SENATE—*Thursday, January 28, 1988*

The Senate met at 9:30 a.m. and was called to order by the Honorable KENT CONRAD, a Senator from the State of North Dakota.

PRAYER

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

Let us pray:

Gracious God, merciful heavenly Father, we may reject Your love or ignore it. You never cease to love us. We may forget You. You never forget us. We may forsake You. You never forsake us. You have committed Yourself to us in Your own words: "Have not I commanded thee? Be strong and of a good courage; be not afraid, neither be thou dismayed: for the Lord thy God is with thee whithersoever thou goest."—Joshua 1:9. You have promised: "I will never leave thee nor forsake thee."—Hebrews 13:5. Grant to all Your servants who labor in this pressure cooker place daily—hourly awareness of and trust in Your unconditional, universal, enduring love and provision. In Jesus' name. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. STENNIS].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, January 28, 1988.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable KENT CONRAD, a Senator from the State of North Dakota, to perform the duties of the Chair.

JOHN C. STENNIS,
President pro tempore.

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

THE JOURNAL

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

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

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, it was informally agreed last night that the time of the two leaders would be yielded to the Senator from Wisconsin [Mr. PROXMIRE].

I ask unanimous consent that that be done.

The ACTING PRESIDENT pro tempore. Without objection, the Senator from Wisconsin is recognized.

SDI A BAD BARGAIN AT ANY COST: HERE'S WHY

Mr. PROXMIRE. Mr. President, how do we make a realistic estimate of the cost of a project like the strategic defense initiative [SDI]? Supporters of the program tend to ignore its costs, or understate them. Opponents buttress their argument against the project by stressing the costs and overstating them. How do we secure the most likely cost or the range of most likely costs? First, we should recognize that cost projections at this stage of the development of a new technological program like the strategic defense initiative are guesses. It is impossible to make estimates of the cost of researching, developing, producing, deploying SDI. Even after SDI has been completed, the cost of maintaining, operating and especially modernizing the project will continue at a very high level year after year, in perpetuity. Why can we not secure reliable cost estimates from those most expert in the SDI technology?

Here is why: First, there is no agreement on what SDI should be designed to do. Should it simply protect our own missile sites and command and control centers so that the U.S. deterrent is safer? Should it defend the Nation's Capitol as the ABM Treaty permits? Should it defend all major U.S. cities? Should it defend all population centers in the United States? Should it defend the entire territory of the United States? Obviously the larger the mission the more costly the project. Defense of missile sites and command and control centers would come in at a small fraction of the cost of a total defense of the entire Nation.

Second, how intensive a defense is necessary for each of these American targets to make SDI sufficiently effective to be worthwhile or "adequate"? And what is the cost of a system that provides "adequate" defense? For example, would a system that provides a 50-percent defense; that is, eliminating 50 percent of Soviet ICBM's that would otherwise strike American targets be adequate? Would a 90-percent defense against U.S.S.R. attack be "adequate"? How reliably can we determine the survivability percentage that SDI would provide?

Third, in a recent article in The Backgrounder, a publication of the Heritage Foundation, by Grant Loebs, SDI advocates estimate the cost of an SDI system that would safeguard the American population against 90 percent of Soviet ICBM's at about $118 billion. They contended the expenditure would cover a 10-year period and would vary between $10 and $12 billion per year. The article omitted any shred of documentation to justify the capability of such an SDI to stop 90 percent or any other percentage of Soviet missiles. It made no distinction between Soviet ICBM's that would be fired from the Soviet Union over the pole and those that would be discharged from bombers or submarines. In fact, it assumed that the SDI would primarily use space based kinetic kill vehicles [SBKKV's] or battle stations to strike Soviet stationary land-based ICBM's in their burst phase. The article failed to show how we would defend such an SDI against antisatellite weapons designed to destroy our highly vulnerable SBKKV's.

Fourth, even if everything worked according to the unlikely scenario desired by the SDI advocates; that is, no effective counter measures used by the Soviets, no bomber or submarine attack, no mobile land-based launchers that could evade the orbiting SBKKV's, the SDI advocates failed to indicate why we should expect SDI to take out 90 percent of the Soviet's missiles.

Fifth, suppose SDI enjoyed that unlikely success, what would be the result of a Soviet strike using only half of their arsenal of 10,000 nuclear warheads and a 90-percent success rate for our SDI, the consequence would be 500 Soviet warheads finding their American target. The Union of Concerned Scientists estimate that if just 100—not 500—if just 100—Soviet strategic warheads should strike American cities we would instantly suffer the death of between 35 and 55 million Americans. Our cities would be a steaming radioactive mess.

Sixth, obviously the Soviets would be expected at the very least—if we proceed with SDI—to increase their offensive nuclear warheads by whatever factor required to nullify our SDI. If they calculate that SDI might eliminate 90 percent of their warheads they could relatively quickly and cheaply increase their warheads by tenfold. Result, the Soviet deterrrent with 100,000 nuclear warheads would carry precisely the same force against a 90-percent effective SDI that it carries now against no SDI.

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

Seventh, it is as impossible to estimate the cost of SDI as it is to estimate how much water it would take to fill a swimming pool that has precise dimensions but also has a drainage hole in the bottom of the pool that flows out into the ocean. Whatever resources we in the United States pour into a defensive system, the Soviets will certainly view SDI as an attempt to destroy the credibility of their deterrent. They view their deterrent as we view our own deterrent—as absolutely essential to their nation's security. Result: No matter how much we pour into building an SDI—several hundred billion, a trillion dollars or several trillion, the Soviets can spend far less and maintain a capability to retaliate against any attack with a devastating and I mean totally devastating nuclear counterattack.

The solid, grim fact remains. SDI or no SDI, no one can win a superpower nuclear war. There will be nothing left but losers. This is why arms control, not SDI, is the only way to peace in this nuclear world.

CALIFORNIA PAPERS FAVOR REPEAL OF GLASS-STEAGALL

Mr. PROXMIRE. Mr. President, I ask unanimous consent, on another subject, that a number of editorials from California newspapers supporting a repeal of the Glass-Steagall Act be printed in the RECORD.

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

[From the Sacramento Bee, Aug. 10, 1987]

BANKING IN THE VISE

For a half century, federal law has barred commercial banks from engaging in other businesses, such as selling securities. But while rules designed to protect bank stability have restrained banks, a decade of deregulation has loosed other businesses, including investment firms, brokerage houses, insurance companies, travel agents, auto manufacturers and even retailers, to tread on the commercial banks' turf. The result? The very rules designed to promote bank safety are now making the banking system more risky.

In the new world of financial supermarkets, banks—defined as institutions that both take deposits and make commercial loans—are being besieged from two directions. On the deposit side, customers who once had little choice but to keep their money in banks can now buy certificates of deposit at the department store or set up cash management accounts that offer packages of services—checking, credit cards, insurance, brokerage, mutual funds—that banks are not permitted to match.

On the loan side, the large and medium-sized corporations that were once the bank's best borrowers are turning to the commercial paper market for short-term financing. Mortgages and auto loans, once a substantial source of income for banks, are being repackaged as securities by investment firms, a technique that lowers costs for consumers but deprives banks of business. That competition has left banks squeezed into what has become the least profitable and riskiest part of the financial world—lending to small companies, farmers, real estate developers and governments abroad.

Although the need to bolster the banking system by putting banks on a level playing field with their less-regulated competitors has been clear to regulators such as the Federal Reserve Congress so far has failed to heed their calls for comprehensive banking reform. Lawmakers are readier to listen to the investment houses, brokers and real estate and insurance agents, who enjoy the legal shackles that keep the banks at bay. As a result, after five years of trying, the closest that Congress can come to a major reform is a bill, headed for the president's desk, that puts restrictions on the growth of non-bank banks and a moratorium on regulatory or court actions that let banks into new fields.

That sort of dithering doesn't inspire confidence. To bolster the banks and spread their risks, Congress must free them to compete with other financial institutions in services such as securities underwriting, insurance and brokerage. At the same time, lawmakers must think about how to restructure financial regulation to achieve in today's more market-oriented financial world the same kind of protection against panics and concentration of power that existed in decades past. Strict laws are needed to see that insured deposits aren't used by diversified institutions to venture into risky businesses, that loans aren't tied to the sale of other financial services and that financial institutions keep firm walls between their banking and non-banking activities.

Properly managed, diversified financial supermarkets can bring lower costs and new services to consumers. But the current willy-nilly deregulation, without comprehensive reform, only brings new instabilities and the risk of a weakened banking system.

[From the Oakland Tribune, June 29, 1987]

DON'T REGULATE BANKS TO DEATH

As if competing with foreign behemoths and domestic financial giants weren't challenge enough, America's banks must do battle from within a regulatory straitjacket fastened by a false premise.

The straitjacket is the Glass-Steagall Act of 1933, which bars banks from applying their financial expertise to underwriting and dealing in securities, a field monopolized by investment banks and foreign institutions.

The premise behind that act is the assumption that bank meddling in securities markets prompted the wave of bank failures in the Great Depression.

This enduring myth has no basis in fact. The great majority of the 4,800 banks that collapsed between 1930 and 1933 were small, rural banks that handled no securities business at all. They went under because they had too small an asset base and too restricted a loan portfolio to survive the one-third shrinkage of the nation's money supply engineered by the Federal Reserve Board.

Today the threat to the nation's banks comes not from overspeculation but overregulation. In today's hypercompetitive international markets, banks cannot hold onto quality customers without more freedom to expand the scope of their operations.

Consider some indicators of the dismal state of the domestic banking industry: Of the world's top 25 banks, only two are American, down from 15 only 30 years ago. Bank profits have slid for the past 15 years, to the point where a quarter of the nation's banks are losing money. For five years running, the bank failure rate has broken post-Depression records.

Glass-Steagall isn't the only culprit. But arbitrary limits on bank entry in the underwriting field, combined with equally arbitrary geographic limits on branch banking, have made it tough for many banks to survive the sharp deflation of the 1980s.

The law effectively stops banks from competing for the prime corporate market in short-term lending; their share of the market has plummeted from 43 percent in 1974 to 27 percent 1985. The reason: Cash-poor companies find it cheaper to raise money from cash-rich companies through the $1 trillion-a-year commercial paper market rather than going to the bank. Only investment banks—and 15 foreign banks grandfathered by Congress—can underwrite commercial paper and other securities.

So U.S. banks have been forced to become lenders of last resort to energy ventures, farm operations and other risky businesses, even while facing tough new competition from "non-bank banks" set up by large companies like Sears and J.C. Penney.

Frustrated by all these restrictions, Chase Manhattan president Thomas Labrecque even talked of abandoning the bank's federal charter. "A bank charter begins to look more and more like a one-way ticket to the graveyard," he said.

Relief is not in sight. Although the Supreme Court last week upheld the right of banks to broker commercial paper, they still may not underwrite it. And Congress is moving, under enormous pressure from investment banks and other financial sectors, to stop further erosion of the Glass-Steagall Act. California Sen. Alan Cranston, listening to his generous campaign contributors in the securities industry, is among the many in Congress fighting to keep the banks in their narrow place.

But the consequences of limiting competition across the range of financial services will surely be to further weaken domestic banks vis-a-vis their foreign rivals.

"If banks cannot evolve," warns Treasury Secretary James Baker, "the term 'countinghouse industry' may before long become an epitaph like 'smokestack' or 'rust bowl.' * * * The victim would be one more U.S. industry that would not—or in this case could not—evolve to meet the competition."

[From the San Jose Mercury, July 7, 1987]

UNBIND THE BANKS

House and Senate conferees have approved a measure that may well be remembered as the banking bill that wasn't.

The legislation, which now goes back to the two chambers for approval, is notable more for what it doesn't accomplish than for what it does.

The bill fails most broadly and miserably in the crucial area of banking deregulation, a process that is long overdue and which must be undertaken soon if American banks are to retain—recover, in many cases—their health.

Congress, unfortunately, has allowed itself to be pressured by the competitors of a reinvigorated banking industry. The conferees agreed to curb the creation and expansion of limited-service banks, which aren't subject to the same regulations as full-service institutions, and to ban temporarily the granting of new banking powers by federal regulators.

Their position may gladden members of the brokerage, insurance, real estate and travel industries, who fear competition from

fully armed banks, but it makes no economic sense. It also is a disservice to consumers.

The U.S. financial landscape has shifted dramatically since the Great Depression, but the regulations governing banks have remained essentially unchanged. Rules created to stabilize the industry more than 50 years ago are throttling it today.

In 1970, seven of the world's 25 largest banks were American, today only three are. A post-Depression record of 200 bank failures is expected this year.

Banks are restricted to activities—principally commercial and consumer lending—that potentially are far riskier than the underwriting and brokerage business they would like to engage in.

No such prohibitions hinder foreign banks or a variety of financial services firms in this country, and they are plundering U.S. banking's business base.

There are ways to let banks expand into more lucrative areas without compromising the safety of their deposits, and they should be adopted. A far greater risk would be posed if the current slide were allowed to continue.

However, blocking the conference committee measure is not the best way to achieve the needed reform.

The legislation authorizes a crucial refinancing by the Federal Savings and Loan Insurance Corp., the currently insolvent agency that is supposed to provide a safety net for the U.S. thrift industry. On that ground alone, it should be approved.

Then, next fall, Congress should take on the crucial, politically nettlesome task it has avoided. Banks must be deregulated.

[From the Fresno Bee, July 13, 1987]

BANKING IN THE VISE

For a half century, federal law has barred commercial banks from engaging in other businesses, such as selling securities. But while rules designed to protect bank stability have restrained banks, a decade of deregulation has loosed other businesses, including investment firms, brokerage houses, insurance companies, travel agents, auto manufacturers and even retailers, to tread on the commercial banks' turf. The result? The very rules designed to promote bank safety are now making the banking system more risky.

In the new world of financial supermarkets, banks—defined as institutions that both take deposits and make commercial loans—are being besieged from two directions. On the deposit side, customers who once had little choice but to keep their money in banks can now buy certificates of deposit at the department store or set up cash management accounts that offer packages of services—checking, credit cards, insurance, brokerage, mutual funds—that banks are not permitted to match.

On the loan side, the large and medium-sized corporations that were once the bank's best borrowers are turning more and more to the commercial paper market for short-term financing. Mortgages and auto loans, once a substantial source of income for banks, are being repackaged as securities by investment firms, a technique that lowers costs for consumers but deprives banks of business. That competition has left banks squeezed into what has become the least profitable and riskiest part of the financial world—lending to small companies, farmers, real estate developers and governments abroad.

Although the need to bolster the banking system by putting banks on a level playing field with their less-regulated competitors has been clear to regulators such as the Federal Reserve, Congress so far has failed to heed their calls for comprehensive banking reform.

Lawmakers are readier to listen to the investment houses, brokers and real estate and insurance agents, who enjoy the legal shackles that keep the banks at bay. As a result, after five years of trying, the closest that Congress can come to a major reform is a pending bill that puts restrictions on the growth of non-bank banks and a moratorium on regulatory or court actions that let banks into new fields.

That sort of dithering doesn't inspire confidence. To bolster the banks and spread their risks, Congress must free them to compete with other financial institutions in services such as securities underwriting, insurance and brokerage. At the same time, lawmakers must think about how to restructure financial regulation to achieve in today's more market-oriented financial world the same kind of protection against panics and concentration of power that existed in decades past.

Strict laws are needed to see that insured deposits aren't used by diversified institutions to venture into risky businesses, that loans aren't tied to the sale of other financial services, and that non-bank financial institutions keep firm walls between their banking and non-banking activities.

Properly managed, diversified financial supermarkets can bring lower costs and new services to consumers. But the current situation of willy-nilly deregulation without comprehensive financial reform only brings new instabilities and the risk of a weakened banking system.

JANUARY GOLDEN FLEECE GOES TO MINORITY BUSINESS DEVELOPMENT AGENCY

Mr. PROXMIRE. Mr. President, I am presenting my Golden Fleece of the month for January to the Minority Business Development Agency of the Department of Commerce for awarding a second $200,000 grant to a virtually useless conference of mayors in southern Texas despite being told by the Department's own auditors that the "performance of the conference during its first grant was extremely poor" and that the project should be terminated. Only after the additional $200,000 was spent and a followup audit report concluded that in the second year the "project's results were minimal" did Federal funding finally stop.

The Minority Business Development Agency's [MBDA] mission is to assist in the establishment and successful operation of minority owned and run businesses. On August 30, 1984, the Lower Rio Grande Conference of Mayors was incorporated in Texas. On September 28, 1984, the conference was awarded a $200,000, noncompetitive, no matching funds required, demonstration project from MBDA.

In May 1986, the inspector general issued a highly critical report of the project and strongly recommended no further funding. According to the report only part of the initial focus of the conference related, even indirectly, to minority business enterprise. Most of the effort and funding went into the overhead costs of setting up the conference and into general community planning.

The auditors pointed out that both the first grant and the proposed second grant duplicated services already provided by the MBDA and other Commerce Department agencies. For example, MBDA itself was funding minority business development centers in key locations in the area. Also, the Department's Economic Development Administration was funding other economic planning and development organizations in the lower Rio Grande region.

Finally the auditors questioned the appropriateness of funding a project, "a major purpose of which would be to generate applications to other Federal agencies for additional grants."

Disregarding the detailed warnings, MBDA awarded the second grant which ran until July 1987.

An interim audit in April 1987 found in addition to producing "minimal" results, the conference was in terrible financial straits. The organization was more than $47,000 in debt, including owing $4,400 to the IRS for overdue payroll taxes. The Federal grant money could not be used to pay the money owed IRS. The auditors concluded that it was doubtful that the conference could continue to function without significant non-Federal funding. Once again the inspector general's report recommended the MBDA not renew the grant.

Finally, after wasting $400,000 of taxpayers' money, the MBDA cut off the funding, and without another handout from "Uncle Sugar" the Lower Rio Grande Valley Conference of Mayors ceased operations.

CIVIL RIGHTS RESTORATION ACT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of unfinished business, which the clerk will now report.

The assistant legislative clerk read as follows:

A bill (S. 557) to restore the broad scope of coverage and to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964.

Pending: Hatch Amendment No. 1386, to clarify that the exemption to Section 901 of the Education Amendments of 1972 shall also apply to entities closely identified with the tenets of a religious organization.

The Senate resumed consideration of the bill in accordance with the unanimous-consent agreement entered on yesterday, which provides as follows:

S. 557 (ORDER NO. 157)

2.—*Ordered,* That at 10:30 a.m. on Thursday, January 28, 1988, the Senate proceed to vote, up-or-down, on the Hatch amendment, dealing with religious tenet, with no time for debate on any motion to reconsider that vote.

Ordered further, That upon disposition of the Hatch amendment, the Senate proceed to the consideration of a Metzenbaum/Kennedy/Weicker/Packwood amendment, with the time until 1:00 p.m. to be equally divided and controlled in the usual form, with an up-or-down vote to occur at 1:00 p.m. thereon, and with no time for debate on any motion to reconsider that vote.

Ordered further, That upon the disposition of the Metzenbaum amendment, the Senate proceed to the consideration of a Danforth amendment, with the time until 2:00 p.m., to be equally divided and controlled in the usual form, with an up-or-down vote thereon to occur at 2:00 p.m., and with no time for debate on any motion to reconsider that vote.

Ordered further, That upon the disposition of the Danforth amendment, the Senate proceed to the consideration of a Hatch substitute for S. 557, on which there shall be 30 minutes debate, to be equally divided and controlled in the usual form, with an up-or-down vote to occur at the expiration of that time, and with no time for debate on any motion to reconsider that vote.

Ordered further, That upon the disposition of the Hatch substitute, the Senate proceed to the consideration of a Humphrey amendment, dealing with Arlines, on which there shall be 1 hour, to be equally divided and controlled in the usual form, and which will be subject to a Harkin-Weicker amendment in the second degree, which must be relevant, on which there shall be 1 hour debate, to be equally divided and controlled in the usual form.

Ordered further, That upon the disposition of the Humphrey amendment, the Senate proceed to the consideration of a Humphrey amendment dealing with small providers, on which there shall be 1 hour debate, to be equally divided and controlled in the usual form, and which will be subject to a Harkin-Weicker amendment in the second degree, which must be relevant, on which there shall be 1 hour debate, to be equally divided and controlled in the usual form.

Ordered further, That no further amendments on abortion be in order.

Ordered further, That no amendments to listed amendments be in order, unless so specified.

Ordered further, That no amendments to any underlying language be in order.

Ordered further, That time for debate on any debatable motion, appeal, or point of order shall be limited to 20 minutes, to be equally divided and controlled in the usual form. *(Jan. 27, 1988.)*

AMENDMENT NO. 1386

The ACTING PRESIDENT pro tempore. The pending question is the Hatch amendment, Amendment No. 1386.

Mr. HATCH. Mr. President, the amendment I am offering will address one of the serious flaws of the legislation as drafted. In 1972, when Congress enacted title IX, which bans sex discrimination in education programs or activities receiving Federal financial assistance, it adopted an exception to coverage under the provisions of the act. This exception reads as follows:

This section shall not apply to an education institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization. * * * (20 U.S.C. section 1681(a)(3).)

When this language was adopted, many educational institutions were controlled by religious organizations. Today, this direct nexus is not quite so clear. Today, many of these institutions, while they retain their identity with religious tenets, are controlled by governing boards, a majority of whose members are lay persons. Similarly, many such institutions receive less financial support from religious organizations than they did in the past. They are, therefore, outside of the scope of the existing test.

The amendment I am offering would expand the scope of the religious tenets exemption by including not only entities controlled by a religious organization, but also those "closely identified with the tenets of" a religious organization.

This language is by no means new to Congress. When we last faced this issue directly during consideration of the higher education amendments of 1986, we included in that legislation a nearly identical exemption to a prohibition on religious discrimination for projects under the Construction Loan Insurance Program.

So this is not a new idea. It is something we have approved.

The amendment would not protect an institution which sought an exemption from prohibitions under title VI, that is, race; section 504, that is, handicapped; or the Age Discrimination Act, that is, age. The exemption would have no application to public schools or hospitals. It would apply only to private institutions which persons attend voluntarily.

So it is a very narrow exception. It is one that does recognize religious freedom and religious beliefs in our society, and I think corrects what is an inequity with regard to religious freedom and religious beliefs in our society that would not otherwise be corrected without this particular amendment.

Moreover, the amendment would not allow an institution to be exempted in its entirety. It would only exempt a policy of the institution that is based on its religious tenets to the extent that the policy conflicts with title IX.

So it is very limited in that regard also.

Church colleges and universities, freely chosen by the students who attend them, have traditionally regarded attitudes about marriage, children and families as central to the concerns of their students. These schools provide not just a traditional education but instill important family and religious values as well. In this regard, church schools provide a very different approach than public schools. The latter, as an extension of the democratic state, must take a more neutral posture regarding certain values including sexual mortality, abortion, marriage, and family life. Without any amendment, S. 557 will push much closer toward an official orthodoxy on value questions in all schools and educational institutions. And it will be an orthodoxy set by Washington, not by the particular beliefs of the citizens out there in the respective areas.

The proponents of S. 557 will argue that this amendment is unnecessary, that no school has ever been denied a request for an exemption. While that may be technically correct—and that is all it is—during the 10-year period between 1975 and 1984, only 5 out of 220 requests for exemptions were actually granted. What the proponents forget to mention is that the bureaucracy has stubbornly resisted even acting on the requests, reflecting an apparent hostility for an exemption.

If one wanted to accurately describe what has happened with the current exemption, during the period I just mentioned, there were 220 requests, 5 exemptions granted and 215 what we might call "failures to act." So technically it is true that one can say that the Department did not deny any requests, but such a description creates a false impression. In fact, more than 95 percent of the requests were simply ignored. Obviously, for the schools involved, there is no real difference between a denial and a failure to act. The result is the same. The schools were forced to bend their religious beliefs to accommodate the regulatory demands of the Department of Education.

Since 1985, when this issue became the subject of congressional debate and public attention, about 145 of the requested exemptions have been granted. Current law provides no guarantee, however, that a different administration will not revert to the practices of the past or revoke the exemptions already granted. Moreover, since there is a private right of action under title IX, there is also the very real possibility that private suits will be filed to deny schools these exemptions.

Moreover, given the scope of Federal jurisdiction called for in S. 557, the need for this amendment will increase as a result of the scope of this bill. While in the past a private, religious school could assume that only a specific program or activity was subject to Federal regulation, S. 557 would apply coverage over the entire institution, guaranteeing that all value and moral related activities at a school would be subject to Federal regulation.

I do not know how anybody could not vote for this amendment which corrects that imbalance and restores the rights of these basically religious institutions to believe in the values that they do and in the tenets that they do.

The support for this amendment is perhaps the evidence of its merit. It has been endorsed by such mainstream organizations as the National Association of Independent Colleges and Universities, which has over 800 member institutions enrolling over 2 million students; the Association of Catholic Colleges and Universities; the American Association of Presidents of Independent Colleges and Universities; the United States Catholic Conference; Agudath Israel; the National Society for Hebrew Day Schools; and the Association of Advanced Rabbinical and Talmudic Schools.

Religious liberty is a basic right of every American, the first right guaranteed in the first amendment. I hope my colleagues will join with the other sponsors of this amendment and protect diversity and pluralism in education. That is what this amendment does. This amendment can be adopted without jeopardizing our commitment to civil rights or impairing the effectiveness of the four statutes addressed in S. 557.

With that, I will reserve the remainder of my time. I will be happy to yield to Senator HATFIELD as the lead cosponsor on this amendment.

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

Mr. HATFIELD. Mr. President, I thank my colleague from Utah, Senator HATCH, for yielding time.

I rise not only as a cosponsor of the amendment before us, but as one who supports the general principles of the Civil Rights Restoration Act. In light of the Supreme Court's decision in Grove City, there is a clear need to strengthen and expand coverage of the four civil rights statutes banning various forms of discrimination in programs and activities that receive Federal funds.

With this said, however, I am also troubled by several aspects of this bill, including its impact on first amendment rights as they relate to religious liberty. Our country was founded on principles of diversity and pluralism, particularly with regard to the free exercise of religious beliefs as guaranteed by the Constitution. As currently drafted, this bill does not adequately protect these rights.

Let me explain. Title IX of the Education Amendments of 1972, which I voted for, prohibits gender discrimination in educational programs or activities receiving Federal funds. That title, however, contained an exemption for educational institutions which are "controlled by a religious organization." Under this exemption, an educational institution may seek an exemption from the provisions of title IX where application of that title "would not be consistent with the religious tenets of such organization." Many private religious colleges and universities teach fundamental religious principles on such topics as marriage, chastity, and abortion. Some religious educational institutions, while believing that educational and other opportunities for men and women should be fully and completely available, also teach that particular distinctions based on gender are both natural and religiously significant. While this may not be the viewpoint of any Senator, surely we all support the right of those institutions to follow the tenets of their religion.

In 1972, the vast majority of these religious schools were directly controlled by church denominations, catholic dioceses and other religious organizations. The current exemption was adequate to protect each school's first amendment right to the free exercise of their religious beliefs. I emphasize that was in 1972.

However, the form of association between these religious entities and their private colleges and universities has evolved over the past 16 years. And I doubt if there are many Senators here that are fully acquainted with this evolution. Today, many of these educational institutions, while still holding to their religious beliefs and doctrine, are controlled by lay boards and have additional sources of funding beyond the religious organization.

Mr. President, it is pretty obvious with the economics of private colleges today, that they must look beyond those denominational constituencies for sources of funding. They could not exist if they did not.

The "religious tenets" exemption from application of title IX, as presently worded, does not reflect this current form of relationship in these institutions. Accordingly, the "control" test for application of the exemption no longer affords adequate protection for religious values under title IX. The current exemption must be amended to reflect the changed nature of religiously oriented institutions.

The amendment before us restores full protection of religious values by providing an exemption from title IX based on religious tenets not only when the institution is controlled by a religious organization, but also when an educational institution "closely identifies with the tenets of" that religious organization.

Keep in mind that we do not seek to "loosen" this exemption. I am an adamant supporter of the full application of all civil rights laws. After 37 years in public life, I think that record is pretty well established. But I do not share the fear that this amendment will somehow create a loophole resulting in widespread discrimination in education. This amendment simply seeks to restore fully the constitutional protection of the free exercise of religious beliefs in religious educational institutions, therefore satisfying the intent of Congress when it adopted the "religious tenets" exemption to title IX in 1972. The amendment will protect important nondiscriminatory principles embodied in title IX and other civil rights statutes.

Let me remind my colleagues what this amendment will not do. It is very limited in scope and does not allow a college to unilaterally claim a blanket exemption from all title IX requirements. There must be a policy or policies embodying a particular religious tenet and a particular title IX regulation regarding gender discrimination in conflict before the exemption will apply. We still hold the control over this, Mr. President, under this act. Title IX coverage will properly apply to all other aspects of the institution's activities.

Further, under the regulations promulgated by the Department of Education, a college must still apply for the exemption. The Department of Education reviews each exemption request submitted, and grants or denies the request based on the facts presented. The Department of Education retains jurisdiction to investigate any complaints or concerns raised regarding the school's connection with the particular religious organization, or if there is concern about the legitimacy of the religious tenet articulated by the school.

Nor does the amendment permit an educational institution to claim protection for differentiation on the basis of race, handicap, or age. These civil rights statutes are fully applicable.

Finally, the exemption is only available to schools which are "controlled" by a religious organization or "closely identified with the tenets of a particular religious organization." The language places reasonable limits on the class of eligible religious organizations.

Let me repeat, Mr. President, that this amendment does not abrogate the intent of title IX; but rather, reflects the actual structure of religious higher education. The amendment strikes a constitutional balance between the need to promote the principles of equal rights, while allowing for the legitimate exercise of religious liberty.

Let us remember that the first amendment guarantees religious liberty as well as free speech and other rights.

This amendment has the support of many organizations, including the U.S. Catholic Conference, the National Association of Independent Colleges and Universities, the Christian College Co-

alition, the Association of Catholic Colleges and Universities, and the American Association of Presidents of Independent Colleges and Universities.

Mr. President, this amendment is badly needed, and I think we ought to be aware of the erosion of first amendment liberties that is happening in our land today. It is interesting to note in closing that a great number of publications on the bicentennial celebration of the Constitution of the United States are addressing first amendment rights and the problems that are arising periodically and regularly under those rights, specifically regarding religious liberties. I speak as one who has had a little experience not only in university and educational life, but in dealing with a very interesting cult that developed in my State. Their presence again called attention to the right to freely exercise religious beliefs under the first amendment. I refer to the Rajneesh. The point is that we must continue to protect our full rights under the Constitution and the first amendment, particularly in the field of religious education.

I urge its adoption.

Mr. HATCH addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Utah.

Mr. HATCH. Mr. President, I would also like the RECORD to show that the National Association of Evangelical Churches supports our amendment and then we reserve the balance of our time.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. KENNEDY addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KENNEDY. How much time remains?

The ACTING PRESIDENT pro tempore. The Senator from Utah controls 2 minutes 52 seconds; and the Senator from Massachusetts 21 minutes 22 seconds.

Mr. KENNEDY. I yield such time as the Senator from Vermont may want.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

Mr. STAFFORD. Mr. President, I thank the very able Senator from Massachusetts for yielding time to me.

Mr. President, it is not without some trepidation that I find myself on the opposite side of an issue from the very able Senator from Utah, Senator HATCH, and my very able friend of many years, the Senator from Oregon, Senator HATFIELD. But that is the way it is today.

Mr. President, I rise in opposition to the amendment being offered to S. 557, The Civil Rights Restoration Act.

The issue before us is whether or not to permit the standard for the religious tenet exemption as outlined in title IX of the Education Amendments of 1972 to be expanded from "controlled by" to "closely identified" with the tenets of a religious organization. It is my opinion that we should reject the amendment and leave the language in the bill as it now stands. I believe that the goal of all civil rights laws is universal compliance. Immunity from such compliance should be granted cautiously and judiciously, as is current practice. Liberalizing the standard for the granting of waivers is unwarranted.

There are several reasons why we should reject this amendment. First and foremost in my mind is the simple fact that in order for S. 557 to be effective it needs to be passed as it is now crafted. I cannot emphasize this point enough. We must not stray from the original intent of this legislation which is to restore the nondiscriminatory statutes back to their pre-Grove City status. We must not allow this measure to be turned into a vehicle for other legislative agendas, but rather, we must permit it to pass in its original form. If we allow one amendment to take hold, I am afraid that we will find ourselves lost in a sea of legislative agendas far from our original shoreline.

Let me also remind my colleagues of the short title of this act: The Civil Rights Restoration Act. Its basic premise is to restore the civil rights of all individuals to the status they held before the narrow ruling issued by the Supreme Court in Grove City. It does not address the issue of religion. It is not, and should not become a religious issue.

Current title IX regulations provide for a religious exemption to the statute where it is inconsistent with the religious tenets of the institution. An educational institution need only make application to the Department of Education for such an exemption. To date, no institution that has completed an application has been denied an exemption. According to a 1987 Department of Education report, there are 150 institutions that have been granted religious exemptions. The National Center for Education Statistics reports that nationally, there are 3,301 institutions of higher learning. They report 786 religiously affiliated schools. That represents over five times the current number that could possibly gain exemption from compliance to the nondiscrimination statutes safeguarded by S. 557. It also means that 559,053 students, the total number of women enrolled both part time and full time in religiously affiliated schools, would possibly be subjected to discriminatory acts. The enactment of the education amendments of 1972 provided women with opportunities to participate in programs and facilities in which they had previously been denied access. The amendment offered by Senator HATCH threatens the rights that we sought to protect in the education amendments of 1972.

Some of my colleagues have mentioned the fact that contained within the Higher Education Act reauthorization of 1986 is language which is similar, if not identical, to that being proposed by Mr. HATCH. They are indeed correct—there is language. However, the context in which that language is used is entirely different from the way in which the amendment proposes its use in S. 557. The language that was inserted by Congressman HENRY during the conference on S. 1965 references only section 752 of the College Construction Loan Insurance Association authorization. This was a concession made very reluctantly by the Senate conferees. When the Senate spoke during floor consideration of the Higher Education Act amendments, the antidiscrimination statute adopted used the phrase "religiously controlled." The expansion agreed to in conference was just that—a conference agreement. It refers only to religious discrimination in consideration of doing business with a newly formed loan insurance association. If I had anticipated then, that insertion of that conference agreement language would possibly cause the failure of a reassertion of our civil rights, I would have fought much more vigorously to prevent its inclusion.

In the 99th Congress, attempts were made to broaden the religious exemption language during consideration of H.R. 700, the civil rights legislation. The House Education and Labor Committee adopted an amendment similar to that proposed by Senator HATCH. The House Judiciary Committee rejected this so-called religiously "affiliated" language. Because of this and other points of disagreement, H.R. 700 was permanently stalled in committee. During the 100th Congress, the Senate Labor and Human Resources Committee reaffirmed the House Judiciary's decision to reject this language by a vote of 11-5. I ask my colleagues to support the decision made by the committee and vote against this amendment.

In closing, I would like to reaffirm my commitment to title IX of the education amendments of 1972. It is indeed unfortunate that in order to guarantee equality for women, we have to mandate it in Federal funds. It seems to this Senator that we should be able to look upon each other as equals and treat each other in such a manner that does not require Government intervention. Discrimination against women should be eradicated from our society. Expanding definitions and manipulating words only creates a greater potential for side-stepping equal treatment.

The PRESIDING OFFICER (Mr. GRAHAM). Who yields time?

Mr. KENNEDY. I yield myself such time as I may use.

Mr. President, I oppose this amendment.

I welcome the comments of the former chairman of the Education Committee, now the ranking minority member of the committee, who has made an extraordinary contribution in the areas of education and not only has reviewed our general education programs but also has a unique perspective on this issue. He has given it a good deal of attention and is probably as knowledgeable about the real implications of this amendment and what the current situation is as any other Member of this Senate.

Since its enactment in 1972, title IX has contained an exemption for educational institutions "controlled by a religious organization." I think that basically addresses the central concerns of the Senator from Oregon and the Senator from Utah. The exemption permits an education institution to seek an exemption from the prohibition on sex discrimination in title IX where the application of title IX "would not be consistent with the religious tenets of such organization."

S. 557 leaves the religious tenet exemption in title IX intact and clarifies that the exemption is as broad as the title IX coverage of education programs and activities. Thus, a religiously controlled education program or activity which receives Federal financial assistance and is therefore subject to the sex discrimination prohibition in title IX, but is not part of an education institution, would still be within the scope of the religious tenet exemption. The inclusion of clarifying language for the religious exemption was prompted by concern expressed by the Catholic Conference in previous Congresses. Bishop Joseph Sullivan, who testified on behalf of the U.S. Catholic Conference before the committee on S. 557, commented approvingly on the religious tenet exemption in S. 557:

> When we testified on this legislation in the last Congress, we requested that the religious tenet provision be extended to ensure that the noneducational institutions would also be protected. As we read S. 557 in its present form, the extension of the religious tenet provision beyond education institutions have been made.

The Catholic Conference later expressed sympathy with the supporters of a change in the religious tenet exemption. I want to make that clear. But in terms of working out the language which we have in S. 557 and reviewing that the testimony we had, it was acceptable at that time. There was an effort to develop this further position, and the conference has embraced that.

The record of implementation of the religious tenet exemption does not indicate any need to broaden the religious tenet provision. The U.S. Department of Education, the agency charged with administering title IX religious exemption requests, provided the following information to the committee by letter dated May 19, 1987. I think this is very important, Mr. President, and I hope the Members are listening.

> OCR has received requests for religious exemptions from 227 institutions since July 21, 1975, the date the title IX regulation was implemented, to the present.
>
> OCR has granted exemptions to 150 institutions. Under the 1985 religious exemption project aimed at resolving the requests pending at that time, OCR closed 79 request files for a variety of reasons, including, but not limited to: the institution withdrew the request; the institution did not need a religious exemption since its admission practices were already exempt; the institution had ceased operations; or the institution failed to respond to repeated requests from OCR for additional information sufficient to act on the exemption request. * * * OCR has never denied a request for religious exemption. No requests for religious exemption are pending at this time.

Some requests were not granted because they were incomplete or the practice engaged in did not violate title IX, as I mentioned.

So exemptions have been granted to institutions seeking to discriminate against women based on their marital status, to limit intercollegiate athletic activities for women, and to discriminate against unmarried pregnant students.

This amendment seeks to expand the religious tenet exemption to include entities who are "closely identified" with the tenets of a religious organization.

Expanding the exemption would substantially broaden the exemption by allowing potentially hundreds of schools and colleges to escape from title IX coverage.

The National Center for Educational Statistics reports that there are 3,331 institutions of higher education nationwide, of which 794 report a religious affiliation. Therefore, it is conceivable that as many as one-quarter of all such institutions could apply for and receive exemptions.

Admittedly, the control test is, and should be, a difficult one. Many schools have chosen to no longer be controlled in order to be able to receive private and public aid. By adopting this amendment, we would allow them to take Federal funds on the one hand and discriminate on the other. There have been no problems in the past. I do not believe that there are problems at the present time.

Mr. President, I want to repeat that there are no pending applications at the present time, and there has not been an instance where there has been a rejection, other than as I understand for the lack of additional information or the conditions which we have mentioned, and the potential in this other area is indeed significant.

Now, we have provided a test that exists and is well understood now by educational institutions. No such test is even suggested by those who propound this amendment.

We provide: is it a school or a department of divinity?

When the initial language was developed, it was pointed out to the supporters of the amendment that we had various seminaries and other religious organizations, groups, educational, whose tenets were of sufficient nature that may be violative of the language. So there was the development with those various groups of these criteria which have been the standard criteria which now are in place, are understood, with a solid record of adherence to it.

These are the criteria: Is it a school or department of divinity, or requires its faculty, students or employees to be members of or otherwise espouse a personal belief in a religion of the organization which it claims to be controlled or on its charter and catalog or other official publications contain explicit statements that it is controlled by a religious organization or an organ thereof or is committed to the doctrines of a particular religion and the members of its governing body are appointed by the controlling religious organizations or an organ thereof or it receives a significant amount of financial support from the controlling religious organization or an organ thereof.

Those seem to me to be flexible, Mr. President. They are understood. Those are words that have been interpreted time in and time out, and I think quite frankly the proof is in the pudding and that is that this has not been an issue which we gave that was raised in a significant way in the course of our hearings. In fairness, the issue was raised over the course of the hearings, but in the consideration, when we talked to and inquired of the various religious groups, even at that time the Catholic Conference reported it; later they adjusted it when the Senate proposal came up.

But under the current situation I will include the full list of the groups that support the existing law for the reasons that I have identified.

The following religious denominations and faith groups support the Civil Rights Restoration Act and oppose all substantive amendments:

Episcopal Church.
Presbyterian Church, USA.
United Methodist General Board of Church and Society.
Union of American Hebrew Congregations.
American Baptist Churches, USA.
Lutheran Office for Governmental Affairs.
United Synagogue of America.
Progressive National Baptist Convention.
United Church of Christ.

United Methodist Church, Women's Division, General Board of Global Ministries.
African Methodist Episcopal Church.
Unitarian Universalist Association.
American Jewish Congress.
American Jewish Committee.
National Council of Churches.
African Methodist Episcopal Zion Church.
Central Conference of American Rabbis.
Church of the Brethren.
Christian Church (Disciples of Christ).
Church Women United.
Friends Committee on National Legislation.
American Friends Service Committee.
National Council of Jewish Women.
Reorganized Church of Jesus Christ of the Latter Day Saints.
National Federation of Temple Sisterhoods.
American Ethical Union.
NA'AMAT U.S.A.
American Humanist Association.
North American Federation of Temple Youth.

Mr. THURMOND. Mr. President, the provisions of title IX allow partial exemptions to institutions where the provisions of title IX are in conflict with their religious tenets. However, these exemptions are limited to institutions which are "controlled by a religious organization".

I support the pending amendment which would extend this exemption to entities which are "closely identified" with the tenets of a religious organization. This amendment would permit religiously oriented schools to claim an exemption from a particular title IX regulation on the basis of a conflict between that regulation and its own religious principles.

I believe it is important that these institutions retain the religious freedoms so basic to our Constitution.

I, therefore, urge the approval of this amendment.

Mr. LEVIN. Mr. President, I will vote against the so-called religious tenets amendment because it expands a current exemption in an ill-defined way.

It may be true, as the proponents of this amendment claim, that the current criterion for educational institutions to receive an exemption from title IX—that they be "controlled by a religious organization"—is too rigorous a standard. It is possible that the nature of educational institutions has changed in such a way over the past few years so that meeting this standard has become too difficult.

However, the solution proposed by those supporting this amendment is too vague. "Closely identified" is an undefined phrase which, in my view, contains potential for abuse.

If the pre-Gover City standard, as expressed through agency regulations, is no longer appropriate because religiously affiliated educational institutions have changed in some way, regulations can be redrafted to accommodate these changes. But the standard that would be applied under this amendment is too broad, and therefore I cannot support it.

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

The PRESIDING OFFICER. The Senator controls 2 minutes and 56 seconds.

Mr. KENNEDY. I yield the remaining time.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. WEICKER. I thank the distinguished Senator from Massachusetts. I think he has pointed out statistically what the case is.

Again, I want to repeat that the bill as written specifically states that any entity which is controlled by a religious organization is eligible for an exemption.

What the distinguished Senator from Utah is trying to do is expand that to entities that are "closely identified with the tenets of a religious organization."

This is a Civil Rights Restoration Act. What we are dealing with is the Constitution of the United States and, very frankly, any exemptions that are granted should be very narrow in terms of scope. The Constitution—that is what prevails in this land; that is what allows every faith to go ahead and practice as they will, but in no wise should it contravene the tenets of the Constitution.

In this particular instance, all sorts of untold mischief would occur as to title IX were the amendment to be adopted.

I think appropriate consideration has been given to people's religious beliefs insofar as an entity is controlled by a religion. But to go ahead and expand it as closely identified with, I can assure you anybody that is in contradiction to the civil rights laws of this Nation is all of a sudden going to find themselves closely identified with one faith or another and the whole purpose of the legislation goes by the boards.

So, I would hope that this would be roundly defeated in the sense that it once again reaffirms the Constitution of the United States. This is not a theocracy. This was set up as a democracy. And in order to preserve that freedom which attaches to all faiths or no faith, it is essential that we have clear-cut guidelines and touchstones as to what the rights of every American are, regardless of what our religious beliefs happen to be, and they can vary, and I would hope that the amendment of the distinguished Senator from Utah will be defeated.

The PRESIDING OFFICER. The Senator from Connecticut yields the floor.

The Senator from Utah.

Mr. HATCH. Mr. President, I have been intrigued by the arguments by the proponents of the bill and the opponents of this particular amendment. First of all, Senator STAFFORD indicated we are just doing a simple overrule of the Grove City decision. The record is well established that we are not just returning to the law as it was prior to the Supreme Court's decision in Grove City.

Look at the language in S. 557 concerning two-tier coverage. Did that exist prior to Grove City? No. And the proponents admit this.

Look at the language on small providers, ultimate beneficiaries of school systems. Was comparable language in existence prior to Grove City? No.

S. 557 really does a lot more than put us back where we were right before Grove City. What is unfortunate is that the sponsors are so eager to abridge, curtail, and eliminate basic fundamental religious rights guaranteed in the Constitution in the name of civil rights.

So when the distinguished Senator from Connecticut starts telling about the Constitution he ought to look at it and read it and realize that the first amendment provides for religious freedom first before all other types of freedoms.

We can have other effective civil rights laws and still have the basic right to freedom of the religion.

With regard to the Catholic Conference, I was intrigued with the comments of my distinguished colleague from Massachusetts because I have a letter from Rev. Msgr. Daniel F. Hoy, from the United States Catholic Conference, one paragraph of which says:

> We also understand that Senator Orrin Hatch will offer an amendment at the request of the National Association of Independent Colleges and Universities, to broaden the religious tenets exception. We are sympathetic to their concerns in this area and are supportive of the amendment.

Contrary to what the distinguished Senator from Massachusetts said, the Catholic Conference is supportive of this amendment, as I think most religious institutions are.

Finally, let us understand what is involved here. When the distinguished Senator from Massachusetts indicated that there has not been 1 exemption denied, actually of the 215 applied for between 1974 and 1984, there were literally only 5 exemptions granted and 215 of them ignored.

Now, admittedly, since Reagan has taken over, that has changed. But it could go right back to that. And the reason they are ignored is because of, I think, bureaucratic hostility to religion, and that is what we have to watch out for.

Finally, with regard to using this "controlled by" language, let me just say this to you: "Controlled by" means, as near as we can ascertain, only two schools in this whole country who would fit within that category. The other 200 or 300 schools, in excess of 200 schools, would not be covered.

Only Brigham Young University and Catholic University would literally be controlled by the religions involved. All the rest of them—Georgetown, Notre Dame, all these others—would not fit within that category and their exemptions would be denied if my amendment does not pass.

So I encourage all Members of the Senate to vote for the amendment.

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

The hour of 10:30 having arrived, the question is on agreeing to the Hatch amendment. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee [Mr. GORE] is necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of illness.

I further announce that, if present and voting, the Senator from Tennessee [Mr. GORE], would vote "nay."

Mr. SIMPSON. I announce that the Senator from Kansas [Mr. DOLE] is necessarily absent.

I also announce that the Senator from Alaska [Mr. MURKOWSKI] and the Senator from Wyoming [Mr. WALLOP] are absent on official business.

I further announce that, if present and voting, the Senator from Wyoming [Mr. WALLOP] would vote "yea."

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

The result was announced—yeas 39, nays 56, as follows:

[Rollcall Vote No. 7 Leg.]

YEAS—39

Armstrong	Hatch	McConnell
Bentsen	Hatfield	Melcher
Boren	Hecht	Nickles
Breaux	Heflin	Pressler
Cochran	Helms	Quayle
D'Amato	Humphrey	Roth
Danforth	Johnston	Simpson
Domenici	Karnes	Stennis
Exon	Kassebaum	Stevens
Ford	Kasten	Symms
Garn	Lugar	Thurmond
Gramm	McCain	Trible
Grassley	McClure	Warner

NAYS—56

Adams	Evans	Packwood
Baucus	Fowler	Pell
Bingaman	Glenn	Proxmire
Bond	Graham	Pryor
Boschwitz	Harkin	Reid
Bradley	Heinz	Riegle
Bumpers	Hollings	Rockefeller
Burdick	Inouye	Rudman
Byrd	Kennedy	Sanford
Chafee	Kerry	Sarbanes
Chiles	Lautenberg	Sasser
Cohen	Leahy	Shelby
Conrad	Levin	Simon
Cranston	Matsunaga	Specter
Daschle	Metzenbaum	Stafford
DeConcini	Mikulski	Weicker
Dixon	Mitchell	Wilson
Dodd	Moynihan	Wirth
Durenberger	Nunn	

NOT VOTING—5

Biden	Gore	Wallop
Dole	Murkowski	

So the amendment (No. 1386) was rejected.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the amendment was not agreed to.

Mr. STAFFORD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Are there any other amendments? By previous agreement, the Senator from Connecticut is recognized.

AMENDMENT NO. 1393

(Purpose: To clarify that S. 557 is abortion-neutral)

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Connecticut [Mr. WEICKER] for himself and Mr. KENNEDY, Mr. METZENBAUM, and Mr. PACKWOOD, proposes an amendment numbered 1393.

At the end of the bill, insert the following new section:

ABORTION NEUTRALITY

No provision of this Act or any amendment made by this Act shall be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal Funds to perform or pay for an abortion.

Mr. KENNEDY. Mr. President, I think the Senator from Connecticut is entitled to be heard. We are making good progress and we want to continue to make progress. This is an important issue. The Senator from Connecticut is entitled to be heard.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Connecticut is recognized.

Mr. WEICKER. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. WEICKER. Mr. President, have the yeas and nays been ordered on this amendment?

The PRESIDING OFFICER. They have not been ordered.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. WEICKER. Mr. President, the amendment before the Senate reaffirms that the Civil Rights Restoration Act is neutral with respect to abortion. As the committee report states, and as the sponsors of the bill have consistently maintained, this bill creates no new abortion rights. I note the statement in the committee report on page 26:

Title IX does not now require any institution to perform abortions and no abortions would be mandated if S. 557 were enacted. This bill does not expand abortion rights.

Frankly, this amendment should not be necessary. A debate on abortion has no place in a bill which seeks only to define what constitutes "program or activity" under the four statutes in question. But, to reassure those who are concerned that our bill will require institutions or hospitals to perform or pay for abortions through their health insurance plans, we offer this amendment.

This amendment does not change the substantive language of title IX—in fact it does not amend title IX. Title IX does not mention abortion now, and we do not alter that.

For those religiously controlled institutions, including hospitals which operate educational programs receiving Federal aid, the exemption in title IX will continue to be available. As everyone is aware after the debate this morning, that exemption allows such institutions to be exempt from those portions of the title IX regulations which are offensive to their religious tenets. No institution has ever been denied such an exemption.

Mr. President, I urge adoption of this amendment in order that the law be clear and in order to satisfy any doubts relative to this subject matter.

Admittedly, it is not the intention of this amendment to go ahead and start redefining and redrafting regulations. That is not the job of this body. But it makes very clear what the law can and cannot do in regard to this matter.

Mr. President, I urge adoption of the amendment.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut controls the time.

Mr. WEICKER. Mr. President, I yield such time as the distinguished Senator from Oregon requires.

The PRESIDING OFFICER. Under the previous order, the vote on this amendment has been ordered at 1 p.m. Therefore, the Senator from Connecticut is in control of 70 minutes and the Senator from Utah is similarly in control of 70 minutes.

Mr. PACKWOOD. After the 1 o'clock vote, may I ask the Chair, will there be further debate time on the Danforth amendment which will be voted on at 2 o'clock?

The PRESIDING OFFICER. From the conclusion of the vote which will commence at 1 o'clock until 2 o'clock, the time will be equally divided and will be on the Danforth amendment.

Mr. PACKWOOD. I thank the Chair.

Mr. President, let me address myself to the amendment which has been offered by Senator WEICKER and to the

argument raised by my good friend from Missouri, Senator DANFORTH. You will recall yesterday Mr. DANFORTH made reference several times to the memorandum of law from the law firm of Dewey, Ballantine, Bushby, Palmer & Wood of what would be the effects of the Civil Rights Restoration Act; whether that act would possibly cause institutions who do not have to perform abortions or pay for abortions currently to have to perform and pay for them under this act.

The proponents of the Civil Rights Restoration Act as it came from the committee thought the answer to that was no, that we did not create additional rights that did not exist before.

But a red flag was waved indicating that we were not just returning to institutionwide coverage, instead of program-specific coverage, but that we were also attempting to expand the rights so that institutions that did not approve of abortion would have to perform or pay for them.

This is the memorandum given to Senator DANFORTH by Dewey, Ballantine, Bushby, Palmer & Wood:

This memorandum considered whether proposed amendments to title IX of the Education Amendments of 1972 could require covered institutions to fund or perform abortions.

Then it goes on:

No one can predict with certainty how the pending legislation would be construed in court.

Based on our analysis of these factors, we conclude that, if the CRRA is enacted in its present form,

Education institutions could be required to fund abortions for students or employees;

Hospitals that engage in education activities or that are affiliated with education institutions could be required to perform abortions for students or employees;

Hospitals could be required to perform abortions for the general public; and

Many education institutions and hospitals associated with a religious institution could fail to qualify under the Act's "religious" exemption.

The amendment of the Senator from Connecticut is very specifically designed, I hope, to answer the "could-be" possibilities in the memorandum from the law firm, to answer the concerns of the Senator from Missouri and others allied with him, that this act could expand the requirement, the compulsion, that certain organizations would have to provide or pay for abortions that do not now.

This amendment says nothing in this act shall require them.

Mr. President, I do not think there should be any argument about that now as to how does the act read, with the amendment of the Senator from Connecticut.

The question really becomes, therefore, whether all we are trying to do is to put the law back to where it was prior to Grove City. All of us prior to Grove City felt the law meant institutionwide, that it was not meant program specific. That surprised us all, Mr. President: President Nixon, President Ford, President Carter, and my hunch it maybe even surprised President Reagan.

That is all we were trying to do.

Mr. President, I think what the Senator from Missouri is trying to do is to return the law to something more than existed prior to Grove City. He is not quarreling with institution-wide coverage. He supports, as I understand, institution-wide coverage.

The amendment of the Senator from Connecticut will take care of the problem about whether this act compels abortions.

Mr. President, I think what the Senator from Missouri wants to do is to change the interpretation of the law that might possibly follow from the regulations in place long before Grove City. These regulations were promulgated by them Secretary of Health, Education, and Welfare Caspar Weinberger in 1975. They all came out simultaneously; they all in one form or another relate to sexual discrimination; they all have some abortion language in them—termination of pregnancy, as it is called in the regulations.

Many of those regulations have never been tested in the court. That was the state of law prior to Grove City.

If we want to go back and undo the state of law prior to Grove City, that, I think, is what the Senator from Missouri wants. He would make the argument that those old regulations that have now been in place for 12 or 13 years have never been tested and he does not want them tested. He wants right now, by law, to simply cut them off and reverse any possibility that they might be tested in the courts and come out adverse to the position of the Senator from Missouri.

That is a fair argument. I understand that argument. I do not agree with it. I do not want to achieve the same end that he wants to achieve, but I understand his argument.

I think it is fair, however, for everyone to understand in the Senate what it is he wants to do. Whether it is the Senator from Utah, the Senator from Connecticut, the Senator from Massachusetts, or myself, or Senator DANFORTH, we have all argued we do not want to change anything in the law other than reverse Grove City's institutionwide versus narrow interpretation.

We all say that is all we want to do. I would posit that the Senator from Missouri wants to change much more than that, and to the extent that we are trying to narrowly confine this bill to one purpose, one purpose, and that is to reverse Grove City's very narrow definition of "program or activity," I think he has to admit that he wants to go beyond that and prohibit any court interpretations of 13-year-old regulations that might conflict with his position.

That is the issue we should be arguing. We should not be arguing abortion here at all. We should be arguing whether or not we want to in any way expand substantive rights, substantive rights, not the issue of institutionwide versus narrow. We should be arguing whether or not we want to expand, restrict, or in any way change substantive rights under title IX and any regulations that have been issued thereunder.

For the sake of simplicity, for the sake of doing as little as possible other than correcting Grove City, all of us at least on my side have tried to make sure honestly that we were not expanding any rights. Heaven knows, those opposed have tried to make sure that we were not doing anything beyond retaining present rights. There is no question but what the amendment of the Senator from Connecticut makes sure, absolutely makes sure, that there is nothing in the Civil Rights Restoration Act that expands abortion rights. That is clear beyond any doubt. So when we come to vote on the amendment of the Senator from Connecticut, I do not know why anyone in this body would vote no, whether or not they share Senator DANFORTH's position or do not; at least this amendment absolutely guarantees that the Civil Rights Restoration Act does not expand abortion rights.

We can then get to the debate on the amendment of the Senator from Missouri, Senator DANFORTH, as to whether we want to pass a law that will change substantive rights and make the substantive law something different—the substantive law something different—than it was prior to Grove City. That is fair debate. But all of us, including opponents and proponents of this act, including proponents and opponents of the Danforth amendment, have said we do not want to change the substantive law. If the Senator from Missouri wants to, he is so entitled. He has a fair argument on his side. But we should all understand that we are then opening up a crack, the issue of changing the substantive law. Rather than all of us trying to say let us not change the law at all, we are then in a position to say, well, if we are going to change what the law was, not just the institutionwide versus "program or activity," narrow coverage, then we all might have a lot of amendments that we would like to offer to either restrict or expand title IX, to restrict or expand the other three principal civil rights acts in areas where at least in my judgment we have not expanded coverage far enough. But I am willing to put that aside for another time.

So I would hope that by a unanimous vote the amendment of the Sen-

ator from Connecticut would pass, and then I would hope that this Senate would say, "There, that takes care of the subject of abortion; there is nothing in this act now that is going to change any abortion rights," and then let us focus on whether or not we want to change the substantive law in any way, substantive law as it existed prior to Grove City; I hope we do not. I strongly support the amendment of the Senator from Connecticut. I hope it passes overwhelmingly and that we subsequently defeat the amendment of the Senator from Missouri.

The PRESIDING OFFICER. Who yields time?

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. HATCH. I yield such time as the Senator from Missouri may need.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, the question is one of substantive law. I do not think there is any doubt about that. The question is, Where will the substantive law be going after Congress acts on the Civil Rights Restoration Act? The concern that has been expressed by the Senator from Missouri is that if we pass the Civil Rights Restoration Act without the Danforth amendment, the result will be that we will open the door to court decisions or to administrative regulations which will have effects which I think most of us in Congress would believe to be outrageous. The issue is whether we want to open the possibility, a very real possibility according to legal opinion which I have, that a court decision could hold, for example, that a hospital affiliated with a Catholic university must perform abortions or that, for example, Notre Dame University must cover abortions under its health plan.

That is the substantive law issue. It does not have anything to do with the timing of regulations. It does not have to do with what was done in 1975. The law as of right now is, as I understand it, that medical schools and hospitals are not required to perform abortions if it is contrary to their conscience. They are not now required to do that. The issue is, Could they be required to do that in the future? That is the question before us.

Now, that question is not something that just popped out of the head of the Senator from Missouri. I did not wake up some morning and say, "By golly, we are about ready to pass something called the Civil Rights Restoration Act which could force Notre Dame University to provide for abortion coverage under their health plan or could require Georgetown University Hospital or Baylor University Hospital to perform abortions." That is not something that I dreamed up. That is something that was presented to me by the American Hospital Association, which supports the Danforth amendment, by the Catholic Health Association, which supports the Danforth amendment. So I sought legal opinion. I sought the opinion of counsel.

I called the Dewey, Ballantine law firm, one of the great law firms of this country, and I asked them for a legal opinion. I have copies of that legal opinion. Any Senator, any staff person is welcome to see it. The legal opinion said that, yes, as a matter of fact, the combination of title IX plus regulations that have been promulgated under title IX, plus the Civil Rights Restoration Act could be construed by a court or by an administrative agency to require colleges, universities, hospitals to provide insurance coverage for abortions under their health plans and could be construed by a court or by an administrative agency to require the actual performance of abortions on students, on staff, on faculty members, and even on the general public.

Now, what is the present state of the law? When Congress passed title IX of the education amendments back in 1972, clearly Congress did not pass a law by which we intended to mandate the funding or the performance of abortions by people who did not want to fund or perform abortions. We did not intend that in 1972. I am sure it was not even thought about in 1972 because Roe versus Wade was not decided until a year later.

The glitch comes when title IX is embellished by a regulation of the Department of Health, Education, and Welfare equated sex discrimination with denial of abortion coverage, and further, with the Civil Rights Restoration Act which expands the coverage of title IX to include hospitals, even hospitals that are not related to a university or to a medical school. If they have any kind of education programs such as nurses education, they would be included by this bill and which expands institutionwide the coverage of title IX.

That was the opinion that I sought from the Dewey, Ballantine law firm. They said yes, a court could so decide.

Now we come to the events of today. We are going to have two amendments to vote on. Under the agreement that we have entered into, no matter what happens to the Weicker-Kennedy-Metzenbaum-Packwood amendment, we will have to vote on my amendment which will provide notwithstanding anything else in the bill, and so on that my amendment prevails. So we will have two votes. We had a big hassle which lasted about 7 or 8 hours yesterday on the floor of the Senate as to who goes first. I obviously wanted to go first with my vote. I could not do it. But why was that so important to the other side? It was so important to the other side because they wanted to create an initial vote which was a shell, which created a plausible argument that it was doing something so that people could get political cover by voting for their amendment and then vote against the Danforth amendment. So that Metzenbaum-Kennedy-Weicker-Packwood amendment is a blank. It is a zero. It does not do anything as a matter of law. It appears to do something as a matter of law, but it does not do a thing.

Again, I am not relying on JACK DANFORTH's analysis for saying that it has no legal effect. I again have sought the opinion of counsel.

I am going to read into the RECORD the analysis of the Dewey, Ballantine law firm. Here is what they say in an opinion letter that is written to me dated January 27.

DEAR SENATOR DANFORTH: This letter follows up on our letter of January 21, 1988, and an accompanying memorandum on the Civil Rights Restoration Act and the Obligation to Fund or Perform Aborations.

You have asked for our opinion on an amendment to the Civil Rights Restoration Act that has been introduced by Senators Kennedy and Metzenbaum as an alternative means of addressing the problem discussed in our earlier memorandum. This amendment reads as follows:

Then Dewey, Ballantine sets forth the text of the pending amendment.

Then the letter goes on:

Based on our review of this proposed amendment, we conclude that it would not solve the problem identified in our earlier memorandum. The proposed amendment declares that the Civils Rights Restoration Act itself does not require the funding or performance of abortions. It is silent, however, on the possibility—which was the subject of our earlier letter and memorandum—that Title IX and regulations promulgated under its authority could require the funding or performance of abortions.

Moreover, since the Civil Rights Restoration Act would overturn the Supreme Court's decision in the Grove City case and thus extend the reach of Title IX, the danger would remain, despite the proposed amendment, that institutions newly brought under the authority of Title IX would also be required to fund or perform abortions for students, employees and even the general public, as described in our earlier letter and memorandum.

The letter is signed by Dewey, Ballantine, Bushby, Palmer & Wood, by J. Paul McGrath who served this country as Assistant Attorney General.

Here is the opinion of the Justice Department in a letter signed by John R. Bolton, Assistant Attorney General, dated today.

DEAR SENATOR DANFORTH: This letter will advise you of the views of the Department of Justice concerning an amendment to S. 557 offered by Senators Edward Kennedy and Lowell Weicker concerning abortion.

Then they set forth the text of the amendment which is now pending.

The letter continues:

It is clear that this amendment will do nothing to address the abortion issue raised by S. 557, in light of the enforcement of Title IX under binding agency regulations, as analyzed in our January 25, 1988 bill comment on S. 557.

This amendment merely purports to state that S. 557 itself does not require payment for, or performance of, abortions. The current pro-abortion Title IX regulations are left in place and fully enforceable by this amendment. Moreover, the underlying bill, S. 557, expands the reach of these regulations, with the continuing result that hospitals operating an education program and which receive federal financial assistance will be compelled to perform abortions on demand to the public. Even on its own terms, the language is wholly inadequate: it does not preclude a hospital from being forced to provide the use of its facilities and services to doctors for the performance of abortions.

In order to render Title IX abortion neutral, Title IX itself must be amended. The language you are offering is the most appropriate and effective way to achieve that essential goal.

I ask unanimous consent that copies of the two opinion letters from Dewey, Ballantine and the Justice Department be printed in the RECORD at this point.

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

DEWEY, BALLANTINE, BUSHY,
PALMER & WOOD,
JANUARY 27, 1988.

Hon. JOHN C. DANFORTH,
U.S. Senate, Senate Russell Office Building, Washington, DC.

DEAR SENATOR DANFORTH: This letter follows up on our letter of January 21, 1988, and an accompanying memorandum on the Civil Rights Restoration Act and the Obligation to Fund or Perform Abortions.

You have asked for our opinion on an amendment to the Civil Rights Restoration Act that has been introduced by Senators Kennedy and Metzenbaum as an alternative means of addressing the problem discussed in our earlier memorandum. This amendment reads as follows:

"No provision of this Act or any amendment made by this Act shall be construed to force or require any individual or hospital or any other institution, program or activity receiving federal funds to perform or pay for an abortion."

Based on our review of this proposed amendment, we conclude that it would not solve the problem identified in our earlier memorandum. The proposed amendment declares that the Civil Rights Restoration Act itself does not require the funding or performance of abortions. It is silent, however, on the possibility—which was the subject of our earlier letter and memorandum—that Title IX and regulations promulgated under its authority could require the funding or performance of abortions.

Moreover, since the Civil Rights Restoration Act would overturn the Supreme Court's decision in the Grove City case and thus extend the reach of Title IX, the danger would remain, despite the proposed amendment, that institutions newly brought under the authority of Title IX would also be required to fund or perform abortions for students, employees and even the general public, as described in our earlier letter and memorandum.

Please let us know if there is additional information we can provide or there are other issues you would like us to address.

Sincerely,

J. PAUL MCGRATH.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, January 28, 1988.

Hon. JOHN C. DANFORTH,
U.S. Senate,
Washington, DC.

DEAR SENATOR DANFORTH: This letter will advise you of the views of the Department of Justice concerning an amendment to S. 557 offered by Senators Edward Kennedy and Lowell Weicker concerning abortion.

We understand this amendment reads as follows:

"No provision of this Act or any amendment made by this Act shall be construed to force or require any individual or hospital or any other institution, program, or activity receiving federal funds to perform or pay for an abortion:"

It is clear that this amendment will do nothing to address the abortion issue raised by S. 557, in light of the enforcement of Title IX under binding agency regulations, as analyzed in our January 25, 1988 bill comment on S. 557.

This amendment merely purports to state that S. 557 itself does not require payment for, or performance of, abortions. The current pro-abortion Title IX regulations are left in place and fully enforceable by this amendment. Moreover, the underlying bill, S. 557, expands the reach of these regulations, with the continuing result that hospitals operating an education program and which receive federal financial assistance will be compelled to perform abortions on demand to the public. Even on its own terms, the language is wholly inadequate: it does not preclude a hospital from being forced to provide the use of its facilities and services to doctors for the performance of abortions.

In order to render Title IX abortion neutral, Title XI itself must be amended. The language you are offering is the most appropriate and effective way to achieve that essential goal.

Sincerely,

JOHN R. BOLTON,
Assistant Attorney General.

Mr. DANFORTH. Mr. President, again, the question before us is not the timing of when a result is brought to pass but rather what result could occur in a court decision in the future. I would suggest that the Weicker-Packwood-Metzenbaum-Kennedy amendment is not in fact abortion neutral, that the effect of our enacting the Civil Rights Restoration Act without the Danforth amendment would be that the Congress of the United States would reaffirm title IX and the regulations thereunder which equate the refusal to provide abortions with sex discrimination, and that further enactment of this legislation, even with this Kennedy-Metzenbaum-Weicker-Packwood amendment, would extend title IX coverage to institution-wide coverage and to hospitals that have any kind of educational component, whether or not affiliated with a university.

I think that the Civil Rights Restoration Act would not preserve the status quo on the question of abortions in these institutions but instead would invite prospective court cases which I predict will occur throughout this country should this act be passed without the Danforth amendment.

So, again, Mr. President, I cannot emphasize too much that the real issue before us has to do with whether or not we in the U.S. Senate really want to require Notre Dame University to provide abortion coverage under its health plan, Georgetown University to provide abortions at its hospitals. That is the real question before us. That is the possibility that has been pointed out by Dewey, Ballantine, by the Justice Department, by the American Hospital Association, by the Catholic Health Association, not just by JACK DANFORTH. I think it is a very, very serious matter. I think it is a very serious matter.

Mr. WEICKER. Mr. President, first, as was eloquently pointed out by the distinguished Senator from Oregon [Mr. PACKWOOD], and to bring the argument back to the amendment before us, we are not debating the Danforth amendment now. We are debating the Civil Rights Restoration Act. We are debating the Weicker-Packwood-Kennedy-Metzenbaum amendment.

I ask the distinguished Senator from Missouri whether he feels that the amendment before us in any way diminishes the substance of his amendment or, in effect, does anything other than strengthen his contention so far as the law is concerned. In other words, would it not be possible to go ahead and adopt both this amendment and his amendment, if that was the will of the Senate?

Mr. DANFORTH. Mr. President, responding to that question, I view the Weicker-Metzenbaum-Kennedy-Packwood amendment as being very similar to a motion to instruct the Sergeant at Arms. It is a legal blank. It has no legal consequence. It does not address the issue that has been raised by my amendment, and that is the opinion of the Justice Department and that is the opinion of the Dewey, Ballantine law firm.

I think the purpose of offering this Weicker-Metzenbaum amendment at this time is not to have a legal consequence but an attempt to provide political cover to Senators who want to vote for something and for some reason do not want to vote for my amendment. It has no legal consequence. It is designed as a fig leaf. I suggest that it is a very small fig leaf, a transparent fig leaf, and it does not provide any cover at all for Senators who are seeking cover.

Mr. WEICKER. So, therefore, to paraphrase the consequence enunciated by the distinguished Senator

from Missouri, there is no reason why anybody should not vote for the amendment, because it has no consequence.

Mr. DANFORTH. I suggest that the reason for voting against it is to simply state by your vote that this is a hoax, it is a sham, it is a nothing, and that a Senator is not going to address a very significant issue of whether institutions that have moral concerns about abortions should be forced to perform abortions; that we are not going to address that very serious concern by voting on an amendment that has no consequence at all.

Mr. WEICKER. To address the last point of the distinguished Senator from Missouri first, let me make two points.

Title IX applies only to students and employees. It is incorrect that the reach of title IX could ever reach the general public. So the Senator's contention that title IX can force hospitals to perform abortions for the general public is false.

Second, hospitals which have a federally assisted education program do come under the reach of title IX; and to the extent that they are religiously controlled, they can receive an exemption.

So let us do away with the fact that anybody is going to be forced to perform abortions on the public. That is not the case.

Let me address, if I can, several of the matters that have been raised in the very articulate presentation by the distinguished Senator from Missouri.

I appreciate getting letters from the Department of Justice, except that I think one has to consider, in terms of the substance of those letters, the source.

First, this Justice Department, has been opposed to the Civil Rights Restoration Act since the matter was first raised. They are against the act, period. This is the Justice Department that commended the court when Grove City was handed down.

So, clearly, this administration, this Justice Department, is going to do everything it can to impede the progress of the Civil Rights Restoration Act or, indeed, if it does progress, to so shape it to the inclinations of this Justice Department and this administration.

Would that this Justice Department had strong feelings on behalf of the retarded and the protection of their rights, and of women and their rights, and of blacks and their rights, and of the elderly and their rights. Enforcement has been notably lacking by this Justice Department in all these areas; and when they come up on the subject of abortion, this is, I suppose, one of the principal comments we have heard from the Justice Department relative to Grove City or the Civil Rights Restoration Act. So, consider the source.

I should like a copy of the letter from the Justice Department.

The point being made here is that the Justice Department says in their letter, and I want to now use their letter:

> It is clear that this amendment will do nothing to address the abortion issue raised by S. 557, in light of the enforcement of Title IX under binding agency regulations, as analyzed in our January 25, 1988 bill comment on S. 557.

Has it occurred to anybody that here is the administration that controls the regulations in their Departments of Education and Health and Human Services? This is the Justice Department commenting on regulations. Regulations are written by the executive branch of Government. If they want the regulations changed, they can change the regulations. This, more than anything else, I think unmasks what is going on out there.

This is just another in the long series of abortion amendments tacked onto every bill that comes down the pike. If it is regulations that bother the administration, and obviously the administration is bothered, as evidenced by this letter from the Justice Department, it can change the regulations. It does not need the Danforth amendment.

Again, consider the source: A Justice Department which has done everything under the Sun not to enforce the civil rights legislation that is on the books and which cheered Grove City and has consistently been opposed to the Civil Rights Restoration Act. So I am delighted that this is going to be passed among my colleagues. But, No. 1, consider the source; and, No. 2, the source says that it is the regulations that are going to be affected, regulations which in themselves can be changed by the executive agencies of this administration. Do you think it can change regulations?

Do any of my colleagues have in the recesses of their memory a recent change of regulations by the administration in this general area?

Does my friend from Missouri have any reaction that this same administration which cannot change title IX regulations has changed title X regulations when it comes to family planning? That is exactly what they have done: change the regulations.

So this really is not an issue, is it? Here is the hoax. Here is the smokescreen. In dragging the regulatory argument out here as if remedy were not available to those who complain, they could change those regulations, as indeed they have changed title X.

The third point is the legal memorandum from Dewey, Ballantine. I certainly hope that not a great amount of money was expended on that opinion, because all Dewey, Ballantine said is that courts could do this. As pointed out by the distinguished Senator from Oregon, they could do this, they could do that. Courts can do anything.

I have not been practicing law since I have been in the U.S. Senate, but as I said, I could issue an opinion like that myself when I was in my general practice days as a young man in Greenwich, CT. Obviously, courts can do anything.

There is nothing very definitive about this great memorandum except courts could do this or could do that.

If indeed the concern of the U.S. Senate is the law that we are about to pass here on the floor of the U.S. Senate, if that is the concern, and that the law reflects title IX before Grove City, then most assuredly this Packwood-Kennedy-Metzenbaum-Weicker amendment gives the assurance the law will not be changed.

I am not in the position here on the floor of the U.S. Senate nor are any of my colleagues, to say what the various executive agencies can or cannot do by virtue of regulation.

Why is it, as I say, that they can go ahead and change title X by regulation, but we cannot do anything with title IX? Of course they can.

But the larger purpose very frankly is another abortion amendment to chip away at Roe versus Wade. That is what this is.

The law, I repeat, as it now is situated does not force religiously controlled hospitals to perform abortions. It does not. And that contention is entirely false both as to how title IX is applicable, because it is applicable to students and employees only and does not apply to the general public. Exemptions can be granted to those religiously controlled institutions, and we have just been through that argument.

If this body wishes, they can pass these two different amendments and they will achieve two different results.

The Weicker amendment, if passed, will guarantee no change in the law vis-a-vis abortion.

The Danforth amendment, if passed, will radically change the law by repealing the executive branch's regulations. So those who have been arguing for no change are the perpetrators of change. And maybe that is what the body wants. I do not.

I disagree with the Danforth amendment.

I have given my word that we should pass something that brings us back to the status quo.

But a vote for the Weicker amendment has a consequence. It clarifies the law and subsequent memorandums from Dewey, Ballantine, Palmer, Bushby & Wood, a fine law firm, to the contrary notwithstanding. All that they say in their second memorandum is that this amendment which reinforces the law will not change executive regulations. Big deal. They did not

have to write a memorandum to tell me that.

Their other great conclusion in the first memorandum is that it could be interpreted by court to say such and such. Very frankly, if I hire a law firm I would like a little more precise, definitive answer than that.

But in any event, I would hope the body would adopt this amendment. If you want to have it both ways, you can have it both ways. I do not advocate that is what we ought to do because one proposes a radical change from the present regulatory stance, which can be accomplished by an administration that somehow has failed to do that.

But if you really want to put it on ice then go ahead and pass this amendment, and you can also go ahead and pass the Danforth amendment which I will oppose for some of the reasons I have described here. I also recognize the fact that has been validly raised by the distinguished Senator from Missouri that there might be those who vote for this amendment would not want to vote for his amendment, but nobody is asking for any cover. Nobody is asking for any cover.

What we want is a Civil Rights Restoration Act passed, with the rights of women, the elderly, the retarded, and minorities to be fully protected by the force of the Federal Government, and a cessation of subsidized discrimination in this Nation. That is the issue before us.

And as I said on the Rupert Murdock amendment and all others that have come along here, these people have been waiting in line and I think these abortion amendments are getting a little tiresome. Regardless of the vestments in which they are paraded on the floor of the U.S. Senate, they come down to the basic bottom line: Let us do something to legislatively change the decision in Roe versus Wade. That is what it all comes down to.

There is no basis in the present law to justify the Danforth amendment.

As I said in my opening statement, there is nothing in the present law to justify a Weicker amendment. It is already the law.

But to allay fears, the amendment is presented to this body. And I hope it would be adopted.

I hope this amendment, as every other extraneous piece of legislation that is going to be heaped on this bill, will be rejected. All we should do is to reaffirm what we meant in the first place, that the civil rights laws of this Nation are to be enforced with all the power at our command and that means if you discriminate you do not get taxpayer money, period.

I am sorry that we continue to be diverted from what this bill is about, to once again get into arguments on abortion. I have been told, I might add, that we have school prayer waiting in the wings, and probably AIDS amendments, et cetera.

I thought that maybe for once something that was magnificent in its ideals, such as the underlying legislation, would have its day before the U.S. Senate and not be sullied by the extraneous.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Florida.

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

Mr. WEICKER. Of course I will yield for a question.

Mr. GRAHAM. I want to be clear as to what the effect of this amendment as well as the amendment that is being offered by the Senator from Missouri would have on the regulations that were adopted in 1975 or others that might be proposed at a future date.

Recognizing the basic legal principle that a regulation must be consistent with and based upon statutory authority, what effect, in the Senator's opinion, would the adoption of the amendment he has proposed have on the statutory authority which is the basis upon which the 1975 regulations are predicated?

Mr. WEICKER. I think my answer to you is it would have really no affect at all because we interpret the law as being very clear on that point as the law is now written. This is in response to the request of those who feel the law is not clear. So we have restated in this amendment what the law already is.

Mr. GRAHAM. So it is your position that the law as it existed prior to 1975 provided a sufficient statutory basis for the regulations that were adopted and that the effect of adopting your amendment would not alter that statutory basis for the 1975 regulations?

Mr. WEICKER. It would not alter the statutory basis and it would not alter the regulations. And the Danforth amendment would or could, as interpreted by Dewey, Ballantine, Bushby, Palmer & Wood, alter the regulations.

Mr. GRAHAM. Could you give me your basis of that distinction between the Weicker amendment and the Danforth amendment to determine the effect on the statutory basis for the 1975 regulations? Why would your amendment not affect the statutory basis and the Senator from Missouri's would have that effect?

Mr. WEICKER. Well, I will let the Senator from Missouri explain how he is reaching into the regulations. I think that is really for him to explain because it is his amendment.

Again, all I have done is to restate the law in this amendment. It is simple. I have to repeat to the distinguished Senator from Florida that my amendment is superfluous to the law as presently written, but it is presented to this body since there are those that have said the Civil Rights Restoration Act gives additional abortion discretion that did not exist in the law before. So in order to reemphasize that that is exactly what we are not doing, we present this amendment, and we say so again in the year 1988. It does no more than that.

Mr. GRAHAM. The concern I have is that when a court does come to the interpretation of the 1975 regulations, one of the questions is going to be: Is there statutory authority to adopt a regulation which purports to say that an institution which receives Federal funds must provide in advance its comprehensive health insurance program for payment of termination of pregnancy? Then, looking at the language which you are now offering, it would appear that a reading of this language would be that that statutory authority of such regulations has been eliminated. Your answer indicates that you do not think that that statutory authority upon which the regulation would be premised is eliminated by the adoption of your amendment.

Mr. WEICKER. No, because I am not in any way addressing the regulations.

Mr. GRAHAM. I know you are not addressing the regulations directly, but I am talking about the foundation upon which the regulations have to be based, which is statutory authority. You cannot have a regulation unless there is a statutory basis.

Mr. WEICKER. It is a reaffirmation of that statutory authority. No more. I think maybe what is in the back of the mind of the distinguished Senator from Florida—correct me if I am wrong, because I do not mean to go ahead and put words in your mouth—is, does enactment of this amendment retroactively approve of the regulations that were enacted back then? If that is the question, I do not think it accomplishes that either. I still think it is open to court interpretation. I do not think anything we do here in any way changes the law as it was or the regulatory interpretation of that law. The next amendment clearly does. There is no question about that.

We have merely tried to respond to those that have a doubt that we are expanding abortion rights under this legislation, and we tried to assure them by restating that such is not the case. I would yield to my distinguished colleague from Oregon to see whether or not he concurs or has additional remarks.

Mr. DANFORTH. Mr. President, who has the floor?

Mr. WEICKER. I have the floor.

Mr. DANFORTH. Who has the floor?

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

Mr. WEICKER. I will be glad to yield, incidentally.

Mr. DANFORTH. I was just going to address the question.

Mr. WEICKER. I will yield for that purpose after I yield to the Senator from Oregon.

Mr. PACKWOOD. I am going to try to address the question because I am not quite sure what you are driving at. Let me ask the Senator from Florida: You are familiar with the argument that both sides seem to make on this that what we want to do is simply go back to the status quo prior to Grove City.

Mr. GRAHAM. I might say, I am not interested or persuaded by that issue. I am interested in finding out the answer to this question: Someone must have assumed in 1975 that there was a statutory basis upon which the regulations were adopted.

Mr. PACKWOOD. I think, then, I can answer the question.

Mr. GRAHAM. My question is: Assuming that was a correct position and that, if challenged in 1975, the regulations would have been sustained, what effect would this amendment have on that statutory basis for the 1975 regulations and what effect would the amendment offered by the Senator from Missouri have on that statutory basis?

Mr. PACKWOOD. The amendment of the Senator from Connecticut would have no effect, because it says nothing in this act, the Civil Rights Act, shall in any way deny, prohibit, compel abortions. It does not attempt to reinterpret title IX in 1972. It does not attempt to reinterpret the regulations of how a court might pass on those regulations. It simply says, nothing in this act shall in any way give any preference to a court decision for or against abortion.

But I think I can answer it this way: I understand what you are saying. I do not know what side you want to come out on, but I think I can explain why we are in the situation we are in.

Let us take the sequence: 1972, the education amendments are passed, including title IX; 1973 is Roe versus Wade is decided; 1975, the regulations are issued by then-Secretary of Health, Education, and Welfare Caspar Weinberger, based upon the 1972 act. And there is a variety of regulations in it. There was relatively little court action involving the subject of abortion under those regulations, relatively little.

But there was no question—now, I will move off this subject for a moment—there was no question but what Congress and the courts, up until the Supreme Court in Grove City, assumed that whatever these regulations related to were institutionwide. And the words "program or activity" appear in the four key civil rights acts that are in the law. And I would just go through a variety of decisions, and where I say State, it is the district court, and where I say circuit, it is the circuit court. California; the District of Columbia, Fifth Circuit; South Carolina; 10th Circuit; 5th Circuit, again; 5th Circuit, again; Illinois; Pennsylvania; 3d Circuit; New York; New Jersey; New Hampshire; we had cases coming from all over the country, all of which interpreted the term "program or activity" to be institutionwide. No one in this Congress thought it meant anything different. We were all thunderstruck when the Supreme Court came out and said Grove City means program specific. And not only was that not even a contest in Congress when we debated this issue 3 years ago, the issue of going back to institutionwide coverage was not even an issue.

This act died 2½ years ago, excuse me, but it did not die over that issue. What you have from 1972 on, actually from 1964 onward, with the Civil Rights Act, was an assumption that coverage was institutionwide.

In title IX, it says you cannot discriminate in education on the basis of sex and you cannot discriminate institutionwide. In 1975, come the regulations that are a point of contest, and they set out certain things, including termination of pregnancy under title IX, we presume institutionwide. If Congress ever presumed institutionwide and if we had meant program specific, we would have changed the law long ago based on all these court decisions.

Now we come to the Civil Rights Act and here is what the Senator from Missouri wants to change. He does not quarrel with institutionwide coverage. We are not making any change that might not have happened absent Grove City, because I want to emphasize again—I think the Senator from Missouri agrees and I see the Senator from New Mexico nodding—we presumed institutionwide. Whatever problems he might have had with abortion existed before the Grove City case. They exist after the Grove City case. And he wants to change the statutory basis, the 1972 statutory basis, to make sure the 1975 regulations cannot be used to achieve an end involving abortion that he does not like.

Now, I think I make the argument fairly for what he wants to do. For the bulk of the rest of us, we thought this exercise was to simply put the law back to where we thought it was. He could be offering this amendment, and I think would be offering this amendment, whether or not there was a Civil Rights Restoration Act on the floor or whether or not the Grove City case had ever been decided. And he wants to change title IX and the authority that the regulations now might give some court—might give, because it has not been interpreted—to reach a conclusion that he does not want.

I am ready to yield the floor unless the Senator from Florida has another question.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. I would be delighted to yield response time.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DURENBERGER. Mr. President, I think the Senator from Florida has focused precisely on what the question is. The question is whether the law is written in such a way as to allow administrative agencies or the courts to decide that it mandates either the funding or the performance of abortions. Now, that really is the underlying question. It does not have to do with what happened in 1972 or 1973 or 1975. The question is: Do you believe that the refusal to fund or provide abortions constitutes sex discrimination triggering title IX on an institutionwide basis and including hospitals? Now, that really is the substantive issue before us.

If you will look at the committee report on your desk on page 2, under "Purpose" the last paragraph, "The purpose of the Civil Rights Restoration Act of 1987 is to reaffirm the pre-Grove City College judicial and executive branch interpretations and enforcement practices." To reaffirm the regulations. Without the Danforth amendment, we are voting to reaffirm the regulations pre-Grove City. Those regulations equated the refusal to fund or provide abortions with sex discrimination.

The belief of the Dewey, Ballantine law firm and the Justice Department and the American Hospital Association is that if we pass this law reaffirming those regulations, the effect of it would be to broaden the instances in which a lawsuit could successfully be filed against an institution to mandate it to fund or to perform abortions. That is the question.

Do you want to open up the possibility that a court or an administrative agency can do that? Or, instead, do we in the Congress want to say no court and no administrative agency is going to be able to read the law in a way to force people to either fund or perform abortions when they do not want to do it. It does not have anything to with Roe versus Wade. Roe versus Wade is the question of a woman's rights to an abortion. There is a difference of opinion on Roe versus Wade. This has nothing to do with Roe versus Wade. It is not an attempt to chip away at Roe versus Wade.

The difference is, on one hand the woman's right to an abortion; on the other hand, whether title IX can be

used as a way to force institutions to either fund or to provide them.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, it is critical that my colleagues recognize that the Weicker-Kennedy-Metzenbaum-Packwood amendment is nothing but an empty shell. This particular amendment states only that the act, S. 557, shall not be interpreted to require individuals or institutions to perform or pay for abortions. But, as the distinguished Senator from Missouri has so cogently stated, it is the existing regulations under title IX that must be addressed. S. 557 does, in fact, broaden the coverage of title IX and, consequently, S. 557 expands the coverage of the abortion regulations.

You cannot read the bill without recognizing it expands the law as it existed 1 day before Grove City. But it is the application of the regulations under title IX that must be changed and only the Danforth amendment brings about that change. That is a fact.

Mr. WEICKER. Would the distinguished Senator yield for just one question?

Mr. HATCH. I would be delighted.

Mr. WEICKER. The distinguished Senator from Utah—I thank him for yielding for a question—sees only the Danforth amendment.

Mr. HATCH. That is right.

Mr. WEICKER. Does the distinguished Senator from Utah agree that the regulations could be changed by the executive agency itself?

Mr. HATCH. The answer to that is the agency might change them, but there will be instant litigation to reenforce them, and we do not know what would happen.

But also, the second answer to that is, not only may the agency change them, but a subsequent administration may harden them or make them more difficult.

So the fact that we have regulations in existence does not necessarily stop them from being changed one way or the other, and it does not change the litigation that would ensure that would reenforce them.

I call to the attention of the distinguished Senator from Connecticut, my friend, his comments made before the committee, which I thought were unique.

Let me do that in just a second, but let me just say this: Danforth solves this problem. It is an abortion-neutral amendment. It seems to me that it is a fair amendment. It does not impose Roe versus Wade on anybody nor does it stop Roe versus Wade from having its full force and effect. In short, if the Weicker-Kennedy-Packwood-Metzenbaum amendment passes, then colleges, hospitals, State government agencies and others would be forced to pay for or perform abortions. Only the Danforth amendment corrects this gross inconsistency under Federal law, whereby the Federal Government refuses to fund abortions.

Under the Hyde amendment, the Federal Government refuses to fund abortions, but under this bill as it is written now, colleges, hospitals, and others will be forced to fund or perform abortions. This is an important thing.

Let me just say in that regard, when we debated this matter before the committee, the distinguished Senator from Connecticut, my friend and a person for whom I have a great deal of respect, he said this. Just for the RECORD I will state:

> If you take Federal funds, you cannot deny a person an abortion. The reason why you cannot deny a person an abortion is it is legal in the United States of America. The reason why it is legal is we do not run the Nation by virtue of our individual consciences. We run by virtue of the constitutional system. That is the answer, pure and simple. And it is not going to change.
>
> The fact is——

This is the distinguished Senator from Connecticut——

> The fact is that the law of the United States of America says that abortion in certain circumstances is legal. Period. That is it . . . that is exactly what the law states . . . I just repeat, so that it is relatively simple, that if someone wants to take Federal funds that you cannot deny the rights of a person under the law. That is it. This in no way impinges upon your individual conscience * * * as I said before * * *.

Senator HUMPHREY then said: "Will the Senator yield for a question?" Does the Senator wish to require Catholic University to perform abortions?"

It probably would have been better for him to have used Notre Dame University, so let us substitute Notre Dame.

Senator WEICKER said: "No, I certainly do not want Catholic University"—or in this case Notre Dame University—"to be required to perform them. The fact is that if Catholic University wants to take Federal funds, they cannot deny—they are not forced to perform them, but they cannot deny an abortion if it is requested."

Once my amendment went down, the preceding amendment went down to defeat—we only had 39 votes, although that is a significant vote——

Mr. WEICKER. Would the Senator yield? Catholic University has an exemption.

Mr. HATCH. That is the point I was going to make personally. Let me just make that point. The reason my amendment was so important before is because under the law as written in this Grove City bill that may pass the floor today, I do not know—under that law, any institution controlled by a religious organization is exempt if its tenets conflict with title IX.

There are only two who make that a requisite in the whole country today out of thousands of schools and hundreds of religious schools. They are Brigham Young University and Catholic University, because they are the only ones completely controlled by religious institutions. All the others are now going to be subject to title IX regulations superseding their own religious tenets—it is just that simple—with the defeat of the Hatch amendment the last time.

I do not think people realize that. This bill is so broadly drafted that, frankly, bureaucrats, with their hostility to religious beliefs, will be trampling all over religious beliefs in these schools.

I think the distinguished Senator from Connecticut would have answered the same way had it been Notre Dame.

Is that correct?

Mr. WEICKER. To respond to the distinguished Senator from Utah, and, again, I can only respond as I did before, exemptions can be granted and they are granted.

Mr. HATCH. Not pursuant to this bill without my amendment.

Mr. WEICKER. And they are granted. And they have been granted to all religiously controlled institutions as far as the public is concerned. So, again, I think you have stated your point articulately and I hope I have mine. But I again have to repeat underlying all of this, yes, to say that Roe versus Wade is not involved is to say that a portion of the law of the land does not have any bearing on what happened after title IX was enacted. I think it certainly does. And that is the law of the land, regardless of how some would like to have it changed.

In terms of, No. 1, the application of title IX is specific to students and employees, and not the public. What those nonreligiously controlled institutions are trying to do is get around this business by having a lay board of trustees and they do not come under the law. These are matters which, quite frankly, really we are not getting into insofar as trying to reestablish what the law was.

I appreciate the speculations of the distinguished Senator from Utah. All I am trying to do is to make sure that what the law was prior to the Grove City case will be the law again with that one point on the definition of program activity being cleared up.

Mr. HATCH. Frankly, that cannot be the case the way this bill is written.

Let me say this, and I will substitute Notre Dame University for Catholic University because Catholic University would be exempt. They do have an exemption, as does Brigham Young University, the only two schools in the country that will have the exemption

if this bill passes both Houses of Congress and is signed into law, which I doubt will happen. So we are going through an exercise here.

Mr. HUMPHREY stated, "Will the Senator yield for a question? Is the Senator willing to substitute Notre Dame to perform the abortion? They will be subject to this law when it passes."

Mr. WEICKER said, "No, I certainly do not want Notre Dame University required to perform them. The fact is that if Notre Dame wants to take Federal funds they cannot deny." He goes on to say, "They cannot be forced to perform them. They cannot deny the abortion if it is requested."

I said, "It is a lot more than that. Under those title IX abortion regulations they have to provide it regardless of their religious beliefs. If those regulations stay in force and effect, and there is no way it seems to me they do not, and this bill passes in its present form, then Catholic institutions that are not owned and controlled by that church but nevertheless affiliated with the church are going to have to provide abortions as a matter of fact to their students. That is, I think, an abomination and I think it flies in the face of religious freedom."

Mr. HARKIN said, "Will the Senator yield? I take it if they don't take Federal money then they don't have to."

I said, "Senator, there is hardly any entity of any size in this world today that does not take Federal money either directly or indirectly. There is hardly a school in this country today that does not indirectly or directly take Federal funds."

Mr. WEICKER said, "That comment, of course, is the essence of the entire argument of this legislation. If you are going to discriminate, you do so with your own money and on your own hook. You do not do so with Federal funds. That underlies everything we are doing here today."

I take it that Roe versus Wade is the law of the land, a constitutional law of the land, and, therefore, it has to be imposed on these schools whether they like it or not, and, frankly, will be imposed whether they have any regulation or not.

Mr. WEICKER. Will the Senator yield?

Mr. HATCH. Let me finish my statement. I would like not to be interrupted and I would like to be able—if you will do it on your own time, I will be happy to yield.

Mr. WEICKER. Sure. I would just comment to assuage the very misgivings the distinguished Senator from Utah has, and they are obviously based on fact, from my own lips, to assuage those doubts being exactly the purpose of this amendment that is before us now.

Now, granted, other misgivings that he has relative to the regulatory agency are addressed by the distinguished Senator from Missouri in his amendment. But what I am saying, and the Senator will certainly agree, is that this amendment is very clear. The very point raised in committee cannot happen, cannot happen, by virtue of this amendment, at least as far as the law is concerned.

It can still happen under regulations, which is the reason why the Senator from Missouri has his amendment.

Mr. HATCH. Your point is Roe versus Wade is the constitutional law of the land and supersedes regulations. Is that your position?

Mr. WEICKER. It certainly is. Roe versus Wade is the law of the land.

Mr. HATCH. Then even this law, which is a statutory law, even your amendment, that does away with your amendment because the precedent that Roe versus Wade would take being the constitutional law of the land would overrule your own amendment.

Mr. WEICKER. Is the Senator amending Roe versus Wade?

Mr. HATCH. This amendment is abortion neutral and ends the issue, if the Senator is wrong that Roe versus Wade would take precedence. If Roe versus Wade does, then both of these amendments would be unconstitutional.

I do not agree with that.

Be that as it may, the Senator may be right.

S. 557 raises serious questions as to the requirements of public and private institutions with regard to the provisions of abortion services. Let me say at the outset that there has been a great deal of confusion regarding the relevance and importance of an abortion neutral amendment to S. 557 which Senator DANFORTH has brought to the floor.

To begin, it is appropriate to discuss the abortion neutral amendment that has been offered by Senator DANFORTH. The amendment reads as follows:

> Nothing in this Title shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person because such person has received any benefit or service related to a legal abortion.

It is hard to believe anybody would vote against that amendment if, in fact, we are trying to go back to pre-Grove City.

The language of the amendment is clear. It would not prohibit any public or private institution from providing abortion services; such institutions would have the option to provide abortion services if they deem such services appropriate and desirable. However, these institutions would not be required to provide abortion services when the provision is against the conscience of the institution. I think that is a fair position.

What we must recognize is that this is not a question of whether one should be able to have an abortion—the Danforth amendment in no way prohibits institutions from providing abortions if they so choose. Rather, the question is whether the Federal Government has the right to force these institutions to pay for or perform abortion services even if to do so is against religious belief or conscience. That is the issue here.

Frankly, there is a glaring irony in the effect of this bill. On the one hand Congress has consistently prohibited the use of Federal funds for the performance of abortions under the Hyde amendment and yet under this bill, institutions that receive Federal assistance would be required to pay for or provide abortions.

Specifically, the regulations at issue, 34 CFR 106.41 and 106.57 require that:

> A recipient shall treat . . . termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational programs or activity.

That is pretty stark stuff.

It is important to note the S. 557 and its accompanying legislative history render these regulations even more egregious than they were before the bill was proposed. First, the proponents have interpreted these regulations as meaning that failure to perform or provide for abortion services is a form of sex discrimination. While this assumption has been argued on the State level in connection with litigation involving State equal rights amendments, this is the first time that abortion has been linked to sex discrimination with regard to these regulations or in connection with Federal legislation, generally.

Second, S. 557 expands the scope of title IX and thereby expands the scope of the existing regulations and the opportunity for future action consistent with the misinterpretation that failure to perform or provide abortion services is a form of sex discrimination. For example, the proponents of the bill have acknowledged that the bill would extend title IX coverage to any off-campus hospital which has any teaching program, such as medical students, nursing students or residents.

In short, under S. 557, any university with students receiving federally subsidized grants or loans will be required to apply the abortion regulations in all of its operations. If a university has a teaching hospital and its students or employees receive medical care at the hospital, it would be required to provide abortion services on

the same basis as any other medical service. Even a nonuniversity hospital receiving Federal assistance could be required to provide for abortions if it conducts any education programs. Under this bill, that is how far it has been expanded. It is not taking us back simply to pre-Grove City.

In fact, in hearings before the Senate Labor and Human Resources Committee, James J. Wilson, city counselor of the city of St. Louis, MO, tested that S. 557 would not only overturn a Missouri State law that treats abortions differently from other medical procedures but also would invalidate the contractual relationship between the city of St. Louis and Regional Hospital which specifically prohibits abortions being performed by Regional with respect to any patients of the city.

The Missouri State Statue, 376.805 R.S.Mo. 1986, provides in pertinent part, "No health insurance contracts, plans or policies * * * shall provide coverage for elective abortions except by an optional rider for which there must be paid an additional premium." The proponents of S. 557 such as the American Civil Liberties Union [ACLU] and Planned Parenthood have publicly conceded that under the bill, the mandatory abortion regulations would cover all educational activities of any teaching hospital. In other words, they concede that hospitals would be required to provide coverage of abortions in the health benefit plans which they offer to the teaching staff and others connected with the teaching program.

Thus, the bill conflicts with Missouri State law prohibiting coverage for elective abortions in group health plans. Moreover, hospitals, such as Regional that have a staffing or teaching relationship with a nearby medical school would be required to provide abortion services, thereby invalidating contractual arrangements such as that between St. Louis and Regional Hospital. There is tremendous controversy in this country surrounding the issue of abortion and those who oppose abortion hold a sincere respect for the right of life of unborn children. To call a failure to perform or provide abortion services sex discrimination is heinous.

Students in colleges covered by title IX have already been compelled to support abortions for other students through mandatory student fees. In the case of *Erzinger* v. *Regents of the University of California*, the Superior Court for San Diego County relied in part on title IX for its decision rejecting the student's claim that the university could not compel them to support the abortions of other students through mandatory student fees. As the court stated:

> The exclusion of medical care in connection with termination of pregnancies might very well and probably would violate Federal law, Title IX of the 1972 Higher Education Amendments * * * (Erzinger v. Regents of the University of California, No. 458599, Superior Court San Diego, Franklin B. Orfield, J., presiding, at pp. 63-64.)

Moreover, there is strong reason to believe that the mandatory abortion coverage resulting from enactment of S. 557 will go beyond coverage of students and employees. As drafted, S. 557 decimates a significant existing limitation on the scope of the title IX abortion regulations—that is, section 901 which provides that the statute applies only to "educational" activities is altered by S. 577, section 901 would exclude noneducational operations of otherwise covered hospitals from regulation. S. 557, effectively abolishes that limitation by providing that "all of the operations" of an entity engaged in the health care business will be covered in their entirety. This indicates that if a hospital is covered at all under title IX, S. 557 will assure that even its treatment of patients from the general public will be subject to the abortion regulations. As drafted, "all of the operations of" listed entities, would include health care institutions whenever a health care institution receives any Federal aid. Certainly, it would run counter to the entire thrust of the bill to limit the application of title IX, and the abortion regulations, to only a hospital's "educational activities." No one contends that the act's other requirements will be limited to students or employees.

In fact, the coverage of this issue has still further ramifications. If a health care institution receiving Federal financial assistance is part of a larger chain, all other institutions in that chain are covered even if none of the other institutions receive Federal assistance. Clearly, S. 557 expands abortion requirements dramatically.

The proponents have suggested that Congress or the administration need merely rescind the regulations in order to correct the concerns raised by this issue. Mr. President, that is an insufficient solution to a serious problem. These regulations were promulgated in 1974 and therefore, have been on the books for the last 14 years. Any rescission would be met immediately with litigation in an attempt to reinstate the regulations. The abortion regulations represent one agency's view of what is required by title IX.

Administrative revocation of those regulations would not bar a court from deciding that the interpretation of the law reflected in the regulations was valid nonetheless and required by the statute. Absent congressional amendment in the form of the Danforth abortion neutral amendment, future administrations could easily reinstate the egregious regulations. Departmental regulations do not provide binding interpretations of Federal law. Judicial interpretations of Federal statutes do. In any event, S. 557 effectively codifies the title IX abortion regulations, which would place them beyond mere administrative revocation. In short, congressional action is required at this time to correct the proabortion effects of S. 557.

It may be useful to point out the views of the proponents of S. 557 on this issue. During the Senate Labor and Human Resources Committee markup of S. 557, on May 20, 1987, Senator WEICKER stated:

> Just for the record, I'll state, if you take Federal funds, you can't deny a person an abortion. The reason why you can't deny a person an abortion is, it's legal in the United States of America. The reason why it's legal is we don't run the nation by virtue of our individual consciences, we run by virtue of a constitutional system. That's the answer pure and simple, and it isn't going to change * * *. It's relatively simple. If someone wants to take Federal funds, then they can't deny the rights of an American under the law. That's it. This in no way impinges on your individual conscience, as I said before * * *. No, I certainly do not want Catholic University required to perform them. The fact is, if Catholic University wants to take Federal funds * * * they can't deny—they're not forced to perform them—they can't deny an abortion if its requested.

Mr. President it is outrageous and inconsistent to disallow the use of Federal funds for abortions on the one hand and to require those receiving Federal funds to pay for or provide abortions on the other hand. It is essential that we accept the Danforth abortion-neutral amendment and correct this glaring problem posed by S. 557.

Let me just add one other sentence. There are those who think that they will be supporting a prolife position by supporting the Weicker-Kennedy-Metzenbaum-Packwood amendment. That is not so. The only position on the floor this day that can solve this problem is going to be the Danforth amendment. So we are asking all Senators who have concerns in this area to vote against the Weicker-Kennedy-Packwood-Metzenbaum amendment. We think that it does more harm to the debate and problem than it does any good, and certainly it seems to me does not solve the problems that we are trying to address here today. It certainly does not solve the expansive nature of this bill, that expands the law way beyond what anybody thought it was back in 1984, before the Grove City decision occurred.

Let me just give 5 minutes to the distinguished Senator from New Mexico, and then turn the balance of my time over to the distinguished Senator from Missouri.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. First, I am not a Senator who believes that we ought to leave the Grove City decision alone. I

have cosponsored legislation to overrule the narrow interpretation of the Supreme Court with reference to institutions. I was an original cosponsor of BOB DOLE's bill of the 98th Congress, and the Senator from Oregon quite properly noted that I was nodding on that part—and that part only—of his discussion about institutionwide coverage versus a narrow interpretation.

Second, I am fully aware that this is not and should not be a discussion of whether or not we agree with Roe versus Wade. I think my record is pretty clear; I do not like the decision, but I am not the Supreme Court. I am a member of the legislative branch.

Third, it should be eminently clear that the law of the land is that the U.S. Government will not pay for abortions. That is the Hyde amendment. We have had that before us enough times where, regardless of how close the vote, it is pretty clear that the Congress of the United States—and I hope and assume constitutionally; nobody has taken that issue to the Supreme Court—has said "You will not spend taxpayers' money for abortion." I assume that is an appropriate exercise of our legislative authority. That is point three. We will not pay for abortion as a matter of decision of the Federal Government.

We had a choice, to borrow the jargon of the day, and Congress elected and exercised its right to choose, and we said we do not pay for them. That is No. 3.

Fourth, if you believe that the Grove City decision is too narrow, you ought to be down here on the floor trying to enact a bill with legislative language that will be passed, be signed by the President, and that will substantially ameliorate the narrow interpretations of the Supreme Court regarding civil rights. Those are my four positions.

Let me take the last one first. I want the last one to happen. In my humble opinion, there is no chance that it is going to happen unless the issue of abortion and civil rights is resolved. I just do not see how, since it has held the House up for 3 years. Can you imagine the President of the United States signing a bill with the Weicker-Kennedy-Metzenbaum language in it and the rest of this bill as it is, with the very first legal opinion out of the box saying you have, by this legislation, substantially expanded the coverage, and thus the scope for litigation, under civil rights of title IX of the Education Act as interpreted by departmental regulations. Can you imagine the President signing that? Can you imagine a veto being sustained by the U.S. Senate and the U.S. House? I just do not believe there is a chance of that.

Now, Mr. President, it seems to me to be—I was going to say the height of hypocrisy, but let me make it a little bit more mellow—it seems to me to be extremely ironic that we will not pay for abortions, exercising our free choice and voting, and we are about to say here today that institutions out there in the United States, principally medical schools doing a fantastic job for American health, doing research, that we are sitting up here saying that an awful lot of them, if they get a little tiny bit of Federal money, there is a real chance, says this legal opinion, that in spite of the Metzenbaum-Weicker-Kennedy language, there is going to be a coercive effect of this new bill. We are drawing on their decisions regarding their choice to say, "We do not choose to perform abortions. There is somebody up the street that might. There is some hospital down the road that might. But we do not."

As a matter of fact, it is a civil rights issue, a pro-choice issue, in my opinion. In this case, it happens to be the same decision that those who are pro-life or right-to-life have come to with reference to their position on this bill.

Mr. President, it is very easy for me—and I have the greatest respect for the Senator from Oregon, who sits here, and the Senator from Ohio, who is over there.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. DOMENICI. Will the Senator yield me 5 additional minutes?

The PRESIDING OFFICER. The Senator from New Mexico is recognized for an additional 5 minutes.

Mr. DOMENICI. It is very simple for me to see what is occurring. Let me couch it this way: Those who say vote for Metzenbaum are asking us to dodge the issue instead of deciding the issue. That is a very, very simple point—dodge the issue and be able to say that, as to the four corners of this new legislation we have addressed the issue. But as a matter of fact you cannot separate title IX of the Education Act from this. So we are not deciding the issue. We have grown notorious as a Congress for not deciding issues. We have grown to the point where our people expect litigation from our legislation because we do not want to decide in clear, plain English language.

I hope those in this body who think they are going to dodge instead of deciding this issue will at least listen to part of this morning's debate because it is unequivocal to this Senator that this legislation before us has in mind affecting title IX of the Education Act in some way or another.

Now, we would be told to not worry about it, it is something else, just worry about the four corners of this bill—dodging the issue instead of deciding it so those who think we are saying to our institutions, our medical schools and derivatives of those medical schools, "We are protecting you because we adopted this language and if you do not want to perform abortions, you are not harming anyone, you are not violating Roe versus Wade, they can go somewhere else and have them." If they think they are going to tell people that is what we decided, they dodged it. And they will have people litigating from now until it finally gets to the Supreme Court—on average 5 years—while people out there are saying what does it mean with reference to title IX, which now has a broadened institutional effect according to the very first legal opinion out of the box.

And I do not think anybody asked them how to decide. Let us send it to five more lawyers, even if we got a three-to-two decision—three lawyers, good ones saying we agree with this one and two do not—it is precisely the point the Senator from New Mexico is making. Let us make it clear. I guarantee my fellow Senators, if you are going to vote for the Metzenbaum-Weicker-Kennedy amendment, and say we made it clear, we protected the choice of institutions to deny abortions because nobody is hurt, you really have not, you have dodged it.

I thank the Senator for yielding.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, how much time is left?

The PRESIDING OFFICER. The proponents have 20 minutes; the opponents have 14 minutes and 51 seconds.

Mr. PACKWOOD. I yield 10 minutes to the Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, let us not confuse the issue. Let us not say that which is not so is so, and let us not say that that which is so is not so.

The manager of the bill, Senator HATCH, in opposition, talks about the expansion of the rights and the obligations of medical schools. The committee report addresses itself to that issue. It says "title IX covers only students and employees and does not reach the public at large." How the Senator from Utah can come to the conclusion that it reaches the public at large in spite of that interpretation by the committee report is difficult for me to understand. The language goes on to state that, "therefore, claims that the bill would require hospitals to provide abortion services to the general public are false."

Yet in spite of that, a member of the committee comes on the floor and says it just is not so. Then we hear the very strong argument made by our friend from New Mexico, who says we want

to correct the Grove City decision, but we want to go further. And there is some concern that the language of this bill expands the right to an abortion, or rather the right to keep Federal funds from being used for an abortion. They talk about a Dewey, Ballantine legal letter saying it is possible that it may be interpreted in a certain way.

Let us face it. None of us who are interested in the Grove City bill or supporting this amendment would require that abortions be performed for the public at large. None of us want to affect the issue of abortion, and we have tried to say that time and time again. The bill does not change the requirement of title IX that it applies to educational programs or activities and their students and employees.

What we are talking about here is an effort on the part of some to put into this civil rights bill a change in the law with respect to the regulations that were passed and enacted several years ago, about 10 years ago. Nobody wants to do that as far as the proponents are concerned. We have tried to make the language as explicitly clear as can be. We say, "No provisions of this act or any amendment made by this act shall be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal funds to perform or pay for an abortion."

In spite of that specific language, language as direct as it could be, the distinguished Senator from Utah says that amendment is nothing but an empty shell. I do not understand his reasoning.

We are saying that abortion is an issue that Congress has dealt with. By my last count, I think it has been almost 500 times since I have been in the U.S. Senate, and every time we get a measure before us, we get an abortion amendment.

Grove City is a civil rights bill. What we are saying is "Let's deal with the civil rights issue, the limitations imposed by Grove City, and let us not get into the abortion issue." The amendment of the Senator from Missouri would do just that. It would reach title IX. It would undo the regulations.

I respect his right to make that argument, that the regulations should be undone, that they should be changed. I do not happen to think so. He certainly has that right. But it is unbecoming for him and others to come to the floor of the Senate and jeopardize this civil rights bill. I believe it is confusing the issue.

I would have much preferred we not have to consider any kind of disclaimer language on the subject of abortion; but we have not been able to prevail upon others who would want us to address the regulations adopted in 1975. We do not want to change the title IX regulations. We do not want to add to them. We do not want to detract from them. We just want to make it clear that scare stories and reports about the impact of this bill on the issue of abortion are not based on fact. That is the reason for our amendment.

On another day, it may be appropriate to deal with the question of the regulations. My views with respect to changing those regulations would not be different from what they are now. But I feel sad that those who would say they support the reversal of the Grove City decision come to the floor, as the Senator from New Mexico has just done, and say that we need to address the abortion issue before we do what is right with respect to Grove City. I do not believe we should condition our consideration of this bill or consideration of an abortion issue.

I remember when Senator Magnuson was a Member of this body, and he would say, almost with tears in his eyes, "Why is it that every time I have an appropriation bill, whether it has to do with this subject, that subject, or any of a number of other subjects, I have to get into a battle on the abortion issue?"

Congress has dealt with that issue on innumerable occasions—as I have said, almost 500 times since I have been here.

The question is, can we stay away from that subject and not jeopardize the enactment of a very much needed piece of legislation to correct the civil rights laws of this country? That is what this issue is all about.

If you think we ought to be able to move forward on the Grove City matter without getting into the abortion issue, then I hope you will vote for our amendment. But if you are willing to jeopardize the passage of the correction, and if you believe that we ought to reach out beyond and try to do something about the 1975 regulations, then of course you will vote against our amendment.

I strongly urge my colleagues: Stay away from the abortion issue on this bill. Vote the Grove City matter up or down, and do not tinker with the 10-year-old abortion regulations.

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

The PRESIDING OFFICER. Who yields time?

Mr. DANFORTH. Mr. President, I wish to respond to a few of the points that have been made by various Senators.

First, I think that perhaps the most telling part of the debate this morning occurred when questions were put to Senator WEICKER and to me by the Senator from Florida [Mr. GRAHAM] about the effect of the two amendments, the Metzenbaum-Packwood amendment and a Danforth amendment that we will shortly be voting on. I think the questions before us are as follows:

First, do we, by passing this legislation, reaffirm a regulation of the Department of Health, Education, and Welfare which equates the refusal to provide abortions with sex discrimination? That was the 1975 regulation. It equated the refusal to fund abortions with sex discrimination.

The bill before us states, quite expressly, and I quote from page 10 of the bill before us:

> Congress finds that legislative action is necessary to restore the prior consistent and long-standing executive branch interpretation and broad institutionwide application of those laws it previously administered.

That is to say that the bill without the Danforth amendment expressly reaffirms a regulation.

Senator WEICKER said, "Well, a regulation that is adopted by an administrative agency can be changed by an administrative agency." I do not think that is the case once Congress has expressly reaffirmed it.

So the underlying policy question for each Senator to answer is, do you believe that the refusal to fund or to provide abortions or to perform abortions constitutes sex discrimination within the meaning of title IX and therefore should be broadly applied to hospitals and to educational institutions under the Civil Rights Restoration Act?

Do we want to open the courts and regulatory agencies to the possibility that institutions may be required to fund or to perform abortions, even though abortion is morally abhorrent to those institutions?

Do we want to say to Notre Dame University that it has to be in their health plan? Do we want to say to Georgetown University that it has to be in their hospital?

Answering some of the points that have been made, first of all——

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

Mr. DANFORTH. I do not have much time, and I would like to run through these points. I know that some other Senators want to be heard.

Senator WEICKER said that the abortion requirement might apply to students and staff of a university.

But it would not be applied simply to patients.

I do not think that is much of a consolation to Georgetown University Hospital that the only abortions it would have to perform is for students or staff, but in point of fact the Dewey, Ballantine legal memorandum expressly addresses this question and states that a court could without the Danforth amendment interpret the law so as to require abortions for the general public even in a hospital like Georgetown University Hospital.

Second, the scope of the religious exemption we have already voted on today. We have voted on a very narrow

scope of the religious exemption. Again the religious exemption, depending on what administration is reading it, can be read so that a university with a lay board of trustees is not covered by the religious exemption. For example, St. Louis University is generally viewed as a Jesuit university. The president of the board of trustees, at least the last time I looked, was Vice President Bush's brother, who is not a Roman Catholic. It would not be viewed as a Catholic institution or a religiously controlled institution. So the religious exemption provides very little coverage.

Finally, it has been said, "Well, do we chip away at Roe versus Wade?" Before us is not Roe versus Wade. Roe versus Wade has to do with a woman's right to abortion.

The issue before us is whether a hospital or a college or a university can be compelled to fund abortions.

Senator DOMENICI pointed out we in Congress in the Hyde amendment language have already voted that we are not going to be in the business of funding abortions in the Federal Government.

Together with title IX and the regulations subsequent to title IX, this bill could be read to force the private sector and local governments, for that matter, to fund abortions when we say that we are not going to do so in the United States.

Mr. President, I would simply reiterate that the Metzenbaum-Kennedy-Packwood-Weicker amendment is a blank. It does nothing. It provides absolutely no cover.

We have legal memos from Dewey, Ballantine and from the Justice Department stating that it has absolutely no effect.

I would urge the Senate to vote against the sham of that amendment and to vote for the Danforth amendment.

I believe that Senator WILSON has been seeking time.

How much time does the Senator wish?

Mr. WILSON. Three minutes.

Mr. METZENBAUM. Will the Senator yield for a question first?

Mr. DANFORTH. Let me ask first: How much time do I have?

The PRESIDING OFFICER. The Senator from Missouri has 8 minutes.

Mr. DANFORTH. Let me say this. I know Senator METZENBAUM and Senator BUMPERS both wanted to question me. I would like Senators who would like to speak to have the opportunity.

I will yield 3 minutes to Senator WILSON and if I have time I will be happy to entertain any questions.

The PRESIDING OFFICER. The Senator from California.

Mr. WILSON. Thank you, Mr. President.

Mr. President, the Senator from Missouri has I think very clearly stated the case for the need for his amendment, but what is apparently not clear to many on this floor and many who are wondering why this amendment is necessary or why if this is adopted there is a need for the Danforth amendment is simply this: This amendment does not remove the need for the Danforth amendment because the need for the Danforth amendment arises from a regulation that would be unaffected by this amendment.

So if Senators wish to vote for this amendment, I suppose they can, but they should dare not delude themselves that by so doing, they will have eliminated the need or addressed the problem that gives rise to the need for Senator DANFORTH's amendment.

Without the Danforth amendment, that regulation continues to give promise of not just strife, but certainly of being applied by bureaucrats in a way that will force institutions subject to title IX to perform or to fund abortions against their conscience. That is not right. And as I stated yesterday, I am one of those Senators generally characterized as prochoice. We will not get into that debate, because there is not time, and that essentially is not the issue. The issue here is one of fairness, for Senators, whether they be prochoice or prolife, can and should support the Danforth amendment simply because on the basis of fairness, hearkening back to the tradition of honoring the request of conscientious objectors, we say to those who legitimately assert a conscientious objection that abortion is morally repugnant to them that they shall not be required to perform it or to fund it.

That is what this is about. It is nothing more or less. It is a narrow point, but of tremendous importance. But do not delude yourselves, my friends, that by voting for this amendment you remove the need for the Danforth amendment. That is not true. The Danforth amendment addresses all of title IX. Its reach is broad as the title and needs to be to protect against that unfairness arising from that underlying regulation, and this amendment that is before us, the Weicker-Metzenbaum-Packwood et cetera, et al., does not do that.

There is nothing wrong with it, I suppose, as long as you understand it does not give the needed protection against that unfairness.

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

Who yields time? The Senator from Ohio.

Mr. METZENBAUM. Mr. President, it is very interesting to me that the Senator from California says that we need the Danforth amendment for protection against title IX regulations while the Senator from Missouri says the bill does not effect the regulations. These are contradictory positions.

But because the Senator from Missouri is saying that the bill does have an impact and enacts the title IX regulations, I want to make it clear that this is not so.

The committee report specifically addresses itself to this issue.

> The title IX regulations are not at issue in this legislation. They have been in place for 12 years and there have been neither any legal challenges to these regulations by anti-choice groups nor any effort on the part of this administration to withdraw or modify the regulations. S. 557 neither ratifies nor rejects the title IX regulations related to discrimination based on pregnancy or termination of pregnancy.

It is as clear as it could be, that we are not affecting the title IX regulations, and we do not want to affect those title IX regulations. The administration can change them if it wants to. That is up to the administration. But what the Danforth amendment does is interject into this civil rights issue the matter of those title IX regulations. We are saying "stay out of the abortion issue if you want to change the law with respect to Grove City." That is as simple and as direct as we can make it.

If you think our language does not say it directly enough, tell us. Nobody claimed that our language wasn't clear.

We are making it clear. We do not want to affect the title IX regulations. We do not want to change law on the abortion issue. We just want to pass the Grove City legislation. We can deal with the title IX regulations in other legislation. It is within the power of the administration modify them.

Mr. BUMPERS. Mr. President, will the distinguished Senator from Missouri be willing to engage in a short colloquy that will be very brief.

Mr. DANFORTH. Yes.

Mr. BUMPERS. This is an immensely difficult problem for almost every Senator here, I think.

But, No. 1, the Senator's amendment only deals with title IX; is that correct?

Mr. DANFORTH. The Senator's amendment deals with the combination of title IX, the regulations pursuant to title IX, and the Civil Rights Restoration Act. The Senator's amendment says that that combination is neutral on the subject of abortion, that the law cannot be read by a court or by a regulatory agency to compel a college, university, or hospital to pay for abortions in its health coverage plan or to perform abortions. That is exactly what the Senator's amendment is intended to do.

Mr. BUMPERS. In the Senator's amendment, section 909 says, "Nothing in this title shall be construed," et cetera——

Mr. DANFORTH. Right.

Mr. BUMPERS. "This title" refers to title IX.

Mr. DANFORTH. Yes.

Mr. BUMPERS. Now, the second question, as I understand the debate, to be very succinct about it, is that the authors of this amendment and the proponents of the Grove City restoration, the repeal of the Grove City decision, are saying this bill as presently written has absolutely no effect on the law as it has previously been. We are simply reinstating the law as it was prior to the Supreme Court decision.

As I understand the Senator's amendment, the Senator's amendment goes beyond that by simply saying "I want to make it permissible for any person, private, public or institution to have the right to refuse to perform abortions," You say pay for. I do not know why "pay for" is there. I do not know anybody who has been required to pay for.

Mr. DANFORTH. Yes. That is a very big issue. In fact, that is what the 1975 regulations were specifically about. Whether you say the university health plan, say, Notre Dame University, whether a health plan a Notre Dame University provided generally for students' health care had to provide for abortions as well. If the Danforth amendment is adopted then the U.S. Senate is saying that Notre Dame University in its health care program does not have to provide for abortion coverage. It is up to Notre Dame to do it or not do it.

We are saying that Georgetown University does not have to perform abortions. It is up to Georgetown University.

By contrast, if the route we are going is the Metzenbaum amendment, we are saying that if a court or a regulatory agency is left open to decide that issue, and according to the legal opinion of Dewey, Ballantine, the well-known law firm, it is well within reasonable possibility for a court to determine that, yes, a school, a college, a hospital, can be required to fund or to perform abortions if they are receiving any Federal funds for any part of their program.

Mr. BUMPERS. Are you saying Notre Dame can be made to include in its health care plan provisions to pay for abortions?

Mr. DANFORTH. That is precisely the issue before us.

Mr. BUMPERS. Under existing law?

Mr. DANFORTH. Yes.

Mr. BUMPERS. Has that been determined by the court?

Mr. DANFORTH. That is the opinion of the Dewey, Ballantine law firm.

Mr. BUMPERS. Has that been validated in court? Has any court said that?

Mr. DANFORTH. The answer to the question is, no, this is a matter that has not been determined by a court. We anticipate litigation as a result of this legislation. The issue is: Do we want to preclude such a court interpretation or, instead, do we in the Congress want to pass the buck to the Federal judiciary and say, "You make the policy for us"? If it is our decision that as a matter of Government policy the decision on funding or performing abortions should be left up to the Notre Dames and the Georgetowns of the country, then we vote for the Danforth amendment. If, instead, we say that no, a court or administrative agency will have a free hand to interpret this law in such a way as to force abortion coverage or abortion performance on these institutions, then we can vote for the Metzenbaum amendment, claim that we have got some kind of cover, and vote for the bill without the Danforth amendment. That is precisely the issue before us.

Mr. BUMPERS. Last question: Since the amendment of the Senator only deals with title IX, what would prohibit somebody from challenging a hospital, private or public, under title VI of the Civil Rights Act?

Mr. DANFORTH. I have not made any legal analysis of that. I have no idea one way or the other.

The only question that I put to the law firm, and the only question I responded to when it came to me from the American Hospital Association and other organizations had to do with the effect of the combination of the bill that is before us, together with title IX and regulations under title IX. They are concerned that we will have given a basis for a court to determine the funding of abortion or performance of abortion could be mandatory. Now, that is their concern.

Mr. BUMPERS. The Senator's amendment goes far beyond the religious——

The PRESIDING OFFICER. The time on the amendment has expired. The proponents have 7 minutes and 17 seconds remaining.

Mr. PACKWOOD. I would be happy to yield additional time to the Senator from Arkansas if he wants to ask a question and the Senator from Missouri to answer to them on my time, but I want to save 3 minutes.

Mr. METZENBAUM. Would you save 2 for me?

Mr. BUMPERS. The Senator may just go ahead. I think I have said all I want to say.

Mr. PACKWOOD. I think you have got it right. There was, I do not want to say an agreement, but there was an understanding that what we were going to try to do with this legislation was simply reverse Grove City and go back to institution-wide coverage. We were not going to get into school prayer although somebody apparently is going to offer a school prayer amendment.

We were not going to get into abortion. We were not going to get into AIDS. We were just going to try to reverse Grove City and go back to what all of us, including the Senator from Missouri, thought was the law prior to Grove City and what the law was in title IX and the 1975 regulations and whatever court decisions we had. And you asked whether we had any court decisions that concluded what he concluded and Dewey, Ballantine concluded, and the answer is no, there were no court decisions. That was the law.

Now, because the allegation was made that the bill as it came out of committee actually expanded abortion rights, Senator METZENBAUM, Senator WEICKER, Senator KENNEDY, and myself offered an amendment that says nothing in this act expands abortion rights. You cannot compel any abortions, provide for them, pay for them in this act. We will go back to where we were prior to Grove City.

What Senator DANFORTH wants to do is change title IX and change the law so that the regulations that are now in existence could never be interpreted by a court to reach a decision on abortion that he does not like. It is a perfectly legitimate position. I do not agree with it. But it certainly cannot be said that all he wants to do is go back to where the law was prior to Grove City. He wants to change the law as it existed prior to Grove City.

I will yield 2 minutes to the Senator from Ohio if he is ready.

Mr. METZENBAUM. Would the Senator just reply to one simple question?

Mr. PACKWOOD. Sure.

Mr. METZENBAUM. Is it not a fact that the Dewey, Ballantine letter is addressed to the bill without our amendment?

Mr. PACKWOOD. Absolutely; totally. As you read the Dewey, Ballantine letter, first, it does not apply to title IX as title IX was originally written. It applies to it as this act amends it. And they have got a whole lot of could be's and may be's, this might happen. This whole memorandum is unrealated to the Weicker-Metzenbaum amendment. It is related, allegedly, to the act as reported. And the amendment that you have offered and Senator WEICKER has offered absolutely denudes the 17-page Dewey, Ballantine memorandum of any relevance.

Mr. METZENBAUM. And is it not a fact that even if it had relevancy, all they say in that letter is some court could decide it this way but make no observation that it is certain that the court will interpret them in this manner. Nor does the memo say that the bill cannot be interpreted any other way. It is just one of those speculative answers.

Mr. PACKWOOD. Here is exactly what they say: If the Civil Rights Restoration Act is enacted in its present form, that is before your amendment,

educational institutions could be required to fund abortions, hospitals that engage in educational activities could be, hospitals could be, educational institutions could fail to qualify.

There is no court decision under all those regulations that existed under title IX prior to Grove City that ever found that, that ever compelled that, that ever could be; never took place. The only issue that Grove City decided was narrow versus institutionwide coverage. That is all. But there have been no bogeyman court decisions reaching those could-be conclusions.

Mr. METZENBAUM. That was my understanding. I thank the Senator.

Mr. DANFORTH. If the Senator has nothing more to say, I will be happy to ask him some questions.

Mr. PACKWOOD. Go right ahead.

Mr. DANFORTH. Well, is not the difference between my amendment's approach and the Senator from Oregon's approach that under the position of the Senator from Oregon, the Senator from Ohio, and others, a court could determine that an institution such as Georgetown University could be compelled to perform an abortion. Under the Danforth amendment, Georgetown University could not be compelled by a court order to perform abortions under title IX. Is that not the difference?

Mr. PACKWOOD. All I would ask my distinguished colleague, since he asked, all I would ask my distinguished colleague is this: Is that any different than what the state of the law was prior to the Grove City decision?

Mr. DANFORTH. Well, this is different, as a matter of fact. First of all, because we are, by statute, reaffirming a regulation; and, second, by statute, we are applying the Grove City scope to hospitals, even hospitals that are not connected with universities. So the answer is clearly yes, we are expanding the law beyond what it was before Grove City by enacting this legislation.

Mr. PACKWOOD. I would respond to my good friend, and he is my good friend, from Missouri that that simply is not the case. It was not intended to do that. We have tried to limit that by the Weicker-Metzenbaum-Kennedy-Packwood amendment. We have no desire to expand the substance of the law beyond where it was. We tried not to do that. And all we wanted to do was say this law applies to institutions. We will go back just prior to Grove City. We had the regulations. We had no particular court decisions on this subject one way or the other. That is the situation we would like to return to.

What the Senator from Missouri wants to do is say, not only are we going to go back to that, we are going to pass a law that will prohibit any court decisions that might reach a conclusion which you do not want.

Mr. DANFORTH. The Senator has read the Dewey, Ballantine letter of this morning which states that the Metzenbaum-Weicker, et al, amendment is a nullity as far as the issue raised by the Senator from Missouri is concerned.

Mr. PACKWOOD. As far as the issue raised by the Senator from Missouri, that is correct, because the amendment of the Senator from Missouri goes back to title IX and the Education Act and the regulations, whereas the amendment of the Senators from Ohio and Connecticut and Senator KENNEDY and myself relates to this act. So it is a nullity as it relates to your amendment, because your amendment applies to the whole panoply of the regulations in the act of 15 years ago.

Mr. DANFORTH. Therefore, the Metzenbaum amendment would provide no cover for a Senator who wants to come to the floor and address the issues that have been raised by the Senator from Missouri.

Mr. PACKWOOD. What the Metzenbaum amendment does is clear. What it would do is carry out the understanding that we would not use this legislation to attempt to change the substantive law of abortion or anything else; that we would try simply to rectify a decision that we all were surprised by and thought was wrong.

Mr. DANFORTH. And the Metzenbaum amendment therefore would leave open the possibility that a court could mandate that Georgetown University has to provide or fund abortions?

Mr. PACKWOOD. The Metzenbaum amendment would leave the law in exactly the same state that it was in prior to the Grove City decision.

Mr. DANFORTH. So the answer to my question is yes?

Mr. WILSON. Yes.

Mr. CRANSTON. Mr. President, the Senate will have the chance to vote on two amendments relating to the issue of abortion.

The first amendment is truly an abortion neutrality amendment.

The second amendment, offered by the Senator from Missouri [Mr. DANFORTH], has been described as an abortion neutral amendment. It is not. The Danforth amendment rewrites substantive law which has been in effect for more than a decade. It would overturn the title IX regulations issued under the Ford administration which forbid educational receiving Federal funds from discriminating against students or employees who are seeking or have had an abortion.

Mr. President, the Civil Rights Restoration Act is not an abortion bill. It is a civil rights measure designed to restore the scope of coverage of the four basic civil rights statutes which require that recipients of Federal funds refrain from discrimination.

The opponents of this legislation have charged that the bill will expand abortion rights, require hospitals to provide abortions to the general public and require religious institutions to perform abortions. Those charges are totally false. The committee report discusses these claims and rejects them flatly. The proponents of the Danforth amendment have contended that the committee report language is not binding and therefore inadequate to respond to their concerns.

The abortion neutrality amendment which is being offered with the support of the principal sponsors of the Civil Rights Restoration Act, in effect, places the committee report language into the statute itself. If flatly provides that on provision of this act or any amendment made thereby shall be construed to require or force any individual or entity to perform or pay for an abortion. It makes the Civil Rights Restoration Act, on its face, abortion neutral. It leaves the substantive law under title IX with respect to abortion exactly where it was. There is no expansion nor any contraction of rights with respect to this issue.

The Danforth amendment, on the other hand, is intended to and would rewrite title IX. It would overturn the existing regulations which protect students, for example, who have had legal abortions from discrimination. It appears to be intentionally drafted to go well beyond the simple issue of performance of or payment for abortion. The Reagan administration has already attempted under the family planning program authorized under title X of the Public Health Service Act to curtail entities receiving Federal funds from providing any counseling or referrals for abortion services. The Danforth amendment does not even provide any special treatment for abortions to save the life of the mother. Literally applied, if the Danforth amendment were enacted, a student who is a rape victim and has been diagnosed to have an ectopic pregnancy—a life-threatening condition—could be denied information at a student health clinic on the necessity of terminating the pregnancy immediately.

Mr. President, the Danforth amendment has no place on the Civil Rights Restoration Act. The sponsors of this measure have drafted the abortion neutrality amendment to make it absolutely clear that this act is abortion neutral. I urge my colleagues to vote for that amendment and against the Danforth amendment.

The PRESIDING OFFICER. The hour of 1 o'clock p.m. having arrived, the question is on agreeing to the amendment offered by the Senator from Connecticut. The yeas and nays

have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee [Mr. GORE], is necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of illness.

I further announce that, if present and voting, the Senator from Tennessee [Mr. GORE] would vote "yea."

Mr. SIMPSON. I announce that the Senator from Kansas [Mr. DOLE] is necessarily absent.

I also announce that the Senator from Alaska [Mr. MURKOWSKI] and the Senator from Wyoming [Mr. WALLOP] are absent on official business.

I further announce that, if present and voting, the Senator from Wyoming [Mr. WALLOP] would vote "nay."

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

The result was announced—yeas 55, nays 40, as follows:

[Rollcall Vote No. 8 Leg.]

YEAS—55

Adams	Glenn	Packwood
Baucus	Graham	Pell
Bentsen	Harkin	Pryor
Bingaman	Heflin	Riegle
Bradley	Heinz	Rockefeller
Breaux	Hollings	Rudman
Bumpers	Inouye	Sanford
Burdick	Kassebaum	Sarbanes
Byrd	Kennedy	Sasser
Chafee	Kerry	Simon
Chiles	Lautenberg	Simpson
Cohen	Leahy	Specter
Cranston	Levin	Stafford
D'Amato	Matsunaga	Stevens
Daschle	Metzenbaum	Weicker
Dixon	Mikulski	Wilson
Dodd	Mitchell	Wirth
Evans	Moynihan	
Fowler	Nunn	

NAYS—40

Armstrong	Grassley	Nickles
Bond	Hatch	Pressler
Boren	Hatfield	Proxmire
Boschwitz	Hecht	Quayle
Cochran	Helms	Reid
Conrad	Humphrey	Roth
Danforth	Johnston	Shelby
DeConcini	Karnes	Stennis
Domenici	Kasten	Symms
Durenberger	Lugar	Thurmond
Exon	McCain	Trible
Ford	McClure	Warner
Garn	McConnell	
Gramm	Melcher	

NOT VOTING—5

Biden	Gore	Wallop
Dole	Murkowski	

So the amendment (No. 1393) was agreed to.

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

Mr. METZENBAUM. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1392

(Purpose: To ensure that the bill does not require that persons, or public or private entities receiving Federal funds perform abortions)

The PRESIDING OFFICER. Under the previous order, the Senator from Missouri is recognized for the purpose of offering an amendment pursuant to the unanimous-consent agreement of last night. The time will be evenly divided between now and 2 o'clock.

Mr. DANFORTH. Mr. President, I call up my amendment.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Missouri (Mr. DANFORTH) proposes an amendment numbered 1392.

At the appropriate place add the following: Notwithstanding any provision of this act or any amendment adopted thereto.

NEUTRALITY WITH RESPECT TO ABORTION

SEC. 909. Nothing in this title shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion.

The PRESIDING OFFICER. Recognizing the Senator from Missouri, the Chair will once again ask that Senators who wish to converse please retire to the Cloakrooms. The Senate will be in order.

The Senator from Missouri.

Mr. DANFORTH. Mr. President, I ask unanimous consent that Senator NICKLES be added as a cosponsor of this amendment.

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

Mr. DANFORTH. Mr. President, during the last vote, a number of Senators came up to me and asked my thoughts on how that vote should go, and my response was it did not make any difference. So I know that some Senators who intend to vote for my amendment voted for the Metzenbaum amendment, some Senators who intended to vote for my amendment voted against the Metzenbaum amendment. My own view, as I stated on the floor during the debate on the Metzenbaum amendment, was that it was very much like a motion to instruct the Sergeant at Arms. It was a rollcall vote, but it had no content at all. It was a rollcall vote that purported to touch on the question of whether or not the Government is going to mandate abortions, but in point of fact it did not in any sense prevent the Government or some court from mandating abortions or abortion coverage. It did not provide any cover whatever for Senators who voted on it. Some people might say, "Well, is it some sort of compromise? Was the Metzenbaum-Weicker amendment some kind of compromise on the issue before us?" The answer is no, it was not any compromise. It was not half a loaf. It was not a slice. It was not a crumb. It was an absolute zero. It did not matter whether it was cast or not, because it had absolutely no legal effect on the issue that has been raised by my amendment.

That is not simply my conclusion. When the language of the Metzenbaum amendment was available, I asked for two opinions, one from the Justice Department and one from the Dewey, Ballantine law firm. I received both of those legal opinions today. Both of them stated that from the standpoint of the basic question of whether or not abortions or abortion coverage is going to be mandated, the Metzenbaum amendment had no legal effect.

The Dewey, Ballantine opinion, which is dated January 27, after setting forth the Metzenbaum amendment, states, "Based on our review of this proposed amendment, we conclude that it would not solve the problem identified in our earlier memorandum. The proposed amendment declares the Civil Rights Restoration Act itself does not require the funding or performance of abortions. It is silent, however, on the possibility, which was the subject of our earlier letter and memorandum, that title IX and regulations promulgated under its authority could require the funding or performance of abortions. Moreover, since the Civil Rights Restoration Act would overturn the Supreme Court's decision in the Grove City case and thus extend the reach of title IX, the danger would remain, despite the proposed amendment, that institutions duly brought under the authority of title IX would also be required to fund or perform abortions for students, employees, and even the general public as described in our earlier letter."

Mr. President, the State of the bill as it now exists before the Senate, with the Metzenbaum-Weicker amendment which was just added, is that it remains a very live possibility that an administration or a court could require hospitals to perform abortions and could require health plans of colleges or universities to fund abortions.

Now, if that is the result that we want, if we want that possibility to stay alive, then the thing to do is to vote against the Danforth amendment. If it is the decision of the Senate of the United States to leave it up to a Federal judge, to enter an order requiring abortions performed at Georgetown University Hospital, to require abortion coverage under the health plan at Notre Dame University, and so on, if that is the intention of the Senate, let us leave it open. Let us reaffirm the regulations under title IX and kick the buck to the courts.

If, on the other hand, it is the position of the Senate that we should preclude that possibility in a court decision or in a future regulation, then we should adopt the Danforth amendment. That is the very simple issue before us. Regulations under title IX of the education amendments identified sex discrimination with the refusal to perform or to provide abortions. The bill in its present form expressly ratifies those regulations. No language in a committee report to the contrary undoes the expressed language in the bill itself. So if we in the Senate want to ratify a regulation that identifies refusal to perform abortions with sex discrimination, and if we want to extend that interpretation throughout universities, to university hospitals, to hospitals that have internship programs flowing out of those universities, and to other hospitals which have any teaching program at all, if we want that kind of expanded interpretation, then vote against the Danforth amendment.

I think it would be an absolute outrage for the Senate, the Congress to force on Georgetown or Notre Dame or the city of St. Louis or wherever a policy that under the Hyde amendment we do not support ourselves.

We do not fund abortions. We have made that decision. I do not understand why the Senate at this point should force even church-related colleges and hospitals to do what we will not do ourselves.

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

The PRESIDING OFFICER. The Senator from Texas is recognized for 2 minutes.

Mr. GRAMM. Mr. President, I will be brief. What we have seen here is exactly the same kind of sham that has outraged the American people for years about this greatest of deliberative bodies. We have a clear-cut issue before us. The issue is as simple as any issue can be: Do we want to make it clear that under title IX, with the expansion that is being contemplated, Baylor University and Notre Dame do not have to fund abortions or to perform abortions in their medical facilities?

Now, you can beat all around the bush. You can try to confuse the issue all you want. You can say, well, let us leave it undetermined as it is in the current law. But when you get down to the bottom line, when you vote on the Danforth amendment, there is only one issue: Do we want to leave it open to some Federal judge to come along and say to Baylor University or Notre Dame or St. Mary's or any other private, church-related college in America that although the fundamental teachings of your church are totally opposed to abortion, we are going to force you to fund abortion and we are going to force you to conduct abortions?

Now, the great paradox is that the Congress will not even fund abortion under Medicaid unless the life of the mother is in danger, and yet here we have a clear-cut attempt to force church-related institutions to do what we have prohibited under Medicaid. So you can try to make this a technical question. You can cloud it and go back home and say we were neutral on this subject; it was unclear before. We left it unclear.

The point of this amendment is that it ought not be unclear. There ought to be no doubt in anyone's mind that Baylor University should not be forced to fund something they fundamentally oppose. If you vote against this amendment, you are voting against that basic guarantee.

I yield the floor.

Mr. METZENBAUM. Does the Senator from Texas understand that——

The PRESIDING OFFICER. The time of the Senator from Texas has expired. Who yields time?

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

The PRESIDING OFFICER. The Senator has 9 minutes 44 seconds.

Mr. HATCH. Let me yield 2 minutes.

The PRESIDING OFFICER. The time is under the control of the Senator from Missouri, Senator DANFORTH.

Mr. DANFORTH. Mr. President, I yield—how long would the Senator like?—2 minutes to the Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska is recognized for 2 minutes.

Mr. EXON. I thank my friend from Missouri. I thank the Chair.

Mr. President, this is one of those votes in the U.S. Senate for which it is extremely easy for this Senator to cast and support the Danforth amendment. The case has been adequately made in previous arguments before this body. And I will not attempt to rehash those statements. Suffice it to say unless the Danforth amendment becomes law we are leaving an unanswered question that should not be left unanswered in this very, very important civil rights legislation.

I hope that all of the Members of this body will recognize and realize that the Danforth amendment is very simple, it is very straightforward. It simply says that we should not be in a position of forcing any institution regardless of its association to do something for which the fundamental tenets of that institution—and fundamental beliefs that many of us share—should not be put in jeopardy on a whim of one Federal judge at some time in the future.

It is a clarifying amendment. It states clearly what we should do. I appeal to all of my colleagues to support the Danforth amendment. It will do nothing in the opinion of this Senator, and legal scholars that I have talked with, to harm or weaken the amendment that we are going to vote on, the bill itself, which has to do with civil rights. I hope we will pass the Danforth amendment.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

Mr. DANFORTH. Mr. President, I reserve the balance of my time.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, first I would like to point out to my friend from Texas that Baylor University is specifically exempted under the religious tenet exemption. So his argument in connection with that university is not applicable.

Second, I want to point out that if you vote for our amendment, the Packwood - Kennedy - Weicker - Metzenbaum amendment, you will be undoing that amendment 100 percent because that amendment provides that "Notwithstanding any other provision of the law or any other provision in this bill." So if you voted with us and now you vote for the Danforth amendment, you've totally turned around. It would be a 100-percent change in vote. I hope those who have seen fit to stand with us by 55 votes will see fit to reject the Danforth amendment.

The big question is whether we are going to have a civil rights bill or an abortion bill. We have made it clear in our previously offered amendment now in the bill that this is a civil rights bill and we do not want it to be encumbered with abortion issues.

If you vote for the Danforth amendment, you will have voted for language that totally negates the impact of our amendment, or at least language which would appear to do so on its face. That is the intent of the Danforth amendment. I hope it does not. But I am afraid that it will.

The amendment offered by the Senator from Missouri is also problematic because it does not preclude the imposition of a penalty on a woman if she has a legal abortion. The amendment says nothing in the preceding sentence "* * * shall be construed to permit a penalty to be imposed on any person * * * because such person * * * has received any benefit or service related to a legal abortion."

That language is extremely unclear. It says nothing in the amendment that permits a penalty but the language does not prohibit a penalty or discrimination against a woman who has had an abortion. For example, a woman who has had an abortion or who has been counseled for abortion

can be excluded from scholarship programs, student employment, or even enrollment in classes. The Danforth amendment not only permits this discrimination but it also may encourage institutions to treat women differently because they exercise their constitutional right.

If we pass this amendment, we sanction discrimination against women who exercise their constitutional right. So this civil rights bill which we have introduced to expand the civil rights of all people would sanction discrimination against women. So I think it is fair to say that a vote for the Danforth amendment is a vote for discrimination against women. We say that is inappropriate.

Another problem with the Danforth amendment is that it changes title IX to permit discrimination against women as the medical services provided to them. The Danforth amendment says that "Nothing in this title shall be construed to require or prohibit any person or public or private entity to provide or pay for any benefit or service including the use of facilities related to an abortion."

This language means that if a university provides a medical service and that service has doctors who are ethically required to counsel patients on medical options, it would not be discrimination to fail to counsel pregnant women on all options. What we say when we pass the Danforth amendment is that women are not victims of discrimination when they are denied all information about their options including the option of abortion.

The discrimination that the Danforth amendment sanctions is the kind of discrimination that reduces women to less than full human beings because it denies women the information they need to make an important medical decision.

There is not even a life of the mother exception in the Danforth amendment. And a woman could be bleeding to death from pregnancy complications and under the Danforth amendment she could be denied a life-saving abortion. A man who is bleeding to death can be saved. That, to me, is discrimination against women.

We have already said we do not want to do anything about abortion. We have indicated we want to move forward with the Grove City legislation situation. I would hope that my colleagues would not undo the impact of the amendment which we just passed. That is what this amendment would do. But much more important than that, this amendment would permit discrimination against women in this country.

How inappropriate, how wrong it would be to include in a civil rights bill language which would authorize the discrimination against all women. We must defeat the Danforth amendment.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Chair would remind the gallery that they are here as guests of the Senate.

The Senator from Missouri.

Mr. DANFORTH. Mr. President, the characterization of the bill by the Senator from Ohio is completely erroneous and totally without foundation at all. It is a fabrication. My amendment expressly says, "Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion."

I yield 2 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California is recognized for 2 minutes.

Mr. WILSON. Mr. President, at the risk of being rude, the Senator from Ohio has flatly misstated the contents of the Danforth provision. The language just read by the Senator from Missouri was language which I and others insisted be in there, precisely to ensure that there could not be discrimination against women who either are seeking or have received abortion-related services.

You could have voted for or against the Metzenbaum amendment. You could have voted for it as simply being a truism, as Mr. DANFORTH said, without content, or voted against it as being a sham aimed at trying to persuade people that it would suffice and that there was no need for the Danforth amendment. There is need for the Danforth amendment.

To focus momentarily on the strict legal question, the amendment by Senator METZENBAUM stated that the bill does not require abortion, but it does not reach the offending regulation which gives rise to the need for the Danforth amendment. That need continues to exist, even with the Metzenbaum amendment in it. The Metzenbaum amendment is without content. The Danforth amendment is required to prevent a travesty.

I am prochoice, but I will be hanged if I can see my way or want the Congress of the United States to be on record as imposing upon someone who conscientiously objects to providing or funding abortion, as something morally repugnant to him or to her or to their institution, to be compelled by a Federal bribe to do so. That is wrong. We should not leave the law unclear.

The argument has been made that we should go back to what it was before Grove City. It is not what the law was. The question is what the law should be. It should be clear.

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

Who yields time?

The Senator from Missouri has remaining 4 minutes and 37 seconds. The Senator from Ohio has remaining 12 seconds.

If neither side yields time, the time available will be counted equally against both sides.

Mr. DANFORTH. Mr. President, I yield 1 minute to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized for 1 minute.

Mr. GRAMM. Mr. President, I want to respond to the Senator from Ohio.

First, is he aware that Baylor University waited 9 years to get an exemption? They currently have an exemption. But, as we are all aware, under the law, a new Secretary could come into office, do an investigation, and deny them that exemption.

Let me give the names of some Texas colleges that are religion affiliated that have asked for exemptions, and that for one reason or another did not get them: The Dallas Theological Seminar, Lubbock Christian College, University of Dallas, Southwestern Assemblies of God College, Concordia Lutheran College.

I ask my colleagues: Do we really want to leave any doubt as to whether Lubbock Christian College should have to conduct and/or pay for abortions if that is against the tenets of their religious beliefs? That is the issue here, and I urge my colleagues to focus on that.

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

Who yields time?

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

The PRESIDING OFFICER. The Senator reserves the remainder of his time. If neither side yields, the time will be counted equally against both sides.

Mr. DANFORTH. Mr. President, I yield 1 minute to the Senator from Utah.

Mr. HATCH. Mr. President, purely and simply, this is a question of funding for abortion. Access to abortion is not affected by the Danforth amendment.

The fact is, Mr. President, that the Weicker-Metzenbaum amendment does not solve the problem which is raised here today by Senator DANFORTH. Are we going to force all colleges and many other institutions to pay for or perform abortions despite any decision of conscience or religious belief to the contrary? That is what the Danforth amendment addresses, pure and simple.

Again, the Danforth amendment merely eliminates the coercion factor. Colleges and hospitals and other institutions will be free to provide for abortions if they want to, if they choose to, even under this amendment. But the

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amendment ensures that they are not forced to fund or perform abortions if they object on the ground of conscience or religious belief.

It is outrageous for the Federal Government not to choose to fund abortions, on one hand, and to require colleges or hospitals to fund or perform abortions, on the other hand—if you think about it, merely because those institutions receive, directly or indirectly, Federal funding.

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

Mr. HATCH. May I have an additional 30 seconds?

Mr. DANFORTH. I yield 30 seconds to the Senator.

Mr. HATCH. Mr. President, I ask unanimous consent to have the following documents printed in the RECORD. An analysis of student health insurance plans and a criticism by the U.S. Department of Education; a letter from the U.S. Catholic Conference, dated January 27, 1988; a letter from the U.S. Catholic Conference, dated January 27, 1988, with respect to inaccuracies in the January 21, 1988, letter from the Leadership Conference on Civil Rights, regarding this bill; a letter dated January 28, 1988, from the National Right to Life Committee.

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

U.S. DEPARTMENT OF EDUCATION,
Washington, DC, June 11, 1987.

To: Alicia Coro, Acting Assistant Secretary for Civil Rights.

From: Philip G. Kiko, Acting Director, Policy and Enforcement Service.

Subject: Analysis of Student Health Insurance Plans.

CONCLUSION

Due to the current Title IX regulation, OCR has been placed in the position of being committed to its enforcement when such a practice sometimes appears to have been in conflict with the religious rights guaranteed under the First Amendment and a consistent Federal policy manifested in the Hyde Amendment, Title VII, which includes an abortion-neutral provision, and other Federal statutes. The essential difficulty has been caused by the inclusion of the terms "termination of pregnancy" and "full gynecological care" within the definition of sex discrimination in the Title IX regulation, as it relates to mandated coverage for elective abortions.

INTRODUCTION

Pursuant to our discussion and your instructions, the Policy and Enforcement Service conducted an analysis of the provisions of the Title IX regulation on health benefits and services, as it pertains to OCR's recent investigations of recipients' health insurance programs.

During the past three years, the Office for Civil Rights has received 693 complaints which allege that recipients of Federal financial funds have violated the regulation of Title IX of the Education Amendments of 1972. Specifically, each complaint alleged that a recipient of Federal funds violated the Title IX regulation by not providing the same student insurance benefits for pregnancy and pregnancy-related conditions as are provided for other temporary disabilities.

Of the 693 complaints filed, all but one have been closed by OCR's regional offices. A total of 486 cases were closed when it was determined that no jurisdiction existed over the insurance programs of the institutions. Five of the "no jurisdiction" determinations involved the granting of a religious exemption under Title IX. Of the remaining complaints, 24 were closed for administrative reasons, 13 were closed when no violation was found within the insurance plans, and 169 were closed when a voluntary agreement was reached between OCR and the recipients. Many of the complaints specifically requested: "*Please ensure that elective abortion is covered.* (emphasis added)." (*See, e.g.,* 01-86-2041.)

The voluntary agreements were entered into before jurisdiction over the health insurance plans of the institutions was determined. The fact that 169 institutions entered into these agreements before jurisdiction was determined suggests that the mere filing of the compliant and the commencement of an investigation by the Department of Education was all that was necessary to motivate the institutions to enter into agreements to either (1) amend the benefits of insurance plans, or (2) cancel their offerings of insurance plans for their students.

VOLUNTARY AGREEMENT PLANS

As stated above, OCR has entered into voluntary agreements with 169 institutions. These institutions including some that are religiously affiliated, agreed to take corrective measures before jurisdiction under Title IX was determined. In responses to these cases, a memorandum dated March 7, 1986, was sent by the Acting Assistant Secretary for Civils Rights. The memorandum notified the regional offices that the institutions which were subjected to the health insurance investigations should be informed of their rights under Section 901(a)(3) of Title IX. The memorandum also attempted to clarify the meaing of the term "temporary disability" within 34 C.F.R. §§106.40(b)(4) and 106.57(c). Subsequently, this Policy and Enforcement Office analyzed the complaints, OCR's regional investigations, and OCR's regional agreements with the institutions. The analysis revealed that the institutions adopted corrective action plans in order to bring their health insurance plans into full compliance with the pertinent provisions of the Title IX regulation. Several institutions that were investigated requested exemptions based upon the religious tenets exemption of Section 901(a)(3) of Title IX and its implementing regulation, 34 C.F.R. §86.12. However, other institutions that may have been eligible for the religious tenets exemption apparently were unaware of its existence, failed to ask for it, and thus revised their health insurance plans to fully comply with 34 C.F.R. §§106.39, 106.40(b)(4), and 106.57(c). These revisions appear to contradict the religious tenets of some affected institutions; exemptions had been granted for other institutions in similarly situated instances.

In one complaint which resulted in a voluntary agreement, (complaint # 02-86-2035), the complainant alleged that a Catholic college violated Title IX by not providing elective abortion coverage in its student health insurance plan. OCR investigated the compliant and found the college in violation of 34 C.F.R. §106.40(b)(4). Under the college's student health insurance plan, "voluntary termination of pregnancy was explicitly excluded from coverage, while, according to the insurance carrier, other elective surgery generally was covered" (p. 3, voluntary agreement # 02-86-2035). OCR held that "the College was unable to provide OCR with a legitimate, nondiscriminatory reason, for its limitations on pregnancy-related medical benefits." (*Id.*) Thus, the insurance plan was determined to be discriminatory and in violation of Section 106.40(b)(4).

The result of the complainant's allegation that Title IX had been violated by this Catholic college for not providing coverage for elective abortion was summarized in a letter from OCR to the College:

"In a letter dated March 3, 1986, the College advised OCR that it has taken corrective action to secure voluntary compliance with Title IX. Specifically, effective February 26, 1986, the College has eliminated the four-day limit on maternity care benefits, and *deleted the exclusion of termination of pregnancy. . . ." (Id.)* (emphasis added).

Based upon the above remedial action by the College, OCR stated: "We consider the College to be presently fulfilling its obligations under Title IX of the Education Amendments of 1972. Continued compliance is contingent upon the College carrying out the provisions of its plan. Failure to implement the plan fully may result in a finding of violation." (*Id.*)

It should be noted that after OCR's complaint investigation began, but before a final determination on jurisdiction was made, the Catholic College decided to revise its insurance plan. The following is a quote from a letter from the Dean of Students, who is a Catholic nun, to the president of the insurance company:

"In addition, [the College] wishes to delete, effective today's date, [February 26, 1986], under the maternity care clause, the sentence, 'Elective abortions are not covered'. This limitation is no longer to be included in our Student Accident and Insurance Plan (emphasis added)."

Thank you for your assistance in assuring that [the College] is in full compliance with the federal requirements under Title IX.

This Catholic nun's letter exemplifies the impact that the complaint and subsequent investigatory process can have upon a recipient of Federal financial assistance.

In complaint No. 01-86-2075, the insurance plan of a Catholic college originally excluded coverage for "voluntary termination of pregnancy." After the complaint process had concluded with the signing of a voluntary agreement, the president of the College, a member of a Catholic religious order, wrote to OCR and stated:

"[The College] has committed itself to full compliance with the various laws and regulations forbidding discriminatory practices and will continue to do so."

The president of this College enclosed a copy of the revised insurance plan with this letter; the exclusion of voluntary termination of pregnancy in the former plan had been deleted in the revised plan.

Many of the voluntary agreements begin with the requirement that the institution agree that its student health insurance plan will comply with Sections 106.39 and 106.40(b)(4) of the Title IX regulation. These agreements request that the student health insurance plans provide benefits for "pregnancy, childbirth, false pregnancy, termination of pregnancy, and related medical conditions and recovery therefrom." If provided, these benefits must be provided to the same extent as benefits are provided for other temporary disabilities.

Approximately 30 of the voluntary agreements include an example of what the student health insurance plan must cover in order to comply with the Title IX regulation. These agreements state:

"If the plan provides major medical coverage, specifies a maximum level of costs, covers the cost of a private room, or pays the cost of office visits to physicians for temporary disabilities, pregnancy-related conditions must be treated the same."

These approximately 30 agreements also state:

"The University will not require students to pay a disparate premium for comparable coverage of pregnancy-related conditions under its student health insurance plan."

Approximately 30 voluntary agreements also include an attachment, marked "Exhibit A." This attachment fully quotes Sections 106.39 and 106.40(b)(4) of the Title IX regulation. The quote from Section 106.39 states, in pertinent part:

"This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of another, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care."

A number of insurance plans are enclosed herein; they indicate that corrective action taken as a result of the filing of these complaints *has resulted in the inclusion of election abortion coverage in institutional insurance plans.* For example, in complaint #01-86-2055, the former policy excluded coverage for "childbirth, pregnancy and complications thereof." After the OCR investigation, the revised policy included the following coverage: "[M]aternity, complications of maternity, and abortion shall be payable as any other illness."

In complaint #01-86-2041, the insurance policy excluded coverage of "elective treatment, preventive medicines, serums or vaccines where no injury or sickness is involved." This provision was replaced with "preventive medicines, serums or vaccines." Thus, elective treatments, such as abortion, were added to the coverage of the policy.

In complaint #01-86-2024, the university's insurance plan was also revised after OCR's investigation. Attached to the revised insurance plan was a letter from the insurance company to the college, stating the following:

"Subject to all the terms of your contract, your benefits have been changed."

* * *.

2. Termination of Pregnancy Services: The benefits that are available under your contract for the treatment of a medical condition are also available for termination of pregnancy.

The following insurance plans are enclosed in order to demonstrate the changes which occurred after the complaint and OCR investigation commenced: 01-86-2024, 01-86-2075, 01-86-2055, 01-86-2050, 01-86-2058, 01-86-2061, 01-86-2063, 01-86-2079, 01-86-2041, 01-86-2010, 10-85-2060, 10-85-2059, 10-85-2063, and 02-86-2035.

RECIPIENTS' TERMINATION OF HEALTH INSURANCE PLANS

Approximately 12 of the institutions which were subjected to the complaint and investigation process decided to terminate their offerings of health insurance to the students. (*See, e.g.,* #03-86-2105.) In one complaint against a religiously affiliated college, (#06-85-2077), the complainant alleged that the college discriminated against female students by not offering an insurance plan that treats pregnancy-related conditions in the same manner as other temporary disabilities. Subsequent to the filing of this complaint and during OCR's investigation, the college discontinued offering a health insurance plan for its students.

In a similar instance, (#10-85-2041), a university entered into a voluntary agreement to find a carrier that would "provide coverage for pregnancy and related conditions." Because of the university's small enrollment, it was unable to find a carrier willing to provide the expanded coverage. Thus, this university was compelled to not offer a student health insurance plan due to the economic burdens placed upon it by the complaint and subsequent agreement with OCR.

Enclosed herein are copies of voluntary agreements between OCR and the recipients which resulted in the termination of student health insurance plans by the institutions. (*See, e.g.,* #06-85-2081, 06-85-2082, and 08-86-2034.)

COMMENTS

This office is currently reviewing the voluntary agreements reached between OCR and state university education systems, institutions, or other public schools. The abortion provisions of the Title IX regulation conflict with the laws of some states that prohibit the use of state funds for abortions. It is important to discover whether the enforcement of the abortion provisions of the regulation may have resulted in the violation of state laws by any public recipient. In addressing federalism principles, an analysis will be conducted to measure the extent to which a conflict exists between OCR's voluntary agreements and state laws. The above analysis does not review the present circumstances of private and public hospitals receiving Federal financial assistance, since they are under the jurisdiction of the Department of Health and Human Services.

The Title IX regulation also conflicts with Federal policy to prohibit funding for abortion. In 1976, Congress enacted the Hyde Amendment, which repeatedly was re-enacted in succeeding years, to prohibit Federal funds from being used to pay for nearly all abortions in programs receiving Medicaid funds, with limited and clearly specified exceptions. For example, the current version of the Hyde Amendment states:

"None of the funds contained in this act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term."

The Federal policy to prohibit funding for abortion is exemplified by several other Federal statutes as well: 10 U.S.C. § 1093 prohibits, in the provision of medical care to members of the armed forces, the use of Federal funds to perform abortions except where the life of the mother would be endangered if the fetus were carried to term; 22 U.S.C. §§ 2151b (f)(1) and (2) state that none of the funds provided for international development assistance shall be used for abortions as a method of family planning or to motivate any person to practice abortion; 42 U.S.C. § 300a-6 prohibits the use of Federal funds by any population research and family planning program where abortion is a method of family planning; 42 U.S.C. § 300z-10 prohibits the payment of Federal grants to any Adolescent Family Life Demonstration Projects that provide abortions or abortion counseling or referral; 42 U.S.C. § 2996f (b)(8) states that Legal Services Corporation funds shall not be used for legal assistance with respect to proceedings that seek to procure a nontherapeutic abortion.

The abortion provisions of the Title IX regulation adopted by the Department directly contravene the Federal policy to prohibit Federal funding for abortion, as exemplified by numerous congressional enactments. The regulation requires funding of abortion, where other Federal legislation prohibits such funding. In so doing, the regulation creates a confusing inconsistency within Federal law.

Title VII of the Civil Rights Act of 1964, prohibiting discrimination in employment, appropriately does not include a provision prohibiting the use of Federal funds for abortion, inasmuch as no Federal funding is involved; significantly, however, Title VII does include an abortion-neutral provision that protects employers from being forced to cover employees in their health insurance benefits:

"This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion."

42 U.S.C. § 2000e (k). The inconsistent policy between the Title IX regulation and the Title VII provision may subject an institution to conflicting legal standards governing the type of coverage that is mandated for health insurance plans. Thus, an institution could be placed in the anomalous position of having the same health insurance plan being in compliance with Title VII as it relates to coverage for abortion and in violation of the Title IX regulation as it relates to coverage for termination of pregnancy. The right to choose whether to cover abortion that is secured employers by Title VII is abrogated by the Title IX regulation for those employers that are federally funded educational institutions.

A resolution of this dilemma could be achieved through the legislative process. It is the legal opinion of this Acting Director that if the abortion-neutral language of the Sensenbrenner-Tauke amendment and the religious tenets amendment contained in either H.R. 1881 or the legislation that was adopted in the House Education and Labor Committee in the 99th Congress, had been enacted into law, OCR would have been able to enforce the Title IX proscriptions against pregnancy discrimination without the complications outlined above. Specifically, OCR would not be placed in the position of running afoul of the First Amendment and the existent Federal policy that is manifested by such Federal statutes as the Hyde Amendment and Title VII.

In the 99th Congress, the House Education and Labor Committee adopted the Sensenbrenner-Tauke amendment. It is my understanding that this amendment will be offered in the U.S. House of Representatives and the U.S. Senate when any *Grove City* legislation is considered by either body. Thus, no regulatory revisions are necessary until congress acts. Furthermore, a revision from the legislative process is preferable since a mere regulatory change could be deleted in the future.

Thus, OCR has witnessed a conflict between the constitutional rights of some recipients and a Federal policy of proscribing Federal funds for abortions, on the one hand, and enforcement of the provisions of the Title IX regulation concerning "gynecological care" and "termination of pregnancy," on the other hand.

U.S. CATHOLIC CONFERENCE,
Washington, DC, January 27, 1988.

DEAR SENATOR: As the Senate considers the Civil Rights Restoration Act (S. 557), the U.S. Catholic Conference wishes to reaffirm its conviction regarding this important legislation. We wish to renew our support for efforts to strengthen and make more effective the federal commitment to combat discrimination in our nation. The U.S. Catholic Bishops have actively supported the major civil rights acts that have come before the Congress. Our consistent support is based on our strong beliefs that government has the fundamental moral duty to protect and enhance the life, dignity and rights of the human person.

In our teaching and advocacy, we have sought to condemn racism and unjust discrimination and to work for full equality and opportunity for all people. The USCC supports the goals of the Civil Rights Restoration Act—to insure that federal funds and institutions that receive federal funds do not discriminate. But we cannot support a measure which, under the guise of "civil rights," would require any entity to provide abortion services, which we and millions of other Americans regard as the destruction of innocent human life and a violation of fundamental human rights.

We therefore renew our call for the adoption of the Abortion Neutral Amendment to be offered by Senator Danforth and the passage of strong civil rights legislation which combats discrimination without infringing on the legitimate rights of religious institutions and without requiring any institution to participate in abortion.

BACKGROUND

The Civil Rights Restoration Act (CRRA) would amend four civil rights laws, including Title IX of the Education Amendments of 1972. Title IX prohibits discrimination "on the basis of sex" in federally assisted education programs. In 1975, federal regulations interpreted Title IX to require institutions to treat abortion the same as pregnancy in student and employee health and other insurance programs.

Title IX was enacted in 1972 when it was illegal in most states to perform abortions except to save the mother's life. Clearly, the Congress that enacted Title IX did not intend to mandate that institutions provide or pay for abortion services as a condition for receiving federal funds.

In its 1984 *Grove City College* v. *Bell* decision, the Supreme Court construed Title IX to apply only to specific programs receiving federal assistance. The CRRA would reverse that decision and expand coverage under civil rights laws, which we support. However, in expanding the reach of Title IX, the CRRA as drafted would also inevitably expand the reach of the proabortion regulations to entire institutions. The CRRA and the abortion regulations would apply to non-educational institutions having education components, and thus would affect hospitals. The Catholic Health Association (CHA), which represents over 600 Catholic hospitals in the United States, has concluded that S. 557 ". . . could require all Catholic hospitals which participate in teaching or other educational programs, e.g., interns, residents, nursing students, to provide abortion services."

To prevent these results, the Senate needs to adopt the following amendment to be offered by Senator Danforth:

"Section 909. Nothing in this title shall be construed to require or prohibit any person or public or private entity to provide or pay for any benefit or service, including use of facilities, related to abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person because such person has received any benefit or service related to legal abortion."

The CHA supports this amendment, as does the American Hospital Association (AHA), which represents 5,600 institutions. AHA maintains that ". . . a hospital—religiously affiliated or secular—should be free to choose whether abortion-related benefits and services will be performed in its institution without fear of violating Title IX regulations." The amendment has rightly been called abortion neutral because it does not prevent institutions from including abortion services, but merely does not force institutions to include abortion services against their deep conviction or policies. If the "Danforth" amendment is not included in the CRRA, then the federal government will be in the ironic position of denying federal funds for abortions through the Hyde Amendment, while simultaneously requiring under Title IX that public and private organizations provide abortion coverage with non-Federal funds.

We also understand that Senator Orrin Hatch will offer an amendment at the request of the National Association of Independent Colleges and Universities (NAICU), to broaden the religious tenets exception. We are sympathetic to their concerns in this area and are supportive of the amendment.

The Senate need not choose between greater protection of civil rights and the concerns of the Catholic Bishops. With these improvements, we believe the Civil Rights Restoration Act can help this nation fulfill its commitment to protect individuals against discrimination. We urge strong support of a bill with the protections we have advocated. We do not support any other amendments which we believe would weaken the bill's basic civil rights protections. We support a strong and effective Civil Rights Restoration Act, one that will combat discrimination without requiring any institution to violate deeply held convictions of human life and religious liberty.

Sincerely,

REV. MSGR. DANIEL F. HOYE,
General Secretary.

U.S. CATHOLIC CONFERENCE,
Washington, DC, January 27, 1988.

DEAR SENATOR: I am writing as a result of several inquiries which have been made concerning a memorandum on S.557, the Civil Rights Restoration Act, circulated to members of the Senate by the Leadership Conference on Civil Rights (LCCR). This correspondence addresses several of the same issues which are of concern to the Catholic Bishops Conference in this proposed civil rights legislation.

The enclosed fact sheet corrects the record and documents several of the inadequacies in this memorandum.

I hope you will find this helpful to you in dealing with this very important legislation.

Sincerely,

FRANK J. MONAHAN,
Director.

JANUARY 26, 1988.

INACCURACIES IN THE JANUARY 21, 1988 LETTER FROM THE LEADERSHIP CONFERENCE ON CIVIL RIGHTS REGARDING S. 557

The January 21, 1988 letter and accompanying memoranda to each U.S. Senator from the Leadership Conference on Civil Rights regarding proposed amendments to S. 557 contain inaccuracies which can only serve to confuse the Senate and the public in the ongoing debate on S. 557 and the need for the "Danforth" amendment. Proponents rely heavily on the "principle of restoration" as the reason for opposing any amendments to S. 557. As will be demonstrated below, the restoration principle is at least as much myth as it is reality. Following are several illustrative examples from that letter, and Committee Report 100-64, which do not comport with reality.

1. *Myth.*—"Proponents of the Restoration Act have adhered unswervingly to the fundamental principle of simply restoring coverage . . . and have opposed every amendment that would change substantive law." See page 1 of the letter.

Reality.—Proponents in fact have supported changes in substantive law in S. 557. As reported, the bill contains at least two substantive changes in current law, e.g., the religious tenet exemption in Title IX has been broadened and the definition of "program or activity" for the four amended statutes now singles out for special treatment five kinds of private organizations (i.e., those engaged principally in education, health care, housing, social services, or parks or recreation). Proponents admit in Committee Report No. 100-64 (at p. 18) that the definition of "program or activity" differs from what they perceive as the scope of coverage prior to the Grove City College decision.

In addition, in at least one respect, S. 557 would require a substantive change in longstanding regulations. Under current Title VI regulations which predate the regulations implementing the other three statutes, there is no per se rule of institution-wide coverage of all activities for institutions such as hospitals and universities. Such coverage is merely presumed unless the institution "establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program." 45 C.F.R. § 80.4(d)(2). S. 557 would eliminate this rebuttable presumption of institution-wide coverage. S. Rep. 100-64 does not attempt to explain this deviation from the principle of restoration.

The above can hardly be described as unswerving adherence to the principle of restoration. In reality, proponents have supported substantive amendments that suit their purposes while hiding behind the rhetoric of the so-called "restoration principle" to oppose other meritorious amendments.

2. *Myth.*—"It should also be emphasized that Title IX does not now require any institution to perform abortions. . . ." See page 2 of the letter.

Reality.—Section 106.39 of the current Title IX regulations provides in relevant part that "[i]n providing a medical, hospital, accident, or life insurance, benefit, service, policy, or plan to any of its students . . . any recipient which provides full coverage health service shall provide gynecological care." 34 C.F.R. § 106.39. The Title IX regulations require abortion to be treated the same as pregnancy and other temporary disabilities. Abortion services would have to be provided as part of gynecological care in the case of a recipient, such as an educational institution, if it provides full coverage health service.

Myth.—"No institution would be mandated to perform abortions if S. 557 were en-

acted." See page 26 of Senate Report 100-64.

Reality.—As indicated above, section 106.39 of the current Title IX regulations on its face already requires certain recipients to provide abortion services.

In addition, assertions in the Committee Report may lead the Senate and the public to believe that the language, "all of the operations of", which modifies all categories of entities described in the new definition of "program or activity," will mean one thing (i.e., all of the activities) for educational institutions such as colleges, but will mean something else (i.e., only certain activities) with respect to other institutions such as hospitals. This is simply doublespeak. It defies common sense, violates well-established rules of statutory construction, and is blatantly inconsistent with the concept of "institutional" coverage embodied in S. 557. Courts will simply not give two different meanings to a single phrase in a sentence despite what the Committee Report suggests.

Finally, the Committee Report (at p. 2) stated that one of the purposes of S. 557 is "to reaffirm . . . executive branch interpretation . . . which provided for broad coverage . . . of these civil rights statutes." In this respect it should be noted that in interpreting the scope of Title IX's coverage in 1975, then HEW Secretary Weinberger stated that "if Federal funds go to an institution which has educational programs, then the institution is covered throughout its activities." See *Grove City College* v. *Bell*, 104 S.Ct. 1211, 1233 (Brennan, J., concurring and dissenting in part). Once S. 557 is enacted, the stated purpose of the bill, Secretary Weinberger's 1975 interpretation, along with the all inclusive "all of the operations of" language, will be relied upon to extend Title IX coverage to all activities of institutions such as hospitals that have been singled out for broad coverage in S. 557. Because S. 557 now singles out health care organizations for special corporate-wide coverage, courts will conclude that "all of the operations of" a hospital which has an educational activity and receives federal assistance will be subject to Title IX coverage, including the abortion requirements.

4. *Myth.*—Citing the Senate Committee Report, proponents indicate that Title IX would "apply only with respect to students and employees of educational programs—not to a hospital's patients." See page 1 of the memorandum relating to abortion amendments attached to the letter.

Reality.—As enacted in 1972, Title IX applies to persons, which on its face is broad enough to include patients and is not limited to students and employees of education programs. In this respect, it is interesting to note that longstanding regulations under Title VI, which is the seminal statute after which Title IX and the other two affected statutes are patterned, embody the principle that "[i]n a research or demonstration grant to such an institution [a hospital] discrimination is prohibited with respect to any educational activity and *any provision of medical or other service* and any financial aid to individuals incident to the program." (Emphasis added.) 45 C.F.R. § 80.5(d). Applying this principle, and given the very broad "all of the operation" language, it is unrealistic to believe that courts will interpret Title IX to prohibit hospitals from discriminating against students and employees while at the same time allowing the hospital and its employees to discriminate against patients, such as pregnant women, who receive medical services.

5. *Myth.*—Committee Report 100-64 (at p. 11) states: "Judicial recognition of institution wide coverage waned only after the Supreme Court opinion in North Haven See, e.g., *Dougherty County School System* v. *Bell*, 694 F.2D 78 (5th Cir., 1982) (follows North Haven dicta that Title IX requires program specific interpretation). Prior to North Haven the weight of authority was clearly on the side of institution wide coverage of the civil rights statutes."

Reality.—Prior to North Haven the weight of judicial authority was clearly running against institution-wide coverage of the civil rights statutes. The Committee Report does recognize some contrary authority but understates the weight of that authority by failing to recognize other Court of Appeals cases had already ruled against institution-wide coverage. See, e.g., *Romeo Community Schools* v. *U.S. HEW*, 438 F. Sup. 1021, (E.D. Mich. 1977), aff'd, 600 F.2d 581 (6th Cir. 1979), cert denied, 444 U.S. 972 (1979) ("HEW contends that the term 'program or activity' as used in § 1681 [Title IX] refers to the entire operation of the recipient educational institution. . . . Hence, HEW argues that it may regulate employment practices through a school district's entire system. This novel and protean interpretation of a well established statutory term was thoroughly refuted in *Board of Public Instruction of Taylor Co.* v. *Finch*, 414 F.2d 1068, 1077 (5th Cir. 1969)." 438 F. Supp. at 1033 n. 18); *Mandel* v. *HEW*, 411 F. Supp. 542 (D.Md. 1976) affirm'd by equally divided court, 571 F.2d 1273 (4th Cir. 1976) ("There is much authority for the proposition that Title VI requires HEW to employ a program-by-program analysis when reviewing federally funded institutions." 411 F.Supp. at 556).

One can only assume that proponents' continued denials of the extent of contrary authority stems from a need to defend the so-called principle of restoration at all costs in order to avoid any amendments, however meritorious, to S. 557.

In addition, there are other interesting facts which proponents routinely do not acknowledge. For example, North Haven was a unanimous decision. There were no dissenters to the program-specific discussion of Title IX in the case, which the Committee Report (at p. 10, n. 1) acknowledges paved the way for Grove City. Grove City itself, was a 6-3 decision with no Justice, including those in dissent, advocating the per se institution-wide coverage standard that proponents assert had always been the case. Of particular relevance here, even Justice Brennan recognized that "the program specific language in Title IX was designed to ensure that the reach of the statute is dependent upon the scope of federal financial assistance provided to an institution." *Grove City College* v. *Bell*, 104 S.Ct. 1211, 1237 (1984) (Brennan, J., dissenting).

Crucial to the validity of the restoration principle is a 1969 case, *Board of Public Instruction of Taylor County* v. *Finch*, 414 F.2d 1068 (5th Cir.), on which proponents heavily rely for the proposition that "courts assumed and endorsed institution-wide coverage." Committee Report at p. 10. While various administrative officials undoubtedly urged this interpretation on the courts, the majority of Circuit Courts rejected this interpretation. In the words of Justice Brennan, the court in *Taylor* v. *Finch* "refused to assume . . . that defects in one part of a school automatically infect the whole . . . and rejected the definition of the term program offered by the Department. . . . '" *Grove City College* v. *Bell*, 104 S.Ct. 1211, 1231 (Brennan, J., dissenting) (citations omitted). Finally, the Eleventh Circuit recently described the Finch holding in the following manner:

"Our predecessor court sided with the Taylor County School Board. In a ruling later cited with approval by the Supreme Court, Finch held that HEW's attempt to characterize the entire school system as the relevant 'program' was contrary to the legislative history of title VI. A review of the congressional debate showed that the legislators expected the statute to be applied to narrowly focused grants, referring by name to programs such as the school lunch program, the agriculture extension program for home economics teachers, aid for vocational agriculture teaching, and aid to impacted school districts. The Finch court concluded that Congress intended title VI to apply 'to particular grant statutes . . ., not to a collective concept known as a school program or a road program.' "

U.S. v. *State of Alabama*, 828 F.2d 1532, 1549-50 (1987) (citations and footnotes omitted). Put simply, courts have generally rejected the misinterpretation of Finch advocated by administrative officials.

6. *Myth.*— "[T]he bill deals only with how much of an entity is covered—not with what it must do once it is covered." See page 1 of the memorandum relating to abortion attached to the letter.

Reality.—Proponents cannot deny that, if enacted, S. 557 will extend coverage under the four affected statutes to more operations and activities of covered institutions than is the case at the present time. Institutions will have to bring newly covered operations and activities into compliance with the four affected statutes. The very purpose of S. 557 is to insure coverage of these activities. Yet, disingenuously, proponents attempt to separate the extended coverage provided by S. 557 from the effect of that coverage on newly covered activities. Who is kidding whom? Despite protestations to the contrary, an entity must, of course, do something once covered—it must bring its activities into compliance.

With respect to Title IX, whatever one's views are regarding proponents' restoration principle and assertions regarding coverage of hospital patients, no one can deny that S. 557 will require more abortion coverage in employee and student health and benefit programs. Attempting to counter the reality that S. 557 will result in the application of the pro-abortion Title IX regulations to more activities, proponents routinely trot out a statement taken out of context from a 1985 legal analysis prepared for the United States Catholic Conference. Proponents consistently fail to disclose that in the same paragraph, the legal analysis concluded that the "bill would extend the reach of the Title IX [abortion] regulations . . . to all of the operations of . . . organizations that receive federal assistance and operate education programs."

Conclusion.—As the above demonstrates, there are many inaccuracies associated with the restoration principle. This is not to suggest that there is no need for a Restoration Act. The Conference has consistently supported the need to reverse the Grove City College decision and broaden coverage of the four civil rights statutes. This does not mean that the Conference must accept the lobbying rhetoric promoting the very suspect "restoration principle" that is used as a tool to allow some proponents to choose among amendments to S. 557, arbitrarily ac-

cepting some and rejecting others which have merit, e.g., the Danforth Amendment.

NATIONAL RIGHT TO LIFE
COMMITTEE, INC.,
Washington, DC, January 28, 1988.

Re Danforth and Metzenbaum amendments to S. 557.

Senator JOHN DANFORTH,
U.S. Senate, Washington, DC.

DEAR SENATOR DANFORTH: The National Right to Life Committee (NRLC) strongly supports your amendment to the "Civil Rights Restoration Act" (S. 557). The final form of your amendment, upon which the Senate will vote today, states that: ". . . nothing in this title [Title IX] shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion."

As you know, Title IX regulations define it as "sex discrimination" for recipients to fail to provide abortion "services" on the same basis as other "medical benefits." By vastly expanding the reach of Title IX, S. 557 would impose this pro-abortion legal doctrine on thousands of new institutions, including virtually every hospital in the nation which has any teaching program. The Danforth amendment would establish the simple legal principle that Title IX does not require hospitals, colleges, and state government agencies to provide abortions, insurance coverage for abortions, or facilities for abortions.

The Danforth Amendment, and only the Danforth Amendment, is supported by the American Hospital Association, the U.S. Catholic Conference, the Catholic Health Association, the Southern Baptist Convention, and other organizations which oppose the use of Title IX to compel federally assisted institutions to support the practice of abortion.

The National Right to Life Committee is strongly opposed to the alternative amendment proposed by Senators Metzenbaum, Kennedy, and Weicker. By design, the Metzenbaum Amendment does not address the substantive legal issue at stake, but instead is merely cosmetic. The Metzenbaum Amendment carefully leaves the current pro-abortion Title IX regulations undisturbed. The preamble to S. 557 [Section 2 (2)] states that the purpose of S. 557 is to "restore prior consistent and long-standing executive branch interpretation" of Title IX, which clearly includes the pro-abortion reguations. The Metzenbaum Amendment in no way curbs this ratification of, and expansion of the reach of, the current pro-abortion Title IX regulations.

The Metzenbaum Amendment merely asserts that that "no provision of this Act or any amendment made by this Act shall be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal funds to perform or pay for an abortion." Because the Metzenbaum Amendment refers only to "this act" (S. 557) and not to Title IX itself, it would not protect hospitals, colleges, and state agencies from "sex discrimination" lawsuits if they fail to provide abortion "services," including abortion procedures, on the same basis as other medical procedures.

After all, it is Title IX itself (as interpreted by regulation) which imposes the requirement that educational institutions provide abortions. It is undisputed that S. 557 would expand the reach of those pro-abortion requirements. The Metzenbaum Amendment neither removes the current substantive requirements that recipients of federal funds provide abortion services, nor prevents the expansion of those requirements to the thousands of institutions to which coverage is extended by S. 557.

Moreover, under S. 557, Title IX coverage (including the pro-abortion requirements) would usually extend to a teaching hospital because such a hospital would be deemed to be an "operation" of a federally assisted medical school or nursing school—not because the hospital itself receives federal funds. The Metzenbaum Amendment, by design, refers only to direct recipients of federal funds, and on its face would have no application to whatever to the teaching hospitals and other institutions which are covered under the bill's sweeping "all of the operations of" language.

It is also noteworthy that the Danforth Amendment explicitly reinforces existing legal barriers against penalization of women who are seeking or who have obtained legal abortions. The Metzenbaum Amendment has no comparable provision.

The Metzenbaum Amendment has been sponsored by the leading pro-abortion advocates in the Senate in an attempt to scuttle your amendment, and to thereby preserve and expand a mandatory abortion policy under Title IX. In this context, the National Right to Life Committee can only regard a vote for the Metzenbaum Amendment as a pro-abortion vote.

Thank you for your continuing efforts to prevent thousands of federally assisted colleges, hospitals, and government agencies from being compelled to provide abortions and abortion-related services.

Respectfully submitted,

DOUGLAS JOHNSON,
Legislative Director.

The PRESIDING OFFICER. Who yields time?

If no one yields time, the remaining time will be charged equally against both sides.

The Senator from Missouri has 1 minute and 18 seconds. The Senator from Ohio has 11 minutes and 20 seconds.

Mr. HATCH. Mr. President, I ask unanimous consent that the distinguished Senator from Missouri be given the opportunity of speaking with his remaining time immediately before the vote.

Mr. PACKWOOD. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DANFORTH. Mr. President, I obviously would like some time at the end to rebut whatever is said. I will not be given that.

The issue before us is simple, and that is whether the U.S. Senate wants to leave up to the Federal courts and the regulatory agencies the possibility of requiring hospitals, colleges, and universities to fund or perform abortions when abortions are contrary to the moral sentiments or religious sentiments of those organizations. It is very simple.

The characterization by Senator METZENBAUM is absolutely erroneous. There is no element of discrimination. This does not have anything to do with Roe versus Wade. The question is not whether a woman has the right to an abortion, but the right to pick a hospital to give her an abortion or to have it paid for by a hospital or institution or has a physician that is contrary to the basic principle of abortion.

The PRESIDING OFFICER. Who yields time?

Mr. PACKWOOD. Mr. President, I believe the Senator from Ohio will yield to me.

The Senator from Ohio controls the time.

Mr. METZENBAUM. Mr. President, I yield such time as the Senator from Oregon needs.

Mr. PACKWOOD. I thank the Senator.

Mr. President, it has been said in this debate that this is not about Roe versus Wade or not about the right of a woman to have an abortion, that it is solely involved with the question of whether or not we are going to compel Baylor University or Notre Dame to provide or to do abortions against their will.

Respectfully, Mr. President, I say that is not the issue. The issue is multifold. One is that there is a certain antiwoman animus in the attitude of the proponents of this amendment. Two, there is no question but that any school that has any religious conscience can get out from under these regulations altogether.

I do not know where the figures came from that the Senator from Texas had, but I will quote a letter from the Office of Civil Rights, May 19, 1987. This is from the Reagan administration Office of Civil Rights:

> The Office of Civil Rights has never denied a request for religious exemption. No requests for religious exemption are pending at this time.

There have been a number of schools that refused to comply. For whatever reason, they did not ask the Government for a religious exemption.

But do you mean, has any school ever been turned down for a religious exemption? The answer is no.

Let me read just some of the schools that have obtained the exemptions: Brigham Young; St. John's in Minnesota; Cumberland College; Columbia Union College; Catholic University; George Fox in my home State of Oregon; Pepperdine in California; Union University, in Tennessee; Seton Hall.

I ask unanimous consent there be submitted for the RECORD and printed in the RECORD a list of 142 colleges as of October 25, 1985, that had requested exemptions and received them. I do not have the list beyond that date.

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

RELIGIOUS EXEMPTIONS: TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

EXEMPTIONS GRANTED

1. Brigham Young University (UT),[1] August 12, 1976.
2. St. Charles Borromeo Seminary (PA), September 14, 1976.
3. Harding College (AR), Harding University (AR) (additional exemption granted 9-23-85), October 14, 1976.
4. Covenant Theological Seminary (MO),[1] May 19, 1983.
5. Saint John's University (MN), March 9, 1984.
6. Christian Heritage College (CA),[1] October 19, 1984.
7. Atlantic Christian College (NC),[1] January 9, 1985.
8. Lees Junior College (KY), May 17, 1985.
9. Asbury College (KY), May 17, 1985.
10. Asbury Theological Seminary (KY), May 17, 1985.
11. Central Wesleyan College (SC), May 17, 1985.
12. Freed-Hardeman College (TN), May 17, 1985.
13. Cumberland College (KY), May 17, 1985.
14. Chowan College (NC), May 17, 1985.
15. Columbia Union College (MD), June 18, 1985.
16. United Wesleyan College (PA), June 18, 1985.
17. Appalachian Bible College (WV), June 18, 1985.
18. Ohio Valley College (WV), June 18, 1985.
19. Immaculata College (PA), June 18, 1985.
20. Baptist Bible College and School of Theology (PA), June 18, 1985.
21. Catholic University of America (DC), (additional exemption granted 8-8-85), June 18, 1985.
22. Ricks College (ID), June 24, 1985.
23. LDS Business College (UT), July 22, 1985.
24. Presentation College (SD), July 22, 1985.
25. Southeastern Bible College (AL), July 24, 1985.
26. David Lipscomb College (TN) July 24, 1985.
27. Johnson Bible College (TN), July 24, 1985.
28. Brescia College (KY), July 24, 1985.
29. Kenrick Seminary (MO), August 1, 1985.
30. York College (NE), August 1, 1985.
31. George Fox College (OR), August 5, 1985.
32. Mt. Angel Seminary (OR), August 5, 1985.
33. Walla Walla College (WA), August 5, 1985.
34. Western Baptist College (OR), August 5, 1985.
35. West Coast Christian College (CA), August 6, 1985.
36. Los Angeles Baptist College (CA), August 6, 1985.
37. Pope John XXIII National Seminary (MA), August 16, 1985.
38. Roberts Wesleyan College (NY), August 16, 1985.
39. Antillian College (PR), August 16, 1985.
40. De Sales School of Theology (DC), August 26, 1985.
41. St. John's Seminary (CA), August 27, 1985.
42. Pepperdine University (CA), August 27, 1985.
43. Dominican School of Philosophy and Theology (CA), August 27, 1985.
44. Denver Conservative Baptist Seminary (CO), August 27, 1985.
45. Northwest Baptist Seminary (WA), September 3, 1985.
46. St. Patrick's Seminary (CA), September 3, 1985.
47. Campbell University (NC), September 3, 1985.
48. Bethune-Cookman College (FL), September 3, 1985.
49. Tennessee Temple College (TN), September 3, 1985.
50. Campbellsville College (KY), September 3, 1985.
51. Oakwood College (AL), September 3, 1985.
52. Union University (TN), September 3, 1985.
53. Berea College (KY), September 3, 1985.
54. Biola University (CA), September 3, 1985.
55. Pacific Union College (CA), September 3, 1985.
56. Circleville Bible College (OH), September 13, 1985.
57. Bethel College (IN), September 13, 1985.
58. Trinity Evangelical Divinity School (IL), September 13, 1985.
59. Wheaton College (IL), September 13, 1985.
60. Dr. Martin Luther College (MN), September 13, 1985.
61. Grace College and Grace Theological Seminary (IN), September 13, 1985.
62. Bethany Lutheran College (MN), September 13, 1985.
63. Marion College (IN), September 13, 1985.
64. Andrews University (MI), September 13, 1985.
65. Kettering College of Medical Arts (OH), September 13, 1985.
66. The Cincinnati Bible Seminary (OH), September 13, 1985.
67. The Athenaeum of Ohio (OH), September 13, 1985.
68. College of Saint Benedict (MN), September 13, 1985.
69. Saint Mary of the Lake Seminary (IL), September 13, 1985.
70. Grand Rapids Baptist College (MI), September 13, 1985.
71. Cedarville College (OH), September 13, 1985.
72. St. Louis-Chaminade Education Center (HI), September 18, 1985.
73. Westminster Theological Seminary (PA), September 18, 1985.
74. Seton Hall University (NJ), September 20, 1985.
75. Wadhams Hall Seminary-College (NY), September 20, 1985.
76. Christ the King Seminary (NY), September 20, 1985.
77. Mid-America Bible College (OK), September 20, 1985.
78. Oklahoma Christian College (OK), September 20, 1985.
79. Oral Roberts University (OK), September 20, 1985.
80. Louisiana College (LA), September 20, 1985.
81. Concordia Seminary (MO), September 20, 1985.
82. Mesivta Yeshiva Rabbi, Chaim Berlin (NY), September 23, 1985.
83. Mirrer Yeshiva Central Institute (NY), September 23, 1985.
84. Rabbinical College of Long Island (NY), September 23, 1985.
85. Rabbinical Seminary of America (NY), September 23, 1985.
86. Sh'or Yoshuv Rabbinical College (NY), September 23, 1985.
87. Yeshiva Gedolah-Zichron Moshe (NY), September 23, 1985.
88. Yeshivath Kehilath Yakov (NY), September 23, 1985.
89. Yeshiva and Mesivta Ohr Yisroel (NY), September 23, 1985.
90. Yeshiva of Nitra Rabbinical College (NY), September 23, 1985.
91. Talmudical Academy (NJ), September 23, 1985.
92. Ohr Hameir Theological Seminary (NY), September 23, 1985.
93. Yeshiva Torah Vodaath and Mesivta (NY), September 23, 1985.
94. Mesivtha Tifereth Jerusalem of America (NY), September 23, 1985.
95. Derech Ayson Rabbinical Seminary/Yeshiva of Far Rockaway (NY), September 23, 1985.
96. Central Yeshiva Beth Joseph Rabbinical Seminary (NY), September 23, 1985.
97. Grace Bible College (MI), September 23, 1985.
98. Saint Mary's College (MN), September 23, 1985.
99. Saint Mary's College (IN), September 23, 1985.
100. The Saint Paul Seminary (MN), September 23, 1985.
101. Concordia Theological Seminary (IN), September 23, 1985.
102. Calvin College and Seminary (MI), September 23, 1985.
103. Harding Academy (IN), September 23, 1985.
104. Rabbinical Seminary M'kor Chaim (NY), September 24, 1985.
105. Beth Hamedrash Shaarei Yosher (NY), September 24, 1985.
106. Rabbinical Seminary of Belz (NY), September 24, 1985.
107. Rabbinical College of Adas Yereim (NY), September 24, 1985.
108. Rabbinical College Ch'san Sofer of New York (NY), September 24, 1985.
109. Rabbinical Seminary of Munkacs (NY), September 24, 1985.
110. Ner Israel Rabbinical College (MD), September 24, 1985.
111. Reformed Presbyterian Theological Seminary (PA), September 24, 1985.
112. St. Louis Rabbinical College (MO), September 24, 1985.
113. Faith Baptist Bible College (IA), September 24, 1985.
114. Grace College of the Bible (NE), September 24, 1985.
115. Beth Hatalmud Insitute for Advanced Talmudic Studies (NY), September 24, 1985.
116. Beth Medrash Emek Halacha (NY), September 24, 1985.
117. The Jewish Theological Seminary of America (NY), September 24, 1985.
118. Rabbinical College Beth Shraga (NY), September 24, 1985.
119. Rabbinical College Kamenitz Yeshivah of America (NY), September 26, 1985.
120. Talmudical Yeshiva of Philadelphia (PA), September 26, 1985.
121. Baylor University (TX), September 26, 1985.
122. Southern Baptist College (AR), September 26, 1985.

Footnote at end of article.

123. Notre Dame Seminary (LA), September 26, 1985.
124. Bartlesville Wesleyan College (OK), September 26, 1985.
125. Southwestern Adventist College (TX), September 26, 1985.
126. Crowley's Ridge Academy (AR), September 26, 1985.
127. Crowley's Ridge College (AR), September 26, 1985.
128. Rabbinical College of the Bobover Yeshiva Bnei Zion Inc. (NY), September 27, 1985.
129. Mesivta of Eastern Parkway Rabbinical Seminary (NY), September 30, 1985.
130. Brisk Rabbinical College (IL), September 30, 1985.
131. Telshe Yeshiva (OH), September 30, 1985.
132. The Hebrew Theological College (IL), September 30, 1985.
133. Michigan Christian College (MI), September 30, 1985.
134. William Tyndale College (MI), September 30, 1985.
135. Union College (NE), October 25, 1985.
136. Ohr Somayach (NY),[1] October 25, 1985.
137. Central Yeshiva Tomchei Tmimim Lubavitz (NY), October 25, 1985.
138. Mesivta Sanz of Hudson County (NJ), October 25, 1985.
139. Ayelet Hashachar (NY), October 25, 1985.
140. Yeshiva Kesser Torah (NY), October 25, 1985.
141. Yeshiva Toras Chaim Talmudical Seminary/Denver (CO), October 25, 1985.
142. Colorado Christian College (CO), October 25, 1985.

[1] Five institutions were not included in the count of 216 case files officially pending as of February 19, 1985.

Mr. PACKWOOD. So if you want to get out from under these regulations you have no difficulty. You can apply for an exemption and it will be granted.

I think the issue here is not religious exemption. The issue really boils down as to whether or not you really do think a woman is entitled to make a choice for herself whether she wants an abortion, whether she happens to be a student at Oregon State University, or whether she happens to be a woman who is a housewife or whether she happens to be a woman who is working in the lumber mill or a lawyer. Whether she happens to be going to a public university or a private university that is not religiously affiliated and takes substantial amounts of money from the Government—and most are happy to take money from the Government if they can get it in most cases—can she be denied the right not to have the university perform the abortion, but to provide the access to it under a student health plan?

What the Senator from Missouri is afraid of, and I can understand his fear, is that under the old law, the 1972 law, he thinks there is a possibility that some court might interpret the 1975 regulations in a manner affecting abortion that he and his supporters do not agree with. He has referred to a 17-page memorandum from the law firm of Dewey, Ballantine, Bushby, Palmer & Wood in which they offer their opinion as to what could—not will—could happen if this bill were to pass.

According to Dewey, Ballantine if the Civil Rights Restoration Act is enacted, educational institutions could be required to fund abortions; hospitals that engage in educational activities could be required; hospitals could be required to perform abortions; educational institutions and hospitals associated with a religious institution could fail to qualify under the act's religious exemption.

Mr. President, that has never happened. No institution that has applied for a religious exemption has ever failed to get it. No court has ever yet imposed on any institution the fears that the Senator from Missouri has expressed. But he wants to make sure that no court might. What bothers me with his approach on this was the tacit—I do not want to say explicit—the tacit understanding that all we were trying to do in this act was to reverse the case of Grove City, which the Supreme Court decided 3 or 4 years ago, in which they said that what everyone in this Senate, and I think everyone in the House, and everyone in any administration had ever thought title IX and the regulations meant. Title IX of the Education Act of 1972 is the one that basically prohibits discrimination in sex and employment.

I might add it is the act under which we finally managed to pry loose moneys for women in sports. I would wager today there are a great many proud—I do not mean just halloaed—I mean proud fathers who have reveled in the success of their daughters in track or high school basketball or field hockey with equipment of reasonable quality that they never had access to until we passed title IX.

I might say checking the votes of some of the people who were here in 1972, some of the people who are opposed to giving women the right to make a choice on abortion, also did not like title IX and the right to give women an equal shot at equal athletic facilities.

Now, Mr. President, there is a thread that runs through this entire debate, and that thread is bigger than just the issue of whether or not Notre Dame would have to provide health coverage which might provide abortion. Notre Dame can opt out if they want. The issue is bigger than that. The issue is whether or not you really believe that a woman is entitled to do something beyond what many in this body would limit her to do. That is the basic genesis of the support of many, not all, but many for this amendment.

Deep down in their hearts they are convinced that the world would be better off if women would not be in the marketplace, if they would simply stay home with the children, that deep down we would be better off if the Government could compel and prohibit them from making a choice freely as to whether or not they want an abortion, legally, because we know what the situation would be if they cannot. They would freely make a choice to have an illegal abortion. I hope we are not going back to those days.

They just know the world would be better off if what we did on Friday night was watch boys basketball games, and that is—I do not want to use the word animus, because that has a certain sense of maliciousness. It is not animus so much as it is a sense that we all have a place in society that has been ordained by God and if we would all stay in our place, America would be stronger, safer, freer.

That in whole is the problem we are facing. The vote on the Danforth amendment is frankly an itsy-bitsy part of that whole debate. It is not an integral part of the debate. It is an effort to try to roll back the rights a little bit, of women in this country in the hopes that this can be the harbinger of rolling them back a lot.

No. This is not a vote to repeal Roe versus Wade and overturn the Supreme Court, although I assume we may have those votes from time to time in this Congress, but it is an effort to start down that road, and I would hope that this Senate today in just a few minutes would vote to say we are not going to start down that road, not today, not this Congress, not ever.

The PRESIDING OFFICER Who yields time?

The Senator from Ohio has remaining 2 minutes; the Senator from Missouri 10 seconds.

If no one seeks time, the remaining time will be charged equally against both sides.

Mr. DURENBERGER. Mr. President, I rise as a supporter and cosponsor of the Danforth amendment to the Civil Rights Restoration Act.

The legislation before the Senate is designed to restore the four landmark civil rights statutes to the force and vitality they enjoyed prior to the Grove City versus Bell decision of the Supreme Court. The fact that this effort has taken more than 3 years for the Congress to accomplish, and we are not done yet, testifies to the complexity and controversy of some of the issues it raises.

I would expect that the work of this body on this matter will be subject to substantial interpretation and litigation by administrations not yet elected and in future Court cases. The Grove City controversy arose in the first instance out of a misunderstanding of congressional intent with respect to

the "program or activity" language in the four statutes. It is therefore vitally important that we make our intent very clear with respect to the controversies which have been raised and discussed in relation to this bill. I appreciate the work the committee has done, in its report and in legislative history made on this floor, to anticipate and deal with such matters prior to disposition of this measure.

The pending amendment is a necessary addition to this bill because it resolves an ambiguity which has been raised: The obligations of religious and other educational institutions to provide abortion related services or insurance coverage. Title IX of the education amendments was enacted in 1972 and implemented by HEW regulations in 1975. Those regulations define the denial of abortion services or health plan coverage as sex discrimination, in violation of title IX. Were those regulations to be proposed as a bill in the 100th Congress, I would not support it and doubt very seriously that it would ever become law.

I do not believe it is the view of a majority of the Congress that we should force hospitals associated with educational institutions, whether they be religious or secular institutions, to make a choice of whether, on the one hand, to forego all forms of Federal funding or, on the other, to violate the tenets of their moral conscience by providing abortions.

The inconsistency of that choice with other elements of Federal law, and principles we cherish in this democracy, is both striking and obvious. But that conclusion does not, in itself, remove the necessity of dealing with the issue.

As the Senator from Missouri has stated, there is a reasonable possibility that a future Court or administration may interpret our silence on this issue, or our failure to clarify this ambiguity, as a tacit congressional affirmation of the broadest interpretation of the title IX regulations. We should not allow that to happen.

It is argued that title IX's "religious tenet exemption" will provide teaching hospitals with an opportunity for relief. That exemption is the subject of the underlying amendment and will be debated as soon as this amendment is disposed of. But as the American Hospital Association has argued, there is a large number of hospitals without religious affiliations who do not perform abortions as a matter of conscience. There is no similar "exemption" opportunity for these institutions as currently exists for religious teaching hospitals.

Throughout my career in the Senate, I have consistently and without exception voted to protect the sanctity of human life, including questions of abortion, medical ethics, and capital punishment. Many disagree with a number of those votes. But I regard the Danforth amendment as an important decision by this body with regard to our respect as a nation for all human life.

I recognize that many of my colleagues do not and will not share my conviction on matters of life. Nevertheless, I urge them to carefully consider the pending amendment as a necessary protection of the freedom of conscience for organizations, in their own States and throughout the country, who have chosen not to perform abortions. We should respect and protect their right to do so. We should act affirmatively on the Danforth amendment.

Mr. ADAMS. Mr. President, I am a cosponsor of the Civil Rights Restoration Act. Consistent with the concept of the bill, I have opposed all amendments which seek to do anything but restore the status quo ante. All I want is to go back to where we were before the Supreme Court decision in the Grove City case. There have been a number of amendments which clearly would have had the effect of making substantive changes in the law. In those cases, given my desire to restore the law to the status enjoyed prior to Grove City, it has been a simple decision to oppose them.

The amendment offered by Senator DANFORTH, however, represents a more difficult decision. I know that the relationship between this bill and an alleged expansion of abortion rights has prevented congressional action for a number of years since many believe that this legislation in some way expands abortion rights. If I agreed with that assumption, if I thought it was factually correct, I would be inclined to support the Danforth amendment: after all, the goal of the bill before us is to return us to where we were—not move us either forward or backward in terms of abortion.

After careful study of the legislative language, the committee report, and the memorandum of law prepared for Senator DANFORTH by Dewey Ballantine, I have concluded that this bill does not expand abortion rights, does not change either the rights or the responsibilities of institutions, does not alter the law or the regulations created by title IX. The amendment offered by Senator WEICKER earlier today makes this perfectly clear. While I was pleased to vote for the Weicker amendment, I agree that it was not necessary. It was not necessary because no compelling case was made to support the claim that the Civil Rights Restoration Act changes the legal or regulatory scheme which was in effect relative to abortion prior to Grove City.

The Dewey Ballantine memorandum which is used to justify the "worst case" situations which the Danforth amendment seeks to prevent, for example, is cast in conditional terms. They argue that there is "a serious risk" that a court "could require" actions which some would find unacceptable. The point is that the memorandum does not establish even a probability that a court would so rule. Indeed, the committee report very clearly precludes such a ruling. On page 26 and page 27, the majority makes that point explicitly. The report is worth quoting at some length since it establishes clear congressional intent on this point:

> Title IX does not now require an institution to perform abortions and no abortions would be mandated if S. 557 were enacted. Religiously-controlled organizations will continue to be able to apply for, and receive, an exemption from Title IX requirements where compliance with those requirements would violate their religious tenets. For example, a religiously-controlled university that wished to exclude insurance coverage of abortions from an otherwise comprehensive student health insurance policy, could seek a religious exemption. Additionally * * * claims that the bill would require hospitals to provide abortion services to the general public are false.

Given this clear legislative history, I simply do not believe that the legislation restricts or expands or in any way changes abortion rights under title IX or under Roe versus Wade.

Let me, however, make one more point: While the bill is abortion neutral, I am not at all sure that the language of the Danforth amendment is. There have been persuasive arguments made to indicate that adoption of the Danforth language is specifically designed to alter the regulations which have been in effect since the mid-1970's to implement title IX. That is not the purpose of this bill. And that is not something that I would want to see done. Those who support the Danforth amendment have an agenda which is different then mine: Their desire is not to have an abortion neutral law, rather their desire is to restrict the right to abortion. That is a desire I do not share. And that is why I have supported the abortion neutral language in the bill and the Weicker amendment and why I oppose the Danforth language.

Mr. HEINZ. Mr. President, I strongly support passage of the Civil Rights Restoration Act—S. 557. I was an original cosponsor of this legislation both in the 99th and 100th Congresses. Restoring these four civil rights statutes—title VI of the Civil Rights Act, title IX of the Education Act amendments, section 904 of the Rehabilitation Act, and the Age Discrimination Act—is essential. Restoration of these laws reflects America's commitment to one of the most cherished values in our democratic system: Equality under the law.

During Senate consideration of the Grove City bill over these past few days, along with other colleagues, I

have resisted all amendments that would further dilute these civil rights. These include attempts to expand the religious exemption and to narrow the scope of coverage to individual institutions not systems.

The Senate now is enrolled in a debate on an issue upon which there is considerable disagreement—whether this bill will have an effect on the provision of abortions. I would like to discuss this objectively and dispassionately before the Senate votes today.

First, let me take a minute to describe what these civil rights laws that we are restoring do: They protect individuals against discrimination in federally assisted programs or activities. Title VI prohibits discrimination on the basis of race, color, and national origin; title IX prohibits discrimination on the basis of sex; section 504 prohibits discrimination on the basis of physical or mental disability; and the Age Discrimination Act prohibits discrimination on the basis of age.

Americans have made it clear that they will not tolerate discriminatory treatment of others because of race, sex, age, or disability. We all agree that Federal financial assistance should not be used to subsidize discrimination of any kind.

Since there is agreement about these principles, why is there opposition to the Civil Rights Restoration Act?

In 1984, in its *Grove City College* v. *Bell* decision, the Supreme Court substantially narrowed the scope of title IX of the Education Act amendments. The Court ruled that title IX applied only to specific programs or activities that directly or indirectly received Federal funds. With this decision, the three other similarly worded civil rights statutes that I have mentioned which protect the rights of the elderly, minorities and the disabled were similarly narrowed.

Mr. President, I believe that a careful examination of the legislative history demonstrates the clear intent of Congress to apply title IX not just to a specific program but to an educational institution as a whole. It is for this reason that I joined as an original cosponsor of civil rights restoration legislation. S. 557, the legislation before us is intended to reverse the Grove City decision and restores title IX of the Education Act Amendments of 1972 as well as the three other civil rights statutes to the meaning and scope intended by Congress.

I fully support the overall goal of the legislation. We need to restore the full force and effectiveness of our Nation's civil rights laws to millions of women, the elderly, minorities and the handicapped from discrimination. Since the Supreme Court decision, justice delayed has been justice denied for these individuals.

I am, however, concerned that this legislation goes significantly beyond its original goal of prohibiting Federal subsidization of discrimination. It may, in fact, infringe on certain religious or deeply held moral beliefs, particularly regarding abortion. It is for this reason we are currently debating the pending Danforth amendment.

The root of the concern here, as I understand the issue, lies in the consequences of enacting S. 557, specifically the effect it would have because of existing Federal regulations. Currently, Federal regulations implementing title IX require that educational institutions receiving Federal financial assistance treat abortion on par with other medical treatments for pregnancy. These regulations state:

A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such students * * * termination of pregnancy * * *.

A recipient shall not discriminate against or exclude any person on the basis of * * * termination of pregnancy [in admission or recruitment] * * *.

A recipient shall not discriminate against or exclude from employment any employee or applicant * * * on the basis of * * * termination of pregnancy * * *.

A recipient shall treat * * * termination of pregnancy * * * in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit * * * or policy * * *.

Mr. President, people on both sides of this issue have told me that they do not favor legislation that would require institutions to perform abortions against their will. I am certain that opponents of the Danforth amendment are sincere in their belief that restoration of title IX will not result in unwilling abortions. However, as I read the language of the bill in the context of its legislative history and its implementing regulations, I am concerned that there is considerably uncertainty about how the courts or administrating agencies would construe this legislation.

I share the concern that S. 557 could expand the scope of title IX and its prohibitions on discrimination on the basis of abortion in two ways. First, it could conceivably expand the reach of these regulations within institutions to cover college and university health insurance plans at any institution that receives Federal funds, directly or indirectly, regardless of whether that health insurance plan receives direct Federal funding.

Second, and more importantly, there is reason to believe it could expand the reach beyond the confines of the educational institutions to any hospital which operates "Federal assisted education programs or activities." It is my understanding that under S. 557, if a hospital participates in a program of nursing or medical education in affiliation with a university or medical school and that educational institution receives any Federal assistance whatever, the hospital is brought within the scope of title IX. At a minimum, this may result in the hospital having to provide abortion insurance coverage to residents, interns, nursing students, and teaching staff. More importantly, an institution's refusal either to provide insurance coverage or to perform abortions would equal—for purposes of title IX—"sex discrimination." The institution would stand in violation of the statute.

Mr. President, I do not believe that Congress ever intended, directly or indirectly, to compel health care facilities and personnel that object to abortion as a matter of conscience and religious belief to provide abortions. Nor do I believe that Congress intended these facilities' refusal to do so to be the equivalent of sex discrimination. There are innumerable religiously affiliated hospitals which have had a long record of offering care to those in need in a nondiscriminatory manner. They should not be liable and subject to suit for sex discrimination. This would be unfair, and it would be a cruel irony if in trying to provide justice to certain individuals, we should end up denying justice to others by forcing them to act against their convictions.

In my own State of Pennsylvania, we could be a significant problem for the vast majority of hospitals, both religiously affiliated and nonaffiliated. There are 380 hospitals in Pennsylvania, of which 240 are general community hospitals. Only 40 out of these 240 provide or fund abortions on demand. Mr. President, the great majority—200 of these—have chosen for moral reasons not to perform or fund abortion. These involve both private, nonaffiliated hospitals like Scranton State General Hospital, NTW Medical Center (Wilkes-Barre), Western Pennsylvania Memorial Hospital, and so forth, and the many Catholic hospitals throughout the State, none of which perform abortions.

It is my understanding that in the absence of an abortion neutral amendment, none—I repeat, none—would meet the religious exception test of title IX principally because they have lay boards. Hence, all of these hospitals I have just mentioned would be required to provide abortions or be guilty of sex discrimination. In short, we would be requiring hospitals such as Mercy Hospital in Pittsburgh and St. Joseph's Hospital in Philadelphia to act in a manner that directly violates a fundamental precept of their religious affiliation. We should not do so.

My colleague from Missouri, Senator DANFORTH, has offered an amendment to avoid this situation. His amendment states:

Nothing in this title shall be construed to require or prohibit any person, or public or

private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person because such person has received any benefit or service related to a legal abortion.

Mr. President, this amendment would clarify that neither title IX of the Education Act amendments nor the implementing regulations require educational institutions, hospitals or other entities to provide or pay for abortions and abortion-related services. Insofar as I can judge, the amendment is narrowly drawn to remove the risk that institutions—such as those I have named in Pennsylvania—could be compelled to offer abortions against their moral convictions. It would appear to protect women who have had abortions from discrimination. It would neither require nor prohibit the provision of abortion services as a condition of the receipt of Federal funds.

More significantly, Mr. President, it would remove abortion from the dimension of categories for purposes of sex discrimination under title IX. I recognize that this is the core argument in opposition to the amendment. And, I must say, it has given rise to some very serious claims that removing abortion from the categories of sex discrimination will result in women losing scholarships, being denied employment or admission to educational institutions—in short, losing everything they had gained in the last 16 years. These charges were troublesome to me in that I have always been a strong proponent of legislation supporting women's rights including, in particular, the equal rights amendment. Upon my review of all the information, however, I am not persuaded that removing abortion from the category of discrimination will produce these dire results for two reasons.

First, given the advances made by women since enactment of title IX in 1972, our country would neither countenance nor condone these types of draconian measures inflicted upon women who have had abortions. Second, abortion was never an issue, or an element of congressional intent, in the original legislation. In fact, when title IX was enacted in 1972, abortion was almost entirely illegal in most States. There is nothing in the legislative history to suggest that Congress intended to include it within title IX. The Danforth amendment, in my judgment, is fully consistent with the goal we all share of restoring title IX to its meaning when first enacted, and I will vote for the amendment.

Mr. President, let me address a final comment to the bill itself, S. 557. Some have portrayed this legislation as a simple question of justice. Others have portrayed it as a complex constitutional issue. Irrespective of these portrayals and arguments there should be no ambiguity where we stand: Federally assisted discrimination should be illegal. It is vital that we pass legislation to ensure that the civil rights of women, minorities, the elderly and the disabled be protected. That is why I wholeheartedly support the Civil Rights Restoration Act.

Mr. LEVIN. Mr. President, I do not believe that the law should mandate the performance of abortion—through a threat of withdrawal of Federal funds if an entity receiving Federal funds wishes not to provide abortions—nor do I believe that an entity receiving Federal funds that wishes to perform abortions should be penalized for doing so. I believe the Danforth amendment carries out that policy.

The Danforth amendment provides that nothing in the law shall be construed:

* * * to require or prohibit any person or public or private entity to provide or pay for any benefit or service, including use of facilities, related to abortion or * * * to permit a penalty to be imposed on any person because such person has received any benefit or service related to legal abortion.

In stating that institutions receiving Federal funds have a choice of performing or not performing abortions, without being threatened one way or another relative to the receipt of Federal funds, I believe the Danforth amendment strikes an appropriate balance in dealing with this issue.

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

The PRESIDING OFFICER. The Senator from Ohio has remaining 1 minute and 50 seconds.

Mr. METZENBAUM. And all time has expired on the other side?

The PRESIDING OFFICER. All time has expired for the Senator from Missouri.

Mr. METZENBAUM. Mr. President, let me just summarize where we are: We passed our amendment, the Packwood - Kennedy - Weicker - Metzenbaum amendment, and we said we do not want to address the issue of abortion in this bill. Our amendment was adopted by a vote of 55 to 40.

Now, Senator DANFORTH comes along with an amendment that says notwithstanding any other provision of the bill, his language will be applicable. There is not much question about the fact that that language negates the impact of that which has already been passed.

I would say to my colleagues, if you voted with us on the past one, I would hope you would vote against the Danforth amendment. If you do not, you are totally reversing your vote cast just a few minutes ago.

But the real issue is not abortion but of civil rights. We want to pass a civil rights bill. We do not want to get involved in the issue of abortion. That is the entire thrust of our efforts.

Unlike Senator DANFORTH, we are not trying to change law on abortion. We are not trying to expand the rights to abortion. We are not trying to cut back. The amendment of the Senator from Missouri does reach out beyond the limits of this bill. That's why it should be rejected.

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

All time has expired. Under the previous order the vote occurs on the amendment offered by the Senator from Missouri. The yeas and nays have not been ordered.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Missouri [Mr. DANFORTH]. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee [Mr. GORE] is necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN], is absent because of illness.

I further announce that, if present and voting, the Senator from Delaware [Mr. BIDEN] and the Senator from Tennessee [Mr. GORE] would each vote "nay."

Mrs. KASSEBAUM. Mr. President, on this vote I have a pair with the Senator from Alaska [Mr. MURKOWSKI]. If he were present and voting, he would vote "aye." If I were at liberty to vote, I would vote "nay." Therefore, I withhold my vote.

Mr. SIMPSON. I announce that the Senator from Alaska [Mr. MURKOWSKI] and the Senator from Wyoming [Mr. WALLOP] are absent on official business.

I further announce that, if present and voting, the Senator from Wyoming [Mr. WALLOP] would vote "yea."

The VICE PRESIDENT. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 56, nays 39, as follows:

[Rollcall Vote No. 9 Leg.]

YEAS—56

Armstrong	Domenici	Humphrey
Bentsen	Durenberger	Johnston
Bond	Exon	Karnes
Boren	Ford	Kasten
Boschwitz	Garn	Levin
Breaux	Graham	Lugar
Cochran	Gramm	McCain
Conrad	Grassley	McClure
D'Amato	Hatch	McConnell
Danforth	Hatfield	Melcher
DeConcini	Hecht	Moynihan
Dixon	Heflin	Nickles
Dodd	Heinz	Nunn
Dole	Helms	Pressler

Proxmire	Shelby	Thurmond
Quayle	Simpson	Trible
Reid	Stennis	Warner
Roth	Stevens	Wilson
Rudman	Symms	

NAYS—39

Adams	Fowler	Packwood
Baucus	Glenn	Pell
Bingaman	Harkin	Pryor
Bradley	Hollings	Riegle
Bumpers	Inouye	Rockefeller
Burdick	Kennedy	Sanford
Byrd	Kerry	Sarbanes
Chafee	Lautenberg	Sasser
Chiles	Leahy	Simon
Cohen	Matsunaga	Specter
Cranston	Metzenbaum	Stafford
Daschle	Mikulski	Weicker
Evans	Mitchell	Wirth

PRESENT AND GIVING A LIVE PAIR AS PREVIOUSLY RECORDED—1

Kassebaum, against.

NOT VOTING—4

Biden	Murkowski
Gore	Wallop

So the amendment (No. 1392) was agreed to.

Mr. DANFORTH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATCH. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATCH. Mr. President, I would like to just say a few words about the preceding vote. I know that it was a difficult vote for everybody in the Senate and everybody on the floor at the time. I know it was difficult for you to come back from New Hampshire.

I want to pay tribute to the three Presidential candidates who returned for this last vote: Senator SIMON, Vice President GEORGE BUSH, and of course, our own minority leader, ROBERT DOLE. I think that emphasized how important that vote really was and really is to the American people.

I want to compliment each of them for thinking enough about how important that issue is to be here and to make the extra effort to be here. I know that it was an extremely difficult effort for all three. I happen to know a little bit about the inconvenience that it caused to all three of them, and I want to express my admiration to all three of them.

Mr. President, I would also like to extend my congratulations to the distinguished Senator from Missouri. I think the passage of his amendment could not have occurred had he not led the fight for it and he did so with great skill, with consummate legal ability and I think with a tremendous capacity for tolerance for all of us here on the floor.

I just could not have more respect for an individual than I have for him at this time, so I would like to pay my respects there. I would like to pay my respect to all who voted for or against the amendment because it was a difficult battle.

AMENDMENT NO. 1394

(Purpose: To provide institution-wide coverage in education, and to retain the scope of coverage for all other entities that existed prior to the ruling in Grove City College versus Bell)

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

The PRESIDING OFFICER (Mr. FOWLER). The amendment will be stated.

The bill clerk read as follows:

The Senator from Utah [Mr. HATCH] proposes an amendment numbered 1394.

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

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

The amendment is as follows:

Strike out all after enacting clause and insert in lieu thereof the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Civil Rights Act of 1987".

PROGRAM OR ACTIVITY

SEC. 2. (a) Title IX of the Education Amendments of 1972 is amended by adding at the end thereof the following new section:

"SEC. 908. (a) Notwithstanding the decisions of the Supreme Court in *Grove City College and others, versus Bell, Secretary of Education, and others* (465 U.S. 555 (1984)), and in *North Haven Board of Education and others, versus Bell, Secretary of Education, and others* (456 U.S. 512 (1982)) the phrase 'program or activity' as used in this title shall, as applied to educational institutions which are extended Federal financial assistance, mean the educational institution.

"(b) In any other application of the provisions of this title, nothing in subsection (a) shall be construed to expand or narrow the meaning of the phrase 'program or activity' and that phrase shall be construed without reference to or consideration of the Supreme Court decisions in *Grove City* and *North Haven*.

"(c) Nothing in this title shall be construed to require or prohibit any person or public or private entity to provide or pay for any benefit or service, including use of facilities, relating to abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to legal abortion.".

(b) Section 901(a) of title IX of the Education Amendments of 1972 is amended by striking out paragraph (3) and inserting in lieu thereof the following new paragraph:

"(3) this section shall not apply to an educational institution which is controlled by, or which is closely identified with the tenets of, a particular religious organization to the extent that the application of this section would not be consistent with the religious tenets of such organization;".

(c) Section 504 of the Rehabilitation Act of 1973 is amended by inserting "(a)" after the section designation and by adding at the end thereof the following new subsection:

"(b)(1) Notwithstanding the decision of the Supreme Court in *Grove City College and others, versus Bell, Secretary of Education, and others* ((465 U.S. 555 (1984)), and in *North Haven Board of Education and others, versus Bell, Secretary of Education, and others* (456 U.S. 512 (1982)), the phrase "program or activity' as used in this section shall, as applied to educational institutions which are extended Federal financial assistance, mean the educational institution.

"(2) In any other application of the provisions of this section, nothing in paragraph (1) shall be construed to expand or narrow the meaning of the phrase "program or activity' and that phrase shall be construed without reference to or consideration of the Supreme Court decisions in *Grove City* and *North Haven*.".

(d) The Age Discrimination Act of 1975 is amended by adding at the end thereof the following new section:

"EFFECT OF SUPREME COURT DECISIONS

"SEC. 310. (a) Notwithstanding the decisions of the Supreme Court in *Grove City College and others, versus Bell, Secretary of Education, and others* ((465 U.S. 555 (1984)), and in *North Haven Board of Education and others, versus Bell, Secretary of Education, and others* (456 U.S. 512 (1982)), the phrase 'program or activity' as used in this title shall, as applied to educational institutions which are extended Federal financial assistance, mean the educational institution.

"(b) In any other application of the provisions of this title, nothing in subsection (a) shall be construed to expand or narrow the meaning of the phrase 'program or activity' and that phrase shall be construed without reference to or consideration of the Supreme Court decisions in *Grove City* and *North Haven*.".

(e) Title VI of the Civil Rights Act of 1964 is amended by adding at the end thereof the following new section:

"SEC. 606. (a) Notwithstanding the decisions of the Supreme Court in *Grove City College and others, versus Bell, Secretary of Education, and others* ((465 U.S. 555 (1984)), and in *North Haven Board of Education and others, versus Bell, Secretary of Education, and others* (456 U.S. 512 (1982)), the phrase 'program or activity' as used in this title shall, as applied to educational institutions which are extended Federal financial assistance, mean the educational institution.

"(b) In any other application of the provisions of this title, nothing in subsection (a) shall be construed to expand or narrow the meaning of the phrase "program or activity" and that phrase shall be construed without reference to or consideration of the Supreme Court decisions in Grove City and North Haven.".

Mr. HATCH. Mr. President, the substitute that I have offered is a reasonable response to the Grove City decision. We all oppose discrimination and favor vigorous civil rights enforcement. This substitute amendment provides explicitly for institutionwide coverage of educational institutions under all four cross-cutting civil rights statutes: Title VI of the Civil Rights Act of 1964; title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975.

It is our intent that educational institutions include elementary and secondary schools, postsecondary institutions, and public school districts. Thus, whenever one school in a public school district receives Federal aid, the

entire public school district is covered. This coverage of public school districts reflects the Department of Education's title IX regulation which defines "educational institution" as including public school districts. 34 C.F.R. 106.2(j).

With respect to all other applications of the term "program or activity," the meaning of that term is neither expanded nor narrowed by the substitute proposal. The Grove City and North Haven cases are to be disregarded in determining the scope of the "program or activity" language outside of the educational institution context.

Therefore, resolution of the scope of coverage outside of education will turn on these statutes' plain language and legislative history and past clear agency practice with respect to specific cases. Where such coverage was broad, taking into account the nature of the Federal aid and its uses, the plain language of the statutes, and their legislative histories, then coverage will be broad. For example, all of the activities conducted within a building constructed with Federal aid would be covered as they have been in the past. Federal block grant funding may yield broad coverage when a State or local agency or other entity receives such funding and uses it for a variety of purposes. Where coverage before Grove City was more narrowly focused, such coverage will be retained. Farmers will not be covered solely by virtue of receiving crop subsidies, although they are covered by the committee amendment. Grocery stores and supermarkets will not be covered solely by virtue of their participation in the Food Stamp Program; entire religious school systems will not be covered solely because one school in that system enrolls a child in the school lunch program, every plant, facility, division, and subsidiary of a corporation will not be covered just because one part of one plant receives some Federal aid.

Let me reiterate, my substitute applies all four statutes throughout an educational institution or public school district receiving any Federal aid. And my substitute does cover all areas outside of education in exactly the same way they were covered before Grove City.

Further, this substitute includes the Danforth abortion-neutral language for title IX endorsed by the National Right-to-Life Committee, the U.S. Catholic Conference, the American Hospital Association, the Catholic Health Association, and others. The substitute also includes language adequately protecting religious tenets under title IX. This religious tenets language, which I will describe shortly, is endorsed by the National Association of Independent Colleges and Universities which has 800 member institutions enrolling 2 million students; the Association of Catholic Colleges and Universities; the American Association of Presidents of Independent Colleges and Universities, Agudath Israel, an orthodox Jewish organization, and others.

These laws were intended to be program-specific when they were originally drafted.

Now, Mr. President, with respect to the scope of these statutes, I want to point out again that the plain language of these statutes, together with their legislative histories, demonstrates that Congress always intended the scope of these statutes to be "program-specific," as the Supreme Court correctly determined in the Grove City decision. They all use a phrase "program or activity" which on its face denotes something less than an entire entity or institution.

Frankly, the term "program or activity" would appear by common sense to mean something less than an entire institution. Congress is often criticized for its ambiguity, or its mistakes in legislative drafting, but I do not think it made such a wholesale mistake as to expect the entire country to think that the term "program or activity" was a synonym for an entire school, a school system, or a state.

Title IX itself makes reference to "an educational institution" and defines the term "educational institution" as broader than a program (20 U.S.C. 1681(c)). In all honesty we have to admit that Congress knew how to cover an entire institution whenever one part of it received Federal aid, but declined to do so in the antidiscrimination provision of these laws.

Moreover, in section 904 of title IX, Congress prohibited discrimination on the basis of blindness or vision-impairment "in any course of study by a recipient of Federal financial assistance for any education program or activity * * *." 10 U.S.C. 1684. Here, Congress clearly banned discrimination on the basis of blindness throughout the institution by using the word "recipient" in the statute itself—in stark contrast to the more discrete term "program or activity" used in the anti-sex discrimination provision of title IX and in the other three statutes. Congress clearly knew how to provide institution-wide coverage under these statutes and declined to do so.

Thus, it is important to recognize that references by the proponents of S. 557 to the "long-standing" interpretation of these laws are inaccurate. Indeed, while some lower courts did rule that these statutes covered an entire institution whenever any part of the institution received Federal aid courts ruled, as the Supreme Court did, that the statutes were program-specific. And the trend in the lower courts leading to the Grove City decision by the Supreme Court was certainly in that direction.

The list of program specific holdings is long. I invite my colleagues to read a few of these cases: *Rice* versus *President and Fellows of Harvard College,* 663 F. 2d 336 (1st Cir. 1981), cert. denied, 456 U.S. 928 (1982); *Hillsdale College* versus *Department of Health, Education and Welfare,* 696 F. 2d. 418 (6th Cir. 1982) (Federal scholarship and loan aid to a college subjects only the college's student aid program to title IX coverage), vacated and remanded in light of *Grove City College* versus *Bell: Dougherty County School System* versus *Bell,* 694 F. 2d. 78 (5th Cir. 1982) (reaffirming earlier decision holding that title IX is program-specific); *University of Richmond* versus *Bell,* 543 F. Supp. 321 (E.D. VA. 1982), university's intercollegiate athletic program not subject to title IX coverage because it did not receive Federal financial assistance.

"Grove City has not impaired executive branch enforcement except in education."

That was basically the testimony before our committee.

Mr. President, let me repeat that we recognize that harm has been documented in the area of education, and my substitute will fully meet those concerns. Institutions of higher education, private elementary and secondary institutions, and public school districts receiving any federal aid are covered throughout. Federally assisted education programs in non-educational entities are also covered.

However, it is important for my colleagues to be aware, that outside of the Department of Education most, if not all, other agencies enforces the statutes properly as program-specific, and have not seen their enforcement activities diminished by the Grove City decision.

For example, the Department of Labor reported that all 47 of its complaint investigations initiated since March 26, 1985 were unaffected by the Grove City decision. No investigation was narrowed in scope as a result of Grove City, and no investigation was found to be beyond the Department's jurisdiction as a result of Grove City. Letter from William J. Harris, Director, Directorate of Civil Rights, U.S. Department of Labor, to Susan J. Prado, Acting Staff Director, U.S. Commission of Civil Rights, December 9, 1986. Indeed, Secretary of Labor William Brock advised Senator KENNEDY on April 2, 1987 that no Department of Labor enforcement on investigative activity has been curtailed as a result of the Grove City decision, adding:

The Department has traditionally interpreted the phrase "program or activity" consistently with the interpretation set forth by the Supreme

Court in Grove City—letter from Secretary of Labor William E. Brock to Senator EDWARD KENNEDY, April 2, 1987.

The Veterans' Administration reported that its conplaint investigation process had not been affected by Grove City, no compliance reviews were dropped, narrowed, or "put on hold" as a result of Grove City, and the Department's procedures for handling complaints and compliance reviews had not been changed—letter from James R. Yancey, Director, Office of Equal Opportunity, Veterans' Administration, to Susan J. Prado, Acting Staff Director, U.S. Commission on Civil Rights, February 27, 1987.

Thus with respect to the vast bulk of Federal agency activity, not only has there been no showing by sponsors of S. 557 that the effectiveness and vitality of these four crosscutting civil rights statutes has been impaired, reports from a number of agencies demonstrate to the contrary.

Even for the Department of Education, of the 674 complaints closed in whole or in part, or suspended, during fiscal years 1984 through 1986, 468 of them concerned abortion rights and were filed by one person. Moreover, if this substitute language had been adopted when it was first offered 3 years ago, all of these cases could have been resolved.

INSUFFICIENT EVIDENCE TO WARRANT 557'S BROAD SWEEP

Let me emphasize, Mr. President no case has been made for the radical expansion of Federal jurisdiction represented by S. 557. Everyone in this body knows that Federal regulations, and the private right of action under at least three of these statutes, are not without significant costs. They should not be imposed without a basis in the record of harm. When we expand Federal authority, we expand the burdens that go with it.

Justice Lewis Powell, joined by Chief Justice Warren Burger and Justice Sandra Day O'Connor, neatly captured the point in a nutshell in a concurrence in this very Grove City case: "[W]ith acceptance of [Federal financial] assistance one surrenders a certain measure of the freedom that Americans have always cherished." 465 U.S. at 577.

As Judge Abraham Sofaer, now the State Department's legal advisor, said in a title VI case, a Federal agency's power is very significant and threatening, even at the investigation phase: "[T]he power to inquire, and to demand explanation, provides leverage that will inevitably delay or discourage many nondiscriminatory and essential decisions." *Bryan* v. *Koch*, 492 F. Supp. 212, 235 (S.D. N.Y.), aff'd, 627 F., 2d, 612 (2d Cir. 1980).

In other words, Mr. President, we must recognize that when we expand Federal jurisdiction under these laws, we expand the burdens accompanying them—paperwork, onsite compliance reviews, affirmative action requirements, and much more.

No record has been made demonstrating a need for the sweeping reach of S. 557. If there are demonstrated problems, let's address them. That is why I'm prepared to go institution-wide in education.

The tailored approach is the way we handled the issue of discrimination by airlines against persons with handicaps. Advocacy groups argued that section 504 covered an airline which used an airport which received Federal aid. Now, that reading of section 504 would mean businesses using federally aided highways would be covered and there would be no end to coverage. The Supreme Court rejected this interpretation.

Congress responded by enacting a law which banned discrimination by an airline against persons with handicaps, the Air Carrier Access Act of 1986. Now, Mr. President, that's the way to fix a problem: Identify a problem, not with slogans, rhetoric, and catchy titles, but with fact, and then craft legislation addressing it. S. 557, in stark contrast, covers the country with a blanket of Federal jurisdiction, regardless of whether there is a problem in a given area or not. Have any of my colleagues heard complaints about farmers, grocers, churches, and synagogues? As I mentioned, except for the Department of Education, Grove City has had either no impact or virtually no impact at any agency in 4 years.

ABORTION

The substitute amendment also addresses the separate abortion issue raised by title IX, by including the Danforth abortion-neutral language. Congress must ensure that no recipient of Federal aid is compelled to provide or pay for abortions or abortion-related services as a condition of the receipt of such Federal aid.

RELIGIOUS TENETS

Again, we have already debated this issue. New religious tenets language is needed in title IX to protect a covered institution's policy which is based upon tenets of a religious organization where the institution is controlled by, or closely identified with the tenets of, the religious organization.

The religious tenet language found in the substitute amendment is virtually identical to language in the Higher Education Amendments of 1986, adopted by Congress and signed into law in October 1986. There, a prohibition against religious discrimination in the Construction Loan Program was enacted with an exception using virtually the same language recommended for title IX. This provision, in short, is modeled on language used by the 99th Congress.

This language is supported by such organizations as the National Association of Independent Colleges and Universities [NAICU], with over 800 college and university members-enrolling over 2 million students; the U.S. Catholic Conference; the Association of Catholic Colleges and Universities; Agudath Israel, a national orthodox Jewish movement with tens of thousands of members; National Society for Hebrew Day Schools—approximately 500 elementary and secondary schools; the Association of Advanced Rabbinical and Talmudic Schools—approximately 60 schools, the National Association of Evangelicals, and others.

Mr. President, we need not expand the scope of Federal regulation beyond what is required to correct problems identified under title IX, this language recognizes that religious liberty is a civil right. The Senate need not and must not sacrifice religious freedoms in an attempt to strengthen civil rights protection.

Mr. President, I urge adoption of the substitute amendment.

No record has been made demonstrating the need for the sweeping reach of S. 557. All the rhetoric aside about why these other three statutes have to be covered, the fact is they were not covered pre the 1984 Grove City decision. If there are demonstrated problems of discrimination or failure to provide proper enforcement against discrimination, then let us solve those problems. And I will work hard with Senator KENNEDY and all others to do so. But I am prepared with this substitute to go all the way with regard to institution-wide coverage of title IX in education, something that many thought was not the law before the Grove City case.

I reserve the remainder of my time.

Mr. THURMOND addressed the Chair.

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

The PRESIDING OFFICER. The Senator from Massachusetts has 15 minutes. The Senator from Utah has 2 minutes and 19 seconds.

Mr. KENNEDY. Mr. President, I yield myself such time as I might use.

Mr. President, this amendment is totally inadequate for several reasons. It overturns only a part of the Grove City decision.

The four statutes which were affected by the Grove City decision prohibit discrimination against women, minorities, the disabled, and the elderly in a wide variety of activities in addition to education such as health, social services, transportation, and housing.

In fact, on the same day that Grove City was decided, the Supreme Court applied the same narrow construction to section 504 in an employment case.

The Hatch substitute says that, in applying the four civil rights laws to other than education institutions, there shall be no reference to the Grove City and North Haven decisions. But there is nothing in the substitute to prevent the court from reaching the exact same narrow result in the next case that comes along.

Under the Hatch substitute, the following federally subsidized discrimination could occur:

A black patient could be denied medical care at a State hospital even though the State hospital system receives Federal funds if the funds were not traceable to the particular hospital and unit where the discrimination occurred.

A State department of social services that receives Federal funds could refuse to permit the adoption of disabled children if the funds are not traceable to the particular unit responsible for adoption.

People over the age of 55 could be denied immunization by a city clinic's policy of providing such services only to the so-called working age population. Such discrimination would be permitted even though the city received Federal funds for health services, unless the funds were traceable to this particular service.

A qualified disabled employee could be denied a promotion in a nursing home corporation if the specific department involved received no Federal money even though the corporation received Federal money in other departments.

Our civil rights laws were designed to prevent this kind of discrimination, not support it.

These four statutes all contain the same "program or activity" language. The courts have specifically applied Grove City to limit coverage under title VI and section 504.

Even as to education, the Hatch substitute does not restore the broad coverage that existed prior to the Grove City decision. For example, prior to Grove City, an entire school system was covered if any school within the system received Federal aid. This broad coverage, which prevents a school system from using Federal money at one school and discriminating at another, would be lost.

Disabled Americans would be particularly disadvantaged by this amendment. Section 504 is the only Federal law which prohibits discrimination against the disabled. This amendment would leave in place the Grove City requirement that Federal funds be traced to a discriminatory program before a claim of discrimination can be made.

These fundamental civil rights laws have never included a dual system of protection from discrimination, giving you more protection if you are in a federally supported school than if you are in a federally supported nursing home.

Our bill would overturn the Grove City decision completely and restore the full protection against the use of Federal funds to discriminate what Congress intended when it passed these laws.

I urge the Senate to reject the amendment.

Let me give you an example, Mr. President. In the case of Foss versus City of Chicago, the city of Chicago and its fire department received Federal funding. There was alleged discrimination against a fireman who had some disability, and under the Grove City case they would say, since the money just went to the city of Chicago and that fire department and did not go to his particular ladder, he was out of court. It did not make any difference; he was out of court. We changed the whole concept of Grove City to say that if the principal departments are going to get Federal funding, they cannot discriminate on the basis of race, they cannot discriminate on the basis of disability, and they cannot discriminate on the basis of age. That condition would continue under the Hatch substitute but not under our bill and not under the original four pieces of legislation that existed prior to the Grove City decision. And that particular example exists on the basis of race and on the basis of age. All this amendment does is deal solely with the issue of education.

What you are saying in effect is OK, we will take care of education but we are going to close the door to the handicapped, close the door to minorities, and close the door to the elderly. That is the effect of the substitute. And for what reason? For what reason? This country and this body decided we were not going to discriminate on the basis of race, age, or ability. It took a period of years to reach that decision, but that has been the decision and that has been the way that the courts interpreted it for years before Grove City. The Hatch amendment will say we are just going to deal with education but too bad if you are handicapped or disabled and too bad if your skin is a different color and too bad if you are too old. What possible sense does that make, Mr. President? It does not make any sense. That is the principal reason the amendment should be rejected.

I reserve the remainder of my time.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. I yield myself 1½ minutes.

The PRESIDING OFFICER. The Senator from South Carolina, [Mr. THURMOND] is recognized.

Mr. THURMOND. Mr. President, I rise in support of the substitute proposal. S. 557 in its present form clearly provides for an expansion of Federal control under the four civil rights statutes. The substitute proposal offered by my colleague from Utah provides a responsible approach to the Grove City decision.

We heard testimony concerning the problems and confusion arising in some educational institutions since the Grove City decision. Regarding educational institutions, this amendment provides explicit institutionwide coverage and for coverage of entire public school districts whenever any Federal aid goes to such a district as a whole. But no showing has been made of the necessity for the sweeping Federal coverage in all areas of American life that is embodied in S. 557—particularly S. 557's encroachment on religious liberty.

Regarding this substitute, it will retain coverage in areas outside of education to the extent that it existed before Grove City. Where such coverage was broad, the substitute proposal retains such coverage. Where the coverage before Grove City was narrow, such coverage will result under the substitute.

I urge support for the substitute.

I yield back any time that I did not use.

Mr. KENNEDY. Mr. President, I would also point out to the membership that the substitute also includes two other provisions which the Senate has previously rejected in terms of treating private schools and public schools differently. We rejected that proposal. That is included in the Hatch proposal. And also with regard to the tenet protections, that is altered and changed in the Hatch substitute.

So we have addressed those ideas after full debate. We reversed the decisions of the Senate, and we come back again to the fundamental approach of the Hatch proposal. That is to deal with only the questions on education and not deal with the issues of the disabled, the elderly, and minorities. It just defies both, I believe, logic, common sense, decency, and as well, public policy and morality to do that.

So I hope that amendment would be rejected. I reserve the balance of my time. How much time do I have?

The PRESIDING OFFICER. The Senator has 8½ minutes remaining. The Senator from Utah or his designee has 50 seconds remaining. The yeas and nays, the Chair advises the Senator from Massachusetts, have not been ordered.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. Mr. President, I must respond to my colleague from Massachusetts. In no way does this substitute amendment close the door to the blind, to the handicapped, to the aged. Instead, this amendment responds with institutionwide coverage in all four of these civil rights statutes in the area of education. This is the only area in which there was documentation of harm from the Grove City decision. When and if other problems arise I will lead the fight to craft legislation to deal with those problems.

I am really disappointed with the misleading rhetoric expressed by my colleague from Massachusetts. This substitute would resolve the problems raised by the Grove City decision. And it is the only bill that can pass both Houses of Congress and be signed by the President.

Mr. DOLE. Mr. President, I must reluctantly vote against the substitute offered by my distinguished colleague from Utah. I agree that legitimate concerns have been raised about whether the legislation now before the Senate wil truly restore the status quo ante Grove City, or whether it will significantly expand pre-Grove City law. Should this bill become law, the courts should be mindful of the concerns that have been raised and the assurances of the sponsors that they have no intention of going beyond pre-Grove City bounds.

However, my concern with this amendment is that it might go too far in the opposite direction—that is, because of certain drafting problems, it may leave the door open for the courts to continue to construe all these laws in a narrow, program-specific manner and we would be right back where we started.

Specifically, because of the manner in which the phrase "educational institution" is used, the courts could interpret the language to mean that only specific departments of a university or college should be covered, as opposed to the entire institution.

In addition, I am concerned that under the amendment, section 504 would continue to be narrowly construed because the grandfathering clause fails to reference the Darrone case—a section 504 case decided shortly after Grove City which held that that law was also program specific.

Again, Mr. Chairman, I want to emphasize that I am very concerned about this bill's sweeping language. There is virtually unanimous agreement that our goal should be to restore pre-Grove City law, nothing more and nothing less. This legislation should be interpreted by the agencies and the courts with that goal in mind. However, I am also concerned that this amendment may leave the door open for the courts to once again give a narrow, program-specific interpretation of these laws. As a result, we would have to pass another piece of corrective legislation.

This Grove City case has had a substantial detrimental effect on civil rights enforcement, particularly on section 504. We have been struggling with this legislation for over 4 years. It is time to put this issue to rest.

Mr. KENNEDY. I suggest the absence of a quorum.

Mr. THURMOND. With the time not being counted to either side.

Mr. KENNEDY. That is right.

The PRESIDING OFFICER. If there is no objection, time for the quorum calls will not be counted to either side.

Mr. KENNEDY. I thought the time was to be counted on either side.

The PRESIDING OFFICER. If that is the request, the Chair is in error. What is the request of the Senator from South Carolina as to allotment of time in the quorum call? Does the Senator from South Carolina wish it be counted against both sides?

Mr. THURMOND. I wish it not count against either side.

Mr. KENNEDY. I object. We are prepared to vote, Mr. President.

Mr. THURMOND. Mr. President, we will go ahead if we cannot find Senator HATCH. He was handling the bill.

The PRESIDING OFFICER. Do both sides yield back the remainder of their time?

Mr. THURMOND. Mr. President, we will go ahead.

The PRESIDING OFFICER. The Senator yields his time. Does the Senator from Massachusetts yield the remainder of this time?

Mr. KENNEDY. If the time has been yielded.

Mr. THURMOND. No. I want to make a statement. We have 50 seconds left, do we not?

The PRESIDING OFFICER. Yes, the Senator has 50 seconds.

Mr. THURMOND. I will take part of that. If Senator HATCH has not come back, we will talk about it later.

Mr. President, here is what I want to say. The White House has sent word down that if this amendment is adopted they will sign this bill. If this amendment is not adopted, the President will not sign this bill. It is just that simple. So now if we want a piece of legislation, we have a chance to get it. But if we want to claim discrimination when there is no discrimination, then that would take place.

So I think it is to the advantage of all concerned to go ahead and vote for this amendment. It ought to pass. It is fair. I have heard no argument against it that is reasonable at all. I hope that the Senate will pass this bill and the President will sign it, and it will become law. This will end the controversy. Otherwise this controversy will go a long time except if the President will veto it, and that would be the end of it. I reserve the balance of my time.

The PRESIDING OFFICER. All time of the Senator from South Carolina has expired.

Mr. KENNEDY. Mr. President, I find it absolutely extraordinary that on the floor of the U.S. Senate through my good friend, the Senator from South Carolina, that we would hear the President of the United States say close the door to the handicapped, close the door to the elderly, close the door to those minorities. That is what the effect of the Hatch substitute bill does; it closes them out, it treats them one way with regard to education under Grove City, and treats them entirely different. No way. Tell all the handicapped people that are outside in that corridor, in their wheelchairs, tell all of the blind people, no way, no way. Why? Let us hear that answer from the President of the United States. Why do you not, Mr. President? Why do you not, Mr. President, want to permit the handicapped and the elderly and the minorities to be included? Why? I would be glad to yield time to hear that answer from any of those who want to speak for the President on this issue about that. But the silence is deafening.

I yield back my time. I hope we will reject this amendment.

The PRESIDING OFFICER. All time has been yielded back.

Mr. THURMOND. This amendment addresses the problem where there is discrimination. It takes care of the situation.

The PRESIDING OFFICER. The question occurs on the amendment offered by the Senator from Utah, Mr. HATCH. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Florida [Mr. CHILES], the Senator from Tennessee [Mr. GORE] and the Senator from Hawaii [Mr. INOUYE], are necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN], is absent because of illness.

I further announce that, if present and voting, the Senator from Tennessee [Mr. GORE], would vote "nay."

Mr. SIMPSON. I announce that the Senator from Alaska [Mr. MURKOWSKI] and the Senator from Wyoming [Mr. WALLOP] are absent on official business.

I further announce that, if present and voting, the Senator from Wyoming [Mr. WALLOP], would vote "yea."

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

The result was announced—yeas 19, nays 75, as follows:

[Rollcall Vote No. 10 Leg.]

YEAS—19

Armstrong	Humphrey	Quayle
Garn	Karnes	Symms
Gramm	Lugar	Thurmond
Grassley	McClure	Trible
Hatch	McConnell	Warner
Hecht	Nickles	
Helms	Pressler	

NAYS—75

Adams	Durenberger	Mitchell
Baucus	Evans	Moynihan
Bentsen	Exon	Nunn
Bingaman	Ford	Packwood
Bond	Fowler	Pell
Boren	Glenn	Proxmire
Boschwitz	Graham	Pryor
Bradley	Harkin	Reid
Breaux	Hatfield	Riegle
Bumpers	Heflin	Rockefeller
Burdick	Heinz	Roth
Byrd	Hollings	Rudman
Chafee	Johnston	Sanford
Cochran	Kassebaum	Sarbanes
Cohen	Kasten	Sasser
Conrad	Kennedy	Shelby
Cranston	Kerry	Simon
D'Amato	Lautenberg	Simpson
Danforth	Leahy	Specter
Daschle	Levin	Stafford
DeConcini	Matsunaga	Stennis
Dixon	McCain	Stevens
Dodd	Melcher	Weicker
Dole	Metzenbaum	Wilson
Domenici	Mikulski	Wirth

NOT VOTING—6

Biden	Gore	Murkowski
Chiles	Inouye	Wallop

So the amendment (No. 1394) was rejected.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum with the time to be equally charged.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Ms. MIKULSKI). Without objection, it is so ordered.

Mr. BYRD. Madam President, the agreement that was entered into last evening provides for an amendment at this time by Mr. HUMPHREY that is wrongfully referred to on the printed calendar as the "Airlines" amendment. It is the Arline amendment, I believe, is it not?

Mr. KENNEDY. That is right.

Mr. BYRD. Madam President, at this time, under the agreement, Mr. HUMPHREY was to call up an amendment dealing with the so-called Arline amendment. He wishes to proceed instead to that part of the agreement which provides that, upon the disposition of the Arline amendment, Mr. HUMPHREY is to call up an amendment, the so-called small providers amendment. The agreement provided also that there would be a qualifying amendment to that amendment. Mr. HUMPHREY is agreeable to proceeding with that amendment prior to the Arline amendment if those who were qualified to offer a second-degree amendment do not intend to do so.

I, therefore, ask unanimous consent that the order of the two Humphrey amendments be reversed and that the small providers amendment not be subject to amendment and that the amendment in the first degree continue to be subject to the 1-hour limitation.

The PRESIDING OFFICER. Is there objection to the request?

Mr. WEICKER. Reserving the right to object.

Mr. HATCH. Will the Senator yield?

Mr. WEICKER. Of course I will yield.

Mr. HATCH. It is my understanding that the distinguished Senator from New Hampshire would limit his time to 30 minutes, equally divided, if there are no amendments to his amendment.

Mr. BYRD. Very well. I include that in the request. The distinguished Senator from Connecticut has reserved the right to object.

Mr. WEICKER. My understanding then is that this amendment has 30 minutes to be equally divided, to which there can be no amendment.

Mr. BYRD. That is correct.

Mr. WEICKER. Well, I have to say that I am not inclined to those kinds of procedures out here, but I think that, in the interest of expediting this bill and feeling hopeful that my colleagues will see the deficiencies in the proposed amendment, I would agree to the unanimous-consent request.

The PRESIDING OFFICER. Is there objection to the majority leader's request? Hearing none, the unanimous-consent request is agreed to.

Mr. BYRD. Madam President, I thank the distinguished Senator from Connecticut and I thank Senator HUMPHREY, Senator KENNEDY, Senator HARKIN, and Senator HATCH.

AMENDMENT NO. 1395

(Purpose: To provide for the treatment of small providers under the Rehabilitation Act of 1973)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Hampshire (Mr. HUMPHREY) proposes an amendment numbered 1395.

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

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

The amendment is as follows:

On page 14, strike out lines 5 through 11 and insert in lieu thereof the following:

"(c) Small providers are not required by subsection (a) to make structural alterations to existing facilities for the purpose of assuring program accessibility. For the purpose of this subsection, the term 'small providers' means any nongovernmental corporation, partnership, sole proprietorship, or other private organization or business which has less than fifteen employees during each working day in each of thirty or more calendar weeks in the current or preceding calendar year."

Mr. HUMPHREY. Madam President, there is very big trouble brewing for small business persons in this country if the bill is passed as it now stands. And I would go beyond that to say that there is big trouble brewing for Senators and Congressmen who are going to be appealed to by such small business persons if this bill is enacted as is. And that is because small business persons, small providers, as we call them in this context, are going to be subject to suits, indeed they will be sued in many cases wherever there is a will to do so, by those who complain that such small providers have not built adequate access to their facilities for handicapped persons.

The purpose of the amendment which is now pending is to qualify that feature of the bill to limit it—I should say to exclude from it, small providers, small business persons, who employ not more than 15 persons.

Under the bill as it now stands, absent amendments, small businesses such as corner grocery stores and the like would be—drycleaners, you name it—anything that is a business and small, would be required to make structural alterations to ensure handicapped accessibility to that facility.

In the bill it allows that small businesses may be excused from making significant structural alterations. "Significant" is the word, undefined, by the way, but only if "alternative means of providing the services are available."

It also provides that "the terms used in this subsection shall be construed with reference to the regulations existing on the date of enactment of this subsection."

In other words, for anyone who wants to know the meaning of "significant," he should refer to the regulations on the date of enactment of this subsection.

Well, that sounds simple enough and handy enough, but it is not, as a practical matter. Under various acts, there are a host of different regulations that define "significant" and define the other important terms in the bill with respect to its applicability to small business. So that is not a solution to the problem of vagueness. In fact, it compounds the problem of vagueness.

What do we mean by "significant"? There are regulations supposedly covering this point but there are many

sets of different regulations depending upon which agency you examine.

The same holds true for the provision that even significant structural alterations are required if there are not "alternative means of providing the service."

What does this mean? Does it mean that a grocer is excused from providing a wheelchair ramp? Remember, we are talking about small grocers now, not Giant Food stores. We are talking about small ones if this amendment is adopted. But absent the amendment, does this mean a grocer is excused from providing a wheelchair ramp only if he provides home delivery service as an alternative means of providing the service?

The requirements and the terms are really, hopefully, imprecise and subjective and I believe will put an unfair burden on these small providers; subject them to lawsuits and ultimately subject Members of Congress to a rising tide of pleas for relief because, absent this amendment, the effect will be unreasonable.

For example, referring, again, to the welter of regulations governing small providers, the USDA, for example, referred to small providers but then required them to engage in consultation with handicapped persons to ascertain whether "significant alterations" are necessary. If a small provider wishes to avoid structural alterations through so-called alternative methods, the provider must ascertain if there is an alternative accessible provider who provides the services in question at no additional cost, remember. And if there is no equal cost provider the regulations offer no further guidance.

Presumably, in that case, the small provider must undertake the significant structural alterations. Well, if Senators want every little mom and pop grocery in this country to construct, for example—and this is only one example—wheelchair ramps for handicapped access then certainly they will want to defeat the amendment pending. But if they think that we ought to carve out, as we have so often on a very reasonable and appropriate basis, an exception for small providers, for small businesspersons, then they will want to support the amendment offered by the Senator from New Hampshire.

Take the case of a minority grocery store proprietor who receives assistance of the Department of Commerce minority business program and who also accepts food stamps in his trade. Does he refer to the Commerce Department regulations or the USDA or both? And what if they differ, if they do? Then he has not only to worry about this but a hire a lawyer to make sure he is doing the right thing, and he might not even find out through hiring a lawyer. He may qualify as a USDA small provider, but not as a Commerce Department small recipient.

It is a very confused situation and we would be a lot better off now, we and the affected citizens, who will be legion, if we get this straight now and to carve out a reasonable and appropriate exception in the case of small businesses as we have so often in other matters of this kind.

So, in summary, Madam President, it is really quite a reasonable amendment. It does not break any new ground. It does not set any precedent.

I would urge my colleagues to adopt the amendment and, Madam President, I would yield the floor at this time and reserve the balance of my time.

Mr. KENNEDY. Madam President, we have 15 minutes, as I understand it; is that correct, Madam President?

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. I yield 5 minutes to the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Madam President, I voice opposition to this amendment. As chair of the Handicapped Subcommittee I find this amendment to be one that ought to be soundly rejected by the Members of this body. I really cannot understand why the Senator would offer an amendment like this. I do not know if the Senator from New Hampshire is a veteran or not. I just ask: Is the Senator a veteran of the Armed Forces of the United States?

Mr. HUMPHREY. Yes, he is. I would be happy to answer your preceding question, by the way; why I am offering this amendment.

Mr. HARKIN. I am just saying, in my own mind I cannot understand. I think it is incomprehensible that a veteran would be insensitive to the rights of our disabled American veterans who want to be accepted in our society.

I have a letter from the Paralyzed Veterans of America, which I ask unanimous consent be printed in the RECORD at this point.

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

PARALYZED VETERANS OF AMERICA,
January 28, 1988.

Hon. TOM HARKIN,
Chairman, Subcommittee on the Handicapped, Washington, DC.

DEAR SENATOR HARKIN: The Paralyzed Veterans of America strongly urges you to reject the "small provider exemption" amendment to S. 557 being proposed by Senator Gordon J. Humphrey. The amendment, if accepted, will destroy the entire reasonable accommodation and program accessibility premise of Section 504 of the Rehabilitation Act of 1973.

Section 504 currently allows small providers an exemption from making their business accessible to persons with a disability if they can prove that the cost of making such structural modifications would impose an undue financial burden. This test of reasonableness is central to the success of Section 504 implementation. Mr. Humphrey's proposal would remove this test from existing law and would allow "small providers" a blanket exemption from making "structural alterations to existing facilities for the purpose of assuring program accessibility." This amendment must be defeated.

Mr. Humphrey's attempt to destroy the "reasonable accommodation" principle of Section 504 violates the accomplishments made in making a more accessible America. His proposal also comes in conflict with the only other federal statement on accessibility—Section 190 of the Internal Revenue Code. Section 190 allows publically-used, privately-owned businesses to deduct up to $35,000 per year for expenses they incur in making their business accessible to elderly and handicapped persons. The Tax Reform Act of 1986 reaffirmed Congressional acceptance of this important incentive to small businesses by making it a permanent part of the tax code. If Mr. Humphrey's amendment is incorporated into S. 557 it will establish a counter-productive federal policy for small providers who wish to make their places of business more accessible to persons with handicaps.

Sincerely,

DAVID M. CAPOZZI,
National Advocacy Director.

Mr. HARKIN. The letter asks that the small provider exemption proposed by Senator HUMPHREY be rejected. I can understand that. I can understand why they would want to reject it. We have a lot of disabled American veterans in this country that would like to have accessibility to the same kind of things that we have accessibility to.

The Senator says: Well, it is going to cost all this money and it is going to create a burden on our small shopkeepers.

We have already taken care of that in this bill. There is a provision in the bill that already addresses that. They are not required to make significant structural alterations to their existing facilities if alternative means of providing the services are available.

Now, the Senator from New Hampshire mentioned putting in a ramp to a dry cleaning establishment or something like that. First of all, dry cleaning establishments, let us be honest about it, are not going to be included because they are not recipients of any kind of Federal aid.

Let us talk about grocery stores. We have looked into the cost of putting in just a couple of planks of wood to make a ramp so someone in a wheelchair can get into a grocery store; what, 100 bucks? You are going to tell a paralyzed veteran who risked life and limb for his country that for 100 bucks he cannot go into a grocery store?

Mr. HUMPHREY. May I respond to the question? Would the Senator yield for a response to the question?

Mr. HARKIN. I do not think the Senator wants to tell these paralyzed

veterans that. I do not even mean to focus on the veterans.

How about the other handicapped people in our society who happen to be born that way who cannot help it? They would like to have accessibility. The Senator uses a cutoff of 15 employees. It makes it sound reasonable.

Fifteen employees could be a small business that has an income of $5 million, $10 million, $15 million a year and for 100 bucks to put in a small ramp so someone can get across the threshold of a door? Maybe a person to assist someone? And beyond that, our bill even provides for referral.

They do not even have to do that if, in fact, they have consulted with the handicapped person and can refer that handicapped person to another recipient of such Federal aid that has accessibility.

So if the small mom and pop grocery does not want to spend $100 putting in a couple planks of wood so that a person in a wheelchair can get into the store, they can refer the handicapped person to a store down the street that might do something like that.

They are perfectly covered by this. They do not have to make significant alterations.

Madam President, I have a letter from the Consortium for Citizens with Developmental Disabilities representing about 38 different groups of handicapped citizens in opposition to this amendment. They recognize also that this amendment would take them out of the accessible environment. I ask unanimous consent that it be printed in the RECORD at the conclusion of my remarks.

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

[See exhibit 1.]

Mr. HARKIN. In the case of a small provider, more is provided by this bill. As I said, we have this last resort provision that says if they have fewer than 15 employees, then they can refer the person to another provider where the facilities are accessible. So we leave plenty of room in there for the mom and pops who absolutely do not want to build that ramp, who do not want to provide the facility to help a handicapped person to shop in that store. They can refer them down the street to someone else who has such accessibility. That is not too much to ask in our society.

In 1964, we passed the Civil Rights Act in this country. We said people could not discriminate on the basis of race, religion, sex, or national origin. In 1973, we passed the National Rehabilitation Act, section 504, which the Senator is amending, extending those rights to handicapped people but only to those who are recipients of Federal aid.

I will go the Senator one better: We have to extend the same Civil Rights Act of 1964 that applied to individuals of this country on the basis of sex, religion, race, and national origin to handicapped people, too. We are not doing that here.

We are saying that under section 504, those small amounts of civil rights we give to handicapped people in terms of accessibility in our society, we are going to assure those civil rights.

To back off with an amendment like that we back down on our commitment to handicapped people to equal treatment in our society. It is a step backward that no one in this Senate, I am sure, wants to take.

EXHIBIT 1

CONSORTIUM FOR CITIZENS WITH DEVELOPMENTAL DISABILITIES,
January 28, 1988.

DEAR SENATOR: The undersigned member organizations of the Consortium for Citizens with Developmental Disabilities strongly urges you to reject Senator Humphrey's proposed amendment to the Civil Rights Restoration Act which would exempt small providers from compliance requirements currently in place under Section 504 of the Rehabilitation Act of 1973. As representatives of many of America's 36 million citizens with disabilities, we find it most disconcerting that Congress would consider limiting already existing protections in the process of restoring those which were lost.

Senator Humphrey has wrongly characterized the requirements embodied under the Section 504 regulations as "burdensome", somehow failing to recognize that those very regulations do in fact provide for an extremely flexible small provider exception. This exception has anticipated the potential difficulties which might be faced by a small provider, and provides for a variety of options which will allow the recipient to comply with program accessibility requirements. In fact, since their inception in 1977, the existing regulations have so well met the intent of Congress and the needs of small providers, that they have been directly incorporated into the Civil Rights Restoration Act under Section 4.

In enacting the Rehabilitation Act fifteen years ago, Congress understood the significant barriers faced in our society by persons with disabilities and sought to assure that at least those segments of society which had access to the resources of the federal government would not engage in the continuing discrimination against and exclusion of America's largest minority. It is unacceptable to permit any recipient of federal funds to engage in the discriminatory actions which would be permitted under Senator Humphrey's proposal.

Senator Humphrey's amendment is not only unnecessary, it will roll back the clock on the progress already made. We are asking you today to reaffirm your support of those protections which Congress has already extended to our nation's citizens with disabilities.

American Academy of Child and Adolescent Psychiatry.

American Association on Mental Retardation.

American Association of University Affiliated Programs.

American Foundation for the Blind.

American Physical Therapy Association.

American Speech-Language-Hearing Association.

ACLD, an Association for Children and Adults with Learning Disabilities.

Association for the Education of Rehabilitation Facility Personnel.

Association for Retarded Citizens of the United States.

Autism Society of America.

Child Welfare League of America.

Conference of Education Administrators Serving the Deaf.

Council of Organizational Representatives.

Council for Exceptional Children.

Disability Rights Education and Defense Fund.

Epilepsy Foundation of America.

Mental Health Law Project.

National Alliance for the Mentally Ill.

National Association of Developmental Disabilities Councils.

National Association of Private Residential Resources.

National Association of Protection and Advocacy Systems.

National Association of Rehabilitation Professionals in the Private Sector.

National Association of State Mental Health Program Directors.

National Association of State Mental Retardation Program Directors.

National Council on Independent Living.

National Council on Rehabilitation Education.

National Easter Seals Society.

National Head Injury Foundation.

National Mental Health Association.

National Rehabilitation Association.

Paralyzed Veterans of America.

Spina Bifida Association of America.

The Association for Persons with Severe Handicaps.

United Cerebral Palsy Associations.

Mr. SIMON. Mr. President, Senator HUMPHREY's amendment to exempt "small providers" from any responsibility to provide access to persons with physical handicaps is another response to apprehensions rather than reality, and I urge my colleagues to reject it.

When the section 504 regulations were promulgated by HEW in 1977, small providers were given alternatives to making expensive structural changes in their facilities. The regulations for all recipients require "program accessibility"; structural changes are frequently not necessary to ensure that the program or activity is available to individuals with handicaps. The regulations for small providers, those with fewer than 15 employees, are even more flexible. To avoid significant costs to small, low-budget providers, the regulations provide another alternative; if small providers cannot make their programs accessible, they may refer individuals with handicaps to other providers which are accessible.

The bill responds to concerns that have continued to be raised by those who are not familiar with the flexibility of the existing regulations. S. 557 includes the small provider exception from the regulations to indicate clearly that small providers are not required to make significant structural alterations to their existing facilities. They can provide the services through

alternative means or, when necessary, they can refer the individual to another provider. What they are not permitted to do is to totally ignore the needs of persons with disabilities.

The Humphrey amendment says to all small providers, including those which make more than $1 million a year, that people with disabilities are not their concern. It says to an American veteran who was disabled in service to this country that he can be shut out and ignored by a Federal recipient, just because that recipient has no more than 15 employees. It says to every tax-paying citizen with a disability that his or her hard-earned income can help support a small emergency medical services company and that company can choose not to serve him or her. This goes far beyond what is fair to small providers, and creates a real injustice for our citizens with disabilities—citizens whose taxes help provide the Federal assistance to the small providers who will be able to ignore them if this amendment is passed.

This is an unnecessary and an unjust amendment, and I urge my colleagues to oppose it.

The PRESIDING OFFICER. The Chair will advise the Senator from New Hampshire that he has 7½ minutes remaining and the Senator from Massachusetts has approximately 8½ minutes.

Who yields time?

Mr. HUMPHREY. Madam President, as the Senator from Iowa pointed out, there is already an exception in this bill. The problem is that the exception is impractical, as the Senator says, and the language of the bill clearly says that. Small businesses are excepted from providing this alternative. In other words, if it is a grocery store, provided there is an alternative grocery store that, in this case, would have a wheelchair ramp. Remember, wheelchair ramps are one thing but there must be widening of the aisles and a whole host of modifications. I used the wheelchair ramp as one example.

Madam President, Senators should not be confused on that point. It would include widening aisles and other matters as well.

Let me say to the Senator from Iowa that if he thinks he can get anything built by a carpenter today for $100, he has not had anything built for a long time. It will be in multiples of hundreds of dollars or the carpenter will be subject to suits for inadequate construction.

Madam President, there are exceptions in the bill, but they are not workable exceptions. The only time the exceptions come into play is if there is an alternative provider, in the case of a grocery store if there is another one nearby with a ramp. Suppose there is not. I can think of a lot of small towns in my State where there is only one little mom and pop grocery store at a crossroads. It is not a matter of going down the street. In some places in Iowa, I think you might have to go to the next county. That may be an exaggeration, but it is not just a matter of going down the street because in many cases it is the only business around for miles and that business person will have to modify his facilities and not at the cost of $100 but more likely multiples and more likely multiples of thousands because it is not just wheelchair ramps.

I understand the rights of the veterans and the obligations, particularly those we have to those who have been injured. But there are also property rights, and there is also the concept of reasonability, which we have always applied in handicapped regulations in the statutes heretofore.

This amendment which the Senator from New Hampshire is offering is reasonable. It is within the context of other things of this kind that we have done before.

All it does with respect to the bill is to modify and improve the exception which is already there by stipulating that businesses with fewer than 15 employees are simply flat out exempt. It is reasonable.

I know the paralyzed veterans organization will say they are obligated to represent the interests of their membership. Of course, they are going to say, "We want every last business in America to make their stores and their facilities absolutely perfectly accessible to our membership." We can understand that. They are an advocacy group. But have we not the right and the obligation, I should say, to consider the general interest as well as the special interest? Do we not have the obligation to consider the burden, the unreasonable burden in this case, on small business? That will be to hundreds of thousands and perhaps millions, though I do not know the figures. They will be large, indeed, however.

What the Senator from New Hampshire is saying is let us clarify, let us improve this unworkable, unrealistic, draconian exception in the bill, which is no exception at all in most cases, improve it by excepting businesses where fewer than 15 persons are employed.

Madam President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator has 3 minutes 36 seconds remaining.

Who yields time?

Mr. KENNEDY. Madam President, I yield such time as he may desire to the Senator from Connecticut.

Mr. WEICKER. Madam President, I rise to oppose the amendment. I believe Senator HARKIN has well enumerated the reasons on behalf of handicapped persons of this Nation. Again, I would point out that there are exceptions made in the bill as it exists, both as to size and as to what is expected.

I would like to address this amendment from the point of view of the small business owner. Granted, in the change in leadership in the U.S. Senate, I was dethroned as chairman of the Small Business Committee, as I was dethroned as chairman of the Handicapped Subcommittee, but I keep in touch with the constituencies as the ranking Republican member.

Not one small business, not one small business, has written in support of this amendment. After all, who would want to write in support of this amendment?

As far as the small business aspects are concerned, I have to point out that section 190 of the Internal Revenue Code allows privately owned businesses to deduct up to $35,000 per year for expenses they incur in making their businesses accessible to elderly and handicapped persons.

So to my good friend, Senator HARKIN, I say never mind a few planks for a wheelchair ramp; there is $35,000 to make the premises available to the handicapped.

Madam President, from a business point of view and from a small businessman's point of view or a small businesswoman's point of view, nobody has asked for this amendment. Indeed, there has been provision made in our Tax Code to enable the smallest of our businesses to comply with the law.

I realize it is rather bitter and cold outside, but it will not be long before they will start to sing the hymn, at least in my church, "Welcome Happy Morning; Age to Age," they will sing, at Eastertime.

Well, happy morning for the disabled of this Nation came when section 504 was passed and they came from out of the cold into this family called America. They can participate in all aspects of our lives, not segregated and relegated to whatever can be done in some special hole or hovel which was assigned to them.

For us who support the Civil Rights Restoration Act to go back to those cold days and away from that happy morning I do not think is the object of the exercise on this floor.

I hope that we use this occasion to affirm the fact that the lame and the halt and the blind are as fully members of our society as anyone else, no more, no less. And by affirming that great moment when we made that possible in this Nation I would hope that the Senator from New Hampshire would be alone in his vote for the amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HUMPHREY. Madam President, parliamentary inquiry. How much time remains to each side?

The PRESIDING OFFICER. The Senator from New Hampshire has 3 minutes 36 seconds, the Senator from Massachusetts has 4 minutes 43 seconds.

Mr. HUMPHREY. Madam President, I wonder if I might address a question to the Senator from Iowa. Is it his intent that every small business in this country will be required to provide access for handicapped persons if there is no alternative business nearby that provides such access?

Mr. HARKIN. If the Senator will yield for my response——

Mr. HUMPHREY. Yes.

Mr. HARKIN. That is neither the language of the law nor the change we made, nor is it the intent of the Senator. The language and the intent is quite clear. It is only those businesses that are recipients of Federal money, period.

Mr. HUMPHREY. Yes, of course.

Mr. HARKIN. The Senator keeps saying every business in America. The bill does not cover every business.

Mr. HUMPHREY. The Senator is correct. But every business that is touched in some by way by the Federal Government, food stamps or whatever. Let us just take grocery stores. Is it the intent of the Senator that every grocery store in America that takes food stamps will have to make structural alternations to provide access to the handicapped, if there is no alternative provider in the locale?

Mr. HARKIN. There are many ways in which they can meet the requirement. They can do it through structural changes. They can do it through other kinds of changes. In fact, I come from a very small town in Iowa where——

Mr. HUMPHREY. Will the Senator answer my question in that it is on my time?

Mr. HARKIN. Will the Senator repeat the question, please?

Mr. HUMPHREY. I withdraw the question because I did not really wish to have a filibuster on my time.

I think the refusal of the Senator to answer my question answers the question. He wishes every business in America in some way, however tangentially touched by the Federal Government, to be required, however small it may be, however marginally profitable it may be, to provide access to the handicapped unless, of course, there is an alternative provider nearby. Who knows what "nearby" means, by the way? Who knows what "adequate alternative" is? It is not defined.

The Senator from New Hampshire is merely trying to improve the exception already in the bill by exempting from all of this vagueness, and troublesome vagueness, and expensive vagueness, as it will be, you may be sure, businesses that employ fewer than 15 persons. It is reasonable. It is prudent and I urge Senators to support it.

I reserve whatever time I may have remaining.

Mr. KENNEDY. I yield a minute to the Senator from Iowa.

Mr. HARKIN. I wanted to respond to a couple points. The answer to the Senator's question is that any recipient of Federal services, Federal aid or moneys, yes, has to meet the requirements of this bill and has to be accessible to handicapped people, but within that umbrella there are many ways in which they can do that. It is not necessarily structural changes. As I began to tell the Senator, I am from a small town in Iowa and I know many times that if an elderly person came to the store to shop and could not make it around the store, the owner or one of his aides would do the shopping for them. They would ask the person what they needed and pick the item off the shelf. There are many different ways in which they can meet this requirement.

I know the Senator talks about costs. Are there costs involved? Yes, there are costs involved. But I note also that the Senator from New Hampshire is a great proponent of the rights of handicapped infants, that they be kept alive—a great proponent of that. I compliment him for that because, I, too, feel strongly about that. We can spend hundreds of thousands of dollars to keep these infants alive but——

The PRESIDING OFFICER. The Senator has spoken for 1 minute.

Mr. HARKIN. Just 30 seconds.

Mr. KENNEDY. How much time do I have, Madam President?

The PRESIDING OFFICER. The Senator from Massachusetts now has 3 minutes and 27 seconds.

Mr. KENNEDY. Thirty seconds.

Mr. HARKIN. I thank the Senator. I just wanted to finish on that point. We spend hundreds of thousands of dollars to keep these handicapped infants alive right at birth and yet we are going to tell them later on, because they want to do things that other people want to do in terms of whether it is shopping or having accessibility, I am sorry, for a few hundred we cannot make this place accessible. I find that a rather curious juxtaposition of an outlook on the right of handicapped citizens.

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

Mr. KENNEDY. First of all, Madam President, in order to even have 504 apply they have to be able to get Federal funds. If you listen to the Senator from New Hampshire, you would think that applies to every small business in the country. Obviously, laundries, McDonald's, they do not get Federal funds. It is only those that are going to get Federal funds that this even applies to, No. 1. Second, when we had the broad interpretation of these provisions between 1977 and 1984, 7 years, there was not a single letter to our Human Resources Committee complaining about this. Even when you have the narrow interpretation of Grove City, over the last 4 years, there was not a single complaint. Who is complaining except the Senator from New Hamsphire?

Finally, Madam President, I find this one of the most mean-spirited amendments that I have heard on the floor of the Senate in recent times. To talk about the paralyzed veterans—speaking for a special interest—they are speaking for the American interests.

Hopefully, we have made some progress in recent years. Hopefully they are speaking for all of us. Hopefully we have a little more generosity of heart and spirit to those individuals who have either been afflicted by disease or by accident or by war than to close the doors on those individuals because we just are not going to do it. We have addressed this issue in the legislation in a reasonable and rationale and sensible way. That is the way we ought to approach this question. I hope that the amendment of the Senator from New Hampshire is overwhelmingly defeated.

If I have any additional time, I will yield it.

I ask for the yeas and nays, Madam President.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HUMPHREY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. HUMPHREY. How much time remains?

The PRESIDING OFFICER. Exactly 1 minute.

Mr. HUMPHREY. I would assure the Senator from Massachusetts as well as my other colleagues that were I the proprietor of a business, however large or small, you may be sure that I agree with your sentiment, that it is enlightened and indeed in the self-interest of a business to make it as fully accessible to the handicapped as that business can be. Of course, you are right. I am not arguing that point at all. My point is that it is a step removed when you say that you are for something but then you are going to force everybody else, however small and marginally profitable, to accept your point of view. That is what I am talking about. I am talking about something that comes down to the distinction of freedom.

Now, I agree larger businesses probably ought to be coerced, if that is nec-

essary. We hope that would not be necessary. That is why I am saying we should exempt only businesses employing fewer than 15 people. The exemption now contained in the bill is vague, is unworkable, is going to cause lots of trouble for many businesses that are touched by Federal funds and, by gosh, that must be all of them by now, every last one of them, And we better amend it and clarify it now and avert the trouble rather than let the bill go through as it is.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts has 1 minute 5 seconds.

Mr. KENNEDY. I yield back whatever time I have.

The PRESIDING OFFICER. All time is yielded back.

The question is now on agreeing to the amendment offered by the Senator from New Hampshire. The clerk will call the roll.

The bill clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Florida [Mr. CHILES], the Senator from Tennessee [Mr. GORE], the Senator from Hawaii [Mr. INOUYE], and the Senator from Illinois [Mr. SIMON] are necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of illness.

I further announce that, if present and voting, the Senator from Tennessee [Mr. GORE] would vote "nay."

Mr. SIMPSON. I announce that the Senator from Idaho [Mr. MCCLURE] is necessarily absent.

I also announce that the Senator from Alaska [Mr. MURKOWSKI] and the Senator from Wyoming [Mr. WALLOP] are absent on official business.

I further announce that, if present and voting, the Senator from Wyoming [Mr. WALLOP] would vote "yea."

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

The result was announced—yeas 13, nays 79, as follows:

[Rollcall Vote No. 11 Leg.]

YEAS—13

Armstrong	Helms	Rudman
Garn	Humphrey	Symms
Gramm	Lugar	Thurmond
Hatch	McConnell	
Hecht	Nickles	

NAYS—79

Adams	Cochran	Evans
Baucus	Cohen	Exon
Bentsen	Conrad	Ford
Bingaman	Cranston	Fowler
Bond	D'Amato	Glenn
Boren	Danforth	Graham
Boschwitz	Daschle	Grassley
Bradley	DeConcini	Harkin
Breaux	Dixon	Hatfield
Bumpers	Dodd	Heflin
Burdick	Dole	Heinz
Byrd	Domenici	Hollings
Chafee	Durenberger	Johnston
Karnes	Moynihan	Sasser
Kassebaum	Nunn	Shelby
Kasten	Packwood	Simpson
Kennedy	Pell	Specter
Kerry	Pressler	Stafford
Lautenberg	Proxmire	Stennis
Leahy	Pryor	Stevens
Levin	Quayle	Trible
Matsunaga	Reid	Warner
McCain	Riegle	Weicker
Melcher	Rockefeller	Wilson
Metzenbaum	Roth	Wirth
Mikulski	Sanford	
Mitchell	Sarbanes	

NOT VOTING—8

Biden	Inouye	Simon
Chiles	McClure	Wallop
Gore	Murkowski	

So the amendment (No. 1395) was rejected.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from New Hampshire was to have been recognized.

Mr. BYRD. Mr. President, I ask unanimous consent—if this will accord with the wishes of the Senator from New Hampshire—that the distinguished Republican leader may proceed for whatever time he needs.

Mr. DOLE. About 4 minutes.

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

(The remarks of Mr. DOLE in connection with the introduction of the joint resolution appear at a later point in today's RECORD.)

Mr. BYRD. Mr. President, I understand that the principals who are involved in the next amendment are trying to perhaps work out some accord. Or shall we proceed with the amendment? What is the situation?

Mr. HUMPHREY. There is an effort to come up with acceptable language, which I understand is promising.

Mr. BYRD. All right.

Mr. HUMPHREY. I am told we will require perhaps another 10 minutes or so.

Mr. KENNEDY. Mr. President, I will agree. I think there is a real possibility we might be able to work out some satisfactory language. I think it is still uncertain, but I think we are close to having a final decision whether we are able to do that or not. I would hope that we could, and we could have a short interlude for that purpose.

Mr. BYRD. All right.

Let me take this occasion to express the hope, then, that the Senate may finish action on this bill.

Mr. KENNEDY. Mr. MATSUNAGA wants to speak.

Mr. BYRD. On this?

Mr. MATSUNAGA. On S. 557, just briefly.

Mr. BYRD. All right.

Let me just say an expression of hope that might be of interest to others that if the Senate completes its business on this bill today, there will be no session tomorrow. However, the hour of 6 o'clock is, I would say, the ultimate beyond which we may go today for good and sufficient reasons, which the people in the fourth estate especially know about. I hope that we will all work hard to try to complete action on the bill so that the Senate can be out at 6 o'clock and, as I say, if we are able to do that, then the Senate will go over until Monday.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. MATSUNAGA. Mr. President, as a cosponsor of S. 557, a bill which now has 59 cosponsors in the Senate, I rise in support of the measure.

S. 557, the Civil Rights Restoration Act of 1987, would not create any new "rights" nor would it extend rights to any new, previously unrecognized minority group. Nonetheless, enactment of S. 557 is essential in order to restore remedies used by the Federal Government for years to enforce four major civil rights laws: Title VI of the Civil Rights Act of 1964, which protects the rights of racial minorities; title IX of the Education Act Amendments of 1972, which mandates equal educational opportunity for women; section 504 of the Rehabilitation Act of 1973, designed to protect the rights of handicapped individuals; and the Age Discrimination Act of 1975.

The need for this legislation stems from a 1984 Supreme Court decision, Grove City College versus Bell, in which the Court ruled that Federal financial assistance to an educational institution mandated such an institution to provide equal opportunity only in the specific program which received Federal aid and not throughout the entire college or university. Prior to the Grove City decision, the language in these four laws was widely interpreted to mean that remedies could be imposed upon the institution as a whole and not merely against a component program or activity.

Since the Supreme Court decision in 1984, enforcement of the Federal Government's civil rights statutes has become much less effective. Many ongoing investigations and enforcement activities were suspended. Moreover, as many observers have pointed out, compliance with the Grove City decision puts the Federal Government in the ridiculous position of saying to institutions that "discrimination is strictly forbidden in your financial aid program, but it is okay to discriminate in your English Department or in your Math Department because those departments do not receive Federal aid."

Mr. President, as we debate the Civil Rights Restoration Act, there will be

efforts to amend the act so as to exempt additional institutions and agencies from coverage under the Nation's civil rights laws, and there will be efforts to expand the existing exemption granted to religious institutions under title IX of the Education Act Amendments of 1972. I urge my colleagues to reject these attempts and simply provide for restoration of the Federal Government's enforcement authority.

I hope that Congress will place itself firmly on the side of justice by saying that discrimination on the basis of race, sex, age and physical handicap is always wrong. We must reaffirm once and for all our commitment to equal opportunity—in education, in employment, in housing, and in medical care.

Mr. SIMON. Mr. President, the Senate has begun debate on the most important civil rights bill to come before the Senate since the 1982 extension of the Voting Rights Act and the most important omnibus civil rights legislation since the Civil Rights Act of 1964. S. 557, the Civil Rights Restoration Act, overturns the decision of the Supreme Court of the United States in Grove City College versus Bell by restoring the broad scope of coverage previously understood and enforced under the four principal civil rights laws by the four previous administrations.

Title IX of the Education Amendments of 1972, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Amendments of 1973 and the Age Discrimination Act of 1975 represent the cornerstones of equal opportunity and the basic protections against Federal subsidization of discrimination. The Congress did not enact these statutes needlessly, nor did we craft their language carelessly. Each of these statutes contains language that was closely modeled on the basic title VI language which sought to target, for purposes of identifying discrimination, the entire program or activity involved, but for purposes of fashioning a remedy to proven discrimination—only the specific entities affected by the discrimination would be the object of the relief granted.

In 1984, while serving in the other body, I was privileged to chair the House Education and Labor Subcommittee on Postsecondary Education and to serve as floor manager of H.R. 5490, the Civil Rights Act of 1984. H.R. 5490 was the predecessor version of the bill now before the Senate. The House passed that bill overwhelmingly by a vote of 375 to 32, with 26 not voting on April 12, 1984. Not since the adjournment sine die of the 98th Congress have we been as close as we are today to restoring the rights of women of all races, the handicapped, the young and the old, and those whose race and national origin is not the predominant one in America—to nondiscrimination in Federal programs.

During the 99th and the 1st session of the 100th Congress, it has not been possible to bring before the Senate the Civil Rights Restoration Act. As we continue with this landmark session of the 100th Congress, the celebration of the 200th anniversary of the signing of the U.S. Constitution, and the celebration of the 59th birthday of the Reverend Dr. Martin Luther King, Jr.—it is both fitting and proper that we mark this occasion by passing S. 557. Enactment of S. 557 would not only close a gap in the enforcement of civil rights, but it would recommit the Nation to the basic principles of equal opportunity. There is, however, another good reason for passing this bill.

Everyday that we delay further, the rights of another child to the best education possible or to participate fully in every aspect of the curriculum or interscholastic sports may be denied. Each year we postpone action on this legislation, we deny some elderly person access to the job training they may need to be free from the shackles of dependency or the poverty that too often characterizes their golden years. Each moment we delay consideration of this bill, we ask some handicapped child or adult to postpone their transition to independence and economic self-sufficiency.

Why do we delay? What does Grove City say that creates a problem in civil rights enforcement? It has been almost 4 years since the High Court's decision on February 28, 1984. *Grove City College* v. *Bell*, 104 S.Ct. 1211 held: First, that title IX applied to Grove City College because some of its students received Pell grants and guaranteed student loans and used them to pay for their education at the college and that Congress intended that these Federal funds constitute "Federal financial assistance" to the institution; second, receipt of these Federal student aid funds, however, did not 'trigger' institutionwide coverage, but restricted coverage to the college's student financial aid office; third, refusal of an institution to execute a proper program-specific assurance of compliance warrants termination by the Department of Education of Federal assistance the college's student financial aid program; and fourth, requiring Grove City College to comply with title IX does not violate the first amendment rights of the college or its students.

It is High Court's recognition that Federal student aid is aid to the college or university admitting a student with a Pell grant or guaranteed student loan, but the limitation it then places on the "program or activity" language that is problematical. The Court accepted a tortured interpretation of the facts—urged on the Court by the Reagan Justice Department—that the student aid was Federal financial assistance to the student aid office only, not to the entire institution! As former Education Department Secretary Ted Bell has written in the 13th man—a Reagan Cabinet memoir, "Much to my surprise and disappointment, the Court handed down a decision that was almost fully in support of Brad Reynolds position." It is almost impossible to conceive how the Justices could understand that Federal student assistance which pays for tuition, dormitory expenses, and other fees could stop at the college's student financial aid office. If all student payments to a college or university were held in the bursar's or the business office—the institution would cease to function. The same is true with Federal student aid.

What has happened since the 1984 decision? According to the Department of Education's own account—834 cases committed to the administrative enforcement process have been affected during fiscal years 1984–86, for example, closed in whole or in part, dropped or narrowed. A total of 674 complaints have been closed or narrowed, including 468 third-party complaints alleging sex discrimination in college health insurance plans involving hundreds of individuals. A total of 88 compliance reviews have been dropped, and 72 others have been narrowed.

What does the Grove City decision really mean? Let's begin by looking at the facts. Grove City College is a private educational institution of higher learning which accepts no direct assistance from the Federal Government. However, the college did enroll students who received federally funded Pell grants and guaranteed student loans. In fact, between 1974 and 1984, students financed their Grove City College educations with more than $1.8 million in Pell grant funds.

In 1976, the Department of Education attempted to obtain an assurance of compliance with title IX from the college. The Department requires such assurances from educational institutions which receive Federal financial assistance. The college refused to execute the assurance and argued that they received no Federal financial assistance. The Department of Education initiated administrative proceedings to terminate the grants and loans to Grove City College students because of the college's refusal to execute an assurance of compliance.

The Supreme Court, on February 28, 1984, unanimously held that Grove City College was a recipient of Federal financial assistance. However, by a 6-to-3 majority vote, the Court held that Federal financial assistance does not create institution-wide coverage under title IX. Title IX governs only the

"program or activity" which receives the Federal funds. Thus, Pell grant funding triggered title IX coverage only of the college's financial aid program. The financial aid department was required to execute a program-specific assurance of compliance with title IX. Failure to execute such a compliance could result in termination of Federal assistance to the financial aid program. Grove City College remained free to sexually discriminate in its remaining "programs and activities," including course offerings and extracurricular activities, while receiving large amounts of Federal aid in the form of Pell grants and GSL's.

The impact of Grove City is not limited to title IX. Title IX is only one of the four major civil rights laws which prohibit recipients of Federal funds from discriminating. All four statutes incorporate the same "program or activity" language. The narrow construction of that language in Grove City, with respect to title IX, equally limits the applicability of title VI, section 504 of the Rehabilitation Act, and the Age Discrimination Act. Thus, Federal funds may be used to subsidize discrimination on the basis of race, handicap and age, as well as sex.

The debate on S. 557 inevitably leads to controversy and debate in several areas. The element of fear and the unknown which has surrounded debate on restoring the most basic of civil rights protections tends to have clouded the real issue. This debate must focus on restoration—returning the protected groups to exactly where they were on February 28, 1984—nothing more and nothing less. We must, in essence, "keep our eyes on the prize." We do not enact this bill to protect hospitals or church-affiliated colleges or private schools. We are seeking to continue this Nation's commitment to its black, brown and native Americans, to women of all races, to the elderly and to those with disabilities. We have tended, in the last few years, to spend far too much time worrying about how this bill will impact those who may have to comply with it, the rights of those who need its civil rights protections have been ignored.

I want to explain my views on these important issues.

Religious tenets—this issue has been a difficult one. Title IX already contains an exemption for those schools and colleges which qualify for it. The exemption permits those educational institutions "controlled by a religious organization" and permits noncompliance with title IX if doing so "would not be consistent with the religious tenets of such organization." A religious tenet exemption applies if the organization satisfies one or more of the following criteria established by the Department of Education: First, the applicant institution is a school or department of divinity; second, it requires its faculty, students or staff to espouse a particular religious belief; or third, its official written material contain an explicit statement that it is controlled by a religious organization, the members of the governing board are appointed by the religious organization, and it receives significant financial support from the religious organization. There is little or no evidence that there is a problem with the existing criteria. Since 1975, 227 institutions have sought an exemption and 150 have been granted. The amendment offered in committee, and rejected overwhelmingly, seeks an unjustified and unwarranted expansion of the exemption by permitting any institution "closely identified with the tenet of" to qualify for an exemption. I don't think the current exemption is broken and it certainly does not need to be fixed.

Colleges and universities which can justify their need for an exemption can get one. It is interesting to note that there are no such applications pending. The existing tests are appropriate because they state legitimate criteria for assessing whether a school or college which receives Federal aid can be exempted from complying with title IX.

Abortion—perhaps the abortion amendment most clearly presents the tension between those of us who seek to do nothing more than restore the full protection of title IX and the other major civil rights protections as they existed prior to the decision in Grove City College versus Bell, and those who see this as an opportunity to expand current restrictions on the use of Federal funds to pay for abortions.

Abortion language has no real place in the Civil Rights Restoration Act. Prior to the Grove City decision, no religiously controlled institution was required to perform abortions. The bill now before us continues this protection for religious institutions opposed to abortion—protections that have resulted in over 90 percent of those institutions applying for such exemptions being granted them. Religious institutions will continue to apply for, and be granted, these exemptions with enactment of S. 557.

We cannot and should not let this bill become the vehicle for turning our backs on the basic civil rights of women, minorities, the aged, and the handicapped because we are unable to move it through the 100th Congress. And we cannot let this bill be the vehicle for attempting to limit a woman's right to abortion beyond the scope of the law as it existed prior to Grove City. Those who label S. 557 expansive are wrong. The real reason for the so-called abortion neutral amendment is to repeal the 1975 HEW title IX regulations. Abortion neutrality in the context of S. 557, requires us to return to February 28, 1984, not all the way back to 1975 in order to eliminate a regulation in effect before the Grove City decision.

Contagious diseases—I was one of several Members of Congress who signed an amicus brief in the Supreme Court Arline case, a brief which argued that persons with contagious diseases are covered by section 504 of the Rehabilitation Act. The Court, by a 7-to-2 majority, affirmed that a person with the contagious disease of tuberculosis may be a "handicapped individual" within the meaning of section 504.

There are several reasons why I oppose any changes to this coverage. First, there is no need to change the law in order to protect the public health. Current law does not guarantee to any person with a contagious disease the right to participate in any specific job or program. It does give the individual the right to show that he or she is an "otherwise qualified" handicapped individual, and as such, must not be discriminated against. In any job or other setting where the individual could not, with reasonable accommodation, do the job or participate without significant risk to others, that individual would not be "otherwise qualified." The individual is simply allowed by section 504 to have his or her day in court.

Second, as the Supreme Court noted, the purpose of section 504 is to ensure that individuals with handicaps are not denied jobs or other benefits because of the prejudiced attitudes or ignorance of others, and this purpose is not served if persons with contagious diseases are automatically excluded. As the Court also noted, "Few aspects of a handicap give rise to the same level of public fear and misapprehension as contagiousness" and "the fact that some persons who have contagious diseases may pose a health threat to others under certain circumstances does not justify excluding from the coverage of the act all persons with actual or preceived contagious diseases."

If we exclude persons with contagious diseases from coverage of section 504, those who are accused of being contagious will never have the opportunity to have their condition evaluated in light of medical evidence and to have reasonable medical judgment determine their risk to others. They will have no opportunity for a determination as to whether they are "otherwise qualified"—whether, with reasonable accommodation, they can do the job without significant risk to others. Fear and prejudice, not reason, will prevail.

Small providers—one of the most difficult problems we face in our Nation is making citizens with disabilities true citizens of this Republic. We must bring them into the mainstream

and help them become a part of every aspect of our national life as full, working, independent partners. They have a right to enjoy the exact same freedoms and opportunities that are available to every other American. Yet, in the context of this bill, the specter of building a ramp to every drug store or grocery store in America has been paraded about to scare small businessmen all around the country. This is unfortunate. The bill includes an exemption for small providers which the committee intends to quiet these fears. I strongly support that language and oppose attempts to broaden it.

The benefits of nondiscrimination are realized not only by persons with disabilities, but by society at large. A major study commissioned by the Office for Civil Rights at HEW about 10 years ago estimated that eliminating discrimination against persons with disabilities within HEW-funded programs would produce $1 billion annually in increased employment and earnings. In addition to increasing the GNP, it was estimated that such an earnings increase by persons with disabilities would result in some $58 billion in additional revenue for Federal, State, and local governments. I dare say that these revenue estimates would be higher today.

Let me conclude by indicating my consistent, strong and unwavering support for quick passage of S. 557. I lead the fight in the Illinois general assembly for public accommodations, antidiscrimination in employment and other key civil rights legislation. I did so at a time when it was not popular to do so. I represented an area in southern Illinois which was closer to Mississippi, than it was to Chicago. My stand was not popular. The protection of the rights of our people are too important to be subjected to poll taking and popular whim before we make a decision. I urge my colleagues to oppose all "killer amendments" and vote for this important civil rights bill.

Mr. GLENN. Mr. President, I rise today in support of S. 557, the Civil Rights Restoration Act of 1987. "Restoration" is indeed the purpose and focus of this legislation. It seeks to restore rights which were conferred by the Constitution 200 years ago, and which have been in the process of restoration ever since.

The Constitution guaranteed to every citizen the right to equal treatment under the laws. Despite this, however, there has been widespread discrimination—against the elderly, the handicapped, aliens, against minorities and women, and against those with religious beliefs which are different from the mainstream.

Congress has recognized that acts of discrimination are inconsistent with the letter and spirit of the Constitution, and have sought to correct this practice—at least, in federally funded programs. The result has been the enactment of major legislation prohibiting discrimination under the threat of of a loss of Federal funds if such discrimination persists. Language to this effect can be found in each of the four major civil rights measures, specifically, title VI of the Civil Rights Act of 1964, title IX of the education amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

The withdrawal of Federal funds for noncompliance with antidiscrimination directives remains the most effective sanction which Congress can impose. It emphasizes the intent of Congress, which is, not only to enact civil rights laws, but also, to put some teeth into the statutes so that they would be given the maximum force and effect.

In 1974, the Supreme Court greatly weakened the impact of these civil rights laws by its erroneous interpretation of the congressional intent in the case of Grove City College versus Bell. In that case, the Court ruled that the Federal prohibition against (sex) discrimination extends only to the particular program or activity which receives Federal financial assistance, not to the institution as a whole. Grove City College is a private institution which received funds only indirectly by way of Federal grants and loans to the students. While holding that indirect aid was sufficient to bring the college under compliance requirements, the Supreme Court narrowed the existing scope of the sanction for noncompliance. Mr. President, I submit that this holding was erroneous in that it does not reflect the intent of Congress.

The Civil Rights Restoration Act is an attempt to set the record straight as to what the actual intent of Congress was in enacting the aforementioned civil rights statutes. These statutes were enacted to eliminate discrimination in all Federal assistance programs. The sense of the Congress during the time of enactment of these measures was expressed most clearly by President Kennedy in his call for enactment of the Civil Rights Act:

> Simple justice requires that public funds, to which taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial discrimination.

In limiting the sanction to the specific program directly affected by Federal funds, the Supreme Court opened the door to the possibility that schools and institutions, such as Grove City College, could receive Federal aid for some programs while discriminating in others. This is not the "simple justice" of which President Kennedy spoke. Rather, this is a dangerous precedent which runs completely contrary to this commitment to eliminate discrimination in all Federal assistance programs. I submit, Mr. President, that the intent of Congress was to close any loopholes which would permit discrimination—not to create them, as the Supreme Court has done.

Congress enacted title IX of the Education Act of 1972 to outlaw discrimination on the basis of sex under any education program or activity receiving Federal financial assistance. In 1973, Congress adopted section 504 of the Rehabilitation Act to include the handicapped under the antidiscrimination rubric, and in 1975, passed the Age Discrimination Act to prohibit discrimination on the basis of age. The language prohibiting discrimination in each of these acts is the same. In each case, it has been our intent to expand the protections of the original Civil Rights Act. Indeed, the legislative history of these statutes is replete with language urging that the protections provided for be afforded the maximum force applicable under the law. This can only be accomplished by continuing to give these laws the broadest of interpretations.

Mr. President, it should be evident to all that our civil rights laws cannot protect all persons equally if they are applied selectively. The bill which we are introducing clarifies the original intent of those laws to deny all Federal funds to any institution which discriminates on the basis of sex, race, national origin, handicap, or age. It restores the broad scope of those laws by carefully defining "program or activity" and by setting standards to determine their application.

Mr. President, the implication of the range of discriminatory practices which would be available through the use of Federal funds unless this legislation is enacted is astounding. Consider, for example, a black child who is refused admission to the privately funded wing of a hospital purely on the basis of race. If that hospital receives Federal money in each of its other departments, under Grove City, that child could have legally been refused treatment from a facility paid for by his parents' own tax dollars.

The Grove City decision, thus, represents a severe threat to civil rights protections. Women and minorities are looking to us to defend their hard-won opportunities and freedoms; indeed, to protect them from the oblique injustice of having to pay, through taxes, for programs or activities which discriminate against them. I urge my colleagues—let us pass this legislation, and let us move boldly toward the day when our Nation's laws effectively reflect God's law: That all persons are created equal.

MORNING BUSINESS

Mr. BYRD. Mr. President, so as to accommodate those who are trying to work out some resolution of the

amendment that is to be called up at this time, I ask unanimous consent that there be a period for morning business for not to extend beyond 10 minutes and that Senators may speak therein up to 2 minutes each.

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

Mr. BYRD. 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. ARMSTRONG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded, and then I would like to propound a parliamentary inquiry.

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

Mr. ARMSTRONG. Mr. President, I would like to clarify the parliamentary situation. As I understand it, we are in a quorum call so that those who are working on a proposed amendment will have time to work it out, and that there has been a unanimous-consent order entered that following the quorum call the Senator from New Hampshire be recognized to offer an amendment.

The PRESIDING OFFICER. The amendment of the Senator from New Hampshire is the next order of business.

Mr. ARMSTRONG. It is my understanding further that it would not be in order except by unanimous consent for another Senator to offer an amendment or even indeed to address the Senate at this point.

The PRESIDING OFFICER. The Senator is correct.

Mr. ARMSTRONG. Mr. President, it would be my hope that my colleagues would give me unanimous consent to address the Senate at this time, simply as a time expedient, without displacing, of course, the Senator from New Hampshire, so that we can use this time productively rather than continuing with a quorum call.

That is my request, that I be permitted to address the Senate at this time.

Mr. BYRD. Mr. President, would the Senator indicate how long he would like to address the Senate?

Mr. ARMSTRONG. I would think 20 minutes or so, certainly not longer than that or not longer than a half-hour. It is only my desire to make a few observations at this time and not to delay the Senate.

Mr. BYRD. It is my hope, let me say, that the Senate will complete action on this measure today by 6 o'clock, in which case there will not be a session tomorrow. But we cannot go longer than 6 o'clock today. If we do not finish by around 6 o'clock today, we will have to come back tomorrow. There is an event tonight. The press has invited the Members of Congress and their wives to an event, an annual event, which many of us want to attend.

I have no objection if the Senator would mind putting a limitation, say, of 20 minutes rather than 30 minutes.

Mr. ARMSTRONG. It would seem perfectly fair to me. It is only my desire to use the time productively, and I certainly want to cooperate.

Mr. KENNEDY. Reserving the right to object, and I do not want to object, is there any chance that if the amendment is worked out, that the time the Senator uses will be considered as part of the time that will be associated with the Humphrey amendment?

Mr. ARMSTRONG. That would not be something for me to talk to. I do not have control of that time.

Mr. HUMPHREY. If the Senator will yield, I would be reluctant to accede to the request until we see the package that is being worked out.

Mr. KENNEDY. I have no objection.

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

Mr. ARMSTRONG. Mr. President, I thank the Chair and I thank the leader and my colleagues.

THE STATE OF MEDICAL KNOWLEDGE IS CHANGING

Mr. ARMSTRONG. Mr. President, there was a headline in the Washington Post that we ought to think about before we act upon the Humphrey amendment or on this bill. In this morning's paper there is an article entitled "First U.S. Case Of Second Form of AIDS Reported." That is on page A-9. And another story entitled "Prompt Screening Of Blood Supply Urged To Detect Leukemia-Causing Virus." That is on page A-8.

I bring this to the attention of my colleagues to point out that the state of medical knowledge is changing very, very rapidly.

When it comes to AIDS, particularly, what we are learning about this disease every day, every month and every year, is dramatically expanding the horizons of medical knowledge.

Three years ago, the most reputable medical authorities in this country were saying do not worry about getting AIDS through blood. That is not the way you get it.

People like the American Red Cross and distinguished doctors were issuing public reassurances that you do not get AIDS from blood. That shows how far we have come in just 3 years.

What has that to do with the amendment we are going to consider or the whole theory of this bill?

Plenty. Under the Arline case, which I guess has been discussed somewhat on the floor, but has been discussed extensively behind the scenes, it appears that a person who has a contageous disease, such as AIDS, tuberculosis, you name it, might suddenly and unexpectedly be considered a handicapped person for the purposes of this law.

Traditionally, employers, both public and private, exercise unlimited discretion as to who they will hire, fire, who they will promote and what jobs they will put them into.

Over a period of time society has determined we should temper to some degree that particular discretion on the part of employers. We have determined long since that as a matter of public policy we do not want employers, whatever their private feelings might be, to discriminate on the basis of race or sex. More recently, we have determined we do not want employers discriminating or making arbitrary decisions on the grounds of being handicapped. In other words, if a person is handicapped, an employer may not discriminate against the handicapped in employment.

Now, then the question that is addressed in Arline and which comes up in the Humphrey amendment is this. Suppose a person has a contagious disease. Is that person, therefore, entitled to legal protection against being terminated in their employment or being denied employmnent in the first instance? Specifically, let us say you have a person with TB and a school board wants to prevent that person from working on the food service line. May the school board do that? Now, as a matter of public policy, I think it is the height of irresponsibility for the courts or for Congress to say no, the school board may not exercise such discretion.

Well, let us not beat around the bush. That is exactly what we are talking about here, is the right of public and private employers to exercise discretion in the employment and tenure and assignment of persons who have communicable diseases.

Now, why is that important? Because under Arline and under the amendment that is coming up, if, as and when it comes up, an employer who wants to exercise that discretion will have to go into court and show that such a person who has TB or AIDS or whatever it might be is in fact a direct threat to the health of other persons. How will an employer prove that? By medical testimony. Keep that in mind as you read the article that I mentioned at the outset, that just today there is an item in the paper in which medical science has discovered a new strain of AIDS virus and only a few years ago competent medical authorities were assuring the public, were going out of their way to issue broad-based blanket assurances, which proved to be absolutely 100 percent dead wrong. Under the circumstances, to tie the hands of public and private employers just seems to me to be very far-fetched.

Mr. President, in the epilog from Charles Gregg's book "A Virus of Love and Other Tales of Medical Detection," Mr. Gregg writes the following:

Looking back, then the theme of this book has to be our profound ignorance, 100 years after Pasteur, of the world pathogenic—that is, illness-producing—micro-organisms.

The point is we do not know what we are doing and yet we are preparing to enshrine in statute a test which employers must get passed in order to exercise their reasonable discretion.

Now, I am not saying—and I hope nobody would interpret what I am saying to mean that—someone who has a communicable disease ought to therefore be denied employment or ought to be transferred or ought to be fired or whatever. What I do say is that to tie the hands of employers in making that decision for the protection of other employees, of students, and the general public is really a far-fetched idea, in my opinion, and yet that is what we are about to do. It would be far better, in my opinion, to simply restore the law to where it was before Arline, and that is to just flatly say that at least for the time being communicable diseases do not make you a handicapped person for the purposes of this act. That would be a far better solution. I understand that there has been some attempt to work out an amendment along that line, and it simply is not popular. The only reason I can think of why that is the case is because those who are working on it have not thought this through or perhaps because I have thought it through and do not understand what is at issue. I do not believe that to be the case, but I suppose that is a possibility.

It seems to me that a good place to start in thinking about this is to review the facts of the Arline case itself.

Mrs. Gene Arline was hospitalized for tuberculosis in 1957, when she was 14 years of age. Her disease went into remission for approximately 20 years, during which time Mrs. Arline began teaching elementary school. In 1977, and twice in 1978, she had relapses. In response to these recurrences, Mrs. Arline was first suspended with pay and then discharged after a hearing. Before Mrs. Arline's termination, the superintendent of schools consulted with a medical doctor, who testified that Mrs. Arline's condition posed a threat to the health of the small children with whom Mrs. Arline was in constant contact.

Mrs. Arline sued, and she claimed that the school board had illegally discriminated against her on the basis of her handicap in violation of section 504 of the Rehabilitation Act. On March 3 of 1987, the U.S. Supreme Court agreed with Mrs. Arline by holding in a ruling which surprised me, and I judge surprised a lot of other people as well, that section 504 covers persons who are both contagious and physically impaired by the disease. The Court has sent back to the district court the question of findings of act of whether or not Mrs. Arline is otherwise qualified to teach, and so on and so on.

But the central issue in the case is that so far as I know for the first time the Supreme Court said that a contagious disease could get you into the protected classification of section 504.

Well, why not just live up to Arline where it is? After all, the Court did not order tubercular teachers into elementary classrooms. It just said that sick teachers are entitled to a hearing and to reasonable accommodations so that they will not suffer deprivation based on prejudiced stereotypes or unfounded fear, an aspiration that none of us could argue against in my opinion.

Mr. President, Arline is unacceptable because it will mean that more healthy children and adults will be unwillingly exposed to persons with communicable disease. An increased exposure will mean more sickness among persons who would otherwise be healthy. And if just one of Mrs. Arline's students happens to contract tuberculosis, it appears to me that prejudice and fear and stereotyping is likely to increase and multiply, not to diminish.

Ironically, therefore, the outcome of the decision of the Court is to make worse the very problem which the Court sought to alleviate. Many of the possible criticisms of Arline were summarized in an article by the distinguished scholar, Thomas Sowell, who wrote as follows:

The reason this decision is likely to mean more teachers with contagious diseases teaching your children is that no school has unlimited time and unlimited money to put into hearings, medical evidence for hearings, and fighting the inevitable court appeals from hearings, after an employee is found to be dangerously contagious.

Professor Sowell might also have mentioned—he did not but he could have mentioned—that schools that lose lawsuits will probably have to pay the teacher's attorney's fees, which is a significant threat to many school districts, especially the small ones. Professor Sowell continues:

Somewhere along the way, many schools are going to decide that it is better to give up and hope for the best, rather than continue a ruinously expensive process.

While everyone is looking out for individuals with contagious diseases, who will be looking out for the children?

That is Professor Sowell's view, which I share. Schools and other recipients of Federal financial assistance will have better rules about contagious diseases, it seems to me, if we do not enshrine in law a requirement that to any degree school boards or other employers in question have to prove that a person is a direct or indirect threat to other persons. If they have reason to believe, if a school board acting in its discretionary capacity reaches that conclusion—not to say that everybody who has a contagious disease should be dismissed. Far from it. They should be treated with sympathy and humanely and with a balanced point of view, but if we could just leave it to those who are charged by the voters in their areas with respect to public jurisdiction to make that decision, we will end up, in my opinion, with a more flexible and a far more responsible system than if we simply write into law that in order to give discretion to the school board you have to prove that somebody is a threat. That is hard to prove. It is hard to prove in a disease about which a lot is known, but when you get into those which are on the frontiers of medical knowledge, particularly those that are the most threatening at the present time, such as AIDS, it is impossible, and it is very likely the fact that the proof would end up itself being disproven within a very few years. I remind Senators again that only a few years ago, 3 or 4 years ago, doctors were confidently assuring us something which has later proven to be absolutely untrue.

The Arline decision extended the Rehabilitation Act of 1973 to a contagious disease, and I believe to all contagious diseases. AIDS, however, has captured the public attention and much of the energy of litigators around the country and therefore AIDS provides a case study in how the Federal courts are developing public policy with respect to infectious diseases.

In its footnote 16, the Arline court said:

A person who poses a significant risk of communicating an infectious disease to others in the workplace will not be otherwise qualified for his or her job if reasonable accommodation will not eliminate that risk. (Emphasis added.)

Under Arline each contagious plaintiff is entitled to an individualized inquiry to determine whether he or she is a "significant risk." That inquiry will include:

[findings of] facts, based on reasonable medical judgments given the state of medical knowledge, about (a) the nature of the risk (how the disease is transmitted), (b) the duration of the risk (how long is the carrier infectious), (c) the severity of the risk (what is the potential harm to third parties) and (d) the probabilities that the disease will be transmitted and will cause varying degrees of harm.

This four-part formulation was suggested to the Court by the American Medical Association; indeed, the Court took it straight from the Association's amicus brief.

Consider now how the A.M.A.-U.S. Supreme Court formulation is working

in practice. I would like to cite some specific instances.

A. THE STUDENT WITH AIDS

Ryan Thomas became infected with the AIDS virus as a result of a contaminated blood transfusion. His two physicians wrote to the school district "indicating that there is no medical reason" why Ryan could not attend school. In May 1986 Ryan's school district adopted a policy concerning the admission of children with communicable diseases. A committee—established pursuant to the policy—recommended that Ryan be admitted; the school board concurred and Ryan was admitted to kindergarten.

During the first week of school, "Ryan was involved in an incident in which another child and Ryan got into a skirmish and Ryan bit the other child's pants leg. No skin was broken." Ryan's parents were told to keep him at home until his case was reviewed. A psychologist analyzed Ryan and concluded that Ryan would behave "aggressively" in a kindergarten setting because his social and language skills were below those of his peers. The doctor could not predict what form this aggression might take. Based on this evaluation, the committee recommended that Ryan be kept out of school and taught at home. The school board concurred, but agreed to review the case after 3 months.

The committee "took the recommendations of the Centers for Disease Control [CDC] into account in its determinations and recommendations regarding Ryan following the biting incident." CDC's recommendations included the following:

1. Decisions regarding the type of educational and care setting for [AIDS]-infected children should be based on the behavior, neurologic development, and physical condition of the child and the expected type of interaction with others in that setting. * * *

2. For the infected preschool-aged child and for some neurologically handicapped children who lack control of their body secretion or who display behavior, *such as biting*, . . . a more retricted environment is advisable *until more is known about transmission* in these settings. * * * (Emphasis added.)

Substantially similar guidelines and recommendations were issued by the American Academy of Pediatrics (AAP) and the California State Department of Education (SDE).

Apologies to my colleagues for taking the time for this much detail, but here is why this is important.

However, a Federal district court judge enjoined the school district from exclud[ing] or prevent[ing] Ryan Thomas from attending his kindergarten class on the ground that he poses a risk of transmission of the AIDS virus to his classmates or teachers.

The school district was held to have violated section 504, the same section the Arline case turned on.

The judge said:

Aside from its citation to the recommendations of the CDC, AAP, and SDE, the School District has presented no medical evidence to *prove* that the AIDS virus can be transmitted by human bites. The information and recommendations published by the CDC, AAP, and SDE cite no such medical evidence and do not, of themselves, prove that transmission by biting is possible.

In this particular judicial district of California, evidently, it is impossible for a school district to act cautiously. Here is a case where the board established a written policy, the board set up a special review committee, and board admitted an AIDS victims after review. After the child got into a skirmish and bit another child, the board sent the victim home but provided home-based education. The board had the child analyzed by a psychologist who concluded that the child would behave aggressively.

The board then acted on the recommendations of its own committee which in turn had relied on guidelines of the Centers for Disease Control, the American Academy of Pediatrics, and the California Department of Education;

Relying on expert advice with regard to children who bite, the board adopted an interim policy of home-based education because—CDC's words—"a more restricted environment is advisable until more is known about [AIDS] transmission."

I would ask my colleagues what in the world could the school board have done that would have been a more thoughtful, responsible, compassionate, balanced approach than this? It sounds to me—I do not know all the facts, but I know this many facts—that they did exactly what we would expect a group of school directors to do. That is that we would expect the school directors in our own home school districts to do in that circumstance.

They did not pass the muster of the court. In this case, the judge wants proof, mind you, not reasonable supposition, not grounds to believe, but proof that you can get AIDS by biting. In other words, the school evidently has a duty to ensure that they can prove it by evidence. Are we going to set up a situation in which school districts have to let a student become exhibit A? I just think that is an untenable thing for this Congress to do.

I am honestly dumbfounded that the Supreme Court took the position it did and for us to go on and make it worse or to fail at this opportunity to make a clear-cut statement that contagious diseases are not a handicap within the meaning of section 504 just boggles my mind.

That is exactly where we are going in the post-Arline era.

Let me give you case No. 2.

This is a teacher with AIDS.

Consider the case of Vincent Chalk, a public schoolteacher who has AIDS. Chalk's employer removed him from the classroom but offered a job writing grant applications at the same rate of pay. Chalk sued.

The school board produced a professor of medicine who testified that AIDS may be transmitted by as-yet undiscovered means, such as tears or saliva. The board admitted that its expert was in a medical minority.

I think that is true. I believe that opinion is a medical minority just as the opinion that you could get AIDS from a blood transfusion was not only a medical minority, but a ridiculed medical minority 4 years ago.

In any case, the board admitted that the expert was in the minority. By the way, my dentist thinks it is true. I will bet your dentist thinks it is true because they are all wearing rubber gloves these days. They were not a few years ago.

The board admitted its expert was in a medical minority. The board said:

The possibility of the transmission of AIDS may be small based on the majority of medical opinion, but it's still a risk. And all the plaintiff's experts * * * can say is that there are no reported cases.* * * However, our expert believes that they haven't been studying this long enough.

The Federal district court refused Chalk's request for a preliminary injunction. The Court said:

I do not in any sense mean to be an alarmist.* * * The likelihood is that the medical profession knows exactly what it's talking about. But I think it's too early to draw a definitive conclusion as far as this case is concerned about the extent of the risk.* * * [H]ow much of a risk is worth taking to gratify the sensibilities of [Chalk] and allow him to return to the classroom because he deeply wants to do so when * * * the results could be so disastrous?

I leave it to you, ladies and gentlemen of the Senate. Did the school board act responsibly? I think so. It appears to me that they took into account the legitimate concerns, even the anguish of the teacher, and said, "We are not making you a pariah, we are not firing you, we are not guaranteeing anything; we are saying you should not be in the classroom, you should be somewhere else earning the same salary writing grant applications."

The court agreed that the board had acted lawfully but the ninth Circuit reversed the finding that the board was discriminating against Chalk in violation of section 504 of the Rehabilitation Act. The court of appeals said:

Evidence before the district court overwhelmingly indicates that the casual contact incident to the performance of his teaching duties in the classroom presents no significant risk of harm to others.

The PRESIDING OFFICER (Mr. DASCHLE). The Chair would inform the Senator from Colorado that his 20 minutes has expired.

Mr. ARMSTRONG. Mr. President, unless the managers are ready with the amendment, I would ask for 10 more minutes.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. Reserving the right to object, of course I shall not object, but because of the fact we may reach final passage, and my last flight to Vermont is in about an hour I will not object. I hope maybe the Senator from Colorado may not need to use the whole 10 minutes.

Mr. BYRD. Mr. President, reserving the right to object, I will not object, it is my understanding that those who are preparing a colloquy expect it to be ready in about 10 minutes. So I have no objection. It will probably work out all right.

Mr. ARMSTRONG. Let me say to the Senator from Vermont that the reason I am speaking now is that the amendment is not ready, and rather than wait until it was on the floor and use time then, I thought I could share a few thoughts with my colleagues in advance of its arrival.

The PRESIDING OFFICER. The Senator from Colorado is recognized for an additional 10 minutes.

Mr. ARMSTRONG. I thank the majority leader and my other colleagues.

Mr. President, I think we have pretty well got it into perspective, but I want to go back to where I began and document the point I made at the outset.

Just a few years ago, health officials were telling us there was no significant risk of contracting AIDS from blood transfusions, either as a donor or as a recipient.

In July 1983—this is not the Stone Age; this is July of 1983—the New York City Health Department, the Greater New York Hospital Association, and the Council of Hospital Blood Bank Directors of the Greater New York Region issued a joint statement asserting:

> Physicians can reassure their patients that the community's blood supplies are not considered a source of the spread of AIDS. (United Press International, July 14, 1983).

On November 2, 1983, Dr. John Bove, a spokesman for the American Association of Blood Banks and a physician at the Yale School of Medicine, said:

> The risk of contracting AIDS from a transfusion [is] one out of one million. (Associated Press, November 2, 1983)

On October 16, 1983, an Assistant Secretary of the U.S. Department of Health and Human Services, Dr. Edward N. Brandt, Jr., said:

> Let me make it clear, the blood supply of the nation is safe. I have no concern * * * and would not be afraid of receiving blood anywhere in the country. (Associated Press, October 16, 1983).

Dr. Harold Jaffe of the Centers for Disease Control said in December 1982:

> The risk to the general population is quite small. (Newsweek, Dec. 27, 1982).

On September 15, 1983, American Red Cross President Richard F. Schubert defended his agency's blood collection methods by saying the risks of getting AIDS from a blood transfusion are "infinitesimal," according to a United Press International wire report of that date.

Of course, we know better today. I am not here to criticize these experts. They were giving their best judgment at that time. What I am saying is that there is a lot we do not know about this, an enormous amount we are learning every day, and to require employers to go to court based on the present state of medical knowledge and prove that somebody is a direct threat to the health of others is far too tough a test.

Medical knowledge is constantly changing, even reversing itself. We have seen it over and over now.

Let me read a description of the fight against diphtheria, a disease that ravaged America for generations:

> Physicians in the 18th and 19th centuries thought more about the nature of disease than physicians in previous eras. There was much casting aside and recasting of older ideas, and much that was new. Because of the prominence of diphtheria, physicians seeking to explain illness had to take diphtheria into account. Was diphtheria contagious? Its ease in spreading through the communities, especially among children, persuaded many lay members of the population. But medical opinion was spread among several points of view. Some thought disease passed along genetic, racial, or constitutional lines. Others believed that disease resulted from unhealthy environmental conditions, such as inclement weather or filth. Still others pointed to the deleterious influence of social surroundings, such as poverty, poor diet, crowding, or inadequate clothing. Some doctors believed in contagion.

You get the point. They did not know about diphtheria any more than they know about AIDS today. But in the fight against diphtheria, they did not have Congress saying you had to convince a court that you knew something which medical science did not know.

Who should decide about exposure to contagious diseases, and by what standards? Is the threat of serious contagious disease just another legal element that judges must weigh equally with all other elements? Is the "reasonableness" of judges more reasonable than the "reasonableness" of school boards, which, after all, have the duty to safeguard the health of their students and teachers? Are we quite sure that the correct legal standard for measuring the risk of contagious disease is "no significant risk"? Are we willing to risk our children's lives for that standard? I do not think so.

Mr. President, here is the dilemma: There is no doubt in my mind, though I have yet to see it, that the Humphrey amendment is better than the underlying bill. It improves the underlying bill, and yet it does so in a way which falls so far short of what we ought to be doing by any thoughtful standard that I am in a dilemma whether to vote for it or not. I guess I will, because it appears to be about as far as we can go at this point. But I appeal to my colleagues that we do not have to settle this matter tonight. We could lay it over for a day or two and see if we can come up with a better formula.

However, if we adopt the Humphrey amendment and it is signed into law, and that is all we do, we are making a very marginal improvement in a very bad situation. I am honestly not sure, as I stand here today, whether or not by adopting it we delay or advance the date at which we might have a better solution.

I am pretty sure I know what we ought to do. What we ought to do is simply make a public policy decision that having a contagious disease is not a protected handicap within the meaning of section 504. That would then leave it to the good sense, responsibility, and compassion of public and private employers to make that decision for themselves, rather than requiring them to go to court.

So I am going to wait the advice of the Senator from New Hampshire and others and actually see the amendment before I decide what I am going to do in voting for it. I hope we can do much better than this, because, at least in the version that was floating around earlier, it does not go far enough—not to satisfy me, but to resolve a bad decision of the Court in the Arline case.

Mr. HUMPHREY. Mr. President, if the unanimous-consent agreement permits, I ask the Senator to yield.

Mr. ARMSTRONG. I believe I have time remaining.

The PRESIDING OFFICER. The Senator from Colorado has 3 minutes and 45 seconds remaining.

Mr. HUMPHREY. Mr. President, the amendment is now available, and the colloquy will be completed soon.

First, I commend the Senator for his usual clear presentation of the facts. I agree with him: We ought to be doing far more than the Humphrey amendment will do.

I also agree with him in his surmise or opinion that the Humphrey amendment is better than the status quo but that it is not much better. I agree with what the Senator said, and I hope we can do more in the future.

I think that, given the mood displayed by this body today, if we were to go to what he and I think we should seek, we would fail. In the meantime,

this is better than the status quo, following the Arline decision.

Mr. ARMSTRONG. I do not have the facts completely clear, but I understand that the Senator from New Hampshire offered an amendment in committee which was of a more sweeping nature, more along the lines that I believe would be in order. Is that correct, and, if so, what was the vote on it in committee?

Mr. HUMPHREY. It was offered, and only two members of the committee supported it.

Mr. ARMSTRONG. Mr. President, I do not want anybody who reads the transcript or is in the Chamber to think that any of my observations are intended to criticize my friend from New Hampshire. He is trying to solve this problem, and tried in committee, and he could not get the votes. I suspect the reason is that when this issue has come up before, we handled it by unanimous consent or a short time agreement; but I think we need to address this issue. I have little doubt that as more Senators begin to understand the issue, there will be a disposition to take a far more thoughful and penetrating look at it and adopt something along the lines of the original Humphrey amendment.

Mr. President, since the amendment is here, I think I will now yield the floor and let the process move on. But I hope other Senators will come to the floor and listen to the debate and understand this issue, because we are going to have to come back to this. I would assume that probably later this year, in one way or another, we will have to address this again; because the way the courts are moving, I predict that within a brief period of time it will be obvious to every Senator, as it is to me and the Senator from New Hampshire, that this is not a satisfactory response to the problem, that this is far too serious and too important to deal with in this way.

I thank the Chair and I thank my colleagues.

The PRESIDING OFFICER. The Senator from California.

Mr. WILSON. Mr. President, in the interest of time I think that I will prevail upon my colleagues to allow me to anticipate Senator HUMPHREY's laying down his amendment.

Mr. BYRD. Mr. President, there is need for a unanimous-consent request by the Senator.

Mr. WILSON. I thank my friend, the majority leader.

Mr. President, I ask unanimous consent to have 5 minutes for the purpose of addressing and commending those who have crafted the compromise that we will shortly have before us.

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

The Senator is recognized for 5 minutes.

Mr. WILSON. Mr. President, I have had the opportunity to view the language that has been crafted by those who are attempting to deal with what is a very difficult problem, and the Senator from Colorado, I think, has made that very clear in his eloquent comments that have addressed and made clear as well his concern for what has been a very, very difficult problem or, I should say more accurately, a set of problems.

There are two purposes to the legislation that exists now on the books. There is a desire that those who, through no fault of their own, suffer some physical disability, some affliction or some mental impairment not be deprived of employment or some other benefit if in fact there is no harm to anyone else that flows from their condition.

Competing with that concern obviously has been that enunciated by the Senator from Colorado, the concern for public health, and in the case that he has discussed, the Arline case, the Supreme Court, it seems to me, attempted to mediate those concerns and come to a Solomon-like judgment in which they could see to it that those suffering handicaps were not the subject of discrimination and at the same time obviously create some mechanism that would safeguard from the public health those whose affliction did or conceivably would pose a threat to public health.

I would agree that this may not be perfect language, but I think under the circumstances it deserves commendation because what it does is to state that there will be an adjustment in the definition of the phrase "handicapped person," to take into account that someone who is currently afflicted with the contagious disease or an infection and who by reason of that would constitute a threat to public health or to public safety or by reason of that affliction would be unable to perform the duties that person will not have the protection that exists for those who simply suffer a handicap and pose no threat of harm to others.

I think what this language will do is to require of the local employer, let us say the local school district, the local park and recreation board, that they seek to get the best possible medical evidence. It is conceivable that under this language in different communities a different result may occur, but even in that, I hope, unlikely event as it begins to work its way up through judicial appeal at some point hopefully we will achieve not only a legal but a medical consensus, and it is obviously far preferable that we achieve the kind of medical consensus nationally that would impose a uniform national standard so that the application of the law will be the same in all communities all across the land.

I commend those who have come to this compromise, the Senator from New Hampshire, the Senator from Massachusetts, and others who have been involved, because it is obviously of paramount importance that we safeguard public health. It is also of enormous importance that we do everything humanly and humanely possible to see to it that those who affliction does not pose a threat to public health or to public welfare in some other fashion not be the subject of discrimination, and it seems to me that the compromise that they have struck here comes about as close as it is possible at the present time.

Obviously, too, Mr. President, the difficulty of what they have addressed here consists in the fact that the threat will be very different depending upon the disease, depending upon the circumstances of the individual involved. So it is probably not possible to generalize in the law beyond proposing what is a reasonable test and I think that, therfore, this compromise deserves support because it does afford to us legal protection for the handicapped person and legal protection as well as public health protection for the public in terms of the public health threat that might exist.

So my commendation and I rise in support, Mr. President.

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

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that there may be a period for morning business at this time not to exceed 5 minutes and that Senators may speak therein for not to exceed 1 minute each.

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

Mr. BYRD. Mr. President, I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BYRD. Mr. President, for the information of Senators, the colloquy which has been under preparation for quite some time is being gone over now and it is expected to be ready for presentation to the Senate briefly.

As far as we are able to determine, we know of no other amendments that will be called up once the Humphrey amendment has been disposed of by colloquy or otherwise. It is still hoped that the Senate might be able to complete action on this bill today. And, if I may add one additional hope, it would be that the Senate might be able to finish by 6 o'clock or very shortly thereafter, in which event, if final action is taken on this bill today, the Senate will go over until Monday and will not be in tomorrow. Committees will meet on tomorrow so that commit-

tee work can be done without interruption by rollcalls and quorum calls.

UNANIMOUS-CONSENT AGREEMENT—NOMINATION OF ANTHONY M. KENNEDY TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT

Mr. BYRD. Mr. President, as in executive session, I ask unanimous consent that, provided the nomination and report have been filed by the close of business on Monday, February 1, the Senate proceed to executive session on Wednesday morning at 9:30 a.m.; that there be 1 hour of debate, to be equally divided and controlled in accordance with the usual form on the nomination of Mr. Kennedy to be Associate Justice of the Supreme Court, the time to be controlled by Mr. BIDEN, and Mr. THURMOND; that the vote on the nomination occur at 10:30 a.m.; provided further, that there be no time for debate on the motion to reconsider and that, upon the disposition of the nomination, the Senate return to legislative session without further action, motion, or debate.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent it be in order to order the yeas and nays at this time to the nomination of Mr. Kennedy.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. BYRD. Mr. President, I ask for the yeas and nays on the nomination as if in executive session.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

MR. BYRD. Mr. President, I thank Mr. ARMSTRONG, who is the acting Republican leader at the moment.

UNANIMOUS-CONSENT AGREEMENT—ILO CONVENTION (NO. 144) AND ILO CONVENTION (NO. 147)

Mr. BYRD. Mr. President, I have a further request which I believe has been cleared all around.

As in executive session, I ask unanimous consent that at such time as the Senate considers Executive Calender No. 6, the ILO Convention (No. 144) concerning tripartite consultations to promote the implementation of international labor standards, and Executive Calendar No. 7, the ILO Convention (No. 147) concerning the minimum standards in merchant ships, there will be 30 minutes, equally divided between the chairman and ranking member of the Committee on Foreign Relations, or their designees, on each of the two conventions, and that no amendments or motions to recommit be in order; provided further, that, after all time for debate has been used or yielded back on each of the two conventions, the Senate proceed to vote back to back on the conventions without any intervening action, and that the call for the regular order be automatic at the expiration of 15 minutes on both of those rollcalls.

The PRESIDING OFFICER. Is there objection?

Mr. ARMSTRONG. Mr. President, reserving the right to object, if the leader will yield, could we know what your plan is on these? Do you intend to call these up on Monday?

Mr. BYRD. Yes; I intend to go to these on Monday.

Mr. ARMSTRONG. Can you give us an idea of when the vote would occur?

Mr. BYRD. I want to talk to Mr. MOYNIHAN, who is handling the matters on this side of the aisle. I will talk to him on the next rollcall, after which I will be in a position to respond to the Senator's question.

Mr. HATCH. Will the Senator yield?

Mr. BYRD. I am happy to yield.

Mr. HATCH. I think I will be handling it on this side of the aisle. If that is so, we would like to have the votes so they will be over by 2:30.

Mr. BYRD. All right. Mr. HATCH would like to see the votes completed by no later than 2:30, and he is managing the two conventions on that side of the aisle. When Mr. MOYNIHAN comes to the floor for the next rollcall vote—and there will be at least one more rollcall vote—I will get an answer to the Senator's question.

Mr. ARMSTRONG. I apologize to the leader. My attention was distracted. It is likely that the vote would occur between 2 and 3:30?

Mr. BYRD. Well, I hope the vote would occur earlier than that. That would accommodate Mr. HATCH.

Mr. ARMSTRONG. Earlier than 2 o'clock?

Mr. BYRD. Earlier, I hope.

Mr. ARMSTRONG. Mr. President, it is a matter of indifference to me, but there is a person on our side of the aisle who expressed great interest that this occur sometime after 2 and I understand there are others who want it to occur before 3:30. As far as I am concerned, September would be all right.

Let me leave it at this, if I may, to just express to the leader—I do not intend to object—that if it is possible for the leader to work it out so the vote occurs between 2 and 3:30, it would be convenient for Members on this side.

Mr. BYRD. I will certainly make every effort to do that if Mr. MOYNIHAN, the manager on this side, can accommodate himself to that. This does not mean there will not be rollcall votes before 2 o'clock on Monday.

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

Mr. BYRD. Mr. President, I understand the Senators are ready now to resume consideration of the pending business. I yield the floor.

CIVIL RIGHTS RESTORATION ACT

The Senate continued with consideration of the bill.

AMENDMENT NO. 1396

(Purpose: To provide a clarification for otherwise qualified individuals with handicaps in the employment context)

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

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from New Hampshire [Mr. HUMPHREY] for himself and Mr. HARKIN, proposes an amendment numbered 1396.

At the end of the bill insert the following:

CLARIFICATION OF INDIVIDUALS WITH HANDICAPS IN THE EMPLOYMENT CONTEXT

SEC. . (a) Section 7(8) of the Rehabilitation Act of 1973 is amended by adding after subparagraph (B) the following:

"(C) for the purpose of sections 503 and 504, as such sections relate to employment, such term does not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job.".

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I understand under the UC agreement there was time set aside for the consideration of a Humphrey amendment. Am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. As I understand the situation at the present time, that there has been an amendment which has just been read which is a Harkin-Humphrey amendment, and I would ask consent that it be in order for the Senate to consider that measure at this particular time.

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

The Senator from New Hampshire.

Mr. HUMPHREY. Mr. President, I thank the Senator from Iowa and the floor managers and others, the staff involved, for working diligently to come to compromise language and likewise I thank my colleagues not involved for their patience.

Mr. President, I would like to address several questions to the Senator from Iowa, relative to his understanding of this amendment. Is the Senator prepared? Do I have the attention of the Senator from Iowa?

Is it your understanding that this amendment is designed to address an issue comparable to the one faced by

Congress in 1978 with regard to coverage of alcohol and drug abusers under section 504 of the Rehabilitation Act? That is, Congress wishes to assure employers that they are not required to retain or hire individuals with a contagious disease or infection when such individuals pose a direct threat to the health or safety of other individuals, or cannot perform the essential duties of a job.

Mr. HARKIN. If the Senator would yield, yes, Senator, that is my understanding.

Mr. HUMPHREY. I thank the Senator for that response. Inquiring further, is it the Senator's understanding that this amendment does nothing to change the current laws regarding reasonable accommodation as it applies to individuals with handicaps who cannot perform the duties of the job?

Mr. HARKIN. If the Senator would yield, there seems to be a bit of a difference here. On my copy of the compromise, which again I would just compliment the Senator from New Hampshire and his staff for working on so diligently to reach a compromise in this, the language that I have here basically has a question mark after the word "handicaps." That is in the third sentence, "to individuals with handicaps." That is why I did not understand the last little clause that was added and I would have to have some time to think about that. I am sorry.

Mr. HUMPHREY. Somehow we got two different copies here. I would be happy to end my question with the question mark after the word "handicaps."

Mr. HARKIN. I appreciate that. I am not certain that I know what exactly that does, but, if the Senator would, I would appreciate it and I would respond, then, to the Senator's question by saying that: Yes, indeed, that is my understanding.

Mr. HUMPHREY. Finally, is it the Senator's understanding, as we stated in 1978 with respect to alcohol and drug abusers, that the two-step process in section 504 applies in the situation under which it was first determined that a person was handicapped and then it is determined that a person is otherwise qualified?

Mr. HARKIN. Yes. I do understand—yes, that is my understanding.

Mr. INOUYE. Mr. President, this amendment would undo the United States Supreme Court's decision in School Board of Nassau County versus Arline, which held that individuals with contagious diseases are handicapped within the meaning of section 504 of the Rehabilitation Act of 1973, and are therefore protected from discrimination based on their medical condition.

The factual question posed in Arline was narrow: Are employees suffering from contagious diseases subject to automatic termination, without regard for any actual incapacity or risk of infection? The Court's answer was correspondingly clear: Groundless fears do not alone justify terminating an employee with a contagious disease.

The question in Arline surfaced in the Supreme Court because, in adopting the Rehabilitation Act, Congress had given statutory protection to the handicapped without enumerating the specific conditions to which the act would apply. Of course, Congress customarily acts by categories; groups are as central to the legislative process as cases are to the courts. Still, it is easier to articulate a general principal than to apply it in a threatening situation or uphold it in a difficult case.

The Rehabilitation Act was needed and passed because human beings often harbor an unreasonable dread of diseases and disorders. It is precisely because AIDS is surrounded by this same unreasonable and unwarranted fear and distaste that the Supreme Court's decision was sensible. The logic of the Rehabilitation Act demands that we make no distinctions where no reasonable grounds for differentiation exist.

In adopting an amendment contrary to the Arline decision, we would embody the prejudices that we overcame and precluded in the Rehabilitation Act. However, a number of unpleasant realities pertaining to AIDS give us additional reasons to reject the proposed amendment.

Some of us, and many Americans, seem to feel that we can confront people with AIDS as adversaries or enemies and forcibly control the spread of AIDS. I don't believe that would be morally acceptable, but even if it were, it is impossible. We will control AIDS only through cooperation, education, and respect.

By September 18, 1987, the Center for Disease Control had reported 51,361 cases of AIDS, and it was clear then that many cases had not been properly diagnosed or reported. The Public Health Service estimates that more than 270,000 cases of AIDS will be diagnosed by 1991. According to the CDC, there may be as many as 100 people who carry HIV, the virus that causes AIDS, for each person with AIDS. An estimated 25-50 percent of those who are HIV positive may develop AIDS within 5 to 10 years.

I hope that we will not resort to harassing and rejecting people who have been exposed to AIDS. In any event, it is clear that we do not have the capacity to identify and control the millions of people who may become contagious with AIDS, half of whom may never display any symptoms, and most of whom would not be eager to be diagnosed and subjected to discrimination. A program of contact tracing, for example, would become impossible under such circumstances. A threat of imprisonment is not likely to be very effective against someone who has been diagnosed with AIDS, even if our prisons were equipped to hold numbers of fatally ill individuals.

Only with the trust and cooperation of those who suffer from AIDS, can we continue to seek effective treatment for AIDS, and to discover treatments that prevent antibody-positive individuals from developing the disease.

Even if our compassion fails us in the face of AIDS, I hope that our powers of reason will still allow us to recognize the realities that must dictate our response to AIDS. It is futile to call for measures that cannot be effective and simply reflect our most unworthy reactions to AIDS, drug users, and homosexuals. Further, we would generate panic and cruelty that we could never extinguish. Instead, we must commit ourselves to a realistic and balanced approach to AIDS. We can begin by rejecting the proposed amendment.

Mr. HUMPHREY. Mr. President, the form of agreement is that, at least on the part of the Senator from Iowa and the Senator from New Hampshire, there would be no further debate or discussion at this point. Unless other Senators wish to do so, I think we are ready to dispose of it. A voice vote is acceptable.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. As I understand it, Mr. President, we have a time agreement. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. KENNEDY. I would be glad to yield back the remainder of the time on our side.

Mr. HATCH. I will be happy to yield back the remainder of ours.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senators from New Hampshire and Iowa.

The amendment (No. 1396) was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATCH. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HELMS. Mr. President, this bill would unnecessarily extend four major civil rights statutes far beyond the scope ever intended.

Under this bill, we are venturing into unknown areas of coverage for these statutes. It has become obvious that the sponsors don't even know for certain how far this bill will extend. Coverage under the bill would be limited only by the imagination of special interest advocacy groups and the unfettered discretion of Federal judges.

One of the problems is that the bill represents a broad attack on religious liberty in America. It would expand coverage over every operation of an entire religious school system where Federal money may only go to one activity at one school within the system. It also would cover all of the activities of a church or synagogue in all of its buildings in an area if any program or activity in the area receives any Federal money. Furthermore, it fails to protect adequately the religious tenets of educational institutions and other institutions covered under the expansion of title IX.

Mr. President, as a result of the expansion of coverage under the statutes amended by the bill, many more sectors of American society would be subjected to increased Federal paperwork requirements, random on-site compliance reviews, physical accessibility requirements, and affirmative action.

Mr. President, I am particularly concerned with the effect this legislation would have on the Nation's farmers. Agriculture is the largest employer in the United States. Growers hire 4 percent of the total U.S. work force—nearly 5.5 million people—and this payroll costs about $9.5 billion each year. To put this in proper perspective, labor costs on the farm equal or exceed other costs of production in most cases.

Mr. President, our farmers are already overburdened with Federal laws and regulations regarding employment and other phases of their operations. S. 557 would threaten the Nation's farmers with coverage of additional statutory and regulatory requirements that were never intended to cover them and which are unnecessary.

Last year Mr. C.H. Fields, on behalf of the American Farm Bureau Federation, testified before the Senate Labor Committee in opposition to S. 557. I will ask unanimous consent that a copy of that testimony be printed in the RECORD at the conclusion of my remarks.

Mr. President, let me close by quoting a sentence from Mr. Fields' testimony:

> We have long believed that unnecessary and unwarranted expansion of the power and responsibility of the federal government constitutes a serious threat to the fundamental principles upon which this nation was founded and prospered among the nations of the world.

Mr. President, that captures my feelings precisely, and I urge my colleagues to vote against this unwise legislation.

Mr. President, I ask unanimous consent that the statement of Mr. Fields be printed in the RECORD.

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

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION TO THE SENATE LABOR COMMITTEE REGARDING S. 557—"CIVIL RIGHTS RESTORATION ACT OF 1987"

(Presented by C. H. Fields, Assistant Director National Affairs Division)

The American Farm Bureau Federation is the nation's largest farm organization with a current voluntary membership in excess of 3.5 million member families who have paid annual dues to nearly 2,800 county Farm Bureaus in 49 states and Puerto Rico.

Last January, the voting delegates of the member State Farm Bureau reaffirmed a policy opposed to any legislation that would expand the scope of the existing civil rights statutes to cover those who have not been previously subject to them. The nation's family farms are already struggling for their continued existence as economic entities, and are overburdened with a myriad of federal regulations affecting employment on farms and many other phases of their operations. They should not be threatened with coverage by additional statutory and regulatory requirements in the area of discrimination and civil rights, particularly when such coverage was never intended by the original sponsors of the original statutes and when there is no need for such coverage.

No group of people in this country has a stronger belief in the fundamental principles of freedom, liberty and justice embodied in our nation's basic charter than this nation's farmers and ranchers. We have long believed that unnecessary and unwarranted expansion of the power and responsibility of the federal government constitutes a serious threat to the fundamental principles upon which this nation was founded and prospered among the nations of the world.

We are mindful of the fact that some 750,000 farmers and ranchers are employers. Any statute or regulation affecting employment practices could have an impact on agricultural employers with regard to sex, age or handicap requirements. Several thousand farmers throughout the country operate roadside markets and other direct markets to consumers. The Department of Agriculture administers a number of programs involving federal payments or other assistance to farmers and ranchers. The broad and sometimes vague language in this bill raises serious questions as to what impact anti-discrimination regulations would have on such benefits as loan guarantees, commodity loans, deficiency payments, disaster payments, price supports, conservation cost-sharing, etc.

Supporters of the bill state that Section 7 provides a "rule of construction" which, in effect, exempts farmers as ultimate beneficiaries of federal aid.

We find that statement unpersuasive because:

1. There is no indication in the bill as to which persons or entities are defined as ultimate beneficiaries and under which aid programs. We are not sure it includes businesses, such as farms and ranches.

2. Farms appear to be clearly covered by subparagraph (3) of each operative section because farms are business entities or private organizations, or both under this bill.

3. Even if Section 7 is constructed to exclude coverage of farmers as ultimate beneficiaries before enactment of S. 557, any farm-aid programs adopted after enactment of S. 557 would not be excluded from coverage.

It might also be erroneously argued that Section 4(c) exempts farmers from coverage under the Act. We point out, however, that this language applies only to discrimination against handicapped persons under Section 504 and does not reduce compliance burdens under Title VI or age discrimination. Even under Section 504, only some farmers will benefit from this exemption. USDA Section 504 regulations define "small providers" as entities "with fewer than 15 employees." Somewhere between 50,000 and 100,000 farms employ more than 14 persons. Further, even the "small providers" are exempted only from the most onerous of Section 504 regulatory burdens, such as making structural alterations to existing facilities—and only "if alternative means . . . are available."

The small operations would still be subject to many onerous requirements, including paperwork requirements, requirements to consult with disabled groups and make a record of such consultations; extensive employment regulations; and a requirement to "take appropriate steps" to guarantee that communications with hearing and vision-impaired applicants, employees, and customers can be understood.

To the extent that S. 557 extends the basic principle that the term "program or activity" means all of the operations of the "entire corporation, partnership, private organization, or sole proprietorship," farms may well fall within the scope of that definition in several ways. For example, a subsidy to one commodity on a farm would subject the entire entity to regulation. A farm of contiguous fields could be deemed a "geographically separate facility," and thus covered in its entirety. Additionally, farming could be construed as providing a "social service" to consumers.

Farm Bureau is not opposed to a bill that simply provides coverage under the Civil Rights statutes the same as it was before the Grove City College decision; but our analysis of this bill leads us to the conclusion that it seeks to go much further than that. We believe it would result in a broad expansion of coverage under the Civil Rights statutes, including farmers who were never covered before.

For that reason we are opposed to S. 557 as introduced. We favor, instead, a bill such as the one introduced by Senators Dole and Hatch in the last Congress and which we understood will be introduced in both Houses of this Congress. We hope this Committee will give careful consideration to the concerns we have expressed.

We appreciate the opportunity to present our views.

Mr. THURMOND. Mr. President, I rise in opposition to this bill. The issue surrounding Grove City-related legislation has been improperly focused from the beginning. Federal financial assistance should not be allowed to fund discriminatory activities. No one could rationally argue otherwise. However, the sponsors of S. 557 have chosen to distort this debate by posing the question in simplistic terms under which one is either for their bill or for federally subsidized discrimination.

Many have argued during this debate that they want to restore civil rights coverage to what it was before the Grove City decision. There is substantial evidence that coverage prior

to Grove City was program specific, not institutionwide. However, this bill goes well beyond institutionwide coverage. It does not restore the reach of the four civil rights laws to their pre-Grove City status, but expands Federal authority. The broad extension of these four laws goes well beyond what is justifiable.

Briefly, I would like to discuss a number of significant instances where the breadth of coverage is simply too broad because one small part of a particular entity receives Federal funds.

I believe strongly that there must be an exception to the institutionwide scheme of coverage—that is when the institution is a church or religious organization. Many churches participate in federally assisted programs which serve communities across the country. All the federally assisted programs operated by a church should be covered under the statutes addressed by S. 557. However, extension of Federal regulations throughout the whole church as a result of such assistance treads all over first amendment rights. I do not believe that the Federal Government should be interjected into the operation of our churches.

Additionally, this legislation will provide for coverage of entire religious school systems when only one school, or part of one school, in a system receives Federal financial assistance. Prior to Grove City, only the particular school that received assistance would have been covered. S. 557 would expand coverage to the entire religious school system instead of just the particular school that receives the Federal funds. This coverage threatens religious liberty by placing the religious goals of those schools in a secondary position to the vast regulatory requirements of S. 557.

As the Constitution guarantees religious freedom, we must tread lightly when it comes to asserting Federal regulation of religion or its institutions.

Additional provisions of S. 557 are ambiguous and unnecessary. For example, certain sections mandate blanket coverage by the four statutes of any corporation, partnership, other private organization, or a sole proprietorship, which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation. I can think of no justification for the blanket coverage. Stated simply, there is no reason to treat these so called special purpose businesses any different from other businesses. Coverage for all corporations should be uniform.

In closing, these are some of the issues which make the proposed "Civil Rights Restoration Act of 1987" unacceptable. The question of whether or not Federal funds should be allowed to subsidize discrimination is not the issue. Clearly, Federal funds should not be used to subsidize discrimination. The major issue is the need to carefully balance and protect constitutionally guaranteed freedoms and rights against the reach of the Federal Government. A fundamental right—the freedom of religion—is a guaranteed constitutional right. The Federal Government must not get into the regulation of religion. This bill simply goes too far. It represents a significant increase in Federal jurisdiction over churches and synagogues, private and religious schools, and the private sector.

For these reasons, I will vote against S. 557.

Mr. DIXON. Mr. President, as an original cosponsor of S. 557, the "Civil Rights Restoration Act of 1987," I rise today to solicit my colleagues' support for its approval.

Having debated S. 557 for 2 days now, we all know what the issues are. The bill overturns the 1984 Supreme Court decision in Grove City College versus Bell. The decision severely narrows the scope of coverage of title IX of the Education Amendments of 1972 which bar sex discrmination in federally assisted education programs.

The Court decision affects three other laws which bar discrimination since they contain similar language. The laws are title VI of the Civil Rights Act, section 504 of the Rehabilitation Act, and the Age Discrimination Act of 1975.

Mr. President, I support S. 557 because I deplore discrimination and strongly feel that the Federal Government should not be about the business of subsidizing it.

Additionally, I want to very clearly express my reasons for supporting the overturn of this Court decision. First, I do not believe that it is in line with the intent of Congress.

Second, S. 557 has 58 cosponsors, more than a simple majority of the Members of this body.

And third, I am certain that the people of the State of Illinois do not want the Federal Government to subsidize discrimination.

I am pleased that the Senate approved the Danforth amendment earlier today. During this past year, many hospitals in my own State of Illinois have expressed serious concerns that provisions of S. 557 would force them to perform abortions. Additionally, on behalf of many of its members, the Illinois Hospital Association has been in constant contact with my office regarding this issue.

From where I come in Belleville, IL, Mr. President, there is an old saying that "where there is smoke, there is fire." I am pleased that this body smothered the smoke on the abortion issue by approving the Danforth amendment.

Mr. President, I urge immediate approval of S. 557.

Mr. CRANSTON. Mr. President, I rise in support of S. 557, the proposed Civil Rights Restoration Act. I am proud to be one of the principal sponsors of this important legislation to restore the effectiveness of our Nation's four basic civil rights statutes which provide that Federal funds may not be used to support invidious discrimination.

Mr. President, in 1984, the Supreme Court dealt a crippling blow to the enforcement of the civil rights statutes—title VI of the 1964 Civil Rights Act, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975—which provide that entities which accept Federal financial assistance must not discriminate on the basis of race, color, national origin, sex, handicap, or age. In the case of Grove City College, the Court held that the obligation to refrain from discrimination was limited only to the specific program which received the Federal funds.

Since that decision was handed down, its dire consequences have become apparent. In numerous instances, civil rights complaints have been dismissed because the specific programs involved could not be demonstrated to have received direct Federal funding. In October 1987 a Federal court of appeals reversed a district court decision holding that the State of Alabama had perpetuated racial segregation in its system of public higher education on the grounds that the Justice Department, which had brought the litigation, had not specified which programs or activities within the school system had received Federal funds and how those particular programs were discriminatory. Literally hundreds of administrative complaints filed with the Department of Education alleging civil rights violations have been dismissed because of the Grove City ruling.

The longer the Grove City decision remains the law of the land, the greater its adverse impact will be on civil rights enforcement.

Mr. President, during the Senate's consideration of S. 557, we decisively defeated amendments aimed at weakening the legislation expect one: the Danforth amendment relating to abortion. I strongly opposed that amendment which, if enacted, would rewrite title IX so as to overturn regulations promulgated under the Ford administration which prohibit educational entities from discriminating against students or employees who are seeking or have had an abortion. I regret it was added to this important bill intended to restore rights, not withdraw them. I hope the Danforth amendment does not become law.

CONCLUSION

Mr. President, the proposed Civil Rights Restoration Act is about one issue: Whether the funds of the United States should be allowed to be used to subsidize discrimination. Many of us thought that we had answered that question once and for all with the enactment of the civil rights statutes in the 1960's and 1970's. We must, today, reaffirm that Federal funds will not be used to perpetuate discrimination. We must reaffirm our continuing and enduring commitment to achieving a just and a fair society, a society where every individual, regardless of sex, race, age, or disability, enjoys the right to participate and contribute fully.

DON'T EXPAND REGULATIONS FOR AGRICULTURE

Mr. KARNES. Mr. President, I have offered an amendment to settle the concern that this legislation will expand the scope of the civil rights laws beyond that which existed before the Grove City decision. I share the concern of many of my colleagues about its potential far-reaching effects on farmers and ranchers throughout the country.

I am concerned about the possibility of farmers being brought under the civil rights laws by virtue of their participation in Federal farm programs. As currently drafted, farmers who receive loan guarantees, commodity loans, deficiency payments, disaster payments, price supports, and so on, might be forced to comply with the entire range of civil rights statutes. If this circumstance were to come about, it would lay a whole new set of Federal regulations at the doorstep of farmers and ranchers across the land.

This does not imply that farmers are opposed to civil rights or want to turn back the clock to the times and the events that necessitated the enactment of these laws. In this case, the issue is not discrimination. The issue is unnecessary Federal interference. If someone feels that complaints have been made or a record has been established showing that there are civil rights problems on the American farm that warrant our attention, I would like to hear those arguments and see that record. I do not feel that any such record exists, nor do I feel that there is any basis for such a record. So let's leave them out of the civil rights discussion altogether.

I do not know that it is the direct intent of any Senator to include farmers and ranchers in the coverage of S. 557. The problem with the bill is that is leaves open the question of whether farmers and ranchers could be included. It creates an ambiguity which could ultimately require litigation to resolve unless we deal specifically with the issue here and now.

Section 7 of the bill states that none of its provisions shall be construed to extend the application of the civil rights laws to ultimate beneficiaries of Federal financial assistance excluded from coverage before enactment. It is asserted by some that this language is sufficient to lay the farm and ranch issue to rest. It does not, however, make clear which ultimate beneficiaries are now excluded, nor does it address the issue of exclusion of those persons receiving benefits from programs that may be enacted in the future. Comments in the committee report are not adequate to address these concerns because the bill substantially rewrites the statutes and adds a new definition of programs and activities covered by the law.

The purpose of section 7 may be to generally exempt a number of activities touched by Government funding. However, I have received an opinion developed by the Justice Department asserting that section 7 is not necessarily sufficient to remove all ambiguities about application to farmers and ranchers. Mr. President, I ask unanimous consent that the Justice Department opinion that I refer to be printed in the RECORD immediately following my statement.

Farmers have enough problems. They should not have to operate under the gun, knowing that a court may later rule that S. 557 does include farmers and ranchers, triggering unnecessary, but nonetheless mandatory regulations for them to study and adhere to. They have neither the time, money, nor personnel to attempt to comply with the requirements of bureaucrats who may demand volumes of proof of nondiscrimination even when no complaint has been received. Soon, agribusinessmen are going to feel like they have to call their lawyer before they go out to work in the fields.

There is nothing in this bill which specifically assures farmers that they will not be covered by the wide range of civil rights laws. What could happen if a court would construe the law to include farmers and ranchers against our intent? Such an occurrence has been known to happen from time to time. The possibilities are mind-boggling and outrageous.

Let's consider some. Would farmers have to hire persons with infectious diseases such as TB or AIDS? Perhaps they could be required to restructure jobs, modify facilities or install equipment for handicapped persons.

They might have to establish grievance procedures whereby a hearing would have to be held before letting a worker go simply because he doesn't do the job.

Even small operations could be subject to increased Federal paperwork requirements, random on-site compliance reviews and other regulatory burdens.

Passage of this bill could make farming a whole new ball game, a game that I know farmers like my Nebraska constituents do not want to play. The potential impact of this legislation on the average farm operation is devastating. Anyone familiar with farming knows that regulations like these on farms would be utterly ludicrous.

Farmers are experiencing a severe crisis. They are overburdened with low commodity prices, excess surplus stocks, and the lack of affordable financing. To be faced with additional statutory and regulatory requirements could jeopardize their continued existence.

Mr. President, as the owner of my family's farm, I can tell you how farmers and ranchers would react to extending new civil rights regulations to the farm. They would shake their heads in disbelief. They would wonder why in the world the U.S. Congress is slapping on controls that have no rational relationship whatsoever to life on the average family farm. They would sit down in disgust and write to us, pleading "leave us alone!"—and they would be completely justified in doing so.

Therefore, to be absolutely certain that farmers and ranchers will not be covered by these statutes, I introduced my amendment to clarify the matter. It does nothing more than settle the issue at hand. It states that nothing contained in the statute shall be construed to extend application of the four titles in question to farms, farmers, ranches, or ranchers, based upon participation in any Federal agricultural program unless application is expressly required. I believe that is the unarticulated intent of the act, but my amendment would remove all uncertainty.

I wish to ask the Senator from Massachusetts, does S. 557 affect the historical exemption of farmers and other persons who receive payments under various agricultural support and marketing programs?

Mr. KENNEDY. No. Farmers and other persons who receive Federal grants, loans, or assistance contracts would be "recipients". A full discussion of this continuation of present policy is contained in the committee report, Senate Report 100-64, at pages 24-24.

Mr. KARNES. With that clarification, I withdraw my amendment at this time. I am not certain whether this action will completely resolve the issue altogether, but I feel we have taken a good step toward establishing a record to protect the interests of farmers and other agricultural interests from onerous and unnecessary added regulation and costs.

I yield the floor.

Mr. BRADLEY. Mr. President, there is no subject more important to America than civil rights. Our past failures in guaranteeing equal opportunity to all members of the American commu-

nity have been our badge of shame. Our successes in redressing those inequalities have been our greatest pride.

But we cannot rest on our laurels. We must not take the inviolability of equal opportunity for granted. For once again civil rights are under siege, and this body must liberate them.

Why do I say that civil rights in America are besieged? Because in February 1984, the Supreme Court, at the instigation of the Department of Justice, gutted the principle law outlawing sex discrimination in education. Education—the great equalizer. Education—the very essence of equal opportunity. I can not believe that in 1984, our Supreme Court ruled that it is OK to discriminate against women in federally assisted educational programs. Hard to believe; yet it's true.

That Supreme Court decision, the Grove City case, has left a gaping hole in all our antidiscrimination laws. It has dealt a body blow to the cause of civil rights in America. It cannot be allowed to stand.

Grove City jeopardizes the hard won rights of millions of women and minorities. It dashes the hopes that the elderly and the disabled might take their rightful place in our great economy. It makes a mockery of the principles for which our Nation stands.

Unless we bring the Supreme Court's decision in line with the history and clear intent of our civil rights laws, there will no longer be an all-inclusive prohibition against discrimination based on race, sex, handicap or age. Schools, hospitals, State and local governments—indeed any entity conducting a federally assisted activity will be empowered to get around the clear intent of our civil rights laws.

No Congress that believes in the principle of equal justice under law can permit the Grove City case to stand. That is the purpose the Civil Rights Restoration Act.

Support for this legislation is broad and deep. Top ranking civil rights officials in four administrations have unanimously endorsed it. Women and blacks are solidly behind it.

Given the unassailable strengths of this legislation and its broad-based, enthusiastic support, who could be against it? Well, sad to say, a small but determined band of people implacably opposed to civil rights are trying to prevent passage of the bill.

They argue, disingeniously, that the Civil rights Restoration Act returns the burdensome yoke of Federal intrusion on the frail neck of the States and the private sector. Even sadder, they are supported in their claims by the Department of Justice and the White House.

These claims are groundless. They are part and parcel of a tactic of delay, designed to prevent passage of this essential bill. But the bill's proponents are even more determined.

Let me be quite clear about what this act does. It reaffirms an appropriate interpretation of existing law. That's all. It does not add to that law. It does not thrust the Federal Government down the throats of the States. And it is not the camel's nose of Federal intrusion under the tent of civil liberties. It just says that the civil rights law prior to Grove City remains the law today. It reaffirms this Nation's commitment to the principle that all people are created equal. Which is how I, and I believe a large majority of the American people, want it.

Mr. MITCHELL. Mr. President, I support the Civil Rights Restoration Act. The act is needed to correct the 1984 Supreme Court decision in Grove City College versus Bell which held that recipients of public funds need comply with the civil rights laws only in the particular program or activity to which public funds are directed.

The effect of this ruling has been widespread. It has reached far beyond the original confines of the case—which was brought only on the question of whether student aid was a Federal benefit to the college which the student attended. The Supreme Court ruled that it was. But the Court then went to a question not raised in the case, and found that only the student aid office, which directly handled the funds, had to comply with the antidiscrimination law.

No sooner was this decision handed down than the Department of Justice announced that it would, henceforth, apply this standard to the enforcement of all the major civil rights laws, not merely to the education act amendments on which the ruling was brought.

The Justice Department has done precisely that, and as a result, lower court rulings—which are required to follow Supreme Court precedents—and administrative action have both closed off redress against discrimination for many Americans.

Individuals have been denied hearings when funds could not be traced directly to the salary of a professor accused of sexual harassment, or to the building in which an individual was denied the right to speak, or to the courtroom in which jurors served. In the Education Department alone, well over 600 cases have been suspended or dismissed because of the Grove City ruling.

Four months ago, the 11th Circuit Court of Appeals reversed the factual findings of a lower court that an entire State's higher educational system had systematically channelled black and white students to separate institutions, not on the grounds that the Government failed to show this occurred, but that it did not show precisely where each Federal dollar of aid was used and how that particular program discriminated.

In 1954 the Supreme Court finally overturned more than half a century of de jure segregation in its Brown versus Board of Education judgment. But it was not until passage of the 1964 Civil Right Act, with its title VI enforcement powers, that actual progress began to be made against discrimination.

The threat of losing Federal funds was finally the incentive before which much segregation gave way. And in the decade of the seventies, black college enrollment almost doubled.

The other statutes affected by the Grove City ruling are all based on that experience.

Title IX of the Education Act Amendments of 1972 extended civil rights protections to women in higher education facilities. In 1972, when the act was passed, our Nation's medical schools graduated 830 women as physicians out of a total of 9,253. In 1985, 4,874 women physicians were in the graduating class of 16,041.

In 1972, the Nation's law schools graduated 1,498 women, out of a total of 21,764. Today's 37,491 graduating lawyers include 14,421 women.

There can be no doubt that the doubling of black college enrollment and the increased admissions of women to graduate studies was not a fortuitous outcome. It was the result of enforcing what the law has always demanded, equality of treatment.

We should not have to look back to a century of racial turmoil and discrimination under the 14th amendment to the Constitution to know that a written statute, even a constitutional commandment, has no effect unless it is enforced.

That understanding guided the Congresses which enacted the four civil rights statutes covered by this bill. Those Congresses moved beyond exhortation and recognized that additional incentives were necessary to promote equal treatment.

There are those who like to characterize the civil rights laws as punitive. That implies that institutions have a prior right to receive Federal funds and that any threat of their loss is unfair.

That is not the case. Federal funds are appropriated for programs which the Congress judges to be in the national interest. And among the many issues that are in the national interest is the vindication of our constitutional promise of equality before the law.

As the Supreme Court itself noted in Bob Jones University, any private organization enjoys the full protection of the first amendment in its beliefs or doctrine. But no private organization may expect preferential Government

treatment when its beliefs conflict with national policy.

So when Congress chose to enforce antidiscrimination efforts through the funding mechanism, it did not detract one iota from the first amendment rights of any group, individual or organization. It did offer institutions a choice—the choice between accepting Federal funds and abiding by the law or not accepting Federal funds. There is nothing coercive in such a regime.

Simply put, if an institution accepts tax funds, that institution may not discriminate. We know we cannot eliminate private prejudices and bigotry by law. But we need not and should not subsidize them.

The fundamental issue at stake is that tax dollars raised from all Americans should not be used to discriminate against some Americans, where the issue involves, race, sex, age or handicapping condition.

This is a matter of simple justice.

The Civil Rights Restoration Act does nothing more than restore through statutory language the reach of the civil rights statutes to the institutions which chose to benefit from Federal funds.

The act does not affect any of the definitions of what constitutes discrimination. It neither expands nor narrows any of the rights that may be asserted under antidiscrimination law.

The act does not alter or modify the meaning of "recipient", so those who are not now affected by civil rights laws—for instance, grocers accepting food stamps, farmers accepting crop subsidies or individuals receiving Social Security benefits—remain unaffected by the reach of the law, as they were before the Grove City decision.

The act preserves exactly the same language as in current law with respect to religious organizations; it neither narrows nor broadens it.

The entire purpose and, I believe, the only effect of the bill as written, will be to restore in practice the understanding that I and most Americans held before the Grove City ruling—namely that when an institution chooses to benefit from public funds, it must abide by public law, including laws which outlaw discrimination.

The repeated claims that the bill unacceptably expands civil rights law are untrue. The definitions of unfair treatment which exist in regulations, in case law and in practice are neither broadened nor narrowed by this bill.

I very much regret that the President's State of the Union message included this misleading and inaccurate claim about the Civil Rights Restoration Act, and I sincerely trust that he will not veto this very simple and straightforward legislation, when it reaches him.

We have already waited too long to correct the statutory deficiencies that the Supreme Court found in these four civil rights laws. Over the past 4 years, many cases, some reaching back more than a decade in some instances, have been abandoned, dismissed, and suspended as a result of the congressional failure to act.

These cases are not merely statistics. Each one involves a fellow American whose life has been directly affected. Students have found their study plans delayed and, in some instances, ended. Disabled persons have lost jobs and the chance for independence and personal self-respect. Women have seen career choices and opportunities foreclosed.

We should end this unfairness now. We should reinstate and reaffirm the 20-year-long struggle to vindicate the civil rights of every American.

From 1964 until the earlier years of this decade, there was a bipartisan congressional consensus that civil rights laws must be vigorously enforced. That consensus reflected the overwhelming demand of the American people, who were no longer satisfied with a status quo which treated some of them unfairly.

The effort to give life to the great ideals of our Constitution has always been a struggle against entrenched habit, accepted convention and comfortably established inequities.

That is as true today as it was in 1964. Over the past three decades, the majority of Americans has concluded that we want a society where equality of treatment is not restricted to men, or to white men, or to the physically capable, or to the young. We have concluded that this is not the American ideal.

And we know that we cannot wait passively for a just society to evolve over time. We know that to achieve justice, we must pursue justice. The pending legislation is an essential element of that effort. It must be approved.

Mr. KERRY. Mr. President, in the 1960's, this Nation made a commitment to civil rights for all of our citizens. Many Americans participated in that struggle. Some sat in at lunch counters. Some demonstrated on college campuses. Some were Freedom Riders in the South. Some were arrested and went to jail. Some even gave their lives.

As a result of those efforts, we passed a law, the Civil Rights Act of 1964, which made civil rights a reality in this country. We enshrined those struggles in the law of the land, and by that action we began a process of changing the mentality of a nation, of changing attitudes and age-old prejudices. We have come a long way in that struggle in the past 20 years.

But the Supreme Court's decision in February 1984 in the case of Grove City College versus Bell was a step backward in the continuing struggle for civil rights in this country. In that decision, the Supreme Court ruled that title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in most education programs and activities receiving Federal financial assistance, applies only to the particular program receiving Federal aid, not to the entire institution. The effect of this misguided decision has been to strip away constitutional protections against discrimination for women, minorities, the elderly, and the disabled in our society.

The time has come for the Congress to correct that injustice, and to restore the full protection of our civil rights laws to all Americans. I am pleased, therefore, to be a cosponsor of the Civil Rights Restoration Act of 1987. This legislation would reverse the Grove City decision, and restore full constitutional and civil rights protections under title VI of the 1964 Civil Rights Act, title IX of the 1972 Education Amendments, section 504 of the 1973 Rehabilitation Act, and the Age Discrimination Act of 1975. All of these laws provide vitally important protection against discrimination for our citizens.

We need to pass this legislation now, and pass it in undiluted form, without amendments. We need a clean bill that will make a clear statement to the American people that we still believe in the ideals of the civil rights movement.

Mr. President, amendments that deal with abortion, or with "religious tenets," or with AIDS, have no place on this legislation. This is a civil rights bill. This legislation exists for one purpose, and one purpose only—to reverse the Grove City decision, and to make it clear that we still care about civil rights in the U.S. Senate. And I oppose any efforts to alter or distort that message by adding amendments which do not belong on this bill.

I am disturbed by the Senate's vote in favor of the Danforth amendment. The effect of this amendment would be to penalize women who choose to have abortions, or who have already made that choice. The right to an abortion is a matter of free choice for women, not a decision made for women by the U.S. Senate.

In addition, this legislation is not the appropriate vehicle for such an amendment. This is a civil rights bill, not a referendum on abortion. However, because I believe that the good in this bill outweighs the bad, because it expands the scope of title IX protections for women, I will support the legislation as a whole.

I am pleased that a compromise has been reached with respect to provisions concerning the Arline decision and its ramifications. I would object to any effort to add an amendment to this bill which would overturn the Su-

preme Court's decision in the Arline case. The Arline decision, handed down on March 3, 1987, by a 7-to-2 margin, protects the rights of handicapped persons. It holds that, under section 504 of the Rehabilitation Act, a person with a contagious disease like tuberculosis is considered a handicapped person.

The Supreme Court concluded that all handicapped persons, including those with contagious diseases, have a constitutional right to go to court and have a fair hearing. The Court did not state that all such persons are automatically entitled to a job. Only those persons who do not pose a health or safety risk would be so entitled. There is nothing in Arline which threatens public health or safety. The decision simply protects the constitutional rights of handicapped persons, and it should be respected by the Senate.

I am also pleased that the Senate has soundly rejected an attempt to limit the access of handicapped persons to small businesses. I am strongly opposed to any amendment which would limit the applicability of the law regarding access for the handicapped to small businesses. As chairman of the Subcommittee on Minority and Urban Small Business, I am sensitive to the needs of small businessmen. But I also feel strongly that handicapped persons must have rights equal to those of all others in our society. To close off our Nation's small businesses to handicapped citizens would be a grave disservice not only to the handicapped, but to small business as well.

President John F. Kennedy said:

> Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial discrimination.

That is what this legislation is designed to ensure. The four areas of law covered by this bill are laws which were written to assure that Federal funds would always go to prevent discrimination, not to promote it.

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance. Title IX of the Education Amendments of 1972 bans sex discrimination in educational institutions and programs that benefit from Federal funds. Section 504 of the Rehabilitation Act of 1973 protects disabled persons from discrimination by all recipients of Federal funding. And the Age Discrimination Act of 1975 forbids discrimination on the basis of age by any agency or institution which receives Federal aid.

These are laws for which many people have worked and struggled. Some have even given their lives in the movement for civil rights in this country. And over the past three decades, since the Supreme Court's landmark decision in Brown versus Board of Education, this Nation has made great progress toward the goal of equal justice for all.

But that progress has been seriously threatened by the Court's regressive decision in the Grove City case. As a result of the Reagan administration's broad interpretation of the ruling in Grove City, the impact of the ruling has been extended to reach corporations, local governments, hospitals, airports, and many other facilities which receive Federal funds. Ed Meese, William Bradford Reynolds and company have extended the Grove City ruling far beyond the educational institutions to which the actual holding applied. While the Court's ruling in Grove City was damaging enough, the Reagan administration has made it much worse.

As a result of the Reagan-Meese-Reynolds interpretation of Grove City, Federal civil rights enforcement has been drastically reduced. At each step in the enforcement process, major barriers have been imposed by this administration. Audits and compliance reviews of institutions receiving Federal funds have been drastically curtailed. Investigation of civil rights complaints have been put on hold, sometimes for months or years. Compliance plans to end discrimination, even those which were already in place, have been revoked. Administrative law judges are refusing to hear cases involving discrimination in federally funded institutions, and Federal judges are throwing many private law-suits out of court which would vindicate civil rights.

This is not just a matter of abstract legalisms. It means that, if this decision is not reversed, there would be no Federal enforcement mechanism and no adequate legal recourse for many injustices. For example, as a result of the Grove City decision, an elderly couple may be denied immunization by a city clinic which decides to reserve a vaccine for the working-age population. It means that an employee with outstanding evaluations may suddenly be fired when his employer learns that he has epilepsy, or other diseases. It means that a high school girl may be put on a waiting list for a science class until all the boys who want to enroll have had a chance to do so. And it means that a public school may decide to hold separate dances for black students and white students.

Incidents like these should be only memories of a distant past in America. But unfortunately, they are all too real. They can happen even now, in 1988, in cities and towns across the United States. And sadly, they can happen with the protection and blessing of the Reagan Justice Department.

That is why we need to pass the Civil Rights Restoration Act, and pass it this year. Too many people have struggled too long, and sacrificed too much, for us to turn our back on civil rights now. Martin Luther King Jr. said, in a letter from the Birmingham jail, that "injustice anywhere is a threat to justice everywhere." Let us once again make American justice a model for all the world. Let us reaffirm our national commitment to civil rights in 1988.

Mr. CONRAD. Mr. President, I rise today in strong support of the Civil Rights Restoration Act. This legislation is urgently needed to clarify the intent of our civil rights laws. The Civil Rights Restoration Act will ensure that institutions receiving Federal funds will not be allowed to discriminate against women, minorities, the disabled or the elderly.

Since the Supreme Court decision in Grove City College versus Bell, the ability of victims of discrimination in federally funded institutions to protest discriminatory practices has been greatly diminished. For example, female students could be denied the use of school facilities for a women's basketball program, if the athletic program of the school does not directly receive Federal funds even though other school activities and education programs do. It is simply unfair to the women, minorities, elderly and disabled people that pay Federal taxes to allow Federal funds to subsidize discrimination.

I think this bill accomplishes its purpose. Under this legislation, victims of discrimination will have a means of challenging unfair practices within institutions that receive Federal aid. I strongly support this effort to strengthen enforcement of our anti-discrimination laws by clarifying the Federal Government's power to cutoff funds.

At the same time, I feel that Congress cannot enact legislation that could be interpreted as forcing federally funded institutions to support abortion against their religious or moral objections. To guard against this possibility, I supported the Danforth amendment. I believe the clarification of congressional intent on this issue is too important to be left to a later date.

The Civil Rights Restoration Act is the most important piece of civil rights legislation to come before the Senate in this decade; and I am proud to have this opportunity to voice my strong support for the rights of women, minorities, the elderly, and the disabled to participate freely in all arenas of American life. In this act, Congress assures that, at the very least, women, minorities, the elderly and the disabled are not denied the chance to participate in programs and activities which receive Federal funds.

Mr. DURENBERGER. Mr. President, this is indeed an important moment for millions of Americans. For 4 years, the four landmark civil rights

statutes have operated with a judicial tourniquet, the Grove City versus Bell decision of the Supreme Court. Today we make a major step to remove that constraint, and restore our national commitment to the equality and dignity of each of our citizens.

As an original cosponsor of this legislation in the 98th, 99th and 100th Congresses, I can say that this has been a long time coming. I salute the perseverance of my colleagues on the Labor Committee, Mr. KENNEDY and Mr. WEICKER, Mr. PACKWOOD, and many others, who fought this fight to the finish.

I am hopeful that the Senate action on this bill, while controversial to many, will speed this bill through the House of Representatives and to the President's desk. It is a bill that deserves to be signed into law, as the strong vote on final passage indicates.

"Simple justice," President Kennedy said, "requires that public funds * * * not be spent in any fashion which encourages, entrenches, subsidizes or results in racial discrimination." It has not been simple, but justice has been done today.

Mr. MOYNIHAN. Mr. President, I rise in support of S. 557, the Civil Rights Restoration Act. I am pleased to be an original sponsor of this much needed and long overdue legislation. This is the third Congress in which this vital measure has been introduced. Certainly, this is a bill whose time has come.

The operative word in this Act is restoration. Unfortunately, we are fighting to restore lost ground, rather than pursuing new legislative initiatives. Our purpose is to restore the protection of the rights of individuals which existed prior to the Court's 1984 decision in Grove City versus Bell. At this time, the intent is not to expand but only to restore. It is my hope that subsequent interpretations of this act will honor that purpose.

In Grove City, the Court held that the prohibition on sex discrimination under title IX of the Education Amendments Act of 1972 applied only to the particular education program or activity receiving Federal funds, rather than to the entire institution. While Grove City on its face only dealt with title IX of the education amendments which bars sex discrimination in education programs, the case had a far broader impact—diminishing the protections against discrimination provided by the Civil Rights Act of 1965, the Education Amendments of 1972, the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

To fully understand the impact of this, we must turn to history—the history of the struggle for equal rights under the law. To do so, one must look to the period immediately after the Civil War, when the 13th, 14th, and 15th amendments to the Constitution were enacted. The 13th amendment outlawed slavery in 1865, the 14th, enacted in 1868, sought to guarantee blacks full citizenship in this country, and the 15th, enacted in 1870, sought to guarantee that the right to vote would not be denied under any circumstances. But history shows that it took another century before the 14th and 15th amendments could be said to have truly guaranteed those rights to blacks.

The first obstacles were of course, the infamous "Jim Crow" laws. Although it is difficult to pinpoint the first of these State laws forbidding blacks and whites from using the same public facilities—trains, schools and particularly interracial marriage—from 1870 to 1885, most, if not all, of the rights the 14th and 15th amendments sought to protect were denied for blacks—completely and seemingly irrevocably.

In 1896, the crushing blow was dealt to equal rights at the Federal level: the Supreme Court formally upheld "Jim Crow" laws in its decision, Plessy versus Ferguson. This decision held that "separate but equal" did not violate the fundamental guarantees of the Constitution. But in fact, both "Jim Crow" and Plessy versus Ferguson did violate the Constitution, as the Supreme Court ruled 58 years later, 58 years too late.

The Brown decision, which effectively reversed the Plessy decision, marked the beginning of both judicial and legislative action to guarantee the protection of civil rights. In 1963, President Kennedy sent the Civil Rights Act to Congress and in doing so said:

> Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination. Direct discrimination by Federal, state or local governments is prohibited by the Constitution. But indirect discrimination, through the use of Federal funds, is just as invidious * * *.

Title VI of the Civil Rights Act attacked this indirect discrimination by prohibiting discrimination based on race, color or national origin in a "program or activity" that receives Federal aid. The Education Amendments of 1972 prohibited sex discrimination in educational programs or activities receiving Federal aid, the Rehabilitation Act of 1973 did the same for handicapped individuals and the Age Discrimination Act of 1975 did the same for the elderly.

During debate of these measures, a number of Members of Congress stated their belief that protection from discrimination should indeed be comprehensive. In the words of former Senator Birch Bayh, "Nothing else would have made any sense if our goal was meaningful coverage and effective enforcement."

Clearly, we have a record of congressional intent. The question is what recourse belongs to Congress and, indeed, many citizens of this Nation in the face of a Supreme Court decision which contradicts the intent of Congress and to which many of us would not choose to consent. In a speech at Tulane University in October of last year, Attorney General Meese addressed this very dilemma. He quoted President Abraham Lincoln on the impact of the Dred Scott decision:

> We nevertheless do oppose [Dred Scott] . . . as a political rule which shall be binding on the voter, to vote for nobody who thinks it wrong, which shall be binding on the members of Congress or the President to favor no measure that does not actually concur with the principles of that decision.

Attorney General Meese went on to say that "the constitutional interpretation is not the business of the Court only, but also, and properly, the business of all branches of Government.

Agreed. Yet, this power can be abused. Reacting to the Supreme Court decision in Engel versus Vitale which forbade school prayer, the Senate tried two times in 1979 to deny the Supreme Court appellate jurisdiction in such cases. Although they did not ultimately succeed, this was clearly an abuse of legislative power in the face of the prohibition of State encouraged "establishment of religion" written in the Constitution. Still, the legislature is surely within its constitutional bounds to try to remedy a decision rendered by the Court to which it does not consent. The legislation we consider today does exactly that.

But is there evidence that Grove City has indeed diminished the enforcement of civil rights? Yes; for example, the Department of Education reports that enforcement actions brought by its Office for Civil Rights have decreased considerably. As of September 1986, 674 complaints filed with the Department of Education have been closed or scaled back because of this decision. Another 88 compliance reviews have been dropped and another 72 have been narrowed. Similar findings have been reported in all of the offices responsible for enforcement of our civil rights statutes. In addition, many court cases have been dismissed for lack of jurisdiction when Federal funds cannot be traced to the specific program where the alleged discrimination occurred. The deterrent effect on potential complainants cannot be measured, but undoubtedly grows as more time passes without rectifying this shameful state of affairs.

Mr. President, I have no doubt that the Congress in crafting these civil rights laws intended an expansive interpretation. We need only look to the words of former Senator Hubert Humphrey during debates on the 1964 Civil Rights Act, the model of subsequent antidiscrimination laws, that "the pur-

pose of title VI is to make sure the funds of the United States are not used to support racial discrimination." Unless Grove City is not overturned, that goal will not be realized.

The Civil Rights Restoration Act is simple and straightforward. The act would amend each of the four civil rights laws by defining the phrase "program or activity" to mean that discrimination is prohibited throughout entire agencies or institutions if any part therein receives Federal assistance.

Mr. President, too much critical time has already been wasted. Over the past 4 years, our civil rights laws have been eroded. We have before us the opportunity to reverse this trend and return to full enforcement of our civil rights laws to protect the rights of all citizens. It is imperative that we act now. I urge my colleagues to vote for this crucial legislation.

Mr. HOLLINGS. Mr. President, I have been a cosponsor of legislation to overturn the Grove City decision since it was handed down by the Supreme Court because I am opposed to any discrimination, and federally subsidized discrimination is the worst situation because it makes us all a party to this travesty. In the 1984 case of Grove City College versus Bell, the Supreme Court said that Congress intended to allow an educational institution to discriminate on the basis of sex in any program which did not receive Federal aid directly. For example, if the English department at a university received Federal funds, it could not discriminate on the basis of sex. The business school, however, assuming it did not receive direct Federal funding, could refuse to allow women to participate in any of their programs. As a Member of the Congress that passed title IX of the Education Amendments of 1972, let me assure you that Congress intended nothing of the sort; what was intended was that artificial barriers like sex discrimination be removed so that men and women would have the chance to go as far as their ability and drive could carry them.

Mr. President, a lot has been said about the evil that this bill seeks to eradicate, and by and large, the Senate is in agreement about what needs to be done to eliminate federally subsidized discrimination. Unfortunately, a lot of falsehoods have also been spread about this bill. Let me set the record straight. This bill merely returns the law to what it was before the Grove City decision was handed down. There are no provisions which will allow the Federal big brother in the backdoor where Federal funds are not accepted.

I support this legislation because I believe that everyone should have a fair shot, and this bill ensures that where the Federal Government is involved, they will get that fair shot.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment, as amended, was agreed to.

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

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I will be happy to yield in 1 minute, but I need to make some final remarks before the vote.

Mr. BYRD. If the Senator will yield and if the Senator from Nebraska will allow me, all Senators need to know what time the vote will occur. Can we set a time?

Mr. HATCH. I think we can set it right at 6, if you would like. I will try to finish before then.

Mr. BYRD. I ask unanimous consent that a vote on final passage occur at 6 o'clock p.m. today and that paragraph IV of the Standing Rules be waived.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. BYRD. I thank all Senators.

The PRESIDING OFFICER. The Senator from Utah retains the floor. Does the Senator from Utah yield the floor?

Mr. HATCH. I yield for a minute to the Senator from Nebraska.

Mr. EXON. Mr. President, the State motto of Nebraska is "Equality Before the Law." That principle is deeply engrained in the aspirations of that great State and our great Nation.

I have been a consistent supporter of the Civil Rights Restoration Act because it embodies the spirit of the words of my State's motto. The principle of this legislation is simple. Institutions which chose to accept Federal funds also accept the responsibility of not discriminating against individuals on the basis of sex, race, age, religion, or creed.

Congress passed the Education Amendments Act of 1972 to prohibit educational institutions receiving Federal funds from employing sex-based discriminatory practices. Since its enactment, Democratic and Republican administrations, conservatives and liberals alike interpreted this law and three other civil rights laws with similar language to apply broadly to entire institutions receiving Federal funds.

In 1984, the Supreme Court narrowly interpreted title IX in the Grove City College case. The Court ruled that an institution, receiving Federal support in the form of student aid, need only meet title IX's antidiscrimination requirements in its student aid office. Under this restrictive ruling, institutions receiving Federal funds are now free to discriminate in other programs not specifically receiving Federal aid.

This unfortunate decision overturns many years of practice and jeopardizes the effectiveness of other civil rights statutes. The Civil Rights Act of 1964, barring racial, religious, and ethnic discrimination; the Age Discrimination Act of 1972; and the Rehabilitation Act of 1974, which prohibits discrimination against the handicapped, all have language similar to that interpreted by the Supreme Court in the Grove City College case.

I am of the firm belief that Federal funds should not be used to encourage, facilitate or promote discrimination.

If enacted, this legislation is intended to only restore the status of the law prior to the Grove City College case. The legislation is not intended to expand the application of Federal law into new areas.

This is a narrowly drafted bill with careful consideration given to accommodate the special needs of religious institutions. In this regard, title IX and the Civil Rights Restoration Act contains a time tested system of waivers. To date, no religious institution which has applied for a waiver has been denied a waiver. Over 140 institutions have been granted religious waivers under title IX.

Early drafts of the Civil Rights Restoration Act did merit criticism for instances of imprecise language, but the bill before the Senate today is tightly drawn and has adequately addressed the concerns of farmers and small businesses.

I realize special interest groups have kicked up a lot of dust with regard to this legislation. As in the past many fundraising letters have gone out with alarmist language. Given the fact that the Reagan administration applauded the Grove City case, it is no surprise that some zealots in the Department of Justice have participated in this organized cry of wolf. It is unfortunate that some in this body will panic and succumb to those cries.

Those of us who have been in the public life long enough recognize many of the organized opponents of the Civil Rights Restoration Act as the same groups who have opposed civil rights and equal opportunity for decades.

The United States is a land of opportunity. Our Federal Government should not condone, facilitate, or encourage discrimination. If an institution should choose to engage in discrimination, it should not receive the financial assistance of the Federal Government.

Our Nation is a better place since we have broken down the barriers of discrimination. The Civil Rights Restoration Act returns the law to its status prior to the Grove City court decision. Once again, I want to emphasize that

the record is replete with assurances that this legislation will not expand into new areas of regulation.

As a cosponsor of the Danforth amendment to clarify concerns about abortion, I am pleased that the Senate did add language to address concerns about abortion. This is a positive step. I am hopeful that the final version of this legislation will include language acceptable to all sides of this controversial and emotional issue.

Mr. President, I have supported the reversal of the Grove City decision for a number of years and am pleased to join with my colleagues to support this much needed legislation.

Thank you, Mr. President.

Mr. HATCH. Mr. President, I think the debate over the last few days has helped make clear the serious problems involved in S. 557. I think we have established quite clearly that S. 557 is not a simple piece of legislation that restores the law to what it was the day before the Supreme Court issued its decision in the Grove City case.

We have established already that the law the day before the Grove City decision was far from settled. There was a split in the circuits and when the Supreme Court decided that title IX should be applied on a program specific basis, it was siding with the majority, that's right, the majority of the lower court decisions.

So, does S. 557 return the law to what it was? Of course not. S. 557 changes the law to the interpretation the proponents seek, the very interpretation rejected by the Supreme Court in the Grove City decision.

S. 557 authorizes a dramatic, radical increase in the jurisdiction of the Federal Government.

Moreover, it trammels the first amendment's guarantee of freedom of religion by forcing churches and synagogues to bow under the heavy hand of Federal regulations just because they run a social service program in their basement which receives but $1 of Federal money. It tells religious schools and universities that if one of their religious beliefs runs afoul of a single Federal regulation, then the religious belief must always be compromised.

The proponents have never made clear why we must assault religious beliefs in order to have an effective civil rights policy.

We do not have to. The Senate has chosen to address one of the key problems with this legislation, the abortion issue, by adopting the Danforth amendment. This is an excellent first step, but I regret it is not enough.

I hoped we would be able to vote out of the Senate a Grove City bill I could support. We got part of the way there, but we failed to address the problems posed for religious institutions by S. 557. Without language that will guarantee religious liberty, I cannot support S. 557.

If my concerns with this bill were of a different nature, perhaps the problems could have been worked out. But one can't chip away constitutional rights, constitutional protections. Once the Federal Government is allowed to regulate churches, once it is allowed to dominate synagogues, once Federal bureaucrats can control religious schools and universities, we no longer have freedom of religion. Consequently, I cannot support S. 557, a position I regret.

For the record, S. 557 is a different bill than its predecessors. The proponents did change the language to address one or two glaring mistakes, but they still have failed to resolve the critical issue for me—why can't we protect all civil rights, including religious rights. We must not be forced to choose between the two.

Mr. President, I think this is important before we finally vote. This should only take a minute or so more. I would announce to all Senators I think I would be finished in just a minute or two.

I should read a letter from the President with regard to this bill.

DEAR ORRIN: I greatly appreciate your efforts on behalf of the Administration's legislation to overturn the Grove City College decision. This legislation that you are offering as an alternative to S. 557, the so-called "Civil Rights Restoration Act of 1987," accomplishes the stated intention of proponents of S. 557. At the same time, it avoids the vastly overreaching scope of S. 557.

As you know, our proposal would provide institution-wide coverage for educational institutions receiving Federal aid, under all four cross-cutting civil rights statutes at issue as a result of the Grove City College decision. In all other areas this measure retains the scope of coverage as it existed without regard to the Supreme Court's decisions in the Grove City College and North Haven Board of Education v. Bell cases. Moreover, our proposal assures that Title IX is abortion-neutral and adequately protects the religious tenets of institutions under Title IX.

A measure such as S. 557 is unacceptable to me. It dramatically expands the scope of Federal jurisdiction over state and local governments and the private sector, from churches and synagogues to farmers, grocery stores, and businesses of all sizes. Additionally, S. 557 inadequately protects religious tenets under Title IX and, even as amended by the Weicker Amendment, compels covered institutions, such as hospitals, to pay for or perform abortions as a condition of the receipt of Federal aid.

We can address legitimate concerns about the Grove City College decision with the simple override of that decision as reflected in the measure you have introduced in the Senate.

Sincerely,

RONALD REAGAN.

Mr. President, I have to admit that my amendment was defeated and I have been informed in chatting with the White House that when he says in his letter, "measures such as S. 557 are unacceptable to me," that that means that this measure, as it presently exists, even with the Danforth amendment on it, will be vetoed if it comes finally through both Houses of Congress. I think everybody should understand that. I hope our colleagues will vote against this bill because of the overreaching nature of this bill.

Mr. HATCH. Mr. President, I am prepared to vote.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, there will be no session tomorrow. The Senate will have concluded its work on this bill. I want to compliment all of those who were responsible for the good work that has been done; those who managed the bill, Mr. KENNEDY and Mr. HATCH; those who had amendments, Mr. HARKIN, Mr. HUMPHREY, Mr. METZENBAUM, and others.

There will be no votes, of course, after this vote today, but there will be votes on Monday.

I do not know when the votes will occur on the conventions. Mr. HATCH is managing the conventions on his side of the aisle. Mr. MOYNIHAN is handling the conventions on this side of the aisle. So I will see in a little while what time the managers can dispose of the handling of those conventions.

Senators should not feel that there will not necessarily be votes prior to the votes on the convention. I just want to make clear on the RECORD that we are coming in at 10 o'clock on Monday and, as we have already agreed, there will be 5 full days of work for 3 weeks and then 1 week to work back in our States and in committees or in our offices.

So Senators should expect votes at any time beginning with the time the Senate comes in at 10 o'clock on Monday.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I will just take a few moments.

Mr. President, today the Senate approves a major civil rights bill which restores protections from discrimination to millions of men and women, older Americans and disabled Americans. The Civil Rights Restoration Act closes a major loophole in our civil rights laws.

The bill eliminates the extremely costly and burdensome requirement that funds be traced to a particular discriminatory program before a claim of discrimination can be made, and reaffirms the broad coverage of our civil rights laws which existed prior to the Grove City decision.

Mr. President, the acceptance of the Danforth amendment was unfortunate. I urge my colleagues in the House of Representatives to return

this bill to one that simply affects the scope of coverage of our civil rights laws and does not make substantive amendments to any of those laws.

I commend Senator WEICKER, the principal Republican cosponsor, for his tireless efforts to bring this bill to completion.

I commend Senator HATCH for his efforts.

Mr. President, I wish to express my appreciation to the members of my staff and the staff of the other Senators. Though I will mention their names after we complete the vote, it does not lessen my appreciation to them for the outstanding work they have done.

Mr. HATCH. Mr. President, I would like to compliment the distinguished Senator from Massachusetts for his leadership on the floor, along with the Senator from Connecticut and others, Senators DOMENICI and THURMOND.

I thank the distinguished majority leader for his cooperation and that of the distinguished Republican leader. Above all, I would like to thank everybody on this side. It has been a hard-fought issue. There are two sides to it. I think everybody has acted with a good deal of fairness throughout the process. In particular I thank Senator DANFORTH for his leadership on the Danforth amendment.

With that, Mr. President, we will add anything further that we have for the record.

Mr. KENNEDY. Mr. President, as I understand, the last amendment was a Harkin-Humphrey amendment. Am I correct?

The PRESIDING OFFICER. Yes.

Mr. EXON. Mr. President, could I inquire of the leader? There was to be a colloquy between Senator KENNEDY and my colleague from Nebraska with regard to farmers' exemptions. Was that included?

Mr. KENNEDY. That has been completed.

Mr. BYRD. Mr. President, I ask unanimous consent that the vote on final passage may occur beginning now.

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

The bill having been read the third time, the question is, Shall it pass? The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee [Mr. GORE], the Senator from Hawaii [Mr. INOUYE], and the Senator from Illinois [Mr. SIMON] are necessarily absent.

I further announce that the Senator from Kentucky [Mr. FORD] is absent on official business.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of illness.

I further announce that, if present and voting, the Senator from Delaware [Mr. BIDEN], the Senator from Florida [Mr. CHILES], and the Senator from Tennessee [Mr. GORE] would each vote "yea."

Mr. SIMPSON. I announce that the Senator from Kansas [Mr. DOLE], the Senator from Idaho [Mr. MCCLURE], and the Senator from New Hampshire [Mr. RUDMAN] are necessarily absent.

I also announce that the Senator from Alaska [Mr. MURKOWSKI] and the Senator from Wyoming [Mr. WALLOP] are absent on official business.

I further announce that, if present and voting, the Senator from Alaska [Mr. MURKOWSKI] would vote "yea."

On this vote, the Senator from New Hampshire [Mr. RUDMAN] is paired with the Senator from Wyoming [Mr. WALLOP].

If present and voting, the Senator from New Hampshire would vote "yea" and the Senator from Wyoming would vote "nay."

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

The result was announced—yeas 75, nays 14, as follows:

[Rollcall Vote No. 12 Leg.]

YEAS—75

Adams	Evans	Moynihan
Baucus	Exon	Nunn
Bentsen	Fowler	Packwood
Bingaman	Glenn	Pell
Bond	Graham	Pressler
Boren	Grassley	Proxmire
Boschwitz	Harkin	Pryor
Bradley	Hatfield	Reid
Breaux	Heflin	Riegle
Bumpers	Heinz	Rockefeller
Burdick	Hollings	Roth
Byrd	Johnston	Sanford
Chafee	Kassebaum	Sarbanes
Cochran	Kasten	Sasser
Cohen	Kennedy	Shelby
Conrad	Kerry	Simpson
Cranston	Lautenberg	Specter
D'Amato	Leahy	Stafford
Danforth	Levin	Stennis
Daschle	Matsunaga	Stevens
DeConcini	McCain	Trible
Dixon	Melcher	Warner
Dodd	Metzenbaum	Weicker
Domenici	Mikulski	Wilson
Durenberger	Mitchell	Wirth

NAYS—14

Armstrong	Helms	Nickles
Garn	Humphrey	Quayle
Gramm	Karnes	Symms
Hatch	Lugar	Thurmond
Hecht	McConnell	

NOT VOTING—11

Biden	Gore	Rudman
Chiles	Inouye	Simon
Dole	McClure	Wallop
Ford	Murkowski	

So the bill (S. 557), as amended, was passed, as follows:

S. 557

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Civil Rights Restoration Act of 1987".

FINDINGS OF CONGRESS

SEC. 2. The Congress finds that—

(1) certain aspects of recent decisions and opinions of the Supreme Court have unduly narrowed or cast doubt upon the broad application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964; and

(2) legislative action is necessary to restore the prior consistent and long-standing executive branch interpretation and broad, institution-wide application of those laws as previously administered.

EDUCATION AMENDMENTS AMENDMENT

SEC. 3. (a) Title IX of the Education Amendments of 1972 is amended by adding at the end the following new sections:

"INTERPRETATION OF 'PROGRAM OR ACTIVITY'

"SEC. 908. For the purposes of this title, the term 'program or activity' and 'program' mean all of the operations of—

"(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

"(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

"(2)(A) a college, university, or other post-secondary institution, or a public system of higher education; or

"(B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system;

"(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

"(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

"(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

"(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

"(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance, except that such term does not include any operation of an entity which is controlled by a religious organization if the application of section 901 to such operation would not be consistent with the religious tenets of such organization.".

(b) Notwithstanding any provision of this Act or any amendment adopted thereto:

"NEUTRALITY WITH RESPECT TO ABORTION

"SEC. 909. Nothing in this title shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion.".

REHABILITATION ACT AMENDMENT

SEC. 4. Section 504 of the Rehabilitation Act of 1973 is amended—

(1) by inserting "(a)" after "SEC. 504."; and

(2) by adding at the end the following new subsections:

"(b) For the purposes of this section, the term 'program or activity' means all of the operations of—

"(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

"(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

"(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

"(B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system;

"(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

"(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

"(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

"(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

"(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

"(c) Small providers are not required by subsection (a) to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on the date of the enactment of this subsection.".

AGE DISCRIMINATION ACT AMENDMENT

SEC. 5. Section 309 of the Age Discrimination Act of 1975 is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting "; and" in lieu thereof; and

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

"(4) the term 'program or activity' means all of the operations of—

"(A)(i) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

"(ii) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

"(B)(i) a college, university, or other postsecondary institution, or a public system of higher education; or

"(ii) a local educational agency (as defined in section 198(a)(10), of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system;

"(C)(i) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

"(I) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

"(II) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

"(ii) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

"(D) any other entity which is established by two or more of the entities described in subparagraph (A), (B), or (C);

any part of which is extended Federal financial assistance.".

CIVIL RIGHTS ACT AMENDMENT

SEC. 6. Title VI of the Civil Rights Act of 1964 is amended by adding at the end the following new section:

"SEC. 606. For the purposes of this title, the term 'program or activity' and the term 'program' mean all of the operations of—

"(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

"(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

"(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

"(B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system;

"(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

"(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

"(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

"(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

"(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.".

RULE OF CONSTRUCTION

SEC. 7. Nothing in the amendments made by this Act shall be construed to extend the application of the Acts so amended to ultimate beneficiaries of Federal financial assistance excluded from coverage before the enactment of this Act.

ABORTION NEUTRALITY

SEC. 18. No provision of this Act or any amendment made by this Act shall be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal Funds to perform or pay for an abortion.

CLARIFICATION OF INDIVIDUALS WITH HANDICAPS IN THE EMPLOYMENT CONTEXT

SEC. 9. (a) Section 7(8) of the Rehabilitation Act of 1973 is amended by adding after subparagraph (B) the following:

"(C) For the purpose of sections 503 and 504, as such sections relate to employment, such term does not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job.".

Mr. KENNEDY. I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Could we have order, Mr. President?

The PRESIDING OFFICER. The Senate will be in order. Will Senators please retire to the Cloakrooms with their conversations? The Senate will be in order.

The Senator from Massachusetts.

COMMENDATIONS

Mr. KENNEDY. Mr. President, I want to just take a moment, but it is a moment important to me and I would think to the Senate and to all of those who have been working on this issue for a very considerable period of time, actually since April 1984.

I thank the majority leader, Senator BYRD, for his leadership on this critical issue, and for his willingness to schedule this legislation as the first order of business of this session. This legislation has been long overdue. The leader is very familiar with the complexities and the challenges that the issue presented, and I want to express my own personal appreciation, and I know I speak for the 58 cosponsors of this legislation in thanking him for his support. I thank the Republican leadership as well for their willingness to work with our leader in scheduling this measure. We know it takes the cooperation of both leaders. But I want to thank especially Senator BYRD and Senator CRANSTON, and Senator INOUYE, all of our leadership who have been a part of this effort.

I also again want to thank Senator WEICKER for his tireless efforts on this bill. We spent not only hours in the markup in committee, but we went through long evenings in the consideration of this bill, well into the night and I believe the early morning, before completing our final markup in the Labor and Human Resources Committee. And I want to thank the other Senators who worked on this measure,

Senator MIKULSKI who worked closely with us to clarify the important issues of coverage of religious institutions, Senator METZENBAUM, who is so important and involved in the floor debate but also was critical to our success in the committee; Senator HARKIN, who has provided strong leadership in dealing with section 504 and disability discrimination; Senator SIMON himself was active in the committee, and made the long trip back from Texas to be here at the critical times in the consideration of this measure.

On our other side, Senator STAFFORD's involvement in the whole range of education issues is well known to the Members of this body. He is really unsurpassed in terms of his knowledge and understanding of the implications of this measure as it applies to education, and he and Senator PELL have worked closely with us. Senator STAFFORD has been active in the floor debate. Senator MATSUNAGA was on the floor and active in our committee considerations, as were Senator ADAMS and Senator DODD.

All of their staffs were very much involved in our markups. These measures have been complicated. Words make very profound differences as we saw in the Supreme Court's decision on this measure.

So it really required extraordinary craftsmanship and all of the Members, both the majority as well as the minority, were very much involved.

We have worked many months in the Human Resources Committee on S. 557 and the Senate has spent 3 days on its passage. But our real concern goes out to the women, the minorities, the handicapped, the elderly, who have waited 4 long years for the Senate to speak on this issue.

I want to thank particularly the members of my staff, Carolyn Osolinik, who has been working on this issue for some 4 years. Those of us who go back over the Senate consideration remember not only the debates but the many hours off the floor that we spent with Brad Reynolds and other members of the Justice Department when we were attempting to find some common ground. We were unable to do so a few years ago. But her efforts have been invaluable.

Michael Epstein, Michael Iskowitz, Mona Sarfaty have been invaluable to us. The general counsel and committee staff director, Tom Rollins, was of great assistance and help all through the consideration and all through the debate.

I want to express my appreciation also to the staff members of our colleagues. I know they would want me to remember them. Terry Muilenberg, who has worked for Senator WEICKER; Al Cacozza, and Linda Greene and Eddie Correia, for Senator METZENBAUM; Bob Silverstein and Kay Casstevens for Senator HARKIN, Diane Thompson for Senator MIKULSKI, William Blakey for Senator SIMON, Ellen Nolan for Senator STAFFORD, Kathy Shine and Diane Pollack for Senator PACKWOOD, Suzanne Matinez for Senator CRANSTON.

I also pay tribute to Senator PACKWOOD for all his efforts. We worked closely together on the previous Civil Rights Restoration Act. He was the prime cosponsor at that time and spent a great deal of time on this bill as well as in floor debate.

There are far too many groups and individuals in the Leadership Conference on Civil Rights and other organizations who worked on this bill to thank them individually. But I thank them all for their hours and years of work to reverse Grove City and reaffirm our commitment to civil rights.

This vote of 75 to 14 is for all of them and for all the others whose lives will be improved as a result of this action.

Mr. BYRD. Mr. President, I thank the distinguished manager of the bill, Mr. KENNEDY, for his kind remarks concerning myself and concerning the leadership on the Republican side of the aisle. I have already expressed my appreciation for the good work that has been done by Mr. KENNEDY, Mr. HATCH, and other Senators.

I want to express appreciation to the Republican leadership for the cooperation that was given in allowing this measure to be called up and for the cooperation that was given not only by the Republican leadership but also by Mr. HELMS, Mr. HATCH, Mr. GRAMM, and others on the other side of the aisle. There were others who had several amendments, and most of those amendments were not called up.

I express appreciation to the minority, because it meant a great deal in our being able to complete action on this measure today.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that there be a period for morning business, that Senators may speak therein for not to exceed 5 minutes each, and that the period for morning business not extend beyond 20 minutes.

The PRESIDING OFFICER. Is there objection?

Several Senators addressed the Chair.

Mr. BYRD. Mr. President, I do not lose the floor by virtue of making the unanimous consent request.

The PRESIDING OFFICER. The Senator is correct.

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

Mr. BYRD. Mr. President, I will not impose on the time over the Senators. I know that other Senators wish to speak.

THE NARCO-TRAFFICKERS WAR ON SOCIETY

Mr. DECONCINI. Mr. President, as a former prosecutor in the mid-1970's in Arizona, I had first-hand experience with the violent and ruthless drug interdiction cases and trying to prosecute them and threats on the lives of deputies as well as my own.

Today, it brings me great sorrow to report the cold-blooded murder of another prosecutor, that being the prosecutor in Colombia.

It is really a sad day when a government is shaken as that government is by the drug lords who have declared war on the civilian government and people.

I am hopeful that governments around the world will take notice of Monday's murder of Colombian Attorney General Carlos Mauro Hoyos, and will better understand the growing power and brutality of illegal drug traffickers. The bullet ridden body of Attorney General Hoyos Jimenez was found in the city of Medellin hours after his car was ambushed by half a dozen armed men who kidnaped Hoyos after murdering two of his body guards.

There is a brutal attempt to intimidate a government and law enforcement, and I think it is very sad that this has happened. I hope that the people of Colombia will take heed that we recognize the severity of the problem they face, that fair government officials will not relent and that we as a nation here will stand with such leadership that wants to take on these types of people.

The attorney general was in Medellin to investigate several government officials and judges who were involved in the release from prison last month of one of the largest drug traffickers in the world, Jorge Luis Ochoa Vasquez. The United States was seeking extradition of Ochoa for drug-related charges when he reportedly bribed his way out of prison. I have been told narco-traffickers paid about $3.5 million to get Ochoa out of prison, and were ready to spend as much as $20 million. After Ochoa's release, the Colombians announced that arrest warrants had been issued for five major traffickers, including Ochoa, and the head of the Medellin cocaine cartel, Pablo Escobar. On Sunday, however, the traffickers declared total war on Colombian officials who would attempt to extradite them to the United States. The individual who gave authorities the location of Attorney General Hoyos' body ended the call by saying "the war continues."

The citizens of Colombia can tell you firsthand about the war. The country has witnessed the murder of thousands of courageous public officials, law enforcement officers, and journalists who attempted to stand up

to the drug traffickers. It is reported that the Medellin cocaine cartel controls approximately 75 percent of the U.S. market—earning as much as a $6 billion a year. The enormous profits and resources accumulated from illegal drugs have made the drug traffickers in Colombia the largest capitalists and landowners. The former President of Colombia, Belisaro Betancur, has said, "We are before an organization stronger than the state."

Mr. President, the United States cannot ignore the traffickers' message of war. Last year after Colombia extradited drug kingpin Carlos Lehder to the United States, the Washington Post reported that intelligence intercepts in the possession of United States officials said that Colombian traffickers had made plans to dispatch two teams of assassins to murder United States officials.

Our good neighbor to the south—Mexico—which is now the No. 1 source of marijuana and heroin coming into the United States must also take notice. I have been told by law enforcement officers working on the southwest border that it is now common to intercept individuals smuggling drugs across the border that are armed with semiautomatic and automatic weapons. According to a September 1987 story in Tucson magazine, drug-related violence near our own southwest border is escalating at an astounding rate. That story cited a local newspaper in the border city of Nogales, Sonora, which has reported that 140 killings took place during the first 8 months of last year. Another reporter listed 29 murders for the month of May alone. If the Mexican Government does not get control of the drug production and transshippment organizations, the problems of Colombia could be their own.

I commend the Colombian Government officials, military personnel, police officers, and private citizens who are attempting to wage a war on drugs. They have suffered greatly, but if they give up the fight the traffickers and terrorists will not hesitate to take total control.

The drug traffickers are doing their best to increase the availability of drugs and so far have been very successful. I urge President Reagan to reaffirm his commitment to fighting drugs when he produces his fiscal year 1989 budget—and not abandon the fight as he did in the 1988 budget.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I thank the Chair and I thank my friend from that great State where he served with such great distinction as the attorney general. I listened with great interest to the comments that he has made and I wish to associate myself with those remarks.

It is a sad time indeed for the world when these things continue to happen.

RESPONSE OF SENATOR BYRD AND SPEAKER WRIGHT TO THE PRESIDENT'S STATE OF THE UNION

Mr. ROCKEFELLER. Mr. President, on last Monday evening, January 25, 1988, the President of the United States delivered to the Congress a message on the State of the Union. By tradition, the party not occupying the White House is afforded the priviledge to respond to the President's address.

It was with great pride that I watched, as did other West Virginians, the Democratic view of the State of the Union. Along with the Speaker of the House of Representatives, JIM WRIGHT, my distinguished and able senior colleague, the majority leader of the U.S. Senate, Senator ROBERT C. BYRD, stated their view of the State of the Union to America.

Mr. President, I commend the leader, and Speaker WRIGHT, for their fine remarks to the people of this country.

I ask unanimous consent that Senator BYRD's and Speaker WRIGHT's remarks be printed in the RECORD.

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

SENATE MAJORITY LEADER ROBERT C. BYRD—DEMOCRATIC VIEW OF THE STATE OF THE UNION

The state of the union has changed dramatically since my boyhood in the coal fields of West Virigina. I grew up in the Depression years—and came to Washington as Harry Truman was leaving office. I've seen America in distress. And I've seen us at our best—innovative, forceful, generous.

I've learned a thing or two about the greatness of America and what holds us together. I've learned how quickly adversity strikes—the stock market crash of '29, Pearl Harbor, the death of John Kennedy—and how our country struggled back each time to renewed vision and strength.

I've also learned that predictions of the future more often bear the glitter of hope than the tarnish of reality.

Tonight House Speaker Jim Wright and I will take a look at the state of the union from a different perspective. We will explore what government has done—and what it must do in the future. Our assessment of America will be tougher than the President's. But it's anchored to the same faith in our people—and the same hopes for the future.

I'm a Democrat whose politics were shaped in an era of hard times—from the small world of coal mines and company stores.

Back then my foster father earned two dollars a day as a miner. Our life was as spare as it was close-knit. As a small community we hung together—and endured. We had our disappointments and our sorrows.

There was no such thing as unemployment compensation, or social security. Our horizons were limited—and our choices few. I graduated as valedictorian of my high school and was lucky to get a job pumping gas at $50 a month.

But out of that grim time came a President and a government that lifted the spirit of America. Never before—or since—has this nation been galvanized by such force.

We came out of World War II with a new confidence—and a new promise. For the first time my people—working people—had some security against deep poverty. We had better working conditions in the mines. The elderly didn't have to turn to their children to take them in.

Looking back, we did the obvious. We rose to the crises of our time. Yet, for me, the images remain—and with them the truth that government is best measured by how well it responds to the peoples' needs.

Since then I have watched this nation—and its government—seek its way through a changing maze of economic and political circumstances—from Medicare to the Great Society. The anguish that was Vietnam. The arrogance that was Watergate. The promise that was Camp David.

Then dawned the Reagan years—and the profound experiment. If the Roosevelt and Truman presidencies were born of necessity, the presidency of Ronald Reagan was born of ideology—and a technicolor view of America and our people.

It opened with the promise to get government off our backs. It offered the mystical formula of "supply side" economics which claimed that a huge buildup of military spending and enormous tax cuts for corporations and the rich would lead to a balanced budget in three years. It was an Administration that sought to make us feel good with images of "morning in America."

It was a time when the President and his presidency became separated in our minds.

As a man, Ronald Reagan has withstood physical pain with grace. He has carried the nation's grief at times of loss. He has always been at ease with his beliefs. A man who can touch the nation's humor—and make us feel better than we sometimes should.

As President, his greatest victory has come at the negotiating table. The arms reduction treaty, though limited is a milestone on the road to a safer world.

But his political victories have not always been national triumphs.

The dark side of the Reagan years has only begun to loom. Instead of a balanced budget, he has presided over a doubling of the national debt in seven years. Our record budget and trade deficits—once just abstract numbers—have now forced the government to default on its most fundamental promises—like education and health. We have surrendered economic leadership in markets around the world.

Our nation has been sharply divided on the question of Central America. The secret arms-for-hostages deals stand in direct contradiction to our given word not to deal with terrorists. The cases of cronyism and abuses of power for personal gain continue to mount in Washington's courtrooms.

We've come to the end of an era. The "feel good" slogans have gone flat with time. We've learned that bravado is not leadership—that ideology is no substitute for common sense.

The time has finally come for us all to face the hard truths that once gave us our self-reliance and world leadership. Hard work—on the job and in the classroom. Pay as you go—no free lunches, no running away from the bills due. Helping those in need—but not those with greed.

It was right here on the Senate Floor that Congress worked with Franklin Roosevelt to help end the Depression—and to win a war.

It was right here that Harry Truman's request for the Marshall Plan was answered—where John Kennedy's space program became a reality—and Lyndon Johnson led the campaign for equal rights.

It is right here that government has had some of its finest moments. This is where we've faced crisis head on—where the institution rose with the nation—together.

We've done it before. And now we've got to do it again.

We've got to educate our children better than we do. We must have a system that not only launches the most gifted—but lifts the horizon for the least well off. More than the number of missiles and tanks, the number of well-educated children is a truer measure of our national strength—and our potential. Every moment we wait is a fraction of our future lost.

We've got to pay as we go. We can't go on borrowing—especially from foreigners. They're after short term gain for themselves—not a long term investment in America. We've got to depend on ourselves to work out a sensible balance between spending and income. The President has to work with Congress—not wait until three weeks after the fiscal year deadline and a stock market crash to sit down with us. The recent budget summit should have been called seven years ago. We've long understood that line-item vetos and balanced budget amendments are no substitute for national will. To palm off our debts to the next generation must not be an option for our own.

We've got to make America free from fear—the fear of a lifetime of savings wiped out by illness—or the dread of foreclosure on a mortgage—or the shame of having an able child cut off from college. Too many of our people are still slipping through the safety net—unknown and unprotected. We must reduce the incidence of killer diseases—like AIDS and cancer—by multiplying the nation's research. And we ought to demand safe passage—on our streets and in the air.

And we've got to sharpen our competitive edge. It's a shock to be told that America is no longer number one around the world—that our products are increasingly outsold—that our manufacturing jobs are shipped overseas. Regaining our leadership rank among nations presents our people with an enormous challenge. And government has a big role—not to subsidize industry, but to give American producers and exporters the best advantge we can. To improve our highways and our ports. To encourage productive investment.

The face of my hometown in West Virginia has changed a great deal since the Depression. The little house where I was raise is gone. A lot of the mines are closed. But we still hold to the old values born to this country long ago.

And we still remember well when government acted to give us the leadership and the hope and the tools to rebuild. We still marvel at what we've achieved when government has been both America's sail and her keel. When we have driven ahead—but stayed clear of the shoals. When we've been guided by common sense and simple trust and vision.

We've done it before. And now we've got to do it again.

As Speaker Jim Wright will explain, we've already made a strong start.

REMARKS OF SPEAKER JIM WRIGHT ON THE STATE OF THE UNION, JANUARY 25, 1988

We have indeed made a strong start, and I'll tell you a bit about it.

But first I want to say congratulations to President Reagan for having successfully negotiated the INF treaty with the Soviet Union. We pledge him our support in that endeavor.

Six months ago, President Reagan and I joined together in calling for a new peace plan for Central America. A few days later, the five Central American Presidents agreed to move that peace process forward. They are still actively pursuing it. Mr. President, so long as there is any measurable progress toward solving that conflict at the table, I think you and I should give peace a chance.

In national security and the pursuit of peace, there ought not to be Democrats and Republicans—just Americans.

Congress has supported those goals. We provided some $300 billion last year for our military defenses.

But we know that no democracy can be a first rate military power if it becomes a second rate economic power.

As important as our commitments abroad may be, our first obligation is to the American people—and to their future.

Today is the day America looks at itself in the mirror and asks how we are doing.

Consider the State of our Union with me as we reflect upon five major steps the 100th Congress is taking to build America's future.

House bill number 1, our first legislative act, was the clean water bill, to protect the one precious resource upon which all human life depends. Because nearly one out of every five public water systems are now contaminated by toxic wastes, we cannot delay the clean-up no longer.

Yet President Reagan vetoed this bill. He insisted that we cut back sharply on America's commitment to clean water and a safe environment. Fortunately, Congress overrode that veto.

House bill number 2 was the highway bill, to improve and upgrade the network of highways and bridges on which Americans depend.

Twenty percent of the bridges in this country are unsafe—thousands of them built more than 100 years ago.

President Reagan vetoed this highway bill also. He mistakenly called it a "budget buster." That was absolutely incorrect. This bill doesn't add a penny to the national debt. We pay for these highways with our gasoline taxes that make up the Highway Trust Fund, where billions of dollars lie idle. And so we overrode that veto as well.

House bill number 3 is the trade and jobs bill.

Mr. Reagan said a few days ago in Cleveland not to worry about the trade deficit—that it was a sign of strength. But just ask the local people who worked at Dalton Industries or at the General Motors Plant near Cleveland, both of which just closed. Those people just lost their jobs to the trade deficit—as millions of other Americans have done.

In spite of what the President says, the trade gap has risen sharply every year for the past seven years, and was higher last year than ever in our history. This has made America the number one debtor country in the world. That isn't a sign of strength!

Our bill does two things. It provides incentives for other countries to abandon unfair practices which discriminate against American goods—like deliberate red tape which keeps American import applications permanently "under study" and never acted upon, or like unloading a shipload of 200 American automobiles—just one car a day.

We simply require in this bill that other nations treat our American products on their markets just exactly as we treat their goods on our markets. No better and no worse.

The bill also strengthens our ability to compete. Tools and schools. It will improve our research and development, modernize America's aging industrial plants, and equip America's work force with the skills and knowledge we need—so that unemployed industrial workers aren't forced to settle for lower paying jobs.

We can't build a vibrant economy by just delivering pizzas to each other.

So while this Administration has crossed its fingers and hoped for the best, the Congress has acted. We'll send a bill to the President shortly, and we earnestly hope he signs it.

House bill number 4 is the housing bill. In the last few years the hope of home ownership has become a fading illusion for too many American families.

President Reagan asked that we abolish the Federal Housing Administration and increase the price of housing by charging hidden user fees. But we saved the FHA outlawed user fees, and protected home ownership, not just for an affluent few, but for Americans of average and modest means.

We also passed a farm credit bill to stop epidemic of family farm foreclosures.

And, for the growing number of men, women and children who have fallen victim to the sad new phenomenon of homelessness, our bill reflects our belief that there is no excuse for *any* American to be abandoned by his country to die of starvation or exposure to the weather.

I have always believed in an eleventh commandment—Thou shalt pass on to your children a better world than you received from your parents—and it is to them, American's children, that the great thrust of our legislative program is dedicated.

House bill number 5 is an education bill. Five years ago, the Administration's own commission produced a chilling report on the sagging quality of American education. The report was called "A Nation at Risk."

The President ignored the warning. In each year of his Presidency, he has called for major cuts in education. Last year he called for a 28% cut. This goes beyond foolhardy. In an age when our children will have to cope with semi-conductors, supercolliders and international competition, America will not survive unless they are better educated than we were. Education must be our first priority, so our bill increases our commitment to quality education for the first time in seven years.

And if it is disastrous to equip our young with inadequate learning, it is immoral to burden them with our financial debts. The policies of this administration have added more to the national debt in seven years than all its predecessors added in almost 200 years.

A great nation like ours should not be forced to borrow from foreigners to pay our bills, or to lose twenty-four cents from every one of your tax dollars just to pay interest on the National Debt.

In the year ahead your national Congress will complete this secure America. And if the President will help, we can do it all on a

pay as we go basis, and not just keep adding to the debt.

Mr. President, we all have to work on this together. The ancient scribes wrote, "not thine to finish the task, but neither art thou free to exempt thyself from it." We cannot solve all our problems by January 1989. But that doesn't mean we don't have to try.

Mr. BYRD. The Speaker is right. We must work together.

These are the times when we must take our measure and gather our strength. These are the times when we must reach for the steel that has been ours for generations and sharpen it.

There are the predictions that we've flattened out—that we've lost the fire.

But we've been tested before. And each time we've come back stronger.

Over the last year, the course of America has begun to change—right on this very floor. Each of you—in your own way, from your own neighborhood—has adjusted our direction by a fraction. You've become a consensus for openness—and caring and balance.

You have asked government to build—and not tear down.

And we have begun. The laws that we have passed in this chamber are not just promises. They are not just the rhetoric of what might be. They are the building blocks for what is to be. They are the working parts of our society that have been hammered by compromise and consensus. And each of you has left a mark on the books.

Together we have committed government to help rebuild America. Together we have begun the job. Together we will finish it.

Good night. May God bless you and may He continue to bless our great country.

RESPONSE OF SENATOR ROBERT C. BYRD AND SPEAKER JIM WRIGHT TO STATE OF THE UNION ADDRESS

Mr. SARBANES. Mr. President, on Monday evening following President Reagan's State of the Union Address, our distinguished majority leader, Senator ROBERT C. BYRD, and the distinguished Speaker of the House, JIM WRIGHT, delivered the Democratic reply.

I believe all my Democratic colleagues will join me in saying that our party was well served by their replies. Individually, each spoke to what is best about our political heritage. Together, they spoke directly to America's future.

In their response to the President, they spoke with a sensitivity to the past and with an acute awareness about what America needs to do to prepare for the coming times.

As the majority leader pointed out, "We've come to an end of an era." And so we have. The Reagan experiment, an experiment in ideology is coming to an end.

America must have a governing philosophy appropriate for the 21st century. A philosophy grounded in reality yet one that recognizes the hopes of our people: That their needs, aspirations, and their best intentions be reflected in their Government here in Washington.

The majority leader, in particular, spoke with great eloquence and personal insight about the deeper purpose of our Government: To build up rather than tear down; that government can "give us the leadership and the hope and the tools to rebuild." And rebuild we must after the years of neglect on the part of the administration.

The Speaker, Mr. WRIGHT, spoke with directness about those legislative initiaties passed last year by this Congress that now mean something tangible to our constituents—the clean water bill, the highway bill, the housing bill, and the trade bill that we will soon send to the President.

Both the majority leader and the Speaker spoke with forcefulness about our need to return excellence to education. And so we shall. As the majority leader so eloquently stated, "we must have" [an education system] "that not only launches the most gifted—but lifts the horizon for the least well off."

I urge my colleagues from both sides of the aisle to re-read these thoughtful statements. I commend the majority leader for his sureness of word, his profound sense of history, and his definition of the role of government in our times. He has pointed the way to a better future for America.

GRASSROOTS SUPPORT FOR INF TREATY

Mr. CRANSTON. Mr. President, the Intermediate-Range Nuclear Forces Treaty now before the Senate has received widespread support from the public, in Congress, and in the arms control community.

Recently 111 major organizations released a statement strongly endorsing the INF Treaty for advancing the mutual security interests of both the United States and the Soviet Union.

The signers of this statement include a broad segment of major religious, labor, environmental, citizen, and arm control organizations representing millions of Americans. The joint statement reflects virtually unanimous grassroots support for this major nuclear arms agreement. Those with long memories will recall that other treaties, including the 1979 SALT II agreement, lacked such widespread backing.

While the rightwing movement in this country is clearly working to whip up sentiment against the INF Treaty, it is heartwarming to see that there will be strong majority backing from the treaty from around the country.

I ask unanimous consent that the statement and list of signers be printed in the RECORD.

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

SUPPORT FOR INF AGREEMENT

We strongly endorse the Reagan Administration's agreement with the Soviet Union to eliminate land-based nuclear missiles with a range of 300 to 3,500 miles. The resulting treaty, which will eliminate all intermediate range nuclear missiles, advances the mutual security interests of the United States and the Soviet Union.

We applaud the precedent that this agreement will create—a treaty signed by the Reagan Administration, certified by that Administration as mutually advantageous and adequately verifiable, and approved by a Democratic-led Senate. Such a treaty will enhance the prospects for future and more significant agreements that would substantially reduce the huge stockpiles of strategic nuclear weapons. We intend to mobilize public and congressional support for the treaty.

Even as we endorse the INF agreement, we will work to ensure that this treaty not be used as a smokescreen for abandoning existing U.S.-Soviet agreements on strategic weapons, particularly the 1972 Anti-Ballistic Missile Treaty, for moving towards deployment of a Star Wars system or for slackening the endeavor to complete successfully the negotiations on the central strategic nuclear arms systems that gravely threaten the world.

Without limits on strategic offensive and defensive weapons, an INF agreement can be easily circumvented by replacing the destroyed weapons with new strategic weapons. We urge therefore that the administration utilize the INF Treaty as a step toward agreement on strategic nuclear weapons and space weaponry.

ACORN (Association of Community Organizations for Reform Now), Mildred Brown, President.

Alliance of Atomic Veterans, Anthony Guarisco, Director.

American Association of University Women, Sarah Harder, President.

American Baptist Churches, U.S.A., Office of Governmental Relations, Robert W. Tiller, Director.

American Friends Service Committee, Asia Bennett, Executive Secretary.

American Library Association, Margaret Chisholm, President.

American Medical Student Association, P. Preston Reynolds, M.D., Ph.D., President.

American Public Health Association, Bailuf Walker, Jr., Ph.D., M.PH., President.

Americans for Democratic Action, Marc Pearl, Executive Director.

Architects/Designers/Planners for Social Responsibility, Tician Papachristou, President.

Catholic Peace Fellowship, Bill Ofenloch, Coordinator.

Center for New Creation, Joan Urbanczyk.

Center of Concern, Peter Henriot, Executive Director.

Church of the Brethren, Washington Office, Leland Wilson, Director.

Church Women United, Washington Office, Sally Timmel, Director.

Citizens Against Nuclear War, Karen Mulhauser, Director.

Clergy and Laity Concerned, Sister Barbara Lupo.

Coalition for a New Foreign Policy, David Reed, Executive Director.

Commission on Social Action of Reform Judaism, Norma Levitt.

Committee for Children, J. Scott Douglas, Director.
Committee for National Security, Anne Cahn, Director, James Leonard, Board of Directors, Paul Warnke, Board of Directors.
Common Cause, Fred Wertheimer, President.
Computer Professionals for Social Responsibility.
Congress of Italian-American Organizations, Mary Sansone, Executive Director.
Council for a Livable World, Jerome Crossman, President, John Isaacs, Washington Director, George Rathjens, Chairman.
Defense Budget Project, Gordon Adams, Director.
Delta Sigma Theta Sorority, Dr. Marcella Peterson, Executive Director.
Dumbarton Peace Ministry, Jessma Blockwick.
Environmental Policy Institute, Robert Alvarez, Director, Nuclear Weapons & Testing Production Project.
Episcopal Peace Fellowship, Patricia Scharf, Executive Secretary.
Federation of American Scientists, Jeremy Stone, Director.
Federation of Reconstructionist Congregations and Havurot, Rabbi Mordechai Liebling, Director.
Freeze Voter, William (Chip) Reynolds, National Director.
Friends Committee on National Legislation, Edward Snyder, Executive Director.
Friends of the Earth, Cynthia E. Wilson, Executive Director.
General Board of Church and Society, United Methodist Church, Donna Morton Stout, Associate General Secretary.
Graphic Communications International, James J. Norton, President.
Gray Panthers, Karen Talbot, Executive Director.
High Technology Professionals for Peace, Alex Brown, Director.
IMPACT, Gretchen Eick, National Director.
Institute for Policy Studies, Richard Barnet, Senior Fellow.
Institute for Space & Security Studies, Dr. Robert Bowman, President.
International Association of Machinists & Aerospace Workers, William Winpisinger, President.
Jesuit Social Ministries, Joe Hacala (S.J.), Director.
The Jewish Peace Fellowship, Rabbi Philip Bentley, President, Naomi Goodman.
Lawyers Alliance for Nuclear Arms Control, Anthony P. Sager, Executive Director.
Lawyers' Committee on Nuclear Policy, Alex Miller, Executive Director.
League of Women Voters of the United States, Nancy Neuman, President.
Mennonite Central Committee, Peace Section, Washington Office, Delton Franz, Director.
Methodists United for Peace with Justice, Adrien Helm, Co-Chair.
Missouri Rural Crisis Center, Roger L. Allison, Executive Director.
Mothers Embracing Nuclear Disarmament, Maureen King, Executive Director, Linda Smith, President.
National Association of Social Workers, Mark Battle, Executive Director.
National Audobon Society, Patricia Baldi, Director, Population Program; Fran Webber, Director, International Issues.
National Conference of Black Lawyers, Wade Henderson.
National Congress for Community Economic Development, Robert Zdenek, President.
National Council of Jewish Women, Lenore Feldman, National President.
National Council of Senior Citizens.
National Education Association, Peace & Justice Caucus, Rhonda Hanson, Chairperson.
National Farmers Organization, DeVon Woodland, President.
National Institute for Women of Color, Sharon Parker, President.
National Rural Housing Coalition, Bob Reposa, Director.
NETWORK: A Catholic Social Justice Lobby, Nancy Sylvester, Coordinator.
New Jewish Agenda, Rabbi Marc Gruber, National Co-Chair.
Nuclear Information Research Service, Michael Mariotte, Executive Director.
Nuclear Times Magazine, Richard Healey, Executive Director.
Organization of Pan-Asian American Women, June Inuzuka, President.
Pastoral Care Network for Social Responsibility, John R. Thomas, Chair.
Pax Christi, U.S.A., Mary Lou Kownacki, O.S.B., National Coordinator.
Peacelinks, Betty Bumpers, President.
Performers and Artists—Anti-Nuclear Action Committee, Barbara Kopot.
Physicians for Social Responsibility, Maureen Thornton, Executive Director.
Presbyterian Church (U.S.A.), Washington Office, George Chauncey, Director.
Presbyterian Peace Fellowship, Bill Yolton.
Professionals' Coalition for Nuclear Arms Control, David Cohen, President; Richard Mark, Executive Director.
Project Vote, Sanford Newman, Executive Director.
Psychologists for Social Responsibility, M. Brewster Smith, President.
Public Citizen, Joan Claybrook, President.
Rabbinical Assembly Social Justice Committee, Alan Silverstein, Chairperson.
Reconstructionist Rabbinical College Reformed Church in America, Author Green, President.
Religious Action Center of the Union of Americans Hebrew Congregations and Central Conference of American Rabbis, Rabbi David Saperstein, Director.
Ripon Society.
Riverside Church Disarmament Program.
Rural Coalition, Lawrence Parachini, Executive Director.
SANE/FREEZE, David Cortright, Co-Director, Carolyn Cottom, Co-Director.
Security Options, Jane Wales, Executive Director.
The Shalom Center, Ira Silverman, Honorary President; Arthur Waskow, Director; Jacqueline Levine, Board Member; Viki List, Chair of the Board; Morton Siegel, Board Member.
Sierra Club, Michael McCloskey, Chairman.
Sisters of Notre Dame de Namur, Mission Education Center.
Sisters of St. Joseph of Carondelet, Incarnation House.
Sojourners, Jim Rice.
Union of Concerned Scientists, Howard Ris, Executive Director.
Unitarian Universalist Association of Churches in North America, Robert Alpern, Director, Washington Office; Dr. William Schulz, President.
United Auto Workers, Dick Warden, Legislative Director.
United Campuses to Prevent Nuclear War, April Moore, Executive Director.
United Church of Christ, Washington Office for Church in Society, Jay Lintner, Director.
United Electrical, Radio and Machine, Workers of America, John H. Hovis, Jr., President.
United Food & Commercial Workers International Union, AFL-CIO-CLC, William H. Wynn, International President.
United Steelworkers of America, Lynn Williams, President.
U.S. Student Association, Circe Pajunen, President.
Women for a Meaningful Summit, Anne Zill, President.
Women for Racial and Economic Equality (WREE), Cheryl Burrows, President; Vinie Burrows, International Secretary.
Women Strike for Peace, Edith Villastrigo, National Legislative Coordinator.
Women's Action for Nuclear Disarmament, Calien Lewis, Executive Director.
Women's International League for Peace and Freedom, Isabel Guy, Legislative Director; Jane Midgley, Executive Director.
Women's League for Conservative Judaism, Eveyln Auerbach, President; Bernice Balter, Executive Director.
Women's Peace Initiative, Jancis Long, Director.
World Federalist Association, Walter Hoffman, Executive Director.
World Peacemakers, Bill Price, Director.
Young Women's Christian Association of the U.S.A., National Board, Glendora Putnam, National President.

FORMER SECRETARY WEINBERGER RECEIVES MINUTE MAN AWARD

Mr. BYRD. Mr. President, I call to the attention of my colleagues that last evening, the Reserve Officers Association of the United States, at its 1988 national council midwinter banquet, presented the distinguished former Secretary of Defense, Caspar W. Weinberger, with the 1988 "Minute Man of the Year" Award. This award is presented annually by the ROA to "the citizen who has contributed most to national security in these times."

Mr. President, previous recipients of the ROA's annual "Minute Man of the Year Award" include Presidents Ford and Reagan; Senators STENNIS, Jackson, THURMOND, NUNN, and STEVENS; and Representatives CHAPPELL, Vinson, Rivers, Sikes, Hébert, McCormack, Laird, Albert, Mahon, MONTGOMERY, and others.

Mr. President, I offer my congratulations to the former Secretary of Defense and wish him all the best in the years to come.

I ask unanimous consent to have printed in the RECORD a list of previous recipients of ROA's annual Minute Man of the Year Award.

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

PREVIOUS RECIPIENTS OF ROA'S ANNUAL MINUTE MAN OF THE YEAR AWARD

1958—Brig. Gen. David Sarnoff.
1959—Senator Richard B. Russell.
1960—Col. Bryce N. Harlow.
1961—The Honorable Hugh M. Milton, II.
1962—The Honorable Carl Vinson.
1963—The Honorable Dennis Chavez (posthumously).

1964—The Honorable Margaret Chase Smith.
1965—The Honorable L. Mendel Rivers.
1966—The Honorable John C. Stennis.
1967—The Honorable Robert L.F. Sikes
1968—The Honorable F. Edward Hébert.
1968—Francis Cardinal Spellman (posthumously)
1969—The Honorable John W. McCormack.
1970—The Honorable Melvin L. Laird.
1971—The Honorable Strom Thurmond.
1972—The Honorable Carl Albert.
1973—The Honorable Henry M. (Scoop) Jackson.
1974—The Honorable George H. Mahon.
1975—The Honorable Gerald R. Ford.
1976—The Honorable John L. McClellan
1977—The Honorable Bob Wilson.
1978—The Honorable Charles E. Bennett.
1979—The Honorable Milton R. Young.
1980—The Honorable Samuel S. Stratton.
1981—The Honorable John Goodwin Tower.
1982—The Honorable G.V. (Sonny) Montgomery.
1983—President Ronald W. Reagan.
1984—The Honorable Sam Nunn.
1985—The Honorable William L. Dickinson
1986—The Honorable Ted Stevens
1987—The Honorable Bill Chappell, Jr.

TRIBUTE TO DONALD L. ROGERS

Mr. RIEGLE. Mr. President, during the recess a pillar of the Washington banking community died.

Donald L. Rogers served as counsel to the Senate Banking Committee from 1953-58 and later became president of the Association of Bank Holding Companies. I think it is fair to say that no one in Washington knew the Bank Holding Company Act and related banking statutes better than Don Rogers.

As president of the Association of Bank Holding Companies, he brought a certain grace to the job. He was always accessible to those who sought his counsel, and as a former staff member he had an unparalleled understanding of Congress as an institution.

Don Rogers combined both a superlative substantive knowledge of banking and financial services law with a gentleness and friendliness and integrity of character which all of us who knew him will miss.

The growth and the success of the bank holding company movement over the last 30 years is inextricably linked to the leadership and commitment of Don Rogers.

I count myself among the many people who mourn his loss. My deepest condolences to his family, to his staff and to his friends.

THE PLIGHT OF SOVIET JEWS

Mr. INOUYE. Mr. President, the plight of the Soviet Jews is a matter of concern for anyone who believes that there are rights that are basic to every human being. This should be of moral and humanitarian concern to all Americans. This statement is part of the coordinated Congressional Call to Conscience for Soviet Jews. I would like to express my appreciation to Senator ALAN CRANSTON and Senator JOHN HEINZ for cochairing this noble effort. There are 2 million Jews who reside in the Soviet Union. It is estimated that some 400,000 Jews in the Soviet Union are currently seeking the right to emigrate. I mention Dr. Vladimir Dashevsky as an example of the plight of the Soviet Jews.

Dr. Dashevsky wishes to be reunited with his daughter in Israel, but has repeatedly been denied his exit visa since 1976. The reasons given for these refusals is that Dr. Dashevsky has not fully demonstrated that he is free from any financial obligations. Since the last refusal, Dashevsky's daughter, Ira, has made a formal declaration that she is fully responsible for the complete payment of any judgment against her father. Thus nullifying any legitimate legal action that the Soviets could claim to take against this citizen. Hopefully, it will be possible for Dr. Dashevsky to be reunited with his family in Israel soon, in light of renewed Soviet commitment to facilitate emigration and to improve relations with the United States.

Dr. Dashevsky's case is only one of thousands of similar cases. The plight of this man and his family is not an isolated incident. The Soviet Government's action in preventing the emigration of Dr. Dashevsky is part of the policy of persecution that they insist on practicing. We, in the Senate, have a duty to raise this issue again and again until the Soviet Union discontinues the inhumane policy of denying Jewish citizens the right to emigrate.

TRIBUTE TO THE "CHALLENGER" ASTRONAUTS

Mr. LAUTENBERG. Mr. President, today marks the second anniversary of the tragic explosion of the space shuttle, *Challenger,* and the death of the seven astronauts. Around the country, many groups are participating in commemorations of the brave space explorers. I would like to share with my colleagues a description of a slide presentation about the astronauts which was prepared by fourth grade students at the Bangs Avenue School in Asbury Park, NJ. I wish they could all view the video tape of this impressive show which I received from their teacher, Barbara J. Hurley.

I ask unanimous consent that the description be printed in the RECORD.

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

ASBURY PARK SCHOOL DISTRICT WINS AWARD OF MERIT FOR SLIDE PRESENTATION DEDICATED TO ASTRONAUTS

An award of merit was presented to the Asbury Park School District at the New Jersey School Board's Convention, for the slide presentation, "A Salute to the Spirit of America."

The slide presentation originated as a project in one of the fourth grade classrooms at the Bangs Avenue School. The students had witnessed on television, the disaster of the space shuttle, "Challenger", and were so stunned and moved by the tragedy that they wanted to do something to honor these brave Americans.

The students had been currently studying the poem, "America The Beautiful" in their choral reading class. They decided to combine the theme of the beauty and spirit of America with a dedication and tribute to these special astronauts who personified that spirit.

The students corresponded with NASA and requested pictures and information relating to the astronauts. They also wrote to the Chamber of Commerce in Washington, D.C. and other sources to obtain scenes and symbols of America. As a musical background for their pictures, the students selected Ray Charles' unusual and moving version of "America The Beautiful." As a final and very emotional touch, the students added their sweet voices to that of Ray Charles as they sang together in praise of America.

The slide production was presented in honor of all astronauts from the "Challenger" with a special tribute to Mrs. Christa McAuliffe, the first teacher in space.

The presentation was produced by Mrs. Barbara Hurley, Reading Specialist and Mr. Allen Ogaard, Media Specialist. It has been shown in other school districts and is available upon request.

SECOND ANNIVERSARY OF THE "CHALLENGER" ACCIDENT

Mr. GLENN. Mr. President, 2 years ago today, the space shuttle *Challenger* exploded in the skies over Florida. It's been 2 years since America shared the grief of the families whose men and women perished in that tragedy. And it's been 2 years since the U.S. Space Program was gripped by uncertainty and inertia.

What lessons have we learned since then? And how should we approach the future of space exploration?

Perhaps the biggest lesson we've learned is that we shouldn't allow our past success in space to lull us into complacency. Complacency about the nature of space exploration—it's not a refined science, but a continuous experiment. Complacency about the benefits of a Space Program—our investment produces a rate of return of 7 to 1 in spinoff technology that we can use right here on Earth. And complacency about America's preeminence in space—we can't rest on our past laurels to sustain our lead in space; if we falter, other nations will pass us by.

And as we work toward rebuilding our Space Program, we should set our sights on some priorities for the

future. The *Challenger* accident created a backlog of military satellites waiting to be put into orbit. For the sake of our national security—when verification of the proposed INF Treaty will be paramount—those satellites must be launched as soon as possible. In the wake of the *Challenger*, our civilian Space Science Program has slowed down; it must proceed and be increased. The Soviets currently have two orbiting space stations, but we don't have even one; if we're to reap the full benefits of space, plans for an American space station must go forward. And while the Soviets actively plan a mission to Mars, we must also begin the preliminary studies and planning for such a journey sometime in the next century.

In order to reach these goals, we need an administration that is willing to support a Space Program for decades into the future, not just in fits and starts. Even though Americans are always fascinated with space "spectaculars" and "firsts," it's our steady investment in basic research and development that lays the foundation for these successes. Solid research must be able to build upon itself. Long-term support for our Space Program requires steadfast leadership from the top—as well as the constant backing of Congress and the American people. The race for space is a marathon, not a sprint, and we must make a commitment to it for the long haul.

I can't overstate the importance of maintaining a strong program of basic research and development in space. America got to be No. 1 because of our commitment to providing education for everyone—not just the rich or politically powerful. From this educated population, America has produced the scientific innovations that gave us an advantage over every other country. And it's that technological leadership which has drawn other nations to us, making the United States a political leader in the international community. If we lose our lead in technology, then we'll lose our edge in world politics, too. And we cannot afford to lose either.

We owe it to the *Challenger* astronauts to pursue an aggressive space program. Their sacrifice will have meaning only if we learn from it and move forward. On this second anniversary of the *Challenger* disaster, we must renew our commitment to research in space, which will, in turn, determine our leadership here on Earth.

In fact, I believe that the words "Go at throttle up"—the final four words spoken by Comdr. Dick Scobee just seconds before the *Challenger* exploded—are nothing less than an expression of America's spirit. And as we pause for reflection on this anniversary, I hope that all of us will recognize that the words "Go at throttle up" were far more than just a courageous epitaph. They are America's history, and they are America's destiny. And they will turn tragedy into triumph once again.

BICENTENNIAL MINUTE

JANUARY 28, 1913: SENATOR ELECTED BY 89-VOTE MARGIN

Mr. DOLE. Mr. President, 75 years ago today, on January 28, 1913, the Nevada State Legislature elected Key Pittman to the U.S. Senate. This event—three quarters of a century in the past—is worth noting for two reasons. It marked the passing of the system under which State legislature elected Senators and it was based on the closest popular vote margin of victory for a Senator in the history of this institution.

The Constitution of 1787 gave to the individual State legislatures the power to elect U.S. Senators. Beginning in the 1890's, reform advocates regularly introduced constitutional amendments to provide for the election of Senators directly by the people. Although the House of Representatives routinely passed those amendments, the Senate routinely rejected them. In the early years of the 20th century several States—particularly the newer Western States—devised plans that essentially achieved those amendments' objectives. In those States, the legislatures made a commitment to follow the voters' will by electing the candidate who won a popular referendum. Nevada by 1910 had adopted this two-track plan.

In November of that year, Republican incumbent Senator George Nixon defeated Democrat Key Pittman in a referendum by 1,100 votes. Although control of the Nevada Legislature shifted to the Democrats as a result of the 1910 election, its new majority agreed to follow the referendum and Nixon was reelected.

In 1912, Key Pittman ran again. This time he succeeded, but by the narrowest electoral margin in Senate history. Pittman's election established two Senate records. He won his four-way race with the smallest total number of votes—7,942 and he won by the smallest margin ever—a mere 89 votes.

THE "CHALLENGER" ASTRONAUTS

Mr. KERRY. Mr. President, I rise today to remember and honor the seven brave American astronauts who died in the *Challenger* tragedy 2 years ago today, Francis Scobie, Judith Resnik, Ronald McNair, Michael Smith, Ellison Onizuka, Gregory Jarvis, and Christa McAuliffe.

They were the best of us. They were distinguished in their careers and dedicated to this Nation's Space Program and its future. The *Challenger* crew has been called "spectacularly democratic," female, male, black, white, Japanese American, Catholic, Jewish, Protestant. Our gratitude for their sacrifice and the sacrifice of their families is eternal.

While the sadness and tragedy of that day will never be fully behind us, it is imperative that we also note the success of this Nation's Space Program. We have flown 55 missions successfully over the last 25 years, sent men to the Moon and returned them safely, opened a new world of communications and pushed back the limits of science in every field. That progress will continue.

The 2-year grounding of our Space Program reminds us that space flight is not ordinary. The risks and challenges of breaking gravity's hold are grave. But we will return to reliable, safe manned flight and continue the work *Challenger's* crew set about 2 years ago.

I would like to conclude by quoting President Reagan's remarks at memorial services for those we remember today:

> The sacrifice of your loved ones has stirred the soul of our Nation, and, through the pain, our hearts have been opened to a profound truth. The future is not free; the story of all human progress is one of a struggle against all odds. We learned again that this America was built on heroism and noble sacrifice. It was built by men and women like our seven star voyagers, who answered a call beyond duty . . . your families and your country mourn your passing. We bid you goodbye, but we will never forget you.

REBECCA THATCHER REPORTS FROM NICARAGUA

Mr. KENNEDY. Mr. President, as Congress begins the countdown in the critical debate over President Reagan's request for additional aid to the Contras and the impact it will have on the issue of war or peace in Central America, we must all remember that those with the biggest stake in the outcome of the debate are the people of Nicaragua themselves. It is their sons and daughters and fathers and mothers who are being maimed and killed in the murderous crossfire of the continuing conflict, and it is their villages and farms that are being used as the bloody battleground.

The people of Massachusetts know this, and they are trying in the best way they can to alleviate some of the suffering and destruction and dislocation that the conflict has generated.

Recently, a journalist for the Springfield Sunday Republican went to Nicaragua to report firsthand on some of these efforts. The journalist, Rebecca Thatcher, visited La Paz Centro, a small city of 20,000 people which has been designated a sister city of Amherst, MA. In an excellent article published last month, Ms. Thatch-

er reported on the people of La Paz Centro and how they are fighting an uphill battle to cope with the effects of the war.

Ms. Thatcher also traveled to Condega, Nicaragua, and in a companion article she describes the efforts of a group of women from Northampton, MA, and other communities in the Pioneer Valley, who are working with the women of Condega to build three schools in that war-torn border city. In the course of this volunteer construction brigade's day-to-day work, Ms. Thatcher reports, they often hear the gunfire of skirmishes nearby.

I commend Rebecca Thatcher's articles to the attention of the Senate, and I ask unanimous consent that they may be printed in the RECORD.

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

[From the Springfield Sunday Republican, Dec. 20, 1987]

AMHERST'S SISTER CITY FEELS WAR'S EFFECTS—NICARAGUAN CONFLICT ENDS IN DEATH TO SONS OF LA PAZ CENTRO

(Northampton bureau reported Rebecca Thatcher recently visited Nicaragua where she toured Amherst's sister city, La Paz Centro, and in another town observed a construction project that had its roots in a program that began in Northampton.)

(By Rebecca Thatcher)

LA PAZ CENTRO, NICARAGUA.—Though this town is far from the conflict zones to the north and east of this war-torn country, the 20,000 residents of Amherst's sister city here acutely feel the effects of the six-year conflict.

The high levels of inflation and currency devaluation that are affecting all of Nicaragua are present here, and on a regular basis one of the town's native sons comes home in a coffin.

"It's a very difficult situation," said Father Enrique Martinez, the Catholic priest of La Paz Centro. "It is sad to see the number of young boys that have fallen. The death of young people is very frequent."

And on a recent Thursday afternoon, there was a palpable silence in the community as roughly 200 people marched in a funeral for 18-year-old Domingo Guadelope.

Angela Quezada is the secretary of the Committee of Mothers of Heroes and Martyrs, a group that works on behalf of those who have lost their children in the war. The next day, inside the organization's office, Quezada echoed a familiar refrain: "We don't want any more of our children dying."

The Nicaraguan embassy here estimates that 50,000 Nicaraguans died in the 1979 revolution that ousted Anastasia Somoza. Another 40,000 have died in the past six years of fighting the U.S.-backed rebels known as Contras.

With a strongly-worded resolution condemning the war, the Amherst town meeting voted on May 11, 1987, to adopt La Paz Centro as a sister city.

"The United States government since 1981 has waged an illegal war against Nicaragua by means of the Contra rebels, which violates the charters of the United Nations, and the Organization of American States, and consequently Article 6 of the U.S. Constitution," stated the resolution.

Irwin Spiegelman, a member of the committee, said the goal of the sister city project is to promote educational and cultural exchanges between the two communities as a way of improving the prospects of peace.

"We want to make the Nicaraguan people more immediate and real to the people of Amherst. We thought this would be a systematic kind of support," Spiegelman said.

According to residents and officials of this town, La Paz Centro is a typical medium-sized Nicaraguan community whose residents are struggling to survive, and in some cases "advance the revolution," in the face of real economic troubles.

"There is no rice, nothing works, our only hope is Jesus Christ," said Angela Garcia, an elderly woman interviewed near the center of the town.

The economic crisis that is gripping all of Nicaragua has caused an astronomical devaluation of the cordoba, the basic unit of currency.

In 1981, the exchange rate was 10 cordobas for $1. In late November, the rate changed again to 15,700 cordobas for $1, and the black market rate is almost twice that.

A teacher in La Paz Centro earns 200,000 cordobas per month, or $12.74. The failure of wages to keep pace with inflation has led to a vast "informal economy" in which people of all ages, mostly women and children, sell everything from bags of ice water to sugar cane in the streets.

Still, the people improvise.

Justina Montano Martinez is the director of the town's pre-school. The building they use is old and dilapidated, and the school lacks such basic supplies as paints, crayons and scissors.

But Martinez holds up a handmade doll and says, "If we don't have a doll we can make one."

Brenda Alburto, a senior in high school, was part of the Sandinistas' literacy program when she was 10 years old.

She spent six months with an isolated peasant family teaching them to read and write. She called it a good experience, noting, "All the wisdom they have . . . we taught each other."

Julio Velasquez Coutreras is the town's interim mayor, appointed by the government. Velasquez was optimistic about the "hermanamiento" or matching between his town and Amherst.

He spoke enthusiastically about last summer's week-long visit by a representative of the sister-city committee in Amherst.

Walking through the town in an old yellow shirt and dungarees, it seems as though almost everybody knows the 47-year-old Sandinista.

People call out greetings or pull him aside to discuss problems. He is obviously proud of the new pre-school that is almost finished, (Pre-school goes up to six years of age in Nicaragua), and the health center, which has a main facility in the town's center and five satellite offices.

There is also a small library with 5,000 books. Except for the books by Marx and Lenin donated by the Soviet Union, nothing has been added to the collection recently, according to the woman in charge of the library, Auxiliadora Saavedra.

"There are some that have read all the books and they come in and ask if there are any new ones," Saavedra said.

Valasquez said the town's economy is primarily agricultural, with one large state farm, a state-sponsored milk project, eight cooperatives and several private farms.

According to Velasquez, the eight cooperatives represent land that was given to peasants after the revolution. He said the government provides the cooperatives with technical assistance, loans, and supplies such as fertilizer.

The principal crops are cotton, corn, soy beans, sorghum, and vegetables, he said.

Townspeople also produce crafts and there is one privately-owned brick factory. A few small businesses, such as beauty parlors, are intermingled in what could be called the downtown. The center also has a monument to the 40 residents of La Paz Centro who died in the 1979 revolution, a park, and a Catholic Church.

Next year, there are plans to have municipal elections, and "the Frente" (people here always refer to the Sandinistas as "the Frente," or "the Front") will run a slate of candidates for the city council and the mayor's office. Velasquez says he expects participation from as many as five other parties.

Velasquez, and the other members of the Frente who run the town, seem remarkably upbeat.

Carlos Edmundo Morales is a 58-year-old Sandinista who works in the Mayor's office. He joined the Sandinistas 25 years ago and personally knows the nine members of the party's directorate.

From 1970 to 1979 he traveled throughout Nicaragua and Central America, organizing political, economic, and military support for the revolutionaries.

"As you can see, what characterizes La Paz Centro is the development of the revolution," Morales said one afternoon.

In Amherst, a sister city committee has been meeting regularly, and plans to raise money for medical supplies and possibly an ambulance, according to committee member Margery Bancroft.

The committee will sponsor a benefit dinner this winter, and plans to organize a fund-raising drive that will request one dollar from every resident of the town in the spring, she said.

Bancroft spent a week in La Paz Centro last summer and returned anxious to build a strong relationship between the two towns.

"They're very happy about it. It gave them some hope," she said.

[From the Springfield Sunday Republican, Dec. 20, 1987]

AREA WOMEN HELPING IN NICARAGUA

(By Rebecca Thatcher)

CONDEGA, NICARAGUA.—The women in this town are often forced to wait for many things as they attempt to build three school buildings here.

But the one thing they are not waiting for is for the men to arrive.

"We want to be independent. They (the men) think that we are not capable of constructing . . . but this is an example that we are strong," said Francesca Ponce-Lira, a spokeswoman for the eight Nicaraguan women who are working with the financial, technical, and physical aid of an organization that was started in Northampton, Mass.

Here in this town of 6,000, about three hours drive north of the capital city of Managua, a women's construction brigade project that was born in Northampton, is proceeding steadily. Eight Nicaraguan women, with the help of between 7 and 14 American women at a time, are building three, three-room school buildings and learning construction skills as they go along.

From the beginning, this project had two objectives, according to the Pioneer Valley women involved. They wanted to express solidarity with the people of Nicaragua, and they wanted in particular to "empower" Nicaraguan women.

Anne Perkins of Wendell has taught carpentry at the Pathfinder Vocational and Technical School in Palmer, and the Putnam Vocational and Technical School in Sprinfield. A long-time peace activist, Perkins said she became involved in the women's construction brigade called Brigade Companeras, because she saw a need to counteract the millions of dollars the United States government has spent on the contras, a U.S.-supported rebel army in Nicaragua.

"We wanted to use American dollars to rebuild what American dollars are destroying," she said.

As feminists, the women also saw a need to help Nicaraguan women aquire skills such as carpentry. "It's important that women have the confidence and skills to shape our environment, especially in Nicaragua where they are trying to reconstruct so much," said Aja Rose of Amherst.

Perkins added that she sees the project as an expression of a certain type of feminism—a feminism that goes beyond the needs of women in the United States.

"To be a feminist who struggles only for a better place for white women in a white world is denying what feminism is, it's a very shallow kind of feminism," Perkins said.

Also a carpenter, Rose said she has not been very involved in the peace movement in the United States and speaks little Spanish. Nevertheless, she said working for a month on the construction brigade had been a very important experience.

It was stressful and difficult, but it also felt very right, she said.

Unlike towns closer to the capital city of Managua, Condego is located close to the conflict and could almost be considered a war zone, she said.

"We could hear bombs and guns shooting often. To have that as a constant presence is hard to integrate," she said.

Recently the contras attacked a civilian bus on the Pan-American Highway very near Condega, she said. They killed one woman on the bus, forced everyone else off, and machine-gunned the bus, she said.

She said that despite the danger, building a school in Nicaragua was a very special experience.

"I can't explain the feeling of just knowing that what you're doing is the right thing to do," she said.

Brigada Campaneras began in Northampton a year and half ago, the brainchild of a group of activist women, some of whom had participated in an earlier construction brigade with men.

Later on, the idea received support from women from New York City and Boston, who also became involved in the fundraising and organizing. Through dances, dinners, tee-shirt sales, raffles and other fundraising events, a total of $21,000 was raised between the three cities.

Working through a Nicaraguan government agency, the group was assigned the project in Condega, and began working in August.

And Ponce-Lira says it is only the beginning.

"After this is done we want to continue constructing . . . We look for a place to build a carpentry school for women," she said.

NATIONAL DAY OF EXCELLENCE

Mr. SHELBY. Mr. President, I rise on this National Day of Excellence to recognize the commitment of the *Challenger* astronauts, whose memory this special day honors. These astronauts—as well as the scores of other astronauts who have flown into space for America's space program—symbolize the pioneering spirit of adventure that our great Nation cherishes. This pioneering spirit is evidenced in young and old Americans. After the *Challenger* accident, the news media conducted polls of schoolchildren across America. Those children said that, even in the face of such a tragedy, the space program must move foreward, exploring the Heavens and more closely studying our Earth.

The 2 years since *Challenger* have allowed time for close examination of our space program, its hardware, its workers and managers, its goals. We have come to appreciate even more the importance of safety and the disastrous effects of slavish adherence to schedules at all costs. A scientist for Morton Thiokol will receive the Scientific Freedom and Responsibility Award next month for his warning about O-ring seals and cold weather. The warning came the night before the *Challenger* launch. Thiokol officials recommended that the launch be put off; NASA objected and Thiokol acquiesced.

It is time now to put those mistakes behind us and to truly honor the *Challenger* crew and get our space program off the launch pad. A report by a National Academy of Sciences and National Research Council team has found that NASA is "no longer a strong technical organization" and must more than double work on advanced space technology to fulfill its mandate to support civil and defense needs under the National Space Act. The Congress and White House must work together to give NASA the funding necessary to undertake this vital research. The research council found the most serious area of deficiency is rocket propulsion development. They warn that any further delays in program expansion will "translate to the loss of United States space leadership to the European, Asian, and Soviet programs," with "considerable impact on the United States economy, prestige, and security." We cannot afford to let this happen.

ZENON HANSEN—THE FIRST DISTINGUISHED EAGLE SCOUT

Mr. HARKIN. Mr. President, I am confident my colleagues will agree on the tremendous contribution to national leadership that has been provided by the Boy Scouts of America. I am happy to report that a fine example of one such contributor comes from my home State of Iowa—Mr. Zenon C.R. Hansen.

An article appearing in this month's Scouting magazine chronicles the inspiring story of Mr. Hansen, the founder and original recipient of the Distinguished Eagle Award. Mr. Hansen grew up in Sioux City, IA, and has been an active supporter of scouting since first earning his Eagle badge at age 16. Throughout his highly successful career, Mr. Hansen has supported the Boy Scouts of America and credited his remarkable success to Eagle Scout training.

The prestige and honor of receiving the Distinguished Eagle Award is worthy of our highest regards. It is presented to adult Eagle Scouts who, having risen to important posts in business, education, or public life, have remained dedicated to the high ideals and principles of the scouting tradition and who have continued to provide leadership for the organization.

I would like to express my gratitude to Mr. Hansen, who, at age 77, remains active today as a member of the national advisory council. I am confident that the people of Iowa share in my pride in the outstanding achievements in industry and scouting of Mr. Hansen.

I ask unanimous consent that a copy of the Scouting article be entered in the RECORD as testament to my respect for Mr. Hansen.

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

THE FIRST DISTINGUISHED EAGLE

(By Dick Pryce)

In 1986, 62 men received the Distinguished Eagle Award, one of the most coveted of Scouting's honors. They were men who in their adult life had achieved significance in business, education, or public life. In each case the recipients felt deeply honored to receive this award, available only to men who had been Eagle Scouts as boys.

What was the origin of the Distinguished Eagle Award? And who was the author of the idea?

It began with Zenon C. R. Hansen, one of the nation's leading business executives and a lifelong, dedicated Scout and Scouter. His Scouting story deserves to be told for, in addition to creating the Distinguished Eagle program, he began making contributions to Scouting in the 1920s, when the movement was still in its infancy.

Life was good for 17-year-old Zenon C. R. Hansen in the spring of 1927. He had just been graduated from high school in Sioux City, Iowa, and his immediate future was all mapped out. An excellent student, young Hansen expected to enroll in the fall on an academic scholarship at the University of Iowa.

He would earn his degree in four years, perhaps less, for he was recognized by his teachers as a hard-working, able student. His background was Swedish, and Swedish-Americans believed that hard work would take a man to the heights.

Then came a call from his high school principal, a man he admired. "The manager

of International Harvester wants to talk to you," the principal told him.

"What about?" asked Zenon.

"I think he wants to hire you."

The young man's achievements in high school and Scouting were common knowledge in the small Iowa town. Zenon had four Silver Palms to go with the Eagle badge he had earned in Troop 17 at age 16. Businessmen in Sioux City recognized him as a dynamo destined to continue achieving.

He was flattered when the manager did offer him a job. He thanked the manager politely and told him of his desire to go to the university on a scholarship. But the man refused to take no for an answer. He convinced Zenon that he would get ahead quicker by working for International Harvester.

The manager was right. At the age of 18, while his peers were pursuing educations, Zenon Hansen was immersed in management training at International Harvester's main office in Chicago. He completed the course with high marks and was dispatched to Europe where he embarked on a personal program to educate himself. He learned German, Italian, and French, and he studied business management, automotive engineering, auditing, and accounting.

By the time the Great Depression cast a pall over the United States, Hansen was 21 and comptroller of his company's Swiss affiliate. A lot of his high school classmates who went on to college weren't doing so well.

He remained overseas until 1936, then returned to the main office in Chicago. In 1941 he was named manager of IH's truck branch in Portland, Ore. He was on a path that was to lead to the board rooms of industrial America. Other opportunities arose, and in 1944 he left International Harvester for a vice-presidency with Automotive Equipment in Portland.

Continuing to climb the business trail, he became president and director of the Diamond T Motor Truck Company and, after that, in 1972 chairman of the board and chief executive officer of Mack Trucks, Inc., in Allentown, Pa.

A rags-to-riches story? That's a fairly accurate description, for his grandmother and two aunts had reared him, and there certainly never had been any extra money around. But don't call it luck because Zenon Hansen has always known the source of his good fortune in life. Scouting!

When I interviewed him at his home in Sebring, Fla., Zenon Hansen, a powerful-looking white-haired man of 77, who is still a member of the National Advisory Council, emphasized that the discipline he learned as a Boy Scout and his belief in the Scout Oath and Law served him well in his business career.

"I was raised as an orphan boy and, frankly, I don't know what would have happened to me if I hadn't been in Scouting," said Hansen. "Even my first job with International Harvester came as a result of my Boy Scout work."

That job offer came as no surprise to Scouter Henry A. Hoskins, who was recruited by Hansen to serve as Scoutmaster of Troop 1 that Hansen had organized. Since Hansen was not old enough to be Scoutmaster, he promised to be the assistant and do all the work if Hoskins would serve as Scoutmaster.

"I'd been active in Scouting some years before I became Scoutmaster," Hoskins said in 1969 when he visited Hansen, who was by then Mack Trucks' top executive. "I was chairman of the court of honor of the Sioux City Boy Scout Council and Hansen kept appearing for more merit badges beyond the 21 required for Eagle Scout—a total of 81 merit badges! That's more than any other Scout I've ever known or heard about.

"When I found out that he was being raised by an aunt and grandmother," Hoskins said, "I figured he could use some fatherly advice from time to time. So my wife and I invited him to our house for dinner each Sunday. We had three boys and one girl, and he became just like one of the family."

In fact, Hansen called his Scoutmaster "Uncle Henry," and Hoskins became the man he could pattern his own life after. And the BSA brought this remarkable man into an impressionable young Scout's life. Little wonder that Scouting became so important to him.

As Hansen recognized, the Scouting door swings both ways. Hansen the Scout became Hansen the Scoutmaster, then Hansen the itinerant Scouter, moving from town to town and corporation to corporation while continuing to serve the movement in an incredible number of positions in many councils. He was president in two—Portland Area in Portland, Ore., and Thatcher Woods Area in Oak Park, Ill. He sat on executive boards in seven councils, on executive committees in three regions, and was executive committee chairman of Old Region Seven.

Hansen had many jobs at the national level—chairman of the National Advisory Council, the National Finance Committee, the National Civic Relations Committee, the National Employee Benefits Committee, and the Distinguished Eagle Scout Award Committee. To each he added the mark of his great abilities.

He is also the man who sold to the Boy Scouts of America the concept of the Distinguished Eagle Scout Award. "The idea for it was born in the mind of Zenon C.R. Hansen approximately 25 years ago," remembers William Harrison Fetridge, who knew Hansen's views well.

"He was then National Treasurer and I was National Vice President of the BSA. He came to see me with the recommendation to create the Distinguished Eagle Award and outlined what he considered would be the necessary qualifications, including 25 years as an Eagle plus a distinguished record in business or public service."

Councils were in desperate need of what Hansen calls "appreciative leadership," men like himself who had profited by their experiences as Eagles and could appreciate what it meant.

At first he found little support for both ideas from Scouting's top hierarchy. "They all thought the Distinguished Eagle Award was a great idea, but nobody wanted to do anything about it," Hansen said.

Among Hansen's supporters was William Fetridge. "He also thought there should be a roster of all Eagle Scouts," said Fetridge. "But I convinced him this would be impossible to do. Finally Mr. Hansen presented his idea to the National Court of Honor, which approved it—as did, I believe, the National Executive Board."

The Boy Scouts of America did sanction the Distinguished Eagle Scout Award in 1969, incorporating Hansen's ideas—including his basic design for the award. And in 1970 Zenon C.R. Hansen, a very distinguished Eagle from Sioux City, Iowa, was deservedly the first person the BSA honored with the award.

Hansen and many of the other earliest recipients—Neil Armstrong, Gerald Ford, Ross Perot—gave money that eventually was used to start the National Eagle Scout Association.

The basic point of the Distinguished Eagle Award, as envisioned by Hansen, is to bring back into Scouting, Eagles who have been out of Scouting but want to give something back. "You have got to give these people the opportunity to participate in Scouting," he insists. "They become the future board members and future council contributors.

"If they're like me, they'll admit they never would have gotten anywhere in this world if they hadn't been an Eagle Scout."

URBAN DEVELOPMENT ACTION GRANTS

Mr. GRASSLEY. Mr. President, I rise today to do two things.

First of all, I want to congratulate Senator PROXMIRE, chairman, and Senator GARN, the ranking member, and their staff of the Committee on Banking, Housing, and Urban Affairs.

Last year Congress passed a new housing bill. This is the first time we have had a housing bill since 1980. The members of the Housing Subcommittee and their staffs are also to be congratulated for their hard work in putting together a bill that we hope the administration will sign.

This brings me to my second point and one I want to bring to the attention of the Senate today.

In this bill yet to be signed, a new formula for the Urban Development Action Grant Program is included. The Senate passed that provision about six different times over the last 4 years only to have the House reject it because they wanted a complete housing bill.

A number of Senators from States on both side of the aisle realized that the UDAG Program would not survive without a change in the formula that would allow it to be a national program again. That group worked hard to come up with a formula that we hoped would be a fair one.

The current system used by HUD has favored for over 4 years now, only about eight States in the Northeastern part of the country, shutting out the rest of the country. This area of the country has received over 80 percent of all the UDAG funds because of this unfair, unjust formula.

I feel compelled today to inform my fellow Senator's of a blatant, unfair attempt by these same few privileged States to again take the bulk of the UDAG funds during the currently scheduled round of funding to be announced before the first of the month.

Let me explain the problem.

Congress, so concerned with the unfairness of the formula now being used, placed a requirement in the new law that the new UDAG formula be immediately implemented by the Secretary upon the signing of the bill.

Everyone felt this bill would have been signed by now. In fact, a bill signing ceremony was scheduled for the 20th of this month. Then the date was moved—I understand at least two other times—to accommodate scheduling problems.

It currently is scheduled on the 5th of February.

Because this date is after January 30, HUD's published date for announcing the UDAG's, HUD feels they are forced to use the old formula.

This means those few States that have been receiving all the funds will again soak up all the funds this round.

I might add: I understand these States felt this would be the last "gravy train round" they would have so they gathered every UDAG application they could muster and applied.

They have lobbied and have, as of now, convinced HUD to use the old formula for this current round.

We have been working hard these last few days to resolve this issue so the new formula would be used immediately. HUD had been planning to use the new formula. They too felt the bill would be signed prior to the funding announcement date and their staff has been working on placing the new provisions in their considerations as they worked with the cities during their negotiations on these projects.

They were so confident this law would be in place they implemented the $10 million cap on the amount of funds any one UDAG could receive.

One of the privileged cities has a number of request in, one of which was for over $15 million, and then indicated that, yes, they could do the project for the $10 million. After they heard the law would not be signed, they went back to HUD and tried to say they really needed the $15 million. Remember, the UDAG funds are only to fill the gap to complete a project. This city has continually been funded no matter what type of application they submitted or how many they applied for, while States like Iowa and three-fourths of the rest of the country were completely shut out.

I say to my fellow Senators, enough is enough.

We have until noon today to get this unfair, unjust, down right wrong decision reversed.

There are three things that can be done.

First, the chairman and ranking member of the Banking and Housing Committee can send a letter to the Secretary requesting him to ask for a waiver of a provision in the current housing law that requires the Secretary to send to Congress all proposed HUD rules 30 days before they are published in the Federal Register. This would allow the Secretary to publish tomorrow in the Federal Register a recission of the January 30 announcement date of this round of UDAG's.

This is the easiest and fastest way to get this program solved.

The second option would be for the President to go ahead and sign the new housing bill, regardless of Members of Congress wanting a bill signing ceremony.

Third, the Secretary would, under current law, just not hold the round and wait until the next large city round in May and use this round's $57 million with the May round's money and hold one large round.

There are good points and bad ones for this option. Some projects cannot wait until May and some of their commitments will have to be renegotiated.

I prefer the first option that would reschedule the date of this round until the President signs the new legislation which is currently scheduled for February 5, only 1 week from tomorrow.

But if this cannot happen, then I would favor the Secretary canceling this round and using this round's funds with May's round. This would allow all projects to have the same opportunity that only those few States that now get the funds to finally have to face the same review that we have to face with our projects.

I want to encourage Senators from the following States to contact HUD and Chairman PROXMIRE and Senator GARN before noon today to encourage them to act immediately by working with their counterparts on the House side to send to Secretary Pierce the letter I have provided their offices.

The States that have UDAG's that will probably not be funded this round are:

Virginia, West Virginia, Alabama, Florida, Georgia, Kentucky, Mississippi, Tennessee, Illinois, Michigan, Louisiana, Oklahoma, Texas, Iowa, Kansas, Missouri, Arizona, California, Washington, and North Dakota.

I encourage Senators from those States, and other States from the South, Midwest, and West that understand how unfair this action is to immediately take action because if you wait until after noon today it will be too late.

If Senate staffs need more information they can contact my office and we will be happy to provide it to them.

INF VERIFICATION AND SANDIA NATIONAL LABORATORIES

Mr. BINGAMAN. Mr. President, Sunday's edition of the Washington Post carried an excellent article on verification technology. The article, entitled "Verification: Keeping Ivan Honest," by John A. Adam, highlights the work done by Sandia National Laboratories in Albuquerque, NM, in support of our INF Treaty negotiators.

The article details the techniques which Sandia has developed for onsite inspection of a Soviet missile assembly plant. The system had to be sufficiently intrusive to guarantee that any significant cheating by the Soviets at such missile assembly plants would be detected, yet not be an invitation to espionage when reciprocally applied to our own facilities.

The article mentions the work of Gus Simmons and Roger Hagengruber in support of a Department of Defense contract on verification. I might note that many other Sandians have played important roles in the treaty negotiation process. Stan Fraley spent 6 months last year in Geneva and there headed a subgroup that defined the inspection protocol to the treaty. In Albuquerque, Don Bauder, John Taylor, and Pauline Bennett, under the supervision of John Holovka, all helped provide information to back-stop the verification subgroup's negotiations.

The article also notes that Richard Perle was primarily responsible for initiating this verification research effort at Sandia in support of the INF negotiations. I want to commend Mr. Perle for this. He and I are not often in agreement on strategic weapons and arms control issues, but we are in total agreement on the need for greater attention to be focused on verification technologies. I have been pointing out since coming to the Senate that we need a solidly funded forward-looking research program on verification technologies to provide options and answers to our negotiators when they need them. Too often in the past, the development of verification options has not kept up with the development of new weapons technologies.

Last year, as a result of an amendment I offered to the Defense Authorization Act, the Congress increased authorized funding for verification research in the Department of Energy and the Defense Advanced Research Projects Agency by almost $30 million. The Appropriations Subcommittees on Energy and Defense later included appropriations for almost $26 million of this addition in the final continuing resolution. These actions testify to the strong support in the Congress for verification research, even when budget constraints forced cuts in many other defense programs. I hope that we will continue that support this year.

Mr. President, we have at Sandia and its sister DOE weapons laboratories a unique national resource. For over 40 years they have played a central role in providing our nuclear deterrent. But increasingly they are diversifying into research on verification technologies and advanced conventional munitions technologies, and thus they are becoming national security laboratories in the broadest sense, not simply nuclear weapons laboratories. Sandia, for example, last year in just a couple of months came up with a tech-

nology to limit use of the Stinger missile in response to Senator DECONCINI's concerns about this antiaircraft missile falling into the hands of terrorists. This involved a simple spinoff from the much more complex use controls embodied in our nuclear weapons. We need to continue to encourage this diversification of the laboratories. Especially at a time of overall budget constraints, we need to make better use of the broad technology base which the laboratories have developed and sustained over the past 40 years.

Mr. President, I ask unanimous consent that the article from yesterday's Post be printed here at the end of my statement.

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

VERIFICATION: KEEPING IVAN HONEST

(By John A. Adam)

When the Senate begins hearings Monday on the INF arms-control treaty, a crucial issue will be whether—and how—the United States can detect potential Soviet violations.

The subject is critical because both the INF accord and the Strategic Arms Reduction Treaty (START) now being negotiated in Geneva will require unprecedented verification technologies. Unlike previous arms accords, which involved watching large structures such as fixed missile silos and bombers, INF and START would restrict individual small missiles.

Consequently, America's traditional monitoring systems—surveillance satellites and electronic intelligence—will not be sufficient. Extensive cooperative measures will be needed. Trucks and railroad cars must be inspected; plant gates, grounds and fences watched; small weapons examined for nuclear content. And the INF pact requires new systems for continuous monitoring of missile-production facilities.

Exactly what kind of sensors the United States will place on Soviet soil is still being decided. But U.S. research on on-site inspection systems—involving tamper-resistant fiber-optic seals, video alert and data-encryption systems, infrared surveillance arrays and more—is already well underway, much of it at Sandia National Laboratories in Albuquerque, which AT&T runs for the Department of Energy.

OVERCOMING MUTUAL MISTRUST

Problems abound when working in an adversary's territory. The verification system must ensure that each side can trust the authenticity of the on-site data, producing a paradox: The Soviets must be assured that information gathered is for verification only—not espionage—and that it agrees with the facts. Thus, data cannot be encrypted. But the United States must be confident that streams of data, traveling through open channels in Soviet territory, are not forgeries. Thus some form of encrypted authentication code must be used.

Cracking that puzzle falls to Sandia's Gustavus J. Simmons, a mathematician with a foot-long beard and a flattop coif who has been solving such brainteasers for 20 years. Simmons and his colleagues are perfecting a data system that guarantees integrity. The technique that the United States will propose to the Soviets is the least sophisticated of Simmons' schemes. But it has already passed the scrutiny of codebreakers at the National Security Agency and was discussed with the Soviets in the '70s during the Comprehensive Test Ban Treaty talks. Moreover, it has proven reliable at remote U.S. seismic stations in Norway and glean data from Soviet underground nuclear tests.

The system works by automatically attaching an authentication "word" to the output of a monitoring device such as a camera. The output, in the form of a long binary sequence (strings of 0s and 1s), is fed into a computer, which breaks the data up into small blocks of, say, 64 bits. The first block is encrypted with a secret key which produces a 64-bit cipher held in the computer's memory. As the second block of data arrives, each element in the cipher is matched with its corresponding element in the second data block. If the two elements are alike, a 0 is recorded; if different, a 1. This produces a new 64-bit number, which replaces the first cipher and is in turn encrypted with the key. This new cipher is then matched against the contents of the third block of data, which begets yet another new cipher and so forth. The end result, after processing an entire data stream thousands of bits long, is a final 64-bit cipher incorporating information about each bit of data in the whole stream. This final cipher, or authentication word, is appended to the unencrypted monitor output and sent.

Nothing in the process prevents the Soviets from scrutinizing the data while it is sent. And the United States can verify the result by running the received data through the same encrypting procedure using a copy of the secret key. If the final cipher generated matches the one that was appended to the original monitor output, then the data are genuine. Just as increasing the number of grooves in a housekey makes it harder to pick the lock, the more variables there are in a cipher key, the less the likelihood of cracking the code.

ON-SITE AND ON GUARD

Shortly before the 1986 summit in Reykjavik where the Soviets agreed to U.S. proposals regarding on-site INF monitoring, Roger L. Hagengruber, vice president of systems analysis at Sandia, got a phone call from the Pentagon. DOD wanted a full-scale test facility built to examine schemes for continuous monitoring of a Soviet weapons-production plant. It also wanted a working model of the site. The project was given top priority.

Within two months, the Sandia team produced a table-top model showing the section of a typical Soviet missile factory which includes the main portal. The Pentagon displayed the model to officials from the White House, State Department and Congress, demonstrating how a missile-carrying truck triggers a suite of sensors to record weight and other data. One U.S. official called it a "good marketing tool" that helped policymakers visualize potential problems.

Both the United States and the Soviet Union have agreed that INF monitoring systems exist which will include "weight sensors, vehicle sensors, surveillance systems and vehicle dimensional measuring equipment." In addition, "non-damaging image-producing" gear will be installed to examine contents of shipping containers and launch canisters. The goal is to devise a system that automatically collects and records data 24 hours a day. The monitoring system must be accurate enough to detect potential violations but work fast enough so traffic flow is not unduly impeded. And because deployment within Soviet borders precludes use of trade-secret equipment, engineers must create highly reliable systems composed mainly of commercially available gear.

One such device is a vertical and horizontal array of infrared sensors to measure rapidly the length and profile of various vehicles leaving the plant. Like radar, the system would send out its own energy beam to sense objects day or night and in adverse weather. For weighing, Hagengruber says commercial scales can be modified to assess a moving truck or to weigh loads on freight trains. Railroad cars in some respects are easy to monitor because they are constrained to tracks, have a fixed geometry and uniform velocities. But they also pose special problems because they may weigh much more than their freight and the cars may come in a mix of gondolas and box cars. To skirt this problem, Hagengruber says they may negotiate that only certain types of train cars are allowed into the plant.

If a vehicle is large and heavy enough to be carrying a prohibited missile, its cargo will be examined by nondestructive imaging, most likely by X-ray sensors tuned to appropriate intensities. X-rays can take measurements and determine material composition and are generally hard to deceive. Manufacturers of rockets routinely use them to inspect solid propellants for cracks. For verification, however, the scans must occur faster than industrial applications, and probably be less intrusive too, says Hagengruber.

Sandia is also examining tamper-resistant seals that would reliably indicate if enclosures had been breached. In one such device, a loop of multistrand plastic fiber-optic cable is cut to desired length in the field. Its ends are put into a one-piece seal body which contains a serrated blade that randomly severs a portion of the cable fibers. The result is a unique "signature" of the uncut fibers. That pattern is photographed. If the fiber-optic loop is later released, the blade is designed to cut additional fibers and change the signature. During inspection, a second Polaroid shot is taken for immediate comparison with the original signature.

WARHEADS AND HOLOGRAMS

Authorities note that it is much easier to verify a ban than a residual force of, say, 100 missiles. Consequently the START pact, because it seeks to halve levels of strategic warheads, will require more strict measures.

In addition, the two superpowers are discussing in Geneva how to limit nuclear-tipped cruise missiles on ships and submarines. Such controls pose special monitoring problems because the missiles are much smaller than other strategic weapons and because some are fitted with conventional warheads.

Researchers have been examining techniques to "tag" concealable mobile nuclear weaponry. The challenge is to design a system that permits counting for verification but does not allow targeting by the military.

Fred Holzer, deputy leader of verification at Lawrence Livermore National Laboratory, outlined further constraints during a 1986 interview. The tags must be tamper-proof and impossible to duplicate; and they must in no way interfere with the missile's operation, he explained. Moreover they must be designed so they cannot be used—or even be perceived to be usable—as a homing device.

Numerous schemes exist. For new missiles, tags might be installed at the production line. One possibility is to make a special

mold with an intricate surface pattern for producing a tag. After the required number were produced, Holzer said, the mold could be broken. Another possibility, for new or existing weaponry, is to make a photomicrograph or acoustic hologram of a small patch on the missile. Each weapon examined could then be checked against a database of the fiber patterns of "legitimate" missiles.

Yet another option is to use a microchip tag that could be queried on inspection. The basic technologies that might be used are being employed by auto manufacturers including BMW, Fiat and Honda. BMW's assembly line uses chips coded to contain such information as paint color, options to be installed and so forth for each chassis. The chip is queried during assembly stages and the specified actions taken. Honda uses an intrinsic property, like fiber grains, to guard against piracy in spare auto parts. Other scenarios are akin to existing methods of satellite tracking of caribou. A U.S. satellite monitors free-roaming herds fitted with radio transmitters in northwestern Alaska to an accuracy of 0.8 kilometers. Holzer says that "these kinds of techniques are being developed rather rapidly." A senior administration official observes, however, that despite all the studies no practical tagging schemes have yet emerged.

START verification might include a plan to designate assembly areas to make missile production more transparent to surveillance satellites. But satellites cannot provide the sort of information that Soviet leader Mikhail Gorbachev mentioned in his summit farewell speech, when he shocked many observers by declaring that the Soviets had a technique that would remotely "identify not only the presence but also the capacity of the nuclear warheads" aboard mobile vessels.

If it exists, such a device probably emits a pulse of high-energy neutrons to induce a small amount of fission in any nuclear warhead. The pulse would have to be weak enough to prevent the degradation in the reliability of the nuclear weapons but strong enough to produce a recognizable signature of gamma rays or neutrons. But because of the rapid degradation of this signature in the atmosphere, such measurements must be made from close range. Moreover, shielding by lead or water could foil the inspection. More detailed schemes must be fielded for effective START verification.

A November 1987 report by the House Intelligence Committee was unanimous in saying that the Executive Branch provides "no central direction and prioritization of research and development to improve arms control monitoring capabilities." It placed the blame largely on the intelligence community.

Indeed many technologies for use in the INF treaty were developed for other purposes. Participants say some analyses, such as whether inspections of suspect sites should be allowed, were done hastily.

Although INF negotiations began in November 1981, money for the major INF monitoring program started flowing several years later. The Department of Defense was the surprising source, including the international security policy branch formerly headed by Richard N. Perle, popularly known as a bete noire of arms control.

In spite of budget constraints, Congress supplemented administration requests for verification research for fiscal 1988. Whether that results in innovative techniques for monitoring the strategically sensitive START pact remains to be seen.

SECRETS AND CIPHERS

(By John A. Adam)

The Drawback in the simplest version of Gus Simmons' scheme is that the Soviets would not know everything being sent. But the secret key used to authenticate old messages would be periodically supplied to the Soviets, who could then exactly reconstruct the authentication words to determine whether espionage information existed. The Soviets could also dismantle a similar piece of authentication gear to discern its intelligence potential.

In that simple approach, the same key is used to encrypt and decrypt a message. In 1986, however, a different method emerged. Called public-key cryptography, it uses one key to scramble a message and a different key to unscramble it. Hence the ability to decrypt a message does not also permit one to make forgeries.

Such a scheme is ideal for verification work, for it allows authentication without secrecy, and it can prevent some convoluted ways of cheating. The United States would encrypt the entire message and share the decrypt key with the Soviets and any other third party. All parties could decipher the data as it was transmitted. Simmons' group at Sandia uses the Rivest-Shamir-Adleman algorithm where the encrypting party bases its key on a pair of prime numbers P and Q that are kept secret and are so large that factoring $N = PQ$ is beyond all projected capabilities of computers. The United States would be confident that the data were genuine because it would be practically impossible, even with supercomputers, to determine the encryption key in time to alter the data.

But under the scheme, the party doing the encryption could send a forgery. Because of that ability, the Soviets could disavow any incriminating message, telling the United Nations, for example, that U.S. data indicating a trainload of illegal SS-20 missiles was a fabrication. So in 1980, Simmons' group devised a method whereby the United States and the Soviet Union would collaborate in the encryption.

But several years ago, it was realized that unilateral action of either party—saying its secret encryption key had been compromised, for instance—would circumvent the system. So Simmons, in his fourth iteration, proposed that a third party do on-site encryption using the public-key technique. With at least three parties contributing to the message-scrambling, the system was immune to impeachment by unilateral actions.

"Each time you solve one problem and peel off that layer of difficulty," says Simmons, "you find a more subtle one inside." But for now at least, he thinks the problem is finally solved. If the Soviets do not agree on his first-generation system, there are many alternatives.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Emery, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting a nomination, which was referred to the Committee on Foreign Relations.

(The nomination received today is printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

ENROLLED JOINT RESOLUTION SIGNED

At 11:29 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled joint resolution:

S.J. Res. 201. Joint resolution to designate January 28, 1988, as "National Challenger Center Day" to honor the crew of the space shuttle *Challenger*.

The enrolled joint resolution was subsequently signed by the President pro tempore [Mr. STENNIS].

ENROLLED JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, January 27, 1988, he had presented to the President of the United States the following enrolled joint resolution:

S.J. Res. 201. Joint resolution to designate January 28, 1988, as "National Challenger Center Day" to honor the crew of the space shuttle *Challenger*.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BENTSEN, from the Committee on Finance, without amendment:

S. Res. 361. An original resolution authorizing expenditures by the Committee on Finance.

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, without amendment:

S. Res. 362. An original resolution authorizing expenditures by the Committee on Commerce, Science, and Transportation.

By Mr. BURDICK, from the Committee on Environment and Public Works, without amendment:

S. Res. 363. An original resolution authorizing expenditures by the Committee on Environment and Public Works.

By Mr. GLENN, from the Committee on Governmental Affairs, without amendment:

S. Res. 364. An original resolution authorizing expenditures by the Committee on Governmental Affairs.

By Mr. CRANSTON, from the Committee on Veterans' Affairs, without amendment:

S. Res. 365. An original resolution authorizing expenditures by the Committee on Veterans' Affairs.

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. SHELBY:

S. 2013. A bill to prevent distortions in the reapportionment of the House of Representatives caused by the use of census population figures which include illegal aliens; to the Committee on Governmental Affairs.

By Mr. MOYNIHAN:

S. 2014. A bill to establish certain grant programs relating to acquired immune deficiency syndrome among intravenous substance abusers, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. KENNEDY (for himself, Mr. SIMON, Mr. CRANSTON, and Mr. MOYNIHAN):

S. 2015. A bill to amend the Immigration and Nationality Act to extend for 1 year the application period under the legalization program; to the Committee on the Judiciary.

By Mr. D'AMATO:

S. 2016. A bill to impose a legislative ban on and require a rulemaking with respect to, certain all-terrain vehicles, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. DOLE (for himself, Mr. SIMPSON, Mr. STEVENS, Mr. MCCAIN, Mr. HOLLINGS, Mr. BENTSEN, Mr. SHELBY, and Mr. STENNIS):

S.J. Res. 243. Joint resolution relating to Central America pursuant to H.J. Res. 395 of the 100th Congress; to the Committee on Foreign Relations.

By Mr. EXON (for himself, Mr. KARNES, Mr. DOLE, Mr. DURENBERGER, Mr. CONRAD, Mr. BURDICK, Mr. LUGAR, Mr. GORE, Mr. BRADLEY, Mr. COCHRAN, Mr. LEVIN, Mr. PELL, Mr. SANFORD, Mr. STENNIS, Mr. THURMOND, Mr. D'AMATO, Mr. BOND, Mr. CHILES, Mr. PRYOR, Mr. DOMENICI, Mr. METZENBAUM, Mr. SASSER, Mr. RIEGLE, Mr. DODD, Mr. GARN, Mr. REID, Mr. SIMON, Mr. HECHT, Mr. GRAHAM, Mr. FORD, Mr. MCCLURE, Mr. DANFORTH, Mr. WILSON, Mr. NUNN, Mr. HELMS, Mr. SYMMS, Mr. STEVENS, Mr. CHAFEE, Mr. GRASSLEY, Mr. WARNER, Mr. DECONCINI, Mr. HEINZ, Mr. BOREN, Mr. HUMPHREY, Mr. HEFLIN, Mr. BINGAMAN, Mr. INOUYE, Mr. STAFFORD, Mr. BYRD, Mr. LAUTENBERG, Mr. JOHNSTON, Mr. BUMPERS, Mr. ROTH, Mr. HOLLINGS, and Mr. CRANSTON):

S.J. Res. 244. Joint resolution to designate the month of April, 1988, as "National Know Your Cholesterol Month"; to the Committee on the Judiciary.

By Mr. CRANSTON (for himself, Mr. WILSON, Mr. ADAMS, Mr. BAUCUS, Mr. BINGAMAN, Mr. BRADLEY, Mr. BREAUX, Mr. BUMPERS, Mr. BURDICK, Mr. CHAFEE, Mr. CHILES, Mr. COCHRAN, Mr. CONRAD, Mr. D'AMATO, Mr. DECONCINI, Mr. DODD, Mr. DOLE, Mr. DOMENICI, Mr. DURENBERGER, Mr. EVANS, Mr. EXON, Mr. FOWLER, Mr. GARN, Mr. GORE, Mr. GRAHAM, Mr. GRASSLEY, Mr. HECHT, Mr. HEFLIN, Mr. HEINZ, Mr. HOLLINGS, Mr. HUMPHREY, Mr. JOHNSTON, Mr. KASTEN, Mr. KENNEDY, Mr. LEAHY, Mr. LUGAR, Mr. METZENBAUM, Mr. MOYNIHAN, Mr. MURKOWSKI, Mr. PACKWOOD, Mr. PELL, Mr. PROXMIRE, Mr. PRYOR, Mr. REID, Mr. RIEGLE, Mr. ROCKEFELLER, Mr. ROTH, Mr. SANFORD, Mr. SARBANES, Mr. SASSER, Mr. STAFFORD, Mr. STENNIS, Mr. WARNER, and Mr. WIRTH):

S.J. Res. 245. Joint resolution to designate April 21, 1988, as "John Muir Day"; to the Committee on the Judiciary.

By Mr. DECONCINI (for himself and Mr. DODD.

S.J. Res. 246. Joint resolution to designate the month of April, 1988, as "National Child Abuse Prevention Month"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BENTSEN, from the Committee on Finance:

S. Res. 361. An original resolution authorizing expenditures by the Committee on Finance; to the Committee on Rules and Administration.

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation:

S. Res. 362. An original resolution authorizing expenditures by the Committee on Commerce, Science, and Transportation; to the Committee on Rules and Administration.

By Mr. BURDICK, from the Committee on Environment and Public Works:

S. Res. 363. An original resolution authorizing expenditures by the Committee on Environment and Public Works; to the Committee on Rules and Administration.

By Mr. GLENN, from the Committee on Governmental Affairs:

S. Res. 364. An original resolution authorizing expenditures by the Committee on Governmental Affairs; to the Committee on Rules and Administration.

By Mr. CRANSTON, from the Committee on Veterans' Affairs:

S. Res. 365. An original resolution authorizing expenditures by the Committee on Veterans' Affairs; to the Committee on Rules and Administration.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SHELBY:

S. 2013. A bill to prevent distortions in the reapportionment of the House of Representatives caused by the use of census population figures which include illegal aliens; referred to the Committee on Governmental Affairs.

PREVENTING DISTORTIONS IN THE REAPPORTIONMENT OF THE HOUSE OF REPRESENTATIVES CAUSED BY CENSUS FIGURES INCLUDING ILLEGAL ALIENS

● Mr. SHELBY. Mr. President, today I rise to introduce legislation that prevents the use of census figures which include illegal aliens for apportionment of the House of Representatives. This legislation will direct the Secretary of Commerce to ensure that illegal aliens shall not be counted for apportionment purposes.

Does it make sense that illegal aliens who are here without the consent of the governed be given representation in Congress? In 1980, the Census Bureau counted 2 million illegal aliens and included them in the numbers used to apportion the 435 seats in the House of Representatives.

According to a Congressional Research Service study, including illegal aliens in the 1980 census awarded an extra seat in Congress to California and New York at the expense of Indiana and Georgia. In 1990, Pennsylvania, Connecticut, Michigan, North Carolina, and Alabama could lose congressional seats if the Census Bureau continues to include illegal aliens.

This problem is relatively new, since prior to the 1970 census the number of illegal aliens in the United States was fairly negligible. To the extent illegal aliens were enumerated at all, their incidental inclusion in the census count was not an issue. But today the situation has changed and the inclusion of illegal aliens is affecting congressional district reapportionment.

The decision to include persons unlawfully present is not the product of years of agency practice, but rather is simply the failure to respond to a recent massive escalation in illegal migration.

The Census Bureau estimates that the permanent stock of illegal aliens coming to the United States rises by 200,000 to 300,000 each year, and brings the total illegal alien population in the United States to as many as 12 million; 12 million people translates into roughly 6 seats in the House of Representatives. The method currently used by the Census Bureau will cause some unknown number of foreign visitors, temporary workers, and foreign students to be included as well.

To avoid this problem in the future, the Census Bureau should add questions to its long and short forms which will identify illegal aliens. This inclusion of illegal aliens in the apportionment base dilutes the representation of several States and violates the equal representation principle.

Mr. President, I urge my colleagues to support this legislation and ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2013

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress finds that—

(1) in recent years millions of aliens have entered the United States in violation of immigration laws and are now residing in the United States in an illegal status and are subject to deportation;

(2) the established policy of the Bureau of the Census is to make a concerted effort to count such aliens during the 1990 census without making a separate computation for such illegal aliens; and

(3) by including the millions of illegal aliens in the reapportionment base for the House of Representatives, many States will lose congressional representation which such States would not have otherwise lost,

thereby violating the constitutional principle of "one man, one vote".

SEC. 2. Section 141 of title 13, United States Code, is amended by redesignating subsection (g) as subsection (h), and by inserting after subsection (f) the following new subsection:

"(g) The Secretary shall make such adjustments in total population figures as may be necessary, using such methods and procedures as the Secretary determines appropriate, in order that aliens in the United States in violation of the immigration laws shall not be counted in tabulating population for purposes of subsection (b) of this section.".

SEC. 3. Section 22(a) of the Act entitled "An Act to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress", approved June 18, 1929 (2 U.S.C. 2a(a)), is amended by striking out "as ascertained under the seventeenth and each subsequent decennial census of the population" and inserting in lieu thereof "as ascertained and reported under section 141 of title 13, United States 1 Code, for each decennial census of population".●

By Mr. MOYNIHAN:

S. 2014. A bill to establish certain grant programs relating to acquired immune deficiency syndrome among intravenous substance abusers, and for other purposes; to the Committee on Labor and Human Resources.

INTRAVENOUS SUBSTANCE ABUSE AND AIDS PREVENTION ACT

● Mr. MOYNIHAN. Mr. President, since June 1981, over 28,000 people have died of AIDS. One-quarter of these deaths, 7,000 people, have resulted from intravenous drug use. According to the Centers for Disease Control, between 50 and 60 percent of intravenous drug users, as many as 335,000, are infected with the AIDS virus.

The AIDS virus is spread through the interaction of bodily fluids. This occurs when a needle used to inject heroin is used by another individual to do the same. That needle has the blood of the first user, which the second user is exposed to when using the same needle. This is the primary way in which AIDS is spread among intravenous drug users.

It is not only the intravenous drug users themselves that are contracting AIDS. They are spreading AIDS to their sexual partners and children. All these people will die; 53 percent of all AID-related deaths in New York City occur among intravenous drug users. As many as 350 children have died already from the AIDS virus contracted from their mother, and the number of children born with the AIDS virus is growing daily. According to a study conducted by Dr. Lloyd Novick, 1 out of every 60 newborns in New York City are born with the AIDS virus.

Children are dying. Mothers and fathers are dying. We are witness to this and seem powerless to stop it.

But we are not powerless.

We have the means to reach these people, break their habit, and stop the spread of AIDS.

This is not the first time intravenous drug use has threatened to wipe out a good number of people in our society. In 1969, when I was a Special Assistant for Urban Affairs for President Nixon, the crisis was heroin, a narcotic derived from the poppy plant. At that time, poppy plants were grown primarily in Turkey, processed into heroin in Marseilles, and then smuggled into New York.

In order to cut off the supply of heroin, I persuaded the President to provide financial assistance to help Turkish farmers make the transition from a poppy-based to a more general agricultural economy. With our help, the program to eradicate illicit poppy production succeeded and the French Connection collapsed, creating a severe shortage of heroin in every major drug center in the country.

It worked. Heroin use in all our cities went down. Crime went down. But now poppy production has moved to Pakistan, Burma, and Thailand. Iran and Syria have replaced France as heroin processing centers. We have had some cooperation with these countries to stop poppy production but not enough. In the last decade, heroin use has reemerged, and with the onset of AIDS, has become even more destructive.

Just last year, in an effort to control the growing problem, Congress enacted a major antidrug abuse law. It authorized $1.7 billion for prevention and treatment of illicit drug use and research into ways of breaking drug addiction, most notably with substances known as narcotic antagonists which block nerve endings so that the effects of narcotics cannot be felt by the user. But the Reagan administration, less than 4 months after the enactment of this much touted piece of legislation, proposed a $900 million cut in antidrug abuse programs. Fortunately, Congress was able to restore some of this money, but not nearly enough.

The bill I introduce today, the Intravenous Drug Abuse and AIDS Prevention Act, was introduced by Congressman RANGEL on September 16, 1987. As chairman of the House Select Committee on Narcotics, Congressman RANGEL has led the long and difficult battle against drug abuse. I have been privileged to work with him in the past and am proud to do so again.

This bill seeks to attack this problem where it lives. It provides $100 million for the Secretary of Health and Human Services to make grants for nonprofit organizations for treatment services to intravenous drug users; 75 percent of these funds will go to areas with a high incidence of drug use and AIDS. The remaining 25 percent of funds will go to areas which have a low incidence of AIDS but a high incidence of drug use and therefore have the potential for widespread AIDS infection.

In addition, $50 million is authorized for demonstration projects to reduce the incidence of AIDS in infants and to care for infants infected with AIDS. These funds could be used to provide prenatal care for women who are intravenous drug users, services to parents of infected children, foster care for children with AIDS, counseling, education and testing services for women at risk for AIDS by virtue of drug use or sexual contact with drug users, and pregnant women infected with the AIDS virus.

Lastly, $50 million is provided for grants for outreach and counseling programs to prevent intravenous drug use among minority groups. We have appropriated $14 million specifically for outreach AIDS education to minority communities. Too little.

The responsibility is clear: If we don't inform our citizens of the dangers of drug use in and of itself and its direct link to the spread of AIDS, we fail in our duty as public officials and as fellow human beings.

I ask unanimous consent that an editorial in the January 23, 1988, New York Times entitled, "Contain AIDS by Treating Addicts" be printed in the RECORD.

I urge my colleagues to support this bill and ask unanimous consent that the text be printed in the RECORD in full.

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

S. 2014

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Intravenous Substance Abuse and AIDS Prevention Act of 1988".

SEC. 2. FINDINGS.

Congress finds that:

(1) More than 38,000 cases of acquired immune deficiency syndrome (AIDS) have been reported to the Centers for Disease Control, and more than 270,000 such cases are expected to be reported by 1991.

(2) Intravenous substance abusers are the second largest group in the United States that has AIDS. Of the cases of AIDS reported to the Centers for Disease Control, 17 percent are attributable to intravenous substance abuse and such abuse was a risk factor in an additional 8 percent.

(3) HIV (the virus causing AIDS) is transmitted among intravenous substance abusers through the use and sharing of needles, syringes, swabs, or other drug-related implements that are contaminated with blood infected with HIV.

(4) HIV can be transmitted rapidly among intravenous substance abusers in a given geographic area. Once a group of intravenous substance abusers becomes exposed to HIV, such abusers become the primary source for heterosexual transmission and perinatal transmission of HIV.

(5) A disproportionate number of cases of AIDS has occurred among members of minority groups. More than 80 percent of such cases attributable to intravenous substance abuse have occurred among Blacks and Hispanics and more than 90 percent of heterosexual and perinatal transmission AIDS cases related to such abuse have occurred among Blacks and Hispanics.

(6) More than 50 percent of women in the United States who have AIDS developed the disease as a result of intravenous substance abuse. The second largest group of women who are at risk with respect to infection with HIV are women who are the sexual partners of intravenous substance abusers.

(7) Most women with AIDS are in their child-bearing years, and women infected with HIV may transmit HIV to any of their children born subsequent to the mother's infection. In July 1987, the Centers for Disease Control reported a cumulative total of 460 cases of AIDS among children under 5 years of age at the time of diagnosis. Approximately 80 percent of children with AIDS who were infected through perinatal transmission were children of intravenous substance abusers.

(8) Preventing or reducing the transmission of HIV among intravenous substance abusers is essential with respect to preventing or reducing the heterosexual and perinatal transmission of HIV in the United States.

(9) To reduce and prevent the spread of AIDS related to intravenous substance abuse, additional Federal leadership and support is urgently needed to expand treatment for intravenous substance abusers, to promote efforts to prevent pediatric AIDS and provide better care for infants with AIDS, and to establish effective school and community-based AIDS prevention programs.

SEC. 3. ESTABLISHMENT OF GRANT PROGRAM FOR TREATMENT SERVICES WITH RESPECT TO INTRAVENOUS SUBSTANCE ABUSE.

(a) IN GENERAL.—The Secretary of Health and Human Services may make grants to public and nonprofit private entities for the purpose of enabling grantees to provide, in accordance with subsection (b), treatment services to intravenous substance abusers.

(b) REQUIREMENTS WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME.—The Secretary may not make a grant under subsection (a) to an applicant unless the applicant agrees that, in providing pursuant to subsection (a) treatment services to intravenous substance abusers, the applicant will—

(1) make available to such abusers, and to the sexual partners of such abusers, counseling and education services with respect to preventing the transmission of the etiologic agent for acquired immune deficiency syndrome; and

(2) make available to such abusers testing for the purpose of determining whether such abusers are infected with such etiologic agent.

(c) CONSENT TO TESTING.—The Secretary may not make a grant under subsection (a) to an applicant unless the applicant agrees that the applicant will not, as a condition of the receipt of substance abuse treatment services, require that an individual undergo testing described in subsection (b)(2).

(d) REQUIREMENT OF PROVISION OF SERVICES IN CERTAIN GEOGRAPHIC AREAS.—The Secretary may make grants under subsection (a) only to applicants that will provide services under the grant in a geographic area in which, in the determination of the Secretary—

(1) the incidence of intravenous substance abuse is substantial relative to such incidence in other geographic areas; and

(2) the incidence, among intravenous substance abusers, of infections with the etiologic agent for acquired immune deficiency syndrome—

(A) is substantial relative to such incidence in other geographic areas; or

(B)(i) is insubstantial relative to such incidence in other geographic areas; and

(ii) may be prevented from becoming substantial if sufficient treatment, counseling, and education services are provided to intravenous substance abusers.

(e) ALLOCATION OF AMOUNTS AVAILABLE FOR GRANT PROGRAM.—Of amounts available pursuant to subsection (f), the Secretary shall—

(1) reserve 75 percent for grants under subsection (a) to applicants that will provide services under the grant in geographic areas described in paragraphs (1) and (2)(A) of subsection (d); and

(2) reserve 25 percent for grants under subsection (a) to applicants that will provide services under the grant in geographic areas described in paragraphs (1) and (2)(B) of such subsection.

(f) FUNDING OF GRANT PROGRAM.—Of the amounts appropriated pursuant to section 7, the Secretary shall reserve 50 percent for the purpose of carrying out this section.

SEC. 4. ESTABLISHMENT OF GRANT PROGRAM FOR SERVICES AND ASSISTANCE FOR REDUCTION AND PREVENTION OF ACQUIRED IMMUNE DEFICIENCY SYNDROME AMONG INFANTS.

(a) IN GENERAL.—The Secretary may make grants to public and nonprofit private entities for the purpose of enabling grantees to carry out demonstration projects for reducing or preventing the incidence in infants of infections with the etiologic agent for acquired immune deficiency syndrome and for providing support to infants who have such infections.

(b) PREFERENCES IN MAKING GRANTS.—The Secretary shall, in making grants under subsection (a)—

(1) give first priority to qualified applicants that will provide services under the grant in any geographic area in which, in the determination of the Secretary—

(A) the incidence in infants of infections with the etiologic agent for acquired immune deficiency syndrome is substantial relative to such incidence in other geographic areas; and

(B) the incidence, among intravenous substance abusers, of infections with the etiologic agent for acquired immune deficiency syndrome is substantial relative to such incidence in other geographic areas; and

(2) give second priority to qualified applicants that will provide services under the grant in any geographic area described in paragraph (1)(B).

(c) PROVISION OF CERTAIN SERVICES.—Grantees under subsection (a) may expend grant funds—

(1) to provide for prenatal care for women who are intravenous substance abusers;

(2) to provide for prenatal care for women who are the sexual partners of intravenous substance abusers;

(3) with respect to the parents of infants infected with the etiologic agent for acquired immune deficiency syndrome, to provide services and financial assistance to parents for the purpose of aiding parents in caring for, and providing support to, such infants;

(4) to provide services and financial assistance with respect to encouraging foster care for such infants and other means by which such infants can receive care and support in settings other than hospitals;

(5) with respect to women who are intravenous substance abusers and who are pregnant or at risk of becoming pregnant, to make available to such women counseling and education services with respect to preventing the transmission of the etiologic agent for acquired immune deficiency syndrome and to make available to such women testing for the purpose of determining whether such women are infected with such etiologic agent; and

(6) to make such services and such testing available to women who are pregnant, or at risk of becoming pregnant, and who are the sexual partners of intravenous substance abusers.

(d) FUNDING OF GRANT PROGRAM.—Of the amounts appropriated pursuant to section 7, the Secretary shall reserve 25 percent for the purpose of carrying out this section.

SEC. 5. ESTABLISHMENT OF GRANT PROGRAM FOR PREVENTION OF ACQUIRED IMMUNE DEFICIENCY SYNDROME RELATING TO INTRAVENOUS SUBSTANCE ABUSE.

(a) IN GENERAL.—The Secretary may make grants to public and nonprofit private entities for the purpose of enabling grantees to provide counseling and education services with respect to preventing the transmission of the etiologic agent for acquired immune deficiency syndrome directly or indirectly through intravenous substance abuse.

(b) PREFERENCES IN MAKING GRANTS.—The Secretary shall, in making grants under subsection (a), give preference to qualified applicants that will provide services under the grant to minority populations in any geographic area in which, in the determination of the Secretary, the incidence of intravenous substance abuse is substantial relative to such incidence in other geographic areas.

(c) PROVISION OF CERTAIN SERVICES.—Grantees under subsection (a) may expend grant funds—

(1) to provide counseling and education services described in such subsection through outreach services to intravenous substance abusers; and

(2) to provide education services described in such subsection through the dissemination of information throughout the geographic area involved, including dissemination in school systems and through means of mass communication.

(d) FUNDING OF PROGRAM.—Of the amounts appropriated pursuant to section 7, the Secretary shall reserve 25 percent for the purpose of carrying out this section.

SEC. 6. GENERAL PROVISIONS.

(a) REQUIREMENT WITH RESPECT TO INCREASE IN SERVICES.—The Secretary may not make a grant under any of sections 3 through 5 to an applicant unless the applicant agrees that the applicant will not expend amounts received under the grant involved to supplant any funds otherwise available to the applicant for the purpose for which such grant is to be made to the applicant.

(b) REQUIREMENT OF APPLICATION.—The Secretary may not make a grant under any of sections 3 through 5 to an applicant unless the applicant has submitted to the Secretary an application for the grant involved. The application shall, with respect to carrying out the purpose for which the grant is to be made, provide assurances of compliance satisfactory to the Secretary and shall otherwise be in such form, be made in such manner, and contain such information and agreements as the Secretary

determines to be necessary to carry out such purpose.

SEC. 7. AUTHORIZATIONS OF APPROPRIATIONS.

For the purpose of carrying out this Act, there are authorized to be appropriated $200,000,000 for fiscal year 1988 and such sums as may be necessary for each of the fiscal years 1989 and 1990.

SEC. 8. DEFINITIONS.

For purposes of this Act:

(1) The term "intravenous substance abuse" includes substance abuse through subcutaneous injection and intramuscular injection.

(2) The term "Secretary" means the Secretary of Health and Human Services.

[From the New York Times, Jan. 23, 1988]

CONTAIN AIDS BY TREATING ADDICTS

New York City has long had to cope with crimes committed by its 200,000 heroin addicts to finance drug purchases. Now they pose a new danger. By sharing the needles they use to shoot up, they spread AIDS. Mayor Koch deserves praise for recognizing the need to increase the city's drug treatment capacity. State officials, already taking steps to boost drug treatment, would earn more credit by finding the funds for the Mayor's plan.

City officials recently made the alarming discovery that 53 percent of AIDS-related deaths in the city occur among intravenous drug abusers, a figure that far exceeds the percentage among gay and bisexual men. While the authorities despair of curbing the drug problem through law enforcement, treatment offers some hope. Most addicts eventually seek help; many more would if more help were freely available.

But residential drug treatment programs offer fewer than 5,000 spaces in the city; expansion would require heavy investments to acquire and staff new facilities. Methadone, a drug that blocks heroin craving and permits a normal life, offers more promise. It is now dispensed on an outpatient basis to about 29,000. Tens of thousands more could be accommodated in city hospitals and clinics with only modest increases in resources and an easing of legal requirements for counseling.

Governor Cuomo recently approved state funding for 5,000 more methadone treatment "slots." Mayor Koch now would extend hours of drug treatment centers to add an additional 3,000 addicts. He also would set up new drug treatment programs in city-owned buildings. He estimates an initial added cost of $5 million and asks the state to come up with the money.

That's appropriate. The state has paid for drug treatment in the city since the fiscal crisis of the 70's. And Mayor Koch offers more than just time and space. He pledges to face down any community objections. A prompt state response could hold him to that pledge and help contain the AIDS epidemic.●

By Mr. KENNEDY (for himself, Mr. SIMON, and Mr. MOYNIHAN):

S. 2015. A bill to amend the Immigration and Nationality Act to extend for 1 year the application period under the legalization program; referred to the Committee on the Judiciary.

IMMIGRATION LEGALIZATION DEADLINE

● Mr. KENNEDY. Mr. President, today I am joining Senator SIMON, Senator CRANSTON, and Senator MOYNIHAN in introducing legislation to extend the application period for the immigration legalization program for an additional 12 months. The application deadline set by statute is May 4, 1988, but all indications are that the program may well need some additional time for those eligible to apply.

I propose this extension because I believe the program has been a success to date. Immigration officers in the field have exhibited extraordinary dedication to this program, along with the hard-working staff of churches and community groups around the country. And this dedication has overcome many of the monumental obstacles faced in getting the program underway.

The result is that, to date, some 1.2 million persons have applied for legalization.

But reports I have received suggest that there are still hurdles ahead—that there are still pockets of eligible illegal aliens who have not yet come forward for the amnesty. I believe even more can be done with this population with more time.

Public education and information has been slow. Word of the program's achievements—that illegal aliens can apply without fear of deportation—has not yet adequately reached undocumented alien communities. And the Immigration Service has made some commendable midcourse adjustments in the regulations governing the program which need time to take full effect.

Like many others, I personally have tried to contribute to the public education campaign by taping public service announcements for the Immigration and Naturalization Service. But now, fully 6 weeks after the taping, the Immigration Service has only now prepared these announcements for airing. I am confident that this situation will be corrected soon, but nonetheless it illustrates the fact that public education of this magnitude is tedious and slow.

The Immigration Reform and Control Act envisioned a 6-month period of public education before the legalization program began. However, the first advertising for the amnesty followed, rather than preceded, the start of the amnesty.

Mr. President, some of the blame for the slow start on public education lies with Congress. The immigration reform law was enacted in November 1986, after we had already wrapped up appropriations for the 1987 fiscal year. And we did not pass a supplemental appropriations bill until July 11—well after the legalization program had already begun.

On this point, Mr. President, we can afford to be generous. We can afford to give the program the benefit of the doubt. For the legalization program has proceeded to date at little or no expense to the taxpayer. As mandated by statute, it is funded through application fees.

So, too, would an extended application period be self-funded.

An extension would in no way alter the requirements for legalization. In other words, only those already qualified for legalization would benefit from extension of the application period.

Hopefully, Mr. President, this legislation in the end will not be necessary. Hopefully, we can take stock of the legalization program in a few weeks and find that the last-ditch public education efforts by the Immigration Service and church and community groups are paying off.

But I believe it is important not to lay the groundwork for an extension of the application period, should it be necessary.

Throughout the debate over the Immigration Reform and Control Act we in this Chamber stated repeatedly that this legalization was a one-shot deal. If this is indeed to be a one-time effort, we need to be sure that the job is complete before we close the books on this humane and important program.

I ask, Mr. President, that the text of my bill be printed at this point in the RECORD, as well as relevant articles from the press.

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

S. 2015

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

SECTION 1. 1-YEAR EXTENSION OF APPLICATION PERIOD UNDER THE LEGALIZATION PROGRAM.

(a) IN GENERAL.—Section 245A(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1255a(a)(1)(A)) is amended by striking out "12-month period" and inserting in lieu thereof "24-month period".

(b) CONFORMING AMENDMENTS.—(1) Section 245A(a)(1)(B) of such Act is amended—

(A) by striking out "first 11 months of the 12-month period" and inserting in lieu thereof "first 23 months of the 24-month period", and

(B) by striking out "18-month period" and inserting "24-month period".

(2) Section 201(c) of the Immigration Reform and Control Act of 1986 (Public Law 99-603) is amended—

(A) in paragraph (1), by striking out "two years" and inserting in lieu thereof "3 years", and

(B) in paragraph (2), by striking out "18 months" and inserting in lieu thereof "30 months".

[From the Boston Globe, Nov. 6, 1987]

AMNESTY DEADLINE EXTENSION URGED

(By Andrew Blake)

Cardinal Bernard Law and Mayor Flynn, saying the federal amnesty program for aliens has been a failure, joined with the Massachusetts Immigrant and Refugee Advocacy Coalition yesterday in calling for an extension of the amnesty deadline next May.

"The promise of the amnesty bill has not been fulfilled," Law said at a news conference in the Haitian Multi-Service Center in Dorchester. Fear, he added, is keeping thousands from applying to the Immigration and Naturalization Service for legal status.

"The termination date should be extended for six months to fulfill the original intent of the law. The bill took six months just to get off the ground," he explained.

Congress last year established an amnesty period for aliens who have lived continuously in this country since Jan. 1, 1982. The program expires on May 4, 1988. Law, Flynn and the coalition also called on Congress for new legislation to cover aliens who entered the country after the Jan 1, 1982 cutoff date.

Although the INS estimates that 3.9 million undocumented aliens nationwide would benefit from the program, only 733,700 have applied. Locally, of about 60,000 who could achieve legal status, only 4,200 have applied, according to the immigrant coalition.

"This law was a reform that never happened. It needs to be revised. It needs to be more open," said Flynn. Last month, Flynn established an outreach program for aliens regardless of their legal status. The program, the first of its kind in the nation, offers free medical and legal assistance.

Earlier in the week, Kitty Dukakis, the governor's wife, urged illegal immigrants to apply for amnesty before the federal program expires in May.

"I realize that many of you have not applied because you are afraid you will be deported or your family will be separated," she said Wednesday at a State House news conference. "Please be aware that the information in your application cannot be used to deport you or your family."

The state's Executive Office of Human Services, recognizing the growing population of legal and illegal immigrants in Massachusetts, Wednesday expanded its refugee assistance program to include all immigrants.

The program primarily operates as a referral service for aid such as legal advice, medical help and information on the amnesty offer for illegal aliens.

In a 17-page report, the immigrant coalition found that aliens are not coming forward in large numbers because they fear the INS, have little knowledge about the amnesty program, are put off by excessive documentation requirements and are concerned about being separated from other members of their family.

Muriel Heiberger, executive director of the immigrant coalition, said the INS should liberalize its policies on the national level rather than follow the most strict interpretation of the amnesty law. Local INS offices, she added, have been courteous and cooperative but must follow policies dictated in Washington.

Cardinal Law said some 3,500 people in the Archdiocese of Boston have asked about amnesty in recent months and some 130 applicants, aided by the church, are being processed by the INS with "another 100 in the pipeline."

"This does not begin to address the potential number of people who could benefit from this bill," said Law.

[From the New York Times, Nov. 3, 1987]

DON'T LET THE AMNESTY DOOR SLAM

Congress passed the Immigration Reform and Control Act last year to make it harder for new illegal aliens to stay in this country—and easier for old ones. The act provided amnesty for aliens who had been here since at least 1982. But they were given only 12 months to apply, and even that time has been constricted. Fairness alone would impel Congress to keep the legalization door open an additional year, to May 4, 1989.

The first goal was to deter illegal immigrants by forbidding employers to hire them. Early evidence indicates that this goal is being met. The second goal was to bring out of the shadows hundreds of thousands of aliens who have lived in this country illegally, and furtively, for years. This goal has been less well met.

Many of the eligible aliens need more time to apply. The immigration and Naturalization Service did not start taking applications until May 5. So far, across the nation, less than a million illegals have applied for legalized status; less than 50,000 are from the New York area. I.N.S. legalization offices are operating at 50 percent capacity in the West and only 20 percent in the East.

If these rates continue, the program will legalize far fewer aliens than anticipated. Also, the approval process has been painfully slow. Only 75,000 amnesty requests have been granted. The most effective way to spur applications is to decide cases and let beneficiaries spread the word.

It comes as no surprise that the Immigration Service is still ironing the wrinkles out of this massive effort. There have been computer problems. National and regional information campaigns take time to develop. Outreach and networking have been inadequate: it takes vast effort to penetrate thousands of aliens enclaves. In addition, clarification is needed for regulations about length of continuous residence, proof of employment and policies regarding the protection of family members.

Aliens, some daunted by language, have hung back. Some don't understand the new law. Some fear, incorrectly, that even if one member of a family is eligible for amnesty, a spouse, parents or children could be deported based on information on the application form. There must be time for accurate information to be disseminated and digested, and for understanding and trust to develop. The Immigration Service is, after all, the agency that deports people.

The Service has worked hard to make the amnesty program work. By extending legalization to May 4, 1989, Congress would insure that it does.

[From the Dallas Times Herald, Dec. 20, 1987]

GIVE AMNESTY MORE TIME

No single law has had more impact on Texas during the past year than the Immigration Reform and Control Act of 1986, which provides amnesty for undocumented aliens who have lived in the United States continuously since Jan. 1, 1982. After years of wrangling, Congress passed the act to help control the flow of illegal immigrants into the United States. It was signed into law on Nov. 6, 1986.

Implementation of the law required a delicate touch, but the responsible organization, the Immigration and Naturalization Service, has proceeded with a heavy hand. Still, the INS was the only government agency that could do the job.

Suddenly, by the stroke of the presidential pen, the INS was told to switch gears: from the agency that tenaciously hunted down illegals and deported them to a kindhearted agency extending the olive branch of amnesty.

Little wonder illegal aliens reacted with fear and suspicion.

While the INS originally projected that about 4 million undocumented aliens would apply for amnesty, only about 1 million have surfaced. Yet the backlog on processing applications is huge—only about 15 percent of the applications have reached a final determination. And many experts feel the INS is letting other business go to deal with the amnesty overload.

Granted, the INS was given a massive task in establishing 107 amnesty centers around the country and publicizing the new law. But imagine how overloaded the system would be if the expected number of illegals had applied.

Distrust of the INS is not the only reason for the slow rate of amnesty applications. Lack of knowledge is another key factor. That's why the Dallas Times Herald has made this story a top priority—publishing information in Spanish as well as English. But in New York, for instance, where only about one-fifty of illegals believed to be there had applied for amnesty a year after the law was passed, efforts to publicize the new law have only recently begun to pick up steam.

It's unfortunate that public service announcements about amnesty are rarely shown on television during prime time.

Still, given time, the public education program will be successful. Eventually, the word will spread and most illegals will understand the opportunity they are being offered. That, however, is only part of the remedy.

A Times Herald survey being published today indicates as many as 40 percent of those eligible for the legalization program are not applying—not because they aren't aware of the program, but because they cannot meet the rigorous documentation requirements, fear the government and are afraid they will be separated from their families.

The question of family unity is critical. Splitting up homes is hardly the American way, and illegal aliens must be treated by American standards. Legal or not, they are here. It demeans us to use totalitarian methods to cure our immigration problems. Congress has been unwilling to deal with the question of spouses and children. In October the lawmakers voted down an amendment to extend amnesty to members of a qualified illegal's nuclear family. Last week, by one vote, House-Senate conferees killed a comparable amendment that was to be attached to the omnibus spending bill.

Congress should reconsider. While splitting up families may be justified on abstruse, technical grounds, we find it distasteful to force people to trade their spouses and children for a chance at U.S. citizenship. The INS has said children won't be deported, which leaves spouses at risk.

It seems the INS is having a difficult time adapting to its new role. The agency cannot resist playing hardball with illegals, with continuing raids and the recent directive that illegals better not be foolish enough to return home for Christmas without U.S. government permission—granted only for medical emergencies.

That's a wonderful way to encourage people to come forward.

Until either the INS or Congress finds the courage and compassion to assure illegals they can apply for amnesty without jeopardizing their families, the application rate will remain to low.

For immigration reform to work as planned, those eligible for amnesty must receive it. Sanctions against employers who hire undocumented aliens, which had to be delayed because of the INS' faulty education program, are now rumbling into action. That's essential. It cuts off the primary attraction of the United States to illegals—jobs.

But there are problems with employer sanctions as well. Fraud has surfaced in many cases, especially in the Special Agriculture Worker program. In Florida, for instance, as many as half of the 42,000 SAW applicants are suspected of using bogus documents to back up their claims.

The INS has also had a problem of districts using different guidelines. This creates confusion and encourages illegals to "shop" for a district to suit their needs. Clearly, all illegals should meet the same standards.

Guaging the effectiveness of immigration reform is difficult. Its ultimate goal is to bring U.S. borders under control. But the only quantitative tool available to measure its success is the number of apprehensions. Although border arrests have dropped by 30 percent since the law's implementation, there's no way to tell if this means fewer illegals are crossing the border or if it is simply the result of less stringent enforcement.

Given the numerous problems, it seems apparent that the May 4, 1988, deadline for amnesty applications must be extended. Rep. Charles Schumer, D-N.Y., is ready to introduce a bill for a one-year extension, and Congress should approve it.

Extending the arbitrary deadline only enables more qualified illegals to apply for amnesty; it does not alter the qualification requirements. While some deadline must be kept to encourage illegals to act quickly, there is no reason not to extend it long enough for the INS and Congress to get their act together.

[From the New York Times, Jan. 3, 1988]

AMNESTY REQUESTS BY ALIENS DECLINE

(By Peter Applebome)

The number of aliens applying for legal status under the new immigration law has dropped steadily in recent months, raising serious questions about whether the program will reach its envisioned total of two million applicants before it ends May 4.

Requests have been made that the one-year program be extended. The situation is also contributing to a debate about the effectiveness of the immigration law and to calls for expanding the number of aliens eligible for amnesty. The law led to the largest amnesty program in history.

MANY CASES NOT FULLY REVIEWED

Thus far 1.2 million aliens have applied for legal status under the terms of the Immigration Reform and Control Act, passed by Congress in November 1986. The number includes 240,000 seasonal agricultural workers and 904,000 aliens applying under the measure's provision for general amnesty.

Fewer than a quarter of the applications have been fully reviewed, with 92 percent of the 1.2 million, or 249,000 people, approved to be issued cards that prove their lawful status.

Applications have been steadily declining since September. At that rate, they would fall below the Immigration and Naturalization Service's estimate of 2 million and the total would not approach the 3.9 million figure that immigration officials used as the most optimistic estimate of potential applicants.

Immigration officials attribute part of the decline to the holiday season. They also say they expect a deluge of applicants in the final month, noting that such programs elsewhere have seen a frantic rush as they wound up.

While immigration officials oppose an extension, they concede that the turnout continues to be disappointing in some parts of the country, particularly Northeastern cities like New York and Boston.

The slow pace and relatively low number of applications that have been reviewed have led to calls for extension. Representative Charles E. Schumer, Democrat of Brooklyn, introduced a bill in December calling for a one-year extension of the application period until May 1989. Members of Congress returning from the holiday recess will find the bill in committee.

"OUT OF THE SHADOWS"

"The original intent of this program was to get the underclass out of the shadows and into the mainstream," said Muzaffar Chisti, who heads the legalization program for the International Ladies Garment Workers Union in New York. "That is not happening. We need more time."

Immigration officials are not alone in opposing extension. "I think there's something un-American about breaking a deal, and that's how people will see extending or expanding the program," said Patrick Burns, assistant director of the Federation for American Immigration Reform, a nongovernmental, nonprofit organization that opposes efforts to liberalize immigration policies.

"Instead of being thanked for an act of beneficence," Mr. Burns went on, "we're hearing the whining of the ungrateful. It's patently obvious this is a bottomless pit. They'll be damned lucky if amnesty isn't repealed altogether if they push this too far."

The immigration law offers legal status or amnesty to illegal aliens who can prove they have resided continuously in the United States before Jan. 1, 1982. More liberal amnesty provisions are included for seasonal agricultural workers.

The amnesty program is part of an approach that includes sanctions against employers who hire illegal aliens and stepped-up Border Patrol and immigration service enforcement agents. The goal is to deter further illegal immigration while offering the protection of legal status to aliens who have lived here since the beginning of 1982.

The amnesty program began slowly last May, amid criticism that the immigration service and counseling agencies set up to assist aliens were not prepared to take up their tasks at the beginning. But applications picked up in July and August, culminating in a record 64,574 in a week at the end of August.

Aliens applying for jobs had to apply for amnesty by the end of August to be hired to work, but applications dipped below 40,000 a week in mid-September for the first time since the beginning of July. They have continued to plunge since then, running below 30,000 a week since the beginning of November.

PROBLEMS ARE CROPPING UP

Interviews with counseling agencies across the nation and reports by groups involved with the matter in Boston, San Franscisco and New York suggest that the program has a number of nagging problems: inadequate publicity, overly strict interpretation of some parts of the law, fear of the immigration service and difficulties in documenting residence.

Most people involved agree, however, that the biggest barrier to broader participation is a failure to clarify the status of family members who are ineligible for amnesty on their own. The issue has raised fears that families will be split up if one member is eligible for amnesty but a spouse or child is not.

"We've found that a lot of people are simply disqualifying themselves because of the family unity question," said Lavinia Limon, executive director of the International Institute of Los Angeles. "It's very clear the law is not resulting in the balanced approach that Congress had in mind."

But Duke Austin, a spokesman for the Immigration and Naturalization Service, said Congress had voted down proposals last year to clarify and broaden the family unity provisions. "It's time to get that issue off the I.N.S.'s back," he said. "It was brought up in Congress and voted down. They couldn't pass it. It's totally unfair to keep carping at I.N.S. when Congress has made its intend clear."

HARDSHIP FOR THE HELPERS

The decline in applicants has caused particular hardship to the church and counseling groups established to aid aliens in applying.

The low turnout, coupled with a lower than expected percentage of applicants using the counseling groups, have resulted in strains on the groups' resources. Many of the agencies, which receive fees for processing the applications, say they are losing money because they established costly operations that are not bringing in as much income as had been projected. Many agencies have radically cut back their services.

In Los Angeles, Catholic Charities has cut back from 14 legalization offices to 5. Ms. Lemon said her organization had been reduced from 20 to 6 legalization workers.

"THREATS TO SMALL BUSINESSES"

There is a fear that the applicants still to come are the weakest cases that will need the most help, and that the agencies will not be prepared to offer it by the time the program ends. Most of the support for extension is from groups that work with aliens. These groups range from organizations working with Hispanic people to Irish organizations in Boston that help Irish aliens.

Some business groups question the program's effectiveness. "This law is not working," said Tom Rowland, executive vice president of the 1,200-member Restaurant Association of Metropolitan Washington. "There are jobs which are going unfilled. If we are going to get extra attention for employer sanctions, then we want extra attention for amnesty. We are saying this is not a temporary discomfort but a serious threat to small businesses."

But beyond the issue of extension, which critics and proponents alike agree has a good chance of passage, is all assessment of the amnesty program as a whole.

Amnesty was the most disputed element of the immigration legislation. Even those who wanted to see the applicant pool expanded by setting a later eligibility date admit they faced long odds. But some familiar with the matter say that so many aliens entered the United States after 1982—or do not apply under the current law—that the program will still leave a huge residue of illegal aliens. That appears most likely in the

Northeast, where the turnout for applications for legal status is the worst.

In a report on the program in New York state, Dr. Josh DeWind, director of the Immigration Research Program of the Center for the Social Sciences at Columbia University, concluded: "A major implication of the low legalization application rate for New York will be the continued existence of a large undocumented population, probably 80 percent of those currently here, which will be even more vulnerable to poverty and exploitation than in the past."

In an interview, he said: "The real problem is not in the program's time period or in the public education program, but in the bill itself and who it restricts. I would advocate a real amnesty to a recent date."

Groups like FAIR say extending or expanding the program would send out the worst possible signal.

"It would make a mockery of the immigration law and encourage illegal immigration to the United States," said Mr. Burns, the assistant director of FAIR, "There are a lot of folks in El Salvador and Mexico and Korea and the Philippines looking at us and asking, are we serious about enforcing the law? If we extend or expand it, not only are we telling them we're not serious—we're telling the 2 million people waiting to come here legally they were fools to believe in the American system."

[From the New York Times, Jan. 6, 1988]

THE MASSES: STILL HUDDLED

(By Jay Mazur)

A union official recently overheard a Haitian-born worker listening to a radio station broadcasting in Creole. Every word was in the man's native tongue, with one glaring exception: The Immigration and Naturalization Service's announcement about the amnesty program for undocumented workers was in English!

This illustrates one reason why, with four months to go in the yearlong amnesty period, perhaps one-quarter of the estimated 3.9 million "illegal aliens" eligible for amnesty have come forward. In the New York area alone, 80 percent or more of those eligible have failed to apply.

If the program falters, the United States risks perpetuating a threat to its social and economic stability as serious as any external menace: a vast underground society populated by millions of men, women and children who live furtively and fearfully, often at the mercy of unscrupulous employers.

The Immigration Reform and Control Act of 1986 was a carefully crafted compromise. It sought to control illegal immigration by penalizing employers who hire "illegals." It also offered legal residency to some, though by no means all, undocumented workers already in America.

Unfortunately, the amnesty provisions of the act are very restrictive. Only immigrants who arrived before Jan. 1, 1982, are eligible, insuring that an enormous pool of immigrants will remain ineligible and constantly subject to deportation. Even those eligible have only a year to apply and to complete an extremely difficult process of documenting their claims.

Problems with the law have been obvious since it took effect. People who came to America legally before Jan. 1, 1982, but later became illegal—say, because their temporary visas expired—are excluded from the amnesty. Eligible immigrants fear coming forward because their spouses or children are ineligible.

Moreover, the extensive documentation required by the Immigration and Naturalization Service to prove residency is overwhelming. For people who have gone to great lengths to conceal their true status, proving it becomes a formidable obstacle. Most import, I.N.S. publicity efforts have been inadequate: The message has not gotten through to millons of eligible people. And now to overcome the distrust of people accustomed to avoiding the I.N.S.?

To be sure, the I.N.S. has mounted a significant amnesty effort. Some 1.2 million people have entered the legalization process and most of them are likely to become resident legal aliens, eligible for citizenship. But the immigrants who have applied generally are those who are better educated, speak English well or work in unionized industries. The three million who have not applied—the large majority—tend to be the less educated, speak little or no English and work in marginal jobs. Thus, the amnesty program has not and will not reach the most vulnerable and exploited.

If the major immigration reform of this generation is to work, it must be liberalized. Unwisely, Congress failed to include in the law a guarantee of family unity, and should correct this mistake. Meanwhile, the I.N.S. can insure that no family will be separated as a result of one family member's applying for amnesty.

First, the amnesty period must be extended for a year; three or four million people cannot be legalized in a few months.

Second, the I.N.S. must use the longer period to launch an effective information campaign: Immigrants should learn about amnesty through the ethnic media and in their own languages. To help establish trust, the I.N.S. should spotlight the work of trade union, religious and community organizations that offer help. The employers of undocumented workers should play a larger role in educating eligible immigrants.

Third, the I.N.S. must simplify its burdensome documentation requirement and other rules. Congress declared an amnesty, and the I.N.S.'s job is to find eligible workers and legalize them, not to make legalization difficult.

The fears of some members of Congress that new immigrants would overburden public services are unfounded. Congress should extend the 1982 cutoff date and make a larger number of undocumented workers eligible for amnesty.●

● Mr. SIMON. I wish to join Senator KENNEDY, chairman of the Immigration Subcommittee, in sponsoring this measure to extend the time period to apply for legalization. This bill, when enacted, will go far to ensure congressional intent that aliens who meet the eligibility standards for amnesty be permitted to apply.

As a member of the Immigration Subcommittee, I have been very concerned with the success of the legalization program. To be sure, uncertainty regarding new administrative requirements for applying for legalization were to be expected, particularly in an undertaking as large as this one. The task of overcoming the historic fear and mistrust of the Immigration Service among the undocumented population just 6 months after the new law passed would have been difficult in the best of circumstances. So it is not to be critical of the INS or to point a finger at the agency when I cosponsor this bill. I support this bill simply in order for the law to have full opportunity and time to work.

The Immigration Service originally estimated that at least 200,000 aliens could be legalized in the Chicago area. As of January 12, however, only 65,323 applications had been accepted. In other words, fewer than one-third of those expected to be eligible have applied after two-thirds of the time to apply has elapsed. Worse, the trend in the numbers of applications—both in Chicago and nationwide—indicates a steady drop each month. Applications for all of November and December in Chicago were fewer than for the month of September. Nationally, the November figures were slightly more than half of the applications received in August. Most of these applications are still under consideration and have not been finally approved. The INS can rightfully be proud of making possible the new futures awaiting these individuals. But we can do better.

Our bill will give the Immigration Service more time to publicize the program—its requirements and its benefits—and will enable the community agencies, religious institutions and other interested parties to work with the INS to increase the number of participants in the legalization program. Legalization under the Immigration Reform and Control Act is a once in a lifetime proposition. Let's make sure that all of those who meet the eligibility standards set down by Congress and the INS have the full opportunity to take part in America.

Cardinal Joseph Bernardin of the Archdiocese of Chicago has recently called upon Congress to extend the legalization period and make other changes in the immigration law. I commend this statement to my colleagues and ask that it be entered into the RECORD with an article from the Chicago Tribune.

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

STATEMENT OF JOSEPH CARDINAL BERNARDIN ON LEGALIZATION ISSUES

When the Immigration and Reform Act of November 1986 was passed, I shared the joy of many immigrants in Chicago. This was to be the opportunity of a lifetime, a chance to realize their hopes and dreams of becoming part of this country which they had come to call home. Now, a year later, I hear their fears and concerns, for this law is fundamentally flawed and simply is not doing what it was established to do.

First: I would add my voice to those who complain that the law is indifferent to keeping a family together. Under the present regulations, for example, a father who came here in December, 1981, could apply for temporary residency and then permanent residency; but his wife and children who may have come a year later could be deported. There are others who could be excluded

because their children are developmentally or physically disabled. Have we created a law that allows for the destruction of the family?

Second: The amount of documentation required to make application should be greatly simplified. For example, proof of living here seems to duplicate proof of working here. Because of the fear of being apprehended, many have destroyed the very evidence that they now need. As the son of an immigrant couple, I know how confusing the laws and regulations of a new country can be.

Third: To qualify for legalization at the present time, one must prove residency in the United States since January 1, 1982, and applications must be filed before May 5, 1988. These dates should be changed because they contradict the intent of the law. To insist on a date of January 1, 1982 ignores the many people who have come to this country because of political and economic problems in Europe and Latin America during the past 5 years. I would urge an extension of the present law to lengthen the application period. Furthermore, I believe that the law should be amended to include all who have been here since November 6, 1986.

Those who minister to immigrants experience the hopes and fears of their people most directly. I am aware that a number of them, specifically the members of the Hispanic Caucus, are addressing this matter in a public way, I share their concern. For my part, while continuing our efforts to assist those who currently qualify for legal status, we must seek to correct the fundamental flaws in the legislation. Moreover, I recommit the Archdiocese of Chicago to work with all those who bring their fears, needs and hopes to the Church.

I believe we can effectively appeal for changes in this law and in the ways it is being interpreted and enforced. Further, I believe we must work within democratic processes to change the law, so that as many people as possible will truly benefit from the legalization process.

[From the Chicago Tribune, Jan. 19, 1988]

GROUPS URGE EASIER, BROADER AMNESTY FOR ALIENS

(By Constanza Montana)

The number of immigrants applying for legalization has been steadily declining in recent months, and state, city and private agencies are pushing for fundamental changes in the new immigration law to make amnesty easier.

Two-thirds of the way into the one-year legalization program, the number of immigrants who have applied is far below the original expectation of the U.S. Immigration and Naturalization Service.

As of Jan. 12, only 65,323 people have applied for legalization at the four Chicago offices, far below the 200,000 to 300,000 initially estimated to be eligible. And 1.2 million have applied nationally, below the 2 million to 4 million estimated to be eligible. The numbers of immigrants applying also have dropped steadily in recent months.

At a recent hearing, the Illinois Human Rights Commission, the Mayor's Advisory Commission on Latino Affairs and several private advocacy groups attacked the law and offered recommendations to amend it.

These recommendations include allowing illegal immigrants who have entered the country before Nov. 6, 1986, to apply; extending the application period to May 4, 1989; expanding the law to include ineligible family members of qualified immigrants; penalizing employers who fail to sign employment verification forms; standardizing and easing application procedures; and stengthening the public information campaign.

Under the Immigration Reform and Control Act of 1986, immigrants who can prove they have lived in the United States since Jan. 1, 1982, without prolonged absences, felony criminal activity or dependence on government cash assistance are eligible to apply for legalization until May 4. Under the law, those who entered the country after Jan. 1, 1982, are not eligible.

The Chicago Committee on Immigrant Protection, a coalition of 40 local organizations serving immigrant needs, called for extending legalization to immigrants who have entered this country illegally before Nov. 6, 1986, the date the law was enacted, and for prolonging the application period by one year.

"The burdensomeness of [the law], needing to prove 5½ to 6½ years of residence, financial responsibility and trouble-free existence in the USA, is overwhelming," said Sister Bernardine Karge, an attorney with the Archdiocese of Chicago Catholic Charities legalization program, at a hearing sponsored by the Governor's Inter-department Task Force on Immigration and the Illinois House Speaker's Task Force on Immigration Reform.

"By extending the qualifying entry date beyond Jan. 1, 1982, the family unity issue . . . and many thorny aspects of document retrieval . . . will be more easily defused," she said. "By expanding the application date beyond May 4, 1988, for at least one more year . . . more eligible aliens will be able to apply."

But last Wednesday, Commissioner Alan Nelson of the Immigration and Naturalization Service said he was opposed to extending the amnesty deadline, and he warned that legislation and even proposals to prolong the year-long program could cause confusion among illegal immigrants and make them miss the application deadline. A.D. Moyer, director of the INS Chicago district, said he would consider any extensions "bad government."

Sister Karge and others contend that the difficulty of documenting residence in this country, fear that family members who do not qualify for the law will be deported and a poor public information campaign are responsible for the lower-than-expected number of immigrants applying for legalization in Chicago and nationwide.

But Moyer said he expects the INS legalization offices "to be flooded the last 30 days" of the application period. He conceded that the difficulty of gathering documentation and "apathy" are keeping most of the eligible immigrants from applying.

"The majority who haven't applied and are eligible appear to be the group that can't get sufficient documentation," he said. "I would be petitioning the commissioner to get an extension of time, but these individuals haven't been able to get their paperwork together in eight months," often because they cannot locate their former employer or that person is unwilling to sign a work verification form, which is necessary to apply for legalization, he said.

David Strauss, executive director of the Illinois Human Rights Commission, said Congress could amend the immigration law "by making it a violation to fail to fill out a verification letter."

Moyer also said that 6 to 10 percent of eligible immigrants have not applied "because of concerns of family unity." The INS's "family fairness" policy states that if both parents qualify for legalization, the INS will not deport children if they are apprehended. Moyer said he would release this week a "format to start dealing with the spouses and minor children of legal applicants."

But that position is small comfort to immigrants still suspicious of the process, said Esther Nieves, executive director of the Mayor's Advisory Commission on Latino Affairs. She said Congress must be pressured to pass a law that addresses the needs of families with only one member qualified to apply for legalization, she said.

David Marzahl, coordinator of the Chicago Committee on Immigrant Protection, said the low application figures "clearly point to the failure of the amnesty program to bring out of the shadows the hundreds of thousands of immigrants who have been living underground for years."

Marzahl and other immigrant advocates say the INS's inconsistent policies hinder the program.

For example, the INS's Belmont and Pulaski legalization offices require photo identifications in each application, though the regulations stipulate that a birth certificate should be sufficient, said Cecelia Munoz, director of the Catholic Charities' legalization program.●

Mr. CRANSTON. Mr. President, I am pleased to join my good friend from Massachusetts [Mr. KENNEDY] in introducing this bill today that will extend the application period for legalization under the new immigration law for 1 year. The extension of the application period until May 4, 1989, is a reasonable and necessary step to assure that all undocumented persons who have arrived in the United States prior to January 1, 1982, will have the opportunity to legalize their status.

My colleagues may recall that on the first year anniversary of the President's signing of the Immigration Reform and Control Act of 1986 into law I expressed my concern that the legalization program may not achieve the goals we intended because many people who appear to qualify for legalization are not coming forward to apply. For a State such as California, where an estimated half of the undocumented population of the country reside, the failure of the legalization programs—for persons who have arrived in the United States prior to January 1, 1982, as well as for farmworkers who could apply for legalization under the Special Agricultural Workers Program—could have a significant negative social and economic impact.

In my remarks on November 6, 1987, I specifically noted that many undocumented immigrants who appear to meet the legalization criteria are not applying for legalization because they fear that their ineligible family members will be deported. I pointed out that the policy announced by the Immigration and Naturalization Service [INS] last fall to address this situation did not resolve the problem because it did not provide adequate assurance that families will not be separated. Al-

though I joined eight other Senators in urging INS to change its policy, as of this date INS has refused to do so.

In addition to the fear of family separation, I have been informed that many apparently eligible individuals are not applying for legalization because of the cost of the application process, the difficulty of gathering the necessary documentation, and the lack of information regarding the legalization program. A number of groups and individuals have complained that the legalization program got off to a slow start, and that many undocumented people are still confused as to whether they qualify for legalization. The fact that INS has changed and modified its regulations pertaining to eligibility for legalization has contributed to this confusion.

I am especially concerned about the failure of the Asian Pacific community to participate in the legalization program. In an editorial which appeared in the Los Angeles Times, November 17, 1987, entitled "Circumstances of Asians Call for Amnesty Extension," the author pointed out that:

It is estimated that in Southern California alone, there are 100,000 to 150,000 undocumented Asian Pacifics. Yet in the INS' entire Western Region (Arizona, California, Hawaii and Nevada) only 29,000 Asian Pacific applications have been filed.

The author goes on to make a point which has been stressed to me over and over again by State government agencies, church organizations, unions, employers, and the undocumented themselves:

The INS has already reached the easy-to-reach immigrant; it is the underground immigrants—those suffering the most—who have yet to apply. It takes time and effort to get the word out to these people. Simply to suggest that a year has passed since the act was passed does not satisfactorily resolve problems of communication, policy and documentation.

Mr. President, I ask that the full text of this editorial be printed in the RECORD at the conclusion of my remarks.

In sum, Mr. President, I believe that there is ample evidence indicating that an extension of the application period for the legalization program is warranted. I am not persuaded by the arguments put forth by the INS that the legalization program is successful given the number of applications it has received to date. While INS hopes to receive 2 million applications by the May 4, 1988, deadline, there is no guarantee that in fact that number of applications will be filed. Moreover, there are some estimates that twice that number could qualify for legalization if the program were to be administered in a manner consistent with congressional intent.

When we passed the immigration reform legislation in 1986 we realized that the task of legalizing this country's undocumented population was indeed monumental. We must not leave that task half done. I urge my colleagues to support this legislation.

[From the Los Angeles Times, Nov. 12, 1987]

CIRCUMSTANCES OF ASIANS CALL FOR AMNESTY EXTENSION

(By Stewart Kwoh and Andrew Cushnir)

The U.S. immigration amnesty program, designed to bring into the mainstream millions of undocumented immigrants who have been living in the shadows of American society, needs to be given a fair chance to fulfill its purpose. Without an extension of the May 4, 1988, deadline, hundreds of thousands of those eligible may remain forever trapped in our underground culture and economy.

A year ago, President Reagan signed this significant immigration reform legislation—The Immigration Reform and Control Act of 1986. One provision of the complicated and controversial act created the amnesty program.

To qualify for the program, an individual must satisfy a long list of requirements. Most important, he must be able to prove that he has continuously lived in this country illegally for at least five years. Qualified people have just one year—from May 5, 1987, to May 4, 1988—to compile the necessary documentation and apply.

The first problem is that many eligible applicants, conditioned for years to fear the Immigration and Naturalization Service, are reluctant to come out of hiding and trust the INS.

Also, INS officials are still revising eligibility regulations. But many people, previously rejected by the INS under the old rules, are unaware of favorable changes. There has not been enough publicity to let them know that they are now eligible.

Although we generally think of the undocumented Latinos when we think of the amnesty program, the undocumented Asian Pacific community, which is having a particularly difficult time with the program, illustrates how much work still needs to be done. The INS' appointment of three Asian Americans this week to help set up outreach programs is a step in the right direction.

To immigrants who speak little or no English and are fearful of government officials, coming forward to apply for amnesty is an intimidating process. Consequently, relatively few Asian Pacifics have applied. It is estimated that in Southern California alone, there are 100,000-150,000 undocumented Asian Pacifics. Yet in the INS' entire Western Region (Arizona, California, Hawaii and Nevada) only 29,000 Asian Pacific applications have been filed.

In a typical example, an eligible Asian woman decided not to file a legalization application because her husband and children did not qualify. She feared that the information in her application would be used against her family and lead to their deportation. She did not understand that all applications are confidential.

The INS recently increased its focus on this outreach issue and has taken some constructive steps. Through several meetings the agency expanded the role of the Asian Pacific Liaison Committee to solicit the help of community leaders in publicizing the program, and last month application documents were released in the eight major Asian Pacific languages. Given time, these initiatives and current intensive outreach campaigns by several Asian Pacific American organizations will help bridge this communication and trust gap, but they are expanding when the amnesty year is half finished.

Initially, the INS estimated that it would process up to 4 million to 5 million amnesty applications nationally. Now they say they hope to reach 2 million people. Many agencies and community organizations believe that the original figures were accruate.

If so, what will happen to the other 3 million people? They will not simply go away. The undocumented are here because they are independent, creative, ambitious and sometimes, in the case of refugees fleeing war-torn countries, desperate people. Those who qualify for amnesty deserve a chance to participate in the program.

Despite all of these problems, the INS and Congress seem unwilling to extend the amnesty deadline. It is argued, based on new figures showing a decline in amnesty applications, that no more time is needed. Not true—the decline is simply a product of the law of diminishing return. The INS has already reached the easy-to-reach immigrant; it is the underground immigrants—those suffering the most—who have yet to apply. It takes time and effort to get the word out to these people. Simply to suggest that a year has passed since the act was passed does not satisfactorily resolve problems of communication, policy and documentation. By extending the amnesty program just six months we can integrate hundreds of thousands of additional eligible immigrants into American society.

As a nation we have a choice to make. Do we resign ourselves to the creation of two classes of Americans—the unprotected citizen and the vulnerable undocumented immigrant? Or do we extend the amnesty program and work toward a humane, fair and consistent policy that offers the promise of America to all responsible, long-time residents who live within our borders? The choice is clear and Congress should act immediately to extend the amnesty program.

By Mr. D'AMATO:

S. 2016. A bill to impose a legislative ban on and require a rulemaking with respect to, certain all-terrain vehicles, and for other purposes; to the Committee on Commerce, Science, and Transportation.

EMERGENCY ALL-TERRAIN VEHICLE SAFETY ACT

● Mr. D'AMATO. Mr. President, I rise to introduce the Emergency All-Terrain Vehicle Safety Act.

The December 30, 1987, settlement of the U.S. Consumer Product Safety Commission's imminent hazard case against the manufacturers of all-terrain vehicles [ATV's] is likely to become final by February 13, 1988. Today I testified before the House Subcommittee on Commerce, Consumer, and Monetary Affairs to express my strong opposition to the settlement. The bill I am introducing today will correct the glaring inadequacies contained in the settlement.

Since 1982, ATV accidents have claimed at least 59 lives in New York State—we are second only to California. Nationwide, ATV's have been responsible for more than 900 deaths and over 330,000 serious injuries re-

quiring hospital emergency room treatment.

If I could believe that the Federal Government's ATV settlement would help to reduce the imminent hazard that ATV's pose to consumers, especially to children, I would not be introducing this bill today. If I were convinced that the CPSC and the Justice Department had fought a tough legal battle or had engaged in serious negotiations to achieve the greatest degree of consumer protection possible without years of litigation, I would not introduce this bill.

Unfortunately, this settlement is a sham and the American public deserve to know it. It is nothing less than a bill of rights for the Japanese-based ATV manufacturers and an insult to American consumers.

This settlement is an embarrassment to the American public. It is the worst example of how a government agency has acted on behalf of the foreign Japanese manufacturers at the expense of American consumers. The manufacturers have waltzed away with a package that will provide them with litigation insurance for the years of individual court battles that are ahead. There were no real negotiations here. The settlement is virtually identical to the first offer made by the Japanese manufacturers in a letter to CPSC on December 3, 1987. In fact, the settlement contains less than what the American ATV manufacturer, Polaris of Minnesota, offered in a separate letter on that same date. It is a stunning victory for the Japanese-based ATV companies.

Let's look at the facts. The settlement does not include consumer refunds for three-wheeled ATV's and the adult-sized ATV's bought for use by children under age 16. It falls far short of the relief authorized by the Commission in December of 1986, and the complaint filed by the Justice Department last December. It does not even match what the only American ATV manufacturer has offered. Consumer refunds are the only effective means for keeping children off adult-sized ATV's: 90 percent of ATV riders aged 12 to 15 ride adult size ATV's. Nearly half of the ATV injuries and deaths are to children under age 16.

This story settlement does nothing for the thousands of American children who are going to be killed and maimed by these products. CPSC's own data show that if there were only four-wheeled ATV's operated by drivers age 16 or older, this could save nearly 100 lives and 60,000 injuries per year. The consumer refunds, dropped from this settlement, would have gone a long way toward making this happen.

Chairman Scanlon has indicated his concerns that refunds wouldn't have worked because used ATV's returned for refunds could still be sold to untrained purchasers. Nothing in this settlement prevents the sale of used ATV's. Supporters of the settlement also claim that if after 1 year this settlement does not reduce ATV deaths and injuries that CPSC can go back and seek refunds. That will be a monumental job. The settlement requires that a "go back" be based on new and substantial evidence—if the current statistics of 20 ATV deaths per month do not increase, or even if they do, is this "new" evidence? Industry is likely to argue that proof of a product defect is that type of new evidence required to reopen the case.

Dropping the demand for refunds is outrageous when the only major American manufacturer—Polaris—had agreed to provide refunds. Here we have an American company willing to take responsible action, while the Japanese-based companies whose ATV's constitute the lion's share of products in the United States are unwilling to do this. Perhaps more shocking is that the Federal agencies charged with protecting consumers were unwilling to fight for them.

Instead of assuming responsibility for tackling the enormous concerns raised by ATV death and injury data the CPSC majority—with the exception of Commissioner Anne Graham—shirked their duty by running to give the industry the keys to the store. This settlement is a bigger giveaway than the Publishers' Clearinghouse sweepstakes.

Defenders of this settlement claim that refunds are too expensive. Really? Each year, since 1985, we have spent over a billion dollars on ATV deaths and injuries. Last year ATV companies sold about 500,000 new ATV's at an average price of $2,000. Instead of refunds, Chairman Scanlon says that "hardheaded negotiations" resulted in a settlement that is in the public interest. What did the public get? Let's look.

The settlement requires consumers to sign what amounts to a manufacturers' and dealers' liability release form when they purchase an ATV. It provides for a watered-down form notice from the manufacturers to dealers and consumers that does not emphasize the hazards to kids. It includes a public awareness campaign that is not spelled out to indicate if it will approach the type of expensive, world series prime-time hype that induced millions of consumers to buy ATV's for family fun. Training courses provided for are unlikely to attract sufficient numbers of riders because no incentives are provided to induce them to take the courses. And the crowning achievement of the settlement—the "stop sale" of three wheelers—is not a stop sale, it is at best a brief moratorium. One day after the settlement was filed, American Honda stated that it would store the three wheelers returned by dealers and expected to be able to sell them again in several months.

Supporters of the settlement say that it represents the only alternative to years of protracted, costly litigation and that it is the most protection that could be obtained for the least amount of time and money. This is nonsense. This settlement is not the most for the least, but the least for the longest amount of time.

The CPSC has been analyzing the ATV problem since 1984. Since that time there have been 20 deaths and 7,000 injuries per month on ATV's. CPSC's imminent hazard case languished at Justice from February 1987 until December 11, 1987 when Justice declared that it was prepared to immediately file suit seeking all the relief authorized by the CPSC including consumer refunds. Scanlon, through such actions as removing the two lead attorneys familiar with the case, made sure that there would be no quick movement on the litigation until a deal suitable to the industry could be worked out. Meanwhile, the ATV industry continued to push their ATV inventories on unsuspecting consumers.

The emergency all-terrain vehicle safety bill bans future sales of three-wheeled ATV's and designed for use by children under age 16. It provides for reasonable refunds to consumers who purchased three-wheeled ATV's, adult-sized ATV's intended for use by children under age 16, and child-size ATV's. Free hands-on training courses coupled with incentives to encourage ATV owners actually to take the courses are required, as well as, an extensive public notice and warning campaign. Moreover, CPSC is barred from requiring consumers to execute written promises as to their use of ATV's. If CPSC failes to issue an emergency rule within 60 days to implement the refunds, notice, warning, and training, then the sale of all ATV's would be prohibited.

Mr. President, I urge my colleagues to support this urgent safety legislation.●

By Mr. DOLE (for himself, Mr. SIMPSON, Mr. STEVENS, Mr. MCCAIN, Mr. HOLLINGS, Mr. BENTSEN, Mr. SHELBY, and Mr. STENNIS) (by request):

S.J. Res. 243. Joint resolution relating to Central America pursuant to House Joint Resolution 395 of the 100th Congress; to the Committee on Foreign Relations.

CONGRESSIONAL APPROVAL OF PROPOSED AID TO NICARAGUAN DEMOCRATIC RESISTANCE

Mr. DOLE. Mr. President, today, at President Reagan's request and because of my own strong conviction that this is the right thing to do, I am introducing the joint resolution of congressional approval for the Presi-

dent's proposed aid package to the freedom fighters in Nicaragua—the so-called Contras.

This joint resolution will enjoy the expedited procedures laid out in House Joint Resolution 395—the fiscal year 1988 continuing resolution. The Senate will vote on this matter February 4.

It is a crucial vote; a vote we must win, to preserve the chance for real peace, and true democracy, in Central America.

It is a vote we cannot duck—no matter how many "fig leafs" and "smokescreens" the House Democratic leadership dream up.

The cry we hear today is: Give peace a chance. The problem is: The only place we hear that cry is in Washington. But this war didn't start in Washington; isn't being sustained from Washington; and is not going to be ended in Washington.

I don't know of anyone in Washington who isn't ready to give peace a chance. Ronald Reagan is—as he has made clear, in every word and deed since the Arias plan was signed in Guatemala City. Ronald Reagan is giving peace a chance.

But what about Mikhail Gorbachev? What about Fidel Castro? What about Daniel Ortega? Are we demanding that they, too, give peace a chance?

Are we demanding that Gorbachev and Castro stop sending military aid and military advisers to the Sandinistas? Are we demanding that Ortega refuse such aid?

The excuse we hear is: Well, Ortega needs the aid, because we support the Contras. Hogwash.

I'll make this deal today, with any opponent of Contra aid who wants to make it: Have the CIA report to Congress on Communist bloc military aid to the Sandinistas; and the American aid to the Contras directly to what's in that report—for every dollar the Communist bloc gives to the Sandinistas in military aid, we'll give just a quarter to the Contras.

So if Gorbachev and Castro want us to end Contra aid, they can just cut off Managua. If Ortega wants us to end Contra aid, he can just refuse the largesse of his Communist mentors—go cold turkey.

Let's just see if Gorbachev, and Castro, and Ortega are willing to give peace a chance.

Or how about this? I keep hearing Contra aid opponents demanding that we "heed the voices of the Presidents of the Central American democracies." A good suggestion. Why don't we ask each of those Presidents to send to us in the Congress a confidential, two-sentence report. The first sentence would be: "The Sandinistas are—or are not—supporting an insurgency and terrorism in my country." The second sentence would be: "The Sandinistas are—or are not—in full, repeat full, compliance with the Guatemala City accords."

That's all we need—those reports every month. And the first month we get four reports saying: "The Sandinistas are not supporting an insurgency and terrorism, and are in full compliance with the peace accords"—the first month we get that report from each of the four Presidents: We cut off military aid to the Contras.

So if Ortega wants to stop our military aid, all he has to do is stop his aid to the insurgents; and stop his oppression of the Nicaraguan people.

Let's see if Daniel Ortega and his Sandinista cronies are really interested in giving peace a chance.

There won't be any takers for either of these offers. And I'll tell you why. Because opponents of Contra aid know—if we make our decision on Contra aid on the basis of the real intentions, actions, and good faith of the Communists in Managua, Havana, and Moscow—if that's what determines our decision, then Contra aid will continue.

Mr. President, why don't we demand of Gorbachev and Castro and Ortega at least as much as we demand of ourselves? Why do we insist on always putting the monkey on our own back?

The suggestion that the United States is perpetuating a war in Nicaragua is hogwash.

Sandinista oppression is perpetuating the war.

Sandinista aggression against its neighbors is perpetuating the war.

Sandinista noncompliance with the Guatemala City accord is perpetuating the war.

Soviet and Cuban militarization of Nicaragua is perpetuating the war.

Mr. President, let's give peace a chance.

But let's make sure Gorbachev, and Castro, and Ortega are willing to give it a chance, too.

Mr. President, I ask unanimous consent that the joint resolution be printed in the RECORD.

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

S.J. RES. 243

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby approves the additional authority and assistance for the Nicaraguan democratic resistance that the President requested pursuant to H.J. Res. 395 of the 100th Congress, the act making continuing appropriations for fiscal year 1988.

By Mr. EXON (for himself, Mr. KARNES, Mr. DOLE, Mr. DURENBERGER, Mr. CONRAD, Mr. BURDICK, Mr. LUGAR, Mr. GORE, Mr. BRADLEY, Mr. COCHRAN, Mr. LEVIN, Mr. PELL, Mr. SANFORD, Mr. STENNIS, Mr. THURMOND, Mr. D'AMATO, Mr. BOND, Mr. CHILES, Mr. PRYOR, Mr. DOMENICI, Mr. METZENBAUM, Mr. SASSER, Mr. RIEGLE, Mr. DODD, Mr. GARN, Mr. REID, Mr. SIMON, Mr. HECHT, Mr. GRAHAM, Mr. FORD, Mr. MCCLURE, Mr. DANFORTH, Mr. WILSON, Mr. NUNN, Mr. HELMS, Mr. SYMMS, Mr. STEVENS, Mr. CHAFEE, Mr. GRASSLEY, Mr. WARNER, Mr. DECONCINI, Mr. HEINZ, Mr. BOREN, Mr. HUMPHREY, Mr. HEFLIN, Mr. BINGAMAN, Mr. INOUYE, Mr. STAFFORD, Mr. BYRD, Mr. LAUTENBERG, Mr. JOHNSTON, Mr. BUMPERS, Mr. ROTH, Mr. HOLLINGS, and Mr. CRANSTON):

S.J. Res. 244. Joint resolution to designate the month of April 1988, as "National Know Your Cholesterol Month;" referred to the Committee on the Judiciary.

NATIONAL KNOW YOUR CHOLESTEROL MONTH

Mr. EXON. Mr. President, today I rise on behalf of myself, my colleague from Nebraska, Senator KARNES and more than 50 other Members of the Senate to introduce a resolution designating the month of April 1988, as "Know Your Cholesterol Month."

As many of you may recall, a resolution of this nature was the last legislative act of my very good friend and colleague, Senator Ed Zorinsky. I am introducing this resolution in memory of Ed. I know he would want this to be passed. Health, most particularly, cardiovascular health, was very important to Ed.

It is an irrefutable fact that cholesterol is a mass killer. Worldwide studies provide documented proof. The higher a person's cholesterol, the greater his risk of suffering a heart attack or stroke.

The National Institutes of Health has launched a multimillion-dollar campaign, the National Cholesterol Education Program, designed to fight this devastating disease. The goal of this program is to reduce the prevalence of elevated blood cholesteral in the United States, thereby reducing coronary heart disease mortality.

According to a recent survey done by the National Heart, Lung and Blood Institute, only 8 percent of American citizens know their cholesterol levels. This resolution can help create broad-based public awareness of this issue, and the deadly importance of knowing your cholesterol levels. As was the case last year, the Nebraska-based National Heart Savers Association, under the leadership of Mr. Phil Sokolof, will conduct free cholesterol checks for all Members of Congress and Capitol Hill Staff in conjunction with the observance of this special month. The exact dates for those tests have not been worked out yet, however, I will pass along that information when the details are finalized. Last year, over 9,000 people were tested during the

congressional observance of "Know Your Cholesterol Week."

Almost 30 percent of the nearly 2 million deaths in this country each year are the result of coronary heart disease. Most coronary heart disease is due to blockages in the arteries that supply blood to the heart. This blockage can be controlled. Elevated blood cholesterol is one of the three main controllable risk factors for coronary heart disease. The other two factors are high blood pressure and cigarette smoking. Any one of these risk factors increases an individual's chance of developing heart disease. The chances of developing heart disease increase in proportion to the amount of cholesterol in an individual's system. However, studies also show that people who have elevated blood cholesterol and who take steps to reduce it also reduce their risk of having a heart attack.

Every adult American should know their cholesterol level. This is a lifesaving issue. Mr. President, I urge swift passage of this resolution.

I ask unanimous consent that the resolution be printed in the RECORD.

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

S.J. RES. 244

Whereas heart attacks struck an estimated 1,500,000 Americans in 1987, a third of whom died immediately;

Whereas scientific data indicates that effective measures to lower serum cholesterol are capable of decreasing occurrences of heart disease;

Whereas only 8 per centum of Americans know their cholesterol level; and

Whereas as many as 250,000 lives could be saved each year if Americans were tested for and took action to reduce high levels of cholesterol: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the month of April, 1988, is designated as "National Know Your Cholesterol Month", and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe such month with appropriate programs and activities.

Mr. D'AMATO. Mr. President, I rise today in support of legislation introduced by my distinguished colleague, Senator EXON, to designate the month of April 1988, as "National Know Your Cholesterol Month." I believe this effort will encourage individuals not only to learn their cholesterol levels, but, more importantly, will lead them to take steps to lower elevated levels.

The dangers associated with high cholesterol are well documented. Years of scientific research have proven that individuals with even modestly elevated serum cholesterol levels run a higher risk of having a heart attack or stroke. The more elevated a person's cholesterol level, the greater are his chances of developing heart disease.

Heart disease is presently the No. 1 killer in America. Last year alone, heart attacks struck an estimated 1.5 million Americans, a third of whom died immediately. More than 43 million Americans suffer from some form of heart or blood vessel disease. In 1985, the cost of providing health care to those suffering from heart disease reached $72.1 billion.

Yet, in spite of the well-established connection between higher than recommended cholesterol levels and heart disease, very few Americans—only 8 percent according to a recent survey—know their own cholesterol levels. This deficiency must be addressed if we are to combat effectively heart disease in America.

Therefore, I am pleased that my colleague has taken the initiative to encourage individuals to become more aware of their cholesterol levels. I commend my colleague from Nebraska for his commitment to this cause, and I ask my colleagues who have not already done so to lend their support to this resolution.

By Mr. CRANSTON (for himself, Mr. WILSON, Mr. ADAMS, Mr. BAUCUS, Mr. BINGAMAN, Mr. BRADLEY, Mr. BREAUX, Mr. BUMPERS, Mr. BURDICK, Mr. CHAFEE, Mr. CHILES, Mr. COCHRAN, Mr. CONRAD, Mr. D'AMATO, Mr. DECONCINI, Mr. DODD, Mr. DOLE, Mr. DOMENICI, Mr. DURENBERGER, Mr. EVANS, Mr. EXON, Mr. FOWLER, Mr. GARN, Mr. GORE, Mr. GRAHAM, Mr. GRASSLEY, Mr. HECHT, Mr. HEFLIN, Mr. HEINZ, Mr. HOLLINGS, Mr. HUMPHREY, Mr. JOHNTSON, Mr. KASTEN, Mr. KENNEDY, Mr. LEAHY, Mr. LUGAR, Mr. METZENBAUM, Mr. MOYNIHAN, Mr. MURKOWSKI, Mr. PACKWOOD, Mr. PELL, Mr. PROXMIRE, Mr. PRYOR, Mr. REID, Mr. RIEGLE, Mr. ROCKEFELLER, Mr. ROTH, Mr. SANFORD, Mr. SARBANES, Mr. SASSER, Mr. STAFFORD, Mr. STENNIS, Mr. WARNER, and Mr. WIRTH):

S.J. Res. 245. Joint resolution to designate April 21, 1988, as "John Muir Day"; to the Committee on the Judiciary.

JOHN MUIR DAY

Mr. CRANSTON. Mr. President, I introduce for appropriate reference a joint resolution to designate April 21, 1988, as John Muir Day. I'm very pleased that Senators WILSON, ADAMS, BAUCUS, BINGAMAN, BRADLEY, BREAUX, BUMPERS, BURDICK, CHAFEE, CHILES, COCHRAN, CONRAD, D'AMATO, DECONCINI, DODD, DOLE, DOMENICI, DURENBERGER, EVANS, EXON, FOWLER, GARN, GORE, GRAHAM, GRASSLEY, HECHT, HEFLIN, HEINZ, HOLLINGS, HUMPHREY, JOHNSTON, KASTEN, KENNEDY, LEAHY, LUGAR, METZENBAUM, MOYNIHAN, MURKOWSKI, PACKWOOD, PELL, PROXMIRE, PRYOR, REID, RIEGLE, ROCKEFELLER, ROTH, SANFORD, SARBANES, SASSER, STAFFORD, STENNIS, WARNER, and WIRTH are joining as cosponsors.

John Muir is one of America's great conservationists. Often called the father of our national park system, Muir helped preserve some of our first national parks, including Yosemite, Sequoia, and the Grand Canyon. He also championed the preservation of our forest lands and through his writings and work influenced U.S. Presidents to set aside forest reserves, leading to the establishment of our national forest system. Muir's articles extolling the natural wonders of Alaska also changed public opinion about this magnificent area.

Not only did Muir's writings of his travels and opinions on man's relationship with nature influence his own generation, but they continue to teach us about the beauty of our country and the value of protecting our wild lands. Today, because of Muir's vision and those who followed him, millions of Americans enjoy billions of acres of national park and forest lands and better understand and appreciate the value of conservation.

In September, the World Wilderness Conference, with representatives from 60 nations, unanimously passed a resolution calling for the commemoration of Muir's birthday. April 21, 1988 marks John Muir's 150th anniversary. I believe this is an appropriate occasion to celebrate the legacy of this great American who helped spawn the modern conservation movement.

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

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

S.J. RES. 245

Whereas April 21, 1988, marks the 150th birthday of the great American conservationist John Muir, heralded worldwide for his dedication to the preservation of wilderness in this country;

Whereas generations of Americans have reveled in the wonders of Yosemite, the Grand Canyon, and other parklands set aside by past Presidents and Congresses at the urging of the Scottish-born naturalist;

Whereas a system of natural, cultural, historical, and recreational national parks which John Muir helped pioneer has grown in size to almost 80 million acres symbolizing the stewardship Americans demonstrate for their precious public resources;

Whereas John Muir was the cofounder and first president of the Sierra Club, an organization which contributes in making this nation a leader in the global environmental movement;

Whereas the John Muir National Historic Site, in Martinez, California, one of 337 units of the National Park Service, was set aside by Congress in 1964 as a monument to the wild lands crusader and was the site from which Muir wrote books celebrating the natural beauty and wildlife of the

United States, books that are still widely read and treasured by people of all ages; and

Whereas the important role of an ecologically sound environment in the quality of life for all people was proselytised by the tireless voice and pen of John Muir; Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That April 21, 1988, is designated as "John Muir Day", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such day with appropriate ceremonies and activities.

By Mr. DECONCINI (for himself and Mr. DODD):

S.J. Res. 246. Joint resolution to designate the month of April 1988, as "National Child Abuse Prevention Month"; to the Committee on the Judiciary.

NATIONAL CHILD ABUSE PREVENTION MONTH

● Mr. DECONCINI. Mr. President, I am introducing today, together with my colleague from the great State of Connecticut, Senator DODD, a joint resolution to declare the month of April 1988 as "National Child Abuse Prevention Month." I am hopeful that a great number of my distinguished colleagues will join us in this important effort.

Mr. President, despite the fact that agencies and organizations serving our children have made notable contributions over the past few years in improving the lives of our youth—by revamping rules and regulations, pinpointing issues, disseminating information and increasing public awareness—child abuse is still on the increase.

Recent data makes it abundantly clear that our Nation's poor children are the high-risk victims for abuse, neglect, and other poverty-related problems. The families of these children are caught in a web of strife, stress, and strain in their attempt to merely survive from day to day. Their struggle is compounded by lack of resources, both spiritual and physical, to reduce the burden imposed by their state of proverty.

Mr. President, America's child-abuse problem does not stop there. It appears in every State in the Union and cuts across all socioeconomic groups. From the impoverished ghettos of our urban centers to the stately manors across the Nation, millions of America's children are not getting a fair chance to grow into productive adults. Many children in the United States are growing up in wholesome, nurturing environments. However, millions more are not blessed with that good fortune. Every child in the world needs and deserves food, shelter, and love in order to survive and prosper.

The evidence of child abuse and neglect is both alarming and overwhelming. The best available statistics estimate that 3 of every 4 cases of child abuse go unreported and the actual number of incidences is on the rise. The data collected by the Child Help U.S.A. organization and others show that over 1 million cases of child abuse is repoprted, so as many as 4 million of our Nation's children are being tragically abused. When I introduced this resolution in 1986, I cited national statistics which stated that reports of child abuse and neglect were up 39.8 percent from 1981. Today, I regret to report that the incidence rate is not declining. And all experts agree that the numbers will escalate further since victims in turn, will likely victimize their own children and others.

Mr. President, despite the best efforts of the social service providers, like Child Help U.S.A., Parents Anonymous, and other members of the National Child Abuse Coalition, the entire Nation is threatened by the continued growth in child abuse and neglect. The only all day, every day, national crisis counseling hotline staffed totally by medical and clinical professionals received over 126,000 calls in 1986 compared with only 8,600 calls when it was established in 1982. The Child Help U.S.A. phone system was at capacity in 1986. Since then, it has had to expand to accomodate an increasing number of calls.

As I have stated previously, Members of Congress have an opportunity to assist the many individuals, organizations, and agencies that are striving to rid our Nation of the epidemic of child abuse and to assist the victims as well. We can help focus public attention on goals and objectives of these agencies and improve the general welfare of our children.

The declaration of April 1988 as "National Child Abuse Prevention Month" is a significant way in which we in Congress can emphasize the importance of increasing public awareness and education for the benefit of our troubled families and suffering children. There is help available in communities throughout the Nation, but we need to get the message out to the abused as well as the abusers. Therefore, I urge my colleagues to join Senator DODD and myself in this effort to have April 1988 designated as "National Child Abuse Prevention Month."

Mr. President, I ask unanimous consent that the text of the resolution be printed in the CONGRESSIONAL RECORD following my statement.

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

S.J. RES. 246

Whereas the incidence and prevalence of child abuse and neglect have reached alarming proportions in the United States;

Whereas an estimated four million children become victims of child abuse in this Nation each year;

Whereas an estimated five thousand of these children die as a result of such abuse each year;

Whereas the Nation faces a continuing need to support innovative programs to prevent child abuse and assist parents and family members in which child abuse occurs;

Whereas Congress has expressed its commitment to seeking and applying solutions to this problem by enacting the Child Abuse Prevention and Treatment Act of 1974;

Whereas many dedicated individuals and private organizations, including Child Help U.S.A., Parents Anonymous, the National Committee for the Prevention of Child Abuse, the American Humane Association, and other members of the National Child Abuse Coalition, are working to counter the ravages and abuse and neglect and to help child abusers break this destructive pattern of behavior;

Whereas the average cost for a public welfare agency to serve a family through a child abuse program is twenty times greater than self-help programs administered by private organizations;

Whereas organizations such as Parents Anonymous, and other members of the National Child Abuse Coalition, are expediting efforts to prevent child abuse in the next generation through special programs for abused children; and

Whereas it is appropriate to focus the attention of the Nation upon the problem of child abuse: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the month of April, 1988, is designated as "National Child Abuse Prevention Month", and the President is authorized and requested to issue a proclamation calling upon all Government agencies and the people of the United States to observe such month with appropriate programs, ceremonies, and activities.●

ADDITIONAL COSPONSORS

S. 533

At the request of Mr. THURMOND, the names of the Senator from Rhode Island [Mr. CHAFEE] and the Senator from Tennessee [Mr. GORE] were added as cosponsors of S. 533, a bill to establish the Veterans' Administration as an executive department.

S. 703

At the request of Mr. SPECTER, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 703, a bill to amend title 18, United States Code, including the Child Protection Act, to create remedies for children and other victims of pornography, and for other purposes.

S. 708

At the request of Mr. PROXMIRE, the name of the Senator from Georgia [Mr. FOWLER] was added as a cosponsor of S. 708, a bill to require annual appropriations of funds to support timber management and resource conservation on the Tongass National Forest.

S. 714

At the request of Mr. SPECTER, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of S. 714, a bill to recognize the or-

ganization known as the Montford Point Marine Association, Inc.

S. 929

At the request of Mr. MELCHER, the names of the Senator from Georgia [Mr. NUNN], the Senator from New Mexico [Mr. BINGAMAN], and the Senator from North Carolina [Mr. SANFORD] were added as cosponsors of S. 929, a bill entitled the "Volunteer Protection Act of 1987."

S. 1109

At the request of Mr. HARKIN, the name of the Senator from North Carolina [Mr. SANFORD] was added as a cosponsor of S. 1109, a bill to amend the Federal Food, Drug, and Cosmetic Act to require certain labeling of foods which contain tropical fats.

S. 1124

At the request of Mr. SIMON, the names of the Senator from Colorado [Mr. WIRTH] and the Senator from Michigan [Mr. RIEGLE] were added as cosponsors of S. 1124, a bill to amend title 18, United States Code, to require that telephone monitoring by employers be accompanied by a regular audible warning tone.

S. 1346

At the request of Mr. MATSUNAGA, the names of the Senator from Tennessee [Mr. GORE], and the Senator from Massachusetts [Mr. KENNEDY] were added as cosponsors of S. 1346, 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, to give 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.

S. 1424

At the request of Mr. SIMON, the name of the Senator from Ohio [Mr. METZENBAUM] was added as a cosponsor of S. 1424, a bill to amend title 8, United States Code, to provide for adjustment of status of certain Polish nationals who arrived in the United States before July 21, 1984, and who have continuously resided in the United States since that date.

S. 1512

At the request of Mr. HATCH, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 1512, a bill to provide that in judicial actions against State judges, such judges shall not be held liable for attorney fees.

S. 1567

At the request of Mr. BUMPERS, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 1567, a bill to provide for refunds pursuant to rate decreases under the Federal Power Act.

S. 2003

At the request of Mr. GRAMM, the names of the Senator from New Mexico [Mr. DOMENICI], the Senator from North Dakota [Mr. BURDICK], the Senator from Montana [Mr. MELCHER], the Senator from Oklahoma [Mr. NICKLES], the Senator from Nebraska [Mr. KARNES], the Senator from South Dakota [Mr. PRESSLER], the Senator from Minnesota [Mr. DURENBERGER], and the Senator from Indiana [Mr. LUGAR] were added as cosponsors of S. 2003, a bill to amend the Internal Revenue Code of 1986 to exempt from tax diesel fuel used for farming purposes.

S. 2011

At the request of Mr. CRANSTON, the name of the Senator from Maine [Mr. MITCHELL], was added as a cosponsor of S. 2011, a bill to increase the rate of Veterans' Administration compensation for veterans with service-connected disabilities and dependency and indemnity compensation for the survivors of certain disabled veterans.

SENATE JOINT RESOLUTION 199

At the request of Mr. BYRD, the names of the Senator from Louisiana [Mr. JOHNSTON], the Senator from Massachusetts [Mr. KENNEDY], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Vermont [Mr. STAFFORD], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Kansas [Mr. DOLE], and the Senator from Pennsylvania [Mr. HEINZ] were added as cosponsors of Senate Joint Resolution 199, a joint resolution to designate the month of May 1988, as "Trauma Awareness Month."

SENATE JOINT RESOLUTION 206

At the request of Mr. DOMENICI, the names of the Senator from New Jersey [Mr. BRADLEY], the Senator from Alabama [Mr. HEFLIN], the Senator from Maryland [Mr. SARBANES], the Senator from Hawaii [Mr. INOUYE], the Senator from Maine [Mr. MITCHELL], the Senator from Delaware [Mr. ROTH], the Senator from Arizona [Mr. MCCAIN], the Senator from Idaho [Mr. SYMMS], the Senator from Nevada [Mr. HECHT], the Senator from Connecticut [Mr. WEICKER], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Minnesota [Mr. DURENBERGER], the Senator from New York [Mr. MOYNIHAN], and the Senator from New York [Mr. D'AMATO] were added as cosponsors of Senate Joint Resolution 206, a joint resolution to declare Dennis Chavez Day.

SENATE JOINT RESOLUTION 212

At the request of Mr. DIXON, the names of the Senator from North Dakota [Mr. BURDICK], the Senator from Indiana [Mr. LUGAR], the Senator from Ohio [Mr. METZENBAUM], the Senator from Florida [Mr. GRAHAM], the Senator from Louisiana [Mr. JOHNSTON], and the Senator from Colorado [Mr. ARMSTRONG] were added as cosponsors of Senate Joint Resolution 212, a joint resolution to designate the period commencing May 8, 1988, and ending on May 14, 1988, as "National Tuberous Sclerosis Awareness Week."

SENATE JOINT RESOLUTION 224

At the request of Mr. CHILES, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of Senate Joint Resolution 224, a joint resolution to designate the period commencing on September 5, 1988, and ending on September 11, 1988, as "National School Dropout Prevention Week."

SENATE JOINT RESOLUTION 242

At the request of Mr. SARBANES, the names of the Senator from Colorado [Mr. WIRTH], the Senator from Hawaii [Mr. INOUYE], the Senator from Georgia [Mr. NUNN], the Senator from Arkansas [Mr. PRYOR], the Senator from Connecticut [Mr. WEICKER], the Senator from California [Mr. CRANSTON], the Senator from Alabama [Mr. HEFLIN], the Senator from Connecticut [Mr. DODD], the Senator from Louisiana [Mr. JOHNSTON], the Senator from New Jersey [Mr. LAUTENBERG], and the Senator from North Dakota [Mr. CONRAD] were added as cosponsors of Senate Joint Resolution 242, a joint resolution designating the period commencing May 2, 1988, and ending on May 8, 1988, as "Public Service Recognition Week."

SENATE RESOLUTION 254

At the request of Mr. SIMON, the name of the Senator from North Dakota [Mr. BURDICK] was added as a cosponsor of Senate Resolution 254, a resolution to state the guiding principles of United States policy toward South Africa's illegal occupation of Nambia.

SENATE RESOLUTION 270

At the request of Mr. LAUTENBERG, the names of the Senator from Florida [Mr. CHILES], the Senator from Nevada [Mr. REID], the Senator from Ohio [Mr. METZENBAUM], the Senator from Michigan [Mr. LEVIN], the Senator from Indiana [Mr. QUAYLE], the Senator from South Dakota [Mr. PRESSLER], the Senator from Hawaii [Mr. MATSUNAGA], the Senator from Indiana [Mr. LUGAR], and the Senator from Maryland [Mr. SARBANES], were added as cosponsors of Senate Resolution 270, a resolution paying special tribute to Portuguese diplomat Dr. de Sousa Mendes for his extraordinary acts of mercy and justice during World War II.

AMENDMENT NO. 1388

At the request of Mr. KARNES, the names of the Senator from Kentucky [Mr. MCCONNELL], the Senator from Idaho [Mr. MCCLURE], the Senator from Iowa [Mr. GRASSLEY], and the Senator from Idaho [Mr. SYMMS], were added as cosponsors of amend-

ment No. 1388 intended to be proposed to S. 557, a bill to restore the broad scope of coverage and to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964.

AMENDMENT NO. 1392

At the request of Mr. DANFORTH, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of amendment No. 1392 proposed to S. 557, a bill to restore the broad scope of coverage and to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964.

SENATE RESOLUTION 361—ORIGINAL RESOLUTION REPORTED AUTHORIZING EXPENDITURES BY THE COMMITTEE ON FINANCE

Mr. BENTSEN, from the Committee on Finance, reported the following original resolution; which was referred to the Committee on Rules and Administration:

S. RES. 361

Resolved, That, in carrying out its powers, duties and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Finance is authorized from March 1, 1988, through February 28, 1989, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed $2,503,993, of which amount (1) not to exceed $30,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $10,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of such Act).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1989.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate, or for the payment of long distance phone calls.

SEC. 5. There are authorized such sums as may be necessary for agency contributions related to the compensation of employees of the committee from March 1, 1988, through February 28, 1989, to be paid from the Appropriations account for "Expenses of Inquiries and Investigations".

SENATE RESOLUTION 362—ORIGINAL RESOLUTION REPORTED AUTHORIZING EXPENDITURES BY THE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, reported the following original resolution; which was referred to the Committee on Rules and Administration.

S. RES. 362

Resolved, That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Commerce, Science, and Transportation is authorized from March 1, 1988, through February 28, 1989, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed $3,384,299, of which amount (1) not to exceed $14,572 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $10,850 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of such Act).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1989.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

SEC. 5. There are authorized such sums as may be necessary for agency contributions related to the compensation of employees of the committee from March 1, 1988, through February 28, 1989, to be paid from the Appropriations account for "Expenses of Inquiries and Investigations".

SENATE RESOLUTION 363—ORIGINAL RESOLUTION REPORTED AUTHORIZING EXPENDITURES BY THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. BURDICK, from the Committee on Environment and Public Works, reported the following original resolution; which was referred to the Committee on Rules and Administration:

S. RES. 363

Resolved, That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Environment and Public Works is authorized from March 1, 1988, through February 28, 1989, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed $2,381,014.00, of which amount (1) not to exceed $8,000.00 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $2,000.00 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of such Act).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1989.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate, or for the payment of long distance phone calls.

SEC. 5. There are authorized such sums as may be necessary for agency contributions related to the compensation of employees of the committee from March 1, 1988, through February 28, 1989, to be paid from the Appropriations account for "Expenses of Inquiries and Investigations".

SENATE RESOLUTION 364—ORIGINAL RESOLUTION REPORTED AUTHORIZING EXPENDITURES BY THE COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. GLENN, from the Committee on Governmental Affairs, reported the following original resolution; which was referred to the Committee on Rules and Administration:

S. RES. 364

Resolved, That, in carrying out its powers, duties and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Governmental Affairs is authorized from March 1, 1988 through February 28, 1989, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel,

and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed $4,548,210 of which amount (1) not to exceed $49,326 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $2,470 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of such Act).

SEC. 3. (a) The committee, or any duly authorized subcommittee thereof, is authorized to study or investigate—

(1) the efficiency and economy of operations all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption, or unethical practices, waste, extravagance, conflicts of interest, and the improper expenditure of Government funds in transactions, contracts, and activities of the Government or of Government officials and employees and any and all such improper practices between Government personnel and corporations, individuals, companies, or persons affiliated therewith, doing business with the Government; and the compliance or noncompliance of such corporations, companies, or individuals or other entities with the rules, regulations, and laws governing the various governmental agencies and its relationships with the public.

(2) the extent to which criminal or other improper practices or activities are, or have been, engaged in the field of labor-management relations or in groups or organizations of employees or employers, to the detriment of interests of the public, employers or employees, and to determine whether any changes are required in the laws of the United States in order to protect such interests against the occurrence of such practices or activities;

(3) organized criminal activities which may operate in or otherwise utilize the facilities of interstate or international commerce in furtherance of any transactions and the manner and extent to which, and the identity of the persons, firms, or corporations, or other entities by whom such utilization is being made, and further, to study and investigate the manner in which and the extent to which persons engaged in organized criminal activity have infiltrated lawful business enterprise, and to study the adequacy of Federal laws to prevent the operations of organized crime in interstate or international commerce; and to determine whether any changes are required in the laws of the United States in order to protect the public against such practices or activities;

(4) all other aspects of crime and lawlessness within the United States which have an impact upon or affect the national health, welfare, and safety; including but not limited to investment fraud and the use of offshore banking and corporate facilities to carry out criminal objectives;

(5) the efficiency and economy of operations of all branches and functions of the Government with particular reference to—

(A) the effectiveness of present national security methods, staffing, and processes as tested against the requirements imposed by the rapidly mounting complexity of national security problems;

(B) the capacity of present national security staffing, methods, and processes to make full use of the Nation's resources of knowledge and talents;

(C) the adequacy of present intergovernmental relations between the United States and international organizations principally concerned with national security of which the United States is a member; and

(D) legislative and other proposals to improve these methods, processes, and relationships;

(6) the efficiency, economy, and effectiveness of all agencies and departments of the Government involved in the control and management of energy shortages including, but not limited to, their performance with respect to—

(A) the collection and dissemination of accurate statistics on fuel demand and supply;

(B) the implementation of effective energy conservation measures;

(C) the pricing of energy in all forms;

(D) coordination of energy programs with State and local government;

(E) control of exports of scarce fuels;

(F) the management of tax, import, pricing, and other policies affecting energy supplies;

(G) maintenance of the independent sector of the petroleum industry as a strong competitive force;

(H) the allocation of fuels in short supply by public and private entities;

(I) the management of energy supplies owned or controled by the Government;

(J) relations with other oil producing and consuming countries;

(K) the monitoring of compliance by governments, corporations, or individuals with the laws and regulations governing the allocation, conservation, or pricing of energy supplies; and

(L) research into discovery and development of alternative energy supplies; and

(7) the efficiency and economy of all branches and functions of government with particular reference to the operations and management of Federal regulatory polices and programs: Provided, That, in carrying out the duties herein set forth, the inquiries of this committee or any subcommittee thereof shall not be deemed limited to the records, functions, and operations of any particular branch of the Government; but may extend to the records and activities of any persons, corporation, or other entity.

(b) Nothing contained in this section shall affect or impair the exercise of any other standing committee of the Senate of any power, or the discharge by such committee of any duty, conferred or imposed upon it by the Standing Rules of the Senate or by the Legislative Reorganization Act of 1946, as amended.

(c) For the purpose of this section the committee, or any duly authorized subcommittee thereof, or its chairman, or any other member of the committee or subcommittee designated by the chairman, from March 1, 1988, through February 28, 1989, is authorized, in its, his, or their discretion (1) to require by subpoena or otherwise the attendance of witnesses and production of correspondence, books, papers, and documents, (2) to hold hearings, (3) to sit and act at any time or place during the sessions, recess, and adjournment periods of the Senate, (4) to administer oaths, and (5) to take testimony, either orally or by sworn statement, or, in the case of staff members of the Subcommittee on General Investigations and Permanent Subcommittee on Investigations specifically authorized by the chairman, by deposition.

(d) All subpoenas and related legal processes of the committee and its subcommittee authorized under S. Res. 313 of the Ninety-ninth Congress, second session, are authorized to continue.

SEC. 4. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1989.

SEC. 5. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate, or (2) for the payment of long-distance telephone calls.

SEC. 6. There are authorized such sums as may be necessary for agency contributions related to the compensation of employees of the committee from March 1, 1988, through February 28, 1989, to be paid from the appropriations account for "Expenses of inquiries and investigations.".

SENATE RESOLUTION 365—ORIGINAL RESOLUTION REPORTED AUTHORIZING EXPENDITURES BY THE COMMITTEE ON VETERANS' AFFAIRS

Mr. CRANSTON, from the Committee on Veterans' Affairs, reported the following original resolution; which was referred to the Committee on Rules and Administration:

S. RES. 365

Resolved, That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Veterans' Affairs is authorized from March 1, 1988, through February 28, 1989, in its discretion, (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed $1,016,583.

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1989.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

SEC. 5. There are authorized such sums as may be necessary for agency contributions related to the compensation of employees of the Committee from March 1, 1988, through February 28, 1989, to be paid from the ap-

propriations account for "Expenses of Inquiries and Investigations".

AMENDMENTS SUBMITTED

CIVIL RIGHTS RESTORATION ACT

WEICKER (AND OTHERS) AMENDMENT NO. 1393

Mr. WEICKER (for himself, Mr. KENNEDY, Mr. METZENBAUM, and Mr. PACKWOOD) proposed an amendment to the bill (S. 557) to restore the broad scope of coverage and to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964; as follows:

At the end of the bill, insert the following new section:

ABORTION NEUTRALITY

No provision of this Act or any amendment made by this Act shall be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal Funds to perform or pay for an abortion.

HATCH AMENDMENT NO. 1394

Mr. HATCH proposed an amendment to the bill S. 557, supra; as follows:

Strike out all after enacting clause and insert in lieu thereof the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Civil Rights Act of 1987".

PROGRAM OR ACTIVITY

SEC. 2. (a) Title IX of the Education Amendments of 1972 is amended by adding at the end thereof the following new section:

"SEC. 908. (a) Notwithstanding the decisions of the Supreme Court in *Grove City College and others*, versus *Bell, Secretary of Education, and others* (465 U.S. 555 (1984)), and in *North Haven Board of Education and others*, versus *Bell, Secretary of Education, and others* (456 U.S. 512 (1982)) the phrase 'program or activity' as used in this title shall, as applied to educational institutions which are extended Federal financial assistance, mean the educational institution.

"(b) In any other application of the provisions of this title, nothing in subsection (a) shall be construed to expand or narrow the meaning of the phrase 'program or activity' and that phrase shall be construed without reference to or consideration of the Supreme Court decisions in Grove City and North Haven.

"(c) Nothing in this title shall be construed to require or prohibit any person or public or private entity to provide or pay for any benefit or service, including use of facilities, relating to abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to legal abortion.".

(b) Section 901(a) of title IX of the Education Amendments of 1972 is amended by striking out paragraph (3) and inserting in lieu thereof the following new paragraph:

"(3) this section shall not apply to an educational institution which is controlled by, or which is closely identified with the tenets of, a particular religious organization to the extent that the application of this section would not be consistent with the religious tenets of such organization;".

(c) Section 504 of the Rehabilitation Act of 1973 is amended by inserting "(a)" after the section designation and by adding at the end thereof the following new subsection:

"(b)(1) Notwithstanding the decision of the Supreme Court in *Grove City College and others*, versus *Bell, Secretary of Education, and others* (465 U.S. 555 (1984)), and in *North Haven Board of Education and others*, versus *Bell, Secretary of Education, and others* (456 U.S. 512 (1982)), the phrase 'program or activity' as used in this section shall, as applied to educational institutions which are extended Federal financial assistance, mean the educational institution.

"(2) In any other application of the provisions of this section, nothing in paragraph (1) shall be construed to expand or narrow the meaning of the phrase "program or activity' and that phrase shall be construed without reference to or consideration of the Supreme Court decisions in Grove City and North Haven.".

(d) The Age Discrimination Act of 1975 is amended by adding at the end thereof the following new section:

"EFFECT OF SUPREME COURT DECISIONS

"SEC. 310. (a) Notwithstanding the decisions of the Supreme Court in *Grove City College and others*, versus *Bell, Secretary of Education, and others* (465 U.S. 555 (1984)), and in *North Haven Board of Education and others*, versus *Bell, Secretary of Education, and others* (456 U.S. 512 (1982)), the phrase 'program or activity' as used in this title shall, as applied to educational institutions which are extended Federal financial assistance, mean the educational institution.

"(b) In any other application of the provisions of this title, nothing in subsection (a) shall be construed to expand or narrow the meaning of the phrase 'program or activity' and that phrase shall be construed without reference to or consideration of the Supreme Court decisions in Grove City and North Haven.".

(e) Title VI of the Civil Rights Act of 1964 is amended by adding at the end thereof the following new section:

"SEC. 606. (a) Notwithstanding the decisions of the Supreme Court in *Grove City College and others*, versus *Bell, Secretary of Education, and others* (465 U.S. 555 (1984)), and in *North Haven Board of Education and others*, versus *Bell, Secretary of Education, and others* (456 U.S. 512 (1982)), the phrase 'program or activity' as used in this title shall, as applied to educational institutions which are extended Federal financial assistance, mean the educational institution.

"(b) In any other application of the provisions of this title, nothing in subsection (a) shall be construed to expand or narrow the meaning of the phrase "program or activity" and that phrase shall be construed without reference to or consideration of the Supreme Court decisions in Grove City and North Haven.".

HUMPHREY AMENDMENT NO. 1395

Mr. HUMPHREY proposed an amendment to the bill S. 557, supra; as follows:

On page 14, strike out lines 5 through 11 and insert in lieu thereof the following:

"(c) Small providers are not required by subsection (a) to make structural alterations to existing facilities for the purpose of assuring program accessibility. For the purpose of this subsection, the term 'small providers' means any nongovernmental corporation, partnership, sole proprietorship, or other private organization or business which has less than fifteen employees during each working day in each of thirty or more calendar weeks in the current or preceding calendar year.".

HARKIN (AND HUMPHREY) AMENDMENT NO. 1396

Mr. HUMPHREY (for Mr. HARKIN, for himself and Mr. HUMPHREY) proposed an amendment to the bill S. 557, supra; as follows:

At the end of the bill insert the following:

"CLARIFICATION OF INDIVIDUALS WITH HANDICAPS IN THE EMPLOYMENT CONTEXT

"SEC. . (a) Section 7(8) of the Rehabilitation Act of 1973 is amended by adding after subparagraph (B) the following:

" '(C) For the purpose of sections 503 and 504, as such sections related to employment, such term does not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job.' ".

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Thursday, January 29, 1988, to conduct a hearing on "Cancer Detection in Women."

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

SUBCOMMITTEE ON MERCHANT MARINE

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Merchant Marine of the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on January 28, 1988, to hold a hearing on S. 1988, legislation amending the Merchant Marine Act of 1920 relating to barges.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Thursday, January 26, 1988, to receive testimony concerning Senate Joint Resolution 231, to authorize the entry into force of the Compact of Free Association between the United States and the Gov-

ernment of Palau, and for other purposes.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, January 28, 1988, at 6 p.m. to hold a nomination hearing.

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

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the session of the Senate on Thursday, January 28, 1988, to consider the committee's resolution authorizing expenditures for the period March 1, 1988–February 28, 1989.

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

COMMITTEE ON ARMED SERVICES

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Thursday, January 28, 1988, in open session to consider the nomination of Grant S. Green, Jr., to be Assistant Secretary of Defense for Force Management and Personnel. In addition, the committee will consider the Senate Armed Services Committee budget for 1988, certain pending military nominations, and possibly consider other civilian nominations which may be eligible for consideration.

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

SUBCOMMITTEE ON INVESTIGATIONS

Mr. BYRD. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs be authorized to meet during the session of the Senate on Thursday, January 28, 1988, to hold hearings on Drug Trafficking and Money Laundering in Panama.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. BYRD. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, January 28, 1988, to hold hearings on Intelligence Matters.

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

ADDITIONAL STATEMENTS

CATERPILLAR, INC.

● Mr. SIMON. Mr. President, on December 26, 1987, there appeared in the New York Times an article featuring Illinois's largest exporter, Caterpillar, Inc., about their efforts in selling to the debt-ridden countries of Latin America.

I believe that the sale described in the opening paragraphs graphically demonstrates the lengths that our companies are going to now in order to sell to Latin American countries, and the lengths to which manufacturers eager to make export sales will go.

I ask that the article be printed in the RECORD, and I urge my colleagues to read it.

The article follows:

[From the New York Times, Dec. 26, 1987]

DEBTS OF LATINS MAKING TRADE LINKS TORTUOUS

(By Clyde H. Farnsworth)

WASHINGTON, December 25.—In 1985 Venezuela wanted to buy a fleet of construction vehicles called wheel loaders from the Caterpillar Tractor Company. Because the country's crushing debt burden was forcing it to curtail imports, Caterpillar was asked to take Venezuelan iron ore in payment.

Caterpillar agreed, then found a buyer for the ore in Rumania, but for payment it had to accept men's suits, which it eventually sold in London for dollars.

"Better to have gone through all that than to have lost a sale," said William F. Canis, Caterpillar's Washington manager for government affairs.

The ingenuity of Caterpillar, based in Peoria, Ill., shows what it sometimes takes to sell to Latin America because of the generalized contraction of business brought on by the five-and-a-half-year international debt crisis.

ASSISTANCE CALLED ESSENTIAL

A number of experts contend that increased foreign capital and other assistance to the debtor nations, aimed at bolstering their economies, is essential to reverse the situation.

While exports by the United States to most other areas of the world are rising, shipments to Latin America have tumbled, falling by 26 percent in 1986, to $31.1 billion, from $42.1 billion in 1981. From 1981 to 1986, imports of the four largest debtors—Brazil, Mexico, Argentina and Venezuela—fell by one-third to one-half.

To finance payments to creditors, one debtor country after another has embarked on varying degrees of austerity, curbing consumption and imports and channeling more resources into dollar-earning exports.

Many analysts are now citing the problems of the debtor nations as among the reasons for the intractably huge United States trade deficit. Some warn that the American trade position will not improve until growth returns to the debtor countries.

"Demand from Europe and Japan won't be enough," said Stuart K. Tucker, a fellow at the Overseas Development Council. "Debtor countries have to help."

The council, a research organization specializing in third world issues, takes the position that growth will not resume in these countries until they are again on the receiving end of world resources. Largely because of interest payments on $1 trillion of third world debt, the flow of resources in recent years has gone from the third world to the developed countries.

William R. Cline, a senior fellow at the Institute for International Economics, a public-policy research organization, contends that the debtor countries need more private capital and more loans from the World Bank. But he stresses that these flows must be linked to improved economic policies in those nations.

John A. Bohn Jr., president of the Export-Import Bank, has proposed that the United States, Western Europe and Japan put up $3 billion in long-term export credits to the major debtors to help them finance purchases from industrial countries. Presumably, the United States could get much of this business, since the dollar's decline in value has helped make the prices of manufactured goods more competitive on world markets.

The need to do something more is also an issue in Congress. Both the House and Senate trade bills envision creation of an international debt management agency to buy third world debt at discounted market prices.

Freed of some of its debt burden, the third world would then play a major role in the growth of world demand, in the view of two backers of the idea, Senator Paul S. Sarbanes, Democrat of Maryland, and Representative David R. Obey, Democrat of Wisconsin.

Treasury Secretary James A. Baker 3d opposes such an arrangement as unworkable, although he supports greater resources for the World Bank to recycle into third world growth. He is expected to ask Congress next year to approve an American contribution for what is expected to be an increase of 60 to 80 percent in World Bank capital. The American share of the overall increase would be one-fifth.

Meanwhile, the debt crisis continues to have a severe impact on American exporters. Some of the story is dramatically told in Caterpillar's sales.

In 1981, the company shipped $903 million of wheel loaders, bulldozers, off-highway trucks and other such equipment to Latin America. Its exports to Western Europe amounted to a bit more, at $992 million.

In 1983, exports collapsed to $266 million in Latin America, but fell more modestly, to $771 million, in Europe. By 1986, sales to Europe, at $1.1 billion, were even greater than in 1981, but sales to debt-saddled Latin America were $543 million, only half the 1981 total.

For other leading exporters, the pattern is not much different. Latin American shipments by Dresser Industries of Dallas, a diversified maker of products for the energy and natural resource industries, amounted to $165 million in 1981 and fell to $109 million in 1983 before recovering to $130 million in 1986.

The debt crisis has not only caused a shrinkage in the Latin American and other third world markets, but has also accelerated a rush of goods to the United States and intensified competition for American exporters outside Latin America. In 1981 the United States took one-third of exports from developing countries but, by 1986, the figure had risen to 60 percent.

"The United States was the only expanding market in the world," said Stephen Cooney, director of international invest-

ment and finance of the National Association of Manufacturers. "The surplus countries, mainly West Germany and Japan, were taking advantage of Latin America as a cheap commodity provider, but had no interest in increasing trade in manufactures and used their formal and informal barriers to keep the Latin products out."

PRICES OF EXPORTS DEPRESSED

Fighting desperately for their own export markets, debtor countries, meanwhile, were both producing more and competing more fiercely with American producers elsewhere around the globe, ironically, the increased production and competition has hurt the debtor nations by pushing down the prices of their exports, according to a staff study by the Joint Economic Committee of Congress.

Although falling oil prices have received the bulk of public attention during most of this decade, prices have fallen for nearly every major commodity exported by debtor nations.

"Since the beginning of this decade, the external debt grew faster than export revenues," the study noted, "but the lag in export receipts cannot be attributed to an unwillingness of the debtors to boost their export volume. Rather, the failure of export revenues to keep pace is due almost entirely to falling commodity prices."

Falling commodity prices, in turn, made it more difficult for American farmers, who are big exporters, to continue servicing their debt, and pushed many of them into bankruptcy.●

HERBERT HOOVER AND THE BAY BRIDGE

● Mr. HATFIELD. Mr. President, the European voyagers who came to this continent, and the pioneers who explored it, found amazing natural wonders: Niagara Falls, Half Dome in Yosemite, the Columbia River Gorge, the Grand Canyon, Crater Lake.

While incapable of building on God's grand scale, the American people, nevertheless, have added magnificent man-made wonders to the landscape: Bonneville Dam, the interstate highway system, the Brooklyn Bridge, and two that bear the unmistakable imprint of our 31st President: the Hoover Dam and the San Francisco Bay Bridge.

It takes uncommon greatness to envision great public works. And it takes uncommon leadership to marshal the resources and public support to bring them into existence. But one's vision often is not appreciated by one's contemporaries. President Hoover's bold vision of a bay bridge was criticized, but with its construction his vision was vindicated by the jobs generated, the industry stimulated and the general prosperity brought to the Bay Area. The bridge paid for itself within its first decade, with a handsome rate of return on the initial loan.

Yet President Hoover's deserved reputation for vision and leadership was buried in the false blame for the Great Depression placed upon him by the succeeding administration. This is a great injustice in our history books.

Robert Hessen, senior research fellow and deputy archivist at Stanford University, has commemorated Herbert Hoover's leadership in envisioning and building the bay bridge in his essay, "Herbert Hoover and the Bay Bridge." In an effort to correct history's verdict of this remarkable man and his achievements, I ask that Mr. Hessen's essay be printed in the RECORD.

The essay follows:

HERBERT HOOVER AND THE BAY BRIDGE

A COMMEMORATIVE ESSAY

(By Robert Hessen)

The San Francisco Bay Bridge opened to traffic on November 12, 1936, and was hailed as the eighth wonder of the world. It cost more than any bridge ever built; it had the longest span over navigable water; and its foundations were the deepest ever sunk. But the Bay Bridge was much more than a great feat of engineering: it was and is indispensable to traffic between San Francisco and the East Bay cities.

Only old-timers can recall the pre-bridge era, when people who lived in Marin and Alameda counties spent a couple of hours on ferry boats commuting to work in San Francisco. Today, on the occasion of its fiftieth anniversary, most people take the Bay Bridge's existence for granted. So it is timely to recall the long struggle that preceded the building of the bridge and the crucial role that Herbert Hoover played in its creation. It is no exaggeration to say that if Herbert Hoover had not exerted his power as president on behalf of the bridge, it would not have been build until many years later.

Shortly after the gold rush, William Walker, a San Francisco newspaper editor, made the first recorded suggestion to build a transbay bridge. Leland Stanford raised the idea twice, once in 1859, two years before he was elected governor of California, and again in 1867, four years after he left office. No action was taken on either occasion. In 1869 a third advocate, the self-proclaimed emperor of the United States, Joshua A. Norton, commanded a bridge be built across the bay—but reality stubbornly defied his decree.

At the end of the nineteenth century, the bay bridge proposal was a good idea waiting for someone to come along with the determination to surmount all obstacles. A candidate for that role emerged in 1914: a San Francisco engineer, F. E. Fowler, designed a cantilevered bridge to span the Bay. But Fowler had underestimated the army and navy's opposition to any bay bridge. Both departments strenuously opposed the building of a bridge, fearing it would be an obstruction to commercial vessels in peacetime and military vessels in wartime—and no bridge could be built without their consent and cooperation.

Herbert Hoover revived the bay bridge idea in 1922, while serving as secretary of commerce. At Hoover's urging, President Warren G. Harding agreeed to appoint a new army-navy commission to study the question. But their findings did not please Hoover: the army recommended a less desirable route than the one he favored, and the navy opposed the bridge altogether. Hoover later wrote in his memoirs:

"I attempted to conciliate the military and engineering conflicts; but my authority, without the backing of the President, was insufficient. Also, opinion in the Bay cities concerning the proper and feasible route was divided, and much acrimonious debate was going on. At that time there seemed to be no way of financing a project so ambitious as this."

Years later, Leland Cutler (a key figure in the creation of the Bay Bridge) recalled how strongly the army and navy had opposed the whole idea. While serving as a director of the San Francisco Chamber of Commerce in 1927, Cutler was chosen to present the case for the bridge to Secretary of the Navy Curtis D. Wilbur. Cutler wrote: "I knew Curtris Wilbur well but made no headway on the bridge presentation. The Navy just wouldn't have it. The Army, whose permission had to be obtained for anything affecting navigable waters, was adamant and it looked as though there would be no bridge."

Herbert Hoover's election as president in 1929 finally gave him the political leverage to offset the army and navy's opposition. During a 1928 campaign speech in San Francisco, he pledged his active support for a bay bridge, and he quickly made good on his promise. In August 1929, after consulting with Governor Clement C. Young of California, Hoover announced the creation of a new commission to reopen the bay bridge question. At his press conference on August 13, 1929, Hoover declared:

"There can be no question as to the necessity for such a bridge for the economic development of these communities. In addition to the cities of San Francisco, Oakland and Alameda, the Governor of California through recent legislation has recently taken an interest in this problem. In order that we may have an exhaustive investigation with a view to final determination which I hope will be acceptable to all parties, I have consulted the Secretary of War and the Secretary of the Navy as well as Mr. [Bert B.] Meek, the representative of Governor Young, and I shall appoint a Commission comprising two representatives from the Navy, two from the Army, and I shall ask the authorities of San Francisco to appoint one member, the authorities of the east side of the Bay to appoint another member. I shall ask the Governor to appoint one or two members and I shall appoint a leading citizen, Mr. Mark Requa if he will undertake it, in the hope that we may arrive at a determination of the common interest."

Hoover's deep commitment to the bay bridge idea is best seen in his choice of the man to head the commission. Mark L. Requa, a fellow mining engineer, had been Hoover's close friend since they first met in 1905. He had been Hoover's assistant in the U.S. Food Administration (1917–1918) and had served as general director of the oil division of the U.S. Fuel Administration (1918–1919). Requa was precisely the sort of man Hoover could count on, someone accustomed to circumventing obstacles and cutting through bureaucratic delays.

To the nine-member group that soon became known as the Hoover-Young Commission, Hoover also appointed Professor Charles D. Marx, his former teacher and retired head of engineering at Stanford University. By choosing Requa and Marx, Hoover clearly signaled the army and navy that their representatives on the commission must be open-minded and not tied to traditional prejudices against a transbay bridge.

The Hoover-Young Commission undertook a comprehensive survey of the bay bridge issue, confronting for the first time

the claims that the whole idea was impossible. The skeptics said the water was too deep, that there was insufficient bedrock on which to build the bridge's piers, and that the cost of construction would be prohibitively high.

The commission's engineering survey addressed the physical obstacles first. The finding were encouraging: on May 27, 1930, Mark Requa advised Lawrence Richey, the president's secretary, that "they have found high bed-rock on a line between Rincon Hill . . . and Goat Island. The only feasible route seems to be from Rincon Hill in a northeasterly direction to Goat Island, and from thence easterly to the Oakland shore." Hoover and others had favored a route from Oakland Point to Telegraph Hill via Yerba Buena Island, but the geological surveys forced a shift of route: the bridge eventually built begins at Emeryville and ends at Rincon Hill Commuter convenience had to be sacrificed to geological necessities, yet Hoover had won a crucial victory. On August 12, 1930, the commission returned a unanimous report favoring construction on a bay bridge.

The next major hurdles were financial. A year earlier, the California legislature had created the California Toll Bridge Authority, empowering it to create and operate a transbay bridge, and giving the Department of Public Works the job of designing and building the bridge. Soon after the Hoover-Young Commission issued its report, the California legislature appropriated $650,000 to prepare plans for the bridge. But to build the bridge required more than a hundred times that amount, and California lacked the money to finance the project.

If the bridge were to be built during the Great Depression, the Bridge Authority had to find a buyer for $62 million in bonds. Given the fact that banks and other financial institutions throughout the country were verging on bankruptcy, it quickly became evident that the most solvent buyer was the federal government, through the newly created Reconstruction Finance Corporation (RFC).

The RFC had been Hoover's creation: he had proposed it in December 1930 to lend funds to financial institutions, especially banks and insurance companies, that were in danger of collapse. At the same time, Hoover also had sought to use the RFC as a job-creating mechanism, by enabling it to lend capital for what he called "reproductive public works," such as the Bay Bridge.

But when Congress voted in January 1932 to create the RFC, it deleted the provision relating to public works. Hoover refused to accept defeat on this measure and continued to push for its passage. Two men from California—Leland Cutler, president of the San Francisco Chamber of Commerce, and Charles H. Purcell, chief engineer of the California State Highway Commission—began a campaign of tireless lobbying in Washington on behalf of the amendment. Their efforts, openly endorsed by Hoover, proved successful: on July 16, 1932, Congress amended the Emergency Relief and Construction Act, authorizing the RFC to make available up to a billion and a half dollars in loans to finance "self-liquidating" projects, that is, public works whose toll revenues would retire their original bonded debt. But even then it was uncertain that the bay bridge project would be endorsed by the RFC. The process would involve approval on two levels: engineering and finance.

A few days after the amendment passed, Hoover urged the California Toll Bridge Authority to send its board of engineers (headed by his former teacher, C.D. Marx) to meet with the RFC's newly created board of engineers. A month later, when no progress had been made, a delegation from the financial advisory committee headed for Washington, hoping to expedite the approval process through personal salesmanship.

Leland Cutler expected that the biggest obstacle would be Harvey Couch, an Arkansas Democrat, who was in charge of self-liquidating loans. When Cutler arrived in Washington in September to see Couch, he found a message saying that the president wanted to see him immediately. At their White House meeting, Cutler later recalled, he found Hoover impatient for results: "He made it clear that he would help us in every way but that the President of the United States had quite a few things to do and wasn't an errand boy and that we would have to do our own work."

Cutler enlisted the aid of Merle Thorpe, editor and publisher of the *Nation's Business*, who was a close friend of Couch. Accompanied by Thrope, Cutler immediately went to see Couch, requesting an opportunity to present the case for the Bay Bridge to the directors of the RFC. To Cutler's surprise, Couch simply said, "How about tomorrow morning at eleven o'clock?"

The next morning, Cutler recalls, the first question posed by Judge Wilson McCarthy, a Utah Democrat, "was one none of us wanted to answer and couldn't answer because it was fatal to our bridge. The question was, 'What was the total revenue from the ferryboats last year?' The answer, of course, would have to be, 'Not enough to amortize the amount we are asking for.'" Cutler realized that to argue that a bridge would cut down commuter time across the Bay would carry no weight with the RFC. He was at a loss as to how to proceed and Harvey Couch took him aside and whispered, "Cutler, did you ever play football in college?"

"Yes, Sir," Cutler replied.

"What did you play?"

"I played quarterback."

"Did you ever take time out when you got into trouble? You're in trouble now, Son; take time out."

Another hearing was scheduled for two weeks later. Meanwhile, Cutler conferred with individual RFC directors and staff, seeking to persuade them that a bridge would stimulate transbay traffic, so that bridge tolls would far exceed existing ferry revenues. To Cutler's surprise, the least receptive RFC director was a newly appointed Republican, Gardner Cowles, Sr., the Iowa publisher. He suspected that the Bay Bridge was only a make-work scheme, a boondoggle for an area hard hit by the depression. He wanted the California delegation to head home and never return.

Cutler tried to arrange a meeting with Hoover to discuss Cowles's recalcitrance, but he was unsuccessful. He turned for help to Ray Lyman Wilbur, who was on leave from the presidency of Stanford University to serve as secretary of the interior. Cutler hoped that Wilbur, Hoover's closest friend, could get him into the White House. Wilbur succeeded, and Cutler delivered his gloomy report. Hoover, determined that the Bay Bridge would not be blocked by anyone, least of all by a Republican whom he had nominated to the RFC, agreed to persuade Cowles to change his position. Hoover later told Cutler that he had spent several unpleasant hours arguing with Cowles. The next day, yielding to the president's personal pressure, Cowles voted to approve the RFC's purchase of bay bridge bonds.

Newspapers throughout California hailed the good news from Washington, and they singled out Hoover for special praise. But outside of California, the news was not as cordially received. Reflecting the fact that sectional rivalries sometimes transcend party loyalties, a fiercely Republican newspaper, the *Chicago Tribune*, wrote two angry editorials questioning the RFC's decision:

"It is significant that no banking syndicate in boom times when any kind of security was salable had the nerve to finance San Francisco's bridge with its staggering overhead. Uncle Sam, for motives which are purely political corruption, has now undertaken to sink 62 millions of the taxpayers' money in this scheme, which would probably land a professional promoter in the penitentiary if he tried to sell it to the public . . . If there are any honest men in the region of the Bay, they have not been heard from at this distance."

Such sharp-tongued criticism was less important than the fact that the RFC's vote was only conditional. Before it made a firm bid to buy the bridge bonds in June 1933, more than fifty amendments to the laws of California had to be enacted. This feat was accomplished largely due to the efforts of Senator Thomas A. Maloney, the speaker pro tem of the state assembly.

Even so, it wasn't certain that California banks would be the repositories of the RFC money. An attorney for RFC exclaimed: "This money . . . will not be put in California banks; it will be put in New York banks where it will be safe."

This remark infuriated Florence McAuliffe, who had worked closely with Leland Cutler to sway the RFC vote. Hearing this slur on California and its banks, McAuliffe shouted back: "my name maybe Florence but I wear a 17½ collar. Out in California, we are not Liberia or France, we are a part of this great commonwealth. The money will be put in California banks!"

It was, and it proved a great stimulus to California's economy. The banks were not the only ones to profit; the bridge created job opportunities for 6,500 engineers and bridgeworkers during the three-and-a-half years of its construction. The bridge consumed 1.2 percent of all the steel produced in America in 1933, and other manufacturers and suppliers received sorely needed contracts. Clearly, the Bay Area profited greatly, but so did the RFC. The increased traffic across the Bay Bridge produced sufficient revenues to yield the RFC several million dollars profit on its investment within a decade.

Twenty years later, when he was writing his memoirs, Leland Cutler wrote that Hoover had been the key figure responsible for the building of the Bay Bridge:

"I gave Mr. Hoover the greatest credit, for he cut all red tape and formed the Hoover-Young Commission to find a way of doing it. Mr. Hoover conceived the Reconstruction Finance Corporation, agreed to an agreement to fit the case of the San Francisco-Oakland Bay Ridge, and during our first onslaught on Washington, used his power with the RFC to help us at every turn. President Hoover also stayed up late at night and received me when I needed help and at any hour telephoned friends who might be needed. I think he knew he would not be reelected and he wanted the bridge on its way before he was out, because he believed in it

and in its part in the progress of the nation."

Hoover, characteristically, stressed the role others had played in the bridge's creation. Speaking at the opening ceremonies of the San Francisco-Oakland Bay Ridge on November 12, 1936, he said:

"This bridge stands for far more than even its convenience and its economic worth. It stands as a monument to unity in community action. It stands for American genius and accomplishment. It is the realization of the dream of two generations . . . That this is the greatest bridge yet constructed in the world requires no repetition from me. Its construction spans not alone this great bay but also the whole advance in industrial civilization—our discoveries in science, our inventions, our increasing skill. It is the product of hundreds of years of accumulated knowledge . . . But above them all in our tributes are the engineers and workmen right here who combined all those centuries of knowledge with courage and imagination . . . Deserving high credit with them are the manufacturers, the contractors. But not the least was the part of those courageous men who daily risked their lives in construction. This bridge will be here giving service to these communities for another hundred years. By that time the nation may have discovered something else that will do the job better. But it will remember that the community courage, and its spirit of cooperation did a great thing here."

As Hoover spoke, generously praising twenty-one individuals by name for their role in building the bridge, those who heard him were probably aware that he had played the preeminent role. If subsequent generations have forgotten his contribution, the Bay Bridge's fifieth anniversary is an appropriate occasion to recall it.

Robert Hessen is a senior research fellow and deputy archivist at the Hoover Institutions, Stanford University. He also teaches U.S. business history at Stanford's Graduate School of Business. His books include *Steel Titan: The Life of Charles M. Schwab, In Defense of the Corporation,* and *Berlin Alert: The Memoirs and Reports of Truman Smith* (editor). He is the general editor of the Hoover Archival Documentaries, a multivolume series that illuminates significant aspects of twentieth century history.

INFANT MORTALITY

● Mr. SHELBY. Mr. President today in Alabama, from across the State, men and women are gathering to talk about a problem that is close to the hearts of all Alabamians, infant mortality. Indeed, Alabama is no stranger to the high costs infant mortality can place on a State. And so it is fitting that members of the business community are joining with government officials and health care professionals in our State capitol to try and put an end to this shameful tragedy.

Due to my schedule here in the Senate, I was not able to attend this symposium. However, I have asked that the following message be delivered to Governor Hunt and the attendees of the meeting. I ask that this letter be inserted in the RECORD.

Mr. President, I look forward to reviewing the information that is generated by this meeting of minds in my home State. I also look forward to sharing this information with my colleagues in the Senate, as we continue to tackle the serious health care problems facing our Nation.

The letter follows:

U.S. SENATE,
Washington, DC, January 27, 1988.

Hon. GUY HUNT,
c/o Mrs. Jean Blackmon, Alabama Department of Human Resources, Montgomery, AL.

DEAR GOVERNOR HUNT AND ATTENDEES TO THE FIRST GOVERNOR'S SYMPOSIUM ON INFANT MORTALITY: I would like to take this opportunity to commend you on the organization of the First Governor's Symposium on Infant Mortality in Alabama. Unfortunately, due to the recovering of the 100th Congress, I am unable to be with you for this most worthy meeting.

Alabamians are no strangers to the high claim infant mortality makes on a state. Indeed, we have the dubious distinction of being one of the country's leaders in the number of child mortalities each year. But as this issue makes headlines throughout the country, the people, parents, and policymakers of this country are not going to remain silent any longer.

You have gathered here today to give of your time, your energy and your knowledge to help galvanize Alabama's response to the tragedy of infant mortality. You are here today to strategize and plan, educate and learn, participate and partake of the vast amount of information available on the crisis that is facing our state. But mostly, you are here today to do something about this problem.

Many of you are leaders of industry and business from across our great state. You bring to this Symposium a special perspective and an important edge. We can not beat this problem alone, we need your input, your guidance—we need your help. It's that simple.

I commend each and every one of you for being here today and I look forward to working with the Governor and with you to help implement a first rate plan that will attack the infant mortality problem in the most comprehensive and effective way possible.

We come from a state that is blessed with bright minds, prestigious educational institutions, exceptional medical resources, and a thriving business community. I am confident that together, we can win the war against infant mortality.

With best wishes for a successful and effective Symposium, I am,

Sincerely,

RICHARD SHELBY.●

JUSTIN DART

● Mr. SIMON. Mr. President, I was saddened by the forced resignation of Justin Dart as Commissioner of the Rehabilitation Services Administration. I have been impressed with his commitment and I admire his courage. He is a remarkable person—just how remarkable is indicated in an article from the Los Angeles Times of December 10.

We need Justin Dart's voice as an advocate for people with disabilities, and we need his leadership as an advocate for democratic processes and participation in Government. I am pleased that he intends to continue to speak out and provide this leadership.

I urge my colleagues to read the Times article about this unusual man.

The article follows:

[From the Los Angeles Times, Dec. 10, 1987]

DART'S DEFIANCE—TAKING ON THE BUREAUCRACY, JUSTIN DART, JR., LOST A JOB BUT GAINED A FOLLOWING

(By Lee May)

WASHINGTON.—Blue-blazered and white-shirted, wearing a blue tie with tiny American flags, Justin Dart, Jr. seems more the patriotic professor than the combative advocate for the handicapped.

Forced late last month to resign as commissioner of rehabilitation services after harshly criticizing Education Department management, he seems more like a man who just got liberated than one who just got fired.

He wheels his chair next to a flag that dominates a wall in his apartment near the Education Department Building in Southwest Washington, obliging a photographer, then tells a visitor of an outpouring of calls and letters from people who are angry that he was fired.

"Many have called to indicate their moral support and want to know what they can do," he said. Others have written and telephoned Congress, the White House and the department.

Thus, in losing the job to which he was appointed in September, 1986, Dart has gained a cause. His firing is focusing on unprecedented attention on problems in the Education Department and on his personal 20-year battle for the rights of the nation's estimated 35 million handicapped.

Such is the contradiction woven through the life of Justin Whitlock Dart, Jr.

His father, the late Justin Dart Sr., was the wealthy California industrialist who raised huge sums of money for the Republican Party and helped persuade Ronald Reagan to enter politics, in the process becoming a charter member of Reagan's California "kitchen cabinet."

But until he switched parties in 1972, the younger Dart, who is 57 years old, strongly supported Democrats, attending the inaugurations of both John F. Kennedy and Lyndon Baines Johnson.

"There were some years we didn't meet at all," Dart said of his father, who died in January, 1984. "He was so intense about his politics, and I was so intense about mine."

Despite their early political differences, Dart said, his father—known for his blunt views in unrefined language—"never tried to intimidate me to support his ideas." He called his father "a great man," adding: "He taught me a lot. He was straightforward. He was a person who held very high standards for himself and for me and others. He expected us to do whatever we did with a passion and with a conscience."

Dart said, "We did agree on one thing: the importance of democracy and the democratic process. He told me to participate in the democratic process as if your life depended on it because it does."

They became closer toward the end of his father's life, said Dart, who has been confined to a wheelchair since suffering polio in 1948. He has a brother—also a polio victim—three half-brothers and a half-sister.

Explaining his rejection of the Democratic Party, he said: "I gradually came to appreciate the importance of independence

and liberation from too much paternalistic central government."

Yet it was his charge of Republican paternalism that drove the Reagan Administration to demand his resignation, which he submitted Nov. 25. It becomes effective Dec. 15.

The simmering problem boiled over at a congressional hearing on Nov. 18, when Dart set aside testimony the Education Department had approved, delivering instead what he called a "statement of conscience," a stinging condemnation of the system in which he worked—a system he said was characterized by "paternalistic central control."

Paternalism was so bad, Dart told The Times later, that whenever he wanted to send anything by Federal Express, he was required to get advance approval from his boss, Madeleine Will, or a "high member of her staff."

In his testimony before the House Education and Labor subcommittee on select education, Dart said his program, the Rehabilitation Service Administration, was "afflicted . . . by profound problems in areas such as management, personnel and resource utilization." The program, budgeted at $1.5 billion a year, makes grants to states, helping them provide training and education that will make handicapped people employable.

Dart's remarks were too much for the Administration to swallow. Choosing between Dart and Will, the wife of conservative columnist and Reagan ally George Will, the Administration asked Dart to leave.

Loye Miller, spokesman for Education Secretary William J. Bennett, said Dart was fired from his $72,500-a-year job "because he stood up and attacked his boss in a hearing. When he attacked Madeleine Will, he attacked Bill Bennett. And that was the end of Justin Dart."

Not quite.

On the first of this month, Dart made public his resignation. Then, the letters to President Reagan began.

"We were shocked, profoundly saddened, and even angry at this great loss of opportunity and waste of talent," wrote the Council of State Administrators of Vocational Rehabilitation.

The National Rehabilitation Assn. wrote: "The unwise decision to force Justin Dart to resign was not in the best interest of the rehabilitation program, the Rehabilitation Services Administration.

When Reagan appointed him last year, Dart had come to Washington from his home in Fort Davis, Tex., to work for three months on the National Council on the Handicapped, an independent federal agency that analyzes federal laws and recommends policies to the government.

A CRUSHING WORKLOAD

The Education Department appointment was so sudden and the workload so crushing, Dart said, that he and his wife never went back to Texas to move. They bought most of the furnishings for their two-bedroom apartment from the Door Store, he said.

Dart still wears cowboy boots, and over his kitchen door hangs a sign the credo: "Lead, Follow or Get the Hell Out of the Way."

While he wears boots and claims a Texas temperament, Dart appears unwilling to get down in the political mud, an activity that many in the nation's capital seem to relish. "Justin's too nice for Washington," one acquaintance said.

Dart said, "I don't like to criticize anyone personally; it's against my principles."

As a Reagan-appointee family, the Darts have always been somewhat unusual, showing up at black-tie events in their 3-year-old beige Nissan pick-up.

But by all accounts, he was a hard worker, conducting research in all 50 states and five Indian nations. Working from his wheelchair, Dart inspired people with disabilities and encouraged their advocates in the struggle for handicapped people's rights.

His firing, said Charlotte Bly-Magee, director of the Southern California Projects With Industry, is "going to look like the Administration is letting the handicapped down."

In Seattle, Paul Dziedzic, president of the Council of State Administrators of Vocational Rehabilitation, declared that Dart has "amplified the problems" of the handicapped, adding, "If people thought they were going to muffle him by firing him, then it backfired."

Both views are accurate.

Many people are complaining that Dart's firing made the Administration look villainous. But Dart certainly has not been muffled.

Winding down his chores at the Education Department, Dart still goes to the office, but his work at home has intensified since he resigned. Rising by 7 a.m., sometimes as early as 5, he churns out letters on a computer and conducts telephone conferences across the nation.

In the future, he said, he will help organize efforts to broaden civil rights laws covering handicapped people in areas like employment, public transportation and housing. Currently, he said, such laws apply mostly to federal activities and those supported by federal funds.

RIGHTS, RESPONSIBILITIES

"We will never accomplish any of our goals fully until we can communicate [to] this nation and [in] law and everyday life that people with disabilities have the same rights and responsibilities as other people and that disability is a normal characteristic of the human process," Dart said.

He likened his own efforts to those of Martin Luther King Jr. and the Mahatma Gandhi, speaking passionately of the world's estimated 500 million handicapped people, whom he called "the largest disadvantaged minority."

Often, Dart seems a man tugging against himself.

Even as he skewered Will's administration of the program he headed, he praised her as his "distinguished colleague advocate."

Similarly, in his resignation letter to Reagan, who presumably acquiesced in his firing, Dart declared that he remained "profoundly respectful of your personal endorsement" of the idea that handicapped people should have independence and equality.

One long-time associate said, "I watched him struggle with divided loyalties. He has come out unfettered."

But not uncriticised.

It is bad enough to be a former Democrat, but even worse to battle so openly with Republican bosses. In addition to the embarrassment he has caused it, the Education Department may be investigated by the General Accounting Office because of Dart's charges.

All this has angered some Republicans. Said Dart, "I've heard that people have suggested that I might be happier in the other party, but nobody said that to my face." He said he is not going to switch back, noting that both Reagan and Education Secretary Bennett are former Democrats.

"I believe people with disabilities need to be strong in both parties," he said. "There are good people in both parties."

Dart is enjoying his new freedom of speech and the attention his dismissal has brought to handicapped people. "I'm not proud that I got fired," he said, "but this is the work that I've dedicated my life to—quality opportunities backed up by quality services."●

NORTH KOREA: TERRORIST STATE

● Mr. ROCKEFELLER. Mr. President, just as South Korea has demonstrated extraordinary resilience and maturity in its current transition to democratic rule, its neighbor to the north has once again stunned civilized people everywhere with the sheer barbarity of its international behavior. I am referring to the wanton North Korea-directed destruction of a Korean Air passenger plane en route from Bahrain to Seoul on November 29, 1987. One hundred fifteen people perished as KAL 858 disintegrated over Adaman Bay near the Thai-Burmese border.

It is now known that two North Korean agents were ordered by the North Korean leader's ambitious son, Kim Jong-Il, to destroy the KAL flight in order to discourage attendance at the 1988 summer Olympics in Seoul. Posing as Japanese father and daughter, Kim Sung-Il and Kim Hyun-Hee boarded KAL 858 in Baghdad, placed a radio time bomb with liquid explosives in the overhead storage compartment, and disembarked when the passenger plane made a scheduled stopover in Abu Dhabi. Nine hours later, 115 innocent people, mostly South Korean construction workers returning home, died.

Regrettably, Mr. President, this North Korean action is not unique. On October 9, North Korean agents succeeded in killing 15 South Korean Government officials in Rangoon on the occasion of President Chun's state visit to Burma. Four cabinet ministers perished in that vicious attack, including Foreign Minister Lee. President Park Chung Hee was similarly the attempted target of a North Korean assassination attack in 1968 in which his wife was killed.

Following the KAL attack, Bahrain agreed to extradite Kim Hyon Hui to South Korea where she underwent questioning by Korean, American, and Japanese authorities. There is no doubt that she and her accomplice were under the direct control of Pyongyang. Last week, our Government announced that North Korea was to be placed on the list of terrorist countries—thus, giving them the same status as Libya, Iraq, and others. Just this week the Japanese Government cut off all diplomatic contact with

North Korea citing "organized terrorism" directed by Pyongyang.

Mr. President, I was in Seoul on the day when the testimony of Kim Hyun Hee was announced. The purpose of my visit was to congratulate President-elect Roh Tae Woo on his election and to express my admiration for the democratic direction in which he is leading Korea. I was deeply impressed with the calm manner in which Roh Tae Woo, the South Korean people, and their Government reacted to this terrible act of state-sponsored terrorism. There were no threats or destabilizing actions—just the calm assurance of a vibrant and increasingly self-confident nation. This contrast with the state-sponsored, barbaric actions of North Korea is obvious for all to see.●

THE IMPACT OF LIABILITY CRISIS ON VOLUNTEERS

● Mr. MELCHER. Mr. President, today, I had the pleasure of announcing the results of a Gallup survey to determine the impact of the liability crisis on volunteers. This survey, funded by the Gannett Foundation and the American Society of Association Executives Foundation, confirms what we have suspected—volunteers are getting harder to find because they are afraid of being sued.

This country was built by volunteers, and it's volunteers who make it work today. But today we learned that almost 20 percent of our volunteers are no longer willing to volunteer. Now, that's a serious problem—a problem that is so serious that we need Federal action to help see volunteers are not scared off.

That's why I introduced S. 929. This bill simply encourages States to exempt volunteers of tax-exempt organizations from personal civil liability if their actions are within the scope of their duties as a volunteer.

More than 30 States have passed legislation offering some protection to volunteers, but there is a great deal of difference in the protection. Some is limited to sports volunteers; some is limited to board members of tax exempt organizations, and some is for all volunteers. We need to have legislation in all the States protecting all our volunteers.

Mr. President, I ask that the results of the Gallup survey be inserted in the RECORD.

The material follows:

THE LIABILITY CRISIS AND THE USE OF VOLUNTEERS BY NON-PROFIT ASSOCIATIONS

INTRODUCTION

This report has been prepared by The Gallup Organization, Inc., for the Foundation of the ASAE. The report summarizes the findings of a survey of non-profit organization executives and volunteer board members concerning liability risk. The survey covered the following areas:

Survey of association executives:

1. Incidence of carrying director and officers liability insurance coverage;
2. Change in cost of liability coverage since 1984;
3. Changes resulting from concern for exposure to liability risk;
4. Practices used by non-profit organizations to minimize liability risks;
5. Incidence of suits over liability issues;
6. Effects of liability coverage on relations with association chapters;
7. Indemnification of directors or volunteers;
8. Perceived effect of liability exposure on volunteers.

Survey of board members:

1. Effect of liability crisis on participation in not-for-profit organizations;
2. Extent to which volunteers inquire into liability coverage and issues prior to accepting board membership;
3. Perceived effect of liability crisis on volunteers;
4. Incidence of refusing to serve due to fear of liability;
5. Experience with lawsuits;
6. Extent of insurance coverage.

SUMMARY OF FINDINGS

Given the concern for liability it is somewhat surprising that only about two-thirds of the organizations report carrying director and officer liability insurance. However, it may be noted that seven in ten board members report they are insured either by their company or by a personal liability policy. Volunteer board members are also likely to report the biggest effect of the liability situation is a concern for insurance coverage.

Most voluntary organizations report the cost of liability insurance has increased. In fact, the average reported increase in the past three years is 155%, and one in eight organizations report an increase of over 300%, roughly the equivalent of a 100% increase over 1984 rates per year.

The risk of being sued or being held liable has lead organizations, in some instances, to make changes. About one in twenty report changing the structure of their board of directors, and as many eliminated committees due to the potential exposure to liability risk. A larger proportion (14%) have eliminated programs they believed would expose the organization to risk.

From the volunteer board member's perspective the fear of exposure to liability is seen as resulting in fewer individuals willing to serve as volunteers. About half of the active board members report a decline in volunteers in the past few years. In fact, 16% of the board members report they have withheld their services to an organization out of fear of liability. More common, seven in ten report volunteers are more careful in what they do or say as board members. Related to the greater caution expressed by board members, organizations report establishing policies concerning volunteer activities. Eight in ten organizations have a policy regarding who may speak for the organization and nine in ten give their committees and boards specific charges and authorization and monitor compliance.

While there is a great deal of concern for the risk of liability, only one in twenty organizations report being sued on a directors and officers liability questions in the past five years. However, the response says nothing about the organizations which may have adopted more cautious policies to avoid such situations nor does it indicate the extent to which potential suits may have been averted before filing with the courts. It is of note that almost as many board members as organizations report being sued. It may also be noted that while only about 5% were sued within the past five years, one in four organizations have been sued at some time in the past.

Thus, while the number of organizations reporting problems with liability risk is not great, concern for liability is common. Organizations have taken steps to alter their operations or activities to minimize liability in the face of ever increasing insurance rates and potential risk. Volunteer board members approach the request to serve on an organization's board with caution, investigating the organization's history of lawsuits and its potential for liability risk. Finally, volunteers are more likely than organization executives to express concern and see a problem affecting the number and quality of volunteers resulting from the liability crisis.

(The following pages summarize the findings of interviews with association executives)

Carrying of Director and Officer Liability Insurance:

The Questions: To begin, does your organization currently carry director and officer liability insurance coverage?

Does your coverage include exclusions for any of the following?

Ethics committee;
Standards committee;
Peer review;
Employee discrimination.

When were these exclusions added?

Approximately two-thirds (64 percent) of all associations surveyed report carrying D&O liability insurance coverage. Among those with liability coverage one in eight (13 percent) report their insurance has exclusions for ethics or standards committee, peer review or employee discrimination. Typically such exclusions appear to have been imposed on the association's coverage since 1985.

[In percent]

	All executives
Carry C&O liability insurance coverage	
Yes	64
No	35
No answer	1
Number of interviews	265

	All with D&O insurance
Exclusions:	
Coverage has exclusions (net) 13:	
Peer review	07
Standards committee	6
Ethnics committee	6
Employee discrimination	4
None of the above	87
Total	100
Number of interviews	171

Extent to Which Costs for Liability Coverage Have Increased

The Question: Compared with the cost of liability coverage in 1984, by what percentage, if any, have your premiums gone up?

Most associations with D&O coverage report an increase in their premiums since 1984. On average, the reported increase is 155%, and the median increase is 54%. Among associations carrying D&O liability insurance about one in four (26%) report their premiums have increased by 100% or more since 1984. Another one in four (23%) have seen their premiums rise by twenty to eighty percent in the past three years. Only

one in seven (14%) report no increase. A large percentage of executives could not estimate the extent of change in the cost of their insurance premiums.

[All with D&O Insurance]

Percent increase on premiums since 1984:	Percent
Over 300	12
Over 200 to 300	5
Over 100 to 200	5
100	4
80 to 99	0
70 to 79	2
60 to 69	4
50 to 59	7
40 to 49	2
30 to 39	4
20 to 29	4
10 to 19	6
1 to 9	4
No increase	14
Can't say	27
Total	100
Number of interviews	171
Median	54
Mean	155

Extent to Which Costs for Liability Coverage Have Increased

The Question: Compared with the cost of liability coverage in 1984, by what percentage, if any, have your premiums gone up?

Most associations with D&O coverage report an increase in their premiums since 1984. On average, the reported increase is 155%, and the median increase is 54%. Among associations carrying D&O liability insurance about one in four (26%) report their premiums have increased by 100% or more since 1984. Another one in four (23%) have seen their premiums rise by twenty to eighty percent in the past three years. Only one in seven (14%) report no increase. A large percentage of executives could not estimate the extent of change in the cost of their insurance premiums.

[All with D&O Insurance]

Percent increase on premiums since 1984:	Percent
Over 300	12
Over 200 to 300	5
Over 100 to 200	5
100	4
80 to 99	0
70 to 79	2
60 to 69	4
50 to 59	7
40 to 49	2
30 to 39	4
20 to 29	4
10 to 19	6
1 to 9	4
No increase	14
Can't say	27
Total	100
Number of interviews	171
Median	54
Mean	155

Changes Resulting From Concern With Liability Risk

The Questions: Has concern for problems with liability caused your organization to make changes in the structure of your board of directors?

Has your organization eliminated any programs due to potential exposure to liability risk?

Has your organization eliminated any committees due to potential exposure to liability risk?

Relatively few associations (5%) report making changes in the structure of their board of directors as a result of concern for problems of liability. However, a larger proportion (14%) have eliminated programs due to potential exposure to liability risk. The elimination of committees is less common, only 5 percent report potential exposure to liability risk has lead to the elimination of committees.

While the number of executives reporting liability issues have affected the organization's leadership is relatively small it is noteworthy that such organizations are more likely than others to report changes in board structure or elimination of programs or committees.

[In percent]

	All executives	Liability affected leadership	
		Yes [1]	No
Made changes on structure of board:			
Yes	5	17	2
No	95	83	98
Total	100	100	100
Number of interviews	265	52	213
Eliminated programs:			
Yes	14	25	11
No	86	75	89
Total	100	100	100
Number of interviews	265	52	213
Eliminated committees:			
Yes	5	17	2
No	95	83	98
Total	100	100	100
Number of interviews	265	52	213

[1] Executives who answered "yes" to at least one of the following questions are categorized as yes to this item.

Have any potential volunteer leaders withheld their services to your organization due to concern over liability exposure?

Have any volunteer leaders resigned due to concern over the liability situation?

Has the number of volunteers actively participating in the leadership of your organization declined as a result of the liability situation in the past three years?

Review of Organization Documents

The Question: Are the governing documents of your organization periodically reviewed to make them current and consistent with present interpretation of association law?

Almost all (88%) association executives report they periodically review the organization's governing documents to keep them current with interpretation of association law.

All executives

Governing documents reviewed:	Percent
Yes	88
No	11
No answer	1
Total	100
Number of interviews	265

Policies Concerning Volunteers

The Questions: Is there an established policy as to who among the volunteers and staff is specifically authorized to communicate outside, the association's views, comments and positions?

Are volunteers prohibited from using association letterhead except when authorized for a specific task, project or purpose?

Do committees and boards have specific charges and authorizations and are they monitored to insure compliance?

A large majority of organizations (80%) have policies concerning communication of the association's views outside the organization. The same proportions report prohibitions on the use of official letterhead except for authorized use.

Nine in ten association executives (90%) also report committees and boards have specific charges and authorizations and are monitored for compliance.

All executives

Established policy regarding communication:	Percent
Yes	80
No	19
No answer	1
Total	100
Number of interviews	265
Prohibitions against using letterhead:	
Yes	80
No	18
No answer	2
Total	100
Number of interviews	265
Committees/Boards have specific changes/authorization:	
Yes	90
No	8
No answer	2
Total	100
Number of interviews	265

Experience with Law Suits

The Questions: Has your association been sued on a directors and officers liability question in the past five years?

How many times?

When was the last time your organization was sued?

How many suits, if any, have you settled out court within the past five years?

How many suits, if any, have you successfully defended in the past 5 years?

How seriously has your liability coverage been affected by these suits?

Approximately one association in twenty (5%) has been sued, within the past five years, on a directors and officers liability question. The majority of organizations have been sued once, but one in four have experienced multiple suits. In addition, it may be noted that about one in four organizations have been sued for some reason at some point in time, including 6 percent who were sued within the past five years for some reason other than D&O liability.

The numbers reporting any involvement in suits is too small to base definite conclusions upon; however, it would appear that about half the suits are settled out of court and most are successfully defended.

[In percent]

Sued on D&O question	All executives	Carries D&O insurance	
		Yes	No
Yes	5	6	1
Once	—3	—4	—1
Twice	—1	—1	—0
Five or more	—1	—1	—0
No	95	93	99
No answer	(1)	1	0
Total	100	100	100
Number of Interviews	265	171	92

[1] Less than one-half of 1 percent.

[In percent]

Last time organization was sued	All executives	Carried D&O insurance	
		Yes	No
Within past year	4	5	2
1 to 2 years ago	3	5	0
3 to 4 years ago	3	5	1
5 years ago	(1)	0	1
More than 5 years ago	12	14	8
Never	74	67	87
No answer	4	4	1
Total	100	100	100
Number of interviews	265	171	92

[1] Less than one-half of 1 percent.

Of those sued for any reason in the past 5 years, 18 percent report their liability coverage has been very or fairly serious affected by these suits.

Organization sued in past 5 years

	Percent
Liability coverage affected:	
Very seriously	11
Fairly seriously	7
Not too seriously	50
Not at all seriously	50
Don't know	11
Total	100
Number of interviews	28

Bias on Underwriters

The Question: Have you incurred a bias on underwriters due in part to the technical nature of your profession?

About one in four association executives report having incurred a bias on underwriters due to the technical nature of their profession. Those who report the liability situation has had an effect on leadership are more likely than the norm to report incurring an underwriters bias.

[In percent]

Incurred bias on underwriters	All executives	Liability effected leadership	
		Yes	No
Yes	23	46	18
No	69	50	73
Don't know	8	4	9
Total	100	100	100
Number of interviews	265	52	213

Effect of Liability on Relations with Chapters

The Question: Have changes in liability coverage changed relations with chapters of your association?

If yes, in what ways?

Are you able to secure coverage for your chapters?

One in ten (10%) report that changes in liability coverage have changed relations with association chapters. While the number is small it may be of value to look at the changes reported. A third report initiating programs or monitoring to reduce the risk of liability. Others report discontinuing chapters, requiring chapters to pay for their own insurance or increased financial management.

[In percent]

Changed relations with chapters	All executives	Liability effected Leadership	
		Yes	No
Yes	10	19	7
Programs to reduce risks: Have gotten much more conscientious watching all levels of chapter activities; started a risk management program; Made chapters more sensitive to liability	−3	−6	−3
Provide liability insurance: Incorporated liability insurance for chapters under national policy; Got them liability insurance; Are required to cover chapters, independent D&O coverage in effect	−2	−4	−1
No longer part of national insurance: Had to distance from the chapters because of this; Cut them loose and they are on their own; Are not part of us anymore, they had to establish a new structure	−2	−6	(1)
Increased financial management: Are starting to write guidelines for them concerning financial matters; Increased financial management; Greater audit and fiscal control	−2	−0	−2
Chapters pay own insurance: Require they carry their own liability coverage when conducting an activity using the organizations name or under our umbrella; They have had to pay more of their share of directors and officers insurance	−1	−2	(1)
Strengthen relationship: Because of group plan have had strengthening of relationship; Have strengthened affiliation agreement	−1	−0	1
Strained relationship: Strained relationship by raising concern at the chapter level which is very difficult; Caused some hard feelings	−1	−2	(1)
Tax laws: Had to change membership requirements for the tax laws; Has to do with tax laws	−1	−2	(1)
No	70	62	72
Don't know	20	19	21
Total	100	100	100
Number of interviews	265	52	213

[1] Less than one-half of 1 percent.

Less than half (36%) of the association executives report they are able to secure coverage for their chapters; however, a large proportion (46%) could not answer the question.

All executives

Able to secure coverage for chapters:	Percent
Yes	36
No	18
No answer	46
Total	100
Number of Interviews	265

Indemnification of Directors and Volunteers

The Question: Do you indemnify your Board of Directors in the Bylaws?

Do you indemnify your volunteers as well?

A majority of associations (58%) indemnify their board of directors. However, less than half (32%) indemnify volunteers. Organizations with D&O insurance are more likely than others to indemnify board members and volunteers. Those reporting the liability crisis has affected leadership also are more likely to indemnify board members.

[In percent]

	All executives	Carries D&O insurance		Liability affected leadership	
		Yes	No	Yes	No
Indemnify board of directors:					
Yes	58	64	48	65	56
No	35	29	43	25	37
No answer	7	7	9	10	7
Total	100	100	100	100	100
Number of interviews	265	171	92	52	213

[In percent]

	All executives	Carries D&O insurance		Liability affected leadership	
		Yes	No	Yes	No
Indemnify volunteers:					
Yes	32	37	25	35	32
No	59	54	66	59	58
No answer	9	9	9	6	10
Total	100	100	100	100	100
Number of interviews	265	171	92	52	213

Effect of Liability Exposure on Volunteer Leaders

The Question: Have any potential volunteer leaders withheld their services to your organization due to concern over liability exposure?

Have any volunteer leaders resigned due to concern over the liability situation?

Has the number of volunteers actively participating in the leadership of your organization declined as a result of the liability situation in the past three years?

Association executives were asked a series of questions concerning the possible effects of the liability crisis on volunteer leaders. About one in five executives (20%) perceive some change as a result of the potential exposure to liability. The most common effect is the withholding of services to the association. Eighteen percent report that, due to concern over liability exposure, potential leaders withheld their services to the organization. A little less than one in ten (8%) report resignations as a result of concern over liability issues. Related to the reported resignation six percent have seen a decline in the number of volunteers in the past three years related to the liability situation. Finally, seven percent believe the quality of volunteers in their organization has suffered due to liability questions.

All executives

Potential volunteer leaders have:	Percent
Withheld services	18
Resigned	8
Declined in number	6
None of the above	80
Number of Interviews	265

Effect of Liability Exposure in Other Volunteers

The Questions: Has the number of individuals volunteering time for service roles in your organization declined as a result of the liability situation in the past three years?

Has the quality of volunteer leaders in your organization suffered due to liability questions?

As one might anticipate, organizations reporting the liability crisis has effected leadership are more likely than others to report a decline in volunteers and relatedly, a decline in the quality of volunteer workers.

[In percent]

	All executives	Carries D&O insurance		Liability effected leadership	
		Yes	No	Yes	No
Individual volunteers declined:					
Yes	6	4	10	29	(1)
No	91	93	87	67	97
Can't say	3	3	3	4	3
Total	100	100	100	100	100

[In percent]

	All executives	Carries D&O insurance		Liability effected leadership	
		Yes	No	Yes	No
Number of interviews	265	171	92	52	213
Quality suffered:					
Yes	7	5	10	31	1
No	91	93	88	65	98
Can't say	2	2	2	4	1
Total	100	100	100	100	100
Number of interviews	265	171	92	52	213

[1] One-half of 1 percent.

SUMMARY OF FINDINGS BASED ON INTERVIEWS WITH VOLUNTEER BOARD MEMBERS

Affect of Liability Crisis

The Question: Overall, how would you say the liability crisis has affected your participation in not-for-profit organizations?

One in five board members (21%) report the liability situation facing voluntary organizations had made them more concerned about serving on boards of directors. One in ten (10%) either carry insurance or verify that the organization carries liability insurance. A small proportion (3%) have become more selective in their participation and 2% have resigned or refused to serve on a board as a consequence of their concern. However, seven in ten (69%) report no negative effect.

LIABILITY CRISIS AFFECT

	Percent	Number
More concerned (net)	21	
Cause for concern/more cautious (have to be more cautious; has not stopped volunteering; has not affected actions, but has generated a sense of concern)		18
Hesitancy in joining (reluctant to join new boards; tougher to get people to work for non-profit organizations; leery of volunteering)		3
Fear being sued (concerned for individual suits; look into risk liability; felt personal exposure)		2
References to insurance (net)	10	
Must have insurance coverage (refusal to serve if proper insurance not available; will serve on boards that have coverage, make sure directors are covered)		5
Incrased cost of insurance (costing more money for insurance; premiums have escalated; created financial problems)		3
Carry insurance		3
More selective (net)	3	
Seek legal counsel (go to an attorney before making statements; talk with attorney before serving)		6
Check on organization/board member (check before joining; check every-thing out; find out how they operate; ask about policies before joining)		3
Resigned/will not participate	2	
Other	3	
No negative affect	69	
Can't say	2	
Number of interviews	359	

Inquiries Concerning Liability Coverage

The Questions: When asked to volunteer as a board member, do you inquire into the organization's liability coverage before making a decision to serve?

Do you research the organization's history of lawsuits before volunteering?

Nearly half (48%) the board members question the organization's liability coverage before making a decision to sit on a board. Perhaps because of their greater experience, or greater potential exposure to suits, those who have been board members for a long period of time or have membership on more than one board are more likely to raise questions about liability before accepting a seat on the board.

Approximately one in four directors (23%) report researhing the organiztion's history of lawsuits prior to volunteering. Again, it is the volunteer with more years of experience or multiple board membership who is most likely to look into the organization's past history.

INQUIRIES CONCERNING LIABILITY COVERAGE

[In percent]

Inquire into liability coverage	Total	Length of board membership			Number of organizations [1]		
		2 yr or less	3 to 6 yr	7 plus years	Only 1	2 to 3	4 plus
Yes	48	42	47	56	34	53	54
No	51	57	53	41	65	46	43
Don't know	1	1		3	1	1	3
Total	100	100	100	100	100	100	100
Number of interviews	359	131	107	121	108	151	100

[1] Number of organizations for which respondent is a board member.

RESEARCHING ORGANIZATION'S HISTORY OF LAWSUITS

[In percent]

Research organization's history of lawsuits	Total	Length of board membership			Number of organizations		
		2 yr or less	3 to 6 yr	7 plus years	Only 1	2 to 3	4 plus
Yes	23	17	26	26	17	26	23
No	76	83	71	74	81	73	77
Don't know	1		3		2	1	
Total	100	100	100	100	100	100	100
Number of interviews	359	131	107	121	108	151	100

Criteria used in research of organization's history

The Question: What criteria do you use in your research of an organization's history?

Among those who look into the organization's history the most common approach, taken by about one in four, is to consult with other board members. Almost as many consider the stability of the organization (22%). Slightly less than one in five (17%) consider the quality of the current board members and as many consider the organization's current insurance coverage. The full distribution of factors considered are shown in the table below.

Criteria used in research of organization's history

Criteria used	Total (percent)
Consultation with members (e.g., check with administration staff)	27
Stability of organization (e.g., how long established; the organization itself)	22
Quality of board member (e.g., quality of people on board now and in the past; knowing about the leaders of the organization)	17
Insurance coverage (e.g., whether or not they are insured; if they carry liability; consult insurance representative)	16
General reputation/word of mouth (e.g., asking around in community; word of mouth; ask community leaders)	11
Type of service/activity provided (e.g., if they do good work; look at what they have to offer; primary purpose	9
Organization records (e.g., go to records; minutes of meetings)	7
Legal counsel (e.g., check with legal counsel; our lawyers follow through the liability clause; State courts)	7
Financial background (e.g., ask to look at financials for 3 yrs; financial status; auditors reports)	6
Media (e.g., check newspaper stories)	3
Other involvement (e.g., usually on a committee so I can research well)	1
Potential for lawsuits (e.g., area of risks; probability of exposure of liability)	6
Number of interviews	81

Perceived changes in volunteer board members

The Questions: In the past few years have you noticed any of the following regarding volunteer board members . . . fewer willing to volunteer or serve? volunteers are more cautious about what they do or say?

About half the volunteer board members (49%) report that they see fewer willing to volunteer to serve on boards of directors. As much larger proportion (72%) report volunteers are more cautious in what they do or say.

FEWER WILLING TO VOLUNTEER OR SERVE

[In percent]

	Total	Length of board membership			Number of organizations		
		2 yr or less	3 to 6 yr	7 plus years	Only 1	2 to 3	4 plus
Yes	49	47	48	52	49	47	53
No	49	50	51	46	47	52	46
Don't know	2	3	1	2	4	1	1
Total	100	100	100	100	100	100	100
Number of interviews	359	131	107	121	108	151	100

VOLUNTEERS MORE CAUTIOUS ABOUT WHAT THEY SAY OR DO

[In percent]

	Total	Length of board membership			Number of organizations		
		2 yr or less	3 to 6 yr	7 plus years	Only 1	2 to 3	4 plus
Yes	72	69	74	74	67	77	70
No	27	28	26	26	31	22	29
Don't know	1	3			2	1	1
Total	100	100	100	100	100	100	100
Number of interviews	359	131	107	121	108	151	100

Withholding of volunteer services

The Question: Have you ever withheld your volunteer services due to fear of liability?

One in six board members (16%) report withholding their services due to fear of liability. Those who serve on several boards, as one might expect, are more likely to report such an experience. It should also be noted that since the survey is of currently active board members there is no measure of the proportion of board members who have completely withdrawn from volunteer activity due to concern for liability.

WITHHOLDING OF VOLUNTEER SERVICES

[In percent]

	Total	Length of board membership			Number of organizations		
		2 yr. or less	3 to 6 yr.	7 plus years	Only 1	2 to 3	4 plus
Yes	16	16	13	20	14	17	19
No	84	84	87	80	86	83	81
Total	100	100	100	100	100	100	100
Number of interviews	359	131	107	121	108	151	100

Experience with lawsuits

The Question: Have you ever been sued as a volunteer of a not-for-profit organization?

Relatively few board members (2%) report having been sued as a volunteer for a not-for-profit organization. As one might anticipate, board members who have served a long time or who serve on several boards are more likely than the less experienced to report being sued.

EXPERIENCE WITH LAWSUITS

[In percent]

Ever been sued	total	Length of Board membership			Number of organizations		
		2 yr or less	3 to 6 yr	7 plus years	only 1	2 to 3	4 plus
Yes	2	1	1	4	0	2	4
No	98	99	99	96	100	98	96
Total	100	100	100	100	100	100	100
Number of interviews	359	131	107	121	108	151	100

Current Liability Coverage

The Question: Does your employer provide liability coverage for your volunteer service?

Do you carry personal coverage for liability?

Seven in ten board members (72%) carry some type of liability coverage. Slightly more than one in four volunteer board members (27%) report their employer provides liability coverage for their volunteer service. This is particularly true of volunteers who serve on several boards or who have served for a long period of time.

Many more volunteers (62%) report carrying personal liability coverage.

CURRENT LIABILITY COVERAGE

[In percent]

	Total	Length of board membership			Number of organizations		
		2 yr or less	3 to 6 yr	7 plus years	Only 1	2 to 3	4 plus
Net liability coverage	72	62	78	76	63	73	79
Personal coverage	62	51	72	66	54	65	66
Employer provides coverage	27	20	30	33	23	22	41
None	28	38	22	24	37	27	21
Total	100	100	100	100	100	100	100
Number of interviews	359	131	107	121	108	151	100

SAMPLING TOLERANCES

In interpreting survey results, it should be borne in mind that all sample surveys are subject to sampling error, that is, the extent to which the results may differ from what would be obtained if the whole population had been interviewed. The size of such sampling errors depends largely on the number of interviews.

The following tables may be used in estimating the sampling error of any percentage in this report. The computed allowances have taken into account the effect of the sample design upon sampling error. They may be interpreted as indicating the range (plus or minus the figure shown) within which the results of repeated samplings in the same time period could be expected to vary, 95 percent of the time, assuming the same sampling procedures, the same interviewers, and the same questionnaire.

The first table shows how much allowance should be made for the sampling error of a percentage:

RECOMMENDED ALLOWANCE FOR SAMPLING ERROR OF A PERCENTAGE

[In percentage points (at 95 in 100 confidence level [1])]

	Sample size						
	350	250	125	100	75	50	25
Percentages near 10	3	4	5	6	7	8	12
Percentages near 20	4	5	7	8	9	11	16
Percentages near 30	5	6	8	9	10	13	18
Percentages near 40	5	6	9	10	11	14	19
Percentages near 50	5	6	9	10	11	14	20
Percentages near 60	5	6	9	10	11	14	19
Percentages near 70	5	6	8	9	10	13	18
Percentages near 80	4	5	7	8	9	11	16
Percentages near 90	3	4	5	6	7	8	12

[1] The chances are 95 in 100 that the sampling error is not larger than the figures shown.

The table would be used in the following manner: Let us say a reported percentage is 33 for a group which includes 350 respondents. Then we go to row "percentages near 30" in the table and go across to the column headed "350". The number at this point is 5, which means that the 33 percent obtained in the sample is subject to a sampling error of plus or minus 5 points. Another way of saying it is that very probably (95 chances of 100) the true figure would be somewhere between 28 and 38, with the most likely figure the 33 obtained.

In comparing survey results in two samples, such as, for example, men and women, the question arise as to how large a difference between them must be before one can be reasonably sure that it reflects a real difference. In the tables below, the number of points which must be allowed for in such comparisons is indicated.

Two tables are provided. One is for percentages near 20 or 80; the other for percentages near 50. For percentages in between, the error to be allowed for is between those shown in the two tables.

RECOMMENDED ALLOWANCE FOR SAMPLING ERROR OF THE DIFFERENCE

[In percentage points (at 95 in 100 confidence level [1])]

Size of sample	175	125	100	75	50	25
Table A (percentages near 20 or 80):						
175	8					
125	9	10				
100	10	11	11			
75	11	11	12	13		
50	12	13	14	14	16	
25	17	17	18	18	19	22
Table B (percentages near 50):						
175	10					
125	11	12				
100	12	13	14			
75	14	14	15	16		
50	16	16	17	18	20	
25	21	21	22	23	24	28

[1] The chances are 95 in 100 that the sampling error is not larger than the figures shown.

Here is an example of how the tables would be used: Let us say that 55 percent of men responded a certain way and 40 percent of women respond that way also, for a difference of 15 percentage points between them. Can we say with any assurance that the 10-point difference reflects a real difference between men and women on the question? Let us consider a sample which contains approximately 125 men and 125 women.

Since the percentages are near 50, we consult Table B, and since the two samples are 125 persons each, we look for the number 12 here. This means that the allowance for error should be 12 points, and that in concluding that the percentage among men is somewhere between 3 and 27 points higher than the percentage among women we should be wrong only about 5 percent of the time. In other words, we can conclude with considerable confidence that a difference exists in the direction observed and that it amounts to at least 3 percentage points.

If, in another case, men's responses amount to 22 percent, say, and women's 24 percent, we consult Table A because these percentages are near 20. We look for the number in the column headed "125" which is also in the row designated "125" and see that the number is 10. Obviously, then, the two-point difference is inconclusive.

A SELF-RELIANT COUNTRY

● Mr. SIMON. Mr. President, on October 27, 1987, Congresswoman MARCY KAPTUR spoke before the 17th convention of the AFL-CIO in Miami. A week after the dramatic Wall Street plunge, Congresswoman KAPTUR addressed problems such as our dependence on foreign credit, and our need to balance the books.

Congresswoman KAPTUR offers a sound analysis of the problems we are facing and the need to move on such important issues as education and health care in an effort to build a stronger more self-reliant country.

I ask that Congresswoman KAPTUR's remarks be printed in the RECORD.

The remarks follow:

REMARKS OF CONGRESSWOMAN MARCY KAPTUR BEFORE THE 17TH CONVENTION OF THE AFL-CIO

Thank you President Kirkland, Secretary-Treasurer Donahue, members of the Executive Council, delegates, distinguished guests, Brothers and Sisters, Toledo delegates. It is an honor for me to address you, the representatives of the freest, most socially progressive trade union movement on earth.

More than 200 years ago, our forebears captured our nation's spirit of independence and freedom in writing the Declaration of Independence. This grant document declares our nation's right to be free and independent of foreign governments. Today, we are the most free of nations. Individual rights are the cornerstone of American democracy. In the last century our freedoms have been expanded. We have created a society with a broad middle class, the envy of the world. We must, and will, do more. Our system of government has withstood the political turmoil of unpopular wars, public corruption, and assassination of our top lead-

ers. As a people, we admire self-reliance, independence, and opportunity for all. We remain the most pluralistic and socially diverse nation on earth. Our diversity is the source of our democratic strength.

But there is another dimension to our heritage of freedom and independence—an economic dimension. This was dramatically brought home last week with the first convulsion on Wall Street and the subsequent ups and downs we have witnessed. At the center of the storm is our nation's dependence on foreign credit. No one is sure how much America is worth anymore. New York Times headlines on Monday, 10/19: "Foreigners Called Key to Rates—Markets Fear Cut in Flow of Capital to U.S."

How long can we truly remain free and independent when we borrow from foreign creditors to subsidize our national income because we, as a nation, spend more than we earn? As astounding as it sounds, we are borrowing money from abroad to pay for goods we insist on importing from abroad.

We as a nation are engaged in a dangerous credit binge which is deepening our reliance on foreign capital. Our government is running the largest deficit in history. During the first five years of the Reagan Administration, more debt was added to the federal ledger than by all previous Administrations—Democratic and Republican—combined! The interest we are paying on this debt is astounding—$137 billion for 1987 alone! This amounts to 16.6 cents of every tax dollar you pay.

I ask you, how long can the United States truly remain free and independent while we are challenged by aggressive foreign competitors who send a flood of money as well as foreign goods—both industrial and agricultural—to capture larger shares of our marketplace? Our own productive capacities are suffering from erosion and displacement. We have witnessed over 4 million jobs move offshore.

Industries vital to our nation's defense are being sold to foreign interests—machine tools, metal fasteners, steel, autos, bearings, electronics and textiles. While U.S. exports abroad are struggling, international investment in the U.S. is booming. I am a vocal supporter of "Buy American" in a world which is rapidly buying America.

Think about it. Where are jobs and profits going when:

25% of our machine tool industry is foreign owned.

½ the value of all autos in the U.S. market are made outside the U.S.

½ of all the textiles we buy are from foreign sources.

Steel imports are 22% of the U.S. market, and imports from countries not restricted under VRAs are rising.

We import nearly half of the oil we consume.

In 1986 the U.S. imported nearly ⅛ of its agricultural products as farmers in Iowa, South Dakota, Minnesota, Oklahoma and elsewhere went bankrupt.

Did you see the recent Wall Street Journal rankings of the world's largest companies and financial institutions?

Of the world's ten largest public companies, 8 are Japanese. Only two, IBM and Exxon, are U.S. owned.

Of the world's ten largest banks, only one is U.S., Citicorp. Seven are Japanese. Two are French.

As a nation, we must reclaim America. We must learn to live within our capacity to earn. We must invest our dollars wisely in our own productive ventures. We must again assert our economic muscle in manufacturing, mining, and agriculture. For if America loses its industrial and agricultural muscle, all the social programs which we rely upon to improve our standard of living are threatened—health care, social security, education, housing.

What are the answers? First, the public pocket book must be put in order. The President was wise to accept the invitation of our Speaker, Jim Wright, to sit down with Congress to balance the books. This is for the good of the nation. The President has nothing to lose in this last year of his administration. I believe the next President of the U.S. should submit pay-as-you-go-budgets. Congress should accept no less. This means programs must have the means to pay for them built in prior to passage.

As individuals, we must wean ourselves off the borrowing binge and get our private checkbooks under control. Working men and women of this nation know how to save. I've seen it firsthand in my own community. Most recently I attended the 50th anniversary celebration of the credit union at GM's Hydra-matic plant in Toledo. It has $20 million in assets. Shortly thereafter, new ground was broken for another multi-million dollar credit union next to the Jeep facility in my District. You and the people you represent understand the meaning of thrift. Your pension funds are one of the largest sources of capital in America—earned by the workers and saved for the workers. As my Dad used to say, "It's not how much you make, it's how much you save."

We need a President to launch our nation on a major campaign to sell U.S. Savings Bonds to provide dollars for investment here at home—call them "Independence Bonds." The American people must be called upon to rebuild our nation's financial independence. We have the ability to finance our own spending. We have an obligation to future generations to pay our own way. Our initial goal should be to displace all foreign purchases of U.S. bonds, an amount nearing $270 billion. In fact, when you buy holiday presents this year, buy savings bonds. It's the best investment you can make in America's future. The federal government must make it financially advantageous for Americans to save. It's no secret domestic savings fuel domestic investment. A dollar saved helps create a job in America.

We also need a President who will sign the Trade Bill. And we need a President who will enforce it. And we need a President who will appoint respected negotiators in the international trade arena. We have people negotiating for our country who don't know a car from a truck, a machine tool from a baseball bat, or a slab of steel from a soybean. How I would love some of the members of this Executive Council to negotiate for America! The goal for America should no longer be free trade, but mutually beneficial trade—trade that expands markets, trade that raises the standard of living for all countries, trade that does not demand that concessions come from one side only.

Not only do we need competence among our trade negotiators, we need integrity. Two weeks ago, it was revealed that the Reagan Administration's top official for auto trade policy, Robert Watkins, was using his official position to solicit a job with top Japanese auto firms. He was doing this at the same time as he was involved in the most important auto trade negotiations with Japan in decades. He is a national disgrace. Members of Congress like myself forced his resignation. Now I am certain why he achieved such weak-kneed results in those negotiations.

This Administration's record is filled with far too many examples of this type of breach of the public trust. Michael Deaver is only the tip of the iceberg. It's happened in machine tools. It's happened in textiles. It's happened in autos. Citizens of this country who go to work for the government of the United States in top trade positions should not be allowed to leave these positions and then immediately go to work on behalf of a foreign country or company.

Congressman Howard Wolpe of Michigan and I have introduced the Foreign Agents Compulsory Ethics in Trade Act, FACE IT, H.R. 1231 to put an end to this type of despicable activity. We need your help in getting the legislation passed. When you go home, ask your member of Congress to sign on to our bill. The battle for fair trade is tough enough. America doesn't need traitors in her own camp.

Let's move to another key measure to reclaim America. We can modernize the public fact of America through the establishment of a "Build America Trust Fund." We can revitalize our cities by modernizing our mass transit systems and our water, sewage and drainage facilities. We can rehabilitate our schools, our fire stations, our libraries and other public buildings. We can rebuild our major county and state roads and bridges. We can improve our ports and inland waterways. In short, we can put in place all of the public works that create and sustain jobs. This means we must tap the talent, creativity, and dedication of our public sector work force.

The Speaker of the House Jim Wright has proposed such a Trust Fund predicated upon the highly successful Highway Trust Fund, a pay as you go method of financing that is fair and fiscally responsible. It has not added one penny to the national debt. We can do the same to set in motion an American public renaissance to repair and upgrade this nation from coast to coast.

Labor too can play a vital role in this endeavor. Pension funds are labor's source of economic power. They are the largest source of capital investment in the U.S. By creatively using pension funds, the building trades in my hometown, Toledo, have helped rebuild our downtown. At the same time they have put thousands of union men and women to work. This should be done all across America.

The private face of America needs to be modernized too. It is unconscionable that our nation has lost its shipbuilding capacity, that our steel mills are not state-of-the-art technology, and that U.S. made tractors are becoming a rare commodity. It is unacceptable that Japan is quickly catching the U.S. auto industry in world market share. And it is unacceptable that, last year, almost half the patents approved by the U.S. government were granted to foreigners.

The next President of this country must revisit the tax code of this land. We must reform Tax Reform to invest in America! We must stamp out hostile takeovers that make financiers rich on Wall Street but destroy jobs on Main Street. We must close the loopholes in the tax laws that move jobs overseas. Our tax laws must encourage U.S. industry to retool, rebuild and emphasize research and development here at home.

To help, we must enlist the help of our own Department of Defense to use its mighty resources, purchases of over $150 billion per year, to help retool and modern-

ize U.S. industry. The national security of this nation is a function of the strength of our manufacturing industries. We must no longer tolerate the offshore migration of manufacturing capabilities in forging, castings, ball bearings, machine tools, semiconductors, steel, electronics, refining, metals, ceramics, and composite fibers. Cutting edge technologies are essential to our defense base. We must invest in them.

Reclaiming an independent America also means committing ourselves to a first-rate educational system. I have always believed education is this nation's first line of defense. We must reverse the trend where nearly one-third of each entering high school class drops out before earning diplomas. And we must make it easy for currrent workers to learn new skills in order to keep pace with technology.

There is a dangerous trend in higher education as well. Japan, with only half the population of the U.S., graduates five times as many engineers as the U.S. Foreign nationals make up nearly half of the enrollment in our graduate schools in engineering, mathematics and computer sciences. There is something wrong with our system which makes it more glamorous and financially rewarding for our best graduates to work on Wall Street than in the factories and on the farms of America. We need an educational system and a business community which encourage America's young to make a commitment to careers vital to our nation's future.

We must spark an American educational renaissance. For those students who do not have the financial means to continue their education, I propose a new type of student aid—a national program of Voluntary Service for America, that would reward participants with educational benefits similar to the GI Bill.

Finally, one of the most difficult issues facing the next administration will be affordable health care for all Americans. Today, 37 million Americans lack any type of health care coverage. One third of them are children. Many of the rest are workers who have lost their health care benefits due to lay offs and unemployment. By 1990, these numbers are expected to double.

We must confront the health care challenge head on. The next President of the United States, within 90 days of assuming office, should appoint a blue ribbon commission comprised of labor and business, health experts, and government officials to formulate a new program of health insurance. It worked for Social Security: it can work for comprehensive health care. Congressmen Don Pease (OH), Martin Sabo (MN), and Ed Roybal (CA) should be part of that Commission. They have already introduced forward looking legislative proposals which would make health care available to all our people. Of course, this proposal has a price tag. But cost-sharing by insurance purchasers according to ability to pay, requiring State matching funds, and saving some money through use of HMOs. I also suggest we place a tax on earnings from rapid stock transfers and the unproductive paper shuffling taking place on Wall Street, and target that money productively for health care for all our people.

In 1776 we were a young confederation fighting for our political independence. In 1987, we are a mature nation waging another fight—to sustain our economic independence.

Mutually beneficial trade, high educational standards, health-care, self-reliance in finance, and the rebuilding of our country. These goals can reclaim America. "Made in the U.S.A." will again be a standard of excellence and dependability. We can do this by *investing* in ourselves, in our future, and in the independence of America.

David Halberstam, in his recent best-selling book about the auto industry entitled *The Reckoning*, professes that this may be the end of the American century. I believe differently. Our country is going to regain its preeminence because of the essential strength of our democratic system. I believe this is the time to reclaim and recapture America for the 21st Century. Our task is to turn America to the next generation in better condition than we found it.

As Carl Sandburg wrote—

"I see America not in the setting sun of a black night—
I see America in the crimson light of a rising sun—
I see great days ahead, great days possible to men and women of will and vision."●

NAUM MEIMAN

● Mr. SIMON. Mr. President, as many of you know, I have been inserting statements in the CONGRESSIONAL RECORD for the past 1½ years on behalf of Naum and Inna Meiman. Last January 1987 we witnessed with relief the occasion of Inna arriving in the United States to receive much needed cancer treatment. Sadly, her release came too late. Inna died 3 weeks after she entered the United States.

This year, I am pleased to announce that Naum Meiman has received permission to leave the Soviet Union. Naum received official confirmation from OVIR on Tuesday, January 26. I am sure that many share my delight in the news; however, it is a delight which is tempered by caution. Naum is old, sick, and alone. Unfortunately, he now has to go through the formal procedure alone. For someone of Naum's age, this procedure can be exhausting.

I am pleased that Naum has received the news for which he has been waiting so long. I am pleased for Naum and I am pleased for the Soviet Union. However, I urge that the Soviet authorities expedite the departure procedure so that Naum can leave in good health and avoid his wife's fate. ●

THE 100TH ANNIVERSARY OF THE EPIPHANY SCHOOL

● Mr. D'AMATO. Mr. President, I rise today to commemorate the 100th anniversary of the Epiphany School in New York City. Since 1888, the Epiphany School has been providing its students with the finest in Catholic education.

One hundred years ago, Epiphany opened as a Catholic grade school by Rt. Rev. Msgr. Richard Burtsell. At the time, New York City's population was increasing at an astonishing rate and a complete Catholic grade school was needed.

From the outset, Epiphany's educational program was conducted by the Sisters of Charity. From 1900 to 1935 they were joined by the Christian Brothers. Every pastor has been in active charge over the years and together they continue to improve the school and its facilities.

Today, the academic achievements at Epiphany rank it among the finest parish schools in the city—as well as one of the oldest. There is now a lay principal, James L. Hayes, and faculty teaching a highly expanded curriculum to approximately 360 students. More students than can be accommodated are continually attracted to the school.

The Epiphany School rejoices in their rich history. They have a proud past and may look forward to an even brighter future.

Thank you, Mr. President.●

INFORMED CONSENT: NEW JERSEY

● Mr. HUMPHREY. Mr. President, abortion on demand claims the lives of nearly 4,000 unborn childen every day. Beyond this tragedy, many women suffer mental anguish and develop severe psychological problems as a result of their abortions. S. 272 and S. 273 would require informed consent by making abortionists supply women with basic information on abortion procedures, risks, and alternatives. I am convinced that if this legislation were passed, many of the abortions that are routinely and needlessly performed would be avoided. I ask unanimous consent that a letter from a woman in New Jersey who supports these bills be entered into the CONGRESSIONAL RECORD. The letter follows:

FEBRUARY 1987.

DEAR MR. HUMPHREY: I am a member of Concerned Women of America. In 1977 and 1978 I had two abortions. I was single, in my early twenties, and living in New York City. I went to the "Eastern Women's Clinic" in Manhattan. Both times my treatment was the same. After testing my urine and discovering that I was pregnant, they politely sat me down and told me the results of the test.

After I calmed down and had a minute to understand my predicament, I told them I wanted the abortion. They quickly set up an appointment for me. They told me what to avoid eating or drinking, to bring a friend to help me home afterwards, and that was it! They never went into any detail of what was involved in the procedure. They never told of the possible consequences to me if anything went wrong, or even what could go wrong. They never talked about the possibility of excess bleeding or of possible injury to my cervix, or of the increase of miscarriages to those women who have undergone multiple abortions * * * Nothing!

I was convinced that there was no child inside of me at the time that I had these abortions. I have since learned that there were two little children living inside of me who I will never get to know. Two little people, that if I had only known about their

growth and development, they might be with me today.

Do not believe the abortionists who say that there are no psychological effects on the women after their abortions. I will never be able to read about, or see on television anything about abortions without my heart breaking for those children that I had killed. And that is exactly what I did to them. Praise God for His forgiveness and love.

I know that if it was mandatory for clinics to counsel and to fully inform these women, there would be fewer abortions and fewer guilt-ridden and heartbroken women later on.

Most sincerely,

MRS. E. RODERED,
Raritan, NJ.●

WELFARE REFORM

● Mr. MOYNIHAN. Mr. President, as chairman of the Subcommittee on Social Security and Family Policy, I rise to welcome and to praise the exceptional emphasis President Reagan gave to family policy in his State of the Union Address Monday evening, and in particular, his summons to make this at long last the year of true welfare reform.

The President commented:

My friends, some years ago, the Federal Government declared war on poverty, and poverty won. . . .

Too often it has only made poverty harder to escape. Federal welfare programs have created a massive social problem. With the best of intentions, Government created a poverty trap that wreaks havoc on the very support system the poor need most to lift themselves out of poverty—the family. Dependency has become the one enduring heirloom, passed from one generation to the next, of too many fragmented families.

It is time—this may be the most radical thing I've said in 7 years in this office—it is time for Washington to show a little humility. There are a thousand sparks of genius in 50 States and a thousand communities around the Nation. It is time to nurture them and see which ones can catch fire and become guiding lights.

States have begun to show us the way. They have demonstrated that successful welfare programs can be built around more effective child support enforcement practices and innovative programs requiring welfare recipients to work or prepare for work.

The President is quite correct in calling attention to the energy and creativity with which State governments have addressed the issue of welfare dependency in recent years. As Senators will know, last year the National Governors Association made welfare reform its No. 1 issue. Governor Clinton of Arkansas, then chairman of the association, and Governor Castle of Delaware brought their proposal to the Finance Committee, and we fashioned our bill (S. 1511) after their model. Time and again I have referred to it as the Governors' bill.

I emphasize my agreement with the President in this large matter, as I would beg to differ on the lesser point with which he opened his discussion. Which is to say that in the War on Poverty, "poverty won."

It happens I was present in the Rose Garden at midmorning of August 20, 1964, on the occasion President Johnson signed the Economic Opportunity Act of 1964. These were his opening remarks:

On this occasion the American people and our American system are making history.

For so long as man has lived on this earth poverty has been his curse.

On every continent in every age men have sought escape from poverty's oppression.

Today for the first time in all the history of the human race, a great nation is able to make and is willing to make a commitment to eradicate poverty among its people.

At no point in his remarks that day did he use the term "war on poverty," but that usage became common and President Reagan surely reflects a widespread judgment that as a nation we failed in that great undertaking.

Not long ago, a cover story in U.S. News & World Report, by the able young scholar David Whitman, noted that Tom Fletcher, the impoverished coal miner President Johnson visited in a vastly publicized tour of eastern Kentucky, is still poor, still living in the same cabin. Just this week an editorial in the New Republic, commenting on a decline in the quality of American civic culture, notes:

One of the causes is the frustration of grinding poverty, particularly in the wake of both insincere promises and oafish efforts to end it.

Indeed, some of the more eccentric programs of the time aroused considerable opposition. Osborn Elliott recently noted that in his final State of Union message, President Johnson did not even mention the Great Society and antipoverty programs.

There were, you could say, auguries. I sat beside Sargent Shriver on March 17, 1964, as he presented the opening testimony on the Economic Opportunity Act before the House Committee on Education and Labor. When at length Chairman Powell invited the comment of a senior Republican member, the hapless legislator could only offer us a reading from John 12:18: "For the poor always ye have with you."

In the near quarter century since, this prophecy appears to have been borne out. About one American in six was poor in 1964. About one in six is poor today.

However, Mr. President, I would offer the thought that this seeming intractable proportion is the result of two quite opposite movements.

In 1964, poverty was essentially a problem of the aged. More than a quarter of the aged were poor.

But programs enacted under President Johnson and President Nixon, primarily within the Social Security area, greatly reduced poverty among the elderly. I refer especially to Medicare, to SSI, and to the increase and subsequent indexing of Old Age Insurance benefits.

PERCENTAGE BELOW POVERTY LEVEL

	1966	1986
65 and over	28.5	12.4

Source: U.S. Census Bureau.

This is a wholly unacceptable level of poverty among the aged. Even so it is a much reduced level, and this was anticipated.

By contrast, of a sudden we look up to find there are more poor Americans today than a quarter century ago, and that the poorest group in our population are children.

Moreover, in actual numbers and as a proportion of the age group—one in five—poverty is greater among children today than it was a quarter century ago.

As we approach the end of the 20th century, a child in America is almost twice as likely to be poor as an adult.

This is a condition that has never before existed in our history. Most probably, it has never before existed in the history of the human species.

Percentage below poverty level

Age group:	*1986*
Under 18 years	19.8
18–64	11.1
65 and over	12.4

Source: U.S. Census Bureau.

How has this come about? At one level the answer is simple. It is, as Samuel H. Preston put it in the 1984 Presidential Address to the Population Association of America: "the earthquake that shuddered through the American family in the past 20 years." The 20 years, that is, from the beginning of the poverty program.

Which is to say a new poverty problem has emerged.

As the Census has just reported, in 1986, nearly 1 in every 4—23.5 percent—children lived with only one parent, 2½ times the proportion in 1960. The vast majority—89 percent—of these 14.8 million children lived with their mothers. These include 18.3 percent of all white children, 53.1 percent of all black children, and 30.4 percent of all Hispanic children.

CHILDREN UNDER 18 LIVING WITH ONE PARENT

[Percent]

	1986	1960
Total	23.5	9.1
White	18.3	7.1
Black	53.1	21.9
Hispanic	30.4	(NA)

Source: U.S. Census Bureau.

Estimates of the number of children who will live with a single parent at some point during childhood are yet more striking. Arthur Norton of the U.S. Bureau of the Census predicts that 61 percent of children born in

1987 will live for some time with only one biological parent before reaching 18. Inevitably, large numbers of these children require some form of public assistance.

Further, Mr. President, in providing such assistance, we have created an extraordinary institutional bias against minority children.

The Social Security Act has two provisions for the care of children in single parent families. The first is Aid to Families with Dependent Children, enacted into law as part of the original 1935 Social Security Act. The second is Survivors Insurance, added to the act in 1939. The characteristics of these two populations are quite different. The majority of the children receiving SI benefits are white. The majority of the children receiving AFDC are black or Hispanic.

RACIAL COMPOSITION OF AFDC AND SURVIVORS INSURANCE CASELOADS

[Percent]

	SI	AFDC
White	66	40
Black	22	41
Hispanic	8	14
Other	4	5

Source: Social Security Administration and Family Support Administration; AFDC data are for 1986; SI data are estimated for 1985.

May I now ask the Senate to listen closely?

Since 1970 we have increased the real benefits received by children under SI by 53 percent.

We have cut the benefits of AFDC children by 13 percent

The U.S. Government, the American people, now provide a child receiving SI benefits almost three times what we provide a child on AFDC.

To those who say we don't care about children in our country, may I note that the average provision for children under SI has been rising five times as fast as average family income since 1970.

We do care about some children. Majority children.

It is minority children—not only but mostly—who are left behind.

AVERAGE MONTHLY AFDC AND SURVIVORS INSURANCE BENEFITS PAYMENTS

[Per recipient payment, in constant 1986 dollars]

	SI	AFDC
1970	$222	$140
1986	339	122
Percent of change	+53	−13

Source: Social Security Administration and Family Support Administration.

In terms of the present emphasis on education in the President's State of the Union, consider this table of the proportion of children in major urban school districts who are now on welfare. (Consider how much greater that proportion would be if measured over time.)

Percentage of children enrolled in public schools on AFDC—by selected cities [1]

Hartford	58
Newark	58
New York	45
Detroit	45
Chicago	44
Oakland	43
Gary, IN	42
Philadelphia	42
Jackson, MS	40
Minneapolis	33
New Orleans	31
Seattle	31

[1] The data in these tables were provided by city officials.

Percentage of children enrolled in public schools on AFDC—by selected cities in New York State [1]

Utica	50
Buffalo	47
New York	45
Rochester	38
Niagara Falls	33
Yonkers	32

[1] The data in these tables were provided by city officials.

Remember these children on average receive less support today than they did 20 years ago. Is it any great wonder, on the edge of privation or worse, that they do not become model scholars?

Surely, if someone in that Rose Garden a quarter century ago had predicted we would treat our children so, the rest of us would have predicted the troubles the children now have.

Why has this come about? Why this institutional bias?

I believe we know why. Welfare has become a stigmatized program. Children dependent on it—as many as one child in three before reaching 18—are stigmatized as well. That surely is what institutional bias means.

Our legislation, with 56 cosponsors, is designed to get rid of that stigma by emphasizing child support and the education and training adults need to get off welfare. There has been a great deal of talk about both, but the Federal Government has really never backed either. Once that stigma is gone, or diminished, States will once again feel the moral obligation to maintain and even increase AFDC payments to dependent children. They are free to do so now. They do not. We want to change this.

Let me declare my own conviction in this matter. AFDC should be a national program, with national benefits that keep pace with inflation, in exactly the same way that Survivors Insurance is a national program with national benefits.

Had the Family Assistance Plan been enacted, we would now have a national program. Had President Carter's Program for Better Jobs and Income been enacted, we would have a national program. As a White House aide, I helped fashion the first for President Nixon. I supported the second here in the Senate. Neither proposal became law. Both fell before a coalition of those who thought the benefits were too great and those who thought them too little.

But that is history. Our Federal budget deficit is such that there is no possibility whatever of establishing national AFDC benefit standards at this time.

Welfare reform must become the art of the possible or it will become a diversion of the essentially unserious.

Mr. President, we can have welfare reform this year. The House has sent us a bill. A majority of Senators have cosponsored a Senate bill. Senator BENTSEN, the distinguished chairman of our Committee on Finance, has scheduled a final hearing next week, on February 4.

I find the words a bit unfamiliar, but why not? "Let's win one for the Gipper."●

THE DONALD ROCHON MATTER

● Mr. SIMON. Mr. President, in the past few days the Nation has been shocked by the reports of the conduct of FBI agents against one of their colleagues, Donald Rochon.

FBI special agent Rochon has sued the FBI for racial harassment and pranks committed against him since 1983. The acts complained of are almost unspeakable—taping the faces of apes over his children's pictures on his office desk, leaving notes on his desk threatening sexual and physical attacks against him and his wife, and forging his signature to a death and dismemberment insurance policy. All of these acts were attributed to his fellow FBI agents. According to EEOC and Justice Department findings, agent Rochon's supervisors failed to respond when he complained of these actions against him. In fact, when Mr. Rochon complained of discrimination, the FBI tried to make him the culprit.

I first learned of the abuses against Mr. Rochon in May 1986 when he was stationed in the Chicago FBI office. I convened a meeting between then-FBI Director Webster and the head of the Chicago NAACP to discuss the allegations. I was not satisfied that the FBI has adequately addressed Mr. Rochon's situation so I raised my concerns about it at the confirmation hearings of Judge William Sessions last September. Judge Sessions responded that "the kind of behavior described is in total contradiction to FBI policy and practice." To a followup question, he indicated that he would be alert to this important issue and implement appropriate changes.

I am pleased that Senator JOSEPH BIDEN, chairman of the Judiciary Committee, has acted upon my request for an investigation of the Rochon matter. I have been assured

that the committee will hold hearings on this and perhaps other instances of harassment within the agency by fellow agents. I was also pleased to learn that, yesterday, the President was reported to have taken personal interest in this case.

There is no room for the type of conduct suffered by Mr. Rochon. It is intolerable. The days are long gone when the FBI can be seen by the American people to be insensitive or above the law. The Rochon matter is an embarrassment to responsible law enforcement officials everywhere as it shakes the Nation's confidence in the Bureau and makes it that much harder for the Bureau to attain the cooperation critical to perform its work.

Mr. President, I ask that the New York Times editorial on the Rochon matter and Judge Sessions' testimony be printed in the RECORD following my remarks.

The material follows:

QUESTION FROM SENATOR SIMON

Question on *Rochon v. FBI.*

Question: Judge Sessions, I am concerned both about the hiring practices of the Bureau in view of the low number of minority and women special agents, and about the treatment and working conditions of the special agents once they join the Bureau.

I want to relate to you an incident which my Chicago staff has been following for some time relating to the Omaha FBI office. A Black special agent was subjected to continued racial harassment by one or more of his colleagues in that office. In what the EEO Hearing Officer and Justice Department called "overall, racially deplorable treatment", the local Omaha FBI office failed to stop the harassment after being informed of its existence, transferred the complaining black agent to an offce he did not request by applying rules to his transfer it did not apply to white agents, and eventually censured the complaining black agent for not coming forward earlier about housing discrimination he and he alone may have faced in Omaha.

I might add that the Omaha office had been the subject of a prior complaint of racial harassment of one agent by others which was upheld by the Justice Department. My question is this:

Can the Bureau function effectively and gain the necessary cooperation in the communities it serves if this type of racial atmosphere in violation of the law exists?

Answer: Of course, the FBI must not tolerate racial discrimination in its ranks in any form. I have no personal knowledge of the incidents related in your question and I have been advised by the FBI that the kind of behavior described is in total contradiction to FBI policy and practice. To be sure, I would not tolerate discrimination by FBI employees in any form.

In my view, the FBI significantly benefits from the inclusion of both minorities and women in the Special Agent ranks. The personnel complement of the FBI should reflect the makeup of the country. I have been advised that the FBI's current policies and initiatives in the area of minority recruitment and retention are in line with my own views. Be assured I will make it clear to all FBI personnel that this area is one of significant importance.

Question: What steps will you take as Director to ascertain whether this type of situation exists in other offices, and, where it does exist, to order remedial action to personnel involved and preventive action to improve race relations within the Bureau?

Answer: As previously stated, I have no personal knowledge of the incidents described in your question and the FBI has advised me that any such conduct is not consistent with FBI policy or practice. I have been advised that the FBI already provides EEO training to all its new Special Agents as well as to FBI management personnel during mandatory and elective courses of instruction. Moreover, EEO counselors are assigned to every FBI division to resolve problems and alert FBIHQ to pertinent EEO matters. I have been advised further that the FBI strictly adheres to established EEO complaint procedures (i.e., Title 29, Code of Federal Regulation, Section 1613.201 *et seq.*) and that each FBI division's EEO program is reviewed during routine inspections conducted by FBIHQ.

I will certainly be alert to this important issue, and to the extent that agency policy or practice in the area of EEO relations need to be enhanced or augmented appropriate changes would be implemented.

[From the New York Times, Jan. 28, 1988]

BIGOTRY AND THE FBI'S ANSWERS

If Donald Rochon's experience typifies that of blacks in the F.B.I., then the new Director, William Sessions, has a catastrophe on his hands. Even if it's atypical Mr. Sessions has a problem, because the handling of the Rochon case has sent all the wrong signals to his agents and to the public about the F.B.I.'s attitudes on race.

Mr. Sessions needs to send a different signal, forcefully. And Congress needs to investigate, to insure that this case does not reflect deeper racial problems in an agency that the public ought to be able to respect.

Mr. Rochon is a 37-year-old F.B.I. agent who endured a vicious campaign of racial harassment by fellow agents. It started in Omaha in January 1983. A photograph of his family was defaced by someone who taped a picture of an ape's head over his son's face. A photograph of a black man's bruised, beaten face was placed in his mail slot.

According to the Equal Employment Opportunity Commission, the Special Agent-in-Charge of the Omaha office described these and other incidents as "pranks" that were "healthy" and a sign of "esprit de corps."

Things got worse after Mr. Rochon was transferred to Chicago in 1984. His family received obscene late-night calls and he got anonymous letters threatening him with death and his wife with sexual assault. He also received a bill for a death and dismemberment insurance policy he hadn't requested.

An internal F.B.I. investigation found that another agent had forged Mr. Rochon's name to the insurance application. The agent was given a two-week suspension without pay, but other white agents chipped in to replace his salary.

There are indications that Mr. Rochon was treated especially badly because his wife is white. But other blacks say that discrimination is part of the F.B.I. culture, infecting every aspect of their employment. Like Mr. Rochon, several others have filed complaints and a majority of the agency's 400 Hispanci agents have joined in a class-action suit charging discrimination. All this has attracted attention in Congress, and a House subcommittee plans hearings shortly. They'll come none too soon.

But in the first instance, it's up to Mr. Sessions to restore confidence in the F.B.I's approach to race, particularly in view of the historic cloud over its role in enforcing the civil rights laws. The public is entitled to answers to some reverberating questions:

What does the bureau consider to be merely a prank? Does it believe that a painless two-week suspension is appropriate punishment for an agent who commits forgery and implicitly makes a death threat against another agent? And how does it explain allowing a criminal investigation into these matters to languish for months, even years?

A spokesman says the Rochon case was one of the first times on Mr. Sessions' agenda when he took over the F.B.I. in November. That's encouraging. It's also encouraging that President Reagan yesterday announced his personal interest in the case. It would be more encouraging still if Mr. Sessions made his findings public and, where appropriate, made heads roll.●

"48 HOURS" WORTHLESS

● Mr. HECHT. Mr. President, it seems somewhat ironic that only 24 hours after Dan Rather was "only doing his job" on the Vice President, he did another job on a program ironically called "48 Hours." His latest target was Las Vegas, my hometown, and Mr. Rather neglected to tell the whole story.

Those who watched the CBS profile of Las Vegas might have thought they were watching the travel channel. There were neon lights, blackjack players, show girls, 24-hour wedding chapels, and therapy sessions with compulsive gamblers.

I can understand why a news organization would focus on the Las Vegas strip and downtown casinos, but there's so much the program missed.

In all fairness, CBS is not the first news organization to stress only one aspect of Las Vegas, which is very much like other cities of comparable size. Of course, there are bright lights and show girls. But there are churches, all types of recreational opportunities at nearby Hoover Dam and Mount Charleston, and a growing high-technology industry.

We have the free world's largest laboratory in the Nevada test site, and Nellis Air Force Base provides the finest training available for our pilots and those of our allies.

Mr. President, as a long-time resident of Las Vegas, I understand why my constituents feel the national news media seems to always take a superficial look at our fine community. I wonder if Dan Rather were to profile New York City, whether he would only focus his cameras on Times Square for an hour? Surely New Yorkers would wonder why CBS would not also include a look at Wall Street, Rockefeller Center, the Statue of Liberty, or Central Park.

"48 Hours" should spend a little more time to provide the entire picture. For Dan Rather it seems to be either hit or myth.

Mr. President, I ask that an article entitled "'48 Hours' Worthless" which appeared in today's Las Vegas Review Journal by John L. Smith be printed in the RECORD.

The article follows:

[From the Las Vegas Review, Jan. 28, 1988]

"48 HOURS" WORTHLESS

(By John L. Smith)

Television journalism smeared another pie in its face Tuesday night when CBS news aired "48 Hours in Las Vegas." Imagine collecting all those cliches in two days or less. It must have been difficult.

Why, rumor has it that next week "48 Hours" and Dan "Seven Minutes" Rather will go undercover at Disneyland to find out whether Mickey and Minnie Mouse are married or living in sin.

This so-called news program was filled with the stuff usually reserved for television detective shows. In "Vega$," for instance, Dan Tanna drove his convertible up Fremont Street, then turned left and suddenly was halfway up the Strip. The city was far more than the neon and craps tables portrayed in "Vega$," but it was fiction and such editing was understandable.

To interview a few teen-age ragamuffins in their rebel-without-a-cause mode was inaccurate and damaging to a city overrun by critics. Las Vegas isn't Mayberry, but every American city has its share of troubled youth.

The program missed a great opportunity to do something fresh. This city's many problems, peculiarities and positive qualities could have been illuminated. Instead, it was neon stereotypes and degenerate gamblers.

The biggest theme of all—old Las Vegas emerging into corporate Las Vegas—was glossed over with a sad superficiality. Even brief mention of a few news items would have made the picture clearer:

The recent trial of three Binion's Horseshoe security guards involved in the beating of two blackjack card counters. The Binion family is a Las Vegas institution, and only a few years ago such back-room brutality never would have come to trial.

The face of the gaming industry is changing rapidly, and Japanese investors are a big part of the story.

Las Vegas is an atomic boomtown that has grown far faster than even city planners of vision could have anticipated.

"48 Hours" could not use fictional license as an excuse. Its lack of perspective and reporting was shocking. Its credibility is questionable.

The hour-long puzzle included snippets on sports betting, professional gambling, compulsive gambling, troubled teens, wedding chapels and Leroy's book joint downtown. They even did the showgirl-is-really-a-good-mother-at-heart story.

Like many tourists, and the producers of "Vega$," the "48 Hours" crew didn't leave the bright lights. That's no sin.

But the program's flawed theme—have camera, will travel for two days—is no excuse for representing the youth of this city as a bunch of misguided party animals. Yes, some gamble, drink and—worst of all—violate curfew.

With the exception of the Gamblers Anonymous and sports betting segments, the program added little more than cliches.

The show not only failed to answer basic questions, it failed to ask them. It could have been produced by any tourist. It had all the journalistic rewards of Al Capone's safe.

Perhaps it should have been titled, "Two Nights on the Las Vegas Strip," or maybe "A 49-cent Breakfast in Las Vegas."

After watching "48 Hours in Las Vegas," one question remains:

What did you guys do with all that extra time?●

EXCISE TAXES FOR DIESEL FUEL THAT IS USED FOR FARMING PURPOSES

● Mr. DOMENICI. Mr. President, I rise today to add my name as a cosponsor of S. 2003, a bill introduced by my colleague, the Senator from Texas, Mr. GRAMM. This bill reinstates tax-free treatment for diesel fuel that is used for farming purposes.

S. 2003 is a good bill. It is a needed bill. That is why I am cosponsoring the bill. In fact, if the distinguished Senator from Texas had not acted on this matter so quickly, I would have introduced the bill myself.

Mr. President, S. 2003 corrects a problem created by a provision in the budget reconciliation law, which was just enacted last month.

Under the old system, farmers were exempt from paying the 15-cent-per-gallon excise tax on diesel that was used for farming purposes. They were simply exempt from this tax. They did not owe the tax. And they did not have to pay excise taxes on any diesel fuel that was used for farming.

Under the new system, farmers are still entitled to keep tax-free treatment for off-highway use. But under the recent change, farmers will be forced to pay the tax at the time of purchase. Farmers and ranchers can then apply for a refund at yearend when they file their taxes.

The Federal Government will, in essence, have free use of farmers' hard-earned money for as much as a year, even though these farm families don't owe the tax in the first place. S. 2003 corrects this situation by removing the requirement that farmers pay the tax at the time of purchase.

In general, the new law repealed all provisions permitting exempt sales beyond the wholesale level, but provided four categories of up-front exempt sales, including fuel used for: First, diesel-powered trains; second, aircraft in commercial aviation; third, industrial use other than as a motor fuel; and fourth, State and local governments.

For some reason, farm use was not provided an up-front exemption. Admittedly, the four that were provided an up-front exemption are nontaxable uses. But so is diesel that is used to plow a field or run an irrigation pump. Farm use should also be exempt and that is why I support S. 2003.

The recently enacted tax change for diesel fuel was undoubtedly aimed at reducing fraud and abuse. But I don't think the change did anything to strengthen enforcement of the tax law.

As Senator GRAMM told the Senate when he introduced the bill, this issue is very similar to the recordkeeping requirements imposed by the Internal Revenue Service [IRS] a few years ago where owners of private vehicles used for business were forced to keep logbooks. Those who abused the system before can continue to do so. All the change does is make life tougher for farmers by piling on more bureaucratic recordkeeping rules.

As far as most farmers and ranchers are concerned, this is just another Government-created hassle, just another instance where they are forced to keep records so the Government won't be inconvenienced while using their money.

Mr. President, I for one cannot accept the recent tax change for diesel fuel. Therefore, I hope the Senate will act promptly on this legislation since the new tax requirement becomes effective on April 1, 1988.

Farmers and ranchers in New Mexico and elsewhere should never have to feel the effects of this ill-conceived change in the tax laws. I urge all my colleagues to join me in supporting this bill.●

CATHOLIC WAR VETERANS OF NEW JERSEY

● Mr. LAUTENBURG. Mr. President, I rise to pay tribute to the Catholic War Veterans of New Jersey.

Forty-five years ago, on February 3, "The Four Chaplains" survived the near fatal journey on the SS *Dorchester* off the coast of Greenland.

Father John Washington, Rabbi Alexander Goode, Minister Clark Poling, and Minister George Fox, "The Four Chaplains," relinquished their life jackets to soldiers on the deck of the troopship which was struck by a torpedo. As heroic survivors of this bitter winter nights experience, they were honored with the Distinguished Service Cross.

On February 7, there will be a Catholic War Veterans Memorial Mass in Kearny, NJ, where we will again recognize these men in rememberance of their heroic and selfless acts.

Mr. President, I am pleased to be able to honor our war veterans who have given so much of themselves. The Nation should never forget the four chaplains, and the hundreds of thousands of other men and women who have dedicated themselves to protect our country and our way of life.●

MOZAMBIQUE

● Mr. SIMON. Mr. President, during consideration of the continuing resolu-

tion, the Senate adopted two amendments by voice vote relating to Mozambique. One, offered by Senator HELMS, extends existing conditions on military assistance to Mozambique. The other, offered by Senator KASTEN, imposes conditions on the provision of both bilateral aid and funds through the Southern African Development Coordination Conference [SADCC].

I am opposed to both amendments. Of particular concern for current policy is the Kasten amendment, which jeopardizes United States assistance to Mozambique.

Mozambique has consistently been moving in the right direction and our current policy rightly recognizes that important fact. In an effort to gain regional peace and stability, Mozambique signed the Nkomati accord with the South African Government and, unlike the South Africans, has upheld its commitments. Mozambique has joined the International Monetary Fund and the World Bank. The Government has started to privatize landownership and state enterprises. In the face of growing pressure from RENAMO, Mozambique has resisted offers of increased Soviet military assistance and Cuban troop support.

Mozambique has clearly taken significant steps in the right direction. The United States should encourage that movement not punish it.●

ORDER FOR ADJOURNMENT UNTIL 11:30 A.M. ON MONDAY, FEBRUARY 1, 1988

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 11:30 a.m. on Monday.

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

ORDER FOR CERTAIN ACTION ON MONDAY

Mr. BYRD. Mr. President, I ask unanimous consent that on Monday, no motions or resolutions over under the rule come over and that the call of the calendar under rule VIII be waived.

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

ORDER FOR MORNING BUSINESS ON MONDAY

Mr. BYRD. Mr. President, I ask unanimous consent that on Monday there be a period for routine morning business following the recognition of the two leaders, for not to exceed 20 minutes, and that Senators may speak therein for not to exceed 5 minutes each.

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

PROGRAM

Mr. BYRD. Mr. President, I have spoken to Mr. MOYNIHAN. He will be ready to manage the two conventions at any point between 12 o'clock and 2 o'clock on Monday.

There will be rollcall votes on Monday.

Mr. President, I do not have anything else. I yield the floor.

APPOINTMENT

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, and upon the recommendation of the majority leader of the Senate, pursuant to Public Law 100-203, appoints the following individuals to the National Economic Council: Mr. Lee A. Iacocca, Mr. Lane Kirkland, and Senator DANIEL PATRICK MOYNIHAN.

ORDER OF PROCEDURE

Mr. EXON. Mr. President, the leader has asked me to finish up the business of the Senate. Seeing no other Senator seeking recognition, I ask on behalf of the majority leader one final request by Senator QUENTIN BURDICK of North Dakota.

CORRECTION IN THE ENGROSSMENT OF S. 1143

Mr. EXON. Mr. President, I ask unanimous consent that in the engrossment of S. 1143 the enrolling clerk be permitted to correct the date on page 3, lines 9 and 10 from December 31, 1987, to December 31, 1988.

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

ADJOURNMENT TO 11:30 A.M., MONDAY, FEBRUARY 1, 1988

Mr. EXON. Mr. President, I move that the Senate stand in adjournment until 11:30 a.m. on Monday in accordance with the previous order.

The motion was agreed to; and at 6:29 p.m., the Senate adjourned until Monday, February 1, 1988, at 11:30 a.m.

NOMINATIONS

Executive nomination received by the Senate January 28, 1988:

U.S. ARMS CONTROL AND DISARMAMENT AGENCY

WILLIAM F. BURNS, OF PENNSYLVANIA, TO BE DIRECTOR OF THE U.S. ARMS CONTROL AND DISARMAMENT AGENCY, VICE KENNETH L. ADELMAN, RESIGNED.