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PROCEEDINGS AND DEBATES OF THE 100th CONGRESS, SECOND SESSION

SENATE—*Tuesday, March 22, 1988*

(Legislative day of Monday, March 21, 1988)

The Senate met at 9:45 a.m., on the expiration of the recess, and was called to order by the Honorable WILLIAM PROXMIRE, a Senator from the State of Wisconsin.

PRAYER

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

Let us pray:

In the words of moderator Joe Cunning opening the New Castle Presbytery—"God grant us Your blessing * * * this day. Help us to learn the lessons You teach us. Save us from making the same mistakes over and over again. Save us from falling to the same temptations time and time again. Save us from persisting in courses of action which we ought to have learned long ago can lead to nothing but trouble. Save us from doing things that annoy other people. Help us to grow stronger, purer, kinder. Help us to shed old faults and gain new birth until by Your grace life becomes altogether new. Hear our morning prayer for Your love's sake. Amen."

(Joe Cunning, moderator, New Castle Presbytery, which is the first Presbytery in the United States, upon the 688th meeting with the above prayer.)

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, March 22, 1988.

To the Senate:

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

JOHN C. STENNIS,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the majority leader is recognized.

Mr. BYRD. I thank the Chair.

TIME OF TRIAL FOR POLICY TOWARD AFGHANISTAN

Mr. BYRD. Mr. President, yesterday was Afghanistan Day, and the beginning of a week when the shape of United States policy toward that country, occupied and savaged by Soviet forces for nearly a decade, must become sharper and more certain. Recent reports indicate that the policy of the administration, particularly as it regards the steadiness of our commitment as a nation toward the Mujahidin, should be reevaluated on an urgent basis.

There is no doubt about where the Senate stands on this matter. This body passed a resolution on February 29, 1988, which restated categorically longstanding Senate policy, namely, that United States assistance to the Afghan fighters should continue, uninterrupted, and undiminished, until Soviet forces and advisers are out of the country—not when they are half out, or, even worse, when they start to withdraw.

The distinguished Ambassador of Pakistan, Mr. Marker, visited with me in my office yesterday and briefed me thoroughly on the position of the Government of Pakistan on this matter. I congratulated him on the longstanding, courageous position that Pakistan has shown on this issue, in supporting the Mujahidin, on housing some 3 million Afghan refugees and in working closely with the United States.

There have been some very disturbing reports over the weekend. First, the New York Times reported on the day before yesterday, March 20, 1988, that:

> Despite President Reagan's vocal backing of the guerrillas, and unbeknown to Mr. Reagan, the United States made a commitment in 1985 to end military aid to the Afghan guerrillas at the beginning of the Soviet troop withdrawal.

I hope this is not a true account. It amounts to a cutting off of an American commitment at a very critical time. The Soviets now are putting out the line that the United States and Pakistan are posing stumbling blocks to the Soviet withdrawal from the nation. Can anyone be so naive to think that the Soviet decision to abandon their invasion and occupation was somehow dependent on the good behavior of the United States—that we should be so grateful to the Soviet regime for deciding to get out that we should rush to abandon our commitment to the Afghan fighters? The credibility and steadfastness of America should not become a casualty of the Soviet decision to withdraw.

Last week, Soviet officials declared that they plan to leave with or without a Geneva agreement—an agreement which includes some sort of American "guarantee" of noninterference by Pakistan and Afghanistan in each other's affairs. That, stripped of its diplomatic language, seems to mean that the United States ceases to aid the Mujahidin at some point very early in the Soviet withdrawal. I believe that such a "guarantee" is unwise and breaks a commitment which should not be broken. Indeed, one of the key Afghan guerrilla fighters was reported by the New York Times this past Saturday, March 19, 1988, to be accusing the United States of conspiring with the Soviet Union against Afghanistan. The leader, Mr. Hekmatyar, suspects a superpower deal at the guerrillas expense.

Mr. President, any agreements reached regarding the future of Afghanistan must be open convenants, "openly arrived at." They must be known to the world. The United States

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

must not, by our actions, fuel such rumors. We should avoid implications that the United States and Soviet Governments are secretly deciding the fate of Afghanistan. The world should know what is going on in Afghanistan. We should not fall into a trap of cozy intrigue which feeds rumors of fast-dealing with the Soviets under the table and behind the scenes.

The Soviets have declared that they will get out, no matter what. Fine. Let us see how fast they can do it. They do not need our help in getting out of Afghanistan any more than they had it in getting in.

Mr. President, I do not believe that President Reagan wishes a diminution of the good word of the United States to result from his policy toward Afghanistan during the next critical few months. This has been a bipartisan success story to date, extending over nearly a decade, spanning two administrations, from both parties. We should see it through to a successful conclusion, which is an Afghanistan that has had its political sovereignty restored, free of the cancerous lesions of Soviet occupation and domination.

Indeed, the President has written me a letter dated March 11, 1988, in which he has attempted to spell out his policy more carefully. I have read that letter carefully, and am today responding to it. Unfortunately, I cannot say that my concerns over United States policy in the event of Soviet withdrawal have been satisfied.

In my response, I point out that the current emphasis on "symmetry" raises more questions than it answers. I take it that symmetry means that United States aid to the guerrillas is to cease once Soviet aid to the Kabul regime ceases, and at a point in time when some, but possibly only a minor portion of Soviet forces have departed from that country. As I wrote the President on February 25, 1988:

The question of the "symmetry" of withdrawal or suspension of assistance is a murky one, with obvious dangers. What, in fact, constitutes "assistance?" Certainly a reasonable definition would include the in-country military forces, military and civilian advisers, as well as material and financial aid. I fail to understand why we would terminate our only form of aid, namely military assistance, in return for Soviet agreement to terminate only one form of their efforts to subjugate that nation. The shocking result of that formula is to telegraph the end of our commitment to the Mujahidin while the Soviets maintain the major portion of leverage in Afghanistan.

In addition, the President in his letter cites as his key to any change in United States aid policy the necessity for the Soviet withdrawal to be "complete" and "irreversible." As I have written to him today:

How is it possible to determine that the Soviet withdrawal is "irreversible" on the first day of withdrawal? How can the United States give up the only leverage we have—military assistance to the resistance—and rely on the Soviets' good intentions to complete their withdrawal?

Mr. President, the Soviet Foreign Minister, Mr. Shevardnadze is in Washington this week, and the question of aid to Afghanistan is reported to be a major subject of discussion. I hope it is crystal clear to the administration as to where the Senate stands on this issue. I hope there is no misunderstanding about the depth of feeling on this matter. The argument that United States aid impedes a Soviet withdrawal should be debunked for what it really is, namely, a ploy by the Soviets to entice the United States to soften its commitment and make it easier for them to score a diplomatic and political victory and to lessen what is clearly a military quagmire and political disaster for them. The Soviets are just trying to make a very bad hand a lot better. But the United States holds the high moral cards of credibility and honor and must not weaken the cause of the resistance or make secret deals with the Soviets that would reward them for failing to devour Afghanistan.

I urge the President to personally make a thorough review of policies which may well have been made without his full understanding or knowledge.

Mr. President, I ask unanimous consent to have printed in the RECORD an article from the New York Times of March 20, 1988, a copy of the President's letter addressed to me, a copy of my letter addressed to the President, and an additional article relating to this matter.

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

THE WHITE HOUSE,
Washington, DC, March 11, 1988.

Hon. ROBERT C. BYRD,
Majority Leader of the Senate,
U.S. Senate, Washington, DC,

DEAR SENATOR BYRD: It was good to talk recently with you about my determination to help the Afghan Mujahidin achieve rapid, complete and irreversible withdrawal of Soviet troops and freedom for the Afghan people. This was the same position I expressed forcefully to General Secretary Gorbachev during the Summit here in December and with Secretary Shultz spelled out in greater detail during talks late last month with the General Secretary and Foreign Minister Shevardnadze.

In view of your statement of Afghanistan before the Senate last week, I would like to bring some points to your attention which deal with the concerns you have expressed.

Since 1985, we have indicated our conditional willingness to serve as a guarantor if a satisfactory settlement was reached. Our objectives have been: prompt and complete withdrawal of Soviet forces; restoration of Afghanistan to an independent and nonaligned status; self-determination for the Afghans; and return of refugees in safety and honor. These are the same basic points contained in the resolutions adopted overwhelmingly by eight successive sessions of the United Nations General Asssembly. I have emphasized these points and our support for the brave Afghan Mujahidin in my meetings with Yunis Khalis in November and General Secretary Gorbachev last December.

We have told the Soviets that to be credible for the United States, the Government of Pakistan, the Resistance and the entire free world, their withdrawal must be front-loaded (i.e. fifty-percent (50%) out within first three months), must actually begin to take troops out on the first day an agreement enters into force, and must be irreversible. If this occurs, we are confident of being able to detect and verify by our own national means whether the Soviets are acting in good faith. If not, any commitment by the United States would be off.

We have also told General Secretary Gorbachev and Foreign Minister Shevardnadze in recent months that any commitment to guarantee the Geneva instruments must be symmetrical, i.e., cessation of military or other aid to the Resistance must be matched by a cessation of similar aid to the regime in Kabul. We are confident that the above conditions, combined with the steadily increasing quantity, quality and sophistication of military equipment for the Resistance will enable them to deal effectively with military problems they might face. The Senate Select Intelligence Committee was briefed in detail on March 3 about current and programmed support from various sources for the Resistance. Contrary to erroneous reports, there have been no decisions to reduce or suspend military support and the overall rate of delivery continues to increase, although there has never been a steady, even rate of delivery from week to week and month to month. The enhanced support which the Resistance will receive over these several months, plus that already on hand, will actually strengthen rather than weaken their position vis-a-vis the remaining Soviet forces and the weak armed forces of the Najibullah regime. We, of course, wish to see that regime relinquish political power as soon as possible and be replaced by a regime which represents the vast majority rather than a small minority of the Afghan people.

Looking ahead, the Administration and Congress must be prepared to assist Pakistan, the Afghan refugees and whatever new, non-Communist government emerges in Kabul. The problems of refugee return and relief, plus reconstruction of wartime damage, will be demanding ones and will require broad international assistance. However, we must continue our own outstanding leadership role and set an example for others to follow.

Sincerely,

RON.

U.S. SENATE,
OFFICE OF THE MAJORITY LEADER,
Washington, DC, March 22, 1988.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: Thank you for your letter of March 11 outlining the Administration's policy on several aspects related to an Afghanistan settlement, particularly on the issue of termination of assistance to the Afghanistan resistance. I have serious reservations about the policy you have outlined.

You indicate that in recent months the Administration has told the Soviets that "any commitment to guarantee the Geneva accords must be symmetrical, i.e., cessation of military or other aid to the Resistance must be matched by a cessation of similar

aid to the regime in Kabul." However, the question of the "symmetry" of withdrawal or suspension of assistance is a murky one with obvious dangers. What, in fact, constitutes "aid?" Certainly a reasonable definition would include the in-country military forces, military and civilian advisors, as well as material and financial aid. I fail to understand why we would terminate our only form of aid, namely military assistance, in return for Soviet agreement to terminate only one form of their efforts to subjugate that nation. The shocking result of that formula is to telegraph the end of our commitment to the mujaheddin while the Soviets maintain the major portion of leverage in Afghanistan.

In terms of the Geneva negotiations, it is unclear what exactly the United States is being asked to guarantee. I understand that no one in the Senate has been shown copies of these proposed accords. I certainly have no idea what is in these agreements, particularly the instrument which the United States is considering signing, the accord on guarantees.

It is also my understanding that the Administration has opened bilateral discussions with the Soviets on a mutual termination of assistance. While this new Administration position may appear to some to be equitable and balanced, I believe it involves a withdrawal of a long-standing American commitment to the Afghanistan resistance to support them until the Soviets have withdrawn totally from Afghanistan.

I call attention to the position taken by the Senate in a unanimous vote on February 29, 1988, that "the government of the United States should not cease, suspend, diminish, or otherwise restrict assistance to the Afghan resistance or take actions which might limit the ability of the resistance to receive assistance until it is absolutely clear that the Soviets have terminated their military occupation, that they are not redeploying their forces to be inserted again, and that the mujaheddin is well enough equipped to maintain its integrity during the delicate period of a transition government leading up to new elections." I enclose a copy of this resolution.

Mr. President, you state in your letter that to be credible, the Soviet withdrawal must be front-loaded, must actually begin on the first day an agreement enters into force, and "must be irreversible." How is it possible to determine that the Soviet withdrawal is "irreversible" on the first day of withdrawal? How can the United States give up the only leverage we have—military assistance to the resistance—and rely on the Soviets' good intentions to complete their withdrawal?

Reliance on, in your words, "our own national means . . . to detect and verify . . . if the Soviets are acting in good faith" obviously is essential. But if we determine that they are not acting in good faith, what recourse do we have if we have terminated our assistance program? It would place the Government of Pakistan in an extremely difficult position for the United States to ask for assistance to restart the aid program. I simply do not believe that course of action is feasible.

Yesterday, I met with the Ambassador from Pakistan, to commend his government for its longstanding efforts and courage in supporting the mujaheddin. I believe it is more important than ever to closely coordinate our program and policy with that nation as well as with the mujaheddin leaders.

Mr. President, as I have said repeatedly on the floor of the Senate, I do not believe the Soviets need enticements from the United States to leave Afghanistan. We should not reward the Soviets for having failed to devour Afghanistan.

I respectfully urge you to make a thorough review of any commitments which may have been made without your full support or knowledge.

Sincerely,

ROBERT C. BYRD.

[From the New York Times, Mar. 19, 1988]

AFGHAN REBEL FACTION LEADER VOWS WAR BEYOND ANY PACT

ISLAMABAD, PAKISTAN, March 18.—The leader of a powerful Afghan guerrilla party and major recipient of covert American military assistance, whose aim is a "pure" Islamic state, consistently accuses the United States of conspiring with the Soviet Union against Afghanistan.

Yet the leader, Gulbuddin Hekmatyar, denies that he is anti-American, as is frequently charged.

"But there are people in America who are against our jihad," Mr. Hekmatyar said in an interview in Peshawar, the Pakistan city never the Afghan border that is the center for the seven parties fighting the Moscow-backed Government of President Najibullah in Kabul.

He used the term for an Islamic holy war that is also the common word for the fight against Afghan Government forces and their Soviet allies.

"They are in the Government, in the parties, in the public," Mr. Hekmatyar continued, speaking in English. "There is a class of people who support our struggle because they are against the Russians, not as an Islamic struggle."

Mr. Hekmatyar strongly opposes the Geneva talks on Afghanistan, with the United Nations acting as mediator between the Afghan Government and Pakistan. The talks, which resumed after an offer in February by Mikhail S. Gorbachev to begin withdrawing Soviet troops within two months after an accord is reached, have been blocked by differences on military aid and the shape of a postwar government.

"Gorbachev would not have made this announcement without an understanding with the United States," Mr. Hekmatyar said. "The Washington reaction proved that there is a secret conspiracy. If the Geneva accords are signed, you will find us on the battlefield. I personally will be inside Afghanistan."

The rebel leader, a 39-year-old former engineering student, who speaks in a soft but insistent voice with the certainty of a man expounding dogma, leads a wing of Hizbi Islami, or Islamic Party. In the frequent discord of the loose guerrilla coalition, Mr. Hekmatyar's wing of the split party stands out for being coherent and consistent.

CURRENTLY LEADING REBELS

On Tuesday, Mr. Hekmatyar was named chairman of the coalition. The post rotates every three months among the seven leaders.

Mr. Hekmatyar, who always wears traditional Afghan dress, preaches an Islamic revolution. Unlike his fellow alliance leaders, who strike above all an orthodox, anti-Soviet and anti-Communist tone, he advocates a radical program that rejects a return to the traditional ways of Islam that dominated Afghanistan during the monarchy that was overthrown in 1973 and survived through the political struggles that preceded the move of Soviet troops into Afghanistan in December 1979.

"We want a pure Islamic state in Afghanistan," said "Brother" Hehmatyar, as his associates refer to him. "Before 1973? That was never an Islamic system. It was completely against Islam."

The leader was less forthcoming when asked to define the differences between the "pure" Islam he advocates and the traditional system of the past. The rule of King Mohammad Zahir Shah, who led the deeply Moslem country for 40 years, was not Islamic, Mr. Hekmatyar said.

"Islam says the ruler should be elected by the people," he said. "Not Zahir Shah."

[From the New York Times, Mar. 19, 1988]

IF A GENEVA TRUCE IS SIGNED, YOU WILL FIND US ON THE BATTLEFIELD

PURITY BUT NO DETAILS

Unlike the other rebel leaders, Mr. Hekmatyar, who is aware of the impression his words make in the Western press, was reluctant to spell out his philosophy of "pure" Islam as a political and social system.

When asked about the application of Islamic law, with stern corporal punishment including amputation of limbs or stoning to death of offending women, he replied, "Islam will be implemented in all aspects."

Asked about education for women, Mr. Hekmatyar said the Koran requires education for all. As for whether women should be educated like men—as doctors, engineers or lawyers, he said: "There are some differences. Each class should be educated according to its nature. It will be decided in the future."

Islamic fundamentalists believe that women should be educated for nothing but strict observance of the faith, with a stress on domestic life.

In 1986, when the seven leaders were invited to meet President Reagan, Mr. Hekmatyar was one of three who boycotted the reception. "I was not in favor of it," he said. "We didn't want the world to think the war in Afghanistan is a struggle between the two superpowers, and I was afraid America would compromise with Gorbachev over Afghanistan."

Nonetheless, Western officials said Mr. Hekmatyar continued to receive a significant share of the American arms aid, which is largely distributed by Pakistani intelligence agencies.

His favored treatment by Pakistani intelligence is believed to stem from the fact that he found refuge there at least three years before Soviet troops moved into Afghanistan, and has since maintained close relations with the military and intelligence agencies.

A well-known Islamic student leader at Kabul University, he fled here after an unsuccessful uprising against the leftward trend of the Government of President Mohammad Duad. Pakistan favored him because of his opposition to the creation of a separatist state of Pushtun tribesmen, who live on both sides of the border. The separatist threat has been a major concern of Pakistani governments since the founding of their state in the late 1940's.

Mr. Hekmatyar is himself a Pushtun but opposes separatism because of his advocacy of a larger Islamic brotherhood transcending national frontiers. Part of his revolutionary doctrine, according to Westerners who know him, is the abolition of all traditional structures, such as Pushtun tribalism,

in favor of his notion of an egalitarian Islamic state.

FEARED BY OTHER REBELS

Most diplomats regard Mr. Hekmatyar as the most competent and the most feared of the guerrilla leaders. But they said that he was not feared so much by the Communists as by his allies and not regarded as the most aggressive rebel chief. They believe that his commanders, although heavily armed, preferred to save their men and weapons to establish Nizbi Islami's dominance over all other groups, once the Soviet forces have left the field to the Afghan factions.

Although no one here ventures estimates of his troop strength or the share of the military supplies furnished by the United States that Mr. Hekmatyar has received, it is assumed that his forces are among the most numerous and best supplied.

Although the Hekmatyar wing is not known to have distinguished itself in many actions against Soviet or pro-Soviet Afghan forces, their leader's Islamic zeal has motivated his troops to mount occasional raids into Soviet Central Asia. He is said to believe that the largely Moslem border republics of the Soviet Union are ripe for Islamic revolution.

The raids have consistently been followed by devastating reprisals, in which entire Afghan villages have been leveled, according to diplomats.

These envoys and Afghan moderates, who always speak anonymously and express fear for their lives if they are identified, accuse Mr. Hekmatyar's units also of raiding caravans taking arms and supplies to forces of other parties. This has included a horse caravan carrying medicine on behalf of the French relief organization Doctors Without Borders.

GUNPLAY AT A MEETING

Earlier this month, according to reliable Western diplomats, the animosity that moderate leaders harbor against Mr. Hekmatyar led to a confrontation at an alliance meeting between him and Sibghatullah al-Mojaddedi, head of the Afghan National Liberation Front during which both men drew their pistols. They were separated by their allies.

Unconfirmed reports also link Mr. Hekmatyar's party to assaults on Afghan moderates, particularly supporters of the return of the former King. Mr. Hekmatyar denied such charges in the interview but said he was ready to investigate any evidence presented against his men.

A diplomat reported that after the murder last month in Peshawar of Prof. Syad Bahouddin Majrooh, who had published a poll showing wide support for the former King, representatives of the Hekmatyar wing warned Afghan refugees that those who back King Zahir Shah would share Professor Majrooh's fate.

Late last year, two Americans who accompanied a Hekmatyar unit into Afghanistan were said by the party to have been killed in a Soviet attack, but a suspicion persists among diplomats and relief organization workers that they were murdered by the guerrillas.

Pakistan is holding five suspects, reported to be members of a Hekmatyar unit, on suspicion of killing a British cameraman last December. Diplomats said the Briton had accompanied a unit of another fundamentalist party and was believed to have filmed a clash between the two forces. He was killed, according to a survivor of the clash who has testified to Pakistani authorities, when he refused to turn over his camera and film to the Hekmatyar guerrillas.

[From the New York Times, Mar. 20, 1988]

REPORT SAYS U.S. DEMANDS ON AID MAY IMPEDE AFGHAN PACT

(By Martin Tolchin)

WASHINGTON, March 19.—A demand by the Reagan Administration that the Soviet Union end assistance to the Afghan Government at the same time that the United States cuts off aid to the country's guerrilla forces could prove a major obstacle to a Soviet withdrawal from Afghanistan, according to a staff report to the Senate Foreign Relations Committee.

A DEMORALIZED REGIME

The report faulted the Administration for its failure to raise the issue until recently. "As a result," the report said, "it appears to some foreign observers that the symmetry dispute is an attempt to sabotage the Geneva talks" on negotiating the withdrawal of Soviet forces from Afghanistan.

But the report noted that it was not necessary to resolve the issue in the context of the Geneva negotiations, adding that "some observers believe it will be finessed through a U.S.-Soviet understanding to which differing interpretations may attach."

The symmetry issue was of secondary importance, the report said, because "no amount of Soviet military aid without Soviet troops can save the demoralized and discredited Kabul regime from collapse."

Despite President Reagan's vocal backing of the guerrillas, and unbeknown to Mr. Reagan, the United States made a commitment in 1985 to end military aid to the Afghan guerrillas at the beginning of a Soviet troop withdrawal. When the Soviet withdrawal appeared within reach, the commitment led the Administration to compensate for the aid cutoff by making stringent demands on the Russians, including the "symmetry" demand. Kabul has categorically rejected such a cutoff in Soviet support.

The report said the nine-month Soviet withdrawal period would expose the Afghan rebels to some risk. It was possible that the Russians might use the withdrawal period for attacks on the guerrillas whose leaders say they have supplies for one or two months of fighting at current levels.

The United States could minimize such risks with two "insurance measures," according to the report. First, Washington could take steps to maintain a pipeline for delivering assistance to the rebels in the event that any accord broke down. Second, the United States program that provides food, medical supplies and financial aid to Afghans living in territory controlled by the rebels could be increased.

PAKISTANI CONCERNS

A second major obstacle to a withdrawal of Soviet troops, the report said, was a Pakistani demand that an interim Government be formed in Kabul prior to the signing of any agreement negotiated in Geneva.

"The Pakistani Government is concerned that an agreement which leaves the Najibullah regime in Kabul will insure continued civil strife in the country," the report said. "Under these circumstances, Pakistan fears the refugees will not go home."

There are nearly three million Afghan refugees in Pakistan.

The report said that although the Pakistani analysis appeared at least partially correct, "the Government is under intense external and internal pressure to drop this demand."

"The Reagan Administration does not believe the creation of an interim government should be a precondition for an agreement for a Soviet withdrawal," the report said.

The report noted that Iran, which shelters two million Afghan refugees, could have some leverage in the Geneva negotiations. Iran was able to disrupt the accord by increasing support for rebel groups. "Iran's ability to disrupt the accord is a factor the Soviet Union must consider," the report said.

RESERVATION OF REPUBLICAN LEADER'S TIME

Mr. BYRD. Mr. President, I ask that the time of the Republican leader be reserved.

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

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

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond 10:30 a.m. with Senators permitted to speak therein.

The Senator from Wisconsin.

IS THE WALL STREET JOURNAL BECOMING A KNEE-JERK LIBERAL?

Mr. PROXMIRE. Mr. President, you could have knocked this Senator over with a feather recently when he read in the Wall Street Journal, of all places, a spirited defense of progressive taxation. Now, do not get me wrong. The Wall Street Journal is a great paper. I doubt if there has ever been a time when any paper anywhere has covered in its news column the business and the economy of this immensely complex society of ours more objectively and expertly than the Wall Street Journal does today. But the Journal's editorial columns are an entirely different animal. When the Journal shifts gears from their superlative news columns to their editorial opinions, the saintly Dr. Jekyll becomes the manic Mr. Hyde and with a vengeance. That is why this Senator could hardly believe it when the article he had been waiting for for years denouncing the regressiveness of the Social Security payroll tax showed up, of all places, right in the middle of the Journal's March 17 editorial page. This estimable article was written by the Journal's chief economic correspondent in Washington, Alan Murray.

Murray's article starts off like straight-from-the-shoulder Wall Street Journal right wing reaction. The just-created National Economic Commission, says the article—

Will recommend reductions in Social Security benefits—that you can bet on, and for a very simple reason—that's where the big money is.

But then Murray rips off the cover and exposes a widely ignored truth. He writes:

If the commission cuts benefits, it should also take a close look at the payroll tax that funds Social Security. The tax has grown tremendously in recent years, and is in bad need of an overhaul.

Is Murray right? Yes and no. The Social Security tax is monumentally, shamefully regressive. Think of it. Here is a tax that makes not the slightest bow toward justice or fairness. It contains no exemption, none, for very-low-income workers. There is no deduction for essential expenditures for anyone regardless of how poor or needy they might be. Does the tax increase as ability to pay rises? No, indeed. In fact, here is a tax that is actually capped at $45,000 per year. What does that mean? That means for a Member of Congress who is paid $89,500 per year by the taxpayer, only the first $45,000 is taxed. The remaining $44,500 is exempt. For a big bucks investment banker or Fortune 500 CEO who makes $500,000 per year, a whopping 90 percent of this income is totally exempt. And for the really rich and famous who just clip coupons and harvest dividend checks and enjoy million-dollar annual unearned incomes, all of it—that's right, all of it—is exempt from the Social Security tax.

So here is where Alan Murray is absolutely right. The Social Security tax is regressive, very regressive. He is also right in saying it is a very big revenue producer for the Federal Government. As Murray points out, this tax as recently as 1950 raised only about 5 percent of Federal revenues. Today it raises 25 percent. For most of the American people, it is a bigger tax than the Federal income tax. This is true for families with single-earner income of $40,000 per year or families with two earned incomes of $40,000. It is an effective flat tax of 15 percent on all wage or salary income. So far Murray is right.

So where is he wrong? He is wrong in ignoring the fact that there is a reason, and an acceptable reason, for the regressiveness of this Social Security tax. And because Mr. Murray ignores this justification for the regressiveness of the payroll tax, he is wrong in his contention that the National Economic Commission will necessarily recommend a cut in Social Security benefits. In fact, if they take the time to understand this tax and the benefits it provides, they will not recommend such a reduction. Murray should recognize the basic fact that this payroll tax is dedicated to a single purpose. That purpose is to provide a retirement income for elderly Americans. Not one nickel of the huge proceeds of the Social Security payroll tax can be spent, or should be allowed to be spent, for national defense, environmental protection, housing, or any other purpose not expressly related to the retired beneficiaries who have earned benefits by working and paying the tax for at least 10 years and in most cases 30 or 40 years. Social Security is simply a return on a very rough actuarial basis of forced savings. It is social insurance, with the emphasis on insurance. Tens of millions of workers who paid the heavy premium for this insurance with their tax are entitled to receive the benefits.

Under these circumstances, would the National Economic Commission act rightly in recommending reductions in Social Security benefits? The answer to that question follows from the answers to two other questions. First, are the benefits provided by law excessive? At this moment, about 35 million Americans receive Social Security checks every month. The average check is about $500. Millions of those recipients are elderly, retired Americans who have paid into Social Security for many years. They rely on that monthly $500 or so as their sole, or virtually their sole source of funds. So how much is $500 per month? It is well below the poverty line. A reduction in Social Security benefits would shove these elderly further below the poverty line.

So how about a means test so the Economic Commission could recommend a cut in benefits for those millions who have income that supplements their Social Security benefits? Such a means test would convert Social Security from an insurance program, which it is, to a welfare program. It would cut off from some or all of the benefits many of those who have paid into Social Security and paid in heavily for many years.

Would it be possible to cut the Social Security tax without reducing Social Security benefits? After all, the system will run a surplus of $38 billion this fiscal year. Conservative projections forecast an astounding $10 trillion reserve for Social Security by 2020. So what is wrong with that? Plenty. A cut in the payroll tax without reducing benefits would have two adverse effects. First, it would diminish the enormously constructive role Social Security is playing and will continue to play for the next 30 years in reducing the deficit. Second, it would gut the actuarial soundness of the system which relies on running up a massive balance to take care of the post World War II baby crop that will be retiring after the year 2020.

Certainly Alan Murray may be right in predicting that the National Economic Commission will cut Social Security benefits. But it is very unlikely they would recommend a reduction of any kind in a Social Security tax that will play such a huge role in solving the deficit problem. After all, cutting the deficit is the prime reason the Commission was created. Finally, looking at how a progressive tax would affect the members of that Commission, it is unrealistic to assume they would call for replacing the regressive Social Security tax with a tax that would slash into their own after-tax income that is now virtually untouched by the payroll tax. Come to think of it, it is also unrealistic to expect the Congress to enact a new tax law that will hit Members of the Congress so hard when the current Social Security tax touches them so gently.

Mr. President, I ask unanimous consent that the article by Alan Murray in the March 17 Wall Street Journal be printed in the RECORD.

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

[From the Wall Street Journal, Mar. 17, 1988]

DEFICIT PANEL SHOULD EXAMINE PAYROLL TAX ROLE

(By Alan Murray)

You can bet your last Treasury bill that the National Economic Commission, created to devise a plan for cutting the budget deficit, will recommend reductions in Social Security benefits. After all, that's where the big money is.

But if the commission cuts benefits, it should also take a close look at the payroll tax that funds Social Security. The tax has grown tremendously in recent years, and is in bad need of an overhaul.

The payroll tax accounted for a bare 5% of the nation's total tax revenues in 1950; today, it has risen to 25%. When President Reagan says that taxes account for the same percentage of our economic output as they have throughout the postwar period, he's right—but only because surging payroll taxes have offset a decline in income and excise taxes.

The drawback is that the payroll tax, unlike the income tax, isn't based on ability to pay. The earned income tax credit reduces the payroll tax burden for those at the very bottom of the income scale, but the $45,000 cap on taxable earnings also reduces the burden for those at the top of the scale. The vast majority of Americans are stuck in the middle, paying what amounts to a flat 15% tax on earnings, regardless of their incomes. (Only half of that is actually paid by the employee, but most economists agree that the impact on an employee's take-home wages is the same as if he had paid the full amount.)

In the past few years, the problem has become even more acute. Revenue from the payroll tax has grown so rapidly that it now exceeds Social Security outlays, creating a surplus in the system's trust fund that is expected to total about $37 billion this year and grow to $100 billion a year by the middle of the next decade.

Technically, the surplus is separate from the rest of the budget. But in fact, it is all invested in Treasury securities. As a result, the extra money being raised by the payroll tax is transferred to general revenues. The payroll tax is no longer just as a means of

paying for current Social Security benefits, but has also become a way of financing the rest of government.

Defenders of the current system argue that a trust-fund surplus is needed to help defray the heavy costs that will be incurred when the baby boom generation retires sometime in the next century. They see it as a laudable effort by the current generation of workers to ease the tax burden on the next generation.

Their concern is legitimate. The nation is going to be top-heavy with retirees in the future, and the cost of supporting those retirees will be immense. But the only way to alleviate the tax burden on the next generation is to eliminate the deficit on *all* government operations, and perhaps even run surpluses. Running a surplus in the trust fund while the rest of government is deep in deficit serves little purpose.

At the root of the Social Security problem lies widespread confusion about how the system operates. From its inception, it was viewed as the government equivalent of a private pension fund, somehow separate from the rest of government. Workers put their money into the fund, and when they retired they expected to pull it back out, plus interest.

This view of Social Security helped generate popular support for the program. But the analogy to a private pension fund is weak, at best. For one thing, the vast majority of the money paid into the trust fund isn't invested; instead, it is paid out to current beneficiaries. Moreover, the relation between the amount a worker pays into the fund and the amount he eventually gets out varies.

Thus, there's no reason why the National Economic Commission shouldn't consider Social Security fair game in the commission's efforts to cut the budget deficit. It should be evaluated like any other government spending program.

But the commission should also look at the payroll tax as part of the total federal tax burden. If they do, they'll find that the growth of this regressive tax in recent years has whittled away the progressivity of the nation's tax system—a notion still supported by a majority of Americans.

Clearly, reducing the deficit must be the commission's top goal. That's the real measure of the burden this generation is leaving to its children. But in reducing the deficit, the commission also needs to keep one eye focused on the issues of fairness and ability to pay.

Some tax experts recommend a radical overhaul of the payroll tax system—for instance, replacing the current 15% flat tax with a set of progressive tax rates. That idea, however, is likely to prove too controversial for the commission's taste.

A less drastic remedy would be to match cuts in Social Security benefits with cuts in the payroll tax. The revenue needed to reduce the budget deficit could then be raised through offsetting increases in the income tax. The commission may want to avoid boosting the income tax rates set in the 1986 tax law, but it could still raise ample revenue by attacking some of the loopholes left untouched by the 1986 act.

Another change that would boost the system's overall progressivity would be to increase the tax on Social Security benefits. Under current law, 50% of benefits above a certain income threshold are subject to tax. By raising that figure to 85%, the government could bring in about $4.5 billion in new revenue each year from high-income retirees, according to the Congressional Budget Office. The tax on benefits is admittedly an awkward revenue-raising device that, in its current form, leaves some middle-income retirees facing unusually high marginal tax rates. But measures to mitigate that problem could be adopted without diminishing the revenue gain.

Reducing the deficit is critical. But the National Economic Commission should be careful to reduce the deficit in a manner that reflects our society's desire for progressive taxation.

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

The PRESIDING OFFICER. The majority leader.

FILING OF AMENDMENTS UNDER CLOTURE

Mr. BYRD. Mr. President, I ask unanimous consent that even though the Senate will be in recess from 12:45 until 2 p.m. today, Senators may have until 1 p.m. today to file their amendments in the first degree in accordance with the requirements of Senate rule XXII.

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

MORNING BUSINESS PROVISION

Mr. BYRD. Mr. President, I also ask unanimous consent that following the disposition of the vote on the override of the President's veto today, there be morning business until the hour of 12:45 p.m., at which time the Senate will be going into recess.

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

Mr. BYRD. Mr. President, I ask unanimous consent that Senators may speak during that period for morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.0

MEXICO AND THE DRUG TRAFFIC: PART III—RESULTING CRIME AND VIOLENCE IN THE UNITED STATES

Mr. WILSON. Mr. President, last Friday I spoke briefly about the flood of drugs entering the United States from Mexico. This morning, I will discuss how the drug empire affects crime and violence throughout America, not just in border communities.

The overflow of narcotics, marijuana, heroin, and cocaine from Mexico has transformed our southwestern border into a war zone. Illegal narcotics go hand-in-hand with crime and criminals, and where drug traffickers reside so, too, does violence.

With drugs pouring into the country from Mexico, street-corner assassinations and gangland-style violence have become commonplace in many United States cities, including our Nation's Capital.

A recent study completed by the Justice Department revealed that in 12 major American cities three-quarters of the men arrested for violent crimes tested positive for the use of some dangerous drug. The situation is so critical in southern California that in my home county of San Diego the sheriff considered arming his deputies with semiautomatic weapons quite understandably because in most U.S. law enforcement circles there is a feeling that often the officers are being literally outgunned in their war against drug dealers.

While traffickers often pack Uzi machineguns and Soviet-made AK-47 assault rifles some of which are equipped with laser scopes our law enforcement agencies often have only service pistols and shotguns for their protection. It has become routine, Mr. President, in major drug busts for the arresting officers to seize large caches of these very dangerous and sophisticated foreign-made weapons.

Drug-related violence is in no way limited to confrontations between NARCO smugglers and Customs agents along the border. As illegal drugs move inland away from the border and begin to infest our cities, violence follows very closely thereafter. Wholesale distributors and street dealers often are at each other's throats literally battling for control over territories in which to sell dangerous drugs.

In Los Angeles a gang member peddling crack in front of a liquor store was gunned down by a rival gang. Mr. President, that young man had come selling crack. He had intruded into a rival gang's territory trying to make a quick several hundred dollars. It was the fourth shooting to occur in front of that liquor store that week. Similar stories fill the pages of newspapers of Washington and New York and hundreds of other American cities large and small.

No community is immune. We have all heard of the problems southern Florida has had to face in terms of drug-related violence and corruption. The good news is that Florida is getting tough on drug dealers and for the first time in years it appears that its crime rate has begun to dip. The bad news is that many of those Florida traffickers now seem to have relocated to other States bringing with them a new wave of crime. Police in Los Angeles, Washington, Denver, Phoenix, Las Vegas, and Portland all have reported an increased presence of drug-related gang violence in their cities.

And with a sickeningly increasing regularity we read in newspapers or see on television news reports of the senseless killing of a young police officer in New York by a man high on drugs or of the coldblooded robbery murder of two Drug Enforcement Administration agents in Pasadena by two pushers. The threat to law offi-

cers, Mr. President, has become intolerable.

The international drug lords have planted the seeds of this violence by flooding our communities with their illegal drugs and the traffic and the peril that it creates are escalating. From 1986 to 1987 the Drug Enforcement Administration and the U.S. Customs Service reported a 300 percent increase in cocaine seizures in the Los Angeles area alone, and an overall 700 percent increase at Mexican border crossing points. Dangerous drugs harm more than drug users. In Mexico, the drug empire reaping billions in profits has totally undermined and corrupted Mexican law enforcement. In America the drugs supplied from Mexico breed crime and violence and also death with victims claimed both by drug overdose and by armed robbery of those seeking to support a habit. Illegal drugs have in short created a crime wave in the United States on a scale and of a viciousness that most local law enforcement cannot contend with.

Mr. President, to put it in simplest terms, stopping the flow of dangerous drugs entering the United States from Mexico is essential if we are to reduce crime in America. But a campaign waged against the drug traffic in Mexico cannot be effective unless and until Mexican authorities give full cooperation to U.S. antidrug efforts. And we simply cannot pretend that they are doing so now.

Until the Government of Mexico gives full cooperation to U.S. antidrug efforts all other cooperation in so many ways between our two nations, however desirable and necessary, is threatened because until full cooperation is given by Mexican authorities a wave of drug-related crime and violence will continue to threaten America's cities and towns, on our streets, in our parks, in schools, and on the playgrounds.

Mr. President, in my next statement I will examine the views expressed and efforts made by Mexican Government officials relating to the drug traffic and I will tell why they cannot be accepted as adequate or as a substitute for the full cooperation which the law demands.

Mr. President, I thank the Chair. I believe the Senator from Illinois has a statement. I yield the floor.

RESPONSE TO THE STOCK MARKET CRASH

Mr. DIXON. I thank my friend from California both for his remarks this morning and for his kindness in yielding the floor to this Senator for some brief remarks.

I am delighted to see my friend, the distinguished Senator from Alabama, in the chair because he is a member of the Banking Committee, and the subject matter I am about to address is one he is familiar with. I am delighted to see my friend, the distinguished Senator from Missouri, on the floor because he is a member of the Banking Committee as well and is familiar with this subject matter.

Mr. President, I would like to call to the attention of the U.S. Senate a very interesting, informative, and I think, excellent editorial from the Sunday Chicago Tribune of March 20, 1988, entitled "Mr. Reagan's last Stand on the Crash." I want to read just briefly from it.

After two months of watching federal regulators bicker over how to reform the financial markets, President Reagan is trying to force them to iron out their differences.

His new interagency committee, headed by Treasury Secretary James Baker, won't go over the same ground plowed by six major studies since the markets came unglued five months ago. Instead, it will try to develop a coordinated response to the crash by early summer.

May I underline those words, Mr. President, ". . . a coordinated response. . ."?

This may seem like mere dillydallying, a maneuver to stall new regulatory laws by an administration with an aversion to regulations. But with a Democratic-controlled Congress bent on doing something, anything, to slap another set of restrictions on the markets, no matter how destructive or half-baked, a little constructive footdragging is precisely what's needed right now.

In the meantime, federal regulators and the various exchanges in Chicago and New York should quit their infighting and agree on ways to monitor the relationships between the stock, futures and options markets. This is the area singled out by the presidential Brady commission as in need of urgent attention. It wanted to put a superregulator such as the Federal Reserve Board in charge, but Fed Chairman Alan Greenspan wisely rejected that role for the central bank.

David Ruder, chairman of the Securities and Exchange Commission, offered his agency as the omnipotent regulator and called for higher margins, or collateral, on futures to dampen volatility. Wendy Gramm, not about to give up any turf as new head of the Commodity Futures Trading Commission, deplored that idea and the SEC power grab. She has the best approach, trying to focus attention on better information flow and the handling of larger volumes of securities and futures rather than on regulatory changes.

I stress that, Mr. President: "Trying to focus attention on better information flow and handling of larger volumes of securities and futures rather than on regulatory changes."

There is more, Mr. President, and I ask unanimous consent that the entire tribune editorial be printed in the RECORD.

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

MR. REAGAN'S LAST STAND ON THE CRASH

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His new interagency committee, headed by Treasury Secretary James Baker, won't go over the same ground plowed by six major studies since the markets came unglued five months ago. Instead, it will try to develop a coordinated response to the crash by early summer.

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Last week the SEC's Ruder retreated from his call for higher margins and pushed for coordinated trading halts to prevent the markets from breaking down during heavy trading. Wendy Gramm was receptive. But Nicholas Brady, the Wall Street executive who headed the President's first postcrash study, is talking darkly about another one waiting to happen unless the exchanges and regulators agree soon on reforms.

Brady, a confidant of George Bush, apparently thinks that scaring everyone into accepting his policies will keep him in a national spotlight and snare a seat in a Bush cabinet. But James Baker is still treasury secretary, and he—along with Greenspan, Ruder and Gramm—should be given time to reach a consensus. The goal should be supervising the linkages between markets without increasing government tinkering in them. If Washington binds them too tightly, their aggressive (and freer) competitors overseas will be only too happy to snatch their business.

Mr. DIXON. Mr. President, the futures industry has made every conceivable effort to arrive at an understanding with the New York Stock Exchange and others about what should be done and has worked with the regulators to achieve a balanced response to the problem in the marketplace. They continue to do that work every day.

I conclude by saying this: May we never forget that this is an international marketplace; that when something occurs in the United States of

America, in New York, in Chicago, it occurs in London, it occurs in Tokyo, it occurs in Hong Kong, it occurs in every conceivable marketplace in the world.

We will make a profound error if we act hastily, without having a consensus in the marketplace by the regulators and the people out there serving the public in the marketplace.

The President, in my opinion, has made an excellent suggestion. Secretary of the Treasury James Baker will do a good job in working out an accommodation.

The Presiding Officer knows that when we had the banking bill last year, it was the Secretary of the Treasury, in the end, who came to us and accommodated us so that we could get a consensus last year. He has done that again this year. He is trying to do it now. The President is asking us to wait until May 18 in order to achieve an understanding among those in the marketplace and the regulators about what the response should be, and I say that is a responsible approach.

I recognize what the distinguished chairman of the Banking Committee, the Senator from Wisconsin [Mr. PROXMIRE], has done. He is working on a bill now. I am happy to hear that. The distinguished chairman of the Agriculture Committee, the Senator from Vermont [Mr. LEAHY], has legislation. He has an important role, because his committee has jurisdiction over the CFTC. I say to all those fine Senators and their colleagues and friends that we should wait and see what the consensus is on May 18. There will be plenty of time after that to take the appropriate action.

I thank the Presiding Officer, the Senator from Alabama [Mr. SHELBY], and I thank the Senator from Missouri. I hope they share my view that we should not act in haste on a problem that needs thoughtful and careful attention.

Mr. BOND. Mr. President, I thank my good friend from Illinois for yielding the floor. I commend him for the very thoughtful statement he has made on a subject of great importance to this body and to the people of the United States.

We share his concern that when action is taken, it be coordinated action. I applaud his commendation of the committee to be headed by Secretary of the Treasury, Jim Baker. I think we will get the best possible advice from that body.

I commend my friend from Illinois for his leadership on this matter and others in the Banking Committee.

TRIUMPH OF FREE ELECTIONS IN CENTRAL AMERICA

Mr. BOND. Mr. President, I am here to discuss today, for the benefit of my colleagues, a very interesting experience I had this past weekend.

Yesterday, I returned from Central America, where, for the first time in 50 years, in that region we had the opportunity to witness the peaceful transfer of power from one political party to another by means of the ballot box.

I was honored to be asked by President Reagan to go to El Salvador on the bipartisan observer commission headed by our colleague, Senator LUGAR, along with Representative MURTHA, 5 other Congressmen, and 11 other observers.

Our mission was to observe, along with similar delegations from many other countries, the process of the election for members of the Salvadoran National Assembly and municipal posts to determine whether the elections were fair and honest. As an American, accustomed as most of us are to the routine right of exercise of the right of suffrage, it was heartening to see the commitment of the Salvadorans to the exercise of the voting franchise and the relatively smooth operation of the process. In a country where the people have only had the right since 1982 to participate in free elections, between 60 and 70 percent of the 1.6 million registered to vote actually turned out to vote on Sunday.

As we visited polling places in the capital city of San Salvador and the third largest city of San Miguel, as well as polls in the outlying rural areas, we had the opportunity to witness the process and to talk, through translators, with the voters. Many had traveled considerable distances to reach the polling place that day. It was not uncommon to find people who had walked 2 to 3 kilometers. Still others rode in or on pickup trucks, dump trucks, or crowded buses with passengers packed on the luggage racks for 15 to 20 kilometers to come to the polling place.

The hardships to get to the polls were not insignificant. But that much greater discouragement to voting was the widespread effort at voter intimidation by the Marxist guerrilla organization, Farabundi Marti Liberation Nationale [FNLN]. This guerrilla group, with command and control headquarters in Nicaragua, is committed to a broad range of activities to achieve their ultimate objective of revolutionary triumph of the proletariat over the oppressors, which we understand to be the establishment of a Communist government. This guerrilla organization, which is supported and funded by the Sandinistas and the Cubans, has carried out active sabotage on public facilities to disrupt electricity, water, and telephone service. Indeed, we experienced the lack of electricity and water in the capital city. They have also kidnapped officials of opposing parties and engaged in the indiscriminate killing and maiming of campesinos, or peasant farmers, and their families.

In the week before the election, the FMLN used its access to radio and television in El Salvador as well as word of mouth to disuade Salvadorans from voting, among other things, by threats of violence and the warning of "transportation stoppages" on election day, which would include blowing up or burning of buses. In the week before the voting, to show the people of San Salvador what they meant, their labor union front organization overturned and burned government vehicles and privately owned buses.

The FMLN guerrillas knew they could not stop the election, but they hoped to show a low turn out by keeping candidates of their revolutionary front groups from participating by intimidation.

In one rural department, which roughly corresponds to one of our States, we visited the polling place where Salvadorans had come from the self-proclaimed guerrilla capital in the neighboring department to vote. By midmorning on Sunday, over 90 people from that town had come to vote.

Also, we found that in other areas, the transportation stoppage threat had discouraged voting. Also, farmers in many of the rural regions were reluctant to carry home the indelible mark on the little finger which is designed to discourage double voting, which I still bear on my finger, because I wanted to see how long it lasts. This mark on the finger, for a Salvadoran peasant, can be a target for retribution and even death from the leftwing guerrilla organization. It does not wash off easily. Many Salvadorans still carry it today.

Yet they were not afraid to vote.

The Salvadoran generally turned out in their Sunday best for a festive day in which the high point of the day was the exercise of the vote. When we asked these voters, through translators, why they were not afraid to vote, we received answers that they believed that God would protect them, and that they were accustomed to guerrillas, who no longer frighten them.

The voting procedure at the poll table, which accommodated no more than 300 voters, were simplified to permit easy voting for those who were not fully literate. Each voter had to present his or her carnet—a laminated badget with photo, fingerprint and address—and locate the voting table number on the list of registered voters. At that table, the voter was given one ballot for the election of deputies to the assembly and one for municipal officials. Each ballot had the symbols of the parties participating and the voters instructions were simply to mark an X through the symbol of the party to vote for the of-

ficials of that party. On the municipal level, the party with the most votes took all the offices; for the assembly ballot, again each department there was proportional allocation of vote, roughly among the top three.

Although we witnessed some minor foul ups, such as delayed opening of the polls, failures to have sufficient tables and chairs, to carnets that were not delivered to registered voters and names which did not appear on the lists, but these, though troublesome, were isolated incidents. Where there were delays up to 2 hours, the Salvadoran voters waited in line without complaint and with some good humor, a condition no American would accept. I wish we in America had such a commitment to voting.

The election was a powerful lesson on the value of the democratic rights to a free election for those of us who often take our access to the ballot box for granted.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

CIVIL RIGHTS RESTORATION ACT (GROVE CITY)—VETO

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of the President's veto message on S. 557, which the clerk will report.

The assistant legislative clerk read as follows:

The President's veto message on 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, sec. 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964.

The Senate resumed consideration of the veto message.

The PRESIDING OFFICER. Under the previous order there will now be 1½ hours of debate on the veto message, to be equally divided and controlled by the Senator from Massachusetts [Mr. KENNEDY] and the Senator from Utah [Mr. HATCH].

Mr. BYRD. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time be equally charged against both sides.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, as I understand, the Senator from Utah has 45 minutes and the other 45 minutes are under the control of the Senator from Connecticut and myself.

The PRESIDING OFFICER. The Senator is correct, minus what time has been used by the quorum call.

Mr. KENNEDY. Mr. President, I yield such time as I might use.

The last President who vetoed a civil rights bill was impeached. I don't expect President Reagan to share Andrew Johnson's fate. But the fact that over a century has elapsed since the last civil rights veto is a good measure of the importance of this vote and the powerful bipartisan consensus that civil rights measures supported by Congress have historically enjoyed.

The President's veto is all the more deplorable, since this legislation confers no new civil rights at all. It is a civil rights restoration act, designed to restore the status quo ante—that is, the status of the law before the Supreme Court's unfortunate decision in 1984 in the Grove City College case.

The Reagan administration has misused that decision as an excuse to roll back the clock on civil rights.

The Supreme Court, at the instigation of the Reagan Justice Department, had accepted an erroneously narrow reading of the fundamental laws prohibiting the use of Federal funds to support discrimination against women, minorities, the elderly, and the disabled. The legislation vetoed by the President would do nothing more than restore these antibias laws to their pre-1984 condition.

Since 1984, hundreds of administrative enforcement actions to stop discrimination have been dropped, and victims of discrimination have been thrown out of court. From the beginning, many of us would have liked to use this legislation to broaden the reach of civil rights. But we accepted the principle of restoration as the basis for action, because we recognized that our first priority was to restore the law as it had been for the past two decades under the great civil rights statutes enacted in the 1960's and the 1970's.

This bill, therefore, does nothing more than reaffirm the basic principle of the 1964 Civil Rights Act, which President Kennedy explained as follows:

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.

Title IX of the Education Amendments Act, section 504 of the Rehabilitation Act, and the Age Discrimination Act have extended that principle of nondiscrimination to women, the disabled, and the elderly.

I also want to take this opportunity to express my regret at the cavalier reasoning of the Supreme Court in gutting the four civil rights statutes at issue in this legislation. The Court found the intent of Congress unclear, and rationalized its decision in the Grove City College case by saying that if Congress had meant the laws to be interpreted broadly instead of narrowly, Congress could simply pass a new statute saying so.

But as we have seen, it is not all that easy to simply pass another law. The opponents of civil rights could not believe their good fortune in the Court's decision, and they have lost no opportunity in the past 4 years to capitalize on the judicial setback to civil rights by preventing any legislative correction.

So I hope that in the future, when the Supreme Court considers important social issues such as this, the justices will try harder to decipher the intent of Congress instead of taking the judicial path of least resistance by telling the legislative branch to try again.

As Justice Holmes once put it, the life of the law has not been logic, it has been experience. Whatever the logic of the Court's decision in the Grove City College case, the experience of the past 4 years is clear—large numbers of Americans have suffered violations of their fundamental civil rights and millions of Federal dollars have been dispensed to organizations and institutions that practice discrimination. That result is unconscionable and unacceptable and it never had to happen.

To those who make the preposterous claim that this bill violates the principle of separation of church and state, I reply that this legislation has been exhaustively examined and strongly endorsed by mainstream church leaders representing millions of Christians and Jews, and also by the association representing most of the private and religious colleges in America.

Indeed, most of these groups have worked closely with us on this legislation from the start. Some of them had expressed reservations about earlier versions of the bill. Some of them supported amendments that were not adopted. But they are unanimous in their support for the bill that passed the Senate and House. Those opposed to discrimination in America recognize the importance of this measure. They agree that it overturns the Grove City decision, without expanding Federal regulation of State and local governments or private corporations, and without infringing on freedom of religion.

Contrary to the incredible allegations by the Moral Majority in its mis-

chievous and deceptive campaign of misinformation and disinformation, the Civil Rights Restoration Act does not prohibit discrimination against homosexuals and does not give sweeping protection to alcoholics and drug addicts. Fortunately, Congress knows more about this civil rights measure than the Moral Majority seems to know. It is easy for Congress to see through the transparent distortions being used in this unseemly attempt to undermine civil rights. The opponents are proving once again that on this issue, as on many other issues, the Moral Majority is neither moral nor a majority.

This latest wave of scare tactics is now receding. It is reminiscent of the unconscionable campaigns against advances in civil rights throughout our history. We have overcome these anti-civil rights campaigns in the past and I am confident that we will overcome this assault today.

The Civil Rights Restoration Act is no leap into the unknown. It merely returns four important civil rights laws to their former scope. For 20 years, until 1984, these laws had operated to bring us closer to our goal of equal justice for all.

It is time to stop the hysteria and stop the use of Federal funds to discriminate against women, minorities, the disabled, and the elderly. The Civil Rights Restoration Act should have been enacted into law with President Reagan's signature, and now it is up to Congress to enact it into law by overriding President Reagan's veto. Once again, we in Congress can demonstrate the wisdom of the Founding Fathers, who gave us the power to override Presidential vetoes precisely because, in their wisdom, they anticipated circumstances such as this.

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

Mr. HATCH. Mr. President, I yield such time as he may require to the distinguished Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, surely Congress can advance the cause of civil rights without putting government in the business of regulating religion.

The President has promised that he will work with Congress to pass alternative legislation that does not entangle government with our churches and synagogues. I think we should take him up on his promise. I will vote to sustain the veto.

The issue before us is not whether Congress will overturn the Grove City case. We will and we should do that. The issue is whether we can avoid the excesses of this legislation without doing violence to its underlying purpose. I am convinced that we can.

Under the bill now before us, a church which participates in the Meals on Wheels Program would have to meet Federal access requirements for the handicapped. Clearly, this goes too far in telling religious organizations how to go about their business.

My concerns in this regard are not new. When the bill was on the floor of the Senate, I voted for two amendments to broaden the religious tenets exemption and to limit the bill's applicability to religious organizations. Both amendments were defeated. Now we have a chance to correct in new legislation what we failed to correct in this bill.

Advocates of the present bill have branded those who have raised concerns as religious zealots who are against civil rights. That characterization is grossly unfair. The vast majority of my constituents who have spoken out on this issue are committed to equal opportunity. But they do not believe that the basic values of this country depend on government telling religions what to do, and they are deeply worried that government is reaching into the practice of their religious beliefs.

From personal experience, I can attest that in the hearts of my constituents, basic human decency is alive and well. And so is a strong belief in the separation of church and state.

Mr. President, let us sustain the President's veto, and then let us enact immediately a bill that overturns Grove City in a manner consistent with religious liberty. On this matter of moral principle, let America affirm its belief in civil rights with one voice, and not with the anger which now divides us.

Mr. HATCH. Mr. President, I believe the distinguished Senator from South Carolina wanted to go next. I would be happy to yield to him, if he is available.

I wish to thank the distinguished Senator from Missouri for his cogent and important remarks. He happens to be an Episcopalian minister. His church has endorsed this bill and yet he sees the important reasons why we have decided to stand up on this bill.

It is not really a question of civil rights, but the extent to which the Federal Government can proceed to regulate the lives of churches. I just have to thank him for his eloquent statement on behalf of what the President is trying to do.

This is not really an issue of civil rights. All of us would vote to overturn the Grove City decision and apply the title IX decision and, as far as I am concerned, the other statutes, as well. But, sometimes there is merit in having them apply only to that particular program or activity or, in the case of religious institutions, to only that congregation or that particular institution that has violated some regulation.

I am happy to yield 5 minutes to the distinguished acting Republican leader.

Mr. SIMPSON. Mr. President, it is a difficult situation, obviously, for many of us.

On January 28, 1988, I voted in favor of final passage of this bill, the Civil Rights Restoration Act. In my 9 years here, no one has ever been able to indicate anything but sensitivity on my part with regard to civil rights.

It is unfortunate that that still arises in America, that if you do not like a bill like this that somehow you are not committed to civil rights. That is very unfortunate. It is kind of sad, in a way; kind of racism in reverse. It is always kind of disgusting to me.

Anyway, 27 of my colleagues voted in favor of this legislation on the passage. Republicans and Democrats are committed to the original legislative intent of the Civil Rights Statutes and there is no one among us who in any way feels that somehow the Federal Government should subsidize discrimination. That is absurd.

However, many Senators and the White House are concerned that this does not adequately define the scope of coverage for certain entities—and Senator HATCH has done a beautiful job of explaining that and will again in a short period of time before the vote at noon today—religious organizations, small businesses, and local governments—or the types of Federal assistance that would require compliance under the act; for instance, on this question of the ultimate program beneficiary versus Federal financial assistance.

And, you know, one of the ironies of it all is, as we do this to America, to farmers, to small bsuinesses, to the church groups, we do not do it to ourselves in the U.S. Congress. Is that not interesting? I wonder when the people of America are going to figure that one out.

We do not put this on ourselves because it is a burden on ourselves, we who hire and fire people at will in the Congress. We do a beautiful job of that. You simply walk in in the morning and you go—you are gone. There is no appeal process. There is no nothing. That is the way we do our business in Congress. I hope the people of the United States are aware of that. I think they are. But we could do a good thing if we could put ourselves under this.

I voted in favor of the limiting amendments, which would have addressed those concerns by limiting the scope of Federal involvement. I voted for Senator HATCH's amendment. I voted for Senator DANFORTH's amendment, the abortion neutral language.

I think the President has sent us a very appropriate veto message. He has submitted an alternative piece of legis-

lation which he believes achieves the intentions of S. 557, and I intend to support that proposal. I intend to vote to sustain the President's veto.

I am a little disturbed, too, though, about the massive misinformation campaign being waged against this legislation, which charges that all sorts of new rights will emerge as a result of this bill. And my constituents in Wyoming are truly fearful of what they perceive this legislation will do. So I guess that I have always felt, as elected representatives, that we have a responsibility to inform and help educate our constituents to the full meaning and consequences of this and any other pending legislation. If we had been successful in that responsibility and obligation, I think the misinformation campaign would have had very little effect upon a knowledgeable public.

But I understand carefully what they are saying. I really do. I come from a State with a lot of religious schools and people who have decided the public school system does not quite get the job done. Why should we think of them as being evil or mean spirited? I certainly do not. I admire them. They have fears and legitimate concerns about the scope and application of this bill and that the act in its present form is not as effective as it could be.

So I think the President has presented us with something that could be more efficient. It is a great temptation, in an election year, to make a partisan issue of important legislation. We will do a lot more of that this year, you can bet a buck. But civil rights are much too important for political partisanship and so, Mr. President, in sustaining the President's veto, I intend to work with the administration to strengthen this civil rights legislation, preserve its goal while addressing the legitimate concerns expressed about its scope and coverage by honest and concerned and thoughtful people in the United States.

I would also indicate that even though the Republican leader will not be able to be present because of many previous commitments, that if he were here he would assist in sustaining this veto. I think that is important for our colleagues to know, on both sides of the aisle, as to the position of Senator DOLE: Yes, he has the same concerns that we all do about this. He has some certain reservations. But, on balance, he has asked me to share with my colleagues that, were he present and voting he would vote to sustain the President's veto.

That is the message from our leader. I want to share that with you. He will submit a statement in the RECORD and I ask unanimous consent that that statement be entered in the RECORD as if delivered.

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

Mr. SIMPSON. Finally, Mr. President, it seems to me that the President's bill, S. 2184, is a remarkable piece of work. It might even be something where we would offer, at an appropriate time, a unanimous-consent request before the vote that if the veto is sustained we would take up the President's bill under a time limit, certain time limit with only specified amendments to be in order. That seems like an act of good faith for those who feel strongly about the issue. If the veto is sustained we would not dither about and go into the usual holding pattern, we would simply take up the President's bill under a time limit, time agreement under, even, expedited procedures if that be the case, with only specified amendments to be in order.

I think that is certainly something to be considered and certainly could be discussed and certainly objected to if that be the wish of the body and will of the Senate.

I thank the President; I thank the Senator from Utah. I greatly admire his efforts and his very important effort at his debate and presentation of a hearing and tough issue that is not just this simple, as previously indicated by some.

Mr. DOLE. Mr. President, I have always supported legislation to overturn Grove City to restore the broad civil rights coverage that existed prior to that case. I feel strongly that taxpayer funds should not be used to subsidize discrimination in any way. Moreover, such legislation is of vital importance to disabled Americans, who are still fighting to establish their rightful place in the civil rights movement. Section 504 is the only comprehensive civil rights law protecting the disabled. And section 504 has been eviscerated by Grove City.

At the same time, I recognize that S. 557 is not a perfect bill. I am not fully satisfied with it. I wish that more of the language contained in the administration's bill had been adopted. But the fact remains that the administration and its congressional allies had the opportunity to offer amendments, and they were voted down. This is a highly complex piece of legislation. The issues are highly technical. It took 4 years of hearings, debate, drafting, and redrafting to develop a consensus proposal. People of good will still differ over the meaning of some of the bill's provisions. But unfortunately, much, if not most of the public controversy has focused not on areas where there is good faith disagreement, but rather on serious misconceptions about what this bill does.

HOMOSEXUAL RIGHTS

First and foremost, it should be emphasized that this bill does not grant any kind of rights to homosexuals. There are no differences between the President's proposal and S. 557 on this issue. Both bills contain identical language on the question of discrimination against persons with contagious diseases. This language is consistent with current law and makes clear that persons with contagious diseases are not protected under section 504 if they pose a threat to the health and safety of others or if they are unable to perform the essential functions of the jobs. There is no other language in either bill that could be construed in any way to have anything to do with homosexuality or discrimination on the basis of a person's sexual preference. In addition, none of the four underlying civil rights statutes have ever been interpreted to prohibit discrimination on the basis of a person's sexual preference.

ABORTION

Nothing in this bill could be construed to require recipients of Federal funds to provide abortions or abortion services. Here again, S. 557 and the administration's bill are identical. Both include the Danforth "abortion neutrality" amendment which states 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 abortion * * *" and further that "No provision of this Act * * * shall be construed to force or require any individual or hospital or any other institution, program, or activity to perform or pay for an abortion."

FARMERS AND RANCHERS

S. 557 continues the exemption for "ultimate beneficiaries" of Federal assistance which means, under agency regulations and longstanding administrative practice, that farmers and ranchers receiving farm subsidies or price supports, as well as individuals receiving other types of aid such as food stamps, social security, and so forth, are not subject to these civil rights laws. The President's bill also continues the exemption for ultimate beneficiaries, but in addition, specifically names farmers and ranchers as exempt. Proponents of S. 557 have argued that this is unnecessary and potentially dangerous since naming farmers and ranchers without naming other types of ultimate beneficiaries could give rise to the argument that Congress did not intend to automatically exempt them also.

RELIGIOUS ORGANIZATIONS

The administration has argued that as drafted, S. 557 would cover an entire church, even if it only received Federal funds, for example, for a day care center or refugee placement program. S. 557's sponsors have said that this is incorrect, and that only the part of the church or synagogue that received Federal funds would be cov-

ered. I am sympathetic to the administration's concerns, however, this appears to be more a matter of interpretation than substantive disagreement. The courts should interpret S. 557 consistent with the explanation of the sponsors and their repeated assurances that they do not intend to go beyond pre-Grove City law. It should also be pointed out that major religious groups, including the Catholic Conference which originally opposed the bill, are satisfied with the explanation of the sponsors and now support the bill.

RELIGIOUS SCHOOLS

The administration's bill would expand the religious tenet exemption in title IX to include institutions "closely identified" with a religious organization. Current law exempts only those schools "controlled by" a religious group.

An amendment to S. 557 containing the administration's language was defeated, 39 to 56. Though I agree with the stated purpose of the administration's language, no problems have arisen under the current exemption. Indeed, over 150 schools have already been granted an exemption and there is no evidence that any school has ever been required to violate its religious tenets in order to comply with title IX. It is also worth noting that while it led the fight for this amendment, the National Association of Independent Colleges and Universities now supports S. 557.

SMALL BUSINESSES

Small businesses that receive Federal funds will not be required to make costly structural changes to their facilities to make them accessible to the handicapped. Both S. 557 and the administration's bill codify the small business exception from section 504 building accessiblity requirements currently contained in the section 504 regulations.

DRUG ADDICTS AND ALCOHOLICS

S. 557 does not grant new rights to drug addicts and alcoholics. As does the administration's bill, S. 557 contains no changes in current law on this issue. Under current law, alcoholics and drug addicts are not protected under section 504 if they pose a threat to health and safety or are unable to perform the essential functions of the job.

GROCERY STORES

The administration bill would exempt grocery stores or other business entities receiving food stamps. S. 557 is silent on this issue. The U.S. Department of Agriculture has testified that under current law, grocery stores receiving food stamps are not covered. I agree with this view; Senator KENNEDY and others do not. The important point is, S. 557 does not deal with the question one way or the other.

CONCLUSION

Mr. President, the Grove City debate has been going on since 1984. Nearly everyone, including the administration, agrees that legislation to overturn Grove City is needed. We have had hearings and debates; we have drafted and redrafted. This is probably one of the most closely scrutinized pieces of legislation in Senate history. The administration has raised valid concerns, many of which have been addressed in S. 557. Indeed, though the veto has drawn attention to the areas of disagreement, we should not discount the many areas where agreement was achieved. In fact, most of the President's bill is drawn directly from S. 557.

While I wish we could have passed a bill the administration supported, I do believe that many of the concerns about this bill are based on misconceptions. The bill's proponents have repeatedly assured us that the intent is merely to restore the law to its status prior to Grove City. Agencies and the courts should strictly adhere to that intent.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I yield 6 minutes to the distinguished Senator from South Carolina.

Mr. THURMOND. Mr. President, I urge my colleagues to vote to sustain the veto by the President and to support the administration proposal to resolve the Grove City dispute.

Regarding my concern about this legislation, S. 557 represents a significant increase in Federal jurisdiction over churches and synagogues, private and religious schools, and the private sector. The major issue involved in this legislation is the need to carefully balance and protect constitutionally guaranteed freedoms and rights against the significant authority of the Federal Government. Stated simply, this legislation goes too far. Due to the broad expansion of Federal intervention into the private sector, this legislation is unacceptable.

Since S. 557 was introduced, its proponents have chosen to distort the real issue. They promote the premise that one is either in favor of this legislation, or is in favor of federally subsidized discrimination. This simplistic approach is used by some of the proponents to disguise their true motive which is to expand Federal authority. Federal financial assistance should not be allowed to fund discriminatory activities. No one could rationally argue otherwise. However, this bill vastly expands not only program-specific coverage, but institutionwide coverage as well. It does not restore the reach of the four civil rights laws in question to their pre-Grove status, but extends them well beyond what is justifiable.

Before any Senator casts his or her vote to override the President's veto, I urge each Senator to examine the administration proposal which effectively resolves this Grove City issue. The President's proposal balances and protects constitutionally protected rights and guaranteed freedoms against the reach of Federal Government authority. This administration proposal addresses serious concerns raised by S. 557. It resolves the problems raised in regards to religious liberties; the overextention of coverage applying to entire corporations; grocers that receive food stamps, farmers, private schools; and, coverage of State and local governments. More specifically, it:

First, provides that when one part of a church or synagogue receives Federal assistance, then only that part may be regulated by Government, rather than the entire religious institution;

Second, provides that when private secondary or elementary schools receive Federal aid, only the school that receives that aid, and not the entire school system is subject to Federal regulation;

Third, limits corporate coverage to the plant or facility that actually receives Federal assistance unless the assistance is given to the corporation as a whole;

Fourth, explicitly exempts farmers, and;

Fifth, provides that merely accepting food stamps does not lead to the regulation of grocers and supermarkets.

In summary, the President's proposal more appropriately resolves the Grove City problem than does S. 557. The administration proposal restores civil rights coverage to what it was before the Grove City decision. This restoration is a balanced, reasonable approach which should be adopted in this body in lieu of S. 557.

In closing, scrutiny of S. 557 shows that it significantly increases Federal jurisdiction beyond what is justified over religious institutions, private schools, and the private sector. I do not believe that those who voted in favor of S. 557 clearly understood its broad reach. I urge each Senator to vote to sustain the President's veto. This body can then swiftly act on the administration's proposal which appropriately balances the constitutional guarantees with the reach of Federal authority.

Mr. President, I just want to say this. Some people feel, because this bill has the words "civil rights" in it, that it is a true civil rights bill. This is not a civil rights bill. This is an extension of Federal authority and that is what has gone on here for years and years and that is one reason we have such a big deficit today. Over $2.5 trillion. We have not balanced this budget but once in 27 years. Federal authority, extending Federal authority.

There is only so much power. Are we going to exercise power as the Constitution allows or are we going to keep shifting it to Washington? Unfortunately, over the last 40 years, the Congress has shifted more and more power to Washington.

I say the American people are sick and tired of it. People want to see the Federal Government stay within the powers delegated under the Constitution it borders and not deprive the States and citizens of their rights. This bill goes into religion, it goes into private schools, it goes into private competitive business.

I say to you, it is a dangerous bill and that this bill should not become law. The only way now to stop it is to sustain the President's veto and then we can vote on the bill that he has come forward with, which is a reasonable, balanced bill.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I yield 45 seconds to myself.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I have heard many reasons why people should oppose this bill, but the idea that this bill somehow has contributed to the Federal deficit really goes beyond any kind of understanding on my part.

Second, Mr. President, I would hope that the suggestion that has been made by the acting Republican leader, that all we have to do is sustain the President's veto and enter a unanimous consent agreement for consideration of the President's bill would be dismissed out of hand. This administration has had 4 years to send up bills. Their spokesmen have testified time and time again against any effective reversal of the Grove City decision. Now, after 4 years, in the 11th hour and 59th minute, to propose some kind of so-called alternative policy I think is a blatant attempt to buy votes and we should reject it if we are faced with it.

Mr. President, I want to yield to the Senator from Oregon who was one of the earliest supporters of the Civil Rights Restoration Act. I yield 3 minutes.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, I strongly urge this body to override the veto of the President for this reason: This bill does nothing more, and is intended to do nothing more, than restore the state of the law as we thought it was prior to the so-called Grove City decision.

Mr. President, let me simply illustrate what we thought the law was, what Grove City did, and what we are trying to change.

The Grove City decision was an interpretation of the words "program or activity," and the Supreme Court in the Grove City case said "program or activity" means the specific program or activity that receives Federal funds. For example, if in a college the English department received Federal funds, we assumed prior to Grove City that the entire college was covered, and if the English department received Federal funds, the French department could not discriminate.

The Supreme Court said no, "program or activity" means just the program or activity that gets the money. If the English department gets the money, it cannot discriminate, but if the French department does not get any money, it can discriminate.

So this bill simply started out to reverse the interpretation of the words "program or activity" to say it means what we thought it meant, institutionwide. Only when we looked into this bill we found out that the other Civil Rights Acts, the principal ones that exist in this country—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—all used the words "program or activity."

We had no reason to think when the administration argued this position that the Supreme Court would interpret "program or activity" otherwise in those other titles. So we had to change it for all four. But prior to Grove City, we meant institutionwide applied in all of those acts and all we have done is change the law back to what we thought it was. We have not expanded it beyond what we thought it was. We have not attempted to add any new obligations beyond what we thought existed. There was never a more status quo bill. Frankly, I would have liked to have gone beyond what this bill does, but in fairness we said we would simply go back to what we thought was the status quo prior to Grove City.

I hope by an overwhelming margin we will vote to simply reinstate fairness for all Americans, be they disabled or minorities or women or the elderly and give them the opportunity that everyone else in this country assumes as a matter of right.

I thank the Chair and I thank the Senator from Massachusetts.

Mr. RUDMAN. Mr. President, I will vote today to override the President's veto of S. 557, the Civil Rights Restoration Act. I will do so because the bill restores into law an important principle: an organization—a private business, a school, or a community organization—desiring the benefit of Federal dollars must not discriminate against individual Americans on the basis of gender, race, age, or a handicap. This principle was the legal policy of the United States until the Supreme Court's 1984 decision, and S. 557 simply reinstates it.

Like most of my colleagues, I have received many phone calls from constituents who oppose the bill. These good people from New Hampshire recount horror stories about what S. 557 would force them or their church to do, tales that they believe because they have been spread by opponents of the measure. If these horror stories had any truth to them, I would not be voting for this bill today.

This issue is far too important to the rights of millions of Americans and to the moral fiber of this country to be analyzed on the basis of misstatement and misinformation. It is important, therefore, that we all understand precisely what the bill will and will not do.

First, this bill will not create any new civil right. Only those groups currently protected by our civil rights laws will be entitled to protection under this act. Some opponents of this bill have characterized it as requiring the hiring of homosexuals by Christian schools. Neither this bill nor the underlying statutes mention homosexuals, sexual preference, or any other phrase that could possibly be interpreted as granting rights to homosexuals as a class. The administration clearly agrees with my analysis because, while they asked for a number of changes in the bill, they did not ask for language to ensure or clarify that neither the bill nor existing law protects individuals on the basis of sexual preference. It does protect individuals on the basis of gender, as it should.

Second, the bill does not change the definition of what constitutes Federal financial assistance. Tax-exempt status has not been considered Federal financial assistance for the purpose of these laws, and will not be when this bill is enacted. The mere receipt of a Social Security pension, veterans' benefits, welfare, or similar benefits is not considered Federal financial assistance as I speak, and it will not be considered Federal financial assistance if the bill becomes law.

Third, the bill will not change the definition of who is a recipient of Federal financial assistance. If a business, university, or church receives Federal financial assistance today, it is subject to the civil rights laws. If a member of the church receives veteran's benefits, that fact alone will not subject the church to the civil rights laws under current law. More generally, an organization will not be deemed to be receiving Federal financial assistance merely because one of its members, customers or clients receives some Federal benefit. It is true that some types of assistance, notably aid for college students, Medicare, and Medicaid, will trigger coverage of the organiza-

tion receiving those funds, but that is only because those Federal funds inure to the direct benefit of the university or hospital. But that is true even if S. 557 does not become law. All S. 557 does is clarify which activities of an organization receiving Federal financial assistance are subject to the civil rights laws.

Fourth, nothing in this bill will affect the practice of religion in a church or synagogue, nor could it. The first amendment continues, intact, as the fundamental guarantor of our religious freedom and I am confident the Supreme Court would strike down legislation which interferes with that. It is true that, should a local church decide to accept Federal funds for some purpose, the nonreligious aspects of the church will be covered by the prohibitions against discriminating on the basis of gender, race, age, or handicap. Although I voted for an amendment by Senator HATCH which would help clarify the applicability of these laws to churches, the defeat of that amendment does not, in my view, provide sufficient grounds to vote against this bill which is endorsed by the U.S. Catholic Conference, the Presbyterian Church, the Episcopal Church, the Evangelical Lutheran Church, the Methodist Church, and many other religious organizations.

Mr. President, I have touched on just a few examples of the misinformation that has been generated about this bill. Although some dispute these points, the clear language of the bill coupled with the language of the existing law compels these conclusions.

S. 557 will simply require that if an organization wants the benefit and use of taxpayer dollars, paid into the treasury by men and women, blacks and whites, handicapped and nonhandicapped Americans, it cannot discriminate against the very people who provide those funds. If this reasonable requirement is too onerous for an organization, then it should not take the money. S. 557 is a good bill which has been discussed for 4 years, and it deserves to become law.

I cannot complete this statement, however, without commenting on what is perhaps the most extreme irony of this debate. Last year, I stood on the Senate floor and expressed my distaste for the serious campaign of distortion that was waged against the nomination of Judge Robert Bork to the U.S. Supreme Court, as did many of my colleagues. We were joined in that condemnation by some of the very people who have generated such a sense of fear and apprehension in many of our constituents about S. 557. There is no excuse for inciting that fear under false pretenses, and I sincerely hope that this does not become the standard for debating matters which directly or peripherally touch upon civil rights.

Mr. KENNEDY. Mr. President, I am delighted to yield to the Senator from Connecticut. This has been a bipartisan effort. The Senator from Connecticut has been the principle cosponsor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. WEICKER. Mr. President, I pay a special tribute to the distinguished Senator from Massachusetts for having worked long and hard through the parliamentary maze, through opposition both within his own and within my party to achieve this moment today. It stands as a high tribute to his perseverance, to his compassion, to his vision.

Next, Mr. President, I would like to highlight just two very short sentences in Senator RUDMAN's statement. He said:

> Like most of my colleagues, I have received many phone calls from constituents who oppose the bill. These good people from New Hampshire recount horror stories about what S. 557 would force them or their church to do, tales that they believe because they have been spread by opponents of the measure. If these horror stories had any truth to them, I would not be voting for this bill today.
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> This issue is far too important to the rights of millions of Americans and to the moral fiber of this country to be analyzed on the basis of misstatement and misinformation. It is important, therefore, that we all understand precisely what the bill will and will not do.

Senator RUDMAN states the case well in trying to clear up that fog of misinformation.

Now, Mr. President, this is as important a day as any of us have experienced or will experience in the near future. It has the potential of being a restatement, a restatement of our national commitment to equality of opportunity for all. Equal opportunity for all, to be a matter of national policy rather than individual whim.

Mr. President, how wonderful it is to view the strivings of those young people in a special Olympics setting. We cry and we laugh as we watch their strivings. For the few minutes of a day our hearts are touched. And maybe we will even reach into our pockets to supply a few pennies for those special Olympics.

And yet it was not so long ago that those very special men and women sat in the dark corners of institutions forgotten by our society, relegated by our prejudices to the darkness of dispair, of being nothings in America.

For how long did the blacks of this Nation, until they found a voice in Dr. King, fulfill a role that was no more than being servants within their own country? Then Dr. King spoke from the steps of the Lincoln Memorial in Washington, and a nation's conscience and activism was touched.

No longer were these Americans to be denied the opportunities of jobs, education, and prosperity.

How all of us thrill today as we see the achievements of women throughout our society. Not just in historical roles but as athletes, decisionmakers in Government, and leaders in business.

And now of course, it is easy to laugh as we view the zaniness of the promise of eternal youth in a movie such as Cocoon, forgetting completely that for so many years to be old, was in fact, to be supremely lonely.

After we get through with all the technicalities about this legislation, it comes down to these people, because they are the ones who were and are affected. This legislation is about your neighbor, whether that neighbor happens to be elderly, a woman, a black or handicapped in any way. They are what this legislation is about.

It is about flesh and blood and a history of exclusion. They did not amount to a hill of beans before we made national statements of commitment to opportunity. We didn't rely on the fact of feeling a little warm inside on a particular moment of a particular day. It had to be a 365-day-a-year statement of national purpose. Not left to individual whim, beneficence or kindness. We set high expectations for ourselves as a nation, and we set the tough standards that go with manifesting those expectations.

The instant legislation was not meant to be a cream puff. It says we are not going to subsidize discrimination and, if you do discriminate, the full force of the law comes down on your head. The law, in this instance, is not just a Federal Government.

It is, all of us, 250 million Americans. We do not want to see dark corners anymore. We do not want to see loneliness anymore. We do not want to see doors shut in one's face because of skin color or gender. We have better things to do than to return to times best forgotten.

Greater lies ahead. Mankind's opportunities are too important to be left to the leavings from mankind's table. That is what this bill is about. It is a technical correction of the past and the promise of even more opportunity for the future. We know by virtue of history that when it came to opportunity, neither individual inspiration nor States' rights can achieve the destiny of the United States of America. Only an entire nation can do that. Today our Nation addresses its future and sets its destiny.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I yield 3 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, first I want to commend the Senator from Massachusetts and the Senator from Connecticut for standing up on this issue. This is not a partisan issue. This is something that ought to appeal to the basic good instincts of every Member of the Senate and the House.

In 1984, when I was in the House, I was the chief sponsor in the House of the Civil Rights Restoration Act to attempt to reverse that Grove City decision, and it passed the House 375 to 32.

There are, I think, just two basic questions. One is: Should we go back to the pre-Grove City decision? And that is all we are attempting to do. The sentiment clearly in this body is that we should, and we should, for those who dredge up specters of all kinds of things happening, let the record be clear, I heard the Senator from Massachusetts say earlier today, and I have heard the Senator from Connecticut say: We simply want to go back to the pre-Grove City decision. That is it.

Then, I guess the more fundamental question is: Are we going to try to make real the dream of a Constitution for equality? Those who wrote the Constitution talked about forming a more perfect Union. It was not a perfect Union then; it is not a perfect Union today, but it is a better Union today with opportunities there for minorities, for women, for others.

The Grove City decision grew out of the title IX Grove City appeal. It was not very many years ago the average woman working full time was making 59 cents compared to a man working full time. That has lifted a little, but very little. It has gone up to about 63 or 64 cents, but for those women under the age of 30, it has gone up to 85 cents compared to the dollar the man makes. That is not good, but it is much better because of the force of law. We have a long way to go.

The unemployment rate for employables who are handicapped is astronomical. The unemployment rate for those who are handicapped who also happen to be black is today 82 percent. That is almost unbelievable.

We have to do better in our society. I do not think one here suggests this is the whole answer, but it is at least a small step forward to guaranteeing opportunity to everyone.

Senator WEICKER talked just a little bit before about the Olympics. Let us talk about the real Olympics, and that is the race of life. There are people in the race of life who have handicaps. Let us remove those handicaps insofar as possible, and we can help do that by overriding the President's veto.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I yield 7 minutes to the Senator from Maine.

The PRESIDING OFFICER. The Senator from Maine.

Mr. MITCHELL. Mr. President, the President's veto of the Civil Rights Restoration Act was an unfortunate mistake.

This bill does not create a broad new mandate for Federal intervention in the daily lives of Americans. Instead, it restores the fundamental premise of all our civil rights laws: That there are no rights without remedies.

The bill passed the Senate and the House with broad, bipartisan support because it achieves a very simple and straightforward result: It will assure that Federal tax dollars raised from all the people cannot be spent to discriminate against some of the people.

The bill says that institutions which receive Federal funds must obey the laws which say that minorities, women, the elderly and the handicapped cannot be treated unfairly simply because they happen to be black, or female, or physically impaired or old.

That is a matter of simple justice. Americans have embraced the idea that all of us are created equal since we became a Nation. And in the past several decades, Americans have also expected their Government to live up to that ideal in practice.

That is what this bill will ensure.

Because this is such a bedrock ideal, so broadly shared by the American people, some of those who are unwilling to see it adopted in practice have resorted to misinformation, distortion and, in some cases, outright untruths in order to obscure that simple fact.

In the past week, my offices in Maine, as well as my Washington office, have received telephone calls from hundreds of Maine people opposed to this bill.

These people have been told it will force them to hire homosexual ministers for their churches or homosexual teachers for their schools and day care centers.

They have been told it will give new privileges to drug addicts. Others have been told that their freedom to practice their own religion will be endangered.

Some elderly Social Security recipients have even been told that it will mean that they can no longer give a donation to their own church. Rarely has the legislative process been so subjected to such a campaign of misinformation and distortion.

None of these concerns reflects anything that has ever happened in the State of Maine. Instead, they reflect a campaign of misinformation and distortion launched from Lynchburg, VA.

The people of Maine are the victims of a national effort undertaken by the Virginia-based Moral Majority and joined by the Washington-based Free Congress Foundation, the Florida Coral Ridge Ministries and other outside groups with their own agendas who are spreading outrageous untruths in order to pursue their own goals.

The truth is that nothing in the bill has any effect on any church's choice or training of ministers.

The truth is that nothing in this bill will require anyone to hire homosexual teachers.

The truth is that nothing in this bill expands the rights of any drug addict.

The truth is that nothing in this bill affects how any American spends his or her Social Security check.

The truth is, of course, that nothing in this bill overrides the first amendment to the Constitution, which guarantees to all Americans the right to the free exercise of their own religious beliefs.

Pastors in Maine have been told that the bill declares active homosexuals, transvestites, alcoholics and drug addicts, among others, to be handicapped and therefore protected under civil rights laws.

The truth is that the bill contains no such declaration.

Pastors in Maine have been told that when the attempt to "railroad" the bill began, the Moral Majority blew the whistle.

The truth is that this bill was not "railroaded." It has been before the Congress for 4 years.

And the truth is that in 4 full years of public hearings, argument and debate, neither the Moral Majority nor any of its supporters has ever offered any evidence that it would affect the status of homosexuals, drug addicts or transvestites.

Pastors in Maine have been told that lawsuits are now prepared and waiting for this act to become law.

But the legal analysis on which the Moral Majority relies, which was sent to my office, says: "We make no prediction that litigation * * * will be widespread or that schools and churches will always lose these cases." The documents they claim to be using do not even support the distortions that are being made.

Maine pastors have received a memorandum about "the gay rights bill." There is no such bill. This bill has nothing to do with gay rights. It protects racial minorities, ethnic minorities, and religious minorities. It protects women. It protects the handicapped. And it protects old people. But it does nothing whatsoever about homosexual people.

The memo says that the bill, combined with present court cases, would qualify drug addicts, alcoholics, active homosexuals, and transvestites, among others, for Federal protection as handicapped.

That is not true. The bill does not change the definition of who is handicapped. And there are no Supreme Court rulings which require anyone to consider alcoholics, drug addicts, active homosexuals or transvestites to be handicapped.

This memo says that under this bill, churches and religious leaders could be forced to hire a practicing homosexual drug addict with AIDS to be a teacher or youth pastor.

This is the most blatant untruth of all. No American Government has ever had or could ever get the power, under our Constitution, to dictate any choice of pastor in a church—whether it be a youth pastor or any other.

If there were even a grain of truth in this claim, why would the American Baptist Churches support the bill—which they do? Why would the Evangelical Lutheran Church of America support the bill? Why would the United Methodist Church, the Church of the Brethren, the Episcopal Church or the Presbytrerian Church, U.S.A., support this bill?

These major religious denominations do not fear that their religious faith will be offended by a requirement to pursue an injunction common to all faiths: To deal justly with all.

The American Baptist Churches, U.S.A., say they "believe that discrimination against any of God's children is sin."

The United Methodist Church "affirms all persons as equally valuable in the sight of God * * *."

The Presbyterian Church (U.S.A.) urges Congress "to protect the rights of all Americans by overriding the President's veto."

The Church of the Brethren says the bill "represents the most basic moral and traditional teachings of our church."

The Churches of Christ "call upon Congress to resist the scare tactics being employed by some opponents of this bill" and override the President's veto.

The Evangelical Lutheran Church in America urges a veto override, based on the Government's "fundamental duty to protect all people from discrimination."

Major Jewish organizations, the Quakers and others all recognize the fundamental issues of justice embodied in the bill. None believes their religious liberties will be affected.

The Catholic Church of the United States, which operates more religiously affiliated institutions of learning, health care and social services than any other, supports this bill.

The American Association of Retired Persons, the Nation's largest and best-known association serving the rights of Social Security recipients, asked the Senate to override this veto.

Virtually every group representing the physically and mentally handicapped, the health care community, the child welfare community, the major faith communities of our Nation—all support this legislation.

The misinformation about this bill would be laughable were we not dealing with the basic rights of Americans.

The frequent claims of intrusiveness made against this bill arise from an assumption that discrimination should be barred only in extreme circumstances. It is said that Grove City College did not discriminate—only that it refused to fill out Federal paperwork.

Grove City College used $1.8 million in Federal grants from students for its basic tuition costs in the decade from 1974 to 1984, as well as additional funds in the form of guaranteed loans. It refused to provide assurances of compliance with title IX law.

In this debate, a great deal of time has been expended on the unfairness of demanding such assurances. It is surprising that there is not more concern about simple accountability.

We do not permit GI education funds to be spent at any school simply on a verbal assurance that the school will provide the education it claims to provide. We demand accountability. Why is accountability for general education funds intrusive when accountability for GI bill funds is not?

The bill does what any responsible government must do. It makes those who use and spend public dollars accountable for the way they spend those dollars. There is nothing intrusive or unfair about that.

All institutions, religious and secular alike, have a simple choice: To accept Federal funds and obey the law, or not to take Federal funds.

Simply put, if an institution accepts tax funds, that institution may not discriminate. We cannot eliminate private prejudice and bigotry by law. But we need not and should not subsidize them.

Thirty-four years ago, the Supreme Court told American schools to desegregate their classrooms with "all deliberate speed." But 10 years later, "all deliberate speed" had become massive resistance.

So when Congress passed the 1964 Civil Rights Act, Federal funds were tied to the mandate to stop racial discrimination, as President Kennedy's message on the bill requested:

> 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 vision of "simple justice" is as accurate today as it was then.

The only thing that has changed is that we have since recognized that discrimination can also prejudice the rights of women, of disabled people and elderly people.

It is no accident that in the decade after the Civil Rights Act was passed, black college enrollment doubled.

In the days before section 504 of the Rehabilitation Act was passed, men and women with epilepsy were often barred from employment. Diabetics faced subtle, and sometimes not-so-subtle discrimination. Those confined to wheelchairs found their way barred to schoolrooms and law courts.

In the days before title IX of the Education Act amendments was enacted, the Agriculture School at Cornell required female applicants to have SAT scores 30 to 40 percent higher than male applicants.

The 1964 gold medal swimmer at the Tokyo games, Donna DeVerona, was forced to end her athletic career as a teenager. Her teammate, Don Schollander, also a gold medal swimmer, went to college on an athletic scholarship.

In 1964, there was not one single women's athletic scholarship in this country. In 1984, there were over 10,000. It is no coincidence that in this year's winter Olympics, American women won more gold medals than American men.

When the Supreme Court ruled in 1984, in Grove City College versus Bell, that civil rights obligations reached only the specific "program or activity" where public funds are used, all these gains were threatened.

Since 1984, the Education Department has dismissed, rejected or withdrawn almost 700 discrimination cases. Racially based discrimination has been documented in the college systems of 10 States.

The Justice Department's own case against the higher education system of Alabama was dismissed because not even the Federal Government could trace each and every Federal dollar through the system, as the courts required.

The fallout of the Grove City case has been dramatic. But in the face of real injustice, opponents of this bill can cite only speculative difficulties at best.

And some of those opponents have resorted to falsehoods.

The effort to give life to the great ideals of our Constitution has always been a struggle against entrenched habit, accepted convention and established inequities.

We want a just society. To achieve justice, we must pursue justice.

In this veto override, let us reaffirm that historic commitment and reinstate the full force and vigor of the civil rights laws, to vindicate, after 25 years, President John Kennedy's vision of "simple justice."

That is the fair way, that is the right way, that is the American way.

The PRESIDING OFFICER. Who yields time?

Mr. GRAMM. Mr. President, I yield myself 7 minutes.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, for almost 75 years this body remained silent on the issue of slavery while the churches and private schools of our Nation spoke out against it, while they provided the leadership that mobilized public support that ultimately brought slavery to an end. For 150 years this institution, for all practical purposes, looked the other way when discrimination was rampant in our land, and during that 150 years the pulpits of the churches of America flamed in righteousness against bigotry and against discrimination. While this body was silent on integrating our public institutions of higher education and schools in general, private schools provided the early leadership in bringing integration to our society.

I think it is important today as we debate this veto override to recognize that the major cutting edge issue here is not civil rights but the extension of Federal power to institutions that historically have been the very voices of civil rights. We seek here today not to extend the power of the Federal Government to attack bigotry and prejudice but to place the heavy heel of Government upon the very institutions that led this Nation against discrimination and against bigotry when even this great deliberative body was silent on those issues.

Now, Mr. President, why after all these years do the churches of America and the private institutions of higher learning suddenly need Federal regulation in the area of discrimination? What we are looking at here is a massive extension of Federal power, and I ask my colleagues, is the freedom of America and Americans in religious matters better left in the hands of the churches of America or placed in the hands of Government?

Is government a neutral body which oversees in great wisdom disputes among its people or is it ultimately a participant in that debate which chooses sides based not on right and wrong but on the basis of politics?

I submit, Mr. President, that this veto should be sustained. The President has made a proposal which makes many changes, among them one which is absolutely critical and indispensable. The change has to do with religious tenets and churches and synagogues. This body unwisely rejected an amendment dealing with these issues, but we have an opportunity to go back and do it right.

Now, Mr. President, let me simply ask some questions that I think are relevant. Let me pick a private institution in my own State, the University of Dallas. The University of Dallas is a religiously affiliated institution, but it is not controlled by the Roman Catholic Church. It does not have a religious exemption under existing law. It does not take Federal funds as an institution, but it does have students who get guaranteed student loans. If the President's veto is overriden, because some chemistry professor may get a small grant to look at some particular property in chemistry or because a student at the University of Dallas may get a guaranteed student loan, the Federal Government's heavy hand of intervention will be able to reach into this private church-related institution.

The University of Dallas has a seminary which trains clergymen for the Roman Catholic Church. The seminary is run in conjunction with the University of Dallas and those who graduate get degrees from the University of Dallas. 8

Under this bill if a student at the University of Dallas gets a guaranteed student loan to study sociology, the Federal Government would have the ability to intervene, with clear jurisdiction under this new law, into the operation of a Roman Catholic seminary. Mr. President, by that intervention, are we promoting freedom? Is not religious freedom part of the constitutional guarantee? Who are we to intervene into the teachings of a seminary in the name of civil rights? Churches have doctrine. We have recognized from the beginning of the Republic that those doctrines were sacred and they were private.

It is clear to me that we are making a mistake by intervening in these areas. This could be easily corrected by simply having a provision that provided a general exemption on religious tenets, and by excepting churches and synagogues this could be corrected. But by not correcting it, when disputes arise within a seminary between the teachings of the church and what are perceived to be the laws and standards of the Nation, the Federal Government will become an arbiter in what can and cannot happen, and what standards will and will not be tolerated in a seminary in Dallas, TX. And I submit that is wrong.

I object to this bill basically for two reasons. One is philosophical. Government intervention into religious institutions is not the source of freedom. It is not the source of civil rights. These institutions were speaking out on civil rights when this great body was silent on those issues. Who are we to intervene into their private religious activities in the name of civil rights?

Second, I object on a practical basis. Who are we to intervene in the practices that are being used in employment, in a private institution, in a Catholic seminary? I submit, Mr. President—Mr. President, I yield myself 3 additional minutes.

The PRESIDING OFFICER (Mr. FOWLER). The Senator may proceed.

Mr. GRAMM. I submit, Mr. President, that makes no sense. Who are we to extend the hand of Government into a church which is carrying out a public activity in the name of child care or feeding the poor when that individual activity happens to get some funds from the Federal Government? Should we then be able to expand the power of Government to accommodate and to ultimately control the functioning of that church? Should we have the capacity, because one student gets a guaranteed student loan, to dictate practices in a seminary that happens to be located in an institution which is not directly controlled by the church? I submit that we do not, and we should not have that power.

Mr. KENNEDY. Would the Senator yield?

Mr. GRAMM. I would be happy to yield.

Mr. KENNEDY. Could he tell us why then the Catholic Church and the Catholic Conference is strongly supporting this legislation?

Mr. GRAMM. The only thing I can say——

Mr. KENNEDY. As well as major Protestant and Jewish groups?

Mr. GRAMM. If I might respond, the only thing I can say is that they obviously are not speaking for the institution that is going to be affected in this case. The point remains and it is irrefutable that if this veto is overridden, because this seminary in Dallas, TX—and it is not unique, I speak of it simply because it is in my State—is affiliated with an institution that is not directly controlled by the church, though that institution is church related, that this seminary will come under Federal jurisdiction under this law. I submit that is wrong, that is an absurd result, and that should not be tolerated.

Maybe the distinguished Senator from Massachusetts and I may disagee with the teachings of the church on some subject related to abortion or related to family values. But who are we to intervene into that seminary and into that private school? I do not feel myself qualified to do that, nor do I believe the distinguished Senator from Massachusetts is qualified, nor do I believe Federal judges are so qualified.

So this is a clear-cut case where we have an institution that has not qualified for religious exemption, which does have programs that are clearly church related and programs that are clearly going to come under this law.

Mr. KENNEDY. Under the existing law and regulations regarding the religious tenet exemption, a school or department of divinity normally entitled to a religious tenet exemption, if needed, and I do not think that at this point in the debate, the record ought to be distorted and misrepresented.

Mr. GRAMM. If I may simply finish my time, clearly the schools of divinity that are separately constituted are excluded, but departments of divinity which are affiliated with schools that are not directly controlled by the church that give degrees from the university and not from the church are going to be affected, and not just those programs but other programs at the University of Dallas and religious related institutions all over the country are going to come under Federal control. I think that is a mistake. It is one that is easily corrected without trampling on civil rights, religious freedom, and the rights of groups to associate on the basis of shared values. That represents a very basic civil right which cannot be trampled on in the name of expanding the rights of the individual.

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

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

The PRESIDING OFFICER. The Senator from Vermont [Mr. STAFFORD] is recognized for 2 minutes.

Mr. STAFFORD. Thank you, Mr. President. I would like to reaffirm my support and commitment to the Civil Rights Restoration Act of 1987 and ask my colleagues to join with me in overriding the President's veto. We need to send a clear and decisive message to the American people that discrimination, in any form, will not be tolerated.

I was an original sponsor of title IX of the Education Amendments, as well as section 504 of the 1973 Rehabilitation Act. The narrow ruling handed down in Grove City versus Bell has permitted discrimination to reenter our education system despite these two acts as well as the 1964 Civil Rights Act and the Age Discrimination Act of 1975. Clearly, the intent of these measures has been lost by the court ruled "program-specific" rather than "institutionwide" definition originally intended by legislators. When Congress enacted these four statutes, they were attempting to provide an effective and permanent remedy against discrimination. Overriding the veto will restate our commitment to the permanent eradication of discrimination.

It is unfortunate that in order to guarantee equality for all individuals, we have to mandate it in Federal law and hinge enforcement on the receipt of Federal funds. Women, minorities, elderly, and disabled people should not have their tax dollars fund institutions that discriminate against them as individuals.

A century has passed since a President of the United States has vetoed a civil rights measure forwarded by the Congress. I urge my colleagues to join me today in rejecting the administration's efforts to prevent enactment of the Civil Rights Restoration Act of 1987.

Mr. President, I have a letter from a former very distinguished Secretary of Education, Terrel Bell, and in the first two paragraphs he writes to me:

I am writing to urge you and your colleagues to vote to override the President's veto of the Civil Rights Restoration Act, which previously passed the House and Senate by strong bipartisan margins. The legislation necessarily restores coverage of civil rights laws to their original intent and purpose.

When I was Secretary of Education, * * *

Incidentally, he was a Republican Secretary—

* * * we read the law broadly to assure equal educational opportunity. While I had not considered direct aid to a student under the Pell grant program to be aid to an institution, we had for years considered an institution or school district obligated to comply with all the civil rights statutes if it received any federal assistance. We believed that if you take federal funds you must comply.

Mr. President, I ask unanimous consent the balance of that letter be made a part of the RECORD.

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

MARCH 21, 1988.

Hon. ROBERT STAFFORD,
U.S. Senate Office Building, Washington, DC.

DEAR SENATOR STAFFORD: I am writing to urge you and your colleagues to vote to override the President's veto of the Civil Rights Restoration Act, which previously passed the House and Senate by strong bipartisan margins. The legislation necessarily restores coverage of civil rights laws to their original intent and purpose.

When I was Secretary of Education, we read the law broadly to assure equal educational opportunity. While I had not considered direct aid to a student under the Pell Grant program to be aid to an institution, we had for years considered an institution or school district obligated to comply with all the civil rights statutes if it received any federal assistance. We believed that if you take federal funds you must comply.

With the exception of a few small private institutions, there was broad acceptance and support of the civil rights laws to protect minorities, women, and the handicapped from discrimination. At the time I could see no reason to come forth with a new interpretation of these laws. It would cause strife and bitterness among those currently enjoying the protection of the civil rights laws.

It was clear to me then, as it is now, that the Department of Justice is determined to weaken civil rights enforcement in the nation's colleges and schools. Their position was, in my view, harmful to American education and potentially damaging to the rights of minorites who fought against discrimination.

It was a great disappointment to me when the Supreme Court handed down the decision in Grove City College v. Bell, affirming the Justice Department's position.

The Civil Rights Restoration Act is as much a Republican bill as a Democratic bill. As you know, thirteen high ranking government officials from the Johnson, Nixon, Ford, and Carter administrations have all testified in support of the legislation to overturn the Grove City decision.

I am grateful for your leadership in this effort and I hope the Congress will, at long last, reaffirm its commitment to civil rights by overriding the President's veto.

Sincerely yours,

TERREL H. BELL.

Mr. CONRAD. Mr. President, I will vote to override President Reagan's veto of the Civil Rights Restoration Act. I supported passage of this measure in January because I believed in its basic purpose—to improve enforcement of our civil rights laws by making sure that Federal funds are not used to support discrimination. I continue to believe that legislation is needed to ensure this result.

The controversy surrounding the bill and the veto must not obscure what the legislation is all about. In the wake of the Supreme Court's decision in Grove City versus Bell in 1984, this country's ability to deter discriminatory practices by institutions which receive Federal funding has been significantly weakened. The Court's decision limited the application of antidiscrimination laws to the specific program or activity receiving Federal aid. Thus, female students could be kept out of a school's athletic programs if such programs received no Federal aid even though the school got Federal funding for other purposes. Disabled veterans who had defended their country could be denied jobs or admission to universities even though part of the institution received a government grant. The Court held that Congress would have to certify whether it intended that the entire organization be covered in these situations. That's just what the bill does—and that's all it does.

There is no truth to the charges that the Civil Rights Restoration Act would require schools, churches, or any employer to hire homosexuals, alcoholics, drug abusers, or victims of AIDS. Existing civil rights laws do not forbid discrimination based on sexual preference, and neither does the Civil Rights Restoration Act. Current law does not require an employer to hire people with contagious diseases that threaten the health of others—or people with medical problems or disabilities that prevent them from performing the job. And the Civil Rights Restoration Act clearly states that protections afforded to the handicapped do not apply to individuals with contagious diseases that endanger public health or to individuals unable to function on the job for any reason. The heated campaign to defeat this legislation has distorted its meaning and spread considerable misinformation about what the measure actually entails.

During Senate debate on the bill, I supported an amendment to eliminate any ambiguity on the subject of abor-

tion. The Danforth amendment, included in the legislation vetoed by the President, states clearly that hospitals, schools, and other institutions or organizations receiving Federal funds cannot be forced to provide or pay for abortion services. I regarded this clarification as vital—and believe it should have dispelled any doubts about the legislation's intent.

The vetoed bill also included an exception for religious institutions: in these cases, the prohibition on discrimination extends only to the specific activity receiving Federal funds. Thus a church receiving funding for a social service project would not be precluded from generally hiring from within its membership. I was impressed to see that the United States Catholic Conference, Lutheran, Baptist, and other major religious organizations advocate passage of this bill.

Nothing, of course, requires an organization to accept Federal funds. But those who benefit from Federal assistance should be willing to uphold our civil rights laws—and I believe most are. Federal revenues should not be used to support discrimination against women, minorities, the elderly and the disabled, and I believe government should have the power to assure that these groups can freely participate in programs and activities which receive Federal support. That's why I supported the Civil Rights Restoration Act 2 months ago—and why I still do.

Mr. ARMSTRONG. Mr. President, as recently as this morning the Washington Post assured us again that S. 557, the Grove City bill, will not adversely affect churches. The Post editorialized, "As for churches that receive Federal money to run social service projects—day care, nursing homes, and so forth—discrimination would not be allowed in that specific project." The Post was implying that only the specific project and not the entire church would be covered by Federal law. The Post is wrong.

Here is what S. 557 says:

"[T]he term 'program or activity' means *all of the operations of* * * *

"(3)(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 * * *

"any part of which is extended Federal financial assistance." (Emphasis added.)

Therefore, if a church takes Federal financial assistance for a day care program, for example, "all of the operations of" the entire "geographically separate facility" become a "program or activity." That means the entire church is covered. And probably more.

On page 18 the report says,

"In specifying limited coverage of an entire plant as the ['Jgeographically separate facility,' the bill refers to facilities located in different localities or regions. Two facilities that are part of a complex or that are proximate to each other in the same city would *not* be considered geographically separate." (Emphasis added.)

Therefore, if one church program takes Federal funds the entire church is covered *as are all of its facilities* that "are part of a complex or that are proximate to each other in the same city." Where a church takes targeted Federal financial aid, the report (at page 18) says, *"only the full operations* of the geographically separate facility will be covered by the civil rights laws." (Emphasis added.) (Is "only" not a wonderfully simple and comforting word? Why, this bill will "only" extend Federal regulation to the "full operations" of a church.)

Church school systems are simply covered in their entirety if any one school program in any one school receives Federal financial assistance. The report says on page 17,

"If federal financial assistance is extended to *one* of three secondary schools which comprise a system operated by a Catholic Diocese, *all* of the *operations of all three of the schools in the system are covered."* (Emphasis added.)

That statement from the report simply restates what is clear in the bill. Once again, here is what S. 557 says:

"[T]he term 'program or activity' means *all of the operations of* * * * (2)(B) [any] other school system * * * *any part of which* is extended Federal financial assistance." (Emphasis added.)

The bill's intrusion into religious matters could have been cured, but the committee defeated—by a vote of 5 to 11—a Thurmond amendment that would have retained "program specific" treatment of religious organizations. A Hatch amendment to the same effect was defeated on the Senate floor by a vote of 36 to 56. 134 CONGRESSIONAL RECORD. S. 147-155 (daily ed. Jan. 27, 1988) (amendment no. 1384). In light of those votes it is hard to see how the Post, and many others, can talk about the narrowness of this bill.

The committee's explanation of the Thurmond amendment is especially instructive. Here it is in full from page 27 of the report:

By a vote of 5-11, the committee defeated an amendment proposed by Senator Thurmond that would limit coverage of programs or activities operated by religious organizations to the particular subunit of the organization which receives federal funds. In other words, this amendment would not overturn the Grove City College decision as it applies to programs or activities which receive federal financial assistance, as long as the programs or activities are run by a religious organization. The dual system of civil rights protections for programs carried out by religious and secular organizations contained in this amendment is unprecedented in the history of our civil rights laws. For example, religious employers are subject to Title VII in the same manner as non-religious employers. With the narrow exception of the religious tenet exemption in Title IX, religious recipients of federal financial assistance have been and are subject to the prohibitions on discrimination of the four civil rights laws in the same manner as non-religious recipients of federal aid. There has been no trampling of religious liberty under these laws in the more than twenty years they have been in effect. S. 557 simply will restore the coverage of these laws to their pre-Grove City College scope.

The committee rejected the Thurmond amendment for two reasons: First, the amendment would have limited coverage of religious institutions to the unit of the organization that actually received Federal assistance. The majority was opposed to limited coverage. They wanted the entire church covered, and they got what they wanted.

Second, the committee was afraid of establishing an "unprecedented" "dual system of civil rights protections." This interesting argument has the unfortunate defect of being wrong. Title VII, which the committee goes out of its way to cite (it is out of the way because S. 557 does not amend title VII but title VI), does indeed contain exceptions for religious employers:

Section 702 has an exemption for a church "with respect to the employment of individuals of a particular religion to perform work connected with the carrying on" of the church's activities. 42 U.S.C. 2000e-1 (1982). Just last summer the Supreme Court upheld this section against a constitutional challenge. In *Corp. of the Presiding Bishop, Church of Jesus Christ of Latter-day Saints* v. *Amos,* 55 U.S.L.W. 5005 (decided June 24, 1987, without dissent), the court held that section 702 is not an unconstitutional establishment of religion. Amos was especially significant because it concerned a church's secular activities. The court said Congress based section 702 on the permissible legislative goal of reducing governmental interference with the ability of a church to define and carry out its religious mission. Section 703 of title VII also has an exemption for religious schools if the school is "owned, supported, controlled, or managed" by a particular religion or if the curriculum is "directed toward the propagation of a particular religion." 42 U.S.C. 2000e-2(e)(2) (1982).

Therefore, the report's statement about the title VII precedent is wrong, and its claim about "dual systems" is misleading. Perhaps if these facts had been known prior to the votes on the Thurmond and Hatch amendments one of the amendments would have been adopted.

S. 557 will cover an entire church even if just one part of the church receives Federal financial assistance. S. 557 will cover an entire religious education system even if only one part of one school receives Federal financial assistance. The committee intended these results. Unfortunately, however,

the committee's actions—and the Senate's—may have been based on an inaccurate understanding of the 1964 Civil Rights Act. Tomorrow, when we vote again on S. 557, I ask that you reconsider your earlier vote in light of the bill's impact on religious liberty.

Ms. MIKULSKI. Mr. President, I rise in support of the Civil Rights Restoration Act. This is now the fourth year that Congress has debated how to overcome the implications of the Grove City decision. We must not let another session of Congress end without passing this important legislation.

It's been almost 25 years since the Federal Government committed itself to ending invidious discrimination in this country. We, as a nation, said we wouldn't stand for bigotry in our schools, our public accommodations, our housing, or in our voting booths. And we particularly said we wouldn't stand for using taxpayer's money to subsidize that bigotry.

When Congress passed the Civil Rights Act of 1964, Americans took the first major step to stop publicly supported discrimination. Under title VI of the act, we prohibited any program or activity that received taxpayers' money from discriminating about race, color, or national origin.

Title VI became a major weapon for attacking the separate and unequal society that denied basic civil rights and opportunities to millions of Americans. As time passed, we realized that invidious discrimination takes many forms—so we moved to protect the rights of women, disabled people, and the elderly.

Title IX of the Education Amendments of 1972 prohibits sex discrimination in education programs that receive Federal assistance. Its mandate is clear, simple, and effective: Schools that benefit from tax dollars can't discriminate because of gender.

The Supreme Court's 1984 decision in the Grove City case destroyed that simplicity, and severely limited the effect of title IX and its companion laws. It's time to restore the protections for women and men, blacks and whites, old people and young people, handicapped and nonhandicapped, that the Grove City decision curtailed. That's what S. 557 will do, and that's all it will do.

The educational opportunities lost because of this unfortunate decision are gone forever. The young woman denied an athletic scholarship won't apply to college again. Craig Neff, in Sports Illustrated—a magazine, I should mention, not known for its radical political posture—points out that between 1972, when Congress passed title IX, and 1983, the number of women participating in college sports "mushroomed" from 32,000 to 150,000. Title IX made that possible, and Grove City gutted title IX.

To quote Craig Neff:

> The impact [of Grove City] was immediate. The Department of Education's Office of Civil Rights (OCR) had been conducting title IX compliance reviews and investigations of college athletic departments, but it now found itself without a legal basis for doing so. Within a year of Grove City, the OCR had suspended 64 investigations, more than half involving college athletics.

Mr. President, the students whose cases were closed because of Grove City have finished their colleage careers. But we have an opportunity to re-open the doors for hundreds of thousands of present and future students.

Education is a big issue this election year, and it should be. Education is the door to opportunity—the opportunity to choose one's own destiny. We simply cannot continue to deny even one more student a guarantee of equality, or to subsidize discrimination with our hard-earned taxes.

The impact of Grove City has been real and devastating. Since 1984, hundreds of discrimination investigations have been dropped or curtailed—at least 674 in the Department of Education alone. The cases that will never be heard, much less remedied, cover everything from the loss of a teaching job by an elderly woman to a denial of admission to medical school for a wheelchair-bound student.

Mr. President, discrimination has no place in our society. And that principle cuts both ways. We don't let the government discriminate against people because of their religious views. That's why I've been particularly troubled by the scare tactics used by some opponents of this bill. They have raised the specter of religious liberty when this bill has absolutely no effect on that liberty.

We've had 4 years of exhaustive analysis of this bill, and have consulted with every major religious organization in the country. How can some people assert that S. 557 infringes on religious beliefs when almost every single major religious group in America has studied the bill and endorsed it?

Look at the list: the U.S. Catholic Conference of Bishops, the National Council of Churches, the American Jewish Congress, the American Baptist Churches, the Evangelical Lutheran Church of America, the Union of American Hebrew Congregations, the Church of the Brethren, the United Methodist Church, the Episcopal Church, the Anti-Defamation League of B'nai B'rith, the Presbyterian Church USA, the American Jewish Committee, the Church Women United Network-National Catholic Justice Lobby.

Mr. President, these religious groups are filled with enlightened, intelligent, articulate people with a comprehensive knowledge of Federal law and how it relates to our religious beliefs. It just defies logic to argue that they would support a bill that infringes in any way on those beliefs.

We shouldn't let the scare tactics of a few outweigh reason. We should override the President's veto and restore the strength of this country's commitment to equality for all.

Mr. ADAMS. Mr. President, I rise today to express my deep concern about the President's veto of the Civil Rights Restoration Act and the impact that this action could have on the rights of women, minorities, disabled persons, and the elderly.

In 1964, Congress passed the Civil Rights Act—the most sweeping piece of legislation in this Nation's history. The passage of this act signaled to all that the time had come for this Nation to put a halt to discriminatioin in all forms—acknowledging the basic dignity of the human spirit. It was a signal that the equality of all people, of which our Founders spoke, would move a step closer to becoming a reality for all Americans. Finally, passage of this act was a signal that the Federal Government would assume its rightful role in the fight for equality by ensuring the programs which receive Federal funds did not discriminate against people based upon race, religion, color, or national origin.

The fight for equality did not end in 1964—it had just begun. It soon became apparent to those of us in Congress that discrimination in this Nation was not limited to people of color but extended to other segments of our society—to women, to the handicapped, and to the elderly.

Recognizing the repugnancy of discrimination, Congress took action. Title IX of the 1972 Education Amendments was enacted to protect the rights of women in educational programs and activities receiving Federal assistance. Section 504 of the 1973 Rehabilitation Act was enacted to prohibit recipients of Federal funds from discriminating against disabled persons. And in 1975, Congress passed the Age Discrimination Act prohibiting discrimination on the basis of age in the delivery of services and benefits supported by Federal funds.

The Civil Rights Restoration Act is an attempt to reassert the intent of Congress in enacting these laws by overturning the decision of the U.S. Supreme Court in the case of Grove City versus Bell. That decision was based not upon an interpretation of the Constitution, but rather, upon a clear misunderstanding of the intent of Congress in enacting title IX of the 1972 Education Amendments. The decision stands for the proposition that Federal funds may be used to subsidize an institution which fosters and promotes discrimination. As one who served in the House of Representatives when this measure was enacted, I can say without hesitation that the

intent of Congress was to flatly prohibit the granting of Federal funds to institutions which practice discrimination in any form.

The President's decision to veto the Civil Rights Restoration Act is based on the notion that it will interfere with the free exercise of religion. Such is not the case. Churches and synagogues are free to operate without Federal interference as long as they do not accept Federal funds. This is the situation which existed prior to the 1984. During the 20 years between passage of the Civil Rights Act of 1964 and the Supreme Court's decision in Grove City versus Bell, religious freedom in this country flourished. The fact of the matter is that the Civil Rights Restoration Act will not hamper the free exercise of religion in this country, but will hamper the efforts of those who seek to engage in discriminatory practices which are repugnant to our basic beliefs of equality and human dignity. I find it curious that the opponents of this act claim it will inhibit the free exercise of religion yet it has the support of virtually every major Prostestant, Catholic, and Jewish religious organization in this Nation. Someone is wrong in this great religious debate, but I do not think it is the Council of Churches, the American Jewish Congress, the National Council of the Churches of Christ, the Church of the Brethren, the American Baptist Churches, the United Methodist Church, the Presbyterian Church (U.S.A.), the U.S. Catholic Conference of Bishops and the Union of American Hebrew Congregations, all of whom have endorsed the Civil Rights Restoration Act and urged Congress to override the President's veto of this bill.

I believe it is incumbent upon the Congress to override the President's veto of this act. In so doing, Congress will be sending an important message to all that we will not stand by and idly watch while the rights of women, minorities, the disabled and the elderly are eroded. Those of us who fought for civil rights in the 1960's know that retreat is synonymous with defeat. We did not accept defeat in the 1960's and we will not accept retreat in the 1980's.

Mr. BRADLEY. Mr. President, immediate enactment of the Civil Rights Restoration Act is essential to ensure full compliance with our Nation's civil rights laws. Today the President appeals to Congress to sustain his veto. While his appeal is in keeping with his administration's pitiful record of enforcing the civil rights laws of our Nation, to sustain his veto would be unconscionable.

This President and this Justice Department's lax enforcement of our civil rights laws threaten to erode the hard won guarantees of civil rights for all Americans, regardless of race, color, national origin, sex, handicap, or age.

The purpose of the Civil Rights Restoration Act is to clarify the intent of these original civil rights laws, an intent interrupted by the Supreme Court's unfortunate misinterpretation of congressional intent in their Grove City College ruling.

I call for an immediate, bipartisan override of this callous veto. The conscience of our Nation demands nothing less.

Mr. KERRY. Mr. President, I regret very much that the President has chosen to veto the Civil Rights Restoration Act. The act is an important statement of a national reaffirmation to the cause of civil rights. I will vote to override the President's veto and enact this legislation into law, and I hope that my colleagues will do the same.

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 these 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.

While we have made considerable progress in America in achieving civil rights for all of our citizens, a recent update of the Kerner Commission Report of 1968 indicates that there is still much more that needs to be done.

The new report concludes that "America is again becoming two separate societies." While race relations have improved in some areas, the situation of black Americans in our inner cities is even worse than it was 20 years ago.

The report states that "quiet riots" are taking place in our cities, consisting of unemployment, crime, drugs, poverty, poor housing, and school segregation. As the report states, these "quiet riots" are "more destructive of human life than the violent riots of 20 years ago."

I commend former Senator, Fred Harris, and the other panelists for issuing their timely and important reminder. There is still much more that needs to be done to fulfill the dream of Martin Luther King. And the Congress must lead the way in that effort.

I was very pleased when the Senate took an important step forward in the civil rights struggle, by passing the Civil Rights Restoration Act in January. This legislation, of which I was an original cosponsor, would reverse the Supreme Court's ruling in the Grove City case of 1984, and restore the full protections of our civil rights laws to minorities, women, the handicapped, and the elderly.

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.

I was particularly pleased that the Senate passed legislation to reverse this bad decision, by an overwhelming bipartisan margin of 75-14. That is why it is with such regret that we now find ourselves forced to revisit this issue and refight this battle once again. But the President's insistence on vetoing this bill makes it necessary to do so.

The time has come to restore the full protection of our civil rights laws to all Americans. The Senate should pass this legislation now, to make a clear statement to the American people that we still believe in the ideals of the civil rights movement.

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.

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.

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, 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 sad 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. Too many people have struggled too long, and sacrificed too much, for us to turn our back on civil rights now.

Twenty years ago, in April of 1968, Dr. Martin Luther King gave his life in the struggle for civil rights in this country. Dr. King once wrote, 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 by keeping the teeth in our civil rights enforcements laws.

Mr. BOND. Mr. President, today I am voting to support the President's veto of S. 557, the Civil Rights Restoration Act of 1987.

I supported this bill when it came before the Senate in January. I voted in favor of it despite a number of concerns I had regarding specific provisions contained in the bill because I believed it was important to address the serious problems brought about by the Grove City case.

In Grove City versus Bell, the U.S. Supreme Court ruled that title IX of the 1972 Education Amendments applied only to the specific program or activity that received Federal assistance. I do not believe Congress intended such a narrow interpretation, and I continue to support efforts to make it clear that title IX applies institutionwide.

My concerns regarding S. 557 involved three separate issues. First, I shared the concerns of many of my colleagues that the bill could result in hospitals being forced to perform abortions against their will. For this reason I supported Senator DANFORTH in his successful move to amend the bill to state, "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 made it clear that hospitals could not be forced—under the civil rights laws—to provide abortions if they did not otherwise want to do so.

Second, I was concerned about the bill's overbroad coverage of religious institutions under the civil rights laws. As passed by the Senate, S. 557 stated that if any part of a church or synagogue accepted Federal funding, then not only the funded program, but the the entire church or synagogue, would be subject to coverage under the Federal civil rights laws. Thus, if for example a church ran a Meals-on-Wheels Program out of its basement, its other activities could be subject to Federal regulation as well.

Because of these concerns, I supported an amendment offered by Senator HATCH which would have made it clear that only the part of a religious institution which accepted Federal funds would be subject to Federal regulation. Unfortunately that amendment was rejected by the Senate.

Finally, I was concerned that the bill could have a negative impact on the Nation's small businesses and farms by expanding the amount of Government bureaucracy they would be forced to deal with or by discouraging businesses from participating in federally subsidized programs—job training programs, for example.

I supported the bill in the hope that these problems would be addressed in a House-Senate conference committee. I believed it was more important to get the bill out of the Senate and on its way to the President. Unfortunately, House Members were not given the opportunity to amend the Senate-passed bill. Thus, the bill was sent to the President with flaws approved in the Senate.

The President's proposal, the Civil Rights Protection Act, addresses the problems created by the Grove City case while, at the same time, addressing the three issues that I have already mentioned.

The President's bill retains the language added by Senator DANFORTH to ensure that the bill is abortion neutral.

The President's proposal deals with religious institutions in an unobtrusive manner. It would extend Federal regulation to any church-run program that accepts Federal funds. Unlike, S. 557, it would not subject an entire church or synagogue to Federal regulation when only one specific program is subsidized. This is, I believe, a much more responsible approach.

Also, the bill contains provisions to make it clear that small businesses and farms are not subject to unecessary regulation and Government interference. The bill does this by making it clear that certain small businesses—such as grocery stores which accept food stamps—will not be subject to new Federal regulation.

Protecting the civil rights of our people is one of the most central responsibilities of the Federal Government. In the past 20 years, we have made tremendous strides in ensuring that our society provides equal opportunity and equal protection for everyone. This is central to an open society that encourages each and every citizen to reach for his or her own highest dreams.

Throughout my two decades in public service, I have recognized the importance of strong civil rights protections and I have worked to provide equal opportunity for all in this society. The Civil Rights Protection Act which President Reagan has proposed will allow us to do just that. I am confident that, if the President's veto is sustained today, the Senate leadership will schedule an early vote on the measure so we can pass this bill, send it to the President for his signature and enact it into law.

Mr. CHAFEE. Mr. President, today I will vote to override the Presidential veto of the Civil Rights Restoration Act of 1987. I do not casually make this vote. As an original cosponsor of this legislation, I feel strongly that this is a desperately needed and appropriately constructed measure.

The Civil Rights Restoration Act is needed in order to clarify the broad scope of coverage of our Nation's civil rights laws. When we as a nation give money to a program, we ask that it be conducted fairly, intelligently, and honorably. Federal funds should not subsidize discrimination—it is that simple. In the last 20 years we have made significant strides toward eliminating discrimination in a variety of important areas. Now is not the time to turn back.

For 4 years now, since the Supreme Court's decision in Grove City versus Bell, we have been trying to restore credibility to this Nation's civil rights laws. In 1984 the Supreme Court adopted a narrow interpretation of title IX of the Education Amendments of 1972. The Court's decision limited the Government's ability to enforce civil rights laws in federally supported institutions, by applying sanctions only to the specific program affected—college athletics, for instance—rather than to the entire institution. Unfortunately, this narrow interpretation applied not only to title IX of the Educational Amendments of 1972, but also to three other important civil rights laws: Title IV of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. This country's greatest achievement, freedom and dignity for all, was—and still is—in critical danger.

And so, 4 years ago, we set out to clarify the scope of these laws. Our sole purpose was to provide institutionwide protection against discrimination based not only upon sex, but upon race, national origin, disability, and age. But the road to the introduction of this corrective measure has been long and troubled.

There were numerous concerns that previously introduced versions might broaden the coverage of these laws beyond their effect prior to the Grove City decision. These concerns have now been addressed, and the relevant provisions tightened. There were concerns that the measure would have an adverse effect on persons whom we never intended to reach. There is now a specific exemption for small providers in the language of this bill. There was a concern that food stamp recipients, students receiving school loans, and farms operating with Federal subsidies would be subject to the law, as ultimate beneficiaries of Federal funds. They, too, have now been specifically exempted in the statute.

This legislation does exactly what it was intended to do—restore civil rights protection to the level that existed before the Grove City decision.

Because I feel strongly that we have finally achieved the measure that will accomplish our worthy goals, I deeply regret the President's decision to veto. We have come down a long road to the final reparation of the state of civil rights in this country. To let this chance pass would be injurious.

Mr. METZENBAUM. Mr. President, in the last few days, last ditch efforts have been made to distort the content of this bill and scare Members of Congress into voting to sustain the President's veto.

I am confident that this propaganda will not stop us from restoring the civil rights of millions of Americans.

This vote to restore the civil rights of women, minorities, older Americans, handicapped Americans is a vote which will unify this country, not divide it. This vote to restore civil rights is a vote which will strengthen our country, not weaken it.

The most recent charge is that this bill will destroy religion in this country. But many religious organizations disagree and support this bill. They include the U.S. Catholic Conference, the National Council of Churches, the American Jewish Congress, the African Methodist Episcopal Church, the Reorganized Church of the Latter Day Saints, the American Jewish Committee, the Lutheran Church, the Presbyterian Church, the Episcopal Church, the Churches of Christ, the Baptist Joint Committee, The Friends Committee on National Legislation, Church Women United, and many others.

The U.S. Catholic Conference said,

> We believe that [the Civil Rights Restoration Act] does much to strengthen Federal civil rights protections while safeguarding vital concerns about * * * religious liberty.

The American Baptist Churches said that,

> * * * this legislation would do much to restore liberties of people threatened by * * * intolerance * * *

The Evangelical Lutheran Church said,

> Religious liberty is not at risk by this legislation * * * . This legislation is critically needed * * *

The United Methodist Church said,

> [We] have worked for four years to see this critical civil rights legislation passed.

These religious organizations support the basic principles we want to restore to law: That Federal financial assistance should not go to institutions that discriminate and that all Americans should receive the benefits of federally funded programs.

There is no coercion here. When an organization—any organization—cannot abide by these principles, it should refuse Federal financial assistance.

I'm proud to vote to override the President's veto and proud that Senators on both sides of the aisle will join me in doing so.

This override vote will clearly demonstrate to the American people that there is bipartisan support for the restoration of civil rights.

This override vote will help to make the ideal of equality a reality in our Nation.

Thank you, Mr. President.

Mr. DIXON. Mr. President, I rise today to urge my colleagues to vote to override the President's March 16, 1988, veto of the Civil Rights Restoration Act, S. 557, and to reject the alternative legislation that the President proposed.

After thorough debate, this body overwhelmingly approved S. 557 on January 28, 1988, by a vote of 75 to 14. During the debate, the Senate rejected several amendments, including provisions that are essentially identical to those that are contained in the alternative bill that the President has proposed.

Except for the "abortion neutral" provision, which I supported, S. 557 restores only those civil rights that existed prior to the Supreme Court's 1984 Grove City College versus Bell Decision.

Specifically, S. 557 prohibits entities that accept Federal financial assistance from discriminating on the basis of race, color, sex, national origin, handicap, and age. The Court decision limited the discriminating coverage to the specific educational programs or activities which received Federal funds.

I deplore discrimination, and strongly feel that the Federal Government should not be about the business of subsidizing it. I feel certain that a majority of the people of the State of Illinois support me in this position.

During the past few days, I have heard from many of my Illinois constituents who expressed some specific concerns about provisions of S. 557. I want to assure them and any other persons who may have similar fears of the following:

First, title IX of the Education Amendments of 1972 already protects the religious freedom of a college or university when its students receive Federal financial assistance and the school is closely affiliated with the religious tenets of a church; and

Second, S. 557 assures employers that they are not required to hire persons with a contagious disease or infection when the person poses a direct threat to the health and safety of others, or when the person with the disease or infection cannot perform the essential duties of the job.

Mr. President, I urge my colleagues to override the veto of S. 557. This action would send a clear message to everyone that discrimination will not be tolerated in this country in any institution that receives Federal financial assistance.

Mr. FORD. Mr. President, I regret that President Reagan decided to veto the Civil Rights Restoration Act, S. 557. I believe he got some bad advice from staff who simply have not read this legislation or deliberately misrepresented the facts. The bottom line is, public tax dollars should not be used to support discrimination against our elderly, the handicapped, minorities, or women. Without the Civil Rights Restoration Act, this will occur. I will vote to override the President's veto of this legislation.

I have read the President's veto message. I have listened carefully to those of my constituents who have contacted my office about the veto override. And I have concluded that there has been incredible misinformation spread about this legislation. I want to set the record straight as to what this bill will and will not do.

First, farmers in Kentucky who receive crop subsidies and loan guarantees are not currently subject to action under the civil rights laws and that will not change under this legislation. Similarly, individuals who receive food stamps, Social Security benefits, and welfare payments will not be forced to comply with the four major civil rights laws.

Second, this legislation in no way provides any antidiscrimination protection for homosexuals. Discrimination based on sexual preference has never been prohibited by any of the civil rights laws. S. 557 does not change current law in this regard. Any organization, church, business, or individual may continue to discriminate

against homosexuals. While there has been legislation introduced which would amend the civil rights law to specifically prohibit discrimination against homosexuals, legislation which I do not support, The Civil Rights Restoration Act absolutely does not expand coverage of the civil rights laws to homosexuals.

Third, this bill does not provide protection for individuals with AIDS. Under current law, employers can fire or refuse to hire individuals with contagious diseases who pose a direct threat to the health and safety of others. This has been the case since enactment of section 504 of the Rehabilitation Act in 1973. This policy was recently affirmed by the Supreme Court and this legislation in no way expands protection for individuals with AIDS. Similarly, this bill does not expand protection for drug addicts.

Fourth, churches and synagogues which receive Federal financial assistance for such programs as Meals-on-Wheels, refugee assistance, low-income housing, and schools will not be required to conform their religious teachings and doctrines to comply with the civil rights laws. Churches and synagogues are today subject to these civil rights laws if they receive Federal money, and the Civil Rights Restoration Act does not change that. This bill only returns the scope of coverage of the four civil rights laws to where it was prior to the 1984 Supreme Court decision in Grove City. But quite frankly, while I have a hard time understanding why a church or synagogue would tolerate discrimination against our elderly, minorities, and handicapped, these institutions are free to discriminate on any basis if they simply do not accept Federal funds.

Finally, there is nothing in this legislation which can be characterized as antifamily. If there were, I and my colleagues would not support it. The fact is that this legislation in no way impacts the individual family. Individuals who receive Federal support payments are not receiving Federal financial assistance for the purposes of the civil rights laws. There is no Government intrusion into the sanctity of the family.

Furthermore, this legislation contains very important antiabortion language, which I voted for. This language not only ensures that S. 557 does not require that religious hospitals perform abortions, but eliminates from the books current proabortion regulations. As a strong supporter of the right-to-life movement, I welcome this language.

If churches, synagogues, businesses, schools, and other organizations want to discriminate against the elderly, the handicapped, minorities, and women, they are free to do so. But the taxpayers of America will not subsidize that discrimination with Federal funds.

Misinformation campaigns are commonplace in Communist countries. They have no place in America. Nothing in this legislation prohibits any organization or individual from discriminating against another. It simply prohibits them from doing so with Federal money.

I am pleased to join with the numerous religious and church organizations supporting this legislation, as well as other mainstream American groups. I ask unanimous consent that a partial listing of the responsible groups supporting this legislation be printed at this point in the RECORD.

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

U.S. Catholic Conference of Bishops.
American Baptist Churches.
National Council of Churches.
Presbyterian Church USA.
Evangelical Luthern Church of Am.
The Catholic Health Association.
Paralyzed Veterans of America.
American Council of the Blind.
American Foundation for the Blind.
National Council of Senior Citizens.
League of Women Voters.
Business & Professional Women's Clubs.
American Jewish Committee.
Episcopal Church.
American Jewish Congress.
United Methodist Church.
Church Women United.
Church of the Brethren.
AARP.
Cystic Fibrosis Foundation.
Disabled American Veterans.
Easter Seals Society.
National Urban League.
AFL-CIO.
American Bar Association.
PTA.

Mr. McCONNELL. Mr. President, I don't think there is anyone in this body who would vote against a bill which honestly and fairly enhanced the civil rights of American citizens. It would be a violation of the oath that each of us makes to uphold the Constitution to oppose any measure that truly protects the rights of freedom and equality envisioned by our Founding Fathers and expanded by Congress.

Some people say that the easiest way to get support for anything in Washington is to call it reform. We found that to be true with the campaign finance issue, where a disastrous, antidemocratic, unconstitutional bill garnered 53 cosponsors because someone had slapped the reform label on it—guaranteed to be reform or your vote back. Yet, when we were discussing this bill on the floor, it became painfully obvious that many of the bill's cosponsors had no idea what it actually contained, or what it actually would do. It was an embarrassment, to say the least.

I certainly hope that the stirring banner of civil rights, with all its rich history and idealism, is not being used in such a superficial, cynical manner. Yet, we have before us today a bill called the Civil Rights Restoration Act, and when you look at this bill, and consider its vague, intrusive horizons, you begin to see how ironic and incorrect that title is.

Now, if our purpose is to restore the civil rights curtailed in the Supreme Court decision in Grove City College versus Bell, we can do that today. I have supported such legislation in the past, and would do so again without hesitation. This legislation would give back civil rights that the Supreme Court took away.

S. 577, the so-called Civil Rights Restoration Act, would take away people's civil rights to be left alone by the Government, to worship as they see fit, and to pursue their livelihood without having to file forms in triplicate with a giant, impersonal bureaucracy every step of the way. Overall, this bill promises less freedom and more government in every corner of America. If unchanged, S. 557 would:

Allow the watchful eye of the Federal Government into every store, church, school, farm, and hospital in the country.

Diminish the protected religious freedoms which are and always have been the cornerstone of this great Nation.

Paralyze every activity with endless reporting requirements and request forms, to be fed into a vast, slumbering bureaucracy.

Let Washington bureaucrats take over decisions once made freely by individuals, small businessmen, farmers, and the like.

During the Senate's consideration of S. 557 last month, Senator HATCH offered an amendment which I strongly supported, protecting churches, synagogues, and religious schools from the amorphous, broad reach of this bill. Without such amendment, S. 557 could potentially narrow the "religious tenet exemption" contained in Federal antidiscrimination laws.

This was a freedom of religion issue, a test of how much Congress values the right to worship as one sees fit. This amendment made each Member of this body face up to the decision of how much the Federal Government sitting in Washington, DC, should impose its values and notions on religious, devout people throughout this country. Congress rendered its shameful decision on this issue, defeating the Hatch amendment by 39 to 56. It wasn't even close, Mr. President. It wasn't even close. Thus, I am compelled to fight S. 557 as long as it threatens the right to worship.

But this bill does not stop at the churches and synagogues. It forces the Federal Government into every small business, school, farm, and charity

program in America. Well, George Orwell was a little bit off the mark: It took this Congress 4 extra years to erect big brother and put him in every nook and cranny of our citizens' private lives. When you look at the vagueness and breadth of this bill, it is not hard to hear the death knell of States' rights and individual freedom in this country.

We can expect that those on the other side will take to the floor and bash the President over this veto. But the bottom line—and I think the people who live outside this "square mile surrounded by reality" understand this perfectly well—is that it is the President who is trying to protect the rights of Americans—all Americans. It is the President who is resisting an unprecedented expansion of Federal power into the lives of private citizens and the affairs of small businesses, churches, and local governments.

I am proud to stand with the President on this issue, and will stand with him again when his veto is challenged by this body. I voted against S. 557 when it was originally before the Senate in January. It was a threat to freedom and religion then, and the passage of time has not improved it. In fact, the real problems with this bill have only started to become clear, after Congress hastily considered it and passed it, as if Congress was afraid to look over its shoulder.

Well, I urge those of my colleagues who voted for this bill to look over their shoulders, reexamine this bill, and consider that there is a way to fully restore the civil rights lost by an unfortunate Supreme Court decision—a way I totally support—without threatening individual freedom and the right to worship, without moving this country toward a creeping totalitarianism.

I urge those who voted for this bill to check whether they are in fact representing their constituents on this crucial issue. How many people have written them and called them, expressing their legitimate fear about this amorphous bill? What will these Members tell them, after S. 557 has closed down church soup kitchens, choked farmers in red tape, and made small businesses throw in the towel with all the reporting and liability excesses this bill will foster?

I urge my colleagues to listen to their telephones ringing off the hook, to see their mailrooms piling up with telegrams and letters, to listen to the voice of the people back home, who are speaking out of fear of the tremendous, unlimited, power which the Federal Government is claiming for itself today in this bill.

In my home State of Kentucky, where farmers and small businesses are the lifeblood of the economy, this bill would be a disaster. This bill declares that a farmer who receives a crop subsidy, no matter how small, or hires a student part time under a Federal work-study program, will have all of his farm operations subject to a wide range of laws and regulations, including handicapped access and housing standards.

The reporting and inspection requirements alone will crush many small farm operators. Make no mistake—this is not an issue of discrimination; it is an issue of regulation. The farmer who decides to let an unproductive worker go will have to think every time: Could I be sued? Is there any possible way to say that I discriminated? Maybe the worker has an alcohol or drug problem; but if there is any way to claim discrimination—no matter how absurd under the circumstances—that farmer is going to face the possibility of a lawsuit with every personnel decision he makes.

A church operating a day care center that receives any Federal assistance will discover that the entire church suddenly is subject to Federal law and regulation. One result of this is that church day care facilities will have to hire carriers of infectious diseases, and possibly drug addicts and alcoholics—whatever and whomever the Federal courts tell them to hire.

A grocery store, no matter how small, which accepts food stamps—as a service to the poor and homeless—will suddenly be required to file endless forms with the Federal Government and comply with endless regulations created by the bureaucracy. A small business that hires one part-time student on a work-study-program will be drowned in Federal regulations and controls. If it is part of a chain, then all the stores will be affected.

Now, some supporters of this bill say: If the person does not want all these regulations and interference, they should not take the Federal money. On the surface, that sounds perfect. But we ought to ask ourselves why we created those Federal programs in the first place. It is true: If S. 557 is enacted, most people will decide that the assistance just isn't worth the trouble.

But who will suffer? It will be those people whom these Federal programs were designed to help: The economically needy student who won't get hired, the homeless who can't use their food stamps, the parents who can't find affordable, trustworthy day care from their church or synagogue, the poor who see the soup kitchens closed down—these are the people who will pay the price for Congress' failure to read and consider the bills it passes.

With these few examples, it should be clear why this Senator, who represents a small, rural State with a lot of struggling people, is obliged to oppose this bill. S. 557 will build yet another wall keeping my State from economic growth and progress. I don't want that for my State, and I intend to fight it.

Now, if this body sustains the President's veto, then what will become of civil rights legislation in Congress? Is that the end of civil rights restoration? Certainly not. President Reagan accompanied his veto message with a real Civil Rights Restoration Act, one that addresses every civil rights issue identified by those supporting S. 557—without infringing on the personal and religious freedoms of decent, hard-working Americans.

Specifically, the President's bill would provide that:

If only one part of a church or synagogue receives Federal assistance, then only that part can be regulated by the Government, and must comply with all Federal civil rights laws.

The Federal Government shall respect the religious tenets of organizations which are closely identified with, but not controlled directly by, religious groups.

Farmers would be explicitly exempted from the bill's reach.

Coverage of civil rights laws would be extended throughout an entire business facility if any part of the facility receives Federal assistance—but coverage would extend no further, to other facilities owned by the business.

The mere acceptance of food stamps from poor and homeless persons does not increase coverage for grocery stores.

When private secular or religious schools receive Federal assistance in any form, coverage will extend throughout the school, but not to other schools in the system if they do not also receive Federal aid.

Full coverage of the civil rights laws shall extend to all local agencies and departments receiving Federal aid, but not to other agencies and departments which do not receive Federal aid.

I have said before and will say again, I believe that Grove City should be reversed. I believe that the civil rights which were curtailed by that wrongful decision must be fully restored. In fact, I have cosponsored and voted for legislation to accomplish these goals. I would do it again. But S. 557, as passed by this body and vetoed by the President, promises less freedom and more government in every corner of America.

My objection has nothing to do with discrimination; it is an objection to regulation. It is an objection to restrictions on personal freedom and the right to worship. We don't need to put big brother in the churches, in the schools, on the farm, and in struggling people's businesses to protect civil rights. Let's protect civil rights, but let's do it right.

I urge my colleagues to sustain the President's veto on this unwise bill, and urge them to support meaningful

legislation to overturn Grove City and restore the civil rights which this body affirmed by law over the last two decades.

Mr. President, I yield the floor.

Mr. GRASSLEY. Mr. President, a President's exercise of the veto power is a serious matter. Article I of the Constitution affords us the authority to override that veto.

When we consider whether to override, a number of considerations must be balanced. Not the least of these considerations is the need to support our President, particularly in times of crisis.

Notwithstanding these considerations, in the past I have regularly voted to override Presidential vetoes. I have done so, in fact, eight out of nine times. So, I am not afraid to oppose the President when he is wrong. On most of these occasions, I was joined by a majority of my colleagues.

Today presents another occasion to balance the arguments for and against an override of the President's veto.

I take a back seat to no one when it comes to promoting the civil rights of every person in this great land of ours. My faith has instilled in me an abiding belief that all of us are equal in the eyes of our maker. So my commitment to equality isn't solely based in mere laws passed by legislatures, or in my role as a Member of this body, as seriously as I take my responsibilities. It's much deeper than that.

I know many of my colleagues feel the same way, for many of the same reasons.

After the Supreme Court's 1984 decision on a narrow construction of program-specific coverage in the Grove City case, we in the Congress labored long and hard to work on restoring our original intent regarding the application of the Nation's civil rights laws.

Our goal—to return the state of the law to what we thought was the case before the Supreme Court's ruling. We had a consensus on that goal.

I was among those who sponsored legislation to overturn the narrow result in Grove City, and return application of the civil rights laws to bar discrimination. Institutions receiving Federal funds should not discriminate—there is absolutely no quarrel with this principle.

When we were able to debate this issue, I looked forward to seeing the legislative process played out.

The legislative process normally means careful committee consideration and debate, full discussion here on the floor of the Senate, and an opportunity to offer amendments to resolve ambiguities and make improvements. The other body is supposed to proceed likewise. Ultimately, any differences are to be worked out, and other refinements made, in conference.

We debated S. 557 in the Senate for 3 days. I was anxious to try to make improvements in this measure. A number of amendments were offered. I supported some of them, in an effort to make a better product.

I was pleased that one of these amendments, offered by Senator DANFORTH, was included in S. 557. Ultimately, I supported the bill on final passage from the Senate, thinking that it would be further considered and amended by the other body. I was hopeful that the two versions of the bill would then undergo further refinement in a conference committee. That's the way the legislative process is supposed to work.

I assumed that the other body might see fit to consider amendments as we did—such as an exemption for those education institutions closely identified with the tenets of a religious organization, or to narrow the law's application to that portion of a religious institution receiving Federal funds, rather than the entire institution.

However, a quick turn of events deprived the legislative process of its full measure of deliberation when the leadership of the other body declined to permit any amendment to the Senate bill—other than a minority party substitute bill that didn't have any chance of passing. This was especially surprising given this bill's label as "the most important civil rights bill in more than 20 years."

Over the past 3 days, literally thousands of Iowans have voiced their concern to me that this legislation will violate their civil rights. They have urged me to work on a compromise measure that will accomplish the goal of affording civil rights for all Americans. Therefore, I stand ready to work with congressional leadership and the administration to enact true civil rights protection legislation. We can prohibit discrimination by those who receive Federal financial assistance, without jeopardizing other equally important civil rights.

Upon reflection of what has happened since last January, when the Senate last had an opportunity to speak on this issue, I have determined that it would be best to take a step back from our recent labors and have another look at this bill and the alternative offered by the administration. I, therefore, will cast my vote to sustain the decision to veto S. 557 and hope to bring these points to my colleagues' attention for refinement and clarification:

First, as one can't judge a book by its cover; so don't judge a bill by its title—the "Civil Rights Restoration Act" is really the "Massive Expansion of Federal Powers" Act.

Second, the bill goes far beyond the mere reversal of the Supreme Court's 1984 Grove City ruling—it's deceptive to argue otherwise.

Third, the bill's ambiguous and murky language is certain to lead to an avalanche of litigation over the expanded coverage of religious-oriented schools, small businesses, farmers, and local governments—the Grove City case had nothing to do with these entities.

Fourth, why not simply spell it out in the bill that farmers receiving crop subsidies aren't covered by massive Federal recordkeeping requirements? Or that corner grocery stores taking food stamps don't have to install ramps or elevators?

Fifth, the President's alternative bill spells it out, and is a true civil rights bill—committed to the principles of equal employment opportunity and antidiscrimination.

Sixth, I supported this bill earlier in the hope that further clarifying amendments could have been considered in the House; but the House leadership thwarted fair consideration of any other amendments.

Seventh, I urge the Senate leadership to immediately take up the President's bill—a true civil rights bill we all can support.

NATIONAL ASSOCIATION OF HOME BUILDERS' SUPPORT FOR THE CIVIL RIGHTS RESTORATION ACT

Mr. CRANSTON. Mr. President, I would like to clarify the position of the National Association of Home Builders [NAHB] regarding this legislation. In the words of the president of the association, Mr. Dale Stuard, in his March 21 letter to me—and in an identical letter to the chairman of the Labor and Human and Resources Committee's Subcommittee on the Handicapped [Mr. HARKIN]—the Association "support[s] the Civil Rights Restoration Act of 1987."

This is in contrast to the position expressed by the Association last week in support of the veto of this bill. Beginning late last week, however, I and certain members of the majority leadership in the House, as well as Senator HARKIN, discussed the issues involved with representatives of NAHB, and we were able to satisfy them that this bill would not result in the hardships for their members about which they had such serious concerns. As a result, Senator HARKIN and I had an exchange of correspondence with NAHB in which we addressed their concerns and they, in response, announced their support for the legislation.

Mr. President, I am pleased to be able to provide this clarification and ask unanimous consent that copies of our letter to NAHB and the NAHB response to me be printed in the RECORD.

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

U.S. SENATE
Washington, DC, March 21, 1988.

MR. DALE STUARD,
President, National Association of Home Builders, 15th and M Streets, NW., Washington, DC.

DEAR MR. STUARD: The National Association of Home Builders has raised several concerns regarding the potential impacts of the Civil Rights Restoration Act of 1987 on property owners, tenants and home builders. These concerns relate primarily to the following issues: The impact of the Act upon existing buildings (subsidized and nonsubsidized); the impact of the Act upon nonhousing activities of a business predominately involved in providing housing; and the definition of the term "federal financial assistance".

First let us clearly state that a business involved in providing housing would have to comply with these requirements only after the date it receives federal financial assistance. If federal financial assistance is involved there will be some expense in altering existing structures to make them accessible to handicapped persons. However, it is not intended that every part of every building must be accessible to handicapped persons. Rather, the common areas of buildings should be accessible. There is no intention that building owners would have to undertake inordinate expenditures in order to comply with handicapped accessibility requirements. In most cases, the cost to make existing buildings accessible to handicapped persons will be no more than 1 cent per square foot on the average.

There was also the question raised regarding the reach of the law to non-housing activities (e.g., commercial and manufacturing activities) and non-subsidized housing activities. If the non-housing activities are conducted in a form that is legally and operationally separate and distinct from the housing activities, and if the non-housing activities receive no federal financial assistance, then such non-housing activities are not affected by this law. Additionally, nonsubsidized housing is not affected by this law, unless owned by an entity that is not legally and operationally separate and distinct from the entity that owns the subsidized housing.

Several concerns have been raised regarding the definition of federal financial assistance. You have raised specific concerns regarding the FHA and VA loan programs, FDIC and FSLIC insured loans, as well as GNMA and FNMA secondary market activities.

Pursuant to the Department of Housing and Urban Development's interim regulations under section 504 of the Rehabilitation Act of 1973, the term "federal financial assistance" does not include a procurement contract or payments pursuant thereto or a contract of insurance or guarantee. Thus, under the regulations, FHA and VA insured or guaranteed loans would not constitute federal financial assistance. Nor would the secondary market activities of government sponsored enterprises (*e.g.*, FNMA or GNMA) or loans insured by FDIC or FSLIC constitute federal financial assistance.

We wish to emphasize strongly our commitment to ensuring that the law as interpreted in the future by courts and administrative agencies complies with the understanding set forth in this letter. Should legislation be required to correct any interpretation by any entities which contradicts any of these understandings, we will do out best to enact such legislation. In this context we note that the Senate will soon be considering some related issues in the context of the Fair Housing Act, on which we expect to continue to work together.

In particular, the Fair Housing Bill will deal with the question of requirements for handicapped accessibility, including retrofit and rehabilitation requirements, and we believe the best course of action to meet our mutual concerns will be to ensure that any agreement reached dealing with accessibility requirements during the fair housing deliberations be made explicitly applicable to the accessibility requirements triggered by the Civil Rights Restoration Act.

Sincerely,

TOM HARKIN,
Chairman, Subcommittee on the Handicapped, Committee on Labor and Human Resources.

ALAN CRANSTON,
Chairman,
Committee on Veterans' Affairs.

NATIONAL ASSOCIATION OF HOME BUILDERS,
Washington, DC, March 21, 1988.

Hon. ALAN CRANSTON,
Majority Whip, S-148, U.S. Capitol, Washington, DC.

DEAR MAJORITY WHIP CRANSTON: On behalf of the National Association of Home Builders, I would like to take this opportunity to thank you for your March 21 letter regarding NAHB's concern with the scope of the Civil Rights Restoration Act of 1987.

As you know, we have never opposed civil rights legislation. Rather, our concern related to the potential impact of S. 557 on retrofitting existing buildings and the scope of the definition of "federal financial assistance."

Having raised these concerns, we are now satisfied that they have been adequately addressed. Your letter, as well as the legislative history, clearly spells out that there is no intent on the part of Congress for property owners to incur substantial expenditures in order to make existing buildings accessible to the handicapped. Furthermore, we have been assured that FHA and VA loan programs, FDIC and FSLIC insured loans, and GNMA and FNMA secondary market activities do not constitute federal financial assistance. Moreover, it has been clarified that unsubsidized housing would not be covered if legally and operationally separate from subsidized housing.

Accordingly, we support the Civil Rights Restoration Act of 1987.

Sincerely,

DALE STUARD,
President.

Mr. METZENBAUM. In the last few days, last-ditch efforts have been made to distort the content of this bill and scare Members of Congress into voting to sustain the President's veto.

I am confident that this propaganda will not stop us from restoring the civil rights of millions of Americans.

This vote to restore the civil rights of women, minorities, older Americans, handicapped Americans is a vote which will unify this country, not divide it. This vote to restore civil rights is a vote which will strengthen our country, not weaken it.

The most recent charge is that this bill will destroy religion in this country. But many religious organizations disagree and support this bill. They include the United States Catholic Conference, the National Council of Churches, the American Jewish Congress, the African Methodist Episcopal Church, the Reorganized Church of the Latter Day Saints, the American Jewish Committee, the Lutheran Church, the Presbyterian Church, the Episcopal Church, the Churches of Christ, the Baptist Joint Committee, the Friends Committee on National Legislation, Church Women United, and many others.

The United States Catholic Conference said:

> We believe that—the Civil Rights Restoration Act—does much to strengthen Federal civil rights protections while safeguarding vital concerns about * * * religious liberty.

The American Baptist Churches said that:

> This legislation would do much to restore liberties of people threatened by * * * intolerance.

The Evangelical Lutheran Church said:

> Religious liberty is not at risk by this legislation * * *. This legislation is critically needed.

The United Methodist Church said:

> We have worked for 4 years to see this critical civil rights legislation passed.

These religious organizations support the basic principles we want to restore to law: that Federal financial assistance should not go to institutions that discriminate and that all Americans should receive the benefits of federally funded programs.

There is no coercion here. When an organization—any organization—cannot abide by these principles, it should refuse Federal financial assistance.

I'm proud to vote to override the President's veto and proud that Senators on both sides of the aisle will join me in doing so.

This override vote will clearly demonstrate to the American people that there is bipartisan support for the restoration of civil rights.

This override vote will help to make the ideal of equality a reality in our Nation.

Mr. KARNES. Mr. President, I am a strong believer in civil rights, but the Grove City legislation is much more than a civil rights bill. It opens the door for broad Federal intrusion into some of our most personal and cherished rights, like the free exercise of religion. I began to become very concerned last August when I read the civil rights bill to prepare for my vote. You can find bizarre things in legislation when you settle down to read the language.

I was shocked to learn that it would have left the door open for massive Federal intervention into basic activities of churches and synagogues. It could allow for new and totally unnecessary requirements for farmers and

ranchers. It could subject small businesses to extra regulations that could cost jobs and hurt their operations. In short it became clear to me from the very beginning that this bill was deceptively named. Instead of being called the "Civil Rights Restoration Act," it should be called the "the Expansion of Government in Our Lives Act."

Subjecting bona fide churches and their congregations to lawsuits under the Grove City bill could affect this vital aspect of family life in America. The mere threat of court action would have a chilling effect on church life. This expansion of Government power may jeopardize one of the cornerstones of freedom in our country—the independence of our churches from governmental influence.

I believe we can have strong civil rights without destroying the constitutionally protected religious freedoms and the family values that they are designed to protect.

I have been criticized by some for voting against the Grove City bill. I voted against the Grove City bill when it wasn't the popular thing to do. You can imagine that if you vote against anything called civil rights bill, that some people are going to get the wrong idea. But I firmly believe people should be allowed to worship their God according to their own moral values, with minimal intrusion by the courts or by Congress. When legislation like this comes to the Senate floor for a vote, I feel it is important to stand up and be counted in favor of family values and religious independence, instead of simply going with the rest of the crowd.

If you care about family values, or religious independence, or farming and ranching, or small business and jobs, this vote affects you.

I am not a newcomer to this issue. I first published an article in Nebraska newspapers last August that detailed my strong misgivings about this bill. I said at that time I am a strong supporter of civil rights, a vital aspect of our freedoms, but that we must be careful not to introduce new Federal intrusion into matters where it is ill-advised or totally unnecessary. Mr. President, I submit a copy of that article for the RECORD to be printed.

I applaud President Reagan's extensive efforts since last year to address the problem areas in this bill. He is not a newcomer to this bill either. He has consistently outlined the reasons why he cannot support the bill. I have a copy of his letter to my distinguished colleague, Senator HATCH, dated January 28, in which the President explained why he opposed the overly broad provisions in the bill, and why he was seeking support on Capitol Hill to oppose the current legislation. The President has consistently sought a better piece of legislation, but he knew that the current bill would need to be rejected first. I congratulate him for his early identification of the problems in the Grove City legislation, and his consistent efforts to get a better bill.

It is time for Congress to uphold the President's veto and begin work on a solid civil rights bill that will protect women, minorities, elderly and disabled people and protects our religious freedoms and unnecessary Federal intervention. The President's alternative clarifies the gray areas that create such great concern with churches, synagogues, small businessmen, women, farmers, ranchers, and schools. If the veto is sustained I will work tirelessly to enact into law the President's alternative which achieves effective civil rights restoration and reform without challenging the values of religious freedoms that I believe are found in S. 557.

Mr. President, I also ask unanimous consent to have the following Omaha-World Herald editorial of March 22, 1988 included in the RECORD as a part of my statements.

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

[From the Falls City (NE) Journal, Aug. 14, 1987]

FARMERS BEWARE: THE NEW CIVIL RIGHTS BILL

(By Senator David K. Karnes)

The United States Senate is thinking about giving farmers the gift that keeps on giving—headaches. That's right. More regulation of the business of farming. Only this particular bill could change the way of life on the farm as well as the way of doing business, depending on how a court might see it.

Surprised?

It's true. The Labor and Human Resources Committee of the United States Senate is preparing legislation to expand already existing civil rights statutes. The language of the legislation is just loose enough to leave the door open for some complex and disturbing legal consequences.

Of particular concern to me is the possibility that farmers would be brought under the civil rights laws as "ultimate beneficiaries" of federal assistance programs.

Under current law "ultimate beneficiaries" are not regulated by the civil rights acts. That is, farmers receiving deficiency payments, loan guarantees, commodity loans, disaster payments, or price supports—all government programs—have not been regulated because they are "ultimate beneficiaries." However, if the past history of other federal law, like the OSHA regulations, can be a guide it is entirely possible that S. 557 could be expanded far beyond the limits of its current language.

Section 7 of the proposed legislation states that none of its amendments 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 does not, however, make clear which ultimate beneficiaries are now excluded. I would prefer that farmers would be specifically excluded in the body of the act. Nor does it address the issue of exclusion of those persons receiving benefits from programs that may be enacted in the future.

Would S. 557 require farmers to come under the Civil Rights laws as the price for participating in new farm programs down the road? I have asked that question; thus far, no one has given me sufficient assurance to the contrary. It is not enough to say that the bill does not alter or affect who is a recipient of federal financial assistance. The language must be modified to erase all doubt. If our worst fears are realized, then it is not inconceivable that farmers, even small operations, could be subject to increased federal paperwork requirements, random on-site compliance reviews, and numerous other regulatory burdens. It is even possible that farmers will have to make physical changes on their farms—at their own expense—to comply with the civil rights requirements.

We have no way of knowing all the impacts the new legislation could have on the operations of a farmer, but the possibilities are varied and quite disturbing.

It would be a mistake to believe that those who are opposed to this bill are opposed to civil rights or want to turn back the clock to the time and the events that necessitated the enactment of these laws. I simply want to make certain we know precisely how far the bill would go toward making life more difficult for farmers. Loose drafting of legislation can yield some amazingly bad and surprising results.

The American farmer is maintaining a precarious balance. Overburdened already by low commodity prices, excess surplus stocks, and the lack of affordable financing, legislation of this type could be the final act that sends many farmers over the edge.

The goal of the 1985 Farm Bill was to reduce government involvement in the life of the American farmer. We need to strive toward that goal, not in the opposite direction.

[From the Omaha (NE) World Herald, Mar. 22, 1988]

CIVIL RIGHTS NOT THE ISSUE IN GROVE CITY COLLEGE BILL

Backers of the Grove City College bill distorted the issue when they packaged their bill as a civil rights litmus test and accused President Reagan of turning back the clock on civil rights by vetoing it. Legitimate arguments against the bill didn't get the attention they deserved as the vote on the override approached.

Contrary to the allegations of the bill's supporters, Reagan's veto and the alternative he offered didn't constitute a retreat from the concept that discrimination is wrong. The White House proposed strengthening the civil rights laws—but without the congressional bill's serious intrusions on the activities of private individuals and organizations.

Congress passed its bill as a response to the 1984 Supreme Court ruling in the Grove City College case. The court said that the government's civil rights authority extends to college programs and activities that receive federal funds—but not to programs and activities that don't receive federal funds. Congress voted to extend federal authority to entire institutions, as well as businesses, private organizations and state and local governments, if any of their branches received federal aid.

The congressional version, in other words, went far beyond overturning the Supreme

Court decision. The White House says it could have these effects:

If a grocery store accepted food stamps, the government could force the store to have a work force that mirrored the racial composition of the community. Small businesses could be forced to file periodic compliance reports and submit their personnel records to federal inspectors.

Farmers and businesses that hired a part-time federally assisted work-study student could have their entire operation open to federal inspectors.

If a state agency used federal funds, the entire state government would be covered.

A national social service organization would be covered if one local affiliate received federal funds.

A business would be covered if it contributed its own funds to a federally assisted school district, private school or private social service program.

To be against such a sweeping expansion of authority isn't to favor illegal discrimination. As Paul A. Gigot wrote recently in the Wall Street Journal, "Genuine acts of discrimination remain covered by the great civil rights laws of the 1960s, of course, as no one disputes they should be."

Likewise, most people of good will don't dispute the principle that federal funds should not be used to subsidize illegal discrimination.

But harassing farmers who hire work-study students and businesses that participate in adopt-a-school programs is not the way to make society more humane. A number of congressmen and senators, including Sen. David Karnes, R-Neb., who voted against passing the bill in January, have displayed the wisdom to see the issue as it is and the courage to reject the distortions of the bill's supporters. They deserve special praise.

Mr. BENTSEN. Mr. President, despite overwhelming bipartisan majorities in both Houses of Congress in support of the Civil Rights Restoration Act, President Reagan has exercised his veto power. Now we have the opportunity—and responsibility—to override that veto.

The long struggle to guarantee Americans their basic civil rights led to a series of laws which we can all be proud of, laws which prohibited discrimination on the basis of race, sex, age, or physical handicap. In 1984, however, the Supreme Court radically restricted the application of these laws in the Grove City case. At last, the Congress has a chance to restore the protections which our people had prior to that Court decision.

Already there are unjustified claims that this law could somehow infringe on our religious liberties. That is not the opinion of the American Baptist Churches, or the United Methodist Church, or the Church of the Brethren, or the Presbyterian Church USA, or the Episcopal Church, or the Evangelical Lutherans of America, or the U.S. Catholic Conference, or the American Jewish Congress—for all of those groups, as well as many others, support this law.

Unfortunately, opponents of this legislation have stirred up a duststorm of criticisms, suggesting that this law will lead to ridiculous and unintended burdens on schools, churches, and shopkeepers. That is just not true.

These hypothetical horror stories are reminiscent of the arguments used years ago when we first approved the landmark legislation preventing discrimination on the basis of race, national origin, sex, age, or disability. Those arguments were farfetched then and are still wrong now.

For example, this law will not require churches to hire homosexuals. None of our civil rights statutes has ever been interpreted to provide protection on the basis of sexual preference; neither does this bill do that. This law will not force small store owners to make expensive structural adjustments when that is clearly not feasible. The Senate specifically included an exemption for small providers.

We also protected farmers, by continuing the exemption already in the law for those farmers who receive payments under various agricultural support and marketing programs.

What this law will do is restore those civil rights Americans used to have. It will reestablish the legal situation and legal protections which were in effect prior to the Supreme Court's decision. It will forbid federal subsidies to those who practice illegal discrimination.

President Reagan's last-minute alternative would permit large numbers of institutions that receive Federal aid to discriminate and still get Federal funds. That is not acceptable to me, and I doubt that it is acceptable to the overwhelming majority of Congress. We should not condone and should never subsidize discrimination.

By insisting on this law, we are not expanding the powers of the Federal Government; we are not encroaching on religious liberties. We are simply restoring the basic civil rights of millions of vulnerable Americans. That is a necessary and proper role of government, to establish those wise restraints that make us all free.

Mr. WARNER. Mr. President, there is no question that the Congress of the United States is dedicated to the goal of enacting meaningful civil rights legislation in this Congress. The fact that 27 Senators on this side of the aisle voted for S. 557 on final passage clearly demonstrates our commitment to the goal and stated purpose of this civil rights legislation. I support civil rights for all Americans and I voted for the bill when it passed the Senate.

However, while it is for the Congress to make the law, it is the responsibility of the executive branch to implement and enforce the law, and of the citizens of this Nation to live with and comply with the law.

The President has now vetoed this bill. In his veto message, the President referred to the problems of administering the bill as passed. He gave very specific, understandable detailed explanations of problems with the bill.

The President's message clearly indicates that there are some major questions as to the scope and intent of the legislation that may only be resolved in the courts. For example, to what extent will a church that serves meals on wheels programs for the elderly be covered? To what degree will existing buildings have to be retrofitted if FHA loans, VA loans, or other federally guaranteed loans to individuals, corporations or partnerships are used to purchase, or build, single or multifamily housing. These questions are not clearly addressed by the legislation.

In other situations, the current law is in a state of change and there is the possibility that future judicial decisions will alter the assumptions upon which the legislation is passed today. For example, will a corner grocery store that accepts food stamps be covered? Will future judicial determinations require farmers who receive Federal crop subsidies to be covered.

We now have the opportunity with the President's veto to clarify these questions and then pass an even better bill. The Congress is not only capable of resolving, but is responsible for resolving these questions now instead of leaving it to the courts for later.

The President is committed to the elimination of invidious discrimination through vigorous enforcement of Federal civil rights laws. I do not doubt the sincerity of that intention. I understand that the proposal forwarded to the Congress with the veto uses S. 557 as a starting point and adds changes to address: problems of implementation; the scope of the legislation as to certain types of institutions and businesses; and the type of federal aid that requires implementation of Federal civil rights statutes.

The Congress has the obligation to send to the executive for implementation legislation which is practical and will not result in years of litigation and uncertainty for the citizens of this country. I hope that the Senate will seriously consider the President's new proposals and work with him to achieve meaningful and practical civil rights legislation that we can vote for, and the President can sign this year.

Mr. DOMENICI. Mr. President, I would like to say a few words about the extremely important bill we are considering again here today, S. 557, the Civil Rights Restoration Act.

This bill is designed to reverse the 1984 Supreme Court decision in Grove City versus Bell and restore the scope of four very important civil rights statutes: Title VI of the 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.

I have heard from many of my good friends in New Mexico who have deep concerns about this bill. I have taken these concerns very seriously and I have gone back and taken another look at this bill, reviewing it in light of the concerns that have been expressed. I have re-researched this matter and talked with discrimination law experts and constitutional scholars who are first amendment and freedom of religion authorities.

Mr. President, I must tell you that I believe that the concerns that have been expressed stem from a misunderstanding of what passage of this bill will mean.

In order to explain this, it is important to review what the Grove City decision was all about.

In the Grove City case the Supreme Court ruled that the four civil rights laws that I mentioned earlier applied only to the individual programs of a school or other organization that receives Federal funds, and not to the entire college or organization of which the program is a part.

Therefore, under the Grove City decision, a college that receives Federal funds as a part of its financial aid program would only be prohibited from discriminating against individuals in relation to its financial aid programs. In all other areas, the college would be free to discriminate.

Mr. President, neither the Congress nor the President believe that the scope of these civil laws should be limited in the way the Court ruled in Grove City. Almost everyone agrees that the Grove City decision should be overturned because it is an incorrect interpretation of congressional intent. Congress has always intended that the laws that prohibit discrimination not be limited in the way interpreted by the Supreme Court in the Grove City case.

For too long, discrimination on the base of race, sex, age, and physical handicap has been a blight on this country. So long as people in America are subjected to these types of discrimination, we are not a free people.

Our civil rights statutes need to make certain that taxpayers' dollars are not used to initiate or perpetuate bias and prejudice. The Federal Government should not encourage or subsidize discrimination. The task of eliminating discrimination from institutions that receive Federal aid can only be accomplished if civil rights statutes are given their original broad interpretation.

Mr. President, we need to restore to the civil rights laws the original broad coverage that they had before the Grove City decision. Everybody agrees with that. The President does, the Senate does, the House of Representatives does, the American people do.

I was very pleased to cosponsor legislation in 1984 along with Senator DOLE and others that would have restored the original scope of these laws. That bill did not become law, and for the past 4 years, while legislation has been drafted and redrafted and hearings have been held, discrimination against individuals on the basis of race, sex, age, and physical handicap has occurred because of the Supreme Court's decision. It is time to put a halt to that.

The Civil Rights Restoration Act will correct the Grove City decision. It would amend the four civil rights laws that I have just mentioned to restore their original institutionwide application. It would make clear that discrimination is prohibited throughout entire agencies, institutions, education systems, and corporations if these institutions receive Federal funding. S. 557 restores the original intent of the Congress regarding the application of these civil rights laws.

That is all that this bill does. With the exception of a provision to ensure that hospitals will not be forced to perform abortions, the Civil Rights Restoration Act restores the law back to where it was before the Grove City decision. If there were problems with the underlying statutes before Grove City, they remain.

Discrimination on the basis of race, sex, age, and physical handicap is prohibited by Federal law and has been prohibited by Federal law for the past generation. This bill does not change what constitutes discrimination.

The Civil Rights Restoration Act does not change who is protected. It does not grant any new rights to any person or groups. Federal law does not grant homosexuals any special rights, nor does this bill. Federal law does not prohibit discrimination against alcoholics, drug addicts, and persons with contagious diseases where the persons present a danger to the health and safety of others or cannot perform their jobs. This bill does not change that.

Under this bill, small businesses will not be required to make expensive structural changes to their buildings to make them accessible to the handicapped.

The Civil Rights Restoration Act does not change the status of grocery stores that accept food stamps. I don't believe that such grocery stores are covered under the civil rights laws, and the law has never been interpreted in that way. But if they are covered, they always have been, and this bill does not cause them to be covered.

Under existing law, farmers and ranchers who receive farm subsidies or price supports are not subject to these civil rights laws. This bill does not change that.

As I said, the bill adds nothing new to Federal law as it existed prior to the Grove City decision, with a single exception.

The bill does change existing law to prevent hospitals from being forced to perform abortions.

A concern was expressed during the hearings on this bill that the civil rights laws could be interpreted to force hospitals to perform abortions, even if the hospitals are opposed to abortion.

I am very pleased, Mr. President, that the Congress was able to correct this problem by adopting the Danforth amendment, making these laws abortion-neutral. I voted for that amendment and argued strongly for it.

That amendment makes it clear that Congress will not force private organizations to perform or finance abortions—these are things we in Congress have long said we would not tolerate in our own programs.

Mr. President, it makes great sense to say that institutions should not discriminate, but it is not discrimination for a hospital to say, "We don't choose to perform abortions, and we will not perform them." No one should be forced to perform or pay for an abortion against his or her will. I am very pleased that S. 557 clarifies this point.

Although I support the Civil Rights Restoration Act, let me make it clear that there are some problems with the four civil rights laws that are the subject of this bill. These problems have existed since long before the Grove City decision. These problems result from ambiguities in the laws themselves and from court decisions interpreting the law.

The bill now before us did not create these problems, but they are problems nonetheless.

When the Senate considered this bill in January I voted in favor of two amendments to correct some of these problems with these four civil rights laws.

The first would have limited coverage of these laws when applied to religious organizations that receive Federal funds. Under the amendment, the antidiscrimination provisions would apply only the specific programs and activities operated with Federal funds by a religious organization, rather than the entire religious organization. This would have done much to assure that the Federal Government does not interfere with legitimate religious beliefs.

The second amendment would have expanded the religious tenets exemption, allowing schools closely identified with the tenets of religious organizations—but not officially controlled by a religious denomination—to claim an exemption from certain sex discrimination provisions.

Although no school has ever been denied a religious exemption under the law, I supported the amendment because it would have enabled schools like Georgetown and Notre Dame to

have access to religious tenets exemptions they do not now have under the civil rights laws and allowed them to be exempt from compliance with certain rules that could be at odds with some of their fundamental beliefs.

These amendments would have changed the four civil rights laws, not merely restored them to their previous coverage. However, I believe that they were reasonable and important amendments. Yet, both amendments were rejected by the Senate.

Therefore, the religious tenets exemption and other provisions affecting religious organizations are exactly the same as they have been for the past decade. They have not changed.

This is not to say that these provisions in existing law are perfect—I don't think they are. But these provisions in the bill are not new.

I believe that after we pass this bill, Congress ought to go back and reexamine some of the problems with the underlying civil rights statutes.

In the meantime, though, we need to take this first step and overturn the Grove City decision by restoring to our civil rights laws the broad prohibition against discrimination that they should have, that they historically have had until the Supreme Court's decision in Grove City. That is all this bill does. And that is why I will vote to override the President's veto.

Mr. GORE. Mr. President, the Civil Rights Restoration Act is the most important piece of civil rights legislation of this decade. I cosponsored this bill and have strongly supported it because it will ensure that our tax dollars are not supporting discrimination on the basis of race, sex, age, or physical disability.

That was the intent of Congress when these four civil rights statutes were originally enacted. Congress reaffirmed this intention when it passed this bill by large, bipartisan majorities in the House and Senate this year. President Reagan made a mistake last week in vetoing this bill. Today, Congress will correct that mistake by overriding his veto.

I am proud of the progress we have made in the South and across the country in eliminating prejudice and discrimination. It is in this proud tradition that I take a stand against discrimination, and refuse to accept a presidential veto of much-needed civil rights legislation. In this day and age it is simply unacceptable to allow any Federal moneys to go to institutions that practice discrimination on the basis of race, sex, age, or physical disability.

Throughout my years in Congress I have fought to protect the working men and women of this country. I have worked so that America is truly a land of opportunity for everyone and that there are no artificial barriers to how far any individual can advance. This bill will ensure that people are not kept out of organizations for reasons based on prejudice, that women are not sexually harassed, and that the disabled are not kept out merely because they cannot get through the door or up the stairs.

The committee report on this bill tells the stories of blatant discrimination occurring at federally funded institutions—though not in the specific programs that were receiving aid—and the Justice Department's Office of Civil Rights closing the cases because "it found the alleged discrimination did not occur in a program or activity which was a direct recipient of Federal financial assistance."

There has been much misinformation about his bill. It does not affect ultimate beneficiaries; Those that accept food stamps, Medicaid and Medicare benefits, or Social Security checks from private citizens. In addition, farm subsidies do not constitute Federal funding. There has also been much concern about religious schools: Religiously controlled schools are eligible for a religious tenets exemption if to comply with the applicable sex discrimination provisions would violate the religious tenets of the institution.

Others have expressed concern that small providers would be unduly burdened with requirements of structural alterations to ensure that their facilities be handicapped accessible. The bill does not require costly alterations on the part of smaller organizations if there are alternative ways of providing the services.

Finally, there has been concern that the bill requires the employment of individuals who pose a health threat. This is simply not so. The Rehabilitation Act specifically states that if an employee poses a health risk, he or she may be taken out of the workplace.

These concerns are all adequately addressed in the bill. Unfortunately, opponents of the bill have misinformed the public. They have charged that it goes against religious principles. I think that it is a central theme of Judeo-Christian tradition that we treat our neighbors fairly, regardless of the color of their skin, their age, their sex, or any physical disability.

This legislation does not apply to private action; we cannot legislate against private prejudice. But we can ensure that Federal funds are not used to subsidize actions based on unreasonable prejudices that amount to arbitrary discrimination. I strongly believe that Americans do not want their tax dollars used in this manner. For this reason I will vote today to override the President's veto of this important civil rights bill. I urge all my Senate and House colleagues to join me. We need to show the American people that we in Washington do not condone discrimination and we certainly will not fund it.

Mr. CRANSTON. Mr. President, President Reagan's veto of the Civil Rights Restoration Act came as no surprise. The Reagan administration urged the Supreme Court in the Grove City case to narrow the scope of coverage of the Nation's civil rights statutes and has fought for the past 4 years against restoring the effectiveness of these statutes.

The veto demonstrates, once again, that this administration is out-of-step with the Nation on the issue of civil rights.

There is a broad consensus in this country, and in the Congress, that Federal funds should not be used to subsidize discrimination. The Civil Rights Restoration Act is designed to do just that—help ensure that Federal funds are not used to subsidize discrimination against individuals because of race, sex, age, or disability.

Mr. President, this legislation passed both the House and Senate by overwhelming bipartisan margins. It was debated, revised, and scrutinized for 4 years. It is time that we enact it into law.

This Nation has come too far and struggled too hard to put invidious discrimination behind us to turn back now. The Grove City College decision brought civil rights enforcement proceedings to a grinding halt throughout the Nation. The record on S. 557 amply documents the numerous civil rights complaints and cases which have been dismissed or curtailed because of the narrow strictures imposed by the Grove City decision.

The Federal Government has a moral and a constitutional responsibility to assure its resources are not used to discriminate. It is not enough just to give lip service to the principles of equality of opportunity which are the foundation of our democracy. It takes a commitment to making those promises a reality.

That's what this legislation, and the civil rights struggle of the past three decades, is about—making the promise of equality a reality.

The veto should be overridden.

Mr. RIEGLE. Mr. President, I rise today to express my support for overriding the President's veto of S. 557, the Civil Rights Restoration Act of 1987.

It is truly an unfortunate situation we have before us. The President, against the counsel of his own advisers, has vetoed important civil rights legislation which prohibits discrimination against an individual on the basis of his sex, race, age, or handicap. As my colleagues know, the legislation before us was written in response to the 1984 Supreme Court decision in Grove City versus Bell. In that decision the Supreme Court narrowly con-

strued title IX of the Education Amendments of 1972 to mean that antidiscrimination laws would apply only to the programs for which Federal funds had been received. Hence, under Grove City, a college admission office that received Federal funds would be barred from discriminating; however, if the same college's science department did not receive Federal funds, antidiscriminations law would not apply.

The result of the Grove City decision was the opening of a gaping hole in our 20 year commitment to ending discrimination in our great Nation. Clearly, Mr. President, Congress did not intend for such an inequitable result when it passed civil rights legislation, and our vote today will set the record straight. No longer will institutions be able to practice selective discrimination; but rather, our vote today will reaffirm our national commitment to ending discrimination against minorities, women, elderly, and disabled persons.

Mr. President, opponents of this legislation have argued that it provides an unwarranted intrusion into religious freedoms enjoyed by all Americans. Yet, national church leaders from the Catholic bishops to the Evangelical Lutherans and the American Hebrew Congregation support this legislation and its goals. In addition, S. 557 leaves in place the current religious tenet exemption to title IX. Hence, no college or school controlled by a religious group will be required to adopt policies that conflict with its religious beliefs.

Others have argued that this legislation will have a profound and costly effect on small grocery stores that accept food stamps and on farmers who receive Federal crop subsidies. Yet, both the language of the bill and the committee report make it clear that such would not be the case. The committee report states that farmers receiving crop subsidies would not be covered by this legislation. In fact, they've not been covered since 1964. Others excluded from coverage include recipients of Social Security, Medicare, and Medicaid, and individuals who receive food stamps.

It is an unfortunate fact that discrimination still exists today against women, minorities, elderly, and disabled persons. Although we cannot legislate what is in the hearts of the people, we can send a clear message today that scarce Federal resources will not be used to fund institutions which discriminate.

Mr. President, the legislation before us will restore reason and balance to our Nation's civil rights laws. I hope my colleagues will agree and will vote with me to override the President's veto. Thank you.

Mr. DASCHLE. Mr. President, as the Senate prepares to vote on the motion to override the President's veto of the Civil Rights Restoration Act, I think it is important that each Senator, and the American public, make an honest effort to separate fact from hyperbole before reaching a final opinion on the legislation.

The debate surrounding the Civil Rights Restoration Act is unquestionably highly charged. As I listen to the speculation about the potential effects of this legislation, there is little doubt why the debate has generated such widespread attention.

Each Member of this body has heard alarming reports about what could happen if this bill becomes law. For example, some opponents of the bill suggest that it would force employers to hire homosexuals, or retain employees who cannot perform their jobs because they are alcoholics or have infectious diseases. Others claim that the bill would force certain churches to ordain women or require religiously affiliated hospitals to perform abortions. Finally, some assert that ultimate beneficiaries of Federal aid, such as farmers who merely receive price and income supports and loans or Social Security recipients, would be covered by the bill.

These would be alarming prospects, were they true. They are not, however, justified by fact.

If any of these charges were true, a vast majority of the Senate, including myself, would not have supported this bill. Nor would so many religious organizations and other groups have urged Congress to override the President's veto.

The Civil Rights Restoration Act is a straightforward bill which will simply restore the ability of victims of discrimination—including blacks, the elderly, the handicapped, and women—to seek redress in the manner they did prior to the 1984 Supreme Court decision in the Grove City case. It is a bill that clarifies the original intent of Congress that the civil rights laws be interpreted to apply to all the programs and activities of an institution that receives Federal funding, rather than to just the specific program which receives that funding.

During Senate consideration of this legislation, precautions were taken to ensure that the Civil Rights Restoration Act will perform as advertised. Thus, when concern was expressed that the bill might have the unintended effect of requiring religiously affiliated institutions to perform abortions if they received any Federal funding, the Senate added a provision to the bill stipulating that colleges, universities, and other institutions closely affiliated with churches may get an exemption from the law, as in the past. I voted for that provision. This religious tenets exemption has been available for 16 years, has been granted to more than 200 institutions, and has not been denied once.

The Civil Rights Restoration Act has broad-based support, both within and outside the Congress. It was thoroughly debated by the Senate and the House, and it passed both Chambers by overwhelming margins.

The list of religious organizations which support the Civil Rights Restoration Act is instructive. It includes the U.S. Catholic Conference of Bishops, the American Lutheran Church, the Association of Evangelical Lutheran Churches, the Lutheran Church in America, the Union of American Hebrew Congregations, the American Baptist Churches and the Church of the Brethren, to name just a few.

In fact, the U.S. Catholic Conference has circulated a letter which states that, "we believe that it (the Civil Rights Restoration Act) does much to strengthen Federal civil rights protections while safeguarding vital concerns about human life and religious liberty." I commend this letter to my colleagues' attention and ask unanimous consent that it be printed in the CONGRESSIONAL RECORD.

Mr. President, whenever the President vetoes a bill, the Congress must take this action very seriously. Even the most ardent supporters of the Civil Rights Restoration Act should re-examine their support in light of the President's veto.

I have done just that.

The Civil Rights Restoration Act is not a partisan issue. Senators on both sides of the aisle joined together when this legislation passed in February by a vote of 75 to 14. I expect that on the vote today, once again, Republicans and Democrats will join together to override the President's veto.

Similarly, religious organizations of diverse faiths have announced their support for the Civil Rights Restoration Act. Like the majority of the Senate, they do so in order to return our civil rights laws to their pre-Grove City status.

For these reasons, I will join the vast majority of the Republicans and Democrats in Congress to pass this legislation over the President's veto.

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

U.S. CATHOLIC CONFERENCE,
Washington, DC, March 14, 1988.

DEAR SENATOR: I write on behalf of the nation's Roman Catholic bishops to urge you to vote to override the veto of the Civil Rights Restoration Act. We strongly support this legislation which recently passed the House and Senate by overwhelming margins. We believe that it does much to strengthen federal civil rights protections while safeguarding vital concerns about human life and religious liberty.

This important legislation will strengthen the federal commitment to combat discrimination based on race, gender, age, national origin and handicapping condition. We be-

lieve government has a fundamental duty to protect the life, dignity and rights of the human person. This is why we supported the goals of the Civil Rights Restoration Act, successfully urged its modification in several important respects, strongly urged final passage in this amended form in both the House and Senate and urged the President to sign it.

As you know, the United States Catholic Conference expressed some serious reservations about the original bill. In the bill vetoed by the President, Congress made several essential improvements, including the "abortion neutral" amendment. This amendment, which we strongly supported, ensures that no institution will be required to provide abortion services or benefits as a condition of receiving federal funds. If this bill does not become law, we fear these important guarantees will be lost and the existing regulations under Title IX could once again threaten to force institutional cooperation with abortion. We also believe this legislation as interpreted by the committee report and floor debate adequately accommodates our legitimate concerns in the area of religious liberty.

No piece of legislation is perfect and people of good-will can disagree over these matters. However, we believe the Civil Rights Restoration Act with the important improvements made by the Congress is a significant victory for civil rights and an important step forward in insuring that our nation's civil rights laws do not require any institution to violate fundamental convictions on human life.

We are pleased by the overwhelming bipartisan support of this vital legislation. We hope you will join in this broad based effort to help our nation live up to its pledge of "liberty and justice for all" and vote to override the veto of the Civil Rights Restoration Act.

Sincerely yours,

Rev. Msgr. DANIEL F. HOYE,
General Secretary.

Mr. DECONCINI. Mr. President, I rise today to cast my vote to override the President's veto of the Civil Rights Restoration Act.

The Civil Rights Restoration Act has been one of the most highly scrutinized pieces of legislation this body has addressed in many years. Throughout the debate waged in the national press and in the Senate, facts have been twisted and misrepresented. So much so as to lead one to believe this legislation is meant to completely overhaul the current state of civil rights law. That is not the case. The Civil Rights Restoration Act is intended to, and does, return the civil rights law to the state which existed prior to the Grove City decision by the Supreme Court. In Grove City the Court held that only the specific program or activity of an institution receiving Federal funds must conform to the existing civil rights laws.

I have received numerous letters and phone calls raising concerns on the application of the Civil Rights Restoration Act to the hiring and firing of homosexuals, alcoholics, drug addicts, and persons with contagious diseases. I have heard additional concerns expressed regarding the coverage of the Civil Rights Restoration Act to churches and religious educational facilities. And finally, many of my Arizona constituents have contacted me regarding concerns associated with abortion and this legislation. Each is a valid concern, yet I believe now, as I did when I became an original cosponsor, that this legislation is the most important recent legislation strengthening the Federal commitment to combat discrimination based on race, gender, age, ethnicity or handicapping conditions without infringing on the rights of religious organizations and others to manage their own house.

I am not alone in my beliefs. My distinguished colleague, Senator SIMPSON, the Senate Republican Whip, has also concluded that we have "ended up with good language that does not interfere with religious liberties."

The Civil Rights Restoration Act amends title IX of the Education Amendments of 1972, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. Title IX prohibits sex discrimination in education programs or activities receiving Federal financial assistance. Title VI addresses discrimination based on race, color, or national origin in a program or activity that receives Federal aid. Section 504 prohibits discrimination against disabled persons in programs or activities receiving Federal funds. The Age Discrimination Act prohibits discrimination on the basis of age in federally funded programs or activities.

Contrary to some of the most expressed fears, this bill does not require protections provided women under title IX to be extended to homosexuals. Nor has any other statute been interpreted by courts to provide such protection.

This bill would not preclude an entity from taking action against an individual solely on the basis of that individual's homosexuality. If, for instance, the religious tenets of an organization require it to take disciplinary action against a homosexual because of that person's sexual preference, section 504 of the Rehabilitation Act would not protect the individual. In addition, title IX would not protect the individual from disciplinary action. The case law has continually supported this position and this bill does not change that interpretation.

For example, in *Rowland* v. *Mad River Local School District,* 730 F. 2d 444 (1984) the U.S. Court of Appeals for the Sixth Circuit held that sexual preference is not a constitutionally protected interest.

In Rowland, a teacher was suspended, transferred and finally terminated after she disclosed that she was a homosexual. The teacher claimed that the school's actions violated her right to freedom of speech and to equal protection under the law.

The court first ruled that since Rowland was speaking upon matters only of personal interest, and not public concern, her statements did not constitute protected speech under the first amendment.

Second, the court found no evidence to support a finding that Rowland was treated differently from heterosexual employees. As a consequence, the court held that the school district had not violated Rowland's constitutional rights. In 1986, the U.S. Supreme Court refused to hear the case.

Many of the inquiries I have received have questioned the application of this bill in the area of alcohol and drug abuse as it relates to hiring and firing by employers who receive Federal funding. During the floor debate on this legislation, Senators HUMPHREY and HARKIN offered an amendment which was unanimously adopted. That amendment allows employers to exclude or fire a prospective or current employee if it is determined that he or she poses a direct threat to the health or safety of other workers. Actions may also be taken if such an individual cannot perform the duties required and no reasonable accommodations can be made to remove the safety threat or enable the person to complete his or her assigned duties.

This provision maintains the current law, section 504 of the Rehabilitation Act. In fact, since the 1978 amendments to that act, employers have acted with the knowledge that they do not have to hire or retain alcoholics or drug addicts. Additionally, courts have continually upheld the rights of employers to act in this manner.

For example, in *New York City Transit Authority* v. *Beazer,* 99 S.Ct. 1355 (1979) the U.S. Supreme Court upheld the transit authority's blanket exclusion of persons who regularly use narcotic drugs from employment. The Court considered the exclusion to be a policy decision and thus refused to interfere with the judgment of the transit authority.

Just as employers are not required to suffer consequences of an employee's alcohol or drug addiction, employers are also not required to hire or retain persons with contagious diseases if the employee poses a direct threat to the health and safety of others or cannot perform the functions of the job. In these types of cases such determinations must be made on an individual basis, just as with an alcohol or drug addiction hiring related decision.

As previously stated, this language was unanimously supported in the Senate, as well as passed in the House, and was found in the Sensenbrenner substitute which was endorsed by the

administration via a letter from Secretary Bennett.

The same standards regarding employment of individuals with contagious diseases apply to the admission of pupils to schools. This case-by-case review process is supported by the American Public Health Association which suggests that individualized review acts to promote the overall health of the general public.

Although I have responded to many questions and concerns on the above matters, the major concern of those who contacted my office has centered around this legislation's application to religious organizations and the application of the religious tenet exemption. Because of the nature of this concern, I believe a thorough explanation is in order.

Under the Civil Rights Restoration Act, complete coverage of a corporation, partnership, or other private organization, of which a religious organization is one, would result under two circumstances. In the first instance, where Federal financial assistance is extended to a private organization "as a whole," that is, assistance which is not designated for a particular purpose, the organization as a whole is required to meet the requirements of the Civil Rights Restoration Act. Conversely, a grant to a religious organization for a specific purpose, such as assistance to refugees, would not qualify as assistance to the religious organization "as a whole," and therefore would not require compliance with civil rights statutes.

Second, when "principally engaged in the business of providing education, health care, housing, social services, or parks and recreation" an organization must follow the Grove City legislation. It is self-evident that a church, diocese, or synagogue is a religious organization. As such, a religious organization would not be covered in its entirety even if engaged in education, health care, or social service programs, because the primary objective of a religous organization is religion.

Furthermore, and in lieu of the above classifications, a religious organization is not prevented from giving hiring preference to members of that religion in its federally assisted activities. However, this does not mean that a religious organization may engage in racial discrimination veiled in the cloth of religious preference.

Under title IX of the Education Amendments of 1972, education institutions controlled by a religous organization are exempt from compliance with the requirements of title IX. In order to acquire exempted status, an educational institution must file an application of exemption with the Department of Education. Since this process has been in effect, no institution has been denied exempt status. As a result of the exemption process, institutions qualifying for exempt status include institutions that: require sex discrimination in training students for the ministry; require differential treatment of pregnant students and employees; require differential treatment of men and women in athletic programs; require unmarried pregnant students to live separately from other unmarried women in a dormitory; require marital status to be considered for employment; prohibit men and women from swimming in the same pool; and mandate other religion-based differing treatment. Under the Civil Rights Restoration Act, religiously controlled educational institutions will be able to continue to choose to manage their facilities as they deem necessary in accordance with the teachings of their religious beliefs.

Finally, prior to the passage of the Civil Rights Restoration Act, concerns were expressed to me that this bill would require any institution not controlled by a religious organization to either provide or pay for abortions. To allay these concerns the Senate adopted the Danforth amendment which I cosponsored. The Danforth amendment provides in pertinent part that nothing in the legislation "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 abortion." By so stating, this amendment acts to make this legislation abortion neutral. I believe this amendment contributed to the overwhelming support for the bill which passed the Senate by a 75 to 14 margin and the House by a 318 to 98 margin.

I have repeatedly received reports that many of the religious organizations are opposed to the legislation. Yet when I take an inventory of the correspondence directed to me, I find what appears to be overwhelming support for the Civil Rights Restoration Act. After voicing serious reservations about the original bill, the U.S. Catholic Conference joined in supporting the legislation and urged the President to sign the act into law. But as we now know, the President chose not to sign the bill.

In addition, the Evangelical Lutheran Church of America writes "those of us who stand before you today are unwaivering in our support of this bill, and of its great need for our country today." The American Baptist Churches, U.S.A. states "we reiterate our continued support for this legislation and urge the Congress to override President Reagan's veto." Similar statements have been sent to me by the General Board of Church and Society, the United Methodist Church, the Presbyterian Church (U.S.A.), the Washington Office of the Episcopal Church, the National Council of the Churches of Christ, the Jesuit Social Ministries, the Quakers, and others.

The American Jewish Congress expressed its support recently by stating that "we strongly urge the House and Senate to override the President's veto." The AJC clearly summarized the issue, saying "(t)his remains a matter of simple justice."

Mr. President, I have been honored by an appointment to the U.S. Constitution Bicentennial Commission. I was fortunate enough to have joined my colleagues in the original room in which the Continental Congress convened, and we reenacted the drafting and signing of our Constitution. These activities have given me cause to reread many of our Nation's most treasured documents in a new light. If I might ask your indulgence for one moment, I would like to read something which I find appropriate here.

When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the Earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent request to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.

As we all know, that is the beginning of the Declaration of Independence.

Mr. President, I find these cherished words ring particularly true as I cast my vote to override the Presidential veto of the Civil Rights Restoration Act. In so doing I reiterate my support for all those certain unalienable rights on which our country was founded.

Mr. LEVIN. Mr. President, in the last few days, we have witnessed a remarkable campaign in support of President Reagan's veto of S. 557, the so-called Grove City bill. The concerns of the people who have contacted their elected representatives and urged them to sustain the veto are sincere. Unfortunately, their concerns are based on erroneous information.

Leaders of major religious organizations have spoken out against the misinformation being spread by those who wish to defeat the Grove City bill. The Evangelical Lutheran Church in American, one of the many religious groups supporting S. 557, says that those responsible for the anti-Grove City campaign are "spreading hysteria." The American Baptist Churches in the U.S.A., another religious organization supporting the bill, denounces attacks on the bill as "egregiously irresponsible misrepresentations."

Is it true that churches and religious schools will have to hire homosexuals as a result of this bill? No, it is not true. None of the civil rights statutes amended by this bill has ever been interpreted by the courts to provide pro-

tection on the basis of sexual preference; none of the agency regulations implementing these statutes have ever so provided; and nothing in the bill creates any such protection.

Is it true that if this bill passes, a church school won't be allowed to fire individuals with contagious diseases? No it is not true. An employer will be free to fire anyone who poses a threat to the health and safety of others or who cannot perform the essential functions of the job.

Some of the major religious groups supporting this bill—the Presbyterian Church, the United Methodist Church, the Episcopal Church, the Church of the Brethren, the U.S. Catholic Conference, and others—understand that the bill restores important protections to racial and ethnic minorities, to women, to the handicapped, and to the elderly, protections that were severely limited as a result of a 1984 Supreme Court decision. These religious institutions had no problem with the application of these civil rights statutes before 1984, and they are convinced that they won't have a problem after this bill becomes law.

To repeat, Mr. President, the concerns of those who have called and written in the past week are sincere. But they have been expressed in response to information that is just plain wrong. Homosexuals and drug addicts get no new rights under this bill. The activities of churches, synagogues, and religious schools will not be subject to new and intrusive scrutiny by the Federal Government. S. 557 simply reaffirms the coverage and enforcement practices that existed before the 1984 Supreme Court decision. Before 1984, the civil rights statutes were effectively preventing federally funded discrimination without infringing on religious liberty. They will continue to function in this way after S. 557 is passed.

Mr. President, I think most Americans oppose discrimination and support religious liberty. These are not mutually contradictory values. The Civil Rights Restoration Act preserves both these values.

Mr. BINGAMAN. President Reagan's veto last week of the Civil Rights Restoration Act was a regrettable disservice to millions of women, Hispanics, blacks, native Americans, elderly, and disabled Americans. Today, I hope the Members of the Senate will rectify President Reagan's wrong and vote to override the veto.

Since its initial introduction in 1984, I have been a supporter of the Civil Rights Restoration Act because I refuse to condone discrimination. My continued support for this act will be reflected by my vote today.

After the Supreme Court's 1984 decision in Grove City versus bell, the strength and effectiveness of major civil rights statutes were called seriously into question. The Court had ruled that title IX of the Education Amendments of 1972, which prohibits discrimination based on sex, applies only to the particular program or activity receiving Federal financial assistance, not to the institution as a whole. The implications of this ruling are far reaching because similar language is contained in several other civil rights statutes.

Earlier this year, a vast majority of the House and Senate agreed that we had no choice but to set the record straight. The intent of Congress always has been, and must continue to be, that the broadest interpretation be given to statutory construction of our Federal civil rights laws.

The evolution of civil rights laws in this country has been a slow and arduous process, and we have by no means reached a point where we can be complacent. The Grove City decision, the Presidential veto, and the recent dissemination of misleading and irresponsible information about this issue, illustrate this point.

I believe the act that passed the Senate by a vote of 75 to 14 2 months ago provides a solid basis for a full partnership between the States and Federal Government to abolish discrimination in our country. The Senate's vote today can reaffirm that commitment.

I sincerely hope that my colleagues will not be swayed into switching their votes solely because of pressure from the Moral Majority's recent negative and misinformed campaign to sustain the Presidential veto.

I, along with probably all the Members of this body, have received hundreds of calls and letters from constituents who, prompted by the Moral Majority's efforts, have become concerned about the impact of the act. I would like to take this opportunity to set the record straight on exactly what this bill entails.

In general, the Civil Rights Restoration Act amends title VI of the 1964 Civil Rights Act, section 504 of the 1983 Rehabilitation Act, title IX of the Education Amendments of 1972, and the Age Discrimination Act. These antidiscrimination measures relate to discrimination only on the basis of race, handicap, sex, and age, respectively. As I mentioned earlier, the act clarifies that these antidiscrimination measures apply to all parts of institutions that receive Federal assistance for any of their programs or activities.

Mr. President, at this point I would like to address in greater detail some of the important concerns raised by my consitituents.

SEXUAL PREFERENCE

The act does not provide protection on the basis of sexual preference. It relates to four antidiscrimination statues based only on race, handicap, sex, and age. Homosexual groups have recognized this and have sought new legislation specifically prohibiting discrimination on the basis of sexual orientation.

ALCOHOL AND DRUG ADDICTS

The act does not require an employer who receives Federal funds to hire or retain in employment all alcoholics and drug addicts. A person who is a current alcoholic or drug addict can be excluded or fired from a particular job if he or she poses a direct threat to the health or safety of others or cannot perform the essential functions of the job and if no reasonable accommodation can be made to remove the safety threat or enable the person to perform the functions of the job. Federal agencies such as the Centers for Disease Control, the Department of Labor, and professional organizations such as the American Academy of Pediatrics, and the American Hospital Association have issued guidelines for ensuring safety in the workplace. These guidelines can be relied on for determining reasonable accommodations.

PERSONS WITH CONTAGIOUS DISEASES

Again, employers may refuse to hire or to fire any person who poses a direct threat to the health or safety of others or who cannot perform the essential functions of the job if no reasonable accommodation can remove the safety threat or enable the person to perform the essential functions of the job.

RELIGIOUS ORGANIZATIONS

Complete coverage of a corporation, partnership, or other private organization occurs in only two circumstances:

First, the first is where assistance is extended to the private organization "as a whole." "As a whole" means general assistance that is not designated for a particular purpose. For example, a grant to a religious organization to enable it to extend assistance to refugees would not be assistance to the religious organization as a whole if that is only one among a number of activities of the organization.

Second, the second circumstance is where the organization is "principally engaged in the business of providing education, health care, housing, social services, or parks and recreation." The principal occupation of a church, diocese, or synagogue is by definition "religious."

Other than in these two circumstances, a religious organization is not covered in its entirety. In addition, none of the antidiscrimination statutes amended by the act bars discrimination on the basis of religion. Thus, a religious organization can prefer members of its religion for its activities as long as the religious preference is not a pretext for discrimination on the basis of race, sex, handicap, or age.

Finally, I would like to point out the many religious organizations which have found these provisions acceptable and which fully support the Civil Rights Restoration Act: U.S. Catholic Conference of Bishops, National Council of Churches, American Jewish Congress, American Baptist Churches, Evangelical Lutheran Church of America, Union of American Hebrew Congregations, Anti-Defamation League of B'nai B'rith, American Jewish Committee, Church of the Brethren, Presbyterian Church USA, Church Women United, Network-National Catholic Justice Lobby, United Methodist Church, and Episcopal Church.

ABORTION

The Civil Rights Restoration Act states that nothing in the legislation "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 abortion * * *."

SMALL BUSINESSES

The Civil Rights Restoration Act adds a new subsection to the Rehabilitation Act of 1973 that clarifies that small businesses, such as grocery stores and pharmacies, with fewer than 15 employees, are not required to make "significant alterations to their existing facilities to ensure accessibility to handicapped persons if alternative means of providing the services are available"—for example, if there is a larger grocery store with access ramps nearby.

SCOPE OF THE ACT

I would like to emphasize here that this act applies only to entities which receive Federal funds. That leaves a large majority of institutions and businesses outside the scope of this act. Any employer or entity is free to refuse Federal funding should the employer or entity so desire.

In addition, the act clearly states that its provisions do not extend to "ultimate beneficiaries," which are defined by statute as farmers receiving crop subsidies, food stamp recipients, and welfare and Social Security beneficiaries. These groups of "ultimate beneficiaries" are not covered under this legislation.

CONCLUSION

Finally, I have heard from some individuals that this bill will cause a major intrusion by the Government into the lives of private citizens and that many of our institutions will be turned upside down. This simply is not true.

When title VI was introduced in 1964—more than 20 years ago—opponents made similar claims. It was stated that "virtually every nook and cranny of the private lives of individual Americans would be touched and tainted by the obnoxious proposal." (110 Cong. Rec. 1619, 1964.) That did not happen, and it will not happen under the Civil Rights Restoration Act. Instead, I believe this country, which has become a better place since the passage of our first antidiscrimination laws, only will be made better still by the passage of legislation that rigorously safeguards these laws.

Thus, I can see no reason to oppose the passage of this legislation. If we as Americans truly believe in "equality and justice for all," we should support this legislation and guide it into law. Thank you.

Mr. LEAHY. Mr. President, President Reagan's veto of S. 557, the Civil Rights Restoration Act—the first veto of a civil rights bill to come before Congress in 121 years—should be overridden. The Senate and the House have debated and passed S. 557 by overwhelming majorities. I am proud to be an original cosponsor and strong supporter of this historic legislation.

The Supreme Court's 1984 Grove City decision greatly narrowed the prohibition against sex discrimination in education and foreshadowed similar restrictions on longstanding Federal protections against discrimination based on race, age, and handicapped status.

Since that time, we have worked hard to craft a bill that restores civil rights protection to its status before the Court decision. The bill before us today achieves this goal. It restores four important civil rights statutes to their former meaning and impact. And, in doing so, ensures that our tax dollars are not used to subsidize discrimination.

The Civil Rights Restoration Act goes to the very heart of who we are as a people, and what we can achieve as a nation. I know of no country that has made as much progress as we have made in using the law to end discrimination, and more than that, to redirect the public conscience to ever higher standards of fairness and compassion. Our laws have changed how we behave—they have also changed how we view each other.

Our efforts to restrict discrimination have set the moral tone for our maturity as individuals and our growth as a nation. By overriding the President's veto, we will reaffirm our commitment to civil rights and simple justice.

Mr. KASTEN. Mr. President, I rise to speak on S. 557, the Civil Rights Restoration Act.

I voted for S. 557 when it was considered by the Senate earlier this year, and will vote today to override the President's veto of this legislation. I support this legislation because I believe that Congress has a duty to make clear that Federal funds shall not be used to support discrimination.

There may be some who believe that discrimination—especially racial discrimination—is no longer a problem in our society. There may be some who believe that because of this the Federal Government can afford to refrain from a broad application of our civil rights laws. I do not subscribe to this point of view.

The Federal Government cannot legislate morality. But it does have an obligation to set an example. One way to set such an example is to insist that institutions accepting Federal funds agree not to do certain things—not perform abortions, for example, or in this case, not discriminate on the basis of race, sex, age, or handicap.

This legislation is necessary because of the 1984 Supreme Court decision in Grove City College versus Bell. This decision, while it dealt specifically only with title IX of the Education Amendments of 1972—prohibiting sex discrimination—also effected the application of the Civil Rights Act of 1964—race discrimination—section 504 of the Rehabilitation Act of 1973—discrimination against the handicapped—and section 309 of the Age Discrimination Act. The reason for this is that these four statutes all use substantially the same language, so that a decision dealing with one of them impacts on all of them.

In the Grove City decision, the Court effectively ruled that educational institutions accepting financial aid—including indirect aid such as Pell grants and loans provided to students—had only to comply with civil rights laws in the "program or activity" receiving such aid. In the example that has been often cited, if a college enrolled students accepting Federal financial aid, only the college's financial aid office would be required to comply with the civil rights laws.

This "narrow construction" of the civil rights laws is not what Congress intended when the laws were passed. The fundamental reason S. 557 is necessary is to restore the appropriate "broad construction" of these laws, thereby effectively sending the message that the Federal Government will not subsidize discrimination.

It is absolutely true that most educational institutions and most other institutions have no intention of discriminating. We should be thankful for this. Unfortunately, to ensure that discrimination is not practiced by institutions accepting public funds, some verification of compliance with the civil rights laws is necessary. This verification can impose an aggravating paperwork burden on smaller institutions especially. I feel strongly that the executive branch has an obligation to limit this paperwork burden as much as possible.

Having stated my support for S. 557, I must also state that I have reservations about his legislation. In the last few days, I have been contacted by hundreds of my constituents concerned that the bill as written would

impinge on the free exercise of religion or would force churches and religiously oriented schools to hire people who do not share their beliefs and values.

Mr. President, my reading of this bill is that it does not do any of these things. Congress does not intend it to do any of these things. If I thought S. 557 would do any of these things, I would oppose it.

True, I would have preferred more precise language than is used in this legislation. I supported two amendments that would have, respectively, specified a narrow construction of the civil rights laws where religious institutions are concerned and that educational institutions "closely identified with" a particular religion or denomination—for example, Marquette Univesity in Milwaukee—would not have to comply with provisions of the civil rights laws that violated the basic tenets of their faith. I voted for, and am pleased that the Senate adopted the Danforth amendment, which makes clear that nothing in this bill would require any hospital or other medical institution to perform abortions against its will.

But I am persuaded that the intent and effect of this legislation is not to extend the scope of the civil rights laws any further with respect to religion than was the case prior to the Grove City decision. I want to note one thing in particular that S. 557 clearly does not do.

None of the civil rights laws makes any mention of sexual orientation or preference as a protected group of people. Homosexuals are not protected by reason of proscriptions against discrimination by reason of race, or sex, or age, or handicap. S. 557 makes no mention of any special protection extended to homosexuals.

The charge made by one national organization that this bill would force churches to hire, as one group charged, "an active homosexual drug addict with AIDS as a youth pastor" is wrong. S. 557 simply does not change current law in this area.

But many of my constituents in Wisconsin, in good faith and sincerity, are concerned about how the executive branch of the Federal Government might interpret this law—or how the Federal judiciary might interpret it. I have heard the message they have been sending loud and clear.

If the language in this legislation is being implemented or interpreted by the courts in such a way as to interfere with the free exercise of religion, or impose on farmers, or cost jobs by forcing businesses to make massive, unjustified changes in their physical plants, I will be in the forefront of those seeking a change in the law.

If the executive branch and the judiciary cannot administer and interpret this law in a responsible manner, Congress will have to go back and spell out in very detailed and precise language how the law should be implemented and interpreted. Congress should not have to do this; its role is not to specify every detail of the implementation of the law. But if the executive branch or the judiciary cannot do their jobs, that is what Congress will have to do.

President Reagan has proposed a number of changes to S. 557 in his veto message. I have looked at these changes; I think that, if included in the bill, they would probably improve the clarity of this legislation.

However, I am not fully persuaded that they are necessary. Moreover, they are simply being made too late. Had the administration made these proposals while S. 557 was in committee or on the floor, the Senate could have considered them, either individually or as a package. But under Senate rules, it is simply not in order to consider them now.

I am, frankly, a little mystified as to why the administration, after standing on the sidelines for almost all of the debate on this legislation, chose this moment to propose changes in the bill. I would encourage the administration to take a more active and a more useful role in the legislative process in the future.

In conclusion, Mr. President, let me restate the need for this bill and the reason I am reluctantly voting to override the President's veto. It is vitally important that Congress make clear that the Federal Government will not tolerate discrimination in any activity with which it is associated. This is important enough that, notwithstanding some of the imprecise language in the bill, I believe S. 557 merits the Senate's support.

Mr. HATCH. Over the last few days an amazing thing has happened. There has been an outpouring of calls and telegrams to Capitol Hill that is unprecedented in my memory. In fact at one point 80,000 calls per hour came in to express concern about the Grove City bill. We all know that these Americans overwhelmingly support the President's veto. Now some media have suggested that this avalanche of calls has been stimulated by Moral Majority and Jerry Falwell. But, the fact is, no one group can create this kind of activity. It is just plain not true to suggest this legislation is opposed by a few evangelicals only.

Mr. President, I would like to read into the RECORD, the incredibly broad list of opponents who are now saying to the Congress—stop and rethink this ill-conceived legislation. They range from the U.S. Chamber of Commerce to Citizens for America, to the National Black Coalition for Traditional Values. They include:

MARCH 18, 1988.

GROUPS IN OPPOSITION TO GROVE CITY

Ad Hoc Committee in Defense of Life.
American Association of Christian Schools.
American Conservative Union
American Pharmaceutical Association.
Apostolic Coalition.
Assemblys of God.
Association of Christian Schools International.
Association of Pro-America.
Bott Broadcasting Company.
Catholic League for Religious and Civil Rights.
Christian Action Council.
Citizens for America.
Citizens for Educational Freedom.
Citizens for Reagan.
Coalitions for America.
College Republicans.
Committee to Protect the Family.
Concerned Women for America.
Conservative Alliance.
Conservative Caucus.
Contact America.
Coral Ridge Ministries.
Council for National Policy.
Eagle Forum.
Family Research Council.
Focus on the Family.
Free Congress.
Heritage Foundation.
Intercessors for America.
International Christian Media.
Lutheran Church—Missouri Synod.
Moral Majority.
National American Wholesale Grocers Association.
National Apartment Association.
National Association of Evangelicals.
National Association of Homebuilders.
National Association of Manufacturers
National Black Coalition for Traditional Values.
National Center for Public Policy Research.
National Family Institute.
National Grocers Association.
National Religious Broadcasters.
Public Advocate.
Rutherford Institute.
Save Our Schools.
United Families.
United Pentecostal Church.
U.S. Business and Industrial Council.
U.S. Chamber of Commerce.

Mr. HATCH. Mr. President, I yield 5 minutes to the distinguished Senator from New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire [Mr. HUMPHREY] is recognized for 5 minutes.

Mr. HUMPHREY. I thank the Chair.

Mr. President, once again, Senators confront a difficult choice between succumbing to glib slogans or coming to grips with the enormous problems posed by a bill that bears the misleading title of Civil Rights Restoration Act.

This bill does not simply restore established protections against discrimination that existed before the Grove City decision—not at all.

Proponents of S. 557 have seized on the Grove City decision as a convenient pretext for a massive expansion of Federal regulatory power.

As the Wall Street Journal stated in an editorial of March 14, "Seldom has

a bill opened the door so widely for courts and Federal bureaucrats to intrude into the decisionmaking processes of employers."

Those of us who have taken the trouble to point out the many pitfalls and excesses of this latest Federal power-grab are falsely portrayed as opponents of civil rights. But invoking the slogan of "civil rights" can be no substitute for examining what this expansionist legislation will actually do.

The proponents have mocked concerns for example, that the bill expands Federal coercion in the area of homosexual rights and other exotic civil rights theories. Let me quote without any editorializing directly from a recent Federal court decision by Judge Gerhard Gesell in the case of Blackwell versus Department of the Treasury.

Plaintiff has alleged that the position he sought was eliminated because Treasury officials regarded the fact that he is a transvestite as a handicap. This is enough to state a claim under the Rehabilitation Act.

In a subsequent ruling in the same case, the judge said:

It is clear that transvestites are (handicapped persons), because many experience strong social rejection in the work place as a result of their mental ailment made blatantly apparent by their cross-dressing life-style.

So the claims that this bill goes far beyond the protection of basic and genuine civil rights are not mere myths or distortions. It is Federal judges who have applied these statutes to interfere with valid employer judgments dealing with antisocial behavior and dangerous contagious diseases.

The Wall Street Journal once again hit the nail on the head in its March 14 editorial on this bill, when it said, "Because of vague wording, all sorts of new 'rights' could emerge. Feminists, gays and other activist groups will be filing suits to foster new definitions."

So let the record be clear. The opposition to this bill has nothing to do with legitimate legal protections against race or gender discrimination. Those guarantees come from the Constitution itself, and from the multitude of existing Federal and State civil rights laws which are fully operative and enforceable irrespective of S. 557.

We are concerned, instead, about unwarranted and intrusive Federal regulation that goes far beyond earlier concepts of reasonability in the application of civil rights laws.

This bill will subject clergymen to Federal oversight regarding the details of their church programs and facilities; it will subject private and public school administrators to Federal interference in the area of contagious disease policy; and it will impose burdensome accessibility and retrofitting requirements on small businesses merely because they accept Federal food stamps from their low-income customers.

These are only a few examples of how this bill's primary result will be to expand Federal coercion of society, rather than to simply restore the status quo ante.

So I urge my colleagues to reject the argument that oppositon to unwarranted and unprecedented Government regulation of society is somehow opposition to legitimate civil rights. As Columnist Edwin Yoder wrote in an article entitled "The Hounding of Grove City College" in Monday's Washington Post, "The key issue here is not civil rights against civil wrongs, but a clash of two valid views of freedom."

The regulatory excesses that will arise out of S. 557 are clearly unacceptable. We should sustain the President's veto, and then go about designing a reasonable remedy to the problems created by the Grove City decision.

Mr. President, I ask unanimous consent to have printed in the RECORD an article by Edwin M. Yoder, Jr., published in the Washington Post, as well as the Wall Street Journal editorial to which I referred earlier.

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

[From the Wall Street Journal, Mar. 14, 1988]

CONGRESS ON THE LOOSE

President Reagan is expected this week to veto the "Grove City" bill, a document that makes any organization accepting any federal money subject to federal "civil rights" interpretations. Because of vague wording, all sorts of new "rights" could emerge. Feminists, gays and other activist groups will be filing suits to foster new definitions. The bill should be vetoed, but even some Republicans in Congress may vote to override.

It seems that Congress in this election year is hellbent to win special-interest votes. Republicans don't want to be left out. Beyond Grove City the vote-buying spree could have other consequences, some of them expensive. For example:

Child care. Everyone believes in child care but it is by no means clear that it is the responsibility of the nation's taxpayers. Senator Chris Dodd and a flock of interest groups this week will launch a big media hype to try to make it exactly that, at an ultimate minimum price tag estimated by Douglas J. Besharov on this page last Wednesday at $32 billion a year.

As Mr. Besharov noted, Senator Dodd's bill represents a subsidy for middle-class working mothers, which is why it has such marvelous vote-buying potential. With this new infusion of money and a new set of federal standards to restrict competition, childcare providers will be able to raise their fees. They are lending support to the Senator's media bash.

Mandated benefits. Senator Kennedy's bill requiring all employers to provide specified health-insurance benefits to employees working more than 17.5 hours a week has been reported out of his Labor and Human Resources Committee. He himself puts the price tag for business at $27.1 billion. The respected Institute for Research on the Economics of Taxation (IRET) says it actually will cost $100 billion and $25 billion in GNP. The senator has found a way to cost the nation thousands of jobs.

Minimum wage. The House Education and Labor Committee is considering a bill to raise the minimum wage to $5.05 an hour over the next four years from the current $3.35. After that, youths and marginally productive workers whose work effort is worth less than $5.05 will while away their time on the welfare roles or in some other unproductive endeavor. IRET estimates a loss of 300,000 to 750,000 jobs by 1990, the third year of the increases. If the higher minimums push up wage scales generally, yet more jobs will be lost to foreign competition.

For Grove City the costs are indeterminate but seldom has a bill opened the door so widely for courts and federal bureaucrats to intrude into the decision-making processes of employers. The bill is Congress's response to the Supreme Court's Grove City College decision limiting government influence to the specific areas where its money is put to use. Under the new law if any federal money comes in, even if it is to a grocery store accepting foods stamps, the entire organization is subject to federal interpretations of "rights."

Columnist Patrick J. Buchanan wrote last week that court judgments already have perverted the hallowed term civil rights. Racial discrimination is deplorable and citizenship rights belong to everyone, but courts and lawyers have shown themselves capable of creating "rights" that go well beyond basic constitutional protections.

Yet congressional Republicans are imploring the President not to veto Grove City. Why, they ask, should we antagonize liberal political-action groups in this election year?

There is a very good reason to do so. Taking a clear stand will give voters a real choice. They will be able to choose between politicians who pile new costs on taxpayers and those who don't. They will be able to choose between politicians who do and those who do not regard any kind of conduct, however obnoxious, as a "civil right." If no choice is offered, most voters will go with the incumbents.

Had Republicans offered such a clear choice in 1986, they still might be in control of the Senate. As for receiving the votes of the social-action lobbies, there is simply no way Republicans can outbid Democrats on that front. So why even try?

Child care for middle-class two income parents is not a public responsibility. Mandated employee benefits are not free goods. The ones mandated may not even be the ones some employees most desire. Some forms of discrimination are acts of simple prudence and save lives, as when drug or alcohol abusers are barred from operating trains and buses.

But if nobody makes these points, Congress simply will conduct its election-year spree. After the party is over, we again will be presented with the tab.

[From the Washington Post, Mar. 21, 1988]

THE HOUNDING OF GROVE CITY COLLEGE

(By Edwin M. Yoder, Jr.)

The lopsided vote by which Congress reversed the Supreme Court's 1984 Grove City College decision signals that President Reagan's veto probably won't change the outcome. Nor should it, necessarily.

But Congress whooped this legislation through with an unwarranted air of self-congratulation. And the President in his veto message missed a chance to make a useful point about academic freedom, a sizable bit of which has been lost.

You might assume, if you didn't know otherwise, that the Grove City decision denied someone his civil rights. In fact, what the court said was merely that the Department of Education might sanction the small Pennsylvania college which chooses, for reasons not now fashionable, to separate boys and girls in its intramural sports program; but the sanctions, said the court, must be limited to the offending department.

Were Grove City one of those institutions whose financial structure is heavily marbled with federal subsidies, the college wouldn't have had a leg to stand on, let alone a federal case. But Grove City is among the few institutions which, as a matter of principle, shun the outstretched hand of federal almsgiving. The usual basis for federal sanctions was absent.

Yet there was a small chink in Grove City's armor. The college did not turn away students whose tuition is partly paid by federal grants or loans, administered by the U.S. Department of Education. That was the camel's nose in the tent.

Under a 1972 law, it seemed clear that sanctions (fund cutoffs) might apply to any college program nourished by federal aid—possibly including Grove City's grants office. But was the whole college subject to sanctions—to being second-guessed by federal bureaucrats—because federal grants to individual students happened to be an indirect part of its operating budget?

That was the issue the court addressed. And all the court did was to say no, restricting federal sanctions to the scope of the alleged violation. That is the interpretation of the law that Congress has now shouted down by huge margins. The "Civil Rights Restoration Act" declares, in effect, that a college or university offending federal regulations in any program, however, trivial, may be punished by the withdrawal of federal subsidy from all its programs.

But the president's veto message, with its alarmist imaginings of all sorts of threats to corporations and churches, flagrantly misses the real point: the truncation of academic freedom.

For two centuries the courts have made large allowance for the political independence of higher education. It began with the famous Dartmouth College case of 1819, argued by Daniel Webster. ("It is, sir, a small college, but there are those who love it.") The Marshall Court halted an effort by the New Hampshire legislature to revoke the college's original charter and convert Dartmouth into a public institution. The Supreme Court's solicitude for Grove City, another "small college," is in that tradition.

So energetic has been the federal hounding of Grove City, in pursuit of unisex intramural sports, that Justice Powell, no friend of discrimination, was moved to scold federal authorities. "An unedifying example of overzealousness," he called it—strong words for him, but certainly well warranted.

Zealousness aside, the key issue here is not civil rights against civil wrongs, but a clash of two valid views of freedom. In case upon case, for years and years, the federal judiciary has recognized the special vulnerability of educational institutions to political meddling and pressure—including the kind of pressure that emanates from the righteous causes of the moment.

In the past 20 years, that solicitude has been eroded, often because racial balancing in public or private colleges seemed a greater imperative than the full freedom of university administrators to make their own educational judgments.

Was the integration of the sexes on the playing fields of Grove City so great a cause, then, as to justify this legislation? Perhaps. But the unctuous self-righteousness that attended its passage is inappropriate. You can be sure that something has been lost as well as gained.

Mr. HUMPHREY. Mr. President, I yield whatever time remains back to the manager.

Mr. HATCH. Mr. President, I yield to the Senator from Idaho.

Mr. SYMMS. Mr. President, I will take just a few minutes today to make one last appeal to my colleagues to vote to sustain the President's veto of S. 557, the Grove City bill. As the distinguished Senator from Nebraska, Senator KARNES, said the other day, this legislation would be more properly titled the "Government Intrusion Act of 1988" for its pervasive coverage of private entities, including churches and synagogues, farms, businesses, and State and local governments.

All of us support Federal laws designed to protect individuals from invidious discrimination and ensure equality of opportunity. That is not the question at issue today. The question today is whether we will override the President's veto and support a bill which would quash fundamental freedoms from governmental intrusion and control, all in the name of civil rights. How long will civil rights endure when the almighty arm of Congress has eliminated basic elements of religious liberty and free enterprise?

Two great principles of government—liberty and equality—exist in tension within the language and spirit of our Constitution. It is a tension which has often set the parameters of debate within this body. It helps establish our character as a people, and it is essential to our system of government. It has made, and will continue to make, the United States a great nation to which people around the world, oppressed by their own governments, are drawn with hope for a new life for themselves and their families. S. 557 would destroy that important tension and tip the balance heavily against the principles of freedom. I believe its long-term impacts on the economy and the activities of private associations of American citizens will be debilitating to liberty and opportunity.

S. 557 represents a vast expansion of Federal power over State and local governments and the private sector. This expansion goes well beyond the scope of power exercised by the Federal Government before Grove City. I believe such an expansion of Federal power is unwarranted and ill-founded.

The President has sent us a substitute bill which incorporates many of the provisions included in S. 557, but eliminates the unwarranted Federal intrusion in private activities which was included in the bill we sent to the President's desk. I hope we will vote to sustain the veto, and urge the Judiciary Committee to give the President's substitute proposal expeditious consideration.

Mr. HATCH. I thank the distinguished Senator.

Mr. President, how much time remains to the Senator from Utah?

The PRESIDING OFFICER. The Senator from Utah has 8 minutes and 45 seconds.

Mr. HATCH. Mr. President, I have to clarify a few things. The debate between Senator KENNEDY and Senator GRAMM, I think, contains some matters that need to be clarified.

For one thing, the Senator from Texas is right, and the Senator from Massachusetts was right only insofar as a private religious school that is controlled by the religious institution is exempted by this bill. But not all are private religious schools, and there are only two that qualify in this country out of hundreds, actually thousands. The two are Catholic University and Brigham Young University, which are the only two completely controlled by their respective churches.

So the distinguished Senator from Texas is absolutely right. All these others are going to come under the onus of this bill and under section 3(b), which basically provides coverage throughout the whole institution if a Federal bureaucrat happens to disagree with the religious institution.

I notice that there is an opinion from Steptoe and Johnson with regard to two issues: whether farmers are covered by this bill and whether homosexuals are. I am not going to address the homosexual issue because, to me, that is somewhat irrelevant to this, and there have been some extreme comments made by some people opposed to the bill. Let me address the farm issue.

If we do not want this legislation to cover farms in America—almost every farm in America, large and small, take subsidies—why do we not say so in the bill? That is all the President is asking. Why should we leave it to the whim of a Federal judge as to whether a farm is or is not covered. The American Farm Bureau Federation thinks they are going to be covered. They presented testimony to that effect to the Senate Committee on Labor and Human Resources on March 19, 1987.

Some people claim that section 7 excludes farmers from coverage. It states that this bill does not "extend the application of the acts so amended to ultimate beneficiaries of Federal finan-

cial assistance excluded from coverage before the enactment of this act."

It suggests as much, but is not persuasive. The reason we need language in the bill specifically addressing farmers is that legislative history is not enough to protect farmers.

If we do not want this legislation to cover every farm in America, why didn't we just say so? We should not leave it to the whim of some Federal judge to determine whether a farm is or is not covered. The American Farm Bureau Federation certainly thinks that they are going to be covered. They presented testimony to that effect to the Senate Committee on Labor and Human Resources on March 19, 1987.

Now, some people claim that section 7 excludes farmers from coverage. Section 7 states that this bill does not "extend the application of the Acts [amended by this bill] to ultimate beneficiaries of Federal financial assistance excluded from coverage before the enactment of this Act." The Senate Committee Report (pp. 24, 25) suggests as much, but is unpersuasive. An ambiguous colloquy in the Senate, in which one of the participants himself acknowledged that the issue was not resolved, is of no real help.

In any case legislative history is not enough to protect farmers. While farmers may have been regarded as "ultimate beneficiaries" under the current statutes, these statutes have been completely rewritten under S. 557. Before, the statutes covered programs or activities receiving Federal aid. Under this bill, private organizations, businesses, partnerships, and sole proprietorships are expressly covered if they receive Federal aid. Farms are obviously businesses.

A provision excluding ultimate beneficiaries at best excludes individuals such as persons on food stamps or Medicaid. Those individual ultimate beneficiaries are not businesses and run no risk of coverage as such. This is not so for a farmer—he or she operates a business.

I am not at all persuaded that legislative history is adequate to retain the pre-Grove City exclusion of farmers. Remember, in 1964, when debating the 1964 Civil Rights Act, its leading sponsor, Senator Hubert Humphrey, said he would eat the pages of the CONGRESSIONAL RECORD if the bill permitted quotas. We now know the Supreme Court would make Senator Humphrey eat those pages.

Moreover, even if I believed section 7 excluded farmers, it only applies to ultimate beneficiaries so regarded prior to enactment of the Civil Rights Restoration Act. What happens if we enact new farm programs after this bill goes on the books? At best, it is very unclear that farmers will be excluded from coverage under those new programs, and, in fact, I think they will be covered, no matter what we say in legislative history.

Mr. President, there has been a tendency to reduce the President's veto to the short phrase, "If you want to accept Federal money, you should not discriminate." No one in this Chamber supports discrimination. No one in this Chamber believes that Federal funds should be used to underwrite discrimination. No one in Congress wants to support discrimination against minorities, the aged, women, and those who are handicapped.

While it is easy to reduce the debate to this kind of historical simplicity, the problems with the Civil Rights Restoration Act do not arise because people want to discriminate. They arise because people want to exist without total domination by the Federal bureaucracy. All of the operations of the church become subject to Federal regulators, not just the program itself. All operations and activities of the church or synagogue will be covered and regulated.

In my State of Utah, the Farm Assembly of God conducts the Wee Willie Winkle Day Care Program, which is a State-licensed program. Of the 130 children in this program, the tuition for roughly one-third of the children is covered by Federal assistance.

The program is run in the church gymnasium and once this bill passes all of the activities of that church will be subject to regulation not just that particular day care center.

Now, has this day care program been accused of discrimination? No.

Have they discriminated against minorities, the handicapped, women or the aged? No.

Do they want to rush out and discriminate? No.

They simply want to help the community by providing a desperately needed service, day care for parents who are working or in some other Federal training or education program.

Now the pastor of the church called me to tell me that if S. 557 becomes law, he will have to remove all of those federally-assisted children. He does not want to do so, but he feels he would have no choice. He does not want to subject all of the operations of his church to endless Federal regulations.

Frankly, Mr. President, he has no idea of what this bill will do to him and to others in similar circumstances. The simple fact is that the Wee Willie Winkle Day Care Center is no more of a discrimination against Grove City College, the institution involved in the Grove City decision. It is sometimes forgotten but that school was never accused of discrimination. In fact the Court goes out of its way to make it clear it did not discriminate.

The fact is the debate today is not over discrimination. It is whether we can have an effective civil rights policy without regulating the activities of the church or synagogue.

Are we really helpless in our ability to draft legislation that would protect against discrimination while still protecting the rights of religious congregations, prayer rooms and other activities in the church.

Mr. President, if my colleagues want to vote to sustain the President's veto, then I will work with the majority leader and others, Senator KENNEDY, and anybody who is interested in completing action on this bill by the end of the day or this week.

The simple fact is we can protect minorities, women, the handicapped and aged without regulating churches. We can enforce equality without jeopardizing the religious freedom of synagogues. We can protect freedoms guaranteed all Americans without trampling the first amendment.

I hope my colleagues will join me in supporting the President's veto. The Grove City case should be overturned. But it can be accomplished without destroying rights guaranteed by the Constitution.

I think this mislabeled bill should not become law in its present form. Again it is not a question of civil rights any more than it is a question of religious rights and freedoms. Frankly, what is involved here, and anybody who reads this bill and reads section 3(b) has to realize, is that any church or congregation that takes any dollar of Federal assistance, becomes wholly liable.

It it is a religious school system and one of the schools makes a mistake, then the whole system becomes covered by this bill.

Frankly, I do not think we should be in the business of regulating churches in this country.

If you look at the first amendment, the first amendment lists as the first precious freedom that we have the right, the right to practice our religion the way we want to, freedom of religion.

Mr. President, let me just say this: This is an important bill. I would like to support it. No one feels more dedicated toward civil rights than I do. But I also want to support our religious institutions in this country and their rights to be free, their civil rights, and I do not want the long arm of the Federal Government coming in and interfering with religious rights.

I reserve the remainder of my time.

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

The PRESIDING OFFICER. The Senator from Minnesota [Mr. BOSCHWITZ] is recognized for 2 minutes.

Mr. BOSCHWITZ. Mr. President, if I could ask the Senator from Massachusetts to recognize the Senator from Washington first?

Mr. KENNEDY. The Senator from Washington, under the time constraint, is yielded 90 seconds.

The PRESIDING OFFICER. The Senator from Washington [Mr. EVANS] is recognized for 1½ minutes.

Mr. EVANS. Mr. President, during the past few weeks I have received from my constituents thousands of phone calls and letters expressing concern about the quote, "evils and horrendous effects" of the Civil Rights Restoration Act. I am convinced that most of those who have contacted me have done so after being exposed to a gross misinformation campaign by organizations such as the moral majority. And, after listening to the recent round of debate on the Senate floor, I am compelled to respond to the latest attacks on this most important legislation. It is interesting to note that most of the major religious denominations in this country support the legislation this Congress passed.

I have heard everything from, "this bill will require churches to hire homosexuals affected with the AIDS virus" to "this bill will unduly burden private sector firms with paper work." With regard to the former assertion, nothing in the bill requires directly or indirectly, a firm to hire someone afflicted with the AIDS virus. Whether or not an individual with AIDS will be considered "disabled" within the meaning of section 504 of the Rehabilitation Act is an entirely separate inquiry. That interpretation has been settled by the courts. Addicts and persons with contagious diseases must be treated as handicapped except when they present a danger to the health and safety of others or cannot perform the essential functions of their positions.

S. 557 is concerned only with restoring the scope of coverage under our civil rights statutes. It does not in any way expand the classes of individual protections. The bill does not make sexual preference a protected class. It does not expand the scope of our major civil rights statutes—it merely restores congressional intent. Those statutes clearly prohibit discrimination on the basis of race, sex, age and disability. Thus, the legislation does nothing more than prohibit discrimination by those institutions and entities receiving Federal funds.

As for the latter assertion about the compliance burdens on institutions and the private sector, this issue already has been debated at great length. And, the Senate has expressed its will clearly and unequivocally. Sure, it may be inconvenient for a private entity to fill out the forms necessary and precedent to receiving Federal aid. Yet, does mere inconvenience outweigh the paramount concern of eradicating discrimination? I think not.

I will vote to override the President's veto. The arguments presented in his message to Congress offer nothing new or revealing—certainly nothing which has not been previously discussed and rejected by the Senate. The Civil Rights Restoration Act has one simple purpose—to make federally supported discrimination illegal once again. It achieves this purpose by carefully defining the terms "program or activity" in each of the four statutes in a manner which is consistent with judicial interpretations and administrative enforcement prior to Grove City versus Bell. It does not infringe upon first amendment protections for religious entities. S. 557 preserves the existing law religious tenets exemption. For example, current title IX regulations provide for a religious exemption where an educational institution finds the statute is inconsistent with its religious tenets. To date, no institution has been denied an exemption. Furthermore, it is important to keep in perspective that the goal of our civil rights statutes is universal compliance. Immunity from such compliance should be granted cautiously and judiciously, as is the current practice of adjudication on a case-by-case basis.

The basic question is whether we will allow Federal funds to be used to condone discrimination. I do not believe the majority of Americans want their tax dollars used to subsidize discrimination. Congress must finish the job it started in 1964 by clearly stating that our civil rights laws cannot be effective if too narrowly applied. I urge my colleagues to override the President's veto so that we can reaffirm this Nation's commitment to the vigorous protection of the civil rights of American women, minorities, elderly and disabled citizens.

The PRESIDING OFFICER. The Senator has used his allotted time.

Mr. KENNEDY. Mr. President, I yield to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota [Mr. BOSCHWITZ] is recognized.

Mr. BOSCHWITZ. Mr. President, I rise today to voice my support for the Civil Rights Restoration Act and to urge my colleagues to vote for an override of the President's veto of this important legislation.

In the past week, I have received well over 2,000 calls, many from friends, urging me to support the President's veto. One Republican County Convention adopted a resolution expressing "unified disgust" with my support of the Civil Rights Restoration Act and advised me I should seek other work in the event I vote for it.

Sometimes, of course, a Senator will have an honest difference of opinion with his constituents. I may disagree with some of my constituents about the best way to protect civil rights. At other times, however, our differences will be more a result of misunderstanding than strong disagreement.

That is why I have been very disturbed the past week by a campaign of disinformation that some opponents of this bill have waged. Their tactics have misrepresented this bill, misrepresented its bounds, and misrepresented what it would accomplish. In doing so, they have done a disservice to the people they serve and to the public debate that is taking place.

I was recently given a copy of something called the Moral Majority Alert, and I'm told it was sent a short time ago to thousands of its members across the country. Now I have no axe to grind with Jerry Falwell or the Moral Majority. We've been on the same side on some issues and opposed on others. But I find very objectionable the kind of tactics now being used in opposing this piece of legislation. Listen to this rhetoric:

"Your church or mine could be forced to hire a practicing active homosexual or drug addict as a teacher or youth pastor." The letter also says, "American churches, Christian schools and ministries will be forced to employ a certain number of homosexuals, alcoholics, transvestites and drug addicts."

Mr. President, if those things were true, I'd be at the head of the line opposing this bill. But we know, Mr. President, that Mr. Falwell is not only playing fast and loose with the facts. He's making a hysterical appeal that actually ignores the facts of this bill.

This bill clearly does not change the definition and standard for what constitutes discrimination. It does not give special protection on the grounds of sexual preference. It grants no special rights to homosexuals. The courts have never interpreted the four laws affected by this bill to extend special rights to homosexuals, and this bill will not allow them to do so.

Mr. Falwell goes on to say that homosexuals are protected by the bill because it "declares" that homosexuality is a "disease or handicap." The bill declares no such thing. It does not make any declaration on homosexuality. As far as diseases, it in fact makes clear that coverage does not include individuals who have contagious diseases that would threaten the health of others or prevent them from performing the duties of the job.

This bill is not changing the standard of discrimination. it is simply restoring what Congress believes to be the proper scope for civil rights laws. If a particular institution receives assistance in one of its programs, the entire institution must not discrimi-

nate on the basis of age, sex, race, or handicapped status.

Mr. Falwell makes this bill sound like a sinister plot which he says militant homosexual groups have "railroaded through Congress." That's absurd. This bill has been considered by Congress for 4 years, and it's overwhelming bipartisan support here in Congress reflects broad support for it throughout the country.

Mr. Falwell certainly has a right to differ with me and others on this bill. But when he distorts the bill to this degree in an effort to generate support for his cause, he has stepped over the line.

I will not repeat many of the assertations that I have heard made by others on the floor, but I conclude by saying:

Freedom in this country will not be threatened by this bill, as Mr. Falwell would have us believe. But justice is threatened when public campaigns bend and distort the truth in the name of their cause. I fought such a campaign of distortion when the opponents of Judge Bork sought to misrepresent his record. They were eventually successful. I will continue to fight those campaigns now and in the future from whatever side of the aisle they come.

Mr. Falwell can whip up all the hysteria he wants, and alarm as many people as he wants, and raise as much money as he likes. But this Senator is going to continue to support this bill to protect and expand civil rights of all Americans. I'm proud to support this bill and reaffirm the commitment of the U.S. Senate to civil rights for all Americans.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. How much time remains?

The PRESIDING OFFICER. Two minutes and 50 seconds.

Mr. KENNEDY. I yield myself the remaining 2 minutes.

Again and again in this debate, we have heard the arguments of the moral majority and the rightwing against this legislation. Those arguments are full of sound and fury—but they signify nothing but disinformation about this bill. Never in the history of civil rights have so many phone calls done so much to distort so many facts.

These are the same reprehensible arguments we have always heard against civil rights. The issue is discrimination, pure and simple. Opponents of this measure have left no stone unturned in their unseemly attempt to carve new loopholes in the law and provide greater leeway for bias and discrimination.

The arguments of the opponents are awash in hypocrisy. They pay lip service to civil rights, but they refuse to practice what they preach. When the chips are down, they never met a civil rights bill they didn't dislike.

We have come too far in civil rights over the past three decades to roll back the clock today. Federal funds should not be used in any way, shape or form to subsidize discrimination because of race, sex, age, or disability.

It has been 121 years since a President of the United States has vetoed a civil rights bill. Congress overrode Andrew Johnson's veto in 1867, and Congress should override Ronald Reagan's veto today.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Utah has 57 seconds remaining.

Mr. HATCH. Mr. President, I yield 10 seconds to the distinguished Senator from Colorado.

YOU CAN'T RESTORE WHAT NEVER WAS

Mr. ARMSTRONG. Mr. President, S. 557, the Civil Rights Restoration Act, is misnamed.

I know that its proponents say over and over again that the act does nothing more than restore the law to its pre-*Grove City College* v. *Bell*, 465 U.S. 555 (1984), status, but the proponents are wrong. Their own bill demonstrates my point:

Look at section 2, the congressional findings. The second finding reads:

> The Congress finds that 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.

What section 2 does not say and cannot honestly say is that S. 557 would restore the law to what it was as interpreted and construed by the judicial branch. The vast weight of judicial opinion was against institution-wide coverage. The following list shows the major cases that demonstrate that prior to Grove City the civil rights statutes were usually read to be just what their words say they are, viz., program specific:

North Haven Bd. of Education v. *Bell*, 456 U.S. 512 (1982).

Hillsdale College v. *Dept. of H.E.W*, 696 F.2d 418 (6th Cir. 1982), vacated and remanded in light of *Grove City*, 104 S.Ct. 1673 (1984).

Brown v. *Sibley*, 650 F.2d 760 (5th Cir. 1981).

Doyle v. *Univ. of Alabama at Birmingham*, 680 F.2d 1323 (11th Cir. 1982).

Rice v. *Pres. & Fellows of Harvard Coll.*, 663 F.2d 336 (1st Cir. 1981), cert. denied, 456 U.S. 928 (1982).

Simpson v. *Reynolds Metals Co.*, 629 F.2d 1226 (7th Cir. 1980).

Bd. of Instruction of Taylor Co. v. *Finch*, 414 F.2d 1068 (5th Cir. 1969) [cited by both supporters and opponents of the idea that Title VI is program specific].

Romeo Community Schools v. *Dept. of H.E.W.*, 438 F.Supp. 1021 (E.D.Mich. 1977), aff'd, 600 F.2d 581 (1979).

Othen v. *Ann Arbor School Bd.*, 507 F.Supp. 1376 (E.D. Mich. 1976), aff'd, 699 F.2d 309 (6th Cir. 1983).

Dougherty Co. School Sys. v. *Harris*, 622 F.2d 735 (5th Cir. 1980), vacated, 102 S. Ct. 2264 (1982), on remand, 694 F.2d 78 (1983).

Univ. Richmond v. *Bell*, 543 F.Supp. 321 (E.D.Va. 1982).

Bachman v. *Am. Soc'y of Clinical Pathologists*, 577 F.Supp. 1257 (D.N.J. 1983).

Miller v. *Abilene Christian Univ. of Dallas*, 517 F.Supp. 437 (N.D.Tex. 1981).

Angel v. *Pan American World Airways*, 519 F.Supp. 1173 (D.D.C. 1981) (dicta) ("To hold that commercial airlines fall within Section 504 merely because of assistance provided to airports would expand improperly the accepted proposition that Section 504 is limited to direct recipients of federal funds." Id. at 1178).

On page 10 of the Committee Report there are cited a number of cases that the committee uses to demonstrate pre-Grove City that was institution wide. The Department of Justice replies that many of those cases do NOT support institution wide coverage. The Department of Justice said of the committee's case law:

"*Board of Public Instruction of Taylor County* v. *Finch*, 414 F.2d 1068 (5th Cir. 1969) does not 'assume [ ] and endorse [ ] institution-wide coverage. . . .' as the Committee Report at 10 says it does. Indeed, the Supreme Court has cited this case as support for the 'program-specific' reading of these statutes. *North Haven Board of Education* v. *Bell*, 456 U.S. 512, 538 (1982). Likewise, a reading of the *Finch* holding itself does not indicate anything but a 'program-specific' conclusion.

"*United States* v. *Jefferson Co. Board of Education*, 372 F.2d 836 (5th Cir. 1966), aff'd en banc, 380 F.2d 385, cert. denied, sub nom *Caddo Parish Board of Education* v. *United States*, 389 U.S. 840 (1967) does not support institution-wide coverage under title VI. That case dealt with a public school system-wide desegregation remedy where there was a constitutional claim at issue. The scope of title VI was not discussed in the opinion.

"*United States* v. *El Camino Community College District* 454 F. Supp. 825 (C.D. Cal. 1978), aff'd 600 F.2d 1258 (9th Cir. 1979) cert. denied, 444 U.S. 1013 (1980). The Committee Report states the holding as '(Title VI investigation of entire College appropriate.)' Committee Report at 10. The court's decision that an agency's investigatory authority—as distinguished from its regulatory authority—is broader than programs covered by title VI is not inconsistent with the program-specific scope of that statute. An agency has some authority to investigate more broadly than the federally-assisted programs or activities in order to determine whether discrimination is occurring in those assisted programs or activities. The agency, however, may only regulate—and seek remedial action in—those federally-assisted programs or activities.

"The court's decision in *Flanagan* v. *President and Directors of Georgetown College*, 417 F. Supp. 377 (D.D.C. (1976)), that nonfederally assisted financial aid dispensed in a law school built with Federal assistance is covered by title VI, is fully reflective of the program-specific scope of title VI. That activities occurring within buildings constructed with Federal financial assistance are themselves covered, for a period of time, by virtue of such construction aid, is fully consistent with the program-specific reach of title VI. This case provides no support for a scope of coverage beyond program-specificity."

I thank the Chair.

Mr. HATCH. Mr. President, I think it is an injustice to say that the sincere, religiously motivated people across this country really dislike all civil rights bills. I do not agree with that statement. I do not think they agree with that, and I think, again, this is an oversimplification, like saying that this is just a simple overrule of the Grove City case. It just is not restoring the law as it was 1 day before Grove City.

This is a tremendously broad statute that is going to intrude into many, many entities and organizations, practically all in our society, in four statutory ways, and frankly that is the thing I am concerned about more than anything else. I can live with all of that because I, too, want civil rights protected. I cannot live with the way churches are treated in this bill.

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

The Senator from Massachusetts has 1 minute.

Mr. KENNEDY. Mr. President, I yield to Senator KASSEBAUM.

Mrs. KASSEBAUM. Mr. President, I am voting today to override the President's veto of S. 557, the Civil Rights Restoration Act. Like other Members of the Senate, I have received thousands of phone calls in opposition to this legislation and in support of the President's veto of it.

This outcry is of concern to me—not because the callers oppose the position I have taken on this bill—but rather because the calls are based on inaccurate information about what this bill does.

It really is a disservice to sound policy development when misinformation so clouds the debate that any opportunity to discuss alternatives is lost. Moreover, it is a disservice to American citizens to scare them out of their wits with distorted representations of legislation before Congress.

Thomas Jefferson spoke eloquently of the critical role which an informed citizenry plays in making our democratic system work. Public debate is enriched by the thoughtful contributions and give-and-take by people who have studied an issue. It is meaningless when misinformation is presented as fact and when intolerance replaces a respect for opposing views.

With this in mind, I think it is important to set the record straight on some of the statements which have been made about this bill.

The most frequently mentioned concern is that this legislation would force churches and schools to hire homosexual teachers. This is ridiculous. The bill absolutely does not do this.

The legislation does not change the definition of sex discrimination—which deals with gender, not sexual preference. Current Federal civil rights statutes do not prohibit discrimination on the basis of sexual orientation and do not force anyone to hire homosexuals. The Civil Rights Restoration Act does not do so either.

Another statement about this legislation is that it declares that AIDS is a handicap. This legislation does not give any additional rights to persons with AIDS.

AIDS appears to have arisen as an issue in this legislation due to an amendment offered by Senators HUMPHREY and HARKIN which addresses issues raised by the Supreme Court decision in the Arline case. In that case, the Court determined that individuals with contagious diseases are "handicapped" for purposes of coverage under section 504 of the Rehabilitation Act. That is the interpretation of current law. It will continue to be the interpretation of current law, whether or not the Civil Rights Restoration Act is enacted.

The Humphrey-Harkin amendment clarifies that individuals with currently contagious diseases are not handicapped individuals for purposes of section 504 as it relates to employment if they constitute direct health or safety hazards to others or if they are unable to perform the duties of the job due to their disease. I might point out that the Humphrey-Harkin language is also included in the alternative civil rights bill submitted by the President with his veto message.

With respect to the religious freedom issues which have been raised, I would first point out that a large number of Catholic, Jewish, and Protestant groups have endorsed this legislation and have expressed their belief that religious freedom is adequately protected under it. The "religious tenets" exemption under title IX is maintained, and no request for such an exemption has ever been denied. Moreover, churches and synagogues will continue to be able to give preference to their own members.

Another issue is the statement that farmers who receive price support payments would come under coverage of civil rights laws if this legislation is enacted. Again, there is nothing in this legislation or its accompanying report which supports this interpretation. To the contrary, farmers receiving crop subsidies are explicitly cited in the committee report as being "ultimate beneficiaries" who were excluded from coverage prior to the development of this legislation and who will continue to be excluded after the bill is enacted.

Others have indicated that grocery stores will be covered because they accept food stamps. As noted in materials prepared by the Department of Justice, the Department of Agriculture never has—and does not now—consider grocery stores which redeem food stamps as being recipients of Federal aid.

Although there is a great deal of misunderstanding about this bill, there is also some honest disagreement about what it will mean. The stated intent of this legislation is not to expand the reach of Federal civil rights laws but rather to restore the broader coverage under these laws which existed prior to the Supreme Court's 1984 decision in the Grove City versus Bell case.

I question, for example, the need to single out for special mention businesses "principally engaged in education, health care, housing, social services, or parks and recreation." On the whole, however, I believe that the bill meets its stated intent.

It does become frustrating to try to pin down the ins-and-outs of legislative provisions and to see how they might be applied under various regulatory or judicial theories. There is great truth in Alexander Solzhenitzyn's observation that "When the tissue of life is woven of legalistic relations, there is an atmosphere of moral mediocrity, paralyzing man's noblest impulses."

Nevertheless, we have tried to strike a sensible balance, and the four civil rights statutes included in this legislation have been in force for many years. Title VI of the Civil Rights Act—which bars discrimination on the basis of race, color, or national origin—has been in effect since 1964. Title IX of the Education Amendments of 1972—which prohibits sex discrimination in education—has been in force for over 15 years. Section 504 of the Rehabilitation Act, which prohibits discrimination against the handicapped, was enacted in 1973. The Age Discrimination Act became law 20 years later, in 1975.

In the years prior to the Grove City decision, enforcement of these civil rights laws was based on the broad interpretation of institution-wide coverage. Undoubtedly, it has not been smooth going every step of the way, but we have managed to work things out. In the process, we have made great progress toward establishing a society where equality of opportunity is not merely a slogan, but a tangible goal.

Moreover, we have signaled through Federal civil rights statutes that we have made a commitment to fair treatment of individuals as individuals. In many ways, it is this commitment which is most important of all, and I don't think we can afford to back away from it.

Mr. KENNEDY. Mr. President, I ask unanimous consent that a brief from the law firm of Steptoe and Johnson be printed in the Record. This opinion letter, signed by managing partner Robert E. Jordan III and Susan G. Esserman, concludes that neither farmers receiving crop subsidies nor homosexuals are covered by these laws.

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

MARCH 22, 1988.

Senator EDWARD M. KENNEDY,
Chairman, Senate Committee on Labor and Human Resources, Washington, DC.

DEAR SENATOR KENNEDY: This letter is in response to your request for an opinion on two issues relating to S. 557, the Civil Rights Restoration Act of 1987 ("CRRA"). This letter will address: (1) whether farmers receiving crop subsidies, federal price supports, and other similar commodity benefits are covered by the CRRA and the underlying anti-discrimination statutes—Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (1982) ("Title VI"), Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 (a) (1982) ("Title IX"), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (1982) ("Section 504"), and the Age Discrimination Act of 1975 ("Age Act"), 42 U.S.C. § 6102 (1982) ("the anti-discrimination statutes"); and (2) whether the CRRA and the relevant underlying anti-discrimination statutes afford protection to homosexuals. Our opinion is confined to these two specific issues.

I. Whether farmers receiving crop subsidies, federal price supports, and other similar commodity benefits are covered by the CRRA and the underlying anti-discrimination statutes?

Farmers who receive crop subsidies, price support payments, and similar commodity benefits are not covered by the CRRA or any of the underlying anti-discrimination statutes.

Section 7 of the CRRA provides that "ultimate beneficiaries" that were excluded from coverage underlying anti-discrimination statutes prior to enactment of the CRRA will continue to be excluded from coverage after enactment of the CRRA. Farmers who receive crop subsidies traditionally have been considered to be "ultimate beneficiaries" and therefore excluded from coverage under Title VI, the earliest of the anti-discrimination statutes and the model for the other underlying discrimination statutes.[1] Moreover, the Senate Committee Report accompanying the CRRA, S. Rep. No. 64, 100th Cong., 1st Sess. (1987), specifically affirms that farmers receiving crop subsidies are an example of ultimate beneficiaries previously excluded from coverage of the anti-discrimination laws and thus exempt from coverage after enactment of the CRRA.

Section 7 of the CRRA establishes the following rule of construction: "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."

Section 7 thus provides that the CRRA should not be interpreted to expand the application of the anti-discrimination statutes to ultimate beneficiaries of federal financial assistance, if such ultimate beneficiaries traditionally had been excluded from coverage under the statutes. Regulations for the lead agency implementing the anti-discrimination statutes exclude from coverage the "ultimate beneficiaries" of federal assistance. *See* 45 C.F.R. § 80.2 (1987) (Health and Human Services regulations implementing Title VI); 45 C.F.R. § 84.3(f) (1987) (Health and Human Service regulations implementing Section 504); 86 C.F.R. § 90.4(2) (1987) (Health and Human Services regulations implementing the Age Act.[2]

Farmers receiving crop subsidies and similar federal benefits were specifically identified as ultimate beneficiaries excluded from coverage of Title VI by the legislative history of the bill. For example, Senator John Sherman Cooper introduced into the Congressional Record a letter from Attorney General Robert Kennedy stating that since farmers who are recipients of commodity programs are "ultimate beneficiaries", Title VI "would not authorize imposition of any requirements on individual farmers participating in various agriculture support and marketing programs." 110 Cong. Rec. 10076 (1964). Senator Hubert Humphrey also unequivocally stated that Tite VI would not subject farmers who receive benefits such as crop subsidies to the requirements of Title VI:

"Title VI will have little . . . effect on farm programs. It will not affect direct Federal programs, such as CCC price support operations, crop insurance, and acreage allotment payments. It will not affect loans to farmers, except to make sure that the lending agencies follow nondiscriminatory policies. *It will not require any farmer to change his employment policies.*" 110 Cong. Rec. 6545 (1964) (Emphasis added).

The Department of Agriculture ("DOA") regulations promulgated pursuant to Title VI reflect the congressional intent to exempt farmers receiving crop subsidies or other price support benefits from coverage under Title VI. Section 15.1 of the DOA regulations specifies that the anti-discrimination regulations do not apply to any recipient "who is an ultimate beneficiary under any such program." 7 C.F.R. § 15.1 (1987). Section 15.3(d)(7) offers as an example of those persons to whom the antidiscrimination regulations apply those producer associations or cooperatives that are required to provide specified price support benefits to producers, *i.e.*, individual farmers. These organizations that administer a federal program are materially different from ultimate beneficiaries, such as farmers who receive and are the actual beneficiaries of crop subsidies or price support payments.

Because farmers receiving crop subsidies and other similar programs are clearly identified as ultimate beneficiaries and excluded from coverage under Title VI, the Senate Report to the CRRA specifically identifies such farmers as ultimate beneficiaries of federal programs excluded from coverage under the CRRA. *See* S. Rep. No. 64, 100th Cong., 1st Sess. 24 (1987). As the Senate Report states: "So, from the beginning in the legislative history of Title VI, the model for the other three statutes, we have the unequivocal statement that farmers who receive crop subsidies are not covered." S. Rep. No. 64 at 25.

Testimony on an earlier and nearly identical version of the CRRA introduced in the 99th Congress (H.R. 700) confirms that the anti-discrimination statutes have never been interpreted to reach the activities of ultimate beneficiaries of federally financed programs, such as farmers receiving crop subsidies. *See* H.R. Rep. No. 700, 99th Cong., 1st Sess. (1985). According to the testimony of Daniel Marcus, former General Counsel of the Department of Agriculture, the rationale for such an exclusion was:

In enacting the [anti-discrimination statutes] Congress was not concerned with regulating the activities of the tens of millions of Americans who are the ultimate beneficiaries of the federal financial assistance, but who in no sense operate a federally-financed program or activity. Rather, Congress was concerned with the state agencies, the educational institutions and others who operate programs or conduct activities providing services to others and who are in a position to injure ultimate beneficiaries through discrimination. In other words, ultimate beneficiaries are to a large extent the people intended to be protected by Title VI and the other anti-discrimination statutes, not . . . subjected to those statutes. H.R. Rep. No. 700, 99th Cong., 1st Sess. 1182 (1985).

In summary, under the anti-discrimination statutes and their regulations, those categories of persons deemed to be ultimate beneficiaries of federal financial assistance are not covered by the requirements of the acts. The legislative history of the CRRA and Title VI specifically identify farmers receiving crop subsidies as belonging to the category of ultimate beneficiaries. Section 7 of the CRRA in our opinion ensures that those ultimate beneficiaries excluded before the passage of the Act will continue to be exempt from coverage under the anti-discrimination statutes. Thus, it is our opinion that even farmers receiving crop subsidies or farm support under programs enacted after passage of the CRRA would still be exempt from coverage from the CRRA and the underlying anti-discrimination laws since such farmers constitute a category excluded prior to enactment of the CRRA.

II. Whether the CRRA and the relevant underlying anti-discrimination statutes afford protection to homosexuals?

In our opinion the CRRA does not expand the category of persons entitled to protection under the underlying anti-discrimination statutes and thus does not create any rights or protection against discrimination for homosexuals. Moreover, the underlying anti-discrimination statutes[3] have never been interpreted to extend rights or protection against discrimination to homosexuals.

Title IX has never been construed to extend protection against discrimination to homosexuals. Title IX provides that "no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. . . ." 19 U.S.C. § 1681. Thus, the language of Title IX refers to discrimination based on gender and does not mention dis-

[1] With respect to the other underlying statutes, Title IX, which applies to federal funds provided to education, has no practical application to this specific issue. Section 504 and the Age Act, which do have application to all federally funded programs, are modeled after and contain the same "ultimate beneficiary" exclusion as Title VI. Thus, while farmers receiving crop subsidies are not specifically enumerated as a type of ultimate beneficiary, there is nothing in these statutes, regulations, or case law that would suggest any interpretation of "ultimate beneficiary" in these statutes, as applied to farmers receiving crop subsidies, that would be materially different from the treatment afforded such farmers under the model statute, Title VI.

[2] The regulations implementing Title IX do not contain an express exclusion, but they have been applied in a similar manner. *See* H.R. Rep. No. 963, 99th Cong., 2d Sess., pt. 1, 20 (1986).

[3] Only two of the underlying anti-discrimination statutes, Title IX and Section 504 need to be examined in reaching this conclusion. Title VI, which protects against discrimination on the basis of race or national origin, and the Age Act, which protects against age discrimination obviously are not relevant to this issue.

crimination based on sexual preference. Similarly, the legislative history of Title IX and regulations implementing it address and reflect concern for the protection of women and do not even refer to homosexuals. Moreover, there are no reported cases where the argument that Title IX offers homosexuals protection against discrimination is even discussed by a court.

Under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 (1982) ("Title VII"), which bars sex discrimination in employment in language identical to Title IX, it is well settled that homosexuals are not covered. The courts have uniformly held that Title VII does not prohibit employment discrimination on the basis of sexual preference. The rationale for this position has been that, absent clear legislative expression to the contrary, the word sex should be given its normal interpretation, which means that it applies to a person's gender rather than sexual orientation. *See, e.g., De Cintio v. Westchester County Medical Center,* 807 F.2d 304 (2d Cir. 1986), *cert. denied,* 108 S. Ct. 89 (1987); *Sommers v. Budget Marketing, Inc.,* 667 F.2d 748, 750 (8th Cir. 1982) (per curiam); *De Santis v. Pacific Telephone & Telegraph Co.,* 608 F.2d 327 (9th Cir. 1979); *Blum v. Gulf Oil Corp.,* 597 F.2d 936 (5th Cir. 1979) (per curiam); *Smith v. Liberty Mutual Insurance Co.,* 569 F.2d 325, 326-27 (5th Cir. 1978); *Holloway v. Arthur Andersen & Co.,* 566 F.2d 659, 662 (9th Cir. 1977); *Voyles v. Ralph K. Davies Medical Center,* 403 F. Supp. 456, 457 (N.D. Cal. 1975), *aff'd mem.,* 570 F.2d 354 (9th Cir. 1978). The identity of language between Title VII and Title IX, in our opinion, suggests that Title IX would also be interpreted to exclude homosexuals from its coverage.

The other potentially relevant underlying statute, Section 504, also has not been interpreted to afford homosexuals protection against discrimination. The language of Section 504 protects against handicap discrimination in federally funded programs and does not mention protection for homosexuals. Nor do the legislative history or regulations even refer to the issue of homosexuals. The only reported case that confronts the issue of homosexual coverage under Section 504, *Blackwell v. United States Department of the Treasury,* 830 F.2d 1183 (D.C. Cir. 1987), affirmed a district court holding that a person's sexual orientation or preference is not protected under Section 504.

In conclusion, our opinion concerning the two issues for which you have sought advice is: 1) Farmers who receive crop subsidies, federal price supports, and similar commodity benefits are not covered by the CRRA or any of the underlying anti-discrimination statutes; and 2) The CRRA does not create any rights or protection against discrimination for homosexuals, and the underlying anti-discrimination statutes have never been interpreted to afford homosexuals protection from discrimination.

Sincerely,

ROBERT E. JORDAN III.
SUSAN G. ESSERMAN.

Mr. KENNEDY. I yield back the remainder of the time.

The PRESIDING OFFICER. All time is yielded back.

Mr. BYRD. Does the Senator have any time left?

Mr. KENNEDY. Thirty seconds.

The PRESIDING OFFICER. The Senator has 45 seconds remaining. Forty-five seconds remain in the debate.

The PRESIDING OFFICER. All time has expired.

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

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

The question is, "Shall the bill (S. 557) pass, the objections of the President of the United States to the contrary notwithstanding?" The yeas and nays are mandatory under the Constitution.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Delaware [Mr. BIDEN], and the Senator from Mississippi [Mr. STENNIS], are absent because of illness.

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

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

The yeas and nays resulted—yeas 73, nays 24, as follows:

[Rollcall Vote No. 67 Leg.]

YEAS—73

Adams	Ford	Moynihan
Baucus	Fowler	Murkowski
Bentsen	Glenn	Nunn
Bingaman	Gore	Packwood
Boren	Graham	Pell
Boschwitz	Harkin	Proxmire
Bradley	Hatfield	Pryor
Breaux	Heflin	Reid
Bumpers	Heinz	Riegle
Burdick	Hollings	Rockefeller
Byrd	Inouye	Roth
Chafee	Johnston	Rudman
Chiles	Kassebaum	Sanford
Cohen	Kasten	Sarbanes
Conrad	Kennedy	Sasser
Cranston	Kerry	Shelby
D'Amato	Lautenberg	Simon
Daschle	Leahy	Specter
DeConcini	Levin	Stafford
Dixon	Matsunaga	Stevens
Dodd	McCain	Weicker
Domenici	Melcher	Wilson
Durenberger	Metzenbaum	Wirth
Evans	Mikulski	
Exon	Mitchell	

NAYS—24

Armstrong	Hecht	Pressler
Bond	Helms	Quayle
Cochran	Humphrey	Simpson
Danforth	Karnes	Symms
Garn	Lugar	Thurmond
Gramm	McClure	Trible
Grassley	McConnell	Wallop
Hatch	Nickles	Warner

NOT VOTING—3

Biden	Dole	Stennis

The PRESIDING OFFICER. The Chair will remind the gallery, when we are announcing the vote, not to show approval or disapproval of the Senate's vote.

On this vote, the yeas are 73; the nays are 24. Two-thirds of the Senators present and voting having voted in the affirmative, the bill, on reconsideration, is passed, the objections of the President of the United States to the contrary notwithstanding.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, part of being a Member of this august body is to understand that you win some and sometimes you lose some. That is the nature of our process.

I would like to pay particular tribute to the distinguished Senator from Massachusetts, and, I might add, the distinguished Senator from Connecticut, Senators KENNEDY and WEICKER, for the distinguished and effective way they conducted themselves during this debate.

I think the debate was basically, in large part, on substantive issues. I believe we were all able to focus upon our common objectives, and that is, provide civil rights for the people throughout this country and protect those rights.

This bill will go a long way toward doing that. I, of course, have stated my viewpoint as to religious rights and freedoms. We have to see what happens. If the other body follows suit, this bill will become law, and the President's veto will be overridden.

I hope, if some of the problems I have been discussing do arise, that my friends who advocate so strongly for this bill will join me to ensure that our civil rights laws are enforced, but not in ways that will impugn or trample upon the rights of the religious freedoms in this country.

I do not want to see religious schools suffer because of this bill. I do not want to see religious institutions, churches included, suffer as a result of this bill.

Frankly, Mr. President, I would like to just say a word about the President.

No one in politics wants to be branded as anticivil rights, and certainly I do not think anyone in this body deserves to be branded that way, regardless of how hard things have been fought, and certainly the President does not want to be.

I feel the President should be congratulated for having the kind of courage he displayed on this issue. He felt deeply about the seven amendments that he presented, the two foremost of which involve the churches' and synagogues' problem and, of course, the religious tenets problem.

So I would like to just say that I appreciate what he did. He suffered a defeat today. There are going to be other issues and other battles where he is going to win important victories during the remainder of this administration.

I believe the important thing we can take from this is that we all know that President Reagan is not going to be intimidated by the fact that he has overwhelming odds against him, as this bill has presented. You can bet on the fact he is going to win more than he loses, even though he has lost here today.

Again, I would like to give my congratulations to the distinguished Senator from Massachusetts. He has been articulate; he has been effective; he has mobilized outside and inside forces which I think have allowed this great victory that he and his counterpart from Connecticut, Senator WEICKER, have achieved here today.

This used to be the Weicker-Kennedy bill in the prior Congress. I do not think enough good can be said about Senator WEICKER at this time and the leadership he has provided and the effective way he has conducted the debate. I have immeasurable respect for both these gentlemen and both of these dear colleagues.

I want them both to know that, even though we still have disagreements, which we have articulated on the floor. We have lost, and I want to congratulate them on this tremendous victory and let them know I appreciate the way they have treated this particular Senator from the State of Utah.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER (Mr. HARKIN). The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I appreciate the kind and generous remarks of the Senator from Utah. I serve with him not only on the Human Resources Committee, but on the Judiciary Committee, and he is an able lawyer.

I think the debate on this bill has focused the issues which are before this body concerning federally subsidized discrimination affecting millions of disabled, elderly, women and minorities, in our country. I appreciate the opportunity to work with the Senator from Utah, even though we are adversaries on this particular issue.

The debate of the past 4 years and the debates which we have held in the committee and on the floor this year, have exposed these issues to exhaustive examination, and brought them into sharp focus.

This victory today is enormously important for millions of Americans who have not had equal opportunity in the period since the Grove City case was decided. I have been in the U.S. Senate now for 25 years, and I was a part of those bipartisan coalitions in the early sixties and seventies, that worked for meaningful progress in the areas of civil rights.

Once again today, this victory, although it is expressed in the 73 votes of the U.S. Senators today, arises from important traditions in both political parties of protecting individual rights and liberties and extending those protections to millions of Americans who did not have protections until the last 24 years.

I have welcomed very much the opportunity to work in this area, as in other areas, with my colleague and friend, the Senator from Connecticut. He is an articulate and forceful spokesman for equal opportunity. We look forward now to seeing a successful outcome in the House of Representatives.

Today, the American people are saying today through their representatives in the Senate that this country does not want to retreat on the issue of protection of civil rights for all American people.

America is America because of the progress that has been made, and that progress was reaffirmed today in this very strong vote. I am hopeful that the House will override the veto in a similar manner, and then I think the message will go out to the women in our society, the minorities, the elderly, and the disabled that this country is a country that is not going to let them down and leave them behind. This vote should bring a good deal of satisfaction to people all over this country. I am grateful to the Senator from Utah for his comments and look forward to working with him in the future.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. WEICKER. Mr. President, I thank the distinguished Senator from Utah for his very gracious remarks. I also thank the distinguished Senator from Massachusetts for what truly has been a difficult task from its inception, and not just the vote which everybody can see here on the floor but the work behind the scenes in the committee to bring about this day.

The distinguished Senator from Utah was a very important part of this debate—indeed, the debate on many matters. He brings precision to the argument, integrity to the debate, and any legislation that has gone through the sifting process of the mind of the distinguished Senator from Utah is better legislation, win or lose. As he says, you win some, you lose some.

Briefly, then, again my thanks to all who participated in this matter. It has been a battle over years, not just weeks and months. But most importantly I am really happy for my country today. I am really happy in the sense that the commitments of bygone generations have been renewed, whether commitments to the handicapped, or women, or blacks, or Hispanics, or the elderly. The vote today is not only a renewal of commitments to them but the promise to others who are minorities in this country. That is really what happened here today. We have done so much that grinds out of philosphical debate. It is a very happy moment when once again promise is held out to a part of America which, indeed, makes us one people. So somewhere out there I am sure there is an individual who is going to look at the result of what happened here and figure "My turn at bat is coming up and I am going to make it." I cannot think of any better thought that would attach to any legislation passed by this body.

Mr. HATCH. Mr. President, I thank the Senator for the remarks he made about me. It is typically gracious of him and I appreciate that.

Mr. ADAMS addressed the Chair.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. ADAMS. Mr. President, I will not delay the proceedings but I simply echo the remarks of Senator KENNEDY and Senator HATCH and Senator WEICKER. As a member of that committee, I am grateful this has been done. I am particularly grateful it has been done because I know in the case of the younger generation, particularly my daughters, they will see a renewal of America's faith in treating people in a decent, fair, openhanded fashion, and that there is opportunity for everyone. I think it is an historic moment for the Senate and I am grateful to have been a part of it. I thank the ranking minority leader for the time.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The acting Republican leader is recognized.

Mr. SIMPSON. Mr. President, I thank the floor managers for their excellent work in a situation which could have been more polarized than it was. I thank Senator KENNEDY and Senator HATCH for the very civil and professional way they have gone about their business. That makes it easier to legislate. And, indeed, I am certain all will understand that anyone who would have voted to sustain the veto does not have any lesser commitment to the lesser in our society. I think that was clear in the debate.

I would like to clarify a statement I made earlier regarding Senator DOLE's position on the Grove City veto override. I think it is very indicative of some of the confusion and polarization and emotionalism on this issue that such a clarification is even necessary or required, but let me do that.

Let there be no doubt that Senator BOB DOLE, our minority leader, supports legislation to overturn the Grove City case. I voted that way. He voted that way. I recall his work on civil rights throughout his entire time in this body. As to those of us who did vote to sustain the President's veto of the bill, all of us are interested in changing and overturning the Grove City decision. That should not be lost

on any citizen of the United States. Senator DOLE did, indeed, oppose the administration on many aspects of this issue and has indicated that publicly. And, again, as we saw here in the vote total, there were several persons who, if the vote had been near the figure of 33, which was the amount necessary to sustain, would have been supportive of the cause, and that is the position of Senator DOLE. It was a position of mine originally held, that if the vote were required to sustain the veto, there were many of us out of loyalty to the President and as leaders of our party in the U.S. Senate who would be there to vote to sustain. I think that clarification should be made. If I in any way reflected differently Senator DOLE's position, I certainly would not want that to stay in the RECORD in that form, and thus the intent of mine to enter this correction.

Mr. President, the majority leader is not present and I would never want to act without his approval and knowledge. That is an issue of deep trust which I respect.

Mr. PRESSLER. Mr. President, could I make a short statement?

Mr. SIMPSON. Indeed.

The PRESIDING OFFICER. The Senator from Wyoming yields the floor?

Mr. SIMPSON. I yield the floor for that purpose. Approximately how long will the Senator from South Dakota require?

Mr. PRESSLER. About 3 or 4 minutes.

Mr. SIMPSON. Yes, indeed, I do yield the floor for that purpose.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. Mr. President, I wish to explain my vote on the Civil Rights Restoration Act.

I voted with the President today.

There was a great deal of discussion about whether or not farmers were affected by the bill we voted on today. The President's substitute bill clearly states that farmers would not be included. There was a colloquy on this floor in which it was suggested that farmers were not included in the bill vetoed by the President. Of course, I did not want farmers to be included. However, some Supreme Court Justices and other Federal judges do not give much weight to a colloquy in rendering decisions in cases arising from Federal legislation. They want to see black letter law, and that is the usual practice of the Supreme Court. So I felt it was appropriate to support the President's substitute bill which clearly states the bill's application to farmers. There was a disagreement between lawyers here on the Hill and lawyers in the Justice Department as to exactly what the bill passed by Congress said. I think it was overbroad. I think it would give too much authority to judges to determine how it might apply to farmers.

So, although a number of remarks were made here on the Senate floor, it was all colloquy. For that reason, I supported the President. I feel very strongly that as this bill goes down the road it will be interpreted to include farmers. Judges have been given very wide latitude under the bill just passed over the President's veto to apply it quite broadly.

I continue to support strong civil rights legislation. But now that we have what I consider to be a clearer alternative in the President's substitute, I would prefer it to the bill we just voted on.

I thank the Chair.

S. 79—AMENDMENTS BY SENATOR HATCH

Mr. SIMPSON. Mr. President, I note the presence of the majority leader. So I feel more comfortable in asking unanimous consent that I may submit several amendments with regard to S. 79, which I understand must be at the desk before 1 o'clock, on behalf of Senator HATCH. And I ask unanimous consent that I may do so.

The PRESIDING OFFICER. Without objection, the amendments will be considered amendments of the Senator from Utah.

CONCLUSION OF MORNING BUSINESS

Mr. BYRD. Mr. President, I ask that morning business be closed.

The PRESIDING OFFICER. If there is no further morning business, morning business is closed.

RECESS UNTIL 2 P.M.

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess until 2 p.m.

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

Thereupon, at 12:43 p.m., the Senate recessed until 2 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. GRAHAM).

HIGH RISK OCCUPATIONAL DISEASE NOTIFICATION AND PREVENTION ACT

The PRESIDING OFFICER. The clerk will report the unfinished business.

The bill clerk read as follows:

A bill (S. 79) to notify workers who are at high risk of occupational disease in order to establish a system for identifying and preventing illness and death of such workers, and for other purposes:

The Senate resumed consideration of the bill.

Mr. METZENBAUM. Mr. President, today we begin consideration of S. 79, the High Risk Occupational Disease Notification and Prevention Act.

This is the most important occupation health legislation of the past decade. As principal author of the bill, I am pleased and proud that it is before the Senate. Last October, the House passed the companion bill. Now it is our turn to stand up to help save the lives of tens of thousands of American workers.

I commend the Senate leadership for scheduling this bill. I also thank my colleagues on the Labor Committee, particularly our chairman, Senator KENNEDY, who patiently but firmly helped move this bill through a number of markup sessions. I pay special tribute to one of the most revered members of this body, Senator ROBERT STAFFORD, who joined me in introducing this legislation. His commitment to this bill is totally consistent with his career as a beacon for common sense and a steady voice for moderation and compassion within the Senate.

Over the next several days, unfortunately, there may be few words of moderation heard about this bill. We will hear charges and countercharges; representations and misrepresentations. There will be a number of amendments, some constructive and germane, others designed to disrupt the debate and confuse the issue. There is even talk of a filibuster. But before we get caught up in intense debate, I want to discuss the simple principle underlying the bill—that a worker has the right to know when he or she is at high risk of disease from past workplace exposures.

Millions of Americans put their lives on the line every time they punch a timeclock. These hard-working men and women are exposed to occupational health hazards. Often it will take years for the hazards to manifest themselves in disease. But if workers know they have been exposed to occupational hazards, they can get medical monitoring and counseling before the disease has reached a critical, untreatable stage.

Getting accurate information to workers in timely fashion is what this bill is all about. It creates a medical/scientific panel to review existing scientific evidence. Based solely on the scientific evidence, that panel will designate particular worker populations at high risk of occupational disease. Once the scientific designation is made, the National Institute for Occupational Safety and Health will identify and notify as many of the workers in the designated risk population as possible. Workers will be told the nature of the risk, the diseases or conditions asssociated with the risk and their option to seek medical monitoring to detect any symptoms of the disease or condition.

It is that simple and it is critically important. Each year, up to 87,000 deaths in the United States are attributable to hazardous occupational exposures. That is more than the number of people who die on our highways each year; that's more than the number of deaths we had in the entire Vietnam war. The cost in human misery cannot be measured in dollars, but occupational disease does exact a staggering financial toll on the private and public sectors. The Congressional Research Service estimates that occupational disease cost the United States close to $10 billion in 1985.

There are many strategies to prevent the spread of occupational disease. Obviously, primary prevention is vitally important. That is what OSHA is all about—preventing exposures and abating hazards in the first instance. But secondary prevention also is terribly important. S. 79 promotes medical intervention at the secondary stage—after hazardous exposure but prior to the onset of disease. There is broad consensus among medical and scientific experts that secondary prevention does make a difference. The Centers for Disease Control has already identified over 17 million workers exposed to specific hazardous substances for which medical monitoring is effective. According to the American Cancer Society, up to 25,000 occupational cancer deaths per year can be prevented through early detection and medical intervention.

It costs $21,000 to care for a cancer patient in the terminal year. By preventing 25,000 cancer deaths per year, we can save over $500 million annually in health care costs. Given that employers pay the health care costs of 75 percent of American workers, it should be obvious that—in addition to relieving human suffering—this bill can save employers hundreds of millions of dollars in medical care costs alone.

Opponents of S. 79 never even talk about cost savings. Instead, they are touting a number of wild cost estimates as a scare tactic. At the appropriate time, I am prepared to take on those estimates point-by-point. For now, let me quote an insurance industry executive who testified that this bill "not only will not increase workers' compensation and liability insurance costs in the short term, but also will assure a long-term downturn in occupational disease frequency and severity, thereby reducing insurance costs for both employers and manufacturers in the future."

Some may be surprised that I quoted an insurance executive on S. 79. But the fact is a major segment of the business community supports the legislation. In all my years as a legislator, including my days in the Ohio Senate and the Ohio General Assembly, I have never seen such a broad coalition of support for legislation to help workers. On a major bill relating to occupational health, we can expect the support of the AFL-CIO, the American Cancer Society, the American Lung Association, the American Medical Association, and the entire public health community.

You turn around and look at this chart that is behind us, and there you find about 20 separate health and environmental supporters of S. 79, and on the chart to the left you find the business supporters of S. 79, including the Chemical Manufacturers Association, whose members account for over 90 percent of the chemicals generated in the United States, the American Electronics Association, with over 3,000 member companies, the National Paint & Coatings Association, with over 1,000 member companies, Crum & Forster Insurance Cos., the second largest property and casualty insurers in the country, Atlantic Richfield, Occidental Petroleum, Olin Corp., Union Carbide, W.R. Grace, Eastman Kodak, IBM, General Electric, and so many more, including the one company that has experienced more than any other company in America the hazards of occupational illnesses, formerly the Johns-Manville Corp., now known as the Manville Corp.

We have significant support not only from business organizations but from insurance companies, from the health groups, the environmental groups, and as to the business community, we have tremendous support from those companies that will be most directly affected by this bill.

Why are these sophisticated, tough-minded businesses supporting S. 79? Because they recognize that this bill furthers their self-interest by keeping their workers healthy and productive thereby reducing costs. And because they had the courage to look at the substance of the bill and not be swayed by political concerns.

Since introducing S. 79 1 year ago, Senator STAFFORD and I have made many changes. Following negotiations with business representatives, and with Senators QUAYLE and HATCH, we have tightened the science provisions in the bill. We have clarified the procedural protections. And we have strengthened the provisions insuring that the bill is liability neutral.

There is nothing in this bill that provides a basis for any worker to sue his or her employer.

I want to say, Mr. President, that we are still willing to improve S. 79. Senators have expressed their concern about the impact of the bill on farmers. We are prepared to discuss and look favorably upon amendments having to do with the agricultural community. Other Senators have indicated the medical transfer provisions of S. 79 could create practical problems for small business, and we are trying to solve those problems.

While we are open to constructive amendments, we will fight efforts to gut this bill. Opponents of S. 79 have vowed to stop it at all costs. They intend to offer any number of amendments to divert our attention from the main issue. Many of these amendments may sound harmless. I might even be willing to support a number of them in another context but I will not support certain ones of them on this bill, not when they are merely a part of a cynical ploy to subvert S. 79.

I urge my colleagues to pay close attention to the debate. Over the course of the debate, I ask you always to keep in mind that by giving workers the right to know we will improve their health and save lives, the lives of tens of thousands of persons.

Mr. President, I yield the floor to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Ohio has yielded the floor. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I support the High Risk Occupational Disease Notification Act. Our distinguished colleagues from Ohio and Vermont, Senators METZENBAUM and STAFFORD, have worked tirelessly in the effort to make this bill an effective and workable vehicle to alleviate the growing problem of occupational disease in our country. It has not been an easy task but it has been performed effectively. Thousands of man-hours have gone into the preparation of this legislation.

Senators METZENBAUM and STAFFORD have assembled an extremely impressive list of businesses, associations, labor unions, and public health groups that support this legislation. At every stage of the process the concerns of business, labor and insurance have been addressed. All of them did not support the bill in its original form. In fact, many opposed the bill as it was introduced. However, after working closely with the sponsors of the bill and the staff of the Labor Subcommittee, many of these employers have been actively working for passage of the legislation.

The companies that support the bill are doing so because they believe in contributing to a workplace atmosphere that is safe and productive for workers. They are taking a socially responsible position on this legislation. They see the utility of medical monitoring of employees as being in the economic interest of their companies.

The opponents continue to clamor about the issues of competitiveness, repetitiveness and liability as reasons to defeat the bill. The Reagan administration, the chamber of commerce, and the National Association of Manufacturers have gone on record early and often in opposition to this legislation. Their motto is—let the worker

beware. Well, I say, workers deserve fair notice. They have a right to know.

I have received four letters from the administration. Collectively, they have been signed by Attorney General Meese and Secretaries Bowen, Lyng, Smart, Verity, and McLaughlin. They also have the signatures of Small Business Administrator Abdnor and Chairman of the Council of Economic Advisers, Beryl Sprinkel. In case I had any doubts, one letter informs me that, "the administration has made it crystal clear to the Congress its strong opposition to the broad risk notification approach embodied in H.R. 162 and its Senate companion, S. 79." Time and time again the letters raise the issue of "serious liability implications." They go on to state that the bill "will generate substantial tort and administrative litigation, much of it unfounded and without merit."

It is clear that the administration has zeroed in on an area where they think they can cause the most confusion. Instead of arguing the merits of worker notification, they choose to say we see the problem, we realize its seriousness, but we have already done everything that can be done.

That is simply not the case. This problem is not being properly or adequately addressed by current Federal efforts. The OSHA standards provide a right to find out, not a right to know.

Who is it that will suffer from these so-called unfounded liability claims that are without merit? It is not the Government. They are specifically exempt from liability claims under the bill. Section 5(f) of the bill provides "that the United States or any agency or employee thereof is not subject to suit or judicial or nonjudicial proceedings seeking monetary damages for their actions performed pursuant to this act, unless the act or omission is a knowing and deliberate violation of this act." Is there any Senator who wishes to say that the United States should not be liable if it is knowingly and deliberately violating the spirit of this occupational disease legislation?

Certainly, businesses that are involved in chemical and electrical manufacturing and processes should be most concerned with occupational disease legislation. These companies have considerable experience with the potential liability consequences of hazardous workplace exposures. Yet many of these companies are exactly the same companies that have explicitly endorsed the bill. The Chemical Manufacturers Association, whose members produce 90 percent of the tonnage of chemicals produced in the United States, support the bill. The American Electronics Association, representing over 3,000 member companies, has endorsed the bill. The National Paint & Coatings Association, with over 1,000 member businesses, has endorsed the bill.

The Olin Corp., W.R. Grace & Co., American Cyanimid Co., the Eastman Kodak Chemicals Division, Uniroyal Chemical Co., and the Manville Corp. have all voiced their support for the bill. The American Medical Association, the American Cancer Society, the American Nurses Association, the Sierra Club, Citizen Action, the American Lung Association, and the Association of University Programs in Occupational Health and Safety support the legislation.

Companies like IBM, Digital Equipment, Ciba-Geigy Corp., Atlantic Richfield & Occidental Petroleum would not endorse this bill without carefully weighing the liability consequences to their companies. Is there any Senator who wishes to step forward and tell me that Union Carbide is not sensitive to the liability issue?

This bill has also been actively endorsed by Crum & Forster Insurance Co. and the General Electric Co. Les Cheek of Crum & Forster and Marty Connor, corporate counsel of GE, have been working closely with the Labor and Human Resources Committee on this issue since the beginning of this Congress. Both of these men have also been extremely active in the field of product liability legislation, working with the Judiciary Committee. They are acutely aware of the product liability crisis our country faces, and they are equally aware that the liability argument against this bill is unrealistic, purposefully confusing, and blown out proportion.

Opponents of this legislation continually refer to a pilot program for notification that was carried out in Augusta, GA, in 1981. That program did indeed generate a considerable amount of litigation. However, it is important to point out that in the Augusta notification program, the liability claims that were filed were hardly "unfounded and without merit."

In that case, 849 people were notified that they had been exposed to potentially hazardous levels of BNA, a chemical known to cause cancer of the bladder. The notification went out in 1981, 9 years after a Federal investigator had written letters urging notification and medical monitoring for the employees. Of the 849 persons notified, 171 claims, totaling $335 million, were brought by distraught employees and members of their families against the company. The company settled 120 of these claims out of court for a total of approximately half a million dollars. They allowed the other claims to go to trial where they were dismissed. The Supreme Court of Georgia held that workers compensation was the exclusive remedy available to the employees, and S. 79 would do nothing to alter that finding.

Fifteen cases of bladder cancer and 22 additional cases which showed significant signs of the disease were confirmed by medical screening in the Augusta project. This case study is a valuable example that argues for the legislation, rather than against it. Who knows how many of these individuals would have been spared the horrors of cancer, if they had been notified and monitored when the danger first became known?

Dr. William Johnson, the investigator in that case said, "A lot of people knew, or should have known, for a long time what the situation was." At that time Dr. Johnson also blamed the Federal Govenrment, saying it let the "Workers fall through the cracks" because of prolonged debate over funding and agency jurisdictional disputes in risk notification.

We must not permit workers to continue to fall through the cracks. This Senator is not about to sit back and let the health and lives of the working men and women be endangered because we do not have an effective means to notify them of danger in the workplace.

The Augusta case is a poor example of the potential for liability claim proliferation. The opponents of the bill completely ignore the fact that the chemical company was using a substance that had been a suspected carcinogen since 1895. BNA had previously been discontinued in production and use by all American firms except for the compnay in Augusta.

The days of laissez faire in the workplace are coming to an end. Working men and women have a right to know whenever their jobs create a risk of serious disease. What you do not know can kill you. And any worker exposed to risk has a right to management's help in avoiding the danger, and to medical help in dealing with the risk. The bottom line is that this legislation is necessary—and it is needed now.

I yield the floor.

Mr. HATCH. Mr. President, I have to rise in opposition to S. 79, the High Risk Occupational Disease Notification and Prevention Act. During the debate over this measure, I am confident my colleagues will learn how impractical this legislation is and how little it has to do with preventing occupational disease.

Some of my colleagues may be surprised, given my voting record in the past, that I am opposed to S. 79. I led the fight to put new warning labels on cigarettes and smokeless tobacco products. I worked to establish the prevention block grants to help states increase their prevention efforts. I have supported programs to reduce sexually transmitted diseases and reduce childhood accidents. And in the last Congress, I authored legislation which would have established a President's

Council on Health Promotion and Disease Prevention to take a comprehensive look at what we can do to prevent diseases in this country.

In this Congress, I introduced the legislation which will help prevent infectious disease in our children and help us combat tuberculosis. Also, Senator KENNEDY and I have introduced legislation aimed at reducing infant mortality and have moved through the Committee on Labor and Human Resources legislation to reduce the spread of AIDS in this country.

Since I have spent a significant part of my career in this body advocating disease prevention programs, there is nothing I would like more than to have before Congress responsible occupational disease prevention legislation. Unfortunately, S. 79 is not such a bill.

While its stated purpose is disease prevention, its principal effect will be litigation.

Its primary consequence will not be measured in terms of saved lives, but in notices mailed. And, in the name of politics, it permanently, explicitly avoids one of the most significant occupational hazards in the workplace today—passive smoking.

My opposition is based on several basic problems with this legislation which I will outline, along with some possible solutions. First, I do not believe we should create a new Federal bureaucracy simply because we are unhappy with the performance of existing agencies.

I did some checking and was able to come up with at least a dozen Federal agencies, administrations, and departments which are currently involved in regulating health and safety. Everyone from the Occupational Safety and Health Administration to the Environmental Protection Agency to the Coast Guard to the Bureau of Alcohol, Tobacco, and Firearms is involved. This list of more than a dozen Federal agencies does not include the numerous health and safety activities of State and local agencies.

If we cannot adequately address the occupational disease problem with more than 12 Federal agencies, I doubt adding one more will provide an effective solution. If we are dissatisfied with existing performance, why not address the problems directly instead of creating yet another Federal bureaucracy, which may be no more successful than those already in existenced? If there are gaps in our existing Federal occupational disease programs, gaps which I believe exist, why not fill those gaps? Why not work within the existing Federal framework?

There is already too much duplication and too little coordination of Federal efforts. Creating another new board will only exacerbate this problem, especially since we will have to cut existing programs in order to finance this idea.

Second, responsible legislation should be cost-effective. Or to put it a different way, it should be effective for its cost. The American public should not be forced to pay for a program which has little, if any, impact on the morbidity and mortality of occupational diseases if more effective options are available.

Notifying workers after they may have been exposed to an occupational health hazard is not the most effective method for preventing the disease. Why not keep as our primary focus disease prevention instead of disease notification?

Efforts to reduce the morbidity and mortality of occupational disease can be divided into three approaches. Primary intervention covers efforts to prevent exposure to the hazard; secondary intervention covers those efforts which take place after exposure has occurred, but before the development of disease; and tertiary intervention includes those efforts which take place after the development of disease in an attempt to reduce its impact.

Of these three approaches, primary intervention is the only one which has the potential to prevent all occupational disease. We must recognize that in many instances, it is very difficult to prevent the development of disease once exposure has occurred.

Too often, effective medical intervention is not available. For example, lung damage which occurs from exposure to silicon is not reversible and, other than primary intervention or stopping the worker from smoking, there is very little that can be done to slow its progress. Nor can we halt mesothelioma, which is a lung cancer associated with exposure to asbestos. Usually, by the time it can be detected using current medical technology, it has spread to the point where it is almost always fatal.

Secondary intervention is not only less effective than primary intervention, it is also very costly. Frequently, only a small percentage of the workers who have been exposed to an occupational health hazard actually develop the disease. But since there is usually no technique available to separate those few workers from the other workers who have been exposed, every worker must be monitored, usually for long periods of time. Secondary intervention must cover every worker to have any impact at all, and must do so at considerable cost.

In protecting workers, effectiveness and cost must be factors in developing new legislation. When choosing between two approaches to reduce occupational disease, common sense tells us that, if one costs significantly more than the other yet produces no better results, why not at least consider the less costly. Unfortunately, S. 79 does not take this approach. Instead, it chooses the most costly and least effective solution.

Moreover, attempts to amend the bill to address one of the most effective methods for reducing workers' risk of developing occupational disease—smoking cessation—were vigorously blocked. We were told that despite all the stated justifications for this bill, smoking was just too politically divisive to be addressed.

We were also told that the Board would not even be allowed to consider whether or not passive smoking is a health hazard for nonsmokers. In other words, we are being asked to adopt legislation purporting to address workplace health hazards yet, at the same time, to bar forever any consideration of a hazard which kills 15 people a day in this country, many due to exposure at work.

Third, to be effective, any legislation must encourage the employer and the employee to work together to increase health and safety in the workplace. While the employer may be primarily responsible, if we want to continue improving and protecting the health of everyone in the workplace, it must be through a joint partnership. An employee also has some responsibility for his or her own health.

The employer must provide the equipment and training necessary to assure that the workplace environment is a healthy one. The employee needs to use the safety equipment provided and also to bring unsafe working conditions to the attention of management. In addition, an employee has the responsibility to take steps to reduce or eliminate those lifestyle practices which may increase his or her risks of disease. Again, smoking is one prime and obvious example. I am encouraged to see a number of companies which are now working with their employees to help them stop smoking. This is a trend we should encourage.

Any new program which focuses solely on the employer or solely on the employee will be only a fraction as effective as it should be. Just as many occupational hazards have a synergestic, or enhancing, effect with smoking, employees and employers working together can have a synergestic effect when it comes to increasing health in the workplace. We must encourage the employer and the employee to work together, to cooperate on providing and maintaining a healthy work environment.

Fourth, this kind of legislation must also be neutral in its impact on liability. In its current form, not even the supporters of S. 79 can claim that it will not increase liability costs. The best they can claim is that the increase will be acceptable.

But after looking at previous Federal notification projects, projects which

the supporters of S. 79 point to as the models for this legislation, Robert R. Nathan Associates estimated that 25 percent of those notified will file suit against their employers, costing on the average $95,000 per suit to resolve. The sponsors expect that 300,000 people will be notified each year under this bill, generating on this issue alone annual costs of $7.125 billion.

Those who will be hit the hardest of course will be small businesses. There are some who believe that companies in this country represent an endless supply of wealth which can be continually tapped. They do not realize that if Congress enacts S. 79, mandated health-benefits legislation, mandated parental-leave legislation, and an increase in the minimum wage, many small companies will be driven out of business. Others will have to raise prices and inevitably lay off workers. We already knew, according to CBO, that two of those proposals could eliminate 500,000 jobs. Consequently, before we enact legislation such as S. 79, I think it is prudent to determine whether the proposal can be effective given its total impact.

Finally, to be effective, such legislation must not deny anyone the right to due process. Individuals who are affected by the decisions of Federal agencies and boards deserve to have their full due process rights protected. They deserve the right to be heard before any general rule or regulation is promulgated; they deserve the right to a fair determination as to whether the rule or regulation should apply to them; and, they deserve the right of appeal.

To guarantee these rights, Congress established a set of procedures for most administrative agencies to follow in the Administrative Procedures Act. S. 79, however, creates a Federal agency that is basically immune from this statute. It would be above the traditional controls we place on other branches of Government.

I hope my colleagues will take a close look at this legislation and not just legislate by title. S. 79 should be sent back to the drawing board, and we should instead develop legislation which protects all Americans, not just those suffering from politically acceptable diseases.

Mr. President, I yield the floor.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER (Mr. HARKIN). The Senator from Ohio is recognized.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. METZENBAUM. Mr. President, at the outset of this debate, I would like to clear up one very important point. Recently, there has been an attempt to cast doubt on the business support for this legislation. In particular, there has been discussion about the fact that some chemical companies are openly opposing S. 79, and suggestions that the Chemical Manufacturers Association [CMA] does not speak for the industry as a whole.

CMA is a trade association whose members produce over 90 percent of the basic industrial chemicals in the United States. CMA has some 180 member companies, and the overwhelming majority of them remain committed to the CMA position on S. 79. I have received letters of support from CMA itself and from more than 20 member companies, including Union Carbide, W.R. Grace, CIBA-GEIGY, Rohm and Haas, Occidental Chemical, American Cyanimid, Uniroyal Chemical, and many others. In addition, a number of large companies that have not sent letters are lobbying in favor of this bill.

It is not easy for a trade association to support a major piece of worker health legislation. CMA decided it should support the bill if certain important changes were made. It then spent weeks negotiating with oganized labor, public health groups, and my staff to accomplish those changes. The member companies had lawyers and industrial hygienists carefully review the proposed changes. CMA knew its stance would be controversial, and it made sure its members were aware of exactly what was on the table. The American Electronics Association, with over 3,000 members, and the National Paint and Coatings Association, with over 1,000 members, reached the same decision after similar participation and scrutiny of the revised legislative product.

Since business support surfaced for S. 79, there has been a fierce, and well-orchestrated, attack on the companies and associations who decided to support the bill. It is not surprising that a handful of CMA members decided to disassociate themselves from CMA's position in light of these strong attacks. Several of the seven companies who changed their mind are primarily involved in other industries and have stronger ties to other trade associations. This is true of Philips Petroleum and Oil, Eli Lilly and Pharmaceuticals, Georgia Pacific and Paper Products. Perhaps they could not take the heat. Perhaps they simply reconsidered the merits of the bill. I doubt we will ever know.

But one thing we do know. A group of companies and associations who recognized they would be heavily affected by this bill made the judgment that they would work with the sponsors in order to make the bill acceptable. That is how the legislative process is supposed to work. Too often, particularly in the labor area, it does not work that way. We have polarization and the absence of meaningful dialog. This time, we had dialog. The result is a stronger bill.

We had similar constructive dialog with other business supporters of S. 79 who are not members of the Chemical Manufacturers Association. Manville Corp. was concerned about the liability impact of the legislation as originally drafted. But we worked with Manville to ensure that this bill is now liability neutral, which was our intent in the first place.

Let me quote from a letter to me by the president and chief executive officer of Manville regarding S. 79.

The Manville Corporation supports this legislation for two compelling reasons:

1. It is our corporate policy that every worker is entitled to maximum knowledge of and appropriate protection against the health risks known to be present in any given workplace; and

2. Manville believes that a safe, healthy workplace improves productivity and profits, and reduces health care costs and absences from the workplace * * *.

Manville is a company whose past involvement in an occupational health tragedy makes it uniquely qualified to assess the relative merits and burdens of proposed legislation such as S. 79. That experience persuades us—as it should all others—that enactment of this legislation is in everyone's long term interest.

That is the end of the quote from the Manville Corp.

Mr. President, I ask unanimous consent that the complete letter be included in the RECORD.

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

MANVILLE CORP.,
Denver, CO, December 14, 1987.

Hon. HOWARD M. METZENBAUM,
Chairman, Senate Subcommittee on Labor, Washington, DC.

DEAR SENATOR METZENBAUM: This letter intends to convey Manville Corporation's support for definitive action on S. 79, the worker high-risk notification bill currently pending in the Senate. As you know, a similar measure has passed the House with the support of a broad range of organizations and groups representing business, consumers, and organized labor.

The Manville Corporation supports this legislation for two compelling reasons:

1. It is our corporate policy that every worker is entitled to maximum knowledge of and appropriate protection against the health risks known to be present in any given workplace; and

2. Manville believes that a safe, healthy workplace improves productivity and profits, and reduces health care costs and absences from the workplace.

S. 79 and its House counterpart (H.R. 162) contain program elements which in many respects are no more stringent than Man-

ville's current practices. Manville's Environmental Safety Health Information Management System (MESHIMS) is a one-of-a-kind, state-of-the-art computerized system of worker health monitoring that, had the technology been available previously, has the capacity to forewarn of emerging industrial health problems, such as the asbestos tragedy.

Our corporate program of worker health monitoring through annual medical exams and periodic pulmonary function tests, together with a corporate policy that strives to "engineer to zero" exposure to hazards in the workplace, are intended to limit worker exposure to contaminants, to provide a sophisticated means of long-term worker health surveillance, and to allow early medical intervention in the rare instance where injury is detected. But our concern extends beyond our own workplaces to those who use our finished products as well. As one indication of this kind of commitment, for example, Manville has voluntarily revised its Material Safety Data Sheets for relevant fiberglass products, announced a related labeling and consumer education program, and proposed a recommended workplace exposure guideline to its customers, all based on the most limited (and we believe erroneous) suggestions of a possible cancer risk.

Manville is a company whose past involvement in an occupational health tragedy makes it uniquely qualified to assess the relative merits and burdens of proposed legislation such as S. 79. That experience persuades us—as it should all others—that enactment of this legislation is in everyone's long term interest.

We urge you to bring S. 79 to the Senate floor for debate and passage at the earliest opportunity.

Sincerely,

W.T. STEPHENS.

Mr. METZENBAUM. But do not get me wrong. We worked with other groups, besides the business community, in crafting this legislation. In addition to having strong support from scores of labor organizations in this country, we have worked closely with the public health community which strongly endorses this bill.

A listing of the health groups endorsing S. 79 illustrates the breadth of support within the public health community:

Some of these I have mentioned before. They are worth mentioning again: the American Cancer Society; the American Public Health Association; the American Medical Association; the American Psychological Association; the American Lung Association; the American Thoracic Society; the Association of Schools of Public Health; the American Nurses Association; the American College of Preventive Medicine: the National Women's Health Network; the American Association of College Nursing; the American Association of Occupational Health Nurses; the Association of University Environmental Health Science Centers; and the Association of University Programs Occupational Health and Safety.

Finally, occupational health experts have concluded not only that risk notification is needed, but that S. 79 offers a reasonable scientific approach to the problem of occupational disease. Three former top NIOSH officials during the Ford and Reagan administrations, Dr. John Finklea, Dr. Philip Landrigan, and Dr. James Melius, stated in a recent letter to Senator KENNEDY that:

> High risk worker notification would deliver the necessary individualized information to the worker most likely to develop disease. This information would benefit both the worker and his/her personal physician * * *. We strongly urge you and others in the Senate to * * * support the High Risk Occupational Disease Notification Act.

Those are former top NIOSH officials who worked in both the Ford and Reagan administrations.

The broad base of support for this bill is truly impressive and cannot be dismissed, despite efforts to do so by opponents of S. 79. I urge my colleagues to listen to the groups supporting the legislation to understand the importance of this occupational health bill. S. 79 will improve the health and save the lives of thousands of American workers and I urge my colleagues to support it.

Mr. President, I ask unanimous consent that I may yield to the Senator from Vermont for the purpose of making an opening statement.

The PRESIDING OFFICER. Is there any objection?

Mr. QUAYLE. Mr. President, reserving the right to object, what is the intention of the Senator from Ohio? There are others over here who have opening statements they want to make. Is he eventually, after the Senator from Vermont concludes his opening statement and yield the floor? What is his desire?

Mr. METZENBAUM. Mr. President, the Senator from Indiana is correct. The Senator from Illinois is here with an amendment having to do with agriculture. The Senator from Kentucky is here with another amendment having to do with agriculture, and the Senator from Louisiana is intending to come to the floor with an amendment having to do with small business, all of which are amendments moving in the direction of providing some exemptions in these areas.

It is my thought I would yield the floor, and I hope that they might be recognized for the purpose of offering their amendments, but there is certainly no effort nor intent to preclude opening statements from those on the other side of the aisle.

Mr. QUAYLE. I wonder, Mr. President, further reserving the right to object, if the Senator would also put in his unanimous-consent request that the Senator from Indiana be recognized for the purpose of giving an opening statement?

Mr. METZENBAUM. Mr. President, merely for the purpose of an opening statement?

Mr. QUAYLE. Merely for the purpose of an opening statement.

Mr. METZENBAUM. I so include that.

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

The Senator from Vermont is recognized.

Mr. STAFFORD. Mr. President, there are several good reasons for enacting S. 79, the High Risk Occupational Disease Notification Act of 1987.

The first is simple justice. Those whose lives, livelihoods, and health may be in jeopardy because of earlier exposures to poisonous chemicals should know it because we all deserve to know what our risks are.

Equally important, that knowledge should be shared because it can minimize or even eliminate the risk of actually contracting the disease for which a worker or his or her family may be at risk. Some diseases, especially cancers, which may be almost always fatal if undetected, are significantly less fatal if found and treated early. In yet other cases, a disease may never develop if proper precautions are taken.

In a society such as ours where the dangers of toxic chemicals are almost invariably discovered long after workers and others have been exposed, some sort of notification program is a necessity if the loss of human life is to be minimized. Exposures ought to never happen, but it is a fact of life that they do. Given that fact of life, we should establish a program such as the one proposed in this bill.

It has been alleged that the purpose and procedures addressed by S. 79 are covered by the hazard communication standard of the Occupational Safety and Health Administration. This is not the case. S. 79 addresses several categories of employees not covered by OSHA or other laws. It aims at notification of those exposed to significant risks in the past, along with those individuals who are currently exposed. Among classes of employees not covered by current laws are those associated with failed businesses or plant closures, those who were exposed while in the employ of a previous employer and small business employees now excluded from OSHA and State occupational safety and health enforcement programs. Retired workers are also excluded from current coverages. Therefore, there is a real need for S. 79, the high risk occupational disease notification bill.

Mr. President, there is a lot of misinformation around about S. 79. It is important to clarify what the bill does and what it does not do for workers and businesses alike.

First, what the bill does:

First, S. 79 identifies workers at high risk of occupational disease—through very careful review of epidemiological

and clinical studies, a risk assessment board created in the Department of Health and Human Services will identify populations and subpopulations of workers who are at high risk of disease because of previous occupational exposures. The exercise is based upon accepted epidemiological, clinical and biostatistical methods that have long been used. In determining what worker populations are at high risk, the bill directs the board to isolate those exposed workers groups where the incidence of disease is "statistically significant."

Second, S. 79 notifies workers at high risk of occupational disease—once a worker population at high risk has been identified by the Risk Assessment Board, the Secretary of Health and Human Services will undertake to notify each individual within the population of their risk of disease. The techniques for such notification are well established within the Department of Health and Human Services (HHS) and its National Institute for Occupational Safety and Health (NIOSH) which has conducted a number of pilot worker notification programs. The contents of the notification will basically include all the scientific and medical information that a worker and his family physician needs to know to begin monitoring the workers's health. It is important to note that not all workers exposed to a given toxic substance will or should be notified because not all exposed workers are at risk. The bill is aimed at only those specific groups of workers who exhibit a statistically significant incidence of disease compared to the general population. Therefore, without the increased incidence of disease there will be no notification even though there were known exposures.

Third, S. 79 counsels workers at high risk of occupational disease—one of the key elements of the proposed program is medical counseling. A primary component of the notification is a recommendation that the worker place himself on a medical surveillance program and take certain health promotion measures in an effort to prevent the disease from occurring. The purpose of medical surveillance and health promotion, especially when the worker and his family doctor knows he is at high risk, is to either prevent the disease altogether or to detect it early enough for successful treatment. In a number of cases, it is known that certain health promotion measures such as smoking cessation and dietary changes can greatly decrease an at-risk worker's chances of disease. In other cases, such as chemically induced bladder cancer, if detected in its initial manifestations, can be successfully treated. The costs of any medical surveillance are to be borne either by the employer who exposed the worker or, if there is no such employer, by the worker himself through his existing health care program.

Fourth, S. 79 provides worker antidiscrimination protection—the bill provides strong antidiscrimination protections for workers who are notified that they are at high risk of disease. These protections are necessary because workers at increased risk must feel free to place themselves in medical monitoring programs without the fear of losing their job or existing insurance coverage.

Fifth, S. 79 provides for outside input and judicial review—in order to ensure that the Risk Assessment Board has the best information and research available, the bill provides for written notice and comment on any proposed recommendation of the board as well as public hearings if requested by any interested party. Any party adversely affected by decisions of the Secretary of HHS has the right of judicial review.

Second, Mr. President, let me point out what the bill does not do:

S. 79 does not duplicate the OSHA right to know standard—the OSHA hazard communication standard is designed to warn workers of the hazards of existing chemicals in the workplace. Unlike S. 79, the OSHA standard does not seek to isolate those workers at particular high risk because of previous exposures and inform them of the risk.

Moreover, it does not provide for medical counseling and monitoring which is a major component of the bill. Further, the OSHA standard does not cover former employees, many of whom are at the highest risk, or major sectors of the current work force such as public employees and those engaged in the transportation industry. Thus, the S. 79 program is a critical supplement to the OSHA standard and not duplicative at all.

S. 79 does not create a large new bureaucracy—the only new Government unit created by the bill is the seven-member risk assessment board chaired by the Assistant Secretary for Health and composed of four existing HHS career public health officers and three nongovernment members with expertise in occupational health.

S. 79 does not involve large sums of Federal funds—the entire program is capped at an annual $25 million authorization and the preliminary Congressional Budget Office cost estimate ranges from $15 million in the first year to about $27 million in the fifth year. In addressing the cost issue some other cost considerations must be kept in mind. First, the occupational disease costs to the Social Security Program have been estimated at about $3.5 billion annually. Thus, a very modest program designed to prevent occupational disease in the future will have a large payoff in not only reducing the Social Security disability costs but also in the associated costs of Medicare, Medicaid as well as private health care costs.

S. 79 does not create any new tort liability standards—S. 79 neither adds to nor subtracts from the legal rights that currently exist for workers and other citizens who may be damaged by a responsible party. The bill specifically states that a finding or determination by the Board of Disease Risk does not have any standing in tort law or in any subsequent workers compensation claim. The program, by preventing new cases of occupational disease, should have a long term effect of reducing toxic tort cases as well as workers compensation costs. Moreover, the Federal Government and any employer who voluntarily seeks to notify workers under the bill are held harmless for any willful failure to warn under existing tort law.

S. 79 does not impose any new regulatory burdens on business—the bill does not require employers to do anything except to bear the costs of medical surveillance for current employees if the employer was responsible for the exposure. This is not a new cost since employer provided medical surveillance is already required in many health standards issued under the Occupational Safety and Health Act. For those employers who wish to notify, counsel, and provide medical monitoring for the employees, the bill has a provision for them to do so under a simple certification procedure.

This, Mr. President, explains S. 79 in a nutshell. However, before concluding we should look at the problem of exposure of our citizens to toxic substances.

Mr. President, the following are quotes from the book "Disease Prevention/Health Promotion the Facts," prepared by the Office of Disease Prevention and Health Promotion, U.S. Public Health Service of the Department of Health and Human Services.

The Toxic Substances Control Act of 1976 identified the need to control the risks of exposure to over 65,000 commercial chemicals. Complete information on health hazards exists for only about 2% of chemicals used commercially. Virtually all Americans have detectable tissue levels of DDT, dieldrin, PCBs and six other toxic chemicals.

A 1983 National Research Council study identified 65,725 substances to which humans are exposed, including 3,350 pesticides, 3,410 cosmetics, 1,815 drugs, 8,627 food additives, and 48,523 commercial chemicals.

For 30 chemicals or chemical mixtures and 9 industrial processes, there is evidence of carcinogenicity in humans. For an additional 63 chemicals or mixtures of chemicals and 5 industrial processes, there is evidence of probable carcinogenicity in humans.

Hazardous chemical production in the U.S. in 1982 included 7,823 million pounds of benzene, 2,035 million pounds of acrylonitrite, 543 million pounds of asbestos, 952 million pounds of phthalate and 4,902 million pounds of vinyl chloride.

The usage of hazardous metals in the U.S. in 1982 included 1,303 million pounds of lead, 542 million pounds of chromium, 207.9 million pounds of nickel, 36.8 million pounds of arsenic, 8.2 million pounds of cadmium and 3.4 million pounds of mercury.

Over 50,000 pesticide formulations are registered with the Environmental Protection Agency. In 1984, 1.08 billion pounds of pesticide-active ingredients were used in the United States.

Of the 290 million tons of hazardous waste produced in the U.S. in 1981, 70% came from the petroleum and chemical industries.

Mr. President, I would note at this point that the Chemical Manufacturers Association whose workers will be impacted by this bill support it. Continuing to quote from the book:

For 70% of the 67,000 chemicals in commerce there is no available information on possible human health effects. A complete health-hazard assessment can be completed for less than 2% of chemcials used commercially, and a partial health-hazard assessment can be completed for 14% of those chemicals.

The approximately 110 million workers in this country are exposed to a wide variety of occupational hazards that can pose significant risks to their health.

Mr. President, the National Institute for Occupational Safety and Health has developed a list of the 10 leading work-related diseases or injuries based on frequency of occurrence, severity to the individual and amenability to prevention. Mr. President, No. 1 and No. 3 of the list are:

1. Occupational lung diseases: asbestosis, byssinosis, silicosis, coal worker's penumoconiosis, lung cancer, occupational asthma; and

3. Occupational cancers (other than lung): leukemia, mesothelioma, cancers of the bladder, nose and liver;

These are the two central areas of occupational exposure that S. 79 can have a positive affect on the health of the worker.

To continue to point up the problem, Mr. President, I return to the book:

Cancer was the second leading cause of death in the U.S. in 1984, accounting for 22.1% of all deaths, second only to heart disease.

Estimates of the proportion of all cancers in the U.S. related to occupational exposures range from less than 4% to over 20%. The lower estimate attributes 17,000 cancer deaths per year to exposures at the workplace.

Up to 11% of workers exposed to asbestos may ultimately develop mesothelial tumors. In one groups of workers distilling beta-morphylamine who had more than 5 years of exposure, all reportedly developed tumors of the bladder.

Studies of occupational reproductive hazards have shown increased rates of spontaneous abortions among laboratory and chemical workers and among workers exposed to lead, ethylene oxide, and anesthetic gases.

In a 1985 National Health Interview Survey (NHIS), 36% of workers stated their present job exposed them to substances (e.g., chemicals, dusts, fumes or gases) that could endanger their health.

37% of workers in NHIS survey responded that their jobs exposed them to work conditions (e.g., loud noise, extreme heat or cold, physical or mental stress or radiation) that could endanger their health.

A 1984 survey of chemical workers revealed that 60.8% of respondents reported little or no co-worker knowledge about cancer hazards at the worksite, and 37.0% reported little or no co-worker overall knowledge of occupational health and safety.

Mr. President, the need for this legislation is overwhelming when you look at the impact occupational exposure has on the health of the American work force.

S. 79 provides a low cost means to notify workers of the potential dangers of their exposure in the workplace. This will lead to a healthier work force that is more productive and is less expensive in health care costs to employers.

From both the cost and justice point of veiw this piece of legislation is a good bargain for all.

Mr. President, I urge my fellow Senators to support S. 79, the High Risk Occupational Disease Notification and Prevention Act.

I am very pleased to be associated in this endeavor with the very able Senator from Ohio, Senator METZENBAUM.

Mr. President, I am prepared to yield the floor. I yield the floor.

Mr. METZENBAUM. Mr. President, parliamentary inquiry: Before the quorum call, we had put in a unanimous-consent request that provided for the Senator from Ohio to be recognized, and thereafter for the Senator from Indiana to be recognized for the purpose only of making an opening statement.

Is the Senator from Ohio's understanding correct that by reason of the fact that a quorum call has been put in on an interim basis that the impact of that unanimous-consent request was vitiated?

The PRESIDING OFFICER (Mr. SANFORD). It is my understanding it was not vitiated. It still stands.

Mr. METZENBAUM. Mr. President, parliamentary inquiry: It is my understanding that the Senator from Indiana is to be recognized for the purpose of making an opening statement.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. QUAYLE. Parliamentary inquiry. If we had a unanimous-consent agreement and then had a quorum call, is there some precedent where that unanimous-consent agreement would be vitiated?

Mr. METZENBAUM. I was trying to protect the Senator's position.

Mr. QUAYLE. I am not familiar with the practice.

The PRESIDING OFFICER. The agreement required recognition of the Senator from Indiana. So I think we are in proper order.

Mr. QUAYLE. Mr. President, further parliamentary inquiry: When we entered into the unanimous consent agreement it was my understanding that the Senator from Vermont was going to be recognized for the purpose of an opening statement, and then the Senator from Indiana would be recognized for the purpose of making an opening statement. Intervening quorum calls, to my knowledge, will not upset that unanimous consent arrangement. Am I correct?

The PRESIDING OFFICER. Does the Senator have an inquiry?

Mr. QUAYLE. That is my inquiry.

The PRESIDING OFFICER. That is not the situation.

The Senator from Indiana is recognized.

Mr. METZENBAUM. I think the parliamentary inquiry that he and I would like to propound is under what circumstances after a unanimous-consent request has been made and recognition is provided for under that unanimous-consent request, under what circumstances does a quorum interrupt——

The PRESIDING OFFICER. The Chair is not going to rule on a theoretical matter. The Senator from Indiana is recognized.

Mr. QUAYLE. Further parliamentary inquiry. I am just curious about that.

Mr. METZENBAUM. They will not answer a theoretical question.

Mr. QUAYLE. Is it possible when you have a unanimous-consent request agreement that a quorum call would vitiate the unanimous-consent agreement? Is that the case? Is that possible?

The PRESIDING OFFICER. The agreement is not vitiated.

I have so ruled. I recognized the Senator from Indiana.

Mr. QUAYLE. I do not think we are going to get an answer to our question.

The PRESIDING OFFICER. No, the Senator is not.

Mr. QUAYLE. Mr. President, we are here today on a piece of legislation on which I find a somewhat unusual precedent and practice being established.

It is my understanding that this is the first time where a bill has been laid before the Senate and before opening statements are made, there is a motion to move off the bill, by those who support the bill, and now we have a cloture motion already filed—1 day has elapsed—and we are now taking opening statements on S. 79.

I do not believe that before opening statements are made on a bill, cloture is filed, and after cloture is filed, before any opening statements, there is a motion to move to another bill?

Mr. METZENBAUM. Will the Senator permit me to respond?

Mr. QUAYLE. I yield, without losing my right to the floor, if the Senator can answer the question.

Mr. METZENBAUM. It is my understanding—and I cannot give the Senator the details—that during the previous administration, or when the Senator was part of the majority, on three separate occasions the leadership did lay down a cloture motion at a very early point in the proceedings, just as has been done in this case.

With respect to the matter of moving off the bill, I think it should be pointed out that the matter concerning Japan was a priority matter that any Senator had a right to call up. I do not know the specific provisions of that, but I know that Senator BYRD did explain on the floor of the Senate that that was a privileged matter and that any Senator had a right to call it up at any time; and that upon that Senator's doing so, it was a privileged matter for a period of 10 hours.

That was my understanding.

Mr. QUAYLE. I think the Senator from Ohio is correct, however it is not unprecedented where you call up a bill and, before statements are made a cloture motion is laid down.

Maybe the Chair can help us on this question. Is there a precedent? Once cloture is laid down, before opening statements, has there ever been a situation when a motion has been made to move to another bill? I do not think that has ever been done before in the Senate, at least since I have been here.

Mr. METZENBAUM. I am saying to the Senator from Indiana that moving off the bill, as I understand it, came about because the Japanese matter was privileged and that any Senator had a right to call it up at any point.

I am not certain that I am correct in my answer, but am giving the Senator what my understanding is. We can check further as to the facts, but I think it is under those circumstances that the Japanese matter came in, after the cloture motion was laid down.

Mr. QUAYLE. Again, my question is not whether anybody could have moved to that highly privileged matter, because it is my understanding that any Senator could do so.

My concern is the practice that was established here and the precedent that has been established, that before opening statements, a cloture motion is filed, and immediately move to another piece of legislation.

I do not recall that ever happening before, whether it was highly privileged or not. The majority leader could have moved to another bill that was not highly privileged. He is within his rights. But I am trying to see if there was ever a precedent of doing this, and I do not believe there has been.

Mr. METZENBUAM. I am not in a position to answer any further than I have.

Mr. QUAYLE. Mr. President, a parliamentary inquiry: Can the Chair inform the Senator from Indiana whether such a precedent has been set?

The PRESIDING OFFICER. The cloture motion, obviously, was properly filed. But the question of moving off to another bill is the inquiry—the Chair has no way of taking notice of that. In any event, the time for objection has expired. I cannot answer the question whether or not there is a precedent. It would take some research to find that.

Mr. QUAYLE. I do not mean to belabor the Chair. Perhaps I can make an inquiry, formally or informally, and we can, as a matter of record, find out if it has ever happened before. I do not believe it has; and if it has, I would like to know that. If it has not, then this will establish a new precedent.

I thank the Chair for his cooperation.

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

Mr. QUAYLE. I yield to the Senator from Utah for a question.

Mr. HATCH. I have missed some of this debate because I have been necessarily off the floor. But, as I understand it, the procedure around here seems to be that you lay down a bill that has less controversy and then they lay down a cloture motion almost simultaneously with the bill. That is what the distinguished Senator is upset about. Is that correct?

Mr. QUAYLE. I am not upset about it. I do not particularly like it. I don't think that has been used before. We bring a bill up and file cloture. But what has never been done before, in my memory, is filing a cloture petition before opening statements and then immediately move off that bill to something else.

I want to get an understanding as we try to figure out, particularly for minority rights, whether this is a new precedent, one that I hope is not continued. Therefore, we have an extraordinary example of what is happening on this piece of legislation, which I think Members ought to take notice of.

Mr. HATCH. Mr. President, will the Senator yield further?

Mr. QUAYLE. I am glad to yield for a question.

Mr. HATCH. I think the Senator does this body a great service by pointing out that we are consistently coming up with these bills that are very controversial, very hotly contested, that have—at least in my opinion—very deleterious aspects to them, and basically file the cloture motion, so that only germane amendments are in order. Then, that viewpoint is a very restricted rule, anyway.

So it appears to me that we are not really having this body function as the greatest deliberative body in the world. We are just procedurally going down the line, making sure that no real dissent is effectively allowed.

I suspect that what the distinguished Senator from Ohio and his colleagues are going to to is file three amendments and lock up the tree.

Is that the purpose of the amendment?

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

Mr. HATCH. Mr. President, will the Senator yield to me so that I can ask the Senator from Ohio?

Mr. METZENBAUM. We yielded to the Senator from Indiana. We have two distinguished Senators waiting on the floor to offer amendments, Senator DIXON and Senator FORD, and Senator BREAUX is anxious to come to the floor as well.

I just want to respond to one comment.

Mr. QUAYLE. I am glad to yield to the Senator from Ohio for the purpose of a question only.

Mr. METZENBAUM. Does the Senator from Indiana know that when you talk about controversial legislation and laying down an early cloture motion that when the Senator's party was in control, as to the issues that were before the Senate when the cloture motion was laid down very promptly, one of them had to do with Contra aid, the other one had to do with South Africa, both of which I am sure we will agree are highly controversial subjects?

Mr. QUAYLE. I believe that the Senator will find both of those cases, and I am glad the Senator from Ohio brought those examples up, dealt with a unanimous-consent arrangement, the Contra aid and South Africa, that there was worked out by the majority leader and the minority leader a unanimous-consent arrangement in which cloture would be filed on both of those bills. I do not believe there is any such unanimous-consent arrangement on this particular bill. So that is not a very good precedent to cite as far as saying "Well, yes, we have done it in the past."

Mr. METZENBAUM. Let me say——

Mr. QUAYLE. I am glad to yield for the purpose of a question.

Mr. METZENBAUM. Does the Senator from Indiana know that the Senator from Ohio was waiting with bated breath to hear his words of eloquence concerning this bill? And so I will let him proceed in order to advise us accordingly.

Mr. QUAYLE. I thank my friend from Ohio.

I think that the Senator from Utah makes a very good point as far as the intent of filing cloture in this particular case. As the Senator from Utah

says, it was filed and one of the objectives states in the RECORD—not the only objective—one of the objectives of the majority leader was we were in fact to get germaneness.

The Senator from Utah is exactly right that we are trying to do this part of it for germaneness. As a former Member of the House of Representatives, I know how these restrictive rules and cutting off debate and not allowing amendments to come up works. Unfortunately, I was in the minority over there the whole time. I know how the Rules Committee over there operates.

I do not believe, as the Senator from Utah pointed out, that we want this body to become much more like the House of Representatives.

So I would hope that those who take cloture seriously will not only vote against it on Wednesday—I understand it will be filed again today—but also vote against in on Thursday.

Mr. President, let me get to the bill before us, S. 79, which is the high risk notification bill. It is in fact a very complex technical bill.

Let me say at the outset that the objective of this bill is when the Federal Government has information that a worker in the workplace has the increased possibility of getting a disease because of where he or she works the Government ought to share that information with that worker.

I agree with that objective. I have said throughout the battle of S. 79 that we, meaning the Federal Government, have a moral obligation to share known health risk information with the worker. I do not dispute that principle.

What I dispute is this particular legislation and the approach that we use in trying to achieve that objective. If in fact that is the objective, I will be diligently working with Senators on both sides to see if in fact we can construct an alternative or substitute to this legislation, because this legislation is fundamentally flawed in a number of places.

One, the scientific data used to make the determination on when notification in given is far too loose.

Let me give you an example of the legislation that I think the occupant of the chair would be interested in. If you work in a textile mill for a certain number of years with a certain concentration of dust and if NIDSH determines that long-term workers in dirty factories have a high incidence of byssinosis, a disabling lung disease. Under this legislation if NIOSH finds in the mortality statistical study that there is this incidence of increasing a disease, all the people who have worked in those textile mills and cotton gins will receive the notification even if their factories are in compliance with OSHA. The bill does not require the distinction between a short-term worker in a dirty factory, and a long-term worker in a clean one. They receive all those individual notifications and so do their retirees.

Employers may argue "We don't have that incidence of disease because that was 10 years ago or 15 years ago that you are using those mortality statistics," notwithstanding, Mr. President, those notices go out.

When those notices go out you can guess the amount of lawsuits that are going to be filed and in many cases the notices are going to go to people who say, "Hey, I thought you told me, Mr. Employer, that this place was safe, that this was a healty environment in which to work," and the employer can say, "We have in fact reduced the concentration of the potential hazard. We have in fact taken the course and furthermore we do not agree with this particular finding."

But there it is, the Federal Governments determination that these workers are at high risk of byssinosis. Mr. President, you can imagine the litigation, you can imagine the costs that are going to be placed on businesses, defending themselves against this sort of thing.

Mr. President, we need to figure out a preferable way to get this information that the Government has to the employees.

As a matter of fact I have always said throughout the debate on this legislation that I support the fundamental objective and principle that if the Government has conclusive knowledge that an employee has an increased incidence of getting a disease over the national average that information ought to be shared. But we ought to share it with people who we can help.

I do not believe it makes sense to use these notifications to simply scare people.

I recall a column that was written by Ellen Goodman on this issue, that was talking knowledge of incurable disease. She points out that some individuals simply don't want to know if they have incurable diseases, such as Alzheimer's or Huntington's disease. Some do. Some who have found out were sorry they did.

But under the current legislation, on S. 79, he would have to be told or she would have to be told.

My approach would be that once we find this category of people that are predicted to be at-risk, then let us break the category down into the people that we can actually help through either medical monitoring, medical removal, health promotion, or something along those lines. And then let us get that information to them in their normal course of work activity.

It is not through sending out hundreds of thousands of individual notices with a stamp out of: "Government document, highly important, open at your own risk." But we should do it through the work force.

We can also do it through the hazard communication laws that are presently law where we inform workers of a hazard. We inform workers, as we should, of a hazard. And we should, in fact, inform workers of risk of getting a disease if we have conclusive evidence that that is the case. We can give notice of risks through the workplace, and that should be our objective: How can we come up with a manageable piece of legislation that will serve the objective?

Furthermore, Mr. President, this legislation we know received 190 votes, something like that, in the House of Representatives. As I stand here I am sure it will receive a good number of votes. There is no way, as it is currently written, that it will be enacted into law. That is just an impossibility from a political point of view.

If we are really interested in doing something today; if we are really interested in helping the workers get this information of risk that we think is necessary, we will support something other than this legislation. Because we know that it is not going to go anywhere in the final analysis.

We can have political points, make our political battles, we can run out to our constituencies, but I am telling you we are not going to be helping John Jones or Mary Smith out there that might want this information. I would be willing to craft a vehicle to give them this information and once they have this information we can look at medical monitoring, we can look at medical removal, we can look at health promotion. That will not happen, Mr. President, under this legislation because this legislation is not going anywhere. I think we ought to understand the political consequences of this legislation.

Mr. President, I do not believe that this bill should be enacted into law. S. 79 is designed to establish a process for the notification of workers who are at risk of contracting a disease as a result of their exposure to a hazardous substance or physical agent.

As I have said, no one, and certainly not I, can quarrel with such a purpose. Indeed, I believe that S. 79 establishes a very important principle; that when the Federal Government has knowledge that is relevant to the health of an individual, it is the Government's moral and ethical obligation to provide that information to that individual. That is the principle of S. 79. And I believe that my friend from Ohio has done the Senate and the Congress a service by bringing this issue to the forefront.

Mr. President, I also believe if the Congress decides to pass notification legislation, it is incumbent upon the Congress to be responsible about

where, when, and how to notify people they are at risk of contracting a disease. The Government has used alarmist tactics in the past. It creates an atmosphere of fear and panic when it notifies workers, regardless of the scientifically sound connections between exposure and risk.

Unfortunately, as presented I believe that this legislation will do exactly that. And the reason, Mr. President, is that there is no requirement that there be a causal relationship between finding the statistical evidence that a certain number of people in the category of review had a higher incidence of death from a certain disease and workplace exposure to the causative agent—there is no causal relationship to say that they died of that disease because of a certain thing in their workplace.

We need to think beyond the politics of the issue of what we are trying to accomplish here. We should not go off haphazardly. We should not, dealing with legislation particularly giving this kind of power to this independent regulatory board, before we have thought through what we are going to be doing to the employees, the employers, of this country.

This legislation does not require a causal link between risk and exposure and that is one of the criticisms that I have.

During the committee consideration some improvements were made to the bill. However, considerably more work must be done to turn this highly complex and technical bill into responsible and worthwhile public policy. When the committee considered S. 79, I offered a number of amendments that the committee declined to accept. These amendments were based on principles which I believe should be the basis for any worker notification program.

Mr. METZENBAUM. Would the Senator yield for a question?

Mr. QUAYLE. I will be glad to yield for the purpose of a question only.

Mr. METZENBAUM. I was encouraged by the Senator's statement that there ought to be other amendments made to this bill. Would the Senator be good enough to indicate whether there are such amendments that could be offered, not actually totally gutting the bill, but which would then cause the Senator from Indiana to join with the Senator from Ohio in supporting this legislation?

Mr. QUAYLE. I am currently trying to work with a number of Senators on drafting a substitute to this entire bill. The substitute will be along the lines that I just stated on the floor, satisfying my objections and the way that I think it ought to be done. I am working on that, and when in fact we put it together I will be glad to share that with the Senator from Ohio to see whether he concurs or not.

I can tell this to the Senator from Ohio, that it will not gut his bill and it will go along with the basic objective that I think he has and which I share. That is that when the Federal Government has conclusive information of this increased incidence of disease, that that information should be shared with the affected employee. That basic objective, I can assure the Senator, a substitute I will be attempting to put down will achieve.

Mr. METZENBAUM. I am sure the Senator from Indiana knows that when we had plant closing legislation, the distinguished Senator from Indiana said to me one evening that the bill was like a moving target, that it kept changing. I said that we had to keep changing it to pick up votes.

I just want to say to the Senator from Indiana that nothing would please the Senator from Ohio more than to be able to work out such amendments as those that concern the Senator from Indiana in order to get this support for this very, very important piece of legislation. I want to say it as loudly and as clearly as I can. The door is wide open. We are prepared to do that. I thank the Senator for yielding.

Mr. QUAYLE. I thank my friend from Ohio. I do recall that plant closing notification. As a matter of fact, I believe I was explaining one time that it was between Metzenbaum 6 and Metzenbaum 9, that change, that I was eating a salad in the dining room. I could never figure out what the target was, but it was that "Once we get the votes, we can offer it up."

I applaud the Senator from Ohio on the way he knows the rules.

Mr. METZENBAUM. I told him while he was eating the salad and we made change, we picked up two votes. Now I am prepared to pick up one vote, yours, and I am prepared to negotiate with you and see what compromise can be effected. I would like to have you very much with us.

Mr. QUAYLE. I thank the Senator, Mr. President. I think we have worked long and hard on this issue. We have put in a lot of time on it. I know the Senator from Ohio has and I have, too. It is a highly technical issue.

There is no doubt about it, that certainly when we get to what we think will be a good substitute on this particular issue, we will sit down and be glad to talk to the Senator. As I said, it will not violate the objective of what the Senator from Ohio wants to achieve.

Mr. President, let me go on.

The amendments that I offered in the committee were based on principles which I believe should be the basis for any worker notification. We have in the House essentially on the same bill 190 votes in opposition, certainly enough to sustain a veto. I hope that rather than face a veto we could work together on an acceptable compromise.

I believe that the basis for any worker notification program should be this:

Notification is appropriate and should take place when there is a reasonable, scientific, medical, and ethical basis for it. There should be reasonable, scientific, medical and ethical basis for it.

The risk notification program should not impose unreasonable costs on small business. Small businesses are the ones who are going to get zapped by this on a couple of counts. One is the potential liability and it is horrendous. If you send out hundreds of thousands of letters, even though there has been a good faith attempt to try to limit workmen's compensation, to try to limit tort liability, and you get an employee, you get a farmer, get an employee of a farmer, and they get that notice, what do you think they are going to do? Throw it away, if they get a notice that they have increased incidence of getting a disease? What do you think they will do with it? Will they take it to their lawyer; their doctor? What do you think the lawyer is going to do with it? I can tell you what the lawyer is going to do with it.

He will say, "This looks like a little lawsuit."

What we have been trying to do particularly for small business is not to expand liability. I think that the gist of what many small businesses have been complaining to me about is that they are exposed to too much liability.

This is a lawyer's dream and it is very, very costly to small business.

I believe that the choices from the small businessman or woman will simply be that this will sort of push them out of business. I do not believe that we should pass legislation that will do that. This notification program must be administered in a politically responsible manner.

Let me tell you how this risk assessment board is established. This risk assessment board is composed of certain members who are appointed by the Secretary of HHS upon the advice of the National Academy of Science. No Senate confirmation, no Presidential appointment, and once this risk assessment board is appointed, it has the same powers as the FTC, the FCC, the ICC—any independent regulatory agency. This is unprecedented power given to a committee that has zero political accountability.

How far are we willing to go? If we are going to create an independent agency with all the powers, it ought to be appointed by the President and confirmed by the Senate. My preference would be to let the Secretary of HHS have more discretion, but certainly not the power of an unprecedented basis like this legislation.

A disease notification program should not serve as a basis for establishing the liability of an employer. I believe I have basically reviewed that in an analysis on the cost of small business, but we do not want to establish a disease notification program that is really going to cause a whole host of lawsuits.

While proponents of the bill do not disagree with these principles that I have outlined, I can assure you the bill, as reported, does not comport with even one of them. It is my view that S. 79, as reported, has several major deficiencies, which I will describe in more detail in the remainder of my remarks. While such a discussion will be technical, I think it is important that the Members of the Senate understand what a complex bill S. 79 is, and that it is not the small, just simple program that some of the sponsors of the legislation say it is. This is not just a simple piece of legislation that is going to be brought up, easily understood, and put through.

When we take things up in the Labor and Human Resources Committee, though we worked hard and long, it is unfortunately very difficult to get genuine bipartisan compromise on legislation like this that is highly technical and highly complex. Unfortunately, we have to end up doing it on the floor. That is a choice that I do not make, but a choice that has been made.

I just want to read what the definition of an occupational health hazard is, just the legislation itself:

> The term "occupational health hazard" means a chemical, a physical, or a biological agent, generated by or integral to the work process and found in the workplace, or an industrial or commerical process found in the workplace, for which there is statistically significant evidence (base on clinical or epidemiologic study conducted in accordance with established scientific principles) that chronic health effects have occurred in persons exposed to such agent or process. The term includes chemicals that are carcinogens, toxic or highly toxic agents, reproductive toxins, including agents that may cause miscarriages and birth defects, irritants, corrosive, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents that act on the hematopoetic systems, and agents that damage the lungs, skins, eyes, or mucous membranes.

Let us go on to where we look at the population at risk:

> The term "population at risk of disease" means a class or category of employees (A) exposed to an occupational health hazard under working conditions (such as concentrations of exposure, or durations of exposure or both) comparable to the clinical or epidemiologic data referred to in paragraph (8).

I think you can see by just a casual reading of two very important sections, the occupational health hazard and the population at risk of disease, this is, in fact, exceedingly complex and technical.

The identification of populations at risk of the disease, page 41:

> In identifying populations at risk of disease, the Board shall consider the following factors based on the best available scientific evidence—
>
> (A) the extent of clinical and epidemiologic evidence that specific substances, agents or processes may be a causal factor in the etiology of chronic illnesses or long-latency diseases among employees exposed to such substances, agents or processes in specific working conditions (such as concentration of exposure, or durations of exposure, or both);
>
> (B) the extent of supporting evidence from the clinical epidemiologic, or toxicologic studies that receive substances, agents, or processes may be a causal factor in the etiology of chronic illnesses or long-latency diseases among individuals exposed to such substances, agents, or processes;
>
> (C) the employees involved in particular industrial classifications and job categories who are or have been exposed to such substances, agents, or processes under working conditions (such as concentrations, or durations, or both) that may be a causal factor of the etiology of the illness or diseases.

Mr. President, I can go on and on with language that is in this bill which was carefully drafted, but it is an exceedingly complex and highly technical piece of legislation.

In my view, the most serious problems presented by this bill are the following: One, the scientific basis for notification is, inadequate. As I have said, the scientific basis for notification is, from a study of mortality statistics if it is statistically significant, which could be 1 percent above the average, 2 percent, a half percent, whatever statistically significant means, and then the Government is going to notify all those workers without distinction.

There is no requirement of a causal relationship between risk and exposure. Because there is no requirement of causal relationship between the disease itself and the exposure in the workplace, you will literally have hundreds of thousands of people who will be receiving this information erroneously. I tell you what getting that kind of information would do to me. I tell you what it would do for you, your wife, and your kids. If you get that kind of information, you are not going to like it because it says that you are predicted to have a better than average chance of getting a certain disease. And depending on what kind of a person you are, you may take it very seriously; you may tend to want to blame the employer; and you may want to make sure you go down and see your lawyer. But in fact you are getting all worked up, you have all this anxiety, you are going through a lot of stress for naught, because maybe you should not have gotten that notice in the first place because the actual work environment is different than the environment in which the study was done. That is one of the problems with this legislation.

Furthermore, this bill does not achieve its stated goal of tort neutrality. I think the sponsors of the bill have done a very good job in trying to limit the liability. They specifically say that it is not a new tort remedy, they specifically say that it does not affect the workmen's compensation laws.

(Ms. MIKULSKI assumed the chair.)

Mr. QUAYLE. But even though that is in the legislation, Madam President, when those notices go out, they are just simply invitations to lawsuits, invitations to lawyers that are looking to bring lawsuits to help their plaintiffs.

So this bill cannot achieve its stated goal of tort neutrality. In addition, the bill does not deal with the practical realities of notifications and it is not workable in its present form.

What is small business going to do in response to this legislation? Those who want to help small business might think of figuring out a way we can deal with the notification and medical removal problems in the bill. My way would be, since you give this worker this notice, to give him the notification, and if in fact he or she requires medical removal, we leave it up to, say, the Department of Labor to institute certain requirements for medical removal.

The bill also departs widely from relied-upon accepted procedures for administrative and judicial review. It has the extraordinary remedy of writ mandamus. I am not exactly sure why that is in here. But if it is in here because the administrative procedures and the administrative practices do not work, then we ought to be amending the administrative practices and the administrative procedures.

Madam President, I believe that it is critical that a more generally accepted scientific principle be incorporated into the notification decisionmaking process by revising the definition of an occupational health hazard.

And I read the definition of an occupational health hazard for which there is statistically significant evidence—that is the criteria. The definition of an occupational health hazard in S. 79 is one of the most important components of the notification scheme envisioned by the bill. Thus its accuracy is essential to an appropriate notification program.

It is important that the definition of an occupational health hazard be revised to assure that notification will be triggered only when there is a scientifically respectable causal relationship between exposure of the hazard and the consequent health effects.

That is a fundamental problem that you have with this legislation. That is why literally millions of people will be

getting misinformation potentially because there is no causal relationship between exposure and risk. You can have a situation where you go back and review the fatality statistics and people that work in X company, in a certain industry, had a higher national average of dying of a certain disease. And since they had a higher national average of dying of that disease, they in fact will be eligible to receive individual notification under this act no matter, Madam President, that if in fact the disease that they had, and they can track it, was not in fact caused in the workplace, and that is a fact. There does not have to be any causal relationship. In my view, the definition of an occupational health hazard in S. 79 simply makes no sense.

Currently, the definition of occupational health hazard reads it is a chemical for which there is statistically significant evidence that chronic health effects have occurred and exposed employees. Indeed, the majority report on S. 79 emphasizes that notification is warranted only where there is statistically significant evidence that chronic health effects have occurred in persons exposed to hazardous substances. Statistics, to quote the Encyclopedia Britannica, "The art and science of gathering, analyzing, and making emphases from data." Statistical significance means no more than that the inference has a certain degree of probability. However, under the definition of S. 79, no inference is required.

The operative principle is that chronic health hazards have occurred and exposed employees. However, that fact alone has no significance, statistically or otherwise. The mere fact that 50 cases of a chronic health hazard have occurred and exposed employees has no significance. Such a fact is meaningful only if the health hazard can be related to the exposure through relevant scientific means. Such a fact is meaningful only if the health hazard can be related to the exposure to relevant scientific means. Without the requirement of such a relationship, the definition is really quite meaningless.

Let me give you an example; a concrete example which demonstrates the inadequacy of the current definition. Kenneth R. Foster's article, "The Great VDT Debate" reports on clusters of birth defects occurring in children of mothers exposed to video display terminals. Under the definition as proposed by S. 79, the test to determine the existence of an occupational health hazard is whether there is statistically significant evidence that the health effect occurred in exposed employees.

Let me add that there is no question that such effects did occur in the considerable number of instances cited in that article.

Accordingly, VDT's would meet the definition of an occupational health hazard under S. 79. But as the article also demonstrates the fact that these clusters exist is no evidence that there is a causal relationship between the birth defects and the exposure. The author states an epidemiologist would consider the reported clusters to be provocative but inadequate to demonstrate any connection between reproductive problems and the VDT's. That is the heart of the problem. That is the problem, Madam President; that you can go ahead and have a statistic that shows that there is in fact this problem with people that are exposed to say computers, VDT's, but that statistic is not meaningful unless you can call the causal relationship between that exposure and that illness or disease in this case specifically birth defects.

While the statistical analysis in the article is complex, it is absolutely clear that under the definition in S. 79, a mere occurrence of a number of cases would meet the definition of a hazard. Thus it is essential that this definition be revised to require a causal relationship between the health effect and the exposure.

Clarification of the use of the term "commercial and industrial process" is another problem with this bill. Under the bill as currently written an occupational health hazard includes not only chemicals and physical and biological agents, but also an industrial or commercial process. While it has never been too clear as to what that covered, it is my understanding that the authors mean it to cover two particular situations: One, when there is scientific evidence that exposure to certain combinations of substances results in adverse health effects, yet it is not possible to isolate the compound which is responsible. In other words, if you have a couple of things out there and you are not exactly sure which one causes it, you in fact do not have to isolate the compound which is responsible. I have absolutely no quarrel with the use of the term in this situation. However, when a method of hard working such as hard physical labor rather than exposure to a substance is the cause of the hazard, that is where the problem comes from.

The majority report on S. 79 states that it is not intended that this term include work processes resulting in mere physical discomfort such as sitting in an office chair for 10 hours. However, the markup record of this legislation clearly states that it is intended to cover situations such as potential back problems arising from the use of a jackhammer or a nonergonomic typing chair.

I do not think that this is a reasonable type of risk to merit notification, though it may well be appropriate for an OSHA workplace safety standard.

Perhaps there are some in this room who would have back stress, who have to sit long hours while we stand and talk, and they might be subject to notification, although I am sure this legislation exempts Members of Congress, as all other legislation that passes here. We exempt ourselves. But that would be an example. Someone sits in a chair for a period of time, and they are possibly going to be exposed to back injury, back stress, and therefore eligible to receive notification.

The tightening of scientific factors upon which determinations of risk are based: The bill consistently requires that the risk assessment board consider the extent to which certain evidence may be a causal factor in the development of illness or disease in making their determinations to notify. Putting such a speculative, open-ended standard in a statute simply, in my opinion, cannot be justified on the basis of sound science.

Item 4: Incorporating more generally accepted scientific principles into the definition of "population at risk." You will hear a lot about population at risk. S. 79 defines a population at risk of disease as employees exposed to an occupational health hazard under working conditions such as "concentrations or durations of exposure comparable to those in studied populations."

Again, this would be establishing a highly speculative standard for notification. This definition needs to be revised, to ensure that scientific data are not used inappropriately. As currently drafted, the bill's definition of "population at risk" could result incorrectly in notifying individuals with low exposures or short durations of exposures of disease.

Let me give an example that I have used to the former occupant of the Chair. Assume that in the many textile mills and garment factories and workplaces in this Nation there is a risk assessment board determination that a 15-year exposure to cotton dust at concentration level x, y, z, produces a serious disabling lung disease. The risk assessment board would not necessarily have data on concentration levels for all workplaces or all workers, so they would notify anyone who worked in a textile mill for 16 years at any concentration level.

The use of "concentration or duration" rather than "concentration and duration," I can assure you, will result in overnotifications. That is simply put. In a certain period of time, if you been exposed to this agent or this substance, whether it be at the level of x, y, or z, then you are to receive a notice. It does not say that you also have to receive that duration at a certain concentrated level.

Many of the garment factories and textile mills and others have gone a

long way to making their place of work better and more safe and healthier.

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

Mr. QUAYLE. I am delighted to yield to the distinguished Senator from Kentucky for a question only.

Mr. FORD. I say to my friend that if he wants to set a record in speaking, that is his privilege. He said earlier that it would be 20 or 30 minutes. It is now roughly an hour and a half.

I have been waiting to offer an amendment. Can he advise this Senator how much longer it is going to be? If it is going to be much longer, I will have to have somebody here to do it for me, and I want to make arrangements.

If the Senator has all those pages, we were deceived somewhat in the beginning as to how long he would take. I would like to make my personal arrangements, if the Senator will be much longer.

Mr. QUAYLE. I would probably guess another 20 or 30 minutes.

Mr. FORD. It is all right with me, as long as I have some idea.

Mr. QUAYLE. I am just guessing. I am on page 14. It looks like 35 pages. Most of the extemporaneous part of it is included. There are some other points I want to make.

Mr. FORD. So, we are talking about another 20 or 30 minutes—5 o'clock?

Mr. QUAYLE. I would guess around 5 o'clock.

Mr. FORD. That suits me fine. I can make my arrangements, then, and I thank the Senator for his courtesy.

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

Mr. QUAYLE. I yield for the purpose of a question only.

Mr. METZENBAUM. Will the Senator consider permitting the Senator from Illinois, who has been waiting a long time, and the Senator from Kentucky, and the Senator from Louisiana, to offer their amendments, with the understanding that the Senator from Indiana would be recognized immediately thereafter, for the purpose of concluding his remarks, with a unanimous-consent agreement, which I would be willing to enter into, that his remarks would not be disjointed in the RECORD? Would the Senator have any objection to that?

Mr. QUAYLE. I do not want to get into that. I want to finish my opening statement. Maybe I might convince some of those not to offer those amendments or to offer other amendments. Let me conclude my opening statement, and I am just guessing.

What I am doing, as the Senator from Ohio knows, is going through a long history of this. As I go through my speech, a lot of things come to mind, a lot of things that I am trying to get out. That is why it has taken me a lot longer than I thought it would, because there is a lot more here than I anticipated.

Let me go ahead and try to conclude, and then we can get into the amendment process. I would guess that I will not go any longer than 30 minutes more.

Madam President, I was talking about the use of concentration or duration as being "or" rather than "and," and I think that is a very important point to make because you can certainly be exposed to this substance but there has to be certain concentration levels that makes it, in fact, an exposure that will have the cause of this certain disease.

Madam President, let me switch to the incidence of the risk assessment board from the executive branch.

I believe that the provisions of S. 79 relating both to the decisionmaking process and the decisionmaking authority for determining populations at risk of disease are fundamentally at odds with our basic system of government. S. 79 gives final decisionmaking authority to the risk assessment board in determining at risk populations.

The board is located in the Department of Health and Human Services but is effectively independent of them. The Secretary appoints the board to a fixed term, but has no review or influence over its decision.

Think about what we are doing. We are, in fact, creating a board that has the power of the FTC or the ICC or any independent regulatory agency, and yet we are not going to have any political accountability, none whatsoever, because it is a list that is furnished by the National Academy of Science. The Secretary of HHS appoints and once that is done, there is no accountability. The Senate does not vote on confirmation, the President does not appoint. And, as I said, this is unprecedented. We do a lot of things that are unprecedented, but this is an unprecedented vesting of power in an independent regulatory agency without any political accountability.

We live in a democracy and yet we are willing to hand over this kind of power to a board without any accountability to those who are elected to office. I think it is just very fundamental bad public policy.

As I have said the independent board is unprecedented in our post-World War II Govenrment.

The authors of S. 79 argue that the National Transportation Safety Board and the Foreign Service Grievance Board are very similar to the proposed risk assessment board. A look at the facts demonstrates that this statement is just simply in the category of disinformation.

The National Transportation Safety Board is an investigatory board in nature and is accountable to the President. Its main function is to conduct independent investigations of accidents. The Foreign Service Grievance Board was established to adjudicate employee grievances not to set Government policy.

Interestingly enough, there was a similar debate during the enactment of OSHA. At that time Republicans argued for an independent board and the Democrats supported placing power in the Secretary, but the Republicans argued for a board that was appointed by the President and confirmed by the Senate. The board would thus have an appropriate degree of responsibility. Nobody argued for a technocratic body ensconced in the middle of a bureaucracy with no political accountability whatsoever.

I intend to and I believe that the Senate should put this risk assessment board under the Secretary of HHS, and I think this is the way that we will want the risk assessment board to function. It certainly would be more responsible. It is more responsible to our democratic form of government to have this board independent. It is unprecedented in the history of government.

Now, Madam President, I want to turn to the issue of notification to individuals for whom there is no medical benefits, none whatsoever.

As currently drafted S. 79 would result in notifications to numerous individuals that they are at risk of contracting a disease for which nothing can be done. I do not believe that adoption of such a policy by the Congress is appropriate. The fact that there are large numbers of people who will be eligible for notification under this legislation but for whom no successful medical treatment exists is emphasized in the majority report on S. 79.

It discusses a NIOSH analysis of several categories of workers who might be eligible for notification on the basis of a number of mortality studies. The NIOSH concluded that while 110,005 workers could gain direct medical health benefits from notification, 137,967 workers were potentially at high risk and should be notified but there are no effective intervention methods.

This is in the committee report on S. 79 at page 11.

In other words, all these folks are going to get notices about a study that was concluded but there is absolutely nothing that can be done.

Where is the objective here? Where is the concern as to what these people and how these people are going to respond?

Under this study more than 50 percent of the individuals to be notified in this situation would be receiving a notice from the Federal Government

that they were at risk of contracting a disease for which nothing could be done.

Let me just give you a realistic example. What do we suppose would happen if a retired 70-year-old steelworker who is enjoying his retirement in the hills of southern Indiana received such a notice? First of all, we will never know. No one will ever know whether this person is going to contract the disease for which she or he has been notified. If the study predicts out of 1,000 steelworkers exposed to substance x 5 will get disease A, B, and C, for which no early detection is available and no cure is known, so you will notify 995 who will not get the disease and 5 that will. That example assumes a perfect world.

Human nature would suggest that this person would become and remain extremely upset about his health. The persons in his or her family would suffer anxiety and fear to no purpose. Is this really the result Congress wishes to achieve by this legislation?

There are probably many things that could be done rather than for the Government to send its equivalent of a terminal IRS audit notice. This is your terminal draft notice and your number is really up to millions of workers who fit into these respective cohort mortality studies but will not develop the disease.

Would it not be more humane to communicate some of this through personal physicians? This would be particularly so in cases where there is no known early detection for disease or a cure for a disease. Would that not be a better way to notify people of this study?

The majority report points out that recent developments in medical ethics support the principle that individuals should be informed whenever there is a reasonable certainty of risk. This position was set forth in a letter to the committee by Dr. Edmund Paligreno.

I admit that I have less problem with this if the information is coming from an individual's personal physician. However, this notice is coming from your Government.

Therefore, I must say that I do not agree with this view and I strongly believe that there is a time-honored principle of medical ethics that the patient should not be harmed without purpose that should apply in this legislation since in situations like this it should not be the Government that breaks the news.

It is my feeling that the Government needs to help in setting priorities so that those who can benefit from medical help would be directed to it on a first priority basis.

There is a very troubling distinction between the right to know that one has a very good chance of dying of a specific disease because there is no known medical intervention and the desire to know that information.

Recently, some very telling examples have been reported in the news media. Two of the more notable examples are, one, availability of a test which can determine if certain individuals will develop Huntington's disease sometime in the distant future and, two, the possibility that a new blood test may be feasible with identification of individuals at early risk of Alzheimer's disease. There are incurable diseases and we should all be aware that 8 percent of those who get Huntington's disease are reported to commit suicide. This is not a brush it off issue.

News of incurable or severely disabling diseases has to be handled delicately and perhaps not through a Government-issued draft notice received through the mail. Before passing this bill, we need to ask ourselves whether the U.S. Congress should be the ones to decide that yes, people must have that information. Should we make that information available to all on an equal basis? Should we make it available to physicians; or should we send draft notices out to people who may be at risk with a serious disease?

But, no, this legislation says that we, in fact, must send this notification; must, in fact, send this notification even when the disease is incurable and even if receiving that kind of notice will cause, I believe, health harm rather than health help, which I think this legislation would desire.

Let me turn, Madam President, briefly to the tort neutrality issue. Given this litigious society in which we live, it is unrealistic to think that a disease notification program will not generate and increase these liability claims. While I do not believe it is possible to prevent this legislation from generating claims under both tort and workers' compensation law, I do believe it is incumbent upon the Congress to ensure that this legislation is tort neutral.

All Members of Congress are certainly well aware that our legal system is in serious difficulty due to the proliferation of liability claims in recent years. We are all very aware of what impact it has had on the ability of businesses to obtain liability insurance and on the cost of insurance. Commercial liability premiums alone rose 72 percent between 1984 and 1985—a 72-percent increase. Last year, this was one of the top issues our constituents wrote and talked to us about. Maybe during this legislation we will be able to discuss liability. It would be bad public policy to pass legislation opening the door to new and unfounded claims on the system.

As I said, I commend the efforts of the sponsors of S. 79 to address this problem. This legislation is clearly not tort neutral.

Let us look at other aspects of the tort problem. Who are the winners in tort actions? I think we know that. The lawyers are the ones that win.

The Rand Corp. estimated in asbestos compensation claims that for every dollar of compensation the plaintiff receives in hand, the defendant pays out between $2.50 and $3. So we know who makes out in these cases.

Actually, I suppose you could rename this legislation and call it the Lawyers' Full Employment Act.

In fact, a foundation has already been set up to help those notified get their day in court called the Occupational Health Rights Foundation. They have even sent out a brochure called "Find Out How to Take Your Occupational Disease Claims to Court." I mean, that is what is going to happen in this legislation. No matter about all the protestations to the contrary, we are going to open up liability. There are going to be far more lawsuits. They have already got a brochure out: "Find Out How to Take Your Occupational Disease Claims to Court."

The supporters of S. 79 tell us that the bill will be tort neutral because notification cannot be used as a basis of a legal claim. I can assure you this is not a sufficient shield to make certain that the goals of the legislation are met and not diluted by other tort and product liability outcomes.

What about stress claims? Well, there will be two kinds. First, there will be stress caused by stressful jobs where, after all, a stressful job—a telephone operator or air traffic controller, for example—would be eligible for notification that extreme pressure on a job puts him or her at risk of heart attack or heart disease.

Another kind of stress would be the kind that results from getting a notification. There will be lawsuits arising from the fear of getting a disease.

A year ago, a U.S. district court said that a former Firestone Tire and Rubber employee who was exposed to toxins and allegedly suffered injury to his immune system but had not exhibited any symptoms of the disease can sue his former employer directly because his claim was not compensated under California workers' compensation law. They argue that he was made extremely anxious and fearful that he would become sick. This is the type of Pandora's box that S. 79 cannot help but open.

As the committee discussed S. 79, its actual mechanics and complexities became very apparent. One subject that has been under much discussion has been the actual content of a determination by the risk assessment board that a population is at risk. The bill provides that a population would be found to be at risk of a disease when a class or category of employees had

been exposed to an occupational health hazard under working conditions, such as concentration or duration, or both, compared to evidence indicating chronic health effects may occur.

It is relatively straightforward what a determination would say when very specific information relating to both concentration and duration of exposure is available. However, questions arise as to what constitutes unbearable working conditions when information about either specific concentration or duration is not available. Will all employees who could have been exposed to a particular substance be notified? Will notification take place on an industry specific or plant specific basis?

In an attempt to resolve this question, in April my staff requested the major groups supporting S. 79—Chemical Manufacturers Association, the AFL-CIO, and the American Electronics Association—to prepare an example of the determination that might be triggered by an actual occupational health hazard. In other words, let us see what is in this before we pass this legislation. How is it going to work? I mean, how is this legislation going to work?

The CMA and the AFL-CIO have yet to respond to this request. After several months, we finally received a response from the American Electronics Association. I think that the material that the AEA did supply, simply a sample notification letter, is instructive because even AEA, which is a supporter of this legislation, fails to provide a determination as requested. Moreover, their notification letter assumes a type of determination that I already know can be written. It describes it as a situation where both concentration and duration information is available, yet the bill permits notification based upon either concentration or duration.

Another very practical problem that has developed in discussing implementation of this program has been the question of how the characteristics of a population at risk would be translated into an actual list of names and addresses of individuals who are properly within that population. Until we have a much better idea of what an actual determination will look like, it simply is not feasible to develop a workable process for dealing with this problem. I mean, we do not even have, Madam President, what a determination would be coming from the risk assessment board. We have asked that question and received no answer. Maybe there is not an answer.

I think it goes to the unworkability of this bill that we cannot even get a simple determination of what this board will determine it to be in defining the risks of the population at risk under the definition of duration or concentration of materials.

No answer. The importance of this matter to the actual implementation of this legislation is it was imprudent for this committee to report this bill out until this material had been received and analyzed. I mean, if we do not receive this material because it is impossible to develop, it certainly suggests that the sponsors of this bill need to go back and to come up with something that is. And what we in fact will know will be part of this.

Further, in discussing the practicalities of this legislation, it should be noted that the majority report states only 50 Federal employees will be required to implement this program. Such an assertion is either wrong or based on the most naive assumptions about how this program can be implemented. To date our notification experience has been an industry-specific situation such as chemical plants. However it is important to consider how the bill will work in the cross-industry type of situation.

Let us take a highly plausible scenario that may well unfold if this bill is enacted. Assume for the purpose of discussion that the study NIOSH is currently conducting on video display terminals concludes that workers exposed to VDT's for 5 years or more are at risk. Assume further that the board agrees with that finding.

Presumably in this event the board would define the category or class of employees as persons exposed to VDT's for 5 years or more. Given that 28 million people currently use VDT's, it is foolish to think a mere 50 employees could handle the task of notifying them.

The majority report simply does not reflect complexities of implementing this legislation. Locating former employees is not an easy task. Indeed, the interim report of the pilot project NIOSH conducted dealing with workers exposed to a potent carcinogen concludes that a relatively large number of employees—approximately 245 out of the cohort of 1,094 individuals—could not be located despite fairly rigorous search efforts. This is about 24 percent of the group. It should be noted that this was a notification project that simply dealt with one company and one plant. I would also like to point out that this particular pilot project in notification is considered a success by NIOSH in terms of location and notification of former employers. They would argue that this pilot project proves that you can do it. I say it shows that the problem is much more difficult that this bill imagines. Further what is the Government's moral responsibility to the 24 percent of former workers who were not notified?

MEDICAL REMOVAL/JOB RETENTION PROVISIONS

While some progress has been made in addressing these issues, considerable revision of these provisions is still necessary because they are inadequate.

Job transfers with benefit and salary retention would be required where a nonexposed job was available. However, where one was not available, the employer would be required to provide the employee with salary and benefits for a 12-month period. Thus, employees who are unable to transfer due to the lack of a suitable job receive income protection for a year, while those who are able to obtain a transferee position receive income protection forever.

Adoption of S. 79 in its current form, would create in statue, a two-tier wage structure throughout much of American industry. Under S. 79, many employees would receive substantially higher wages for work traditionally performed by lower wage workers. Such a system is certain to generate enormous discontent. It contradicts common sense and elementary notions of fairness to pay employees dissimilar wages for identical work.

Certainly the impact on small business is important. This bill was amended to exempt employers with 10 employees or less from the medical removal requirements the bill would impose. I do not believe that the impact of this legislation on our Nation's small businesses has been adequately addressed.

I do not think it is realistic to expect that small businesses will be able to absorb the employer costs this bill will impose.

I do not believe it would be appropriate to exempt employees of small businesses from notification.

However, I do not think it is realistic for the Congress to require small businesses to provide the costly medical monitoring benefits section 9 of the bill would entail. As we all know, many small businesses do not offer health insurance benefits. Approximately 55 percent of all firms with less than 100 employees offer coverage while 45 percent of all firms with less than 10 employees offer coverage.

Another issue, Madam President, is the departures from accepted procedures for administrative and judical review.

The bill is replete with provisions that depart from widely accepted and relied upon procedures for administrative and judicial review.

To cite just one example, it permits an individual who is aggrieved because of a delay in the issuance of a final determination by the board to bring a civil action for mandamus.

Mandamus is an extraordinary writ which suggests the most extreme emergency to permit an individual to

not first exhaust his administrative remedies. Black's Law Dictionary notes that "the writ of mandamus is a drastic one, to be invoked only in extraordinary situations." The sponsors of S. 79 have yet to state why the legislation would present the requisite extraordinary situation.

Congress enacted the Administrative Procedures Act to address the failure of agencies to carry out their functions properly. If that law is so ineffective that special provisions are required in legislation such as this, it is time for the Congress to take a serious look at the APA and amend it accordingly.

Madam President, before I yield the floor, I want to clarify one point that has been over and over again and that is all of the points that have been brought up about all the businesses that support this legislation. Everybody has got that list and I ask unanimous consent that the lists of associations that support this legislation be printed in the RECORD.

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

(See exhibit 1.)

Mr. QUAYLE. Madam President, let me examine some of this so-called business support. First, look at the American Electronics Association that supports the bill but that is because it regards itself as unaffected by S. 79. They are simply not going to be affected by this. In fact, the AEA's exact words were, "Because we are unaware of any exposures in the electronics industry that would trigger a notification, we are unable to provide you with a sample notification."

We have serious questions about the value of support from a group that is not to be affected by the legislation. I mean, it is pretty easy to go ahead and support the legislation if you do not think you are going to be affected by it.

Let me just read a second one from General Electric. They recently wrote me stating, "We already have in place an extensive program of risk notification and a proactive occupational exposure medical monitoring information system. The legislation, therefore, would have little cost effect on our operations."

Another example. They support it but they are not affected by it. That is the kind of support, I guess, that you want. You want those big companies that are not affected by this to say well, we do this anyway so go ahead, pass the legislation. We are not really concerned what happens to the rest of the folks there. It does not affect us so go ahead, you pass it. We will support it.

Again, we have support from a corporation which would not be affected by this bill. Let us consider the support of Johns-Manville Corp., a former Fortune 500 corporation which sought protection under chapter 11 of the bankruptcy code to protect itself from literally thousands of product liability lawsuits. Could it be this company has no fear of increased litigation because there is no one left who has not already sued them?

So I am not so sure about, when you start looking at the sponsors, one of the sponsors has been cited as the Gruman and Foster, the second largest carrier of liability insurance. It should be noted that the American Insurance Association, which carries 85 percent of the workers compensation coverage in this country, does not agree that S. 79 is neutral on the issue of liability and it strenuously is opposed to the bill in its present form.

So that is some of the so-called business support that is for this bill. Most, it appears, are not affected by it and we will put in three pages worth here. I am not going to read them into the RECORD. They would oppose the bill.

I yield the floor.

EXHIBIT 1

National Association of Manufacturers.
Chamber of Commerce of the United States.
National Federation of Independent Businesses.
National Association of Wholesaler-Distributors.
American Mining Congress.
American Farm Bureau.
American Petroleum Institute.
The Business Roundtable.
National Council of Agricultural Employers.
Adhesive and Sealant Council.
Aerospace Industries Association.
Air-conditioning & Refrigeration Wholesalers.
Alliance of American Insurers.
Aluminum Extruders Council.
American Coke and Coal Chemicals Institute.
American Federation of Small Business.
American Feed Industry Association.
American Furniture Manufacturers Association.
American Hardware Manufacturers Association.
American Iron and Steel Institute.
American Jewelry Marketing Association.
American Machine Tool Distributors Association.
American Meat Institute.
American Retail Federation.
American Retreaders Association.
American Road and Transportation Builders Association.
American Subcontractors Association.
American Supply Association.
American Textile Manufacturers Institute.
American Traffic Safety Services Association, Inc.
American Veterinary Distributors Association, Inc.
American Wood Preservers Institute.
Appliance Parts Distributors Association, Inc.
ARMTEK Corporation.
ARMCO Inc.
Asarco Incorporated.
Associated Builders & Contractors.
Associated Equipment Distributor.
Associated General Contractors of America.
Association of American Railroads.
Association of Footwear Distributors.
Assn. of Plumbing-Heating-Cooling Contractors.
Association of Steel Distributors.
Association of the Wall & Ceiling Industries-International.
Automotive Service Industry Association.
Aviation Distributors & Manufacturers Association.
Bearing Specialists Association.
Beauty & Barber Supply Institute, Inc.
Bechtel.
Bethlehem Steel Corporation.
Bicycle Wholesale Distributors Association, Inc.
Biscuit & Cracker Distributors Association.
Blasch Precision Ceramics, Inc.
Borg-Warner.
Bridgestone Tire Company.
Calazeras Cement Company.
Cast Metals Association.
Caterpiller Inc.
Ceramic Tile Distributors Association.
Champion Spark Plug.
Chesebrough-Ponds, Inc.
China Clay Products.
Chrysler Corporation.
Cleveland Cliffs Inc.
CNA Insurance Companies.
Composite Can & Tube Institute.
Concrete Minnesota Inc.
ConRock Materials and Inc.
Cooper Tire and Rubber Company.
Copper & Brass Servicenter Association.
Corhart Refractories Corporation.
Council of Periodical Distributors Association.
Council of Wholesale-Distributors.
Door & Hardware Institute.
Eagle-Picher Industries.
Edison Electric Institute.
Electrical-Electronics Materials Distributors Association.
Eli Lilly Corporation.
Employers Mutual Companies.
Explosive Distributors Association, Inc.
Farm Equipment Wholesalers Association.
Fire Suppression Systems Association.
Flexible Packaging Association.
Fluid Power Distributors Association, Inc.
FMC Corporation.
Food Industries Suppliers Association.
Food Marketing Institute.
Foodservice Equipment Distributors Assn.
Ford Motor Company.
Frey Concrete.
Gates Rubber Company.
GenCorp. Inc.
General Ceramics, Inc.
General Merchandise Distributors Council.
General Motors.
Georgia-Pacific.
Goodyear Tire & Rubber Company.
Greater Wash/MD Service Station & Repair Assn.
Gypsum Company.
Halliburton Co.
Health Industry Distributors Association.
Hecla Mining Company.
H.G. Hudson Manufacturing Company.
Hilltop Basic Resource Inc.
Hobby Industry Association of America.
Houston Lighting and Power Company.
Independent Medical Distributors Assn.
Institutional & Service Textile Distributors Association, Inc.
International Sanitary Supply Association.
Irrigation Association.
International Truck Parts Association.
Jewelry Industry Distributors Association.

Kemper Group.
Kerr-McGee Corporation.
Keystone Coal Mining Corporation.
Liberty Mutual Insurance Group.
MA. Hanna Company.
Machinery Dealers National Association.
Mack Trucks.
Material Handling Equipment Distributors Assn.
Maytag Corporation.
Mead.
McCreary Tire and Rubber Company.
Michelin Tire Corporation.
Mobil Chemical Corporation.
Mobil Oil Corporation.
Monument Builders of North America.
Motor Vehicle Manufacturers Association.
Motorcycle Industry Council.
Motorola.
Music Distributors Association.
National-American Wholesale Grocers' Assn.
National Appliance Parts Suppliers Assn.
Nat'l. Assn. for Hose & Accessories Distributors.
Nat'l. Association of Aluminum Distributors.
National Association of Casualty & Surety Agents.
National Assn. of Chemical Distributors.
National Assn. of Container Distributors.
National Association of Decorative Fabric Distributors.
National Assn. of Electrical Distributors.
National Association of Fire Equipment Distributors.
National Association of Floor Covering Distributors.
National Association of Homebuilders.
National Assn. of Independent Insurers.
National Assn. of Manufacturing Opticians.
National Assn. of Marine Services, Inc.
National Association of Meat Purveyors.
National Assn. of Plastics Distributors.
National Assn. of Service Merchandising.
National Association of Sporting Goods Wholesalers.
National Assn. of Tobacco Distributors.
National Assn. of Truck Stop Operators.
National Association of Writing Instrument Distributors.
National Automobile Dealers Assn.
National Beer Wholesalers Association.
National Building Material Distributors Association.
National Business Forms Association.
National Candy Wholesalers Association.
National Coal Association.
National Commercial Refrigeration Sales Association.
National Electronic Distributors Assn.
National Fastener Distributors Association.
National Food Brokers Association.
National Food Distributors Association.
National Forest Products Association.
National Frozen Food Association.
National Grain and Feed Association.
National Grocers Association.
National Independent Poultry and Food Distributors Association.
National Industrial Belting Association.
National Industrial Glove Distributors Association.
National Industrial Sand Association.
National Intergroup Inc.
National Kitchen & Bath Association.
National Kitchen & Cabinet Association.
National Lawn & Garden Distributors Association.
National Locksmith Suppliers Association.
National Machine Tool Builders Association.
National Marine Distributors Association.
National Moving & Storage Association.
National Paint Distributors, Inc.
National Paper Trade Association, Inc.
National Particle Board Association.
National Pest Control Association.
National Plastercraft Association.
National Printing Equipment & Supply Assn.
National Ready Mixed Concrete Association.
National Restaurant Association.
National Sand & Gravel Association.
National Sash & Door Jobbers Association.
National School Supply & Equipment Assn.
National Screw Machine Products Association.
National Small Business United.
National Solid Wastes Management Assn.
National Stone Association.
National & Southern Industrial Distributors Associations.
National Spa and Pool Institute.
National Textile & Apparel Distributors.
National Tooling and Machining Association.
National Truck Equipment Association.
National Welding Supply Association.
National Wheel & Rim Association.
National Wholesale Druggists' Association.
National Wholesale Furniture Association.
National Wholesale Hardware Association.
Newmont Mining Corporation.
New York State Electric and Gas Corporation.
North American Heating & Airconditioning Wholesalers.
North America Wholesale Lumber Assn., Inc.
Optical Laboratories Association.
Outdoor Power Equipment Distributors Assn.
Pennwalt Corporation.
Pet Industry Distributors Association.
Petroleum Equipment Institute.
Petroleum Equipment Supply Assn.
Petroleum Marketers Association of America.
Phillips Petroleum Co.
Portland Cement Association.
Power Transmission Distributors Association, Inc.
Printing Industries of America PRM Concrete Corporation.
Procter & Gamble.
Reynolds Metals Companies.
R.R. Donnelly & Sons Company.
Rochester & Pittsburgh Coal Company.
Rubber Manufacturers Association.
Russell Corporation.
Safety Equipment Distributors Assn., Inc.
Scaffold Industry Association.
Scott Paper Company.
Security Equipment Industry Association.
Shell Oil Company.
Shipbuilders Council of America.
Shoe Service Institute of America.
Society of American Florists.
Sorptive Minerals Institute.
Specialty Tools & Fasteners Distributors Association.
Spring Service Association.
Southwestern Bell Corporation.
Textile Care Allied Trades Association.
The American Society of Personnel Administrators.
The AntiFriction Bearing Manufacturers.
The B.F. Goodrich Company.
The Can Manufacturers Institute.
The Firestone Tire & Rubber Company.
The Formaldehyde Institute.
The Goodyear Tire & Rubber Company.
The National Cotton Council.
The National Grange.
The Small Business Legislative Council.
The Society of the Plastics Industry.
The Standard Oil Company.
The West Company, Inc.
Toy Wholesalers' Association of America.
UBA, Inc.
U.S. Borax and Chemical Corp.
U.S. Business and Industrial Council.
Umetco Minerals Corporation.
Unigard Insurance Group.
Union Camp.
Uniroyal Goodrich Tire Company.
United Pesticide Formulators & Distributors Association.
USG Corportion.
USX Corporation.
Utah International Inc.
Video Software Dealers Association.
Volkswagen.
Wallcovering Distributors Association.
Warehouse Distributors Association for Leisure & Mobile Products.
Water and Sewer Distributors Association.
Wausau Insurance Companies.
Wholesale Florists & Florist Suppliers of America.
Wholesale Stationers' Association, Inc.
Wine & Spirits Wholesalers of America, Inc.
Winter Brothers Concrete Inc.
Woodworking Machinery Importers Assn.
Woodworking Machinery Distributors Assn.

AMENDMENT NO. 1773

(Purpose: To provide a further limitation with respect to medical removal)

Mr. DIXON. 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 Illinois (Mr. DIXON) proposes an amendment numbered 1773.

Mr. DIXON. 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 everything beginning on page 64, line 1 through line 12 on page 68 and insert the following:

"(b) LIMITATIONS FOR AGRICULTURAL WORKERS.—Provisions for medical removal protection under this subsection shall not apply to any seasonal agricultural worker employed by an employer for less than 5 months of continuous employment.".

(c) DISCRIMINATION PROHIBITED.—

(1) IN GENERAL.—No employer or other person shall discharge or in any manner discriminate against any employee, or applicant for employment, on the basis that the employee or applicant is or has been a member of a population that has been determined by the Board to be at risk of disease. The subsection shall not apply if the position which the applicant seeks requires exposure to the occupational health hazard which is the subject of the notice. If it is medically determined pursuant to subsection (d) that an employee should be removed to a less hazardous or nonexposed job, an employer may effect such a removal without violating this subsection so long as the employee maintains the earnings, seniority, and other employment rights and

benefits, as though the employee had not been removed from the former job.

(2) SPECIAL PROVISION.—An employer with 10 or fewer employees may transfer an employee who is or has been a member of a population at risk to another job without violating this subsection so long as the new job has earnings, seniority and other employment rights and benefits as comparable as possible to the job from which the employee has been removed. In providing such alternative job assignment, the employer shall not violate the terms of any applicable collective bargaining agreement.

(d) BENEFIT REDUCTION PROHIBITED.—

(1) GENERAL.—If, following a determination by the Board under this Act, the employee's physician medically determines that an employee who is a member of a population at risk shows evidence of the development of the disease described in the notice or other symptoms or conditions increasing the likelihood of incidence of such disease, the employee shall have the option of being transferred to a less hazardous or nonexposed job. If within 10 working days after the employee has exercised the option and transmitted to the employer a copy of the initial determination, the employer's medical representative has not requested independent reconsideration of such determination, the employee shall be removed to a less hazardous or nonexposed job and shall maintain earnings, seniority, and other employment rights and benefits as though the employee had not been removed from the former job. In providing such alternative job assignment, the employer shall not be required to violate the terms of any applicable collective bargaining agreement, and shall not be required to displace, lay off, or terminate any other employee.

(2) INDEPENDENT RECONSIDERATION.—If the employer's medical representative requests independent reconsideration of the initial medical determination under paragraph (1), the employee's physician and the employer's medical representative shall, within 14 working days of the transmittal of the initial determination, submit the matter to another mutually acceptable physician for a final medical determination, which shall be made within 21 working days of the transmittal of the initial determination unless otherwise agreed by the parties. If the two medical representatives have been unable to agree upon another physician within 14 working days, the Secretary or the Secretary's local designee for such purpose shall immediately, at the request of the employee or the employee's physician, appoint a qualified independent physician who shall make a final medical determination within the 21 working day period specified in this paragraph, unless otherwise agreed by the parties. The employer shall bear all costs related to the procedure set forth in this paragraph.

(3) EMPLOYEES SUBJECT TO MEDICAL REMOVAL.—An employer shall be required to provide medical removal protection only for employees who—

(A) are notified individually under section 5, or

(B) the employer knows or has reason to know are members of the population at risk as determined by the board.

(4) SPECIAL RULES FOR MEDICAL REMOVAL.—An employer shall be required to provide such protection only if any part of the employee's exposure to the occupational health hazard occurred in the course of the employee's employment by that employer. The medical removal protection described in this subsection shall be provided for as long as a less hazardous or nonexposed job is available. The availability of such a job shall depend upon the employee's skills, qualifications, and aptitudes and the job's reqirements. Where such job is not available, the medical removal protection shall be provided for a period not to exceed 12 months. The employer may condition the provision of medical removal protection upon the employee's participation in follow-up medical surveillance for the occupational health effects in question based on the procedure set forth in this subsection. The employer's obligation to provide medical removal protection shall be reduced to the extent that the employee receives compensation for earnings lost during the period of removal, or receives income from employment with another employer made possible by virtue of the employee's removal.

(5) SPECIAL LIMITATION.—An employer is not required to provide medical removal protection for employees if the employer—

(A) has 10 or fewer full-time employees at the time medical removal protection is requested, and

(B) made or is in the process of making a reasonable good faith effort to eliminate the occupational health hazard that is the basis for the medical removal decision.

AGRICULTURAL EXEMPTION FROM THE MEDICAL REMOVAL PROVISION

Mr. DIXON. Madam President, today the Senate is debating the merits of S. 79, the High Risk Occupational Disease Notification Act. At issue will be, whether this bill to notify workers that their job may put them at health risk, can accomplish its intended purpose. Some of the questions about whether S. 79 can be effective center around the medical monitoring provisions.

The medical removal and medical monitoring provisions of S. 79 are troublesome, and indeed, unworkable for many kinds of businesses. These provisions are particularly unsuitable to the unique work practices in farming.

Therefore, I offer an amendment, along with my distinguished and good friend from Kentucky, Senator FORD, to exempt from medical removal protection, all seasonal agricultural workers employed by an employer for less than 6 months. Our amendment would also exempt a farmer from paying for the cost of medical monitoring for this same category of employee.

According to the Department of Agriculture, over 70 percent of all farm employees work for less than 6 months. The nature of this seasonal work is such that these workers would not seek medical removal to an alternative job. Seasonal employees may work for several employers simultaneously. This makes medical removal and paying for medical monitoring inappropriate for agriculture employers.

The authors of S. 79 agree that because of the temporary nature of seasonal farm work, an agriculture employer should not be required to find alternative employment for seasonal workers. They have also agreed that it is reasonable to amend S. 79 to set aside $1 million to pay for the cost of medical monitoring of farm employees who work 6 months or less out of the Department of Health and Human Service's migrant health program.

I commend Senators METZENBAUM and STAFFORD for their willingness to accept these constructive amendments of the Senator from Kentucky and myself.

Madam President, I urge my colleagues to ultimately adopt these amendments.

Mr. METZENBAUM. Mr. President, the amendment exempts seasonal agricultural workers employed by an employer for less than 6 months from the medical removal provisions of the bill. The short-term nature of seasonal farmwork makes it impractical for an agricultural employer to find an alternate job for a seasonal farmworker. Let's be clear. This amendment has no impact on regular, year-round farmworkers, who make up about 30 percent of the farm work force. These regular workers are no different than their counterparts employed in other sectors of the economy.

This amendment also does not affect medical monitoring. All notified workers, short term or regular, should be allowed to seek medical testing to determine if they have developed an occupational disease associated with exposure to an occupational health hazard.

This is a constructive amendment that makes the bill more workable. I urge my colleagues to adopt it.

AMENDMENT NO. 1774 TO AMENDMENT NO. 1773

(Purpose: To clarify the medical monitoring provisions relating to seasonal agricultural workers)

Mr. FORD. Madam President, I send to the desk an amendment in the second degree to the amendment of the Senator from Illinois and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD] proposes an amendment numbered 1774 to amendment No. 1773.

Mr. FORD. 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 1 of the amendment strike "5" through the first period and insert the following in lieu thereof: "6 months of continuous employment. Provisions of section 12 of this Act shall not take effect unless the Secretary of Health and Human Services, using existing authorization, provides that in the case of seasonal agricultural workers employed by an employer for less than 6 months of continuous employment, the medical monitoring recommended by the Board is provided through the Migrant

Health Program of the Bureau of Health Care Delivery and Assistance of the Department of Health and Human Services using funds appropriated under section 14. An amount not to exceed $1,000,000 for each fiscal year, from funds authorized to be appropriated by this Act, shall be set aside, if necessary, to carry out the preceding sentence.".

Mr. FORD. Mr. President, the amendments that Senator DIXON and I are offering today are designed to recognize the unique aspects of seasonal farm labor under S. 79, the High Risk Occupational Disease Notification and Prevention Act. As a cosponsor of this legislation, I support establishing a risk notification program that will save lives through early intervention and protect both workers and businesses from the long-term costs of occupational disease. However, I am concerned that the bill that was reported from the Labor and Human Resources Committee does not recognize the heavy use of seasonal employees by farmers, particularly family farmers in my home State of Kentucky. The amendments we are offering make this bill workable for farmers. I believe these amendments are supported by the sponsors of this bill, and I appreciate their willingness to hopefully revise this legislation to address our concerns.

The first amendment we are offering would exempt seasonal agricultural workers, those employed for less than 6 months, from the medical removal provisions of this bill. The second amendment provides that any medical monitoring required by the Risk Assessment Board for seasonal agricultural workers would be provided by the Department of Health and Human Services through the Migrant Health Program and paid for with funds authorized by the bill.

The purpose of S. 79 is, quite simply, to save lives and decrease the long-term costs to both employers and employees that are associated with occupational illness. In Kentucky, we are just finishing a long and controversial process of revising our workers' compensation system. Over the years, black lung disease and other occupational diseases associated with the coal mining industry, have put a strain on the workers' compensation system. Had this legislation been in place several years ago, we could have had a system of identifying and monitoring workers who would develop the most serious and financially devastating of these conditions, and saved considerable expense to Kentucky industry, workers, and the entire worker's compensation system.

While farming may not be as hazardous an occupation as coal mining, there may be certain risks to farmworkers that the Risk Assessment Board will determine are significant enough to trigger a notification. Under the provisions of the bill before us, family farmers would be put in a position of having to potentially remove a temporary, seasonal worker to a less hazardous job, or provide medical monitoring for the employee. This simply is not workable for farmers who use seasonal labor. They may have a different work force every day. Farming does not operate like other industries which maintain a fairly stable work force.

The Department of Agriculture estimates that 70 percent of farm employees are seasonal workers, working less than 6 months per year. It is not realistic to require these farmers to remove notified workers to positions that do not exist. Seasonal workers are hired for a specific job and period of time, for work that is temporary only. The medical removal and monitoring provisions of this bill would effectively require farmers to create jobs or provide medical monitoring for workers who may be employed only a few days or weeks during the year. In the case of a worker who could not be removed to another position, the farmer would have to provide 12 months of salary and benefits, reduced by other compensation, to that worker. Clearly, farmers should not be put in a position of having to provide a year of compensation to a worker who was employed only a few weeks or months.

The amendments which Senator DIXON and I are offering resolve this problem in two ways. First, Senator DIXON's amendment, which I am pleased to cosponsor, would exempt seasonal agricultural workers, those employed for less than 6 months, from the medical removal provisions of this bill. Second, the amendment which I am offering and is cosponsored by Senator DIXON, provides that any medical monitoring required by the Risk Assessment Board would be provided to farmworkers by the Department of Health and Human Services through the Migrant Health Program. Farmers would not be required to provide the medical monitoring. My amendment earmarks $1 million of the funds authorized for this bill to pay for this medical monitoring.

These amendments recognize the temporary nature of seasonal agriculture employees and make the bill workable for farmers. As a practical matter, it is unlikely that many farmers will be affected by the medical removal provisions. Only current workers individually notified, or those the farmer knows are at risk, must be provided medical monitoring or removal to a less hazardous job. The medical removal provisions only become effective when an employee takes action, through his physician, to request transfer. The employer can also request an independent consideration of employee's physician's findings. Because seasonal farm work is of such short duration, it is unlikely that farm workers will even seek removal. It simply does not make sense to apply the removal requirements to temporary farm workers, and this amendment is needed to recognize the unique circumstances of seasonal farm labor.

The medical monitoring requirements of this bill are also unworkable for seasonal agriculture labor. For some crops, farm workers may work for several different farmers during the growing season, and may even work for different farmers during one phase of the growing season. Approximately 75 to 80 percent of tobacco workers are seasonal workers, estimated at between 150,000 and 200,000 workers. Although the planting schedules of burley and Flue-cured tobacco are slightly different, the labor requirements are similar. Typically, tobacco workers work for 2 to 4 months a year. For burley, labor requirements begin with transplanting plants from seedbeds to the fields in May. Then in August and September, there is usually about a month's time of cutting and housing. Then in November and December, workers are required for about 6 weeks for stripping and baling. Although loyalties develop between workers and farmers, it is not unusual for workers to move from farm to farm during these three phases of the growing season, sometimes only working for a few days at the end of the cycle at one farm.

It would, obviously, be unnecessary and burdensome to require each farmer that hires an at-risk worker to provide repetitive medical monitoring. It would also place an undue burden on the worker at risk to show that he or she worked at one particular farm location long enough to be exposed to the hazard. However, for those farm workers who are known to be at risk, medical monitoring should be available. It just simply makes more sense to provide one source of medical monitoring for migrant seasonal farm workers. My amendment provides that by placing responsibility for medical monitoring in the hands of the Migrant Health Program in the Bureau of Health Care Delivery and Assistance within the Department of Health and Human Services. The Migrant Health Program currently provides a health care delivery service for migrant and seasonal farmworkers and their families. This amendment earmarks up to $1 million per fiscal year of the annual authorization for the cost of medical monitoring for seasonal agricultural workers.

It is important to stress that this amendment does not mean that agricultural workers' health hazards should be a priority for the Risk Assessment Board. Under the bill, the Board is instructed to prioritize notifications based on those populations at

risk who would most likely benefit from medical monitoring. The fact that medical monitoring for seasonal farm workers will be paid for with Federal funds does not, by itself, make this population more likely to benefit from medical monitoring. It is also important to note that this provision does not add to the cost of the bill. The sponsors of S. 79 have assured me that the annual authorization of $25 million is sufficient to absorb the estimated cost of medical monitoring for seasonal agricultural workers.

I urge my colleagues to adopt the amendments.

Mr. METZENBAUM. Mr. President, the Ford amendment eliminates another practical problem with S. 79. It has been pointed out that agricultural employers may have a difficult time providing medical monitoring to seasonal agricultural workers who have been notified under S. 79.

Seasonal farmworkers may work for a number of employers during the year and it would be a problem to determine which employer is responsible for the medical monitoring. But seasonal farmworkers at risk of occupational disease should not lose the benefits of medical monitoring just because they change jobs every few months.

This amendment solves the problem by having the Federal Government, through the Migrant Health Services Division of the Department of HHS, provide the monitoring to seasonal farmworkers. No new money is needed for this service. There are enough funds in S. 79 to absorb what will be a minimal cost.

With this amendment, seasonal farmworkers who work less than 6 months for an employer, will receive medical monitoring at no cost to agricultural employers.

I applaud this innovative solution. The amendment improves the bill and should be adopted.

Mr. BREAUX addressed the Chair.

The PRESIDING OFFICER (Mr. REID). The Senator from Louisiana.

AMENDMENT NO. 1775

(Purpose: To revise the medical removal provisions relating to small business and others)

Mr. BREAUX. Mr. 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 Louisiana (Mr. BREAUX) proposed an amendment numbered 1775.

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

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

The amendment is as follows:

On page 2 between lines 13 and 14 insert the following:

"(d) SPECIAL PROVISION.—An employer with 50 or fewer employees may transfer an employee who is or has been a member of a population at risk to another job without violating this subsection so long as the new job has earnings, seniority and other employment rights and benefits as comparable as possible to the job from which the employee has been removed. In providing such alternative job assignment, the employer shall not violate the terms of any applicable collective bargaining agreement.

In addition, an employer is not required to provide medical removal protection for employees if the employer—

"(A) has 50 of fewer full-time employees at the time medical removal protection is requested, and

"(B) made or is in the process of meeting a reasonable good faith effort to eliminate the occupational health hazard that is the basis for the medical removal decision."

Mr. QUAYLE. Mr. President, a parliamentary inquiry. Do we only have two amendments pending, an amendment by the Senator from Illinois and one by the Senator from Kentucky?

Mr. BREAUX. Will the Senator yield?

Mr. QUAYLE. I yield.

Mr. BREAUX. I respond by pointing out that my amendment is to the underlying bill and the previous amendments were to the committee substitute.

Mr. QUAYLE. I thank the Senator.

The PRESIDING OFFICER. The Senator from Illinois.

AMENDMENT NO. 1776 TO AMENDMENT NO. 1775

(Purpose: To clarify the medical monitoring provisions)

Mr. DIXON. Mr. President, I send an amendment to the desk in the second degree to the Breaux amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois [Mr. DIXON] proposes an amendment numbered 1776 to amendment No. 1775.

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

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

The amendment is as follows:

At the end of the amendment add the following: "The medical monitoring required under this Act shall be limited to the monitoring recommended by the Risk Assessment Board. The means of providing such medical monitoring shall be left to the employer's judgment consistent with sound medical practices. If the benefits are made available through an existing employer health plan, the employee may be required to meet deductibles or copayments generally required under the existing employer health plan. Any such current employee shall be required to provide monitoring only for employees who—

"(1) are notified individually under section 5; or

"(2) the employer knows or has reason to know are members of the population at risk as determined by the Board.

An employer with 50 or fewer employees may not be required to pay more than $250 for medical monitoring for any employee in any year. This amount shall be adjusted annually after 1988 based on the Consumer Price Index for medical care services maintained by the Bureau of Labor Statistics.".

Mr. DIXON. Mr. President, by way of explanation, may I state that the amendment offered by my distinguished colleague, the Senator from Louisiana, increases the work threshold from 10 to 50 people in the definition of a small business as contemplated by S. 79. I am candid in saying that I think the number should be larger. We are going to be engaged in continuing negotiations about this matter. But certainly, increasing it from 10 to 50 is a substantial step, in my view, toward protecting the interests of small businesses.

The second-degree amendment, offered by this Senator, caps an employer of 50 or fewer employees expense for medical examinations at $250. I would point out that the report by the committee indicates a "guesstimated" sum of $224 for medical examinations.

There are some of us who would contest that, believing that doctors will protect themselves against malpractice suits by thorough examinations, and would run up costs higher than $224 in some instances. So, we have put a cap on it, or are suggesting a cap in the second-degree amendment offered by this Senator.

Mr. METZENBAUM. Mr. President, under the act, the notification letter to an employee who is a member of a designated population at risk of disease must include counseling information relevant to the nature of the particular risk. That information must include the most appropriate types of medical monitoring for the disease, as determined by the risk assessment board.

The second Dixon amendment makes clear that an employer who is providing medical monitoring to a current employee need only provide the monitoring recommended by the board in the notification letter. If the employer wants to provide more extensive monitoring, the employer is free to do so. But the types of monitoring listed by the board are the only things an employer must provide.

This provision makes monitoring predictable and limits costs for employers. It should be adopted.

The amendment also clarifies the original intent of the sponsors of S. 79 regarding actual delivery of medical monitoring. The amendment provides that the means of providing medical monitoring shall be left to the employer's judgment consistent with sound medical practices.

Thus employers may choose to enter into contractual arrangements with health maintenance organizations, clinics, hospitals or testing laborato-

ries. Employers might also choose to secure appropriate coverage from health insurance carriers. Some employers may choose to create or expand in-house medical programs.

I assume the point of the provision is to allow employer flexibility in providing medical monitoring. However, neither the amendment nor the act should be construed to require that an insurance carrier, an HMO or any other health institution provide medical monitoring.

This provision also makes sense. It protects employee health and lets employers use their best judgment in providing services. I urge my colleagues to adopt it.

Finally, there has been great confusion over the cost of the medical monitoring provisions of S. 79. Opponents have argued that employers, particularly small businesses who may not be able to take advantage of the economies of scale available to large companies, will be forced to pay thousands of dollars per employee for a whole range of expensive, sophisticated medical procedures.

That simply is not true and this amendment by Senator DIXON should put that argument to rest once and for all.

In the vast majority of cases, medical monitoring will involve a simple chest x-ray, or a blood test or a urinalysis. One industry group opposed to the bill estimated that medical monitoring costs would average between $20 and $250 per monitored employee. At the extensive hearings on the legislation, occupational health experts estimated that the cost of medical monitoring would be less than $250 per monitored employee.

This amendment caps the cost of medical monitoring for employers with 50 or fewer employees at $250 per monitored employee per year. In other words, small employers will not be responsible for any medical monitoring costs that exceed $250 per employee. If more expensive tests are required, the employee will be responsible for the cost.

The amendment demonstrates what we have been saying all along—this bill does not and will not impose undue costs on the Nation's small employers. I do not believe this amendment is necessary because medical monitoring costs never were extensive. But this amendment guarantees those costs will be modest for small employers.

It is a fair amendment, which helps small business. As such, I am willing to accept it.

AMENDMENT NO. 1775

Mr. BREAUX. Mr. President, I take this time to comment on the amendment I presented to the underlying bill, to present some comments on the amendment itself and comment on the work presented by Senators METZENBAUM and STAFFORD, all the work that they have done in presenting a bill to the Senate which can be presented to all segments of American society. You can look at the chart of the back of the Senate. I commend those names that are on that chart, organizations, employees and the workers that they represent for their support of this legislation.

I tell all the Members of the Senate that when you can have the Chemical Manufacturers Association and the National Resources Defense Council in agreement on this legislation, you have a good bill. When you have the Manville Corp., and the American Cancer Society in agreement on this bill, you have good legislation.

When you have the National Paint & Coating Association and the American Public Health Association in agreement on legislation, you know that a good job has been done.

I think that the very show of support by these varied and different organizations is a credit to the authors of the bill because it tells everybody in this country that a great deal of work has been done in putting together a compromise package that is good for our country and our Nation and should be supported by everyone.

These organizations represent both ends of the spectrum in these types of debates when we argue about the environment and argue about productivity in this country. I think that that, in itself, speaks as a striking example of why we in this body should give our strong support to S. 79, the legislation before the Senate this afternoon.

It is easy for those of us in the Congress not to have to worry professionally and personally about disease and risk in the workplace because we do not have a lot of problems in the Senate with regard to potentials for incurring disease because of where we work. But I would tell our colleagues in this body that is not the case for hundreds of thousands of workers in this country.

I represent the State of Louisiana which probably has a greater concentration of chemical companies, of oil and gas companies, of plastic manufacturing companies, of paint manufacturing companies that employ literally thousands of men and women in the State of Louisiana. These men and women in a State that has the highest unemployment in the Nation go to work every morning because they need to do so to feed their families. They live on the real edge of whether they are going to be able to earn enough to survive another week or whether they may be out of work because of another plant closing.

These men and women who go to these plants in my State go to these plants with a concern of whether their workplace is, in fact, safe. I want to commend those plants and those manufacturers who have done an outstanding job in trying to notify workers of potential health hazards in the workplace.

Many of them have already done a tremendous job. For many of them who have done that good work already, this bill will cause almost no additional work whatsoever. There are some who will have to take steps that they are not, in fact, taking.

I would say to all of our Members who oppose this legislation to place themselves for a moment in the shoes of an individual who is trying to feed his family and his children, who drives down a highway every morning going to a plant that he is not sure whether they are manufacturing a product that could potentially put him at risk to lung cancer or to bowel cancer, or if she is a female, to put her at an exceptionally high risk of a potential birth defect in a child who is born or to have other problems that she knows little about.

That is what we are really trying to protect. We are really trying to protect those individuals who must work, who must produce the products that are good for society because we need them, but would like to know whether they are working in a place that is safe. That is all this bill does.

We will talk more about it, but I would simply say to those who have some concern to point out that those organizations who are going to be the most directly affected are in support of this legislation. I think that in and of itself is a credit to those who put the legislation together and assures us that it is a fair package that will address the legitimate concerns for all of these corporations who are going to have to be governed by it.

I want to be able to go back to the people of my State and other employees in similar fashions in industries producing hazardous products and say because of this legislation, they can go to work knowing that they are going to be safer in the workplace, and if they are exposed to dangerous substances that could, in fact, cause them problems, that someone is going to tell them about it.

That is all this legislation does: To allow that worker to know that someone is concerned about him, that someone is taking it upon themselves to say that they will be notified and they will be examined. I think that is a fair approach, and I commend the authors of the bill for the great work that I think they have done already.

Mr. METZENBAUM. Mr. President, the small business community has expressed a great deal of concern about the medical removal provisions of S. 79. This amendment, offered by Senator BREAUX, should eliminate those concerns.

The amendment does two things. It exempts businesses with 50 or fewer employees from the medical removal provisions of the bill. That means over 95 percent of the firms in this country will be exempt from medical removal.

The amendment also requires that an employee in the remaining 5 percent of the firms, who is eligible for medical removal but who cannot be transferred to an alternate job with the employer, must make a good faith effort to find other work. This will prevent employees from taking undue advantage of employers.

The Breaux amendment improves the bill and I urge its adoption.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, I yield to the distinguished majority leader 5 minutes.

ORDERS FOR WEDNESDAY

RECESS UNTIL 10:30 A.M.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Kentucky, my good friend and neighbor.

Mr. President, there will be no more rollcall votes today. I ask unanimous consent that when the Senate completes its business today that it stand in recess until the hour of 10:30 tomorrow morning.

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

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that on tomorrow morning that following the two leaders under the standing order there be a period for morning business to extend until 11 o'clock a.m. and that Senators may speak therein.

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

ORDER OF PROCEEDING PRIOR TO VOTE ON CLOTURE

Mr. BYRD. Mr. President, I ask unanimous consent that during the second half-hour under the cloture rule, the time be equally divided between Mr. METZENBAUM and Mr. HATCH. That no amendments be in order during that half-hour. This request has been cleared by both Mr. METZENBAUM and Mr. HATCH.

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

Mr. BYRD. Mr. President, I ask unanimous consent that motions to recommit, with or without instructions, be in order that half-hour.

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

Mr. HATCH. It is also my understanding, Mr. President, if I am correct, that we will soon go out.

Mr. BYRD. Yes. I have already announced there will be no more rollcall votes today and no further action by way of motions, et cetera. Does the Senator waive the mandatory quorum?

Mr. HATCH. I will be happy to waive the mandatory quorum and just have the cloture vote. When is it? Eleven o'clock?

Mr. BYRD. Eleven-thirty.

Mr. President, I ask unanimous consent that the mandatory quorum under rule XXII be waived on tomorrow.

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

Mr. HATCH. Mr. President, I believe this is all all right with the acting Republican leader as well.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Kentucky for yielding, and I wish the distinguished Senator from Utah [Mr. HATCH] a very, very happy 43d birthday.

Mr. HATCH. Thank you.

The PRESIDING OFFICER. Who yields time?

WAIVER OF MANDATORY QUORUM CALL VITIATED

Mr. BYRD. Mr. President, I ask unanimous consent that the order waiving the mandatory quorum on tomorrow be vitiated.

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

Mr. BYRD. I do this, Mr. President, because otherwise Senators might be locked out from offering second-degree amendments, and I do not know that anyone on this side wants to offer a second-degree amendment. But in the event Mr. HATCH would or a Senator would want to offer a second-degree amendment with a mandatory quorum wiped out, such amendments have to be offered by 1 hour prior to the beginning of the vote.

So if there is no mandatory quorum, the vote begins 1 hour after the Senate comes in and does not give Senators an opportunity to offer second-degree amendments.

Mr. HATCH. If the Senator will yield.

Mr. BYRD. Yes.

Mr. HATCH. As I understood it, we would have no amendments regardless. Does the Senator's side intend to bring up any additional amendments?

Mr. METZENBAUM. If I may intercede, it is our understanding that there would be no amendments offered or in order before the cloture vote tomorrow.

Mr. HATCH. Right.

Mr. METZENBAUM. What the majority leader is addressing himself to——

Mr. HATCH. Postcloture.

Mr. METZENBAUM [continuing]. Is the right to file second-degree amendments postcloture.

Mr. HATCH. Then I think that is an appropriate request.

Mr. BYRD. I make the request.

Has it been granted?

The PRESIDING OFFICER. It has been granted.

Mr. BYRD. I thank the Chair. I thank Senators.

Mr. METZENBAUM. I compliment the majority leader, who recognized the need to protect the minority or anyone else having an opportunity to offer an amendment postcloture, and I think it was entirely appropriate. I commend the Senator for doing so when nobody is looking to take unfair advantage of anybody.

Mr. BYRD. I thank the Senator.

Mr. METZENBAUM. Let me at this point say that the Senator from Ohio is prepared to accept the Dixon, Breaux, and Ford amendments at an appropriate time but no action being called for at this point, with some question of whether or not the minority wants me to accept them prior to the cloture vote or after, we will hold that until the morning. But the Senator from Ohio looks favorably on both of the Dixon amendments, the Breaux amendment, as well as the Ford amendment, and that is in a spirit of compromise about which I have spoken earlier. We want to try to work this bill out, if it is at all possible, in a conciliatory and compromising manner.

I thank the Chair. I yield the floor.

CLOTURE MOTION

Mr. BYRD. Mr. President, I hope that cloture will be invoked on tomorrow. In the event it is not, there will be another cloture vote on Thursday. I send a cloture motion to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the committee substitute for S. 79, a bill to notify workers who are at risk of occupational disease in order to establish a system for identifying and preventing illness and death of such workers, and for other purposes.

Senators Bob Graham, Claiborne Pell, Edward M. Kennedy, Barbara A. Mikulski, Alan Cranston, Paul Sarbanes, Harry Reid, Tom Harkin, Spark Matsunaga, John Glenn, Tom Daschle, Wendell Ford, Patrick Leahy, Paul Simon, Howard Metzenbaum, and Timothy E. Wirth.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

FLOOR PRIVILEGES

Mr. BYRD. Mr. President, I ask unanimous consent that Elaine Neenan of my staff be granted privileges of the floor during consideration

of and votes on S. 79, the High Risk Occupational Disease Notification and Prevention Act.

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

THE INSULTING TOSHIBA MACHINE VERDICT

Mr. HELMS. Mr. President, today the Tokyo District Court announced the verdict in the Toshiba Machine case. Two low-ranking Toshiba Machine executives received suspended sentences and the company received a 2 million yen fine. At 127 yen to the dollar, 2 million yen works out to $15,748.03.

It is not my habit to comment on foreign court verdicts, Mr. President, but the decision by the Tokyo Court today is insulting. It is, in fact, outrageous. Given the millions of dollars in corrupt profits Toshiba made on the machine tool deals alone, the violations of the sanctions clearly paid off. If there is no other punishment, then clearly crime does pay.

Mr. President, the Congress in the Trade Bill Conference is about to make a far-reaching decision. If there are no meaningful sanctions on Toshiba and Kongsberg in the trade bill, H.R. 3, it will send a signal to all the corrupt Western businessmen that it is business-as-usual. Any damage these businessmen cause by their illegal sales of high-technological gear to the Soviets and their allies will be willingly paid by the U.S. taxpayer.

Last week the distinguished Senator from Pennsylvania, Senator HEINZ, noted on the floor the heavy lobbying by the administration against the Garn amendments to the trade bill. With this kind of experience, it is fair to predict that no administration would be very likely voluntarily to impose sanctions on a foreign firm for export control violations, no matter how heinous the offense.

Mr. President, the verdict announced today makes it abundantly clear that the Congress must impose its own sanctions on the guilty.

SPEECH BY CONGRESSMAN BILL NICHOLS AT THE VETERANS OF FOREIGN WARS CONGRESSIONAL AWARD DINNER

Mr. THURMOND. Mr. President, on Tuesday, March 8, 1988, I had the privilege of attending the annual Veterans of Foreign Wars Congressional Award dinner. At that dinner, the Veterans of Foreign Wars honored Congressman BILL NICHOLS of Alabama with its annual 1988 VFW Congressional Award.

Mr. President, Congressman NICHOLS gave a very inspirational speech which I would like to have included in the RECORD for the benefit of my colleagues. However, before submitting his speech, I want to spend a few minutes commenting upon his distinguished service to this country and the people of Alabama.

After graduating from Auburn University in 1939, Congressman NICHOLS made plans to enter a career in agriculture. However, his plans temporarily changed as a result of World War II. Having participated in the ROTC Program at Auburn University, Congressman NICHOLS was well-equipped, in 1942, when he entered the Army as a second lieutenant. Assigned to the Eighth Infantry Division as an artillery officer, he distinguished himself in combat in France and Germany. In November 1944, at the Battle of Hurtgen Forest, Germany, Lieutenant Nichols was critically wounded, suffering the loss of a leg. Subsequently, he was awarded the Bronze Star and Purple Heart.

A few years after returning from Europe, Congressman NICHOLS was elected to public office, serving in both the Alabama House and Senate. As a State legislator, he sponsored and helped enact legislation to improve education, to help the handicapped, and to improve roads between the farm communities and the markets they serve. In 1965, he was voted the "Most Outstanding Member of the Alabama Senate."

Since coming to the U.S. House of Representatives in 1966, Congressman NICHOLS has served on the House Agriculture Committee and Armed Services Committee. Presently, he serves as Chairman of the House Armed Services Subcommittee on Investigations.

As a member of the Senate Armed Services Committee, I have had the opportunity to work with BILL on many occasions. His interest in the active duty military is well-known. He is a tireless worker and one of the most able and dedicated Members of Congress. The citizens of East Central Alabama are fortunate to have him as their representative.

Mr. President, as I mentioned earlier, Congressman NICHOLS received the Veterans of Foreign Wars Congressional Award at the annual VFW dinner earlier this month. It was a pleasure for me to be there and hear his remarks. I ask unanimous consent that a copy of his remarks appear in the RECORD immediately following my statement.

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

CONGRESSMAN BILL NICHOLS REMARKS FOR VFW CONGRESSIONAL AWARD

Commander Stock, Director Holt, fellow Members of Congress and distinguished guests, tonight I am honored both humble and highly to receive this year's "Congressional Award" from the Veterans of Foreign Wars. I am flattered to have been put in the same ranks with such notables as the late Senator Carl Hayden of Arizona, who was presented with the first VFW Congressional Award in 1964, and Senator Daniel Inouye of Hawaii, last year's receipient.

I can appreciate what this award means because I am a member of VFW Post 4432 in Sylacauga, Al, and I know of the many services the VFW provides for its members—the soldiers, sailors, airmen and marines who defended our Nation of foreign soil during times of war.

Tonight I feel that I am accepting this award for the 241 young Americans who were killed over 5 years ago in the terrorist attack on the marines at the Beirut airport. The investigations subcommittee, which I chair, conducted the inquiry. No one who took part in that investigation will ever forget it; the magnitude of the tragedy indelibly seared over consciousness. And so I believe the members of the investigations subcommittee who fought so hard for the Goldwater-Nichols Act would want me to report to this organization, whose very reason for being is to honor veterans who have served on foreign shores, that they memorialized those marines' deaths with the most far-reaching reform of the U.S. military establishment since the World War II era.

My subcommittee laid the blame for the tragedy in Beirut on the shoulders of the commander on the ground and his superiors in the chain of command right up to the U.S. European Commander. We held them responsible. But responsibility is only one side of the coin. The other side is authority to carry out a responsibility. Subsequently enquiries revealed that America's combatant commanders in the field, who would be responsible for our very survival as a nation if war should come, had limited authority to exercise genunie command—that is, to organize their commands; train and employ forces as they saw fit and establish the chain of command to their subordinates. We held the European Commander responsible in 1983. In 1986, the Congress gave him and the other combat commanders the fullest measure of authority so that they and their subordinates right down to the commander on the ground have the means to carry out their responsibilities.

I am pleased to report this evening that the new chain of command arrangements are working in the Persian Gulf. The old rigid chain that was seldom if ever altered has given way to a streamlined command structure tailored to get the job done. Whereas there were five intermediate echelons—and two more mandatory stops—in the chain of command running from the President and Secretary of Defense to the commander on the ground in Lebanon, there is only one today to the commander in the Persian Gulf all of which has served to strengthen and bring efficiency and expedience to the chain of command.

In my home State of Alabama there live more than 400,000 veterans. For that reason, I devote much of my time in Congress addressing the needs of the men and women who proudly wore the uniform during times of war. In fact, a large percentage of the casework done in our Washington office as well as in our three district offices in Alabama is devoted to handling the problems brought to our attention by veterans living in East Alabama.

In addition, the needs of the active duty soldier are also of great concern to us since the military has many installations in my State.

Anniston Army Depot and Ft. McClellan are two large Army installations located in my district. Ft. Benning and the infantry

school is just across the Chattahoochee River in Columbus, GA, Maxwell and Gunter Air Force Bases and located in Montgomery, Ft. Rucker is in South Alabama and Redstone arsenal in Huntsville.

And so tonight I accept this award not only for whatever service we may have accomplished during the 21 years since coming to Congress, but I accept it in deep appreciation for admiration and respect I hold for this great organization. The Veterans of Foreign Wars is indeed committed to serve the more than 2 million American veterans that it represents along with their widows and orphans.

This evening I would like to share with you a couple of examples of how the VFW has represented the needs of veterans living in my State of Alabama.

Not too long ago a veteran called our Washington office to request assistance with the hearing loss he was suffering. He too was an old artillery man and so I could appreciate his concern for not being able to hear well due to the muzzle blasts from the 105 guns.

This veteran came to Washington to plead his case before a board at the Veterans Administration and I joined him as did a representative of the VFW.

Now I am sure the VFW receives many cases like this every year from veterans of all walks of life from all of our 50 states, but they still had the time to work with us and try to help this veteran who came all the way from Alabama, over 1,000 miles away from home who was trying to get some assistance for his service-connected hearing loss.

Another example of the VFW's effort is one in which I am especially proud. Many of you may know of the growing need for nursing homes in this country. Unfortunately, as more of the Nation's population grows older the need for such facilities is becoming especially acute.

Thanks to my friend Congressman SONNY MONTGOMERY, who chairs the House Committee on Veterans' Affairs, and to the interest throughout America from the Veterans of Foreign Wars, we now have some 55 State operated Veterans' homes in 37 States. And we have some 7 additional homes underway including Alabama's first veterans' nursing home located in my congressional district.

This facility will care for some 200 aging veterans. However, this project would never have seen the light of day had it not been for the able assistance from our State Department of Veterans' Affairs and our State veterans organizations including the Veterans of Foreign Wars.

Besides tending to the needs of its membership, the VFW also represents our members' belief for this Nation to have a strong defense. Your VFW Commander-in-Chief Earl Stock has said, "two-hundred years ago, we Americans gained our freedoms in the War for Independence but our independence gave us the responsibility for defending our newly won freedoms and today, thanks to those who carried out their responsibility, we remain a free nation."

I view my prime responsibility in Congress is to keep this Nation strong. Wars are not prevented nor are ideals preserved because one country is more logical, better educated or more considerate than the other. American today is great because it continues to be strong. Its individual citizens have believed in the values of this great country of ours so strongly that they have been willing to maintain a strong and ready defense force and if need be, to wear the uniform and defend his flag.

As President Franklin D. Roosevelt once said, "Our security is not a matter of weapons alone. The arm that wields them must be strong, the eye that guides them clear, the will that directs them indomitable."

And, the father of our country, George Washington, when speaking to a joint session of Congress almost 200 years ago said, "To be prepared for war is one of the most effectual means of preserving peace."

As a Member of the United States Congress, I am a firm believer that peace comes through strength and that it is the better course of wisdom to spend dollars for readiness than to risk American lives.

Although it has been almost a half-century since the world's nations have been involved in direct conflict, much of today's world still remains in turmoil.

From the waters of the Persian Gulf where the Iran-Iraq war is still being waged and where we still have thousands of American military personnel protecting shipping lanes that are important to the entire world—to the conflicts in Central America where both sides of the civil war in Nicaragua have yet to sit town to negotiate peace and where a political uprising in Panama is very possible due to the recent turmoil we have seen there over the past several weeks.

War still wages on in Afghanistan where the Soviets remain despite promises to pull their troops out. The war still lingers in Africa where nations have fought for years and years only to spawn new nations that continue to fight with each other. And in the Middle East the war seems to have been going on for centuries now.

However, the beatitudes admonish: "Blessed are the peacemakers for they are the sons of God." And although we remain strong we must never forget the ultimate wish that all the world may one day be at peace no matter how hard mankind must work together to achieve it.

Finally this evening let me share with you one observation. And that is that there are fewer and fewer combat veterans coming to Washington to serve in Congress. As I said earlier, the major powers of the world have not been in direct conflict with one another for almost 50 years now so we haven't had an entire generation at war as was the case when many of us in this room were young men.

However, I believe that of all the duties to which the VFW is responsive certainly one of those duties must be to impress upon the present generation, who have never worn the uniform nor smelled the smoke of battle, the basic ideals on which this Nation was founded.

And so tonight I salute our great organization—2 millions strong and growing—and would remind us all in the words of President Reagan, "We must never forget that freedom is never really free; it is the most costly thing in the world. And freedom is never paid for in a lump sum; installments come due every generation. All any of us can do is offer the generations that follow a chance for freedom."

NEW REFUGEE REPORT

Mr. KENNEDY. Mr. President, for almost 30 years now, the U.S. Committee for Refugees—a private agency—has published each year its World Refugee Survey. I believe this publication to be one of the most thoughtful and authoritative reviews of global refugee conditions available, and I commend it to my colleagues.

This year, I was pleased to be invited to join a host of distinguished contributors to the Survey, as I submitted an article on the wanton destruction that is producing massive flight and starvation in Southern Africa. And the Survey includes comprehensive analyses of the conditions of refugees from Afghanistan, Indochina, the Soviet Union and other parts of the world.

Mr. President, the challenges to the refugee program are many, particularly as we in the Senate seek to reconcile worldwide need with our national budget. But, just as it has in years past, the World Refugee Survey puts the trials and turmoils of the worlds refugees in stark perspective.

Mr. President, this is an important publication, and I ask to have included in the RECORD the U.S. Committee for Refugees' announcement of its publication.

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

A YEAR OF INCREASED DANGER FOR THE WORLD'S REFUGEES

"In the past year, most of the world's 13 million refugees faced increased danger, little hope for going home, and a low priority on the agenda of the international community," Roger Winter, director of the U.S. Committee for Refugees, said today. "That is the human tragedy the World Refugee Survey—1987 in Review documents," Winter said as he announced publication of the thirtieth anniversary issue.

Senator Edward Kennedy speaks forcefully in the World Refugee Survey of that danger for millions of uprooted Mozambicans, Angolans, and South Africans. "The international community," according to Kennedy, "is witnessing another escalating humanitarian crisis in southern Africa, with no end in sight. We are confronting a regional crisis of people that, proportionally, is as large as the Ethiopia-Sudan famine crisis of 1984-85. But this time the people are on the move not primarily because of drought or natural calamity, but in flight from conflict, insurgency, and the growing confrontation with apartheid in South Africa."

Kennedy said, "It is important for us not only to ponder America's role in helping to address the humanitarian problems of Southern Africa, but also our role in helping create them."

"Elsewhere in Africa," said Winter, "Sudan, Somalia, and Djibouti continue as reluctant hosts for large refugee populations, and a major famine emergency again looms in Ethiopia."

In Southeast Asia, tragic incidents occurred in Thailand, which, faced with refugees on every border, continued to offer asylum to many thousands. In March and November, egregious forced repatriations of Hmong refugees to Laos occurred, with refugee lives unnecessarily lost. The situation has deteriorated further in 1988 with interdiction of Vietnamese boat people and pushbacks involving more than 120 refugee deaths at sea.

The World Refugee Survey also reports on other major refugee groups, including Afghans in Pakistan and Iran, Palestinians, and displaced Central Americans.

"In the developed world," said Winter, "Western Europe and North America continually reinforce each other's worst instincts in dealing with asylum seekers." He said, "One wishes for humanitarian consistency from the U.S. government in approching refugee protection matters, but it is not to be found."

Winter described the "truly joyous development" that Soviet Jews, Armenians, and ethnic Germans are being allowed to emigrate in larger numbers than in the past several years. This, he said, is largely because the U.S. government has properly continued to include this issue in negotiations with the USSR. "But, in contrast," he said, "how does one explain the mindset in that same U.S. government toward Haitian asylum seekers?"

"Since 1981, more than 12,000 interdicted Haitians have been forced back to the caldron that is Haiti," Winter said. "Only two in all that time have been found worthy of asylum in the United States, and they literally had the bullet holes to show their fear of persecution in Haiti was well-founded."

"The average American—while knowing little of the details of Haitian life and history—knows enough to be aware that fundamental American fairness has been violently breached in the case of Haitian asylum seekers."

The U.S. Committee for Refugees is a private agency established in 1958 to inform the public about the need for protecting the world's refugees.

TRIBUTE TO JULIUS ERVING

Mr. SPECTER. Mr. President, on April 19, 1988, the Philadelphia 76ers professional basketball team will honor its former great forward, Julius Erving, by retiring his number during a ceremony at the Spectrum in Philadelphia.

For 11 years and to the delight of millions, Julius Erving, fondly referred as "Dr. J." by his myriad fans, brought his special grace and talent to the fans of Philadelphia, the Nation and the world.

Old No. 6 added a new dimension to the game. His acrobatic moves to the hoop, where he seemed to be suspended in midair for an eternity of time, never failed to thrill the crowds, who responded with thunderous cheers. He was a star of the first magnitude.

Although fiercely competitive, Julius always played with a quiet intensity marked by personal dignity and a gracious attitude towards his opponents.

His retirement at the end of the 1986–87 season has left a void in the game for many. These fans will always remember with a sense of loss the very great talent Julius Erving had for the game, the artistry of his movement and his commitment to excellence.

But he has been much more than a great basketball player. He has been and is a fine human being. Unstintingly, he has devoted much time and energy to community, charitable and humanitarian causes. For these efforts, he also deserves our cheers.

It is altogether fitting, then, that the U.S. Senate take note of the exceptional basketball career of Julius Erving and salute him, along with the fans of Philadelphia, as his number is retired from all future competition by the 76ers.

MESSAGES FROM THE HOUSE

At 4:39 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, with amendments, in which it requests the concurrence of the Senate:

S. 1397. An act to recognize the organization known as the Non-Commissioned Officers Association of the United States of America.

The message also announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 1259. An act to recognize the organization known as the National Association of State Directors of Veterans Affairs, Incorporated;

H.R. 2707. An act to amend the Disaster Relief Act of 1974 to provide for more effective assistance in response to major disasters and emergencies, and for other purposes; and

H.J. Res. 480. Joint resolution granting the consent of the Congress to amendments made by Maryland, Virginia, and the District of Columbia to the Washington Metropolitan Area Transit Regulation Compact.

MEASURE REFERRED

The following bill was read the first and second times by unanimous consent, and referred as indicated:

H.R. 1259. An act to recognize the organization known as the National Association of State Directors of Veterans Affairs, Incorporated; to the Committee on the Judiciary.

MEASURES PLACED ON THE CALENDAR

The following joint resolution, previously received from the House of Representatives for concurrence was read the first and second times by unanimous consent, and placed on the calendar:

H.J. Res. 377. Joint resolution designating March 27, 1988, as "National Black American Inventors Day";

The following joint resolution, received today from the House of Representatives for concurrence, was read the first and second times by unanimous consent, and placed on the calendar:

H.J. Res. 480. Joint resolution granting the consent of the Congress to amendments made by Maryland, Virginia, and the District of Columbia to the Washington Metropolitan Area Transit Regulation Compact.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-2865. A communication from the Deputy Secretary of Defense, transmitting, pursuant to law, a report on a violation of statute involving the overobligation or exprenditure of funds in excess of approved appropriation or fund or in advance of an appropriation; to the Committee on Appropriations.

EC-2866. A communication from the President of the United States, transmitting, pursuant to law, a report relative to current methods of estimation of Soviet underground nuclear tests; to the Committee on Armed Services.

EC-2867. A communication from the Deputy Secretary of Defense, transmitting, pursuant to law, the most recent Five Year Defense Program as of September 1986; to the Committee on Armed Services.

EC-2868. A communication from the Secretary to the Interstate Commerce Commission, transmitting, pursuant to law, notification of an extension of time for a decision by the Commission in Docket No. 40073, South-West Railroad Car Parts v. Missouri Pacific Railroad Company; to the Committee on Commerce, Science, and Transportation.

EC-2869. A communication from the Deputy Administrator of the Federal Highway Administration, transmitting, pursuant to law, a report regarding restriction on certain highways on the vicinity of Cincinnati, Ohio; to the Committee on Commerce, Science, and Transportation.

EC-2870. A communication from the Acting General Counsel of the Department of Energy, transmitting a draft of proposed legislation to extend the expiration date of Title II of the Energy Policy and Conservation Act; to the Committee on Energy and Natural Resources.

EC-2871. A communication from the Chief of the Forest Service, Department of Agriculture, transmitting, pursuant to law, a report on the Services observance of Federal Lands Cleanup Day; to the Committee on Energy and Natural Resources.

EC-2872. A communication from the Assistant Secretary of Energy (Management and Administration), transmitting, pursuant to law, the annual report on certain acquisition actions and regulations for calendar year 1987; to the Committee on Energy and Natural Resources.

EC-2873. A communication from the Administrator of the Energy Information Administration, Department of Energy, transmitting, pursuant to law, the annual report of the Energy Information Administration for calendar year 1987; to the Committee on Energy and Natural Resources.

EC-2874. A communication from the Secretary of Energy, transmitting, pursuant to law, the fourth quarter, 1987 Quarterly Report and the 1987 Annual Report on the development of the Strategic Petroleum Reserve; to the Committee on Energy and Natural Resources.

EC-2875. A communication from the Secretary of Energy, transmitting, pursuant to law, the annual report on the Methane Transportation Research, Development, and Demonstration Program for fiscal year 1987;

to the Committee on Energy and Natural Resources.

EC-2876. A communication from the President of the United States, transmitting, pursuant to law, a report on Soviet noncompliance with arms control agreements; to the Committee on Foreign Relations.

EC-2877. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, notice of Presidential determination with respect to a loan of the Export-Import Bank to the People's Republic of China; to the Committee on Foreign Relations.

EC-2878. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the annual report of the Department of competition advocacy for fiscal year 1987; to the Committee on Governmental Affairs.

EC-2879. A communication from the Deputy Assistant Secretary of Defense (Administration, transmitting, pursuant to law, notice of a computer matching system; to the Committee on Governmental Affairs.

EC-2880. A communication from the Chairman of the United States International Trade Commission, transmitting, pursuant to law, the annual report of the Commission, transmitting, pursuant to law, the annual report of the Commission under the Government in the Sunshine Act for calendar year 1987; to ther Committeee on Governmental Affairs.

EC-2881. A communication from the Secretary of Transportation, transmitting, pursuant to law, the annual report of the Department under the Freedom of Information Act for calendar year 1987; to the Committee on the Judiciary.

EC-2882. A communication from the Associate Director, Office of Management, ACTION Agency, transmitting, pursuant to law, the annual report of the Agency under the Freedom of Information Act for calendar year 1987; to the Committee on the Judiciary.

EC-2883. A communication from the Senior Associate Director, General Government Division, General Accounting Office, transmitting, pursuant to law, a report entitled "National Drug Policy Board: Leadership Evolving, Greater Role in Developing Budgets Possible"; to the Committee on the Judiciary.

EC-2884. A communication from the Director of the Office of Legislative Affairs, Agency for International Development, transmitting, pursuant to law, the annual report of the Agency under the Freedom of Information Act for calendar year 1987; to the Committee on the Judiciary.

EC-2885. A communication from the Director of the National Science Foundation, transmitting a draft of proposed legislation to authorize appropriations for the National Science Foundation for fiscal years 1989 through 1993 and make amendments to the National Science Foundation Act of 1950 and related laws; to the Committee on Labor and Human Resources.

EC-2886. A communication from the Secretary of Education, transmitting, pursuant to law, notice of final annual funding priorities for the new Direct Grant Awards; to the Committee on Labor and Human Resources.

EC-2887. A communication from the Secretary to the Railroad Retirement Board, transmitting, pursuant to law, the annual report on the determination of the Railroad Retiremenent Account's ability to pay benefits in each of the next five years; to the Committee on Labor and Human Resources.

PETITIONS AND MEMORIALS

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

POM-434. A resolution adopted by National Association of Regulatory Utility Commissioners relating to rulemaking proceedings on electricity issues which have been proposed by the Federal Energy Regulatory Commission; to the Committee on Energy and Natural Resources.

POM-435. A resolution adopted by the Senate of the State of West Virginia; to the Committee on Labor and Human Resources.

"SENATE RESOLUTION No. 23

"Whereas, The safety of the pertussis vaccine against whooping cough is the topic of current national debate and, while reasonable minds differ on more effective treatment, opponents and proponents both agree that a safer and more effective vaccine is needed; and

"Whereas, the pertussis vaccine is known to have caused seizures, brain damage, mental retardation, deafness, blindness, muscle paralysis and even death in young children; and

"Whereas, it is important that parents be informed about diseases and vaccines against these diseases, it is equally important that parents be informed about adverse reactions to vaccines so that "high risk children" can be identified and screened out of the vaccination process; therefore, be it

"Resolved by the Senate of West Virginia, That funding of the National Childhood Vaccine Injury Compensation Law passed by the United States Congress in 1986 which includes compensation for children injured by childhood vaccines prior to October 1988, is hereby supported; and be it

"Further resolved, That the Clerk is hereby directed to forward copies of this resolution to each of the six members of the Congressional Delegation from West Virginia, to the President of the United States, to the Vice President of the United States and to the Speaker of the U.S. House of Representatives."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute:

H.R. 3235. A bill to amend the Public Health Service Act to revise the program of assistance for health maintenance organizations (Rept. No. 100-304).

By Mr. PROXMIRE, from the Committee on Banking, Housing, and Urban Affairs, with an amendment in the nature of a substitute and an amendment to the title:

S. 1886. A bill to modernize and reform the regulation of financial services, and for other purposes (Rept. No. 100-305).

By Mr. INOUYE, from the Select Committee on Indian Affairs, with an amendment in the nature of a substitute:

S. 721. A bill to provide for and promote the economic development of Indian tribes by furnishing the necessary capital, financial services, and technical assistance to Indian owned business enterprises and to stimulate the development of the private sector of Indian tribal economies (Rept. No. 100-306).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. WARNER, from the Committee on Armed Services:

William Lockhart Ball III, of South Carolina, to be Secretary of the Navy.

(The above nomination was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. NUNN, from the Committee on Armed Services:

Jack Katzen, of Connecticut, to be an Assistant Secretary of Defense; and

Everett Alvarez, Jr., of Maryland, to be a member of the Board of Regents of the Uniformed Services University of the Health Science for a term expiring May 1, 1993.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Mr. NUNN. Mr. President, from the Committee on Armed Services, I report favorably the attached listing of nominations.

Those identified with a single asterisk (*) are to be placed on the Executive Calendar. Those identified with a double asterisk (**) are to lie on the Secretary's desk for the information of any Senator since these names have already appeared in the CONGRESSIONAL RECORD and to save the expense of printing again.

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

(The nominations ordered to lie on the Secretary's desk were printed in the RECORD of January 26, February 2, February 16, and February 18, 1988, at the end of the Senate proceedings.)

*In the Air Force there are 33 appointments to the grade of major general (list begins with Joseph A. Ahearn) (REF. 748)

*Lieutenant General Harley A. Hughes, U.S. Air Force, to be placed on the retired list in the grade of lieutenant general (REF. 798)

*Lieutenant General Michael J. Dugan, U.S. Air Force, reassigned in the grade of lieutenant general (REF. 799)

*Lieutenant General James P. McCarthy, U.S. Air Force, to be reassigned in the grade of lieutenant general (REF. 800)

*Major General Ellie G. Shuler, Jr., U.S. Air Force, to be lieutenant general (REF. 801)

*Major General Thomas N. Griffin, Jr., U.S. Army, to be lieutenant general (REF. 802)

*Major General Thomas W. Kelly, U.S. Army, to be lieutenant general (REF. 803)

*Carl E. Mundy, Jr., U.S. Marine Corps, to be lieutenant general (REF. 805)

*In the Marine Corps there are 9 promotions to the grade of major general (list begins with Michael K. Sheridan) (REF. 806)

*In the Navy there are 8 promotions to the grade of rear admiral (lower half) (list

begins with Harold Martin Koenig) (REF. 807)

**In the Air National Guard there are 17 promotions to the grade of lieutenant colonel (list begins with Randall M. Anderson) (REF. 808)

**In the Air National Guard there are 24 promotions to the grade of lieutenant colonel (list begins with Melvin L. Adamson) (REF. 809)

**In the Army Reserve there are 24 promotions to the grade of colonel and below (list begins with Florentino V. Alabanza) (REF. 810)

**In the Army Reserve there are 26 promotions to the grade of colonel and below (list begins with Henry H. Gordon) (REF. 811)

**In the Army there are 5 promotions to the grade of lieutenant colonel and below (list begins with Mary J. Heger) (REF. 812)

**In the Marine Corps there are 15 appointments to the grade of second lieutenant (List begins with Robert M. Brassaw) (REF. 813)

**In the Air Force Reserve there are 93 promotions to the grade of colonel (list begins with John O. Ahnert, Jr.) (REF. 814)

**In the Air Force Reserve there are 246 promotions to the grade of colonel (list begins with James R. Annis) (REF. 815)

**In the Army National Guard there are 77 promotions to the grade of colonel and below (list begins with Ben B. Bain) (REF. 816)

*In the Army Reserve there are 37 appointments to the grade of major general and below (list begins with Gerald E. Amundson) (REF. 819)

*In the Army National Guard there are 34 appointments to the grade of major general and below (list begins with Frank M. Denton) (REF. 820)

*In the Air Force Reserve there are 21 appointments to the grade of major general and below (list begins with Ronald C. Allen, Jr.) (REF. 828)

*Jerome G. Cooper, U.S. Marine Corps Reserve, to be major general (REF. 829)

*Joe W. Wilson, U.S. Marine Corps Reserve, to be brigadier general (REF. 830)

*In the Marine Corps there are 11 promotions to the grade of brigadier general (list begins with John C. Arick) (REF. 831)

**In the Air Force there are 4 promotions to the grade of colonel and below (list begins with Robert C. Hughes) (REF. 833)

**In the Air Force Reserve there are 3 appointments to the grade of colonel and below (list begins with John D. Kenney) (REF. 834)

**In the Air Force there are 14 promotions to the grade of lietuenant colonel and below (list begins with Michael E. Brooks) REF. 835)

**In the Air Force Reserve there are 5 appointments to the grade colonel and below (list begins with Donald J. Copenhaver) (REF 836)

**In the Air Force there are 2 appointments to a grade no higher tham major (list begins with Gary S. Melvin) (REF. 837)

**In the Air Force there are 4 appointments to the grade no higher than Captain (list begins with Samuel B. Martin) (REF. 838)

**Earnest H. Dinkel, Jr., U.S. Army to be colonel (REF 839)

**In the Army there are 9 promotions to the grade of colonel and below (list begins with Steven M. Bulter) (REF. 840)

**In the Army there are 5 promotions to the grade of lieutenant colonel (list begins with Gary L. Aus) (REF. 841)

**In the Army there are 2 promotions to the grade of Lieutenant colonel (list begins with Micheal J. Connolly) (REF. 842)

**In the Navy there are 4 promotions to the grade of lieutenant commander (list begins with Frederick Eliot, Jr.) (REF. 843)

**In the Navy there are 194 appointments to the grade of ensign (list begins with John M. Adrian) (REF. 844)

**In the Air Force there are 1,953 promotions to the grade of lieutenant colonel (list begins with Gregory J. Aaron) (REF. 859)

**In the Air Force there are 1,081 appointments to the grade of second lieutenant (list begins with Aldru T. Aaron) (REF. 862)

*General Robert H. Reed, U.S. Air Force, to be placed on the retired list in the grade of general (REF. 871)

*Lieutenant General John A. Shaud, U.S. Air Force, to be general (REF. 872)

*Lieutenant General Harry A. Goodall, U.S. Air Force, to be reassigned in the grade of lieutenant general (REF. 873)

*Lieutenant General Robert C. Oaks, U.S. Air Force, to be reassigned in the grade of lieutenant general (REF. 874

Total: 3,974.

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. JOHNSTON (by request):

S. 2203. A bill to extend the expiration date of title II of the Energy Policy and Conservation Act; to the Committee on Energy and Natural Resources.

By Mr. PELL (by request):

S. 2204. A bill to implement the Inter-American Convention on International Commercial Arbitration; to the Committee on Foreign Relations.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BYRD (for himself, and Mr. SIMPSON):

S. Res. 398. A resolution authorizing the printing of the compilation entitled "Majority and Minority Leaders of the Senate" as Senate document; considered and agreed to.

By Mr. BYRD (for himself and Mr. SIMPSON):

S. Res. 399. A resolution authorizing release of documents by the Subcommittee on Oversight of Government Management of the Committee on Governmental Affairs; considered and agreed to.

By Mr. BYRD (for Mr. JOHNSTON):

S. Con. Res. 106. A concurrent resolution requesting the President to return the enrolled bill (S. 854) entitled "Nevada-Florida Land Exchange Authorization Act of 1988"; considered and agreed to.

By Mr. LAUTENBERG (for himself, Mr. D'AMATO, Mr. KENNEDY and Mr. WEICKER):

S. Con. Res. 107. A concurrent resolution calling for a consolidated investigation into the operation of Texas Air Corp. and Eastern Air Lines; to the Committee on Commerce, Science, and Transportation.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. JOHNSTON (by request):

S. 2203. A bill to extend the expiration date of title II of the Energy Policy and Conservation Act; referred to the Committee on Energy and Natural Resources.

EXPIRATION DATE EXTENSION OF THE ENERGY POLICY AND CONSERVATION ACT

● Mr. JOHNSTON. Mr. President, I am introducing today at the request of the Department of Energy legislation "to extend the expiration date of title II of the Energy Policy and Conservation Act."

Mr. President, I ask unanimous consent that the text of the bill and the Department of Energy's March 17, 1988, transmittal letter be printed in the RECORD.

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

S. 2203

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 281 (42 U.S.C. § 6285) of the Energy Policy and Conservation Act is amended by striking "1988" both places it appears and inserting "1993" in its place.

DEPARTMENT OF ENERGY,
Washington, DC, March 17, 1988. 20585

Hon. GEORGE BUSH,
President of the Senate,
Washington, DC.

DEAR MR. PRESIDENT: Enclosed is proposed legislation "[t]o extend the expiration date of Title II of the Energy Policy and Conservation Act." This proposed legislation is part of the Department of Energy's Legislative Program for the 100th Congress.

PURPOSE OF THE LEGISLATON

This bill would amend section 281 of the Energy Policy and Conservation Act (EPCA) to extend the expiration date for Title II of EPCA from June 30, 1988 to June 30, 1993. The extension would continue the authorities in title II for the U.S. Government and U.S. oil companies to participate in and to meet the U.S. obligations under the Agreement on an International Energy Program (IEP, T.I.A.S. No. 8278). These authorities include the section 251 authority for international oil allocation, the antitrust defense afforded by section 252(f) of EPCA to U.S. oil companies participating in the IEP, and the section 254 authority for the Executive Branch to provide certain information to the International Energy Agency (IEA).

BACKGROUND

Following the oil embargo of 1973, the United States and certain other members of the Organization for Economic Cooperation and Development (OECD) entered into the IEP in an effort to promote cooperation among major industrial countries in reducing dependence on imported oil and improving preparedness to respond to international oil supply disruptions. There presently are 21 signatories to the IEP, consisting of most of the principal industrialized oil consuming nations. The IEP Agreement provides for creation of the IEA as an autonomous entity within the OECD, and establishes an

international oil sharing system for use during oil supply interruptions and an information system on the international oil market.

The IEA provides a forum within which, and mechanisms by which, the U.S. and our allies can cooperate to prepare for and alleviate the potential effects of severe oil crises. In view of the continuing unstable conditions in the Middle East and the energy security issues at stake, such cooperation is essential. Principally as a result of our efforts, in 1984 the IEA adopted a significant policy decision which identifies early, coordinated drawdown of emergency oil stocks by member nations as a vital element in coping with a major oil supply disruption. The Administration believes that the early use of oil stocks, coordinated with our IEA partners, should be the first line of defense in a crisis. However, this Administration, like its predecessors during the past decade, is committed to the IEA's established systems for sharing information on international oil markets and for international oil allocation, should a severe oil supply disruption require the activation of these systems.

The IEA's emergency information and oil sharing systems are designed to rely heavily upon the voluntary assistance of private companies that conduct the bulk of the international oil trade. To facilitate U.S. company participation in the IEA, section 252 authorizes the development of voluntary agreements and plans of action to implement the allocation and information provisions of the IEP, and makes available a limited antitrust defense and a breach of contract defense with respect to actions taken to develop or carry out voluntary agreements and plans of action. Under this authority, a Voluntary Agreement and Plan of Action to Implement the International Energy Program was agreed to in 1976 by a number of U.S. oil companies (41 F.R. 13998, April 1, 1976); and on January 26, 1988, the Secretary of Energy approved the Second Plan of Action to Implement the International Energy Program (53 F.R. 2866, February 2, 1988). At present, 17 U.S. oil companies, including both major international oil companies and independent oil companies, are participants in the Voluntary Agreement.

The antitrust defense made available by section 252(f) of EPCA is essential to the participation of U.S. oil companies in the Voluntary Agreement and, through it, in the IEP. The IEP, in turn, can function effectively only with participation by U.S. and foreign oil companies in the international oil market. Those companies would be the primary actors in the redistribution of oil if the IEP's emergency sharing provisions were activated.

Other significant provisions of EPCA's Title II also are scheduled to expire on June 30, 1988, including the section 251 authority for international oil allocation, and the section 254 authority for the Executive Branch to provide certain oil company information to the IEA. These authorities are important to support fulfillment of U.S. obligations under the IEP.

The Strategic Petroleum Reserve, market efficiency and our continued commitment to the IEA are especially significant components of the Nation's energy emergency policy. Extending the IEP authorities in EPCA Title II for five years would provide the necessary affirmation of this commitment.

The Department urges timely action on this bill in order to safeguard the Nation's energy security and because plans are underway for the sixth test of the IEA's emergency sharing system, presently scheduled for late 1988. For the planning and conduct of this test to proceed on schedule, the IEP authorities should not be allowed to lapse. A five year extension of these authorities also would aid U.S. companies in their long-term planning for participation in IEP activities and underscore the Government's seriousness of purpose in encouraging that participation.

The Office of Management and Budget advises that enactment of this legislation is in accord with the President's legislative program.

Sincerely,

ERIC J. FYGI,
Acting General Counsel.●

By Mr. PELL (by request):

S. 2204. A bill to implement the Inter-American Convention on International Commercial Arbitration; to the Committee on Foreign Relations.

IMPLEMENTING THE INTER-AMERICAN CONVENTION ON INTERNATIONAL COMMERCIAL ARBITRATION

● Mr. PELL. Mr. President, by request, I introduce for appropriate reference a bill to implement the Inter-American Convention on International Commercial Arbitration.

This proposed legislation has been requested by the Department of State, and I am introducing it in order that there may be a specific bill to which Members of the Senate and the public may direct their attention and comments.

This legislation was previously considered and acted upon favorably by the Senate in the last Congress, but time did not permit similar action in the House.

I ask unanimous consent that the bill be printed in the RECORD at this point, together with the section-by-section analysis and letter from the Assistant Secretary of State for Legislative and Intergovernmental Affairs to the President of the Senate dated November 4, 1987.

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

S. 2204

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Title 9, United States Code, is amended by adding:

"CHAPTER 3. INTER-AMERICAN CONVENTION ON INTERNATIONAL COMMERCIAL ARBITRATION

"Sec.
"301. Enforcement of Convention.
"302. Incorporation by reference.
"303. Order to compel arbitration; appointment of arbitrators; locale.
"304. Recognition and enforcement of foreign arbitral decisions and awards; reciprocity.
"305. Relationship between the Inter-American Convention and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958.
"306. Applicable rules of Inter-American Commercial Arbitration Commission.
"307. Chapter 1; residual application.

"§ 301. Enforcement of Convention

"The Inter-American Convention on International Commercial Arbitration of January 30, 1975, shall be enforced in United States courts in accordance with this chapter.

"§ 302. Incorporation by reference

"The provisions of chapter 2, sections 202, 203, 204, 205 and 207 shall apply to this chapter as if specifically set forth herein, except that for the purposes of this chapter "the Convention" shall mean the Inter-American Convention.

"§ 303. Order to compel arbitration; appointment of arbitrators; locale

"A court having jurisdiction under this chapter may direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States. The court may also appoint arbitrators in accordance with the provisions of the agreement.

"In the event the agreement does not make provision for the place of arbitration or the appointment of arbitrators, the court shall direct that the arbitration shall be held and the arbitrators be appointed in accordance with Article 3 of the Inter-American Convention.

"§ 304. Recognition and enforcement of foreign arbitral decisions and awards; reciprocity

"Arbitral decisions or awards made in the territory of a foreign State shall, on the basis of reciprocity, be recognized and enforced under this chapter only if that State has ratified or acceded to the Inter-American Convention.

"§ 305. Relationship between the Inter-American Convention and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958

"When the requirements for application of both the Inter-American Convention and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, are met, determination as to which Convention applies shall, unless otherwise expressly agreed, be made as follows:

"(1) If a majority of the parties to the arbitration agreement are citizens of a State or States that have ratified or acceded to the Inter-American Convention and are member States of the Organization of American States, the Inter-American Convention shall apply.

"(2) In all other cases the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, shall apply.

"§ 306. Applicable rules of Inter-American Commercial Arbitration Commission

"(a) For the purposes of this chapter the rules of procedure of the Inter-American Commercial Arbitration Commission referred to in Article 3 of the Inter-American Convention shall, subject to subsection (b) of this section, be those rules as promulgated by the Commission on January 1, 1978.

"(b) In the event the rules of procedure of the Inter-American Commercial Arbitration Commission are modified or amended in accordance with the procedures for amendment of the rules of the said Commission, the Secretary of State, by regulation in accordance with Section 553 of Title 5, United States Code, consistent with the aims and

purposes of this Convention, may prescribe that such modifications or amendments shall be effective for purposes of this chapter.

"§ 307. Chapter 1; residual application

"Chapter 1 applies to actions and proceedings brought under this chapter to the extent chapter 1 is not in conflict with this chapter or the Inter-American Convention as ratified by the United States."

SEC. 2. Title 9, United States Code, is further amended by adding to the table of chapters at the beginning a new sub-heading as follows:

"3. Inter-American Convention on International Commercial Arbitration..... 301".

SEC. 3. This Act shall be effective upon the entry into force of the Inter-American Convention on International Commercial Arbitration of January 30, 1975, with respect to the United States.

SECTION-BY-SECTION ANALYSIS OF A BILL TO IMPLEMENT THE INTER-AMERICAN CONVENTION ON INTERNATIONAL COMMERCIAL ARBITRATION

Section 1. Section 1 of the bill amends Title 9 of the United States Code by addition of a new Chapter 3, consisting of sections 301 through 307. As amended, Title 9 would thus contain three chapters: Chapter 1 (sections 1-14), the original Federal Arbitration Act; Chapter 2 (sections 201-208), the implementing legislation for the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958 ("New York Convention"); and Chapter 3 (sections 301-307), implementing legislation for the Inter-American Convention on International Commerical Arbitration of January 30, 1975 ("Inter-American Convention").

Section 301. Section 301 of Title 9 parallels section 201 of the implementing legislation for the New York Convention.

Section 302. Section 302 incorporates sections 202, 203, 204, 205, and 207 of the implementing legislation for the New York Convention: the two Conventions do not differ so as to call for different measures of implementation in these respects.

The incorporation of section 202, which provides that an arbitration agreement or arbitral award arising out of a legal relationship "which is considered as commercial' falls under the Convention (as incorporated, the reference is to the Inter-American Convention), provides the basis for a broad definition of the term "commercial" for purposes of the Convention. The Convention itself provides no definition of the term, but it is the understanding of the United States that trade, investment, and other business and financial activities which bear on "foreign commerce" are considered "commercial and are thus within the purview of the Convention.

The incorporation of section 202 also clarifies that the Inter-American Convention, like the New York Convention, shall be deemed not to apply to an arbitral agreement or award arising out of a legal relationship which is entirely between citizens of the United States, unless there is a reasonable foreign element in the relationship as defined in section 202.

The incorporation of sections 203 and 204 extends the same provisions concerning jurisdiction of the United States district courts and venue to actions or proceedings falling under the Inter-American Convention as apply to those falling under the New York Convention. Similarly, the incorporation of section 205 gives defendants the right to remove actions or proceedings relating to arbitration agreements or awards falling under the Inter-American Convention from State courts to United States district courts, as is now the case for those falling under the New York Convention.

With the incorporation of section 207, the three-year limitation period for application to a court for an order confirming an arbitral award that applies to awards falling under the New York Convention will also apply to awards falling under the Inter-American Convention. Section 207 also requires the court to confirm the award "unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention." Those grounds are specified in Article 5 of the Inter-American Convention, which was taken almost verbatim from Article V of the New York Convention in order to assure that the sole grounds for refusal of the recognition and enforcement of an award would be the same under both Conventions.

Section 303. The first paragraph of this section repeats 9 U.S.C. section 206, providing that a court may direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States, and that the court may also appoint arbitrators in accordance with the provisions of the agreement. Neither the Convention nor section 303 attempts to resolve other issues which the court may be asked to address in connection with a matter which is to be submitted to arbitration.

The second paragraph of section 303 is new, reflecting Article 3 of the Inter-American Convention. Article 3 provides that when or to the extent that the parties fail to agree upon other applicable rules of procedure, arbitration shall be governed by the rules of procedure of the Inter-American Commercial Arbitration Commission, a private organization originally established in 1934 at the recommendation of the predecessor of the Organization of American States (OAS).

Neither the Federal Arbitration Act nor the New York Convention contains a comparable provision, but rather leaves the choice of rules of procedure to the court in the absence of agreement by the parties. The specification of "back-up" rules provides a desirable certainty and uniformity in the application of the Inter-American Convention.

Section 304. Section 304 provides a rule of reciprocity analogous to that applicable to the New York Convention. The latter permits a reservation, which the United States has made, that a State may on the basis of reciprocity apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State (Article I, paragraph 3). The United States will make a comparable reservation to the Inter-American Convention, and Section 304 has been drafted to make that reservation readily available for the reference of courts and practitioners. Also, the section has been worded in such a way as to make clear that it is intended only to be a rule of reciprocity and not a determination that arbitral decisions and awards made in the United States are excluded from the applicability of the Inter-American Convention if they otherwise fall under the Convention and the provisions of chapter 3, including in particular section 202 as incorporated in chapter 3. Litigation has been required to resolve that issue, in so far as the applicability of the New York Convention is concerned, given the less than precise wording of the two sentences of paragraph 1 and the first sentence of paragraph 3 of Article I of the New York Convention. The Inter-American Convention contains no comparable provisions; while it deals only with "international commercial arbitration," there is nothing in the language of the Convention or in the negotiating history to indicate an intent to limit the applicability of its recognition and enforcement provisions to awards made in countries other than those where recognition and enforcement are sought.

Section 305. The Inter-American Convention does not contain an express provision concerning its applicability when there is another convention on recognition and enforcement of arbitral agreements and awards which might also apply to a specific case. In particular, the United States and at least some other countries will be a party to both the inter-American and the New York Conventions. Given the substantial identity of the two conventions, this issue is not expected to be of great consequence. However, it is nonetheless useful to resolve it explicitly in order to remove a potential ground for controversy.

The New York Convention is better established in law and in practice than the Inter-American Convention and has greater worldwide participation. The United States will therefore enter a reservation in ratifying the Inter-American Convention, to establish clearly the applicability of the New York Convention in appropriate cases.

Section 305 reflects this reservation, providing that, where both Conventions are applicable to a particular case, the United States would be bound by and apply the provisions of the Inter-American Convention only if a majority of the parties to the arbitration agreement are citizens of a State or States that have ratified or acceded to this Convention and are citizens of OAS Member States. In other cases, the United States will be bound by and apply the provisions of the New York Convention. Section 305 makes clear that, where both Conventions are potentially applicable, both parties must be citizens of OAS Member States before the Inter-American Convention would supersede the New York Convention.

Section 306. Section 306, like section 303, is necessary in order to implement the Article 3 provision of the Inter-American Convention which specifies applicable rules of procedure for cases in which the parties fail to agree on such rules. While the rules of procedure of the Inter-American Commercial Arbitration Commission are deemed useful and acceptable, the Commission is a private, nongovernmental body. It is therefore desirable that there be official review and approval of any amendments to the rules before they are made applicable to parties by law.

The United States will enter a reservation regarding article 3 that the United States will apply the rules of procedure of the Inter-American Commercial Arbitration Commission which are in effect as of ratification, unless a later official determination is made to adopt and apply any amendments to the rules which the Inter-American Commercial Arbitration Commission may make subsequently. Section 306 provides a rulemaking procedure for making such an official determination; this procedure provides a simple and efficient mechanism for soliciting the comments of interested and expert groups and individuals in

order to provide an informed basis for official judgment and determination.

Section 307. Section 307 incorporates a provision parallel to 9 U.S.C. section 208.

Section 2. Section 2 of the bill adds a new subheading to the table of chapters at the beginning of Title 9 to correspond to the new Chapter 3.

Section 3. Section 3 of the bill establishes the effective date.

UNITED STATES DEPARTMENT OF STATE,
Washington, DC, November 4, 1987.

Hon. GEORGE BUSH,
President, U.S. Senate.

DEAR MR. PRESIDENT: I have the honor to transmit for the consideration of the Congress the draft of a bill to implement the obligations of the United States under the Inter-American Convention on International Commercial Arbitration. The Convention was transmitted to the Senate for its advice and consent to ratification on June 15, 1981, and the Senate gave its advice and consent on October 9, 1986. The instrument of ratification will be deposited with the General Secretariat of the Organization of American States once appropriate implementing legislation has been enacted. The Convention will enter into force for the United States on the thirtieth day after deposit of the instrument of ratification.

The Inter-American Convention on International Commercial Arbitration entered into force on June 16, 1976. At present, Chile, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay, Uruguay and Venezuela are parties. Consistent with the longstanding United States policy to facilitate the use of arbitration as a means of resolving international commercial disputes, this Convention will provide an opportunity to secure wider benefits of recognition and enforcement of international commercial arbitration agreements and awards among a greater number of countries in this hemisphere.

The Inter-American Convention on International Commercial Arbitration is modeled after the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which the United States became a party in 1970. The draft bill to implement the Inter-American Convention is similarly modeled after, and incorporates in large part, the legislation which implements the New York Convention, 9 U.S.C. 201-208. Several new provisions are incorporated in the draft bill, however, in order to clarify the sphere of application of the Inter-American Convention and to safeguard its provisions respecting arbitral procedures; these are described more fully in the section-by-section analysis which accompanies this letter.

The draft bill is identical to the bill which was introduced, by request, in the House of Representatives on September 22, 1986 by Chairman Rodino (H.R. 5574) and in the Senate on November 5, 1985 by then Chairman Lugar (S. 1828). The Senate passed the legislation during the 99th Congress but the House did not act on it.

The Inter-American Convention on International Commercial Arbitration has received the support of a large number of interested and representative organizations, including the American Bar Association, the American Arbitration Association, the United States Chamber of Commerce, the Association of American Chambers of Commerce in Latin America, the American Foreign Law Association, and a number of state and local bar associations. Experts from the American Arbitration Association and American Bar Association have reviewed the proposed legislation and have advised that they consider it satisfactory.

Prompt approval of this implementing legislation will permit United States citizens and concerns seeking enforcement of commercial arbitration agreements and awards to enjoy the benefit of this Convention among the countries which are parties, and may encourage more rapid and widespread ratification by other countries as well.

The Office of Management and Budget has advised that there is no objection to the presentation of this proposal to the Congress, and that its enactment would be in accord with the program of the President.

With best wishes,

Sincerely,

J. EDWARD FOX,
Assistant Secretary, Legislative and Intergovernmental Affairs.●

ADDITIONAL COSPONSORS

S. 476

At the request of Mr. DODD, the names of the Senator from Texas [Mr. BENTSEN], the Senator from North Dakota [Mr. CONRAD], the Senator from New Jersey [Mr. BRADLEY], and the Senator from Connecticut [Mr. WEICKER] were added as cosponsors of S. 476, a bill to provide assistance in the development of new or improved programs to help younger persons through grants to the States for community planning, services, and training; to establish within the Department of Health and Human Services an operating agency to be designated as the Administration on Children, Youth, and Families; and to provide for a White House Conference on Young Americans.

S. 675

At the request of Mr. MITCHELL, the names of the Senator from Ohio [Mr. METZENBAUM] and the Senator from Washington [Mr. EVANS] were added as cosponsors of S. 675, a bill to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1988, 1989, 1990, 1991, and 1992.

S. 1469

At the request of Mr. BOSCHWITZ, the names of the Senator from Maryland [Ms. MIKULSKI], the Senator from Arizona [Mr. MCCAIN], the Senator from Indiana [Mr. QUAYLE], and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of S. 1469, a bill to amend title VII of the Social Security Act to restrict the use of "Social Security" or "Social Security Administration" on goods not connected with such Administration.

S. 1522

At the request of Mr. RIEGLE, the names of the Senator from Iowa [Mr. HARKIN], the Senator from Pennsylvania [Mr. SPECTER], the Senator from Oklahoma [Mr. BOREN], and the Senator from New Mexico [Mr. DOMENICI] were added as cosponsors of S. 1522, a bill to amend the Internal Revenue Code of 1986 to extend through 1992 the period during which qualified mortgage bonds and mortgage certificates may be issued.

S. 1729

At the request of Mr. LEAHY, the name of the Senator from Maine [Mr. MITCHELL] was added as a cosponsor of S. 1729, a bill to promote rural development, and for other purposes.

S. 1929

At the request of Mr. BUMPERS, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 1929, a bill to amend the Small Business Investment Act to establish a corporation for small business investment, and for other purposes.

S. 2032

At the request of Mr. WALLOP, the names of the Senator from Louisiana [Mr. JOHNSTON] and the Senator from Colorado [Mr. WIRTH] were added as cosponsors of S. 2032, a bill to authorize expenditures for boating safety programs, and for other purposes.

S. 2084

At the request of Mr. REID, his name was added as a cosponsor of S. 2084, a bill to establish a block grant program for child care services, and for other purposes.

S. 2098

At the request of Mr. HOLLINGS, the name of the Senator from Ohio [Mr. METZENBAUM] was added as a cosponsor of S. 2098, a bill to amend the Federal Aviation Act of 1958 to prohibit discrimination against blind individuals in air travel.

S. 2130

At the request of Mr. WILSON, the name of the Senator from Tennessee [Mr. GORE] was added as a cosponsor of S. 2130, a bill to provide that the Consumer Product Safety Commission amend its regulations regarding lawn darts.

S. 2136

At the request of Mr. GRASSLEY, the name of the Senator from New Hampshire [Mr. RUDMAN] was added as a cosponsor of S. 2136, a bill to deny discretionary project funds to States that voluntarily reduce the period of availability of interstate highway construction funds for any fiscal year.

S. 2184

At the request of Mr. HATCH, the name of the Senator from Virginia [Mr. TRIBLE] was added as a cosponsor of S. 2184, a bill to protect the civil rights of Americans 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 JOINT RESOLUTION 21

At the request of Mr. HOLLINGS, the name of the Senator from South Carolina [Mr. THURMOND] was withdrawn

as a cosponsor of Senate Joint Resolution 21, a joint resolution proposing an amendment to the Constitution of the United States relative to contributions and expenditures intended to affect congressional, and Presidential elections.

SENATE JOINT RESOLUTION 197

At the request of Mr. DOLE, the name of the Senator from Georgia [Mr. FOWLER] was added as a cosponsor of Senate Joint Resolution 197, a bill to designate the month of April 1988, as "Prevent-A-Litter Month."

SENATE JOINT RESOLUTION 253

At the request of Mr. CRANSTON, the name of the Senator from Montana [Mr. MELCHER] was added as a cosponsor of Senate Joint Resolution 253, a joint resolution designating April 9, 1988 and April 9, 1989, as "National Former Prisoner of War Recognition Day."

SENATE CONCURRENT RESOLUTION 106—RELATING TO THE PRESIDENT'S RETURN TO THE SENATE THE ENROLLED BILL (S. 854)

Mr. BYRD (for Mr. JOHNSTON) submitted the following concurrent resolution, which was considered and agreed to:

S. CON. RES. 106

Resolved, by the Senate (the House of Representatives concurring), That the President of the United States is requested to return to the Senate the enrolled bill (S. 854) entitled "An Act entitled the 'Nevada-Florida Land Exchange Authorization Act of 1988'. The Secretary of the Senate is authorized to receive such bill if it is returned when the Senate is not in session. Upon the return of such bill, the action of the Speaker of the House of Representatives and the Deputy President pro tempore of the Senate in signing it shall be deemed rescinded and the Secretary of the Senate shall reenroll the bill with the following corrections:

In subsection (a) of section 3, strike "conveyance of" and insert in lieu thereof the words "conveyance to".

SENATE CONCURRENT RESOLUTION 107—RELATING TO AN INVESTIGATION INTO THE OPERATION OF TEXAS AIR AND EASTERN AIR LINES

Mr. LAUTENBERG (for himself, Mr. D'AMATO, Mr. WEICKER, and Mr. KENNEDY) submitted the following concurrent resolution; which was referred to the Committee on Commerce, Science, and Transportation:

S. CON. RES. 107

Whereas Eastern Air Lines carried approximately 10% of domestic airline passengers in 1987, and its operation is therefore of substantial national concern;

Whereas, for more than 50 years Eastern Air Lines has been a major United States-flag air carrier, providing air transportation to millions of passengers annually over an extensive domestic and international route system;

Whereas in February 1986, the Texas Air Corporation acquired Eastern Air Lines and since that time there has been a continuing deterioration of financial condition at Eastern;

Whereas, since that acquisition, valuable assets, including the computer reservations system, international routes between the United States and Mexico and the United Kingdom, jet aircraft and spare parts, have been sold by or transferred from Eastern Air Lines;

Whereas Eastern Air Lines' profitable Eastern Air Shuttle and South American routes have been proposed or considered by the Texas Air Corporation for sale or transfer;

Whereas Orion Air is seeking expedited Federal Aviation Administration and Department of Transportation approval for an amended operating certificate which would allow Orion Air to carry passengers in scheduled operations on Eastern routes despite significant congressional concern and urging that the Federal Aviation Administration and Department of Transportation conduct a thorough review and apply the most stringent safeguards with respect to such amendment so as to ensure public safety;

Whereas the morale of employees has been lowered by certain proposals of Eastern Air Lines and the Texas Air Corporation, including contracting out of aircraft maintenance, the establishment of separate maintenance subsidiaries, and the transfer of maintenance work to foreign repair stations: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the Sense of the Congress that—

(1) the Secretary of Transportation (hereinafter in this resolution referred to as the "Secretary") should conduct a full, consolidated investigation into the operation of the Texas Air Corporation (hereinafter in this resolution referred to as "Texas Air") and Eastern Air Lines, Incorporated (hereinafter in this resolution referred to as "Eastern") since the acquisition of Eastern by Texas Air to determine the past and probable future effect of such management on the public interest (as such interest is described in Section 102 of the Federal Aviation Act of 1958), with emphasis on the public interest in—

(a) the assignment and maintenance of safety as the highest priority in air commerce (49 U.S.C. Sec. 1302(a)(1)),

(b) the prevention of any deterioration in established safety procedures (49 U.S.C. Sec. 1302(a)(2)),

(c) the availability of a variety of adequate, economic, efficient, and low-price services by air carriers (49 U.S.C. Sec. 1302 (a)(3)), and,

(d) the need to encourage fair wages and equitable working conditions for air carrier employees (49 U.S.C. Sec. 1302(a)(3));

(2) the Secretary should use the findings of the comprehensive investigation described in paragraph (1) as a basis for decisions in pending and future cases involving proposed changes in the domestic and international operations of Eastern, including—

(a) in deciding whether to impose labor protective provisions as a condition of the Secretary approving the acquisition of Eastern by Texas Air (remanded to the Secretary by the United States Court of Appeals for the District of Columbia Circuit in Air Line Pilots Association v. United States Department of Transportation), and

(b) in considering requests by Texas Air for authorization to form a new subsidiary corporation, separate from Eastern, to conduct the operations known as the Eastern Air Shuttle;

(3) the Secretary should not authorize the Air Shuttle, or any other entity to operate as a subsidiary of Texas Air in performing any air transportation operations until after the Secretary completes a comprehensive review (including notice and evidentiary hearing) to determine whether such performance is consistent with the public interest under section 408 of the Federal Aviation Act of 1958;

(4) the Secretary should not issue any certificate of public convenience and necessity authorizing any subsidiary of Texas Air to engage in air transportation until after the Secretary conducts a review under section 401 of the Federal Aviation Act of 1958 (including notice and evidentiary hearing) of the application for such certificate;

(5) the Secretary should not authorize Orion Air (hereinafter in this resolution referred to as "Orion") to provide services under contract with Eastern unless Orion establishes conclusively that it is capable of conducting scheduled passenger operations with the highest degree of safety;

(6) the Secretary should not attempt to expedite consideration of Orion's request to operate under contract with Eastern by diverting employees of the Department of Transportation or the Federal Aviation Administration from their responsibilities of ensuring the safety of previously authorized operations; and

(7) the Secretary should require, as a condition of any approval of Orion's request to provide air transportation service under contract with Eastern, that persons purchasing tickets for such service must be informed, at the time of making reservations, of the identity of the carrier having operational responsibility for providing such service.

● Mr. LAUTENBERG. Mr. President, today I am introducing a resolution expressing concern over the state of affairs at Eastern Air Lines. I am pleased to be joined in introducing this resolution by Senators D'AMATO, KENNEDY, and WEICKER.

For over 50 years, Eastern has been an integral part of the commercial aviation industry. It was a pioneer in the field, and an acknowledged leader. That position, however, has been jeopardized in recent years.

Over the last few years, particularly since Eastern was acquired by the Texas Air Corp., employee morale has sunk. There have been allegations of inadequate dedication of resources and attention to safety. This should be of the utmost concern to all of us. The airline passenger assumes that safety is the highest priority for an air carrier. That mandate is clearly laid out in Federal law.

Eastern is in the midst of a labor-management dispute. One aspect of that dispute is Eastern's contract with Orion Air, a cargo operator, under which Orion would provide services, including the piloting of passenger jets, in the event of a strike at Eastern. This matter is before the courts, and under review by the Department of Transportation. Commercial pilots

are highly trained, specialized professionals. Any attempt to replace them with other pilots must be closely scrutinized.

Mr. President, this resolution is not intended to take sides in a private labor-management dispute. It is intended to express our view on a matter of public interest—an air carrier's safe operations, and adherence to the Federal Aviation Act by the Department of Transportation, in spite of the hardships brought on by that dispute.

Airlines are unique in the services they provide, and the privileges they are granted. Airlines are granted the privilege to use a precious, limited national resource—controlled airspace and airport landing rights. And with that privilege, they assume a great obligation—an obligation to serve not just their stockholders, but more importantly, to serve the public interest.

That is at the heart of this resolution. It calls upon the Secretary of Transportation to ensure, through a consolidated review of the operations at Eastern and Texas Air, that the public interest, as defined in Federal statutes, is being protected.

It further calls for the Secretary not to expedite the review Orion Air's petition to amend its operating certificate in order to provide scheduled passenger service. If, as Eastern management proposes, Orion pilots, who now do not fly passenger operations, are allowed to step in and fly Eastern passengers, we have the right to expect that they have been subjected to the most rigorous review, and that their capabilities are established beyond a doubt.

Mr. President, since Texas Air took over Eastern, we've seen a pattern of activity that has further weakened Eastern's financial standing. Its lucrative computer reservations system was sold. International routes between the United States and Mexico and the United Kingdom have been transferred. Gates at busy airports, such as Newark International, have been sold or swapped.

The financial woes at Eastern have led management to call for extraordinary wage concessions from Eastern laborers. These labor problems are well known, and are the subject of several judicial proceedings, as well as action by the National Mediation Board. This is of concern to me. A number of my constituents are being adversely affected by these problems. Many of my colleagues, including those who have joined me today in introducing this resolution, have heard the concerns of their constituents.

These concerns are serious, for they go right to the heart of the operation of Eastern. If the pilots flying the jets, or those maintaining and repairing the planes, are forced to work under unduly stressful conditions; if their jobs are threatened because they don't feel a plane is safe to fly, in spite of management's view; then the problems go beyond internal company strife. They impact the public at large, which depends on a safe, efficient aviation system.

That is why I'm introducing this resolution today. The decision to sponsor this legislation was not made lightly. Eastern is a major carrier, and its operations are therefore of significant national interest. Its safe and efficient operation is of great importance. Adherence to Federal statutes is of great importance. Significant questions have been raised and warrant a full review of the state of operations at Eastern.

Mr. President, it is my sincere hope that the problems at Eastern can be worked out. There have been impasses, and progress is slow. By introducing this resolution, my colleagues and I are calling on the Secretary of Transportation to ensure that the letter of the law is fully observed as these proceedings continue. A large number of our colleagues in the House have agreed with this position by cosponsoring a similar resolution in that body. I urge my colleagues to support this measure.●

SENATE RESOLUTION 398—AUTHORIZING THE PRINTING OF "MAJORITY AND MINORITY LEADERS OF THE SENATE"

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

S. RES. 398

Resolved, That the compilation entitled "Majority and Minority Leaders of the Senate", prepared by the Senate Parliamentarian Emeritus, Floyd M. Riddick, shall be printed, with any revisions and certain tables, as a Senate document, and an additional 2,000 copies shall be printed for distribution by the Secretary of the Senate.

SENATE RESOLUTION 399—AUTHORIZING THE RELEASE OF DOCUMENTS BY THE SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT

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

S. RES. 399

Whereas, the Subcommittee on Oversight of Government Management of the Committee on Governmental Affairs held hearings in September 1987 on the "Oversight of Federal Procurement Decisions on Wedtech";

Whereas, the Department of Justice has requested documents in the possession of the Subcommittee that are relevant to the resolution of questions arising from testimony given during those proceedings;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that documents, papers, and records under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such actions as will promote the ends of justice consistently with the privileges of the Senate: Now, therefore, be it

Resolved, That the Chairman of the Subcommittee on Oversight of Government Management of the Committee on Governmental Affairs is authorized to provide to the Department of Justice investigative documents relating to hearings on "Oversight of Federal Procurement Decisions on Wedtech," subject to any assurances the Subcommittee deems necessary to protect the interests of the Senate.

AMENDMENTS SUBMITTED

HIGH-RISK OCCUPATIONAL DISEASE NOTIFICATION AND PREVENTION ACT

FORD (AND DIXON) AMENDMENT NOS. 1686 AND 1687

(Ordered to lie on the table.)

Mr. FORD (for himself and Mr. DIXON) submitted two amendments intended to be proposed by them to the bill (S. 79) to notify workers who are at risk of occupational disease in order to establish a system for identifying and preventing illness and death of such workers, and for other purposes; as follows:

AMENDMENT No. 1686

On page 63, after line 25, insert the following flush sentence: "Provisions of section 12 of this Act shall not take effect unless the Secretary of Health and Human Services, using existing authorization, provides that in the case of seasonal agricultural workers employed by an employer for less than 6 months of continuous employment, the medical monitoring recommended by the Board is provided through the Migrant Health Program of the Bureau of Health Care Delivery and Assistance of the Department of Health and Human Services using funds appropriated under section 14. An amount not to exceed $1,000,000 for each fiscal year, from funds authorized to be appropriated by this Act, shall be set aside, if necessary, to carry out the preceding sentence.".

AMENDMENT No. 1687

At the end add the following: "Provisions of section 12 of this Act shall not take effect unless the Secretary of Health and Human Services, using existing authorization, provides that in the case of seasonal agricultural workers employed by an employer for less than 6 months of continuous employment, the medical monitoring recommended by the Board is provided through the Migrant Health Program of the Bureau of Health Care Delivery and Assistance of the Department of Health and Human Services using funds appropriated under section 14. An amount not to exceed $1,000,000 for each fiscal year, from funds authorized to be appropriated by this Act, shall be set aside, if necessary, to carry out the preceding sentence.".

BREAUX AMENDMENT NOS. 1688 AND 1689

(Ordered to lie on the table.)

Mr. BREAUX submitted two amendments intended to be proposed by him to the bill S. 79, supra; as follows:

AMENDMENT No. 1688

On page 63, line 16, beginning with "If", strike out through line 25 and insert in lieu thereof the following: "The medical monitoring required under the previous sentence shall be limited to the monitoring recommended by the Risk Assessment Board. The means of providing such medical monitoring shall be left to the employer's judgment consistent with sound medical practices. If the benefits are made available through an existing employer health plan, the employee may be required to meet deductibles or copayments generally required under the existing employer health plan. Any such current employee shall be required to provide monitoring only for employees who—

"(1) are notified individually under section 5; or

"(2) the employer knows or has reason to know are members of the population at risk as determined by the Board.

An employer with 50 or fewer employees may not be required to pay more than $250 for medical monitoring for any employee in any year. This amount shall be adjusted annually after 1988 based on the Consumer Price Index for medical care services maintained by the Bureau of Labor Statistics.".

AMENDMENT No. 1689

On page 64, line 18, beginning with "10" strike out through "10" on line 6, page 68, and insert in lieu thereof the following: "50 or fewer employees may transfer an employee who is or has been a member of a population at risk to another job without violating this subsection so long as the new job has earnings, seniority and other employment rights and benefits as comparable as possible to the job from which the employee has been removed. In providing such alternative job assignment, the employer shall not violate the terms of any applicable collective bargaining agreement.

"(c) BENEFIT REDUCTION PROHIBITED.—

"(1) GENERAL.—If, following a determination by the Board under this Act, the employee's physician medically determines that an employee who is a member of a population at risk shows evidence of the development of the disease described in the notice or other symptoms or conditions increasing the likelihood of incidence of such disease, the employee shall have the option of being transferred to a less hazardous or nonexposed job. If within 10 working days after the employee has exercised the option and transmitted to the employer a copy of the initial determination, the employer's medical representative has not requested independent reconsideration of such determination, the employee shall be removed to a less hazardous or nonexposed job and shall maintain earnings, seniority, and other employment rights and benefits as though the employee had not been removed from the former job. In providing such alternative job assignment, the employer shall not be required to violate the terms of any applicable collective bargaining agreement, and shall not be required to displace, lay off, or terminate any other employee.

"(2) INDEPENDENT RECONSIDERATION.—If the employer's medical representative requests independent reconsideration of the initial medical determination under paragraph (1), the employee's physician and the employer's medical representative shall, within 14 working days of the transmittal of the initial determination, submit the matter to another mutually acceptable physician for a final medical determination, which shall be made within 21 working days of the transmittal of the initial determination unless otherwise agreed by the parties. If the two medical representatives have been unable to agree upon another physician within 14 working days, the Secretary or the Secretary's local designee for such purpose shall immediately, at the request of the employee or the employee's physician, appoint a qualified independent physician who shall make a final medical determination within the 21 working day period specified in this paragraph, unless otherwise agreed by the parties. The employer shall bear all costs related to the procedure set forth in this paragraph.

"(3) EMPLOYEES SUBJECT TO MEDICAL REMOVAL.—An employer shall be required to provide medical removal protection only for employees who—

"(A) are notified individually under section 5, or

"(B) the employer knows or has reason to know are members of the population at risk as determined by the Board.

"(4) SPECIAL RULES FOR MEDICAL REMOVAL.—An employer shall be required to provide such protection only if any part of the employee's exposure to the occupational health hazard occurred in the course of the employee's employment by that employer. The medical removal protection described in this subsection shall be provided for as long as a less hazardous or nonexposed job is available. The availability of such a job shall depend upon the employee's skills, qualifications, and aptitudes and the job's requirements. Where such job is not available, the medical removal protection shall be provided for a period not to exceed 12 months. The employer may condition the provision of medical removal protection upon the employee's participation in follow-up medical surveillance for the occupational health effects in question based on the procedure set forth in this subsection. The employer's obligation to provide medical removal protection shall be reduced to the extent that the employee receives compensation for earnings lost during the period of removal, or receives income from employment with another employer made possible by virtue of the employee's removal. An employee who is receiving medical removal protection and for whom no less hazardous or nonexposed job is available must undertake reasonable good faith efforts to obtain alternative employment.

"(5) SPECIAL LIMITATION.—An employer is not required to provide medical removal protection for employees if the employer—

"(A) has 50".

KASTEN AMENDMENT NO. 1690

(Ordered to lie on the table.)

Mr. KASTEN submitted an amendment intended to be proposed by him to the bill S. 79, supra; as follows

On page 52, after line 19, insert the following new subsection:

( ) ATTORNEY CONTINGENCY FEES.—

(1) An attorney who represents, on a contingency fee basis, a person bringing an action in state or federal court for personal injury or death caused by or resulting from exposure to an occupational health hazard may not charge, demand, receive or collect for services rendered in connection with such action in excess of 25 per centum of the first $100,000 (or portion thereof) recovered, plus 20 per centum of the next $100,000 (or portion thereof) recovered, plus 15 per centum of the next $100,000 (or portion thereof) recovered, plus 10 per centum of any amount in excess of $300,000 recovered by judgment or settlement of such action.

(2) As used in this section, "contingency fee" means any fee for professional legal services which is in whole or in part contingent upon the recovery of any amount of damages, whether through judgment or settlement.

(3) In the event that such judgment or settlement includes periodic or future payment of damages, the amount recovered for purposes of computing the limitation upon the permissible attorney contingency fee shall be based upon the cost of the annuity or trust fund established to make payments. In any case in which an annuity or trust fund is not established to make such payments, the limitation shall be based on the present value of the payments.

METZENBAUM AMENDMENTS NOS. 1691–1695

(Ordered to lie on the table.)

Mr. METZENBAUM submitted five amendments intended to be proposed by him to the bill S. 79, supra; as follows:

AMENDMENT No. 1691

On page 45, line 19, after the period, insert the following: "A nonunanimous final determination shall not be binding unless any Board member who concurs or dissents in the determination is permitted to make such concurring or dissenting opinion available to the public.".

AMENDMENT No. 1692

On page 77, line 14, beginning with "for", strike through the word "professionals" on line 15.

AMENDMENT No. 1693

On page 58 line 15, before the semicolon, insert the following: ", except that such education, training, and technical assistance shall not be available to personal physicians and other professionals who serve such employees, unless such services are also available to physicians and other professionals who serve employers of employees notified under section 5".

AMENDMENT No. 1694

On page 58, line 7, after "the", insert the following: "prevention, monitoring,".

AMENDMENT No. 1695

On page 49, line 11, before the period, insert the following:", except that no such telephone 'hot line' may be available to such employees or their personal physicians if such telephone 'hot line' is not also available to the employees' respective employers. The identity of or any identifying information relating to any person using the telephone 'hot line' shall be confidential and may not be disclosed unless authorized by another provision of this Act and necessary to carry out such provision or upon the written consent of such person".

NICKLES AMENDMENT NO. 1696

(Ordered to lie on the table)

Mr. NICKLES submitted an amendment intended to be proposed by him to the bill S. 79, supra; as follows:

At the appropriate place in the bill, insert the following new section.

FINANCIAL IMPACT STATEMENT

SEC. . None of the provisions of this Act shall become effective unless:

(a) The Committee on Labor and Human Resources requests that the Director of the Government Accounting Office prepare a financial impact statement, as described in subsection (b) below, to accompany the Conference report of this bill.

(b) The financial impact statement required by subsection (a) of this section shall state the extent to which enactment of this bill would result in increased costs to the private sector and State and local governments and shall include, at a minimum, a detailed assessment of the annual impact of the bill (projected annually over a five-year period from its effective date and expressed in monetary terms where appropriate) on—

(1) costs to consumers and business;

(2) national employment;

(3) the ability of United States industries to compete internationally;

(4) State and local governments, fiscally and otherwise, and;

(5) outlays by the Federal Government, including indirect costs it will incur as an employer, as compared to outlays for the same activity in the current fiscal year (as reported by the Congressional Budget Office); *provided*, that the financial impact statement may consist of a brief summary assessment in lieu of the detailed assessment set forth above if preliminary analysis indicates that the aggregate effect on each of categories (1)-(4) above is less than one hundred million dollars.

HATCH AMENDMENTS NOS. 1697-1772

(Ordered to lie on the table.)

Mr. HATCH submittted 75 amendments intended to be proposed by him to the bill S. 79, supra; as follows:

AMENDMENT No. 1697

On page 44, between lines 19 and 20, insert the following new paragraph:

(5) DESIGNATION OF NONEMPLOYEES FOR EXPOSURE TO CHRONIC HEALTH HAZARDS.—

(A) IN GENERAL.—Nothing in this Act shall preclude the Board from designating for notification nonemployees who have been exposed to a chronic health hazard.

AMENDMENT No. 1698

On page 31, strike lines 1 through 9.

AMENDMENT No. 1699

On page 31, strike lines 10 through 12.

AMENDMENT No. 1700

On page 31, strike lines 13 through 16.

AMENDMENT No. 1701

On page 31, strike lines 3 through 4.

AMENDMENT No. 1702

On page 31, strike lines 5 through 7.

AMENDMENT No. 1703

On page 31, strike lines 8 through 9.

AMENDMENT No. 1704

On page 31, strike lines 17 through 19.

AMENDMENT No. 1705

On page 31, strike lines 20 through 22.

AMENDMENT No. 1706

On page 31, strike line 23 through 2 on page 32.

AMENDMENT No. 1707

On page 32, strike lines 3 through 6.

AMENDMENT No. 1708

On page 32, strike lines 7 through 11.

AMENDMENT No. 1709

On page 32, strike lines 12 through 14.

AMENDMENT No. 1710

On page 32, strike lines 15 through 18.

AMENDMENT No. 1711

On page 32, strike lines 19 through 22.

AMENDMENT No. 1712

On page 32, strike lines 23 through line 2 on page 33.

AMENDMENT No. 1713

On page 33, strike lines 3 through 5.

AMENDMENT No. 1714

On page 33, strike lines 6 through 9.

AMENDMENT No. 1715

On page 33, strike lines 11 through 15.

AMENDMENT No. 1716

On page 33, strike lines 16 through 21.

AMENDMENT No. 1717

On page 33, strike lines 22 through 24.

AMENDMENT No. 1718

On page 34, strike lines 1 through 3.

AMENDMENT No. 1719

On page 37, line 13, strike out "Secretary" and all that follows through "science" on line 14.

AMENDMENT No. 1720

On page 40, strike lines 18 through 23.

AMENDMENT No. 1721

On page 41, line 22, strike "(" and all that follows through ")" on line 24.

AMENDMENT No. 1722

On page 42, line 10, strike "(" and all that follows through ")" on line 11.

AMENDMENT No. 1723

On page 39, strike lines 7 through 9.

AMENDMENT No. 1724

On page 39, strike lines 10 through 14.

AMENDMENT No. 1725

On page 39, strike lines 15 through 18.

AMENDMENT No. 1726

On page 40, strike lines 18 through 23.

AMENDMENT No. 1727

On page 40, strike line 24 through line 12 on page 41.

AMENDMENT No. 1728

On page 69, strike lines 14 through 23.

AMENDMENT No. 1729

On page 69, strike line 3 through line 13 on page 74.

AMENDMENT No. 1730

On page 68, after line 22, insert the following—

"(e) Employer access—Nothing in this section shall be interpreted to restrict the employer's access to medical monitoring information."

AMENDMENT No. 1731

On page 68, strike lines 13 through 22.

AMENDMENT No. 1732

On page 67, line 17, strike "12" and replace with "6".

AMENDMENT No. 1733

On page 70, line 20, strike all after the comma through "evidence" on line 22.

AMENDMENT No. 1734

On page 57, strike line 13 through line 19 on page 58.

AMENDMENT No. 1735

On page 58, strike lines 5 through lines 11.

AMENDMENT No. 1736

On page 20, strike line 20 through line 6 on page 63.

AMENDMENT No. 1737

On page 58, strike lines 12 through 19.

AMENDMENT No. 1738

On page 60, strike line 6 through line 6 on page 63.

AMENDMENT No. 1739

On page 63, strike lines 7 through 22 on page 68.

AMENDMENT No. 1740

On page 63, line 14, strike all after "employer" through "employee" on line. 15.

AMENDMENT No. 1741

On page 63, line 14, strike all after "if" through "such" and replace with "the".

AMENDMENT No. 1742

On page 63, line 22, strike all after "5" through line 25 except the period.

AMENDMENT No. 1743

On page 64, strike line 1 through line 2 on page 65.

AMENDMENT No. 1744

On page 65, line 18, strike all after "job" through "job" on line 20.

AMENDMENT No. 1745

On page 64, strike all after "subsection" on line 14 through "job" on line 17.

AMENDMENT No. 1746

On page 65, line 8, strike all after "notice" through "disease" on line 10.

AMENDMENT No. 1747

On page 64, strike all after "subsection" on line 21 through "agreement" on line 2 of page 65.

AMENDMENT No. 1748

On page 65, line 12, strike "10" and replace with "30".

AMENDMENT No. 1749

On page 65, strike line 3 through line 25.

AMENDMENT No. 1750

On page 66, line 19, strike everything after the period through line 21.

AMENDMENT No. 1751

On page 66, line 9, strike "21" and replace with "60".

AMENDMENT No. 1752

On page 66, line 17, strike "21" and replace with "60".

AMENDMENT No. 1753

On page 67, line 1, strike all after "5" through "Board" on line 5.

AMENDMENT No. 1754

On page 67, line 17, strike "12" and replace with "6".

AMENDMENT No. 1755

On page 67, line 8, strike "any part of".

AMENDMENT No. 1756

On page 57, strike lines 8 through 12.

AMENDMENT No. 1757

On page 56, line 22, strike all after the period through the period on line 23.

AMENDMENT No. 1758

On page 56, line 15, strike "30" and replace with "120".

AMENDMENT No. 1759

On page 56, strike lines 5 through 7.

AMENDMENT No. 1760

On page 55, line 11, strike "30" and replace with "180".

AMENDMENT No. 1761

On page 52, strike lines 14 through 19.

AMENDMENT No. 1762

On page 52, strike lines 1 through 13.

AMENDMENT No. 1763

On page 51, strike line 23 through line 24 and renumber subsequent sections.

AMENDMENT No. 1764

On page 51, line 8, strike everything after the period through the period on line 22.

AMENDMENT No. 1765

On page 49, strike line 6 through line 9 on page 50.

AMENDMENT No. 1766

On page 49, strike line 18 through line 9 on page 50.

AMENDMENT No. 1767

On page 49, strike lines 6 through 17.

AMENDMENT No. 1768

On page 49, strike lines 6 through 11.

AMENDMENT No. 1769

On page 49, strike lines 12 through 17.

AMENDMENT No. 1770

On page 45, strike line 15 through line 7 on page 46.

AMENDMENT No. 1771

On page 45, strike lines 15 through 19.

AMENDMENT No. 1772

On page 35, line 23 through 24, strike "generated by or integral to the work process".

DIXON AMENDMENT NO. 1773

Mr. DIXON proposed an amendment to the bill S. 79, supra; as follows:

Strike everything beginning on page 64, line 1, through line 12 on page 68 and insert the following:

"(b) LIMITATIONS FOR AGRICULTURAL WORKERS.—Provisions for medical removal protection under this subsection shall not apply to any seasonal agricultural worker employed by an employer for less than 5 months of continuous employment."

(c) DISCRIMINATION PROHIBITED.—

(1) IN GENERAL.—No employer or other person shall discharge or in any manner discriminate against any employee, or applicant for employment, on the basis that the employee or applicant is or has been a member of a population that has been determined by the Board to be at risk of disease. The subsection shall not apply if the position which the applicant seeks requires exposure to the occupational health hazard which is the subject of the notice. If it is medically determined pursuant to subsection (d) that an employee should be removed to a less hazardous or nonexposed job, an employer may effect such a removal without violating this subsection so long as the employee maintains the earnings, seniority, and other employment rights and benefits, as though the employee had not been removed from the former job.

(I2) SPECIAL PROVISION.—An employer with 10 or fewer employees may transfer an employee who is or has been a member of a population at risk to another job without violating this subsection so long as the new job has earnings, seniority and other employment rights and benefits as comparable as possible to the job from which the employee has been removed. In providing such alternative job assignment, the employer shall not violate the terms of any applicable collective bargaining agreement.

(d) BENEFIT REDUCTION PROHIBITED—

(1) GENERAL.—If, following a determination by the Board under this Act, the employee's physician medically determines that an employee who is a member of a population at risk shows evidence of the development of the disease described in the notice or other symptoms or conditions increasing the likelihood of incidence of such disease, the employee shall have the option of being transferred to a less hazardous or nonexposed job. If within 10 working days after the employee has exercised the option and transmitted to the employer a copy of the initial determination, the employer's medical representative has not requested independent reconsideration of such determination, the employee shall be removed to a less hazardous or nonexposed job and shall maintain earnings, seniority, and other employment rights and benefits as though the employee had not been removed from the former job. In providing such alternative job assignment, the employer shall not be required to violate the terms of any applicable collective bargaining agreement, and shall not be required to displace, lay off, or terminate any other employee.

(2) INDEPENDENT RECONSIDERATION.—If the employer's medical representative requests independent reconsideration of the initial medical determination under paragraph (1), the employee's physician and the employer's medical representative shall, within 14 working days of the transmittal of the initial determination, submit the matter to another mutually acceptable physician for a final medical determination, which shall be made within 21 working days of the transmittal of the initial determination unless otherwise agreed by the parties. If the two medical representatives have been unable to agree upon another physician within 14 working days, the Secretary or the Secretary's local designee for such purpose shall immediately, at the request of the employee or the employee's physician, appoint a qualified independent physician who shall make a final medical determination within the 21 working day period specified in this paragraph, unless otherwise agreed by the parties. The employer shall bear all costs related to the procedure set forth in this paragraph.

(3) EMPLOYEES SUBJECT TO MEDICAL REMOVAL.—An employer shall be required to provide medical removal protection only for employees who—

(A) are notified individually under section 5, or

(B) the employer knows or has reason to know are members of the population at risk as determined by the Board.

(4) SPECIAL RULES FOR MEDICAL REMOVAL.—An employer shall be required to provide such protection only if any part of the employee's exposure to the occupational health hazard occurred in the course of the employee's employment by that employer. The medical removal protection described in this subsection shall be provided for as long as a less hazardous or nonexposed job is available. The availability of such a job shall depend upon the employee's skills, qualifications, and aptitudes and the job's requirements. Where such job is not available, the medical removal protection shall be provided for a period not to exceed 12 months. The employer may condition the provision of medical removal protection upon the employee's participation in follow-up medical surveillance for the occupational health effects in question based on the procedure set forth in this subsection. The employer's obligation to provide medical removal protection shall be reduced to the extent that the employee receives compensation for earnings lost during the period of removal, or receives income from employment with another employer made possible by virtue of the employee's removal.

(5) SPECIAL LIMITATION.—An employer is not required to provide medical removal protection for employees if the employer—

(A) has 10 or fewer full-time employees at the time medical removal protecion is requested, and

(B) made or is in the process of making a reasonable good faith effort to eliminate the occupational health hazard that is the basis for the medical removal decision.

FORD (AND DIXON) AMENDMENT NO. 1774

Mr. FORD (for himself and Mr. DIXON) proposed an amendment to amendment No. 1773 proposed by Mr. DIXON to the bill S. 79, supra; as follows:

On page 1 of the amendment strike "5" through the first period and insert the following in lieu thereof: "6 months of continous employment. Provisions of section 12 of this Act shall not take effect unless the Secretary of Health and Human Services, using existing authorization, provides that in the case of seasonal agricultural workers employed by an employer for less than 6 months of continuous employment, the medical monitoring recommended by the Board is provided through the Migrant Health Program of the Bureau of Health Care Delivery and Assistance of the Department of Health and Human Services using funds appropriated under section 14. An amount not to exceed $1,000,000 for each fiscal year, from funds authorized to be appropriated by this Act, shall be set aside, if necessary, to carry out the preceding sentence.".

BREAUX AMENDMENT NO. 1775

Mr. BREAUX proposed an amendment to the bill S. 79, supra; as follows:

On page 24 between lines 13 and 14 insert the following:

"(d) SPECIAL PROVISION.—An employer with 50 or fewer employees may transfer an employee who is or has been a member of a population at risk to another job without violating this subsection so long as the new job has earnings, seniority and other employment rights and benefits as comparable as possible to the job from which the employee has been removed. In providing such alternative job assignment, the employer shall not violate the terms of any applicable collective bargaining agreement.

"In addition, an employer is not required to provide medical removal protection for employees if the employer—

"(A) has 50 or fewer full-time employees at the time medical removal protection is requested, and

"(B) made or is in the process of making a reasonable good faith effort to eliminate the occupational health hazard that is the basis for the medical removal decision.".

DIXON AMENDMENT NO. 1776

Mr. DIXON proposed an amendment to amendment No. 1775 proposed by Mr. BREAUX to the bill S. 79, supra; as follows:

At the end of the amendment add the following: "The medical monitoring required under this Act shall be limited to the monitoring recommended by the Risk Assessment Board. The means of providing such medical monitoring shall be left to the employer's judgment consistent with sound medical practices. If the benefits are made available through an existing employer health plan, the employee may be required to meet deductibles or copayments generally required under the existing employer health plan. Any such current employee shall be required to provide monitoring only for employees who—

"(1) are notified individually under section 5; or

"(2) the employer knows or has reason to know are members of the population at risk as determined by the Board.

An employer with 50 or fewer employees may not be required to pay more than $250 for medical monitoring for any employee in any year. This amount shall be adjusted annually after 1988 based on the Consumer Price Index for medical care services maintained by the Bureau of Labor Statistics.".

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON HEALTH

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Health of the Committee on Finance be authorized to meet during the session of the Senate on March 22, 1988, to hold a hearing on S. 1673, the Medicaid Home and Community Quality Services Act of 1987.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Tuesday, March 22, to hold hearings on S. 1081, the National Nutrition Monitoring and Related Research Act of 1987.

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

COMMITTEE ON SMALL BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that the Small Business Committee be authorized to meet during the session of the Senate on Tuesday, March 22, 1988, to hold a hearing on the President's fiscal year 1989 budget proposal for the Small Business Administration.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be allowed to meet during the session of the Senate Tuesday, March 22, 1988 to conduct oversight hearings on the Community Reinvestment Act.

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 Tuesday, March 22, 1988 to consider the Department of Agriculture's budget request for fiscal year 1989.

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

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

Mr. BYRD. Mr. President, I ask unanimous consent that the Energy and Natural Resources Subcommittee on Public Lands, National Parks and Forests be authorized to meet during the session of the Senate on Tuesday, March 22, 1988 to receive testimony concerning H.R. 2090 and S. 1478, bills to designate certain National Forest System lands in the State of Montana for release of the Forest Planning process protection of recreation value, and inclusion in the National Wilderness Preservation System, and for other purposes.

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

SUBCOMMITTEE ON SCIENCE, TECHNOLOGY AND SPACE

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Science, Technology and Space, of the Committee on Commerce, Science, and Transportation, be authorized to meet during the session of the Senate on March 22, 1988, to hold an oversight hearing on the National Aeronautics and Space Administration budget.

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

SUBCOMMITTEE ON STRATEGIC FORCES AND NUCLEAR DETERRENCE

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Strategic Forces and Nuclear Deterrence of the Committee on Armed Services be authorized to meet during the session of the Senate on Tuesday, March 22, 1988, in closed session to receive testimony on ICBM modernization programs and strategic indicators in review of the amended fiscal year 1989 Defense authorization request.

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

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Strategic Forces and Nuclear Deterrence of the Committee on Armed Services be authorized to meet during the session of the Senate on Tuesday, March 22, 1988, in open session to receive testimony on proposals for ABM systems complaint with the ABM treaty.

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

ADDITIONAL STATEMENTS

A NEW AGENDA FOR THE GLOBAL ENVIRONMENT

● Mr. GORE. Mr. President, today I am rising to sound the alarm on an issue we have recently heard a great deal about, but about which frankly, much more needs to be done. I am calling on the President to take six emergency steps to respond to the unprecedented global threat of depletion of the atmospheric ozone layer.

First, there should be an immediate ban on nonessential uses of CFC's.

Second, a rapid phaseout, over 5 years, of all other uses of the most harmful CFC's.

Third, an immediate assessment of $1 per pound on the most harmful chloroflurocarbons or CFC's, the chemicals responsible for ozone depletion. The fee should increase to $2 in 1989, and reach $5 by 1992. This will send a long overdue message to the producers of CFC's that we must embark on a crash program to develop environmentally sound alternatives. It will raise $260 million in the first year, a portion of which should go to fund research into alternatives for CFC's and to help those industries who depend on CFC's to manufacture their product.

Fourth, to ban the importation of CFC-containing products into this country that do not meet U.S. standards.

Fifth, the President should personally call on the leaders of Japan and the European nations to urge the ratification in their countries of the Montreal protocol in time for the June economic summit. So far, only the United States and Mexico have done so.

Sixth, the President should put this issue on the agenda of the June summit, and to push at that time for an amendment to the Montreal protocol to further accelerate a total ban of harmful CFC's. After all, this problem has its origin in commerce, and it is precisely the sort of issue that would most benefit from this high level discussion.

Mr. President, last week, 1 day after we voted to ratify the Montreal ozone treaty, government scientists, publicly confirmed what the experts have been warning us about for many years—that we face a potentially cataclysmic threat to our planet, entirely beyond the ability of science to predict.

In a world where the threat of nuclear annihilation, economic collapse, famine, regional conflict, and the AIDS pandemic compete for the attention of world leaders, it's not surprising that some—particularly those in the Reagan-Bush administration—would dismiss such problems as depletion of the ozone layer and the greenhouse effect as the concerns best left to the lower levels of the bureaucracy. But the findings in the NASA report clearly demonstrate that we face a peril as great as any we have faced. Virtually everyone now accepts that this is a deadly serious threat to the health, and well being, of men, women, and children all over the world.

For years the Reagan-Bush administration has crossed its fingers and hoped this problem would simply go away. It responded as it has to virtually every environmental problem it has confronted, allowing the industry at fault to call the shots. As a result once again rather than answers we are left only with questions.

This year, in the United States alone, there will be an additional 50,000 cases of skin cancer, an increase of almost 10 percent, yet Americans are left to wonder why rather than a strategy to assure the rapid development of alternatives to the worst CFC's, instead the administration has agreed to a scheme that seems designed only to guarantee CFC producers windfall profits.

Under the administration-industry plan, producers are guaranteed the same share of the market they currently hold. As the supply of CFC's drops, as it is required to do under the Montreal protocol, and demand remains high, the only thing that will change is that companies will be able to charge more for CFC's. The result will be big profits for the producers of CFC's, the same companies that have misled industry and the American people for years into believing that somehow this would all just go away.

For 6 years, I have chaired hearings in the House and Senate to call attention to these problems. The ozone problem may have begun 60 years ago when chemists developed compounds called chlorofluorocarbons, or CFC's, that came to be used as coolants and as propellants in aerosol sprays. Millions of tons of CFC's were used before traces of them were found in the atmosphere in the early 1970's. By 1974, scientists had concluded that CFC's in the upper atmosphere were destroying the ozone layer that protects the Earth by blocking the Sun's ultraviolet radiation.

By 1978, the United States banned the use of CFC's in spray cans. But that was not enough, as long as other countries continued to use them. In 1985, British scientists discovered a mysterious hole that was opening up in the ozone layer over Antarctica. It became increasingly clear that CFC's were a major factor in this alarming development. We now know that it is the key factor. Scientists say such a breakdown could lead to millions more cases of skin cancer.

In May of last year, some Reagan officials began to fear that governmental action against this threat might offend the President's laissez-faire philosophy. Secretary of the Interior Donald Hodel was quoted as saying the answer to ozone depletion might be for people to wear sunglasses and floppy hats! Fortunately, wiser minds prevailed, and Lee Thomas helped negotiate the 24-nation international treaty we ratified last week to limit the production of CFC's.

The treaty is a tiny but important first step. We must now immediately do much more. Even under the terms of the agreement, ozone depletion may cause an estimated 7 million additional cases of cancer in the United States over the next 80 years—and 131 million cases worldwide. That is simply not acceptable.

Even worse, the greenhouse effect, caused by increased carbon dioxide, CFC's, and other trace gases in the atmosphere, is trapping in heat and causing a long-term warming of the Earth, could have equally dire results.

In 1981, I chaired the first of a series of congressional hearings that focused on the greenhouse effect and the upper atmosphere. In 1985, I introduced the first legislation specifically directed at the greenhouse effect.

Six years ago, at our first hearing, Prof. Roger Revelle of the University of California, testified that the greenhouse effect was no longer a hypothesis, but had become a reality.

In 1982 hearings, Dr. James Hansen of NASA and Prof. George Kukla of Columbia testified that the rise in carbon dioxide levels could be closely correlated with a rise in the Earth's mean temperature, a shrinking of glacial ice, and the rise of the sea level.

The more we learned, the more we realized that the greenhouse effect is too vast and its causes too elusive for any scientific quick fix. It will require major international scientific study and action.

What can America do?

In addition to the steps I have called for today on the ozone problem, I have sponsored legislation to create an International Year of the Greenhouse Effect, to focus international attention on the problem, as was done with the successful International Geophysical Year of 1957. I and other Senators have also urged Secretary of State George Shultz to include the greenhouse effect on the agenda of the next United States-Soviet summit meeting.

We can't stop there.

The United States should call for an international summit devoted to the related problems of the ozone depletion and the greenhouse effect. We should urge an immediate reconvening of the signatories of the Montreal protocol to take additional steps.

Are not these classic examples of problems upon which we, the Soviet Union, and other world powers should work together, pooling our scientific skills to benefit humankind, rather than devoting them to a costly and destructive arms race?

We should challenge General Secretary Gorbachev to join with us and other nations in an all-out, coordinated, and cooperative attack on these urgent threats to the environment of this planet we all share and love.

We must be prepared also to work with the United Nations, the World Bank, and other international organizations, on these issues. We know, for example, that the greenhouse effect appears to be a direct byproduct of resource consumption—the destruction

of forests, the use of fossil fuels, and of CFC's. We know that certain less developed nations are rapidly destroying their tropical rain forests, forests that serve as the major oxygen and carbon dioxide conversion mechanisms in the world. Twelve of the seventeen most heavily indebted nations, including Bolivia, Brazil, Colombia, Mexico, and the Philippines, are destroying their forests at an alarming rate.

The entire world has a huge stake in these tropical forests, so great that an arrangement is needed whereby certain international debts will be eased in exchange for forest conservation.

What will this planet be like 50 or 100 years from now? Will we avert nuclear war, only to be undone by ozone depletion, the greenhouse effect, ocean pollution, global overcrowding, contaminated ground water, or polluted air and acid rain? These threats are not science fiction—the world's best scientists are telling us these things can happen unless we act.

The enduring symbol of the Reagan administration's environmental failures will be a barge filled with garbage, slowly drifting out to sea.

But responsible men and women cannot let these problems drift. Starting in January 1989, we must have leadership that understands our past and cares about our future.●

TRIBUTE TO CHESTER KOCH

● Mr. McCAIN. Mr. President, this weekend I have the honor and privilege of meeting one of America's great veterans—Chester Koch, of Cleveland. Chester is 95 years old and still works daily at Cleveland's City Hall coordinating veterans and patriotic activities. It is estimated that Chester, a World War I veteran, has seen roughly a half a million young Americans off to military duty. He's devoted his life to caring about and serving those young men and women in this country who have cared enough to serve in our Armed Forces.

It is Chester's many years of service and perspective that we all should heed when he says that all of us legislators—whom he calls young whippersnappers—need to remember that the work and sacrifice of America's veterans are what enables all of us to enjoy life the way we do.

Mr. President, I look forward to meeting this great American and dean of American veterans. I ask that the Catholic War Veterans Resolution honoring Chester, and a recent story from the Lake County News Herald be printed in the CONGRESSIONAL RECORD. All of us would benefit from reading about Chester's great service and taking to heart this man's dedicated service to his countrymen.

The material follows:

RESOLUTION NO. 25, TESTIMONIAL RESOLUTION HONORING CHESTER KOCH

Whereas, Mr. Chester Koch, Cleveland, Ohio, has come to symbolize the tradition of service exemplified by the Catholic War Veterans in working with the veterans, and

Whereas, Mr. Chester Koch, one of the boys of 1917-18, has been a member of the Cuyahoga County Chapter since its inception, and

Whereas, Mr. Chester Koch has added luster to the reputation of the Catholic War Veterans of the United States of America, Inc., in his hometown City of Cleveland by being the City's Coordinator of Patriotic Activities, overseeing the observance of National Holiday's and other veteran related programs of a city-wide, public nature, and

Whereas, Mr. Chester Koch during his years in official capacity has seen at least 485,000 men and women off to military service, inquired after them and their families after they entered their countrys service, and again welcomed many of them back home, and

Whereas, Mr. Chester Koch has served the Catholic War Veterans over the years in many roles and offices: Now, therefore be it

Resolved, That the Catholic War Veterans of the United States of America, Inc., In Convention assembled in Albany, New York, this 15th day of August 1985, single out Mr. Chester Koch for HONOR by adopting this Testimonial Resolution and that all the delegates and members of the Catholic War Veterans join in congratulating him on his service to the organization and on his 93rd birthday; and be it further

Resolved, that the National Department act upon this Testimonial Resolution and offer Mr. Chester Koch the greetings of that echelon in this 50th Annual National Convention.

[From the News Herald, July 5, 1987]

WORKING FOR LIBERTY—CLEVELAND VETERAN'S JOB IS KEEPING PATRIOTIC SPIRIT ALIVE

At age 95, Chester Koch reports daily to his job at Cleveland City Hall as coordinator of patriotic activities and participates in half a dozen veterans' groups.

Clevelanders like to think of him as the nation's oldest active patriot.

"As long as he can walk I'm sure he'll be involved in something," said Ron Seman, a local Defense Department spokesman who assists Koch in his efforts.

"I know if they forced him to stay home, away from his activities, he'd probably be dead in a week. He just loves to be involved with anything having to do with veterans' activities and patriotic events."

A city employee for 53 years, Koch arranges Cleveland's parades from his basement office. The World War I veteran has no secretary, but he gets help from city employees through charm and persistence. He takes city buses to work when he can't get a ride and shuffles from place to place with the help of a cane. He has served under 14 mayors.

"There's more patriotism now than ever before in this nation, in my estimation," Koch said. "The appreciation of the public for the use of the flag is much tighter now.

"I have an old saying—a flag in the home will keep the devil away. When you see the flag, your thoughts go back to what it means and what it meant to so many people who died for the flag."

Koch estimates that he has passed out 10,000 flags during his lifetime. But working for veterans is his primary ambition, and arranging parades for Memorial Day, Veterans' Day, Flag Day and other occasions was a natural extension of that.

"My goal is to preserve respect for the veterans, all types of veterans," Koch said. "Those young legislators—whippersnappers I call them—need to understand that our work has enabled them to enjoy life."

Koch went to work for the city in 1934 as an employee of the Utilities Department. He became Cleveland's first and only coordinator of patriotic activities in the 1940s after he saw young men marching off to war with no one there to wish them well.

"It made me recall when I was in the Army," he said, "I just felt that something should be done to show these lads the appreciation of the city of Cleveland. Through that I picked up a heavy feeling of patriotism, and everything I've done from then on has been of a patriotic nature."

Koch began urging high school bands, businessmen and volunteer groups and the Cleveland city government to send off soldiers leaving Cleveland to fight in Germany, Africa or the Pacific. The support Koch received prompted Mayor Edward C. Blythin to move Koch out of the Utilities Department and create a new position for him.

Koch, a Louisville, Ky., native, said his work with veterans began before World War I when he started helping veterans of the Spanish-American War organize Flag Day parades.

Veterans' organizations started becoming truly viable after World War I, he said. Koch, who can remember when Cleveland didn't have a Veterans Administration office or a veterans' hospital said former soldiers are treated much better today than 50 years ago.

But he said veterans still need increased medical assistance and hospitalization benefits. The need is going to increase as the percentage of older veterans grows, he said.

Seman, a Korean War veteran, said he became Koch's lieutenant a decade ago when he was working at City Hall as press secretary for then-Mayor Ralph Perk. Koch has helped scores of veterans who were not aware of what benefits they were entitled, he said.

"Chester works on education. Or if people die, he helps get them a military funeral. He usually knows what buttons to push to get an honor guard or to get the person properly buried," Seman said, "If a veteran has a question and Chester doesn't know the answer, I don't know anyone else in the community who would."

Koch, who lives with his wife in suburban Garfield Heights, said he is involved in the Veterans of Foreign Wars, the American Legion the Catholic War Veterans, the Polish Legion of American Veterans and the Marine Corps League. His greatest participation has been in the VFW.

"I haven't missed a state meeting in 53 years, and I haven't missed a national meeting in that long," Koch said of the VFW. "If I find one or two older men I'm lucky."

Curtis Jewell, assistant adjutant general at the VFW's national headquarters in Kansas City; said Koch has been a member of the organization's National Security and Foreign Affairs Committee for years. The committee meets annually in Washington with Koch in attendance.

"I don't think there's any doubt that Chester has contributed a lot to veterans in general," Jewell said. "But I think it extends beyond veterans to the general citizenry in a patriotic sense—not only in Cleveland but throughout the state of Ohio."

Koch said he has no plans to quit contributing.

"I'm operating on borrowed time, there's no question about that," he said. "There's one thing I have practiced for many years. In the morning I ask the Lord for help to get me through the day. And in the evening I thank the good Lord."●

THE 50TH ANNIVERSARY OF THE POLISH ROMAN CATHOLIC UNION OF AMERICA'S MICHIGAN WOMEN'S DIVISION

● Mr. RIEGLE. Mr. President, on Thursday, March 24, 1988, the Michigan Women's Division of the Polish Roman Catholic Union of America [PRCUA] will celebrate its 50th anniversary with a special dinner program, to be held at the Polish Century Club in Detroit.

For the past 50 years, the Michigan Women's Division of the PRCUA has been serving the needs of the Polish American community at both the local and national levels. Through its work, the Michigan women's division has sought to instill within members of the Polish-American community an appreciation for their rich heritage, an understanding of what it means to be a good citizen and an interest in being active participants in their communities, churches, and schools.

Through various activities for children and young adults such as folk dancing, singing, hobby classes, youth festivals and language classes, the Michigan women's division continues to encourage the preservation of Polish customs and traditions. I want to particularly commend the Michigan women of the PRCUA for the many important programs they sponsor, such as their 12 Polish folk dance schools, various fraternal programs, youth day celebrations, as well as the traditional Polish Easter "Swieconka" and Christmas "Oplatek" dinners.

Mr. President, I extend my warmest congratulations to the Michigan Women's Division of the PRCUA on their 50th anniversary. They deserve great credit and thanks for the tremendous services they have provided to the Polish-American community, and for their tireless efforts to preserve their rich Polish heritage.●

GREEK INDEPENDENCE DAY

● Mr. RIEGLE. Mr. President, March 25 marks Greek Independence Day, the 167th anniversary of the beginning of the revolution which freed the Greek people from the Ottoman Empire. I believe that it is appropriate today to pay tribute to a nation and culture which so greatly influenced our own democratic foundations.

As in the previous years, I am pleased to cosponsor a resolution declaring March 25 "Greek Independence Day: A National Day of Celebration of Greek and American Democracy." Last year, the 166th anniversary of Greek independence coincided with our own celebration of the 200th anniversary of the United States Constitution.

The Greek people's devotion to their freedom and their commitment to democracy have inspired other peoples to establish for themselves a system of government which is dedicated to preserving individual rights and freedoms. Many of the principles of our own Constitution are based on the political and philosophical experience of ancient Greece. The special relationship our two countries have enjoyed since the beginning of the Greek struggle for independence is based on that shared appreciation for democracy.

Modern ties were formed in the early days of the American Republic as the war for Greek independence was being waged. During their own revolution the Greeks borrowed from the ideals and lessons of the American revolution and even translated the Declaration of Independence into a document for their struggle against the Ottoman Empire. Today, this bond remains strong and is perpetuated by the vital Greek American community. It is also evident in our relationship with Greece in the North Atlantic Treaty Organization [NATO].

The Greek people deserve strong United States support on a number of key issues. We are deeply concerned about the ecuminical patriarchate in Constantinople. Renewed hope for the preservation of the patriarchate came recently with the historic meeting in December 1987 between the Primate of the Creek Orthodox Church of North and South America and the mayor of Istanbul, Bedrettin Dalan. The Primate, Archbishop Iakavos, stated his belief that the Greek-American community "can serve as a golden bridge between Greece and Turkey in achieving a just resolution of this critical human rights issue."

The continuing Turkish occupation of Cyprus stands in stark contrast to the independence Greece has enjoyed for the past 161 years. Fourteen years after the invasion, Turkish forces continue to occupy the formerly independent island of Cyprus. Over the years I have worked with others to bring about a just and peaceful resolution to that illegal Turkish occupation of Cyprus. It is imperative that Turkey's 30,000 troops on the northern part of the island are removed so that U.N. sponsored negotiations can begin.

George Vassiliou, the newly elected President of Cyprus, has pledged to work toward a settlement of the Cyprus problem with the Turkish Cypriots. His election is, I believe, a positive step which may bring closer the day when a resolution of the Cyprus tragedy is ultimately achieved.

Finally, the historic agreement in January between Greek Prime Minister Andreas Papandreou and Turkish Prime Minister Turgut Ozal to work together to resolve differences over the Aegean Sea and other matters marked an important turning point. In what was the first direct communication between leaders of the two countries in 10 years an agreement was reached to meet at least once a year, to set up a joint economic council to promote trade and tourism, and to create a direct "hot line" for crisis communications. Although no real discussion of the Aegean dispute or the future of Cyprus were discussed, the meeting represented an important first step.

I hope that the positive developments we have witnessed over the past year will continue and that our own relationship with Greece will help bring closer the day when the longstanding Greek-Turkish conflicts are resolved and the Greek people can once again enjoy the democratic principles of their ancestors.●

BICENTENNIAL MINUTE

MARCH 20, 1920: SENATOR NEWBERRY FOUND GUILTY

● Mr. DOLE. Mr. President, 68 years ago yesterday, on March 20, 1920, Senator Truman H. Newberry and 16 of his 84 codefendants were found guilty of criminal conspiracy growing out of his 1918 campaign for the Senate. This was yet another startling event in one of the most dramatic Senate elections in our history, one which involved America's most famous automobile manufacturer.

The 1918 Michigan Senate race pitted against each other two industrialists of great personal wealth: Truman Newberry and Henry Ford. After a hard-fought campaign, Newberry won the election. But Ford and many newspapers assailed Newberry for excessive campaign spending and for intimidating voters. The Senate referred Ford's complaint to the Committee on Privileges and Elections. In the meantime, Newberry and 134 others were indicted for violating the Federal Corruption Practices Act, which had set a $3,750 limit on campaign spending in Senate races. By contrast, it was estimated that Newberry had spent the then shocking amount of $195,000 on his election. In 1920 the Senator was convicted.

Newberry appealed to the Supreme Court, arguing that the Federal Government had no authority to control State primaries. In 1921, the Supreme Court unanimously overturned Senator Newberry's conviction, on the grounds that the lower court judge had given erroneous instructions to the jury—but the Justices were divided in opinion over the constitutionality of a Federal statute to control State elections.

In 1922 the Senate's Privileges and Elections Committee agreed that Newberry was the duty elected Senator from Michigan, but declared that his excessive campaign spending had harmed the honor and dignity of the Senate. Since Henry Ford gave no indication of abandoning his own crusade against the Senator, Newberry decided to resign voluntarily from the United States Senate.●

BICENTENNIAL MINUTE

MARCH 3, 1843: SENATOR REJECTS A CABINET NOMINEE THREE TIMES

● Mr. DOLE. Mr. President, it is a very rare occasion when the Senate rejects a Cabinet nomination, but 145 years ago, on March 3, 1843, the Senate turned down a Cabinet nominee—not just once—but three times.

What precipitated such a senatorial rebuke? Essentially, the Whig dominated Senate was at loggerheads with the independent-minded President, John Tyler. Tyler, a Democrat turned Whig, was the first Vice President to succeed to the Presidency upon the death of a President. In the White House he vetoed much of the Whigs' legislative program, and won the party's emnity.

On the night of March 3, 1843, Tyler came to the Capitol to sign legislation and submit last-minute nominations at the end of the Twenty-Seventh Congress. For his Secretary of the Treasury, the President nominated Representative Caleb Cushing of Massachusetts. Although a Whig, Cushing had been sharply critical of Senate Whigs and a strong supporter of President Tyler. Liking neither the President nor his nominee, the Senate rejected Cushing by a vote of 19 to 27.

President Tyler was so outraged by the Senate's action, that he sent his secretary back into the Chamber with a notice that he had renominated Cushing for the same post. What the President hoped to accomplish is hard to fathom, for the second vote went even more heavily against him. This time Cushing lost a 9 to 27 vote. This defeat further enflamed the President's anger, and he sent back Cushing's nomination for a third time, only to lose by an embarrassing 2 to 29. At last even Tyler had to bow to the inevitable and nominate another candidate.

Caleb Cushing was the second Cabinet nominee ever rejected for confirmation; and since 1843 the Senate has turned down only six others.●

PRINTING OF SENATE DOCUMENT

Mr. BYRD. Mr. President, on behalf of myself and Mr. SIMPSON, I send a Senate resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 398) authorizing the printing of the compilation entitled "Majority and Minority Leaders of the Senate" as a Senate document.

Mr. BYRD. Mr. President, I ask that the clerk read the resolution. It is very short.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

S. RES. 398

Resolved, That the compilation entitled "Majority and Minority Leaders of the Senate", prepared by the Senate Parliamentarian Emeritus, Floyd M. Riddick, shall be printed, with any revisions and certain tables, as a Senate document, and an additional 2,000 copies shall be printed for distribution by the Secretary of the Senate.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the resolution.

The resolution (S. Res. 398) was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

NATIONAL BLACK INVENTORS DAY

Mr. BYRD. Mr. President, I ask unanimous consent that House Joint Resolution 377, a joint resolution designating March 27, 1988, as "National Black Inventors Day" be placed on the calendar.

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

METROPOLITAN AREA TRANSIT REGULATION COMPACT

Mr. BYRD. Mr. President, I ask unanimous consent that House Joint Resolution 480, a joint resolution amending the Washington Metropolitan Area Transit Regulation Compact just received from the House be placed on the calendar.

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

REQUEST BY DEPARTMENT OF JUSTICE FOR SUBCOMMITTEE DOCUMENTS

Mr. BYRD. Mr. President, I send to the desk a resolution, on behalf of myself and Senator SIMPSON, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A Senate resolution (S. Res. 399) to authorize release of documents by the Subcommittee on Oversight of Government Management of the Committee on Governmental Affairs.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

The Senate proceeded to the immediate consideration of the resolution.

Mr. BYRD. Mr. President, in September 1987, the Subcommittee on Oversight of Government Management of the Committee on Governmental Affairs conducted hearings on the "Oversight of Federal Procurement Decisions on Wedtech." The Department of Justice has requested that the subcommittee provide it with documents relating to testimony at those hearings.

This resolution will authorize the Subcommittee on Oversight of Government Management of the Committee on Governmental Affairs to provide such documents to the Department of Justice solely for use in its investigation. Mr. President, I urge adoption of the resolution.

Mr. SIMPSON. Mr. President, I would join with the majority leader as a cosponsor of that resolution.

The PRESIDING OFFICER. That will be the order.

Mr. BYRD. Mr. President, I thank the distinguished Senator.

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

The resolution was agreed to.

The preamble was agreed to.

The resolution with its preamble are as follows:

S. RES. 399

Whereas, the Subcommittee on Oversight of Government Management of the Committee on Governmental Affairs held hearings in September 1987 on the "Oversight of Federal Procurement Decisions on Wedtech";

Whereas, the Department of Justice has requested documents in the possession of the Subcommittee that are relevant to the resolution of questions arising from testimony given during those proceedings;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that documents, papers, and records under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistently with the privileges of the Senate: Now, therefore, be it

Resolved, That the Chairman of the Subcommittee on Oversight of Government Management of the Committee on Governmental Affairs is authorized to provide to the Department of Justice investigative documents relating to hearings on "Oversight of Federal Procurement Decisions on Wedtech," subject to any assurances the Subcommittee deems necessary to protect the interests of the Senate.

NEVADA-FLORIDA LAND EXCHANGE AUTHORIZATION ACT OF 1988

Mr. BYRD. Mr. President, on behalf of Mr. JOHNSTON, I send to the desk a concurrent resolution, and on his behalf, I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A Senate concurrent resolution (S. Con Res. 106).

Resolved, by the Senate (the House of Representatives concurring), That the President of the United States is requested to return to the Senate the enrolled bill (S. 854) entitled "An Act entitled the 'Nevada-Florida Land Exchange Authorization Act of 1988'. The Secretary of the Senate is authorized to receive such bill if it is returned when the Senate is not in session. Upon the return of such bill, the action of the Speaker of the House of Representatives and the Deputy President pro tempore of the Senate in signing it shall be deemed rescinded and the Secretary of the Senate shall reenroll the bill with the following corrections:

In subsection (a) of section 3, strike "conveyance of" and insert in lieu thereof the words "conveyance to".

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

The Senate proceeded to the immediate consideration of the concurrent resolution.

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

The concurrent resolution was agreed to:

Mr. BYRD. Mr. President, does the distinguished assistant Republican leader have any further statement or business that he would like to bring up before the Senate?

Mr. SIMPSON. Mr. President, I believe not. I thank him for his courtesies and willingness to recognize any extra function here, and I have none to perform. I thank him.

Mr. BYRD. I thank the Senator.

PROGRAM

Mr. BYRD. Mr. President, the Senate will convene at 10:30 tomorrow morning. Following the two leaders under the standing order there will be morning business until 11 o'clock a.m. Senators may speak during that period of morning business.

The second half-hour under the cloture rule will be divided and controlled by Messrs. METZENBAUM and HATCH.

No amendments will be in order. The mandatory quorum call will begin at 11:30; and upon the establishment of a quorum, the rollcall vote will occur on the motion to invoke cloture on the bill S. 79. That will be a 15-minute rollcall vote, Mr. President.

I ask unanimous consent that the call for the regular order be automatic at the close of 15 minutes.

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

Mr. BYRD. Mr. President, if cloture is invoked, S. 79 will be the business before the Senate, to the exclusion of all other business, until action is completed thereon. If cloture is not invoked on S. 79, the Senate will resume consideration of the measure, debate, and amendments thereto. I would anticipate that there would be rollcall votes during the afternoon tomorrow.

I believe that there is a function tomorrow evening to which Senators have been invited. Therefore, I do not anticipate that the Senate will be in late tomorrow.

RECESS UNTIL 10:30 A.M. TOMORROW

Mr. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until the hour of 10:30 tomorrow morning.

The motion was agreed to; and, at 5:36 p.m., the Senate recessed until tomorrow, Wednesday, March 23, 1988, at 10:30 a.m.