

## SENATE—Monday, September 17, 1990

(Legislative day of Monday, September 10, 1990)

The Senate met at 1:30 p.m., on the expiration of the recess, and was called to order by the Honorable RICHARD C. SHELBY, a Senator from the State of Alabama.

## PRAYER

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

Let us pray:

*Search me, O God, and know my heart: try me, and know my thoughts: And see if there be any wicked way in me, and lead me in the way everlasting.—Psalm 139:23, 24.*

Almighty God, infinite in wisdom and power, our Nation faces intractable domestic and international problems which, if not resolved, threaten ruin. Thy Word declares that nothing is too hard for Thee, nothing is impossible. Help the leadership of our Nation to look to Thee, to yield to Thee, to allow Thee to work through them for resolution. If they will not, who will? And if now is not the time, when? Remove from our hearts, Mighty God, any resistance to Thy wisdom, Thy will, Thy work. Grant that no individual will stand in the way of Your perfect will being done at this consummately critical time in the life of our Nation.

We pray in the name of Jesus in whom resides all power, in Heaven and on Earth. Amen.

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, September 17, 1990.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable RICHARD C. SHELBY, a Senator from the State of Alabama, to perform the duties of the Chair.

ROBERT C. BYRD,  
President pro tempore.

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

## RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The acting majority leader is recognized.

## THE JOURNAL

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

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

## SCHEDULE

Mr. CRANSTON. Mr. President, following the time for the two leaders this afternoon there will be a period for morning business, not to extend beyond 2 p.m., with Senators permitted to speak therein for up to 5 minutes each.

At 2 p.m. today the Senate will begin consideration of S. 1511, the Older Workers Benefit Protection Act.

Later today, there will be an announcement of when the vote will be scheduled tomorrow on the Coats amendment and final disposition of the D.C. appropriations bill.

Mr. President, the majority leader asks that I announce for the information of Senators that there will be no rollcall votes today. The vote originally scheduled for 7 p.m. on the Coats amendment will not be held today.

## RESERVATION OF LEADER TIME

Mr. CRANSTON. Mr. President, I ask unanimous consent that the time for the two leaders be reserved for their use later in the day.

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

## MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business, not to extend beyond the hour of 2 p.m., with Senators permitted to speak therein for not to exceed 5 minutes each.

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

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

The legislative clerk proceeded to call the roll.

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

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

## OIL INDUSTRY IS GOUGING AMERICAN CONSUMERS

Mr. LIEBERMAN. Mr. President, last Thursday, the Secretary of Energy, James Watkins, told a Senate hearing that the oil industry's pricing of gasoline is not unreasonable, and "is working very well, and is rather typical of the supply and demand situation."

That is a statement that I presume sent chills and feelings of anger up the backs of most Americans, as it did for me. Twenty-four hours later, Secretary Watkins' boss, the President of the United States, said:

The speculative atmosphere of the oil market belies the reality, which is that there are sufficient petroleum products, so that the market should not be going for a higher price.

Needless to say, I agree with the President. This is a significant difference of opinion between the President and the Secretary of Energy, and I hope that it signals a growing awareness in this administration of the damage that is being caused by price gouging on the part of the oil industry.

That is a reality that grabbed the American people weeks ago, because we know in our guts what the experts are now just beginning to express: The oil industry is making a killing off the Persian Gulf crisis, and that killing is at the expense of the American consumer, but not just that; it is at the expense of the American economy, which is sinking rapidly into recession as a result of the outrageous increases in energy prices.

In fact, as the Washington Post reports this morning, the increase in oil prices has had the effect of imposing an \$85 billion annual tax on Americans. Our colleagues are out there at Andrews Air Force Base now pulling their hair, arguing, pushing and pulling to try to come up with a possibility of \$25 billion in tax increases to help us reduce the budget deficit.

And here in a unilateral and unjustified action, the oil industries raised taxes effectively by \$85 billion on all Americans.

The oil industry claims it had no choice but to raise prices to reflect

changes in the market price of oil. But the fact is, the price of gasoline at the pump is not tracking the spot market price at all. Gas prices have gone up, and have stayed up, despite wide fluctuations in spot market prices.

I have looked at charts recently which showed the rises and falls since the invasion of Kuwait in the world spot market and the world crude oil market and the spot market for unleaded gasoline, and they go up and down. But if you look at the chart for retail price of gasoline, it goes up and it stays up. It does not reflect the rises and falls. When it comes to gas prices the laws of economics and gravity apparently do not relate. When it comes to gas and oil prices in this country what goes up apparently always stays up.

In a time of crisis like the present, the oil industry does not set prices according to the traditional laws of supply and demand, it sets prices in my opinion according to what it thinks it can get away with.

In one sense, who can blame the oil industry? After all, they are in business to make money, and since there is no law on the books against price gouging, some might say, why shouldn't they rip us off?

While the urge to profiteer might be understandable, it is not acceptable. The public will not stand for it, and those of us who represent the public should do something about it. Today, I suggest that the President take several steps to combat oil price gouging, over the short and long terms. Last week, I introduced the National Emergency Anti-Profiteering Act. I am proud to have been joined by 20 of my colleagues in this body in introducing that legislation. It would put in place the mechanism we need to put some restraint on oil industry price gouging. Simply put, if there is no law against price gouging, price gouging will inevitably result every time there is a crisis in the oil markets, from a refinery fire to an oilspill to troubles in the Middle East.

I applaud the President for recognizing that profiteering and speculation is going on and is hurting the American economy. Now, I urge him to get that message to his Secretary of Energy and to embrace our antiprice gouging legislation so he can do something about the practice that is wreaking so much havoc across our land.

Second, the President should begin to tap the strategic petroleum reserve in order to put a damper on the speculation that he recognizes exists in the oil markets. Without an anti-price gouging law, and without tapping the strategic petroleum reserve, one thing is clear: if the President finds it necessary to use force in the Middle East, oil prices will shoot up faster than a cruise missile. He should use the strategic petroleum reserve as a weapon

against uncertainty and panic in the oil markets and oil company profiteering on the Persian Gulf crisis, and strip from them any excuse they would give about shortages of supplies forcing them to raise prices.

Third, the President should call on the oil industry to reduce their extraordinary exports of gasoline to foreign nations. The Wall Street Journal reports this morning that U.S. gasoline exports are rising, despite the fact that this could lead to shortages here at home. Why in the world should we be sending precious gasoline abroad when we need it right here? I know there has been a lot of talk about an oil import fee; perhaps it's time to talk about a gasoline export fee. In their search for ever-higher profits, the big oil companies have decided to ship our gas to Europe. According to the Wall Street Journal between 4.5 and 6.75 million barrels of exports have occurred within the past 45 days alone. That equals more than 30 percent of all our gasoline exports last year.

And finally, Mr. President, I would like to call my colleagues' attention to an article in Sunday's New York Times, in which it is reported that the big oil companies are looking for ways to bury their profits in order to avoid a public outcry when their third quarter earnings are reported in October. For example, ARCO has apparently suddenly decided to settle a dispute with the State of Alaska, and last week agreed to pay \$287 million to the State government, apparently finding it a convenient and timely way to dispose of profits it has enjoyed during this recent wave of price gouging. And the Oryx Energy Co. actually took out loans of nearly \$1 billion—loans that will eat into its reported profit margins—to buy 17 percent of its own stock.

Well, try as they might, I do not think we should let the big oil companies get away with this kind of shell game. Wherever they hide their profits, we should expose them, so that the full magnitude of their profiteering can be evident to all. The fact that they are busily squirreling away millions of dollars just goes to prove what we've been saying all along, which is they are charging us so much more for every gallon of gasoline than they had to pay for it when they bought the crude a month, 2 months, 3 months ago. The result of that is outrageous profits, and now they are embarrassed by their riches and are trying to hide them in our eyes. But it will not and cannot work.

Mr. President, for the benefit of my colleagues, I ask unanimous consent to have printed in the RECORD the two articles that I have mentioned, one, "Gasoline Exports Rise Despite Concern Over Supplies," by Allanna Sullivan, in the Wall Street Journal today, and the second titled "Fearing Outcry,

Big Oil Companies Will Trim Profits," by Thomas Hayes, of the New York Times, yesterday, September 16, 1990.

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

[From the Wall Street Journal, Sept. 17, 1990]

**GASOLINE EXPORTS RISE DESPITE CONCERN OVER SUPPLIES**

(By Allanna Sullivan)

Even as experts fret over the adequacy of future U.S. petroleum supplies, the domestic oil industry has quietly stepped up exports of gasoline.

If the outflow continues, it could mean continued high pump prices for U.S. motorists and tight supplies at the wholesale level in the months ahead. That, in turn, could create public-society headaches for the government, which is asking motorists to conserve gasoline, and for the oil industry, already accused of price gouging in the current crisis.

Since the start of the Iraq-Kuwait oil embargo in early August, shipments of gasoline out of the country—mostly to Europe—have doubled or tripled from their skimpy rates of recent years, according to numerous people familiar with or involved in oil trading.

There is nothing illegal or improper about such sales—oil is one of the most widely traded world commodities. But they do represent a "very, very significant abnormality from trends of recent years," says Calvin Kent, head of the Energy Department's Energy Information Administration.

Gasoline is routinely imported into some major U.S. markets because domestic refineries can't always satisfy demand. And the small amounts of fuel exported usually to nearby countries for logistical reasons, although some regularly goes to Japan.

But now profit opportunities overseas have zoomed, with European buyers offering \$4 to \$8—and at one point in excess of \$10—more per barrel for gasoline than the U.S. market. A \$4-per-barrel differential means \$1 million of additional profit on a typical tanker-load. As a result, one oil company official says his company feels "considerable pressure" to export. Like many oil industry people, he wouldn't discuss exports unless given anonymity.

No one knows yet exactly how much more U.S. gasoline is going overseas in the wake of the Middle East crisis. Government data on tanker exports lag behind by several months because of an antiquated, century-old tracking system. But industry people who attempt to measure such activities on their own put the figure at 10 to 20 cargoes since early August. "It's not an armada, but it has become a trend," says Peter Gignoux, who heads the international trading desk for Shearson Lehman Hutton in London.

Philip Verleger, senior fellow at the Institute for International Economics and a Treasury Department official under President Carter, told a gathering of 35 congressmen Thursday that exports "could be as much as 100,000 to 150,000 barrels a day for August" and early September.

Such estimates suggest between 4.5 million and 6.75 million barrels of exports in the past 45 days. When compared with government statistics, that would equal more than 30% of all the gasoline exported for the full year of 1989. Gasoline exports last year, according to the Energy Department's Mr. Kent, averaged 39,000 barrels daily,

with no more than 60,000 barrels a day exported in any one month.

The increase in exports, coupled with a modest decline in imports in recent weeks, could mean lean gasoline supplies in the U.S. later this year unless demand falls significantly, some industry and government analysts think. While demand is off a bit now because of the softer economy, and inventories have risen slightly in recent days, supplies still aren't bountiful. As a result, the seasonal slump in retail pump prices that normally follows the end of the summer driving season may not occur this year, analysts say.

In fact, motorists may even have to pay still more. "We're struggling just to maintain our gasoline inventories now," says Ted Eck, chief economist for Amoco Corp. Adds Sarah Emerson, analyst for Energy Security Analysis Inc.: "As long as U.S. gasoline goes to Europe, supplies of that fuel will remain tight."

Mr. Kent of the Energy Department says he is haunted by a sense of *deja vu*. "The situation bears watching," he says. "Last year, good bits of propane were diverted to Europe because prices were higher there. And when the weather turned cold here, the U.S. was short that fuel."

So far this year, gasoline demand in Europe has been running 3.5 percent ahead of last year because of robust economies and increased motor travel caused by the opening of Eastern Europe. At the same time, European refiners are being squeezed by the loss of large amounts of partially refined Kuwaiti oil that was easily turned into gasoline. In part, they are substituting some Saudi crudes that yield less gasoline per barrel.

So wholesale prices are much higher than in the U.S. On some recent days, gasoline there fetched 10 cents to 20 cents a gallon more than in the U.S.; on one day, the gap was 32 cents.

#### COMPANIES MAKING TRANSACTIONS

The full list of refiners taking advantage of such spreads can't be determined. However, people involved with trading identify at least five involved in recent transactions: Phibro Energy, a unit of Salomon Inc.; BP North America Inc., a unit of the United Kingdom's British Petroleum Co.; Texaco Inc.; Citgo Petroleum Corp., wholly owned by Venezuela, and Kansas-based Koch Industries Inc.

In response to questions, Phibro says only that it does from "time to time export an odd cargo" of gasoline. It is understood, however, that Phibro currently has a cargo going to South America; it hasn't sent anything to Europe since hostilities in the Persian Gulf began. BP confirms that it has put together at least one cargo for Europe and that its European arm is taking into its own system any exports that it purchases. BP is also taking in U.S. gasoline in New Zealand.

Citgo says it has sent one cargo to Europe so far—230,000 barrels of super premium unleaded. A Koch official says that company sold one cargo to BP North America, but says he doesn't know how BP used it. He also says Koch has made sales to U.S. companies with refineries overseas, but doesn't know what happened to the fuel after that. Texaco confirms it sent one cargo of gasoline to supply customers of its Pembroke refinery in Wales, which is down for maintenance. It says the shipment doesn't reflect a continuing program.

While there is nothing wrong with such transactions, the timing couldn't be worse for

the oil industry. The Justice Department is already investigating the sharp rise in gasoline prices since the invasion of Kuwait. Now other federal agencies are chasing information on exports, including the Energy Department and, industry advisers say, the Central Intelligence Agency.

#### "EMBARRASSMENT" OR "FREE MARKET"

Most high-ranking oil officials are reluctant to discuss the topic. "No doubt, it's an embarrassment," concedes one. Adds another executive at a large U.S. oil company: "No refiner in his right mind should export product right now. Just one barrel, just one rowboat full—the heat we'd take from the feds would be immense."

Those willing to defend exporting say it is merely the free market at work. "We aren't taking gasoline from Americans for the net benefit of the rest of the world," insists an official of a company making exports. "Demand for gasoline is simply stronger in Europe than it has been here."

Tom Burns, manager of economics for Chevron Corp., says: "The market is allocating the gasoline to those who value it most highly. This shouldn't be looked at in a moralistic way. And if it is, well, we're just exporting to our allies who need it." Mr. Burns says Chevron isn't exporting.

The government could face an equally awkward public-relations dilemma. Among the questions pondered at last Thursday's closed-door congressional meeting was what the public might think about oil being exported for profit "while American husbands and sons go to the Saudi desert to fight," says one attendee. Also, the government is in the midst of kicking off a campaign calling on American motorists to cut back on gasoline consumption.

#### U.S. ENERGY POLICY

Some industry experts contend a schizophrenic U.S. energy policy has inadvertently encouraged exports by creating a two-tier global oil pricing system in which the U.S. trails. The administration preaches the free market, even as it imposes a subtle form of oil price control by having officials call industry executives to urge restraint.

And as the government struggles to set strategy, it doesn't always take into account anomalies that can arise within the market. For instance, analysts say, not all oil-fed utilities and manufacturing plants in the U.S. should be encouraged to stop using residual fuel oil in favor of natural gas. If too much of that heavy fuel oil is shunned, they argue, oil refineries will have to cut back on runs of gasoline and heating oil. That is because they would be swamped with unsold "resid" that is automatically produced at the same time.

"The government—it just doesn't know how to connect the dots," says Lawrence Goldstein, president of the Petroleum Industry Research Foundation.

#### FEARING OUTCRY, BIG OIL COMPANIES WILL TRIM PROFITS

(By Thomas C. Hayes)

Fearful of public and Congressional outcry over the large profits that many oil companies are likely to report for the fiscal quarter that ends in two weeks, industry executives are trying to find ways to hold down those profits.

Their strategy takes two tacks. One is to hold down the increases in the retail price of gasoline. That may be news to motorists who have seen gas prices rise an average of 23 cents a gallon since the Iraqi invasion of Kuwait last month, but oil industry execu-

tives say a 36-cent-a-gallon increase would have been needed to offset the sharp increase in crude oil prices, which have nearly doubled this summer.

The oil companies' second strategy for reducing profits is to increase the amount of money they set aside, or hold in reserve, for future environmental expenses, for refinery and chemical-plant maintenance programs and for potential legal claims. Such a step is commonplace in the industry and conforms with accounting standards.

In trying to hold down profits, the oil industry is heeding the advice of the White House and senior Republicans in Congress.

#### CALLS FOR RESTRAINT

In a speech on Aug. 8, President Bush urged the oil companies to show restraint in raising gasoline prices. The next day, Senator Bob Dole of Kansas, the minority leader, sent a telegram to the chief executives of 11 major oil companies, warning that if gasoline price increases were not checked, the outcry would be overwhelming.

"I can assure you that it will be very difficult to stop legislation controlling the prices of petroleum products or taxing profits resulting from these increases should not action be taken by the oil industry," he said in the telegram.

The industry is anxious to avoid a replay of the 1970's, when angry consumers and legislators pilloried Big Oil as oil prices and company profits soared. A windfall profit tax took several billion dollars away from oil companies before crude oil prices plunged below \$10 after 1985. Bryan Jacoboski, an analyst at Paine Webber, said oil executives suppose now that "the best way to avoid any windfall profit tax is not to report any windfall profits."

One warning of potential backlash came Thursday, when Senator Kent Conrad, a North Dakota Democrat, told Energy Secretary James D. Watkins, "There will be universal outrage" if reports of soaring oil profits appear.

Mr. Watkins replied that antitrust officials in the Justice Department were the Administration's first line of defense against profiteering. He also said oil companies that engaged in the practice would be "hampered" by the Administration.

Senator Conrad said in an interview Friday: "If there is a significant surge in profits, we all know there will be a public reaction. I'm not engaged in oil-industry bashing. I am trying to understand what the President means when he says we will not allow profiteering. Where is the plan?"

Nonetheless, profit increases of more than 40 percent from those reported in the comparable fiscal quarter last year seem certain for at least four major oil companies, and many others are expected to show profits of close to 20 percent, Wall Street securities analysts say. In general, oil companies that will profit the most are those that produce a great deal of crude oil and thus will benefit from the near-doubling of crude oil prices.

"It's a great time to be a producer of oil, but it's a bad time to be a retail seller of gasoline," Mr. Jacoboski said.

Holding down prices at the gas pump could also help the larger oil companies in the future because smaller competitors might be squeezed out of gasoline retailing.

#### SMALLER COMPANY HURT

One independent company, the East Coast Oil Corporation, which is based in Richmond and has 42 gas stations in Virginia, has had its daily sales volume reduced by 20 percent in the last month because its prices

are now a few pennies a gallon higher than nearby stations operated by major oil companies like Texaco and Mobil.

East Coast's president, John M. Steele, said he would have to sell the gas at a loss of a few pennies a gallon to match the major companies' prices. As it is, at an average price of \$1.20 a gallon, he said he was making two-tenths of a cent a gallon in profit, before taxes and expenses. In early July, when he sold the same gasoline for 95 cents a gallon, three cents below the competing large oil companies, his operating profit was eight cents a gallon.

The oil companies' strategy of building up reserves to pay for future expenses is not uncommon.

"It's kind of a well-established tradition in the oil industry that any time your company realizes extraordinary earnings that you try to develop some extraordinary pocket to deeply hide those earnings," said Bernard J. Picchi, an analyst at Salomon Brothers. "Environmental charges have been the favorite in the last two years. I expect we will see more of them, and a lot more settlements of long-standing legal disputes."

Staying attuned to Congress has taken on a fresh urgency for oil executives, who see in the Persian Gulf crisis an opportunity to reclaim some of the political ground lost after the disastrous Exxon Valdez oil spill in Alaska 18 months ago.

The blockade against Iraq and Kuwait crude has dramatically underscored the decline of the nation's oil production which has fallen to about seven million barrels a day. The United States, which consumes about 16 million barrels a day, has become more dependent on low-cost crude imports. Daily crude imports were nearly eight million barrels a day before the Iraqi invasion on Aug. 2.

The oil industry wants Congress to back new tax credits that would reduce drilling expenses in the United States. It also wants to explore and produce oil in the Arctic National Wildlife Refuge in Alaska and the coastal waters near Southern California, the Carolinas and Florida.

#### STEPS TO CUT PROFITS

In examples of how oil companies are trying to curtail profits, ARCO and Oryx Energy announced steps last week that will bite into their third-quarter earnings. ARCO settled a long-running pricing dispute over Alaskan crude oil last week, agreeing to pay \$287 million to Alaska's government.

Oryx, the nation's largest independent oil producer, said it had taken out new loans of nearly \$1 billion, sharply raising its interest expense, to acquire 17 percent of its stock, held by the Pew family charitable trusts, for \$968 million.

The oil industry is far from monolithic, as the plight of the independent gasoline marketers suggests. Many major oil companies, including Exxon, Mobil, Amoco and Texaco, are called "integrated" because they operate in virtually all phases of the industry: exploration, production, refining, transportation, service-station retailing and petrochemical manufacturing.

The jump in oil prices this quarter will benefit exploration and production units because each barrel will bring in sharply higher revenues, while the costs to find and pump the oil have not changed. Most refineries also should show higher profits because gasoline demand was strong during the quarter, plant operations were close to capacity and wholesale gasoline prices rose sharply.

On the other hand, petrochemical and gasoline marketing operations were squeezed. Petrochemical units were hurt because demand for products slowed while costs for crude oil, the major raw material for making plastics and other products, soared. And gasoline marketing deliveries because of the major oil companies' response to the President's call to keep retail prices in check.

Mr. LIEBERMAN. Mr. President, I thank the Chair, and I yield the floor.

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

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

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

#### ORDER OF PROCEDURE

Mr. METZENBAUM. Mr. President, under the regular order of business, S. 1511 is to come up at 2 o'clock. I ask unanimous consent that it come up at 2:30 p.m. under the same terms and conditions as previously entered.

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

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

The PRESIDING OFFICER (Mr. LIEBERMAN). The clerk will call the roll.

The 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.

#### TRIBUTE TO JOHN HARBERT

Mr. SHELBY. Mr. President, it is with great pride that I rise today to pay tribute to John M. Harbert III, one of Alabama's most powerful and successful industrialists, who has recently retired as chief executive officer of Harbert Corp. He has made a lasting impression on the State of Alabama, and his genius as a businessman and philanthropist has touched people around the State and the world.

John founded the family owned company in 1949 after he and a crew of 12 men built a bridge near Prattville, AL. The small business struggled to eventually become a major corporation with worldwide operations and 5,000 employees, including 450 in Birmingham. He once recalled that he went broke three times, but never filed for bankruptcy. Hard work, to which he attributes his success, repaid the

debts and put the company back on its feet.

John's projects have improved the quality of life in Alabama and throughout the world. Harbert Corp. has upgraded sewage and water treatment facilities in Egypt, built grain loading and silo storage facilities along the Red Sea at Safaga, built oil and gas pipeline systems through South American jungles and drilled water wells in the Sudan. Government defense installations have been built by Harbert in the South Pacific, as well as the Middle East. In the United States, Harbert had coal and limestone mining projects and barging operations along the Mississippi River in the 1970's. Harbert also helped establish the Florida Gas Co. in the 1960's. These are a few of the countless projects, along with building roads and bridges throughout the United States, that have been major contributions to our standard of living.

John earned his B.S. degree in civil engineering at Auburn University in 1946 and is a licensed professional engineer and land surveyor in the State of Alabama. In addition to the construction company, Harbert Corp. is involved in office management and leasing, real estate development, oil and gas exploration, cogeneration and recycling.

Although business has been an important focus for John, I know that it is not the central component which has shaped his life. He is extremely involved in civic activities, especially with regard to supporting educational, medical, and arts facilities in his community and State. He is a trustee for the Birmingham Museum of Art, the Eye Foundation Hospital, Junior Achievement of Alabama, the Young Women's Christian Association and the Southeastern Legal Foundation. He is also a trustee to the Alabama School of Fine Arts, Birmingham-Southern College and the American University in Cairo. He has been nationally recognized for his work on the Birmingham Area Council of the Boy Scouts of America, which is an ongoing interest of his. In addition, he serves on the National Council of the Salk Institute in San Diego, CA, and was the first Alabamian to be elected to the National Board of the Smithsonian Associates in Washington, DC.

John has been an inspirational figure to many and has generously shared his business knowledge and experiences as executive in residence and lecturer on the campuses of the University of South Alabama, the University of Montevallo, the University of Alabama at Birmingham, Auburn University, Birmingham-Southern College, and Duke University. For his contributions to education, he was awarded the Exemplary Dedication to Higher Education Award in 1981. He

holds honorary doctorate degrees from the University of Montevallo, Auburn University, Birmingham-Southern College, and Cumberland College in Williamsburg, KY.

John's employees note that over the years he has been an eager personal participant in improving the quality of life in his community and has never failed to tackle any challenge head on when something needs to be done. He has superb timing and is willing to roll up his shirt sleeves to accomplish any task. These characteristics have contributed to his success and the success of the United States. He is no sidelin-er.

John has not retired per se, but he has resigned as chief executive officer. He is continuing his role as chairman of the board of Harbert Corp. and will probably be busier than ever.

Mr. President, John Harbert embodies the very characteristics that identify the American spirit—courage, determination, generosity, and the willingness to work hard. He is a great source of pride for the State of Alabama and has given Birmingham the opportunity to add yet another outstanding citizen to that city's history. I know that I join his wife, Marguerite, and his children, John, Raymond and Margie, in sharing their pride in his many accomplishments. I salute John as a man of great personal character, and I am honored to serve as one of his representatives in Washington and even prouder to call him my friend.

#### RECOGNIZING THE 50TH ANNIVERSARY OF THE SELECTIVE SERVICE SYSTEM

Mr. THURMOND. Mr. President, I rise today to recognize the 50th anniversary of the Selective Service System. It is a small but vital Federal agency with a very distinguished history of service. Many of us in this Chamber can personally recall those treacherous weeks leading up to World War II, and the measures taken by the Congress and President Franklin D. Roosevelt to prepare the Nation for battle. On September 16, 1940, the President signed the Selective Service and Training Act, passed by the 76th Congress, which instituted the Nation's first peacetime draft and placed it under civilian control. This was the birth of the modern Selective Service System.

We have always counted on our young men to be ready to defend America. Since 1940, and with only two brief interruptions, men have been required to register with Selective Service. Often, they have been required to serve. Over 10 million men were drafted for World War II, over 3 million more for Korea and Vietnam. It has been our good fortune that a

draft has not been necessary since 1973.

Today, the Selective Service System acts as an inexpensive national defense insurance policy. For the past 10 years, only registration has been required, yet because of this ongoing program and continued mobilization planning, the System is ready to resume a draft at a moment's notice, should the Congress and the President decide that conscription is needed in an emergency.

Two years ago, I hosted a few other Senators and Congressmen to personally congratulate 18-year-old Neil Goldberg, the 20 millionth man to register with Selective Service since the program was reinstated in 1980. Today, nearly 99 percent of the Nation's draft-eligible men, ages 20 through 25, are registered. It is rare, indeed, that any Government program can claim a 99-percent success rate.

This notable achievement is a tribute to the cooperation of the young men themselves, and to the men and women of the Selective Service System who have worked so long and hard to improve compliance rates. It also reflects well on Congress. We have seen fit to pass legislation over the years which helped increase awareness of the registration requirement.

For example, a Military Selective Service Act amendment, which I sponsored in 1985, tied registration to eligibility for most Federal jobs. A man must have satisfied the Selective Service registration requirement before he can work in the executive branch of the Government or in the Postal Service. An amendment introduced by Representative GERALD SOLOMON in 1982 linked registration with eligibility for Federal student financial assistance under the Higher Education Act.

Let us hope and pray that our Nation is never again involved in a crisis of such magnitude that a draft becomes necessary. But let us be appreciative of the fact that we must maintain the capability of mobilizing America's manpower if it ever becomes necessary to do so. The Selective Service System, with the millions of names and addresses in its computers, provides that capability.

It has a small annual budget, and it is authorized only 277 full-time employees, yet System Director Samuel K. Lessey, Jr., runs a tight ship with a proven track record. To ensure that it is ready, the System depends on part-time support from more than 700 assigned National Guard and Reserve officers and it has identified and appointed over 11,000 citizen volunteers who are ready to serve on local, appeal, and review boards.

Let us express our appreciation to all the members of this Selective Service family on their agency's golden anniversary. They help keep our Nation strong in a sometimes-hostile world.

#### HERBERT BROWNELL AND THE EISENHOWER CIVIL RIGHTS RECORD

Mr. DOLE. Mr. President, last June, former Attorney General Herbert Brownell delivered a speech, entitled "Eisenhower and Civil Rights," during the year-long centennial birthday celebration of our 34th President, Gen. Dwight David Eisenhower.

Attorney General Brownell has done us all a great service by outlining in a clear—and yes, exciting way—President Eisenhower's record of leadership in opening up the American dream to all of our Nation's citizens. In his remarks, the Attorney General highlights:

President Eisenhower's efforts during World War II to break down racial barriers in the Army and to guarantee equality for America's black troops.

President Eisenhower's strong support for the plank in the 1952 Republican platform urging the elimination of racial segregation in Washington, DC.

President Eisenhower's leadership in enforcing the District of Columbia ordinance making racial segregation of public facilities illegal in our Nation's Capital.

President Eisenhower's support of the Justice Department's position in Brown versus Board of Education that school segregation was unconstitutional.

President Eisenhower's sponsorship of the Civil Rights Act of 1957, the first piece of civil rights legislation since the Reconstruction era.

President Eisenhower's courageous decision—after mediation efforts had failed—to send troops to Little Rock, AR, in order to enforce the court-ordered desegregation of the Little Rock Public School system.

Without a doubt, these were all difficult decisions made during difficult times in our Nation's history. But they were the right decisions, decisions borne out of courage and commitment, and bearing the imprint of one man in particular, Herbert Brownell.

Mr. President, I ask unanimous consent that the full text of Attorney General Brownell's remarks be inserted in the RECORD at this time.

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

#### EISENHOWER AND CIVIL RIGHTS

(Speech delivered by Herbert Brownell at the Symposium "Decade in Black and White," Eisenhower Library, Abilene, KS, June 5, 1990)

The story of the Eisenhower Administration's activities in the field of civil rights and of President Eisenhower's personal participation in those activities, has never been adequately told. Accordingly it is appropriate that we have this discussion as part of the Centenary international celebration of Dwight Eisenhower's birth.

I obtained a preview of Eisenhower's opinions in the civil rights field on the occasion of my visit to him at NATO Headquarters outside of Paris in March 1952. Eisenhower had invited me to visit him while he was considering the many requests, both from Republicans and Democrats, that he run for President on the Republican ticket. At the time I was a member of a small, informal group headed by Governor Thomas E. Dewey of New York and General Lucius Clay, U.S. Army retired. This group was meeting at the old Commodore Hotel in New York City, to spearhead the various citizen groups which were urging Eisenhower to run. At that time it had no authorization or approval from General Eisenhower for its activities.

When the invitation from Eisenhower arrived, General Clay made arrangements for me to fly to Paris under an assumed name which was deemed necessary to shield General Eisenhower against media speculation about his plans.

I was Eisenhower's guest at NATO Headquarters for an entire day. His views on the importance of the NATO alliance and the relationship with the United States and its allies in western Europe were, of course, well known by that time but his views on domestic affairs were less known. Therefore, I asked him to outline these views so that I could answer his request as to whether I thought it was politically feasible for him to.

I specifically asked him about his position on civil rights. He described his actions during the War in breaking down racial barriers in the Army and supporting equality for black troops. If he decided to run and was elected, he commented that he would seek as a first order of business to eliminate discrimination against black citizens in every area under the jurisdiction of the Federal Government.

It must be remembered that at this time, *Brown v. Board of Education*, relating to discrimination against black children in the public schools, had not yet been decided by the Supreme Court. The previous Supreme Court rule in *Plessy v. Ferguson* had allowed segregation in public schools to continue and had stood as the authoritative interpretation of the Constitution in this area by the Supreme Court for several generations. Under the *Plessy* case, the problem of segregation in primary and secondary schools was not in the Federal government's domain. *Brown v. Board of Education* was to be the turning point.

Our discussion of the Eisenhower actions in integrating the armed forces under his command during the War led to a discussion of the conflicting views on civil rights within the Republican Party. The leading Republican Governors at the time, Governor Dewey of New York, Governor Warren of California and Governor Stassen of Minnesota, were all pro-civil rights and had advocated the passage of fair employment practices legislation in their respective states. Some Republicans in the congressional wing of the Party, however, had been satisfied to cooperate with the southern Democrats in allowing civil rights legislation to be killed year after year by Senate filibuster—the so-called "southern strategy." Eisenhower had a clear picture of this factual situation and the position of Republican party leaders on civil rights by the time that our preview conference was concluded.

As you know, shortly thereafter he decided to become a candidate. He returned to the United States to begin an active pre-con-

vention campaign. One of his first steps was to review the proposed Republican platform and he took a position favoring a plank in that platform which pledged the Republican Party to eliminate segregation in Washington, D.C., the nation's capital.

On his inauguration day, we sometimes forget, segregation prevailed in all public accommodations in Washington. No black citizen could get a room in Washington's first class hotels nor could he or she eat at the city's public restaurants. Parks, playgrounds, bowling alleys, etc. were strictly segregated. This segregation was actually illegal under a District of Columbia ordinance passed many years before, during reconstruction days following the Civil War. But the district government was then controlled by committees of Congress which were dominated by members from the southern states. The District government claimed that since the ordinance had not been enforced for many years, it was inoperative. They called it the "lost statute."

The new President asked me for an opinion on the validity of this claim. When I advised him that the claim was invalid he directed me to take over from the District Corporation Counsel the management of litigation to test the validity of the "lost" statute. I did so, and the Court upheld enforceability of the "lost statute."

President Eisenhower then called together the civic leaders of the City. They responded to his leadership promptly and all public facilities in the District were forthwith desegregated. It should be noted that Frederick Morrow and Ambassador Maxwell Rabb, then of the White House staff, under the President's guidance, were effective in implementing the program which was completed during the first year of Eisenhower's presidency.

But all this, while historic, was soon to be overshadowed by the action of the Supreme Court in the case of *Brown v. Board of Education* which was a consolidation of five cases that had been brought in various states and the District of Columbia by black school children and their parents against their local Boards of Education to desegregate the schools. The Federal government was not a party to the case. It had been argued before the Court but not decided, when Ike became President.

In June 1953, near the end of the Supreme Court term, the court, instead of handing down a decision issued an order setting *Brown* for reargument in October of that year in order to hear the views of the Eisenhower administration. It requested the Attorney General to appear for oral argument as friend of the court and to respond to five specific questions. The gist of the questions was that the Court wanted a new, in-depth look from the participating attorneys into the constitutional problems that were involved. It also wanted a detailed history of the 14th Amendment to the Constitution insofar as it might apply to segregation in the schools. We all know that the 14th Amendment passed during the Civil War period had introduced the concepts of "due process" and "equal protection" to add to the other protections which citizens enjoyed under the original Bill of Rights. What would these concepts mean if applied to practices in the public schools? If they barred segregation how could this fundamental change in America's lifestyle be brought about?

I immediately informed the President of the court's action. His first reaction was that since the Federal government was not

a party to the litigation we should decline the court's invitation on the ground that the decision of this momentous problem was properly one for the Judicial Branch of the government. I recommended, however, that the court's invitation be accepted and the President accepted this position. The Justice department then launched an intensive study of the history of the 14th Amendment and the preparation of our brief on the pertinent constitutional problems. We met the court's deadline for argument in October.

Since no Solicitor General had yet been appointed, I designated J. Lee Rankin, Assistant Attorney General, to represent the Justice Department. After many conferences with him and his staff, the brief was put in final form and submitted to the court along with the historical supplement. The policy group within the Department considering the constitutional questions was, in addition to Mr. Rankin, Deputy Attorney General William P. Rogers, Assistant Attorney General Warren E. Burger and Assistant Attorney General Warren Olney. For the historical study we found a gold mine of government records by Professor W. S. Jenkins of the University of North Carolina from which we concluded that the history of whether the 14th Amendment applied to desegregated schools was inconclusive. We had to face the fact, however, that the same Congress which had initiated the 14th Amendment had also appropriated funds to continue segregated schools in the District of Columbia. Arguably, therefore, Congress had not intended to ban school segregation when it submitted the Amendment to the states for ratification. The principal attorney supporting school segregation was John W. Davis, the New York attorney who had once been Solicitor General, and in 1924 had been the Democratic nominee for President. He used this fact effectively in his oral argument before the court.

Now came the big decision—what was to be the administration's stand on the constitutionality of segregated primary and secondary schools? I consulted the President whose initial reaction was that the Executive branch had more than fulfilled its obligations by preparing the answers to the five specific questions asked by the court—that the interpretation of the Constitution was the Supreme Court's duty.

I pointed out to the President that when Mr. Rankin made his oral argument before the court, he would undoubtedly be asked the flat question: Is school segregation constitutional, and I thought it would be disastrous to our argument if we were not to answer that question forthrightly. The President then asked my professional opinion and I answered that school segregation was unconstitutional. Eisenhower said that if that was my professional opinion, we should so advise the court if they asked the question. The court did ask the question in oral argument and Mr. Rankin stated our position.

The court handed down its unanimous decision outlawing segregation in public schools at the end of its 1954 term in June.

The historic opinion left open for later consideration the all important matter of how the decision would be enforced. Probably the reason it did so was to obtain a unanimous opinion from the 9 Justices on the basic constitutional problem. The enforcement of the *Brown* decision was thus in limbo for a whole year. The significance of the later *Brown II* decision on the enforcement of *Brown I* is often overlooked. We proceeded to prepare another brief and

another oral argument for *Brown II* on methods of enforcement. This time our presentation was made by Simon Soboloff, the newly appointed Solicitor General. He consulted the President who suggested that we emphasize the complexity of the administrative problems to be faced by the local school boards such as the necessity of changing school district lines, of building new school houses, of training and hiring new teachers, and a myriad of other administrative problems which made instant compliance with *Brown I* impracticable. On the other hand, if enforcement was to be indefinitely delayed, a generation of school children would not receive the benefits of desegregation.

We decided to recommend a plan to have each school district where a desegregation dispute existed, submit a desegregation plan to the local District Court for approval. We also urged a second point in our briefs, that school districts should be required to submit their plan within a period of 90 days and that all districts must comply after a period of one year.

The Supreme Court adopted our first suggestion but rejected our second suggestion when it handed down its decision, again unanimous, in *Brown II* in 1955. No timetable for a presentation of plans or completion of desegregation was included. *Brown II* created indecision among local educational and political officials. It unwittingly sowed the seeds for violence that ensued in Little Rock and during the administrations of Presidents Kennedy and Johnson.

In the Department of Justice, our efforts to enforce the Supreme Court's decree in the *Brown* case outlawing segregation in the public schools were two-pronged.

First, we responded affirmatively to calls for assistance from the Federal Courts, as at Little Rock.

Second, we drafted and succeeded in getting passed, the Civil Rights Act of 1957 which was to be the first Civil Rights Act since the Reconstruction Era. This Act, as originally presented by us to Congress, would for the first time have given to the Attorney General direct power to sue whenever there was a violation of any Civil Rights which had been declared by the Supreme Court to be a constitutional right. If thus encompassed the whole field of rights later covered by the Civil Rights Acts in the '60's, including the right to vote.

In simple language it empowered the Attorney General to enforce the Constitutional promise of "equal protection" for all citizens without further Congressional action. Its scope was broad enough to give the Attorney General the power to enforce not only voting rights but also any Federal District Court decree which approved a local plan to desegregate the public schools. It would have freed up moneys appropriated for general law enforcement purposes to be used for those specific purposes. It would have broken the 100 year impasse in Congress on Civil Rights. I trust we will have an opportunity to discuss this 1957 Civil Rights Act more fully during the course of this symposium.

Immediately, Senators Richard Russell, Sam Ervin and James Eastland from the South denounced the bill as making the Attorney General a "czar." This charge was true to the extent that Congress, through filibusters, would no longer have been able to stop the Justice Department from implementing the "equal protection" promises of the Constitution in any manner approved by the Courts.

Outside of Congress, we were met by massive resistance to enforcement of the *Brown* decision. Almost all of the Senators and Congressmen from the Deep South issued a defiant "Southern Manifesto." It stated: "We pledge ourselves to use all lawful means to bring about a reversal of this *Brown* decision which is contrary to the Constitution and to prevent the use of force in its implementation." The Southern Manifesto spawned the formation throughout the South of White Citizens Councils seeking to nullify the *Brown* decision.

Sporadically, cases of rioting began to occur when local school board officials attempted to comply with the *Brown* decisions. In one case in Tennessee a man named Kasper led the rioting that threatened to get out of hand and the local judge asked for Justice Department aid, which was granted. Kasper was sent to jail. Shortly thereafter unknown persons burned fiery crosses in the front of homes where a number of Supreme Court Justices lived in Washington. The following Sunday early in the morning I heard commotion outside my home and turned on a master light switch. I found that kerosene has been dumped on the ground under the bedrooms where my children slept, but the intruders were nowhere to be seen. The atmosphere was ugly. Over a period of months we in the Justice Department had had the growing realization that a clash of historic importance between the President, who was required by the Constitution to enforce the law of the land, and political leaders in the South, who had announced their plan to resist enforcement of *Brown v. Board of Education*, was inevitable.

We had engaged in "contingency planning" so we would not be caught unprepared. Thus, by the time that the groups from White Citizens Councils from various parts of the South converged on Little Rock, Arkansas, we had completed our studies of the legal precedents on the President's power to intervene in localities where rioting went beyond local ability to control a violation of the Constitution.

We were called upon for assistance by the Mayor of Little Rock and the school board which was trying to integrate the high school. They were a law-abiding and progressive group that accepted the Supreme Court decision in the *Brown* case as binding on all public officials, even though some other officials, like Governor Faubus, defied the court's interpretation of the Constitution.

A federal judge was hearing the dispute between Governor Faubus and the school board, as the crisis had spilled over into litigation. The Judge called on the Justice Department to enter the case as friend of the Court. We accepted and sent attorneys to work with the school board attorneys. We also sent a Justice Department attorney, who had previously resided in Arkansas, to discuss the situation with Governor Faubus, but to no avail. Finally we sent in FBI agents on a fact-finding mission.

At the same time, many appeals for help in Little Rock were being made directly to the White House. Sherman Adams, Chief of Staff, undertook to mediate. We, of course, kept him informed of activities on the legal front. Adams called upon an old friend of his from Congressional days, Brooks Hayes of Arkansas, who believed that a compromise was possible. Governor Faubus by that time had called out the Arkansas National Guard and ordered that the black students be prevented, by force if necessary, from en-

tering the high school. Adams and Hayes counseled with some Southern governors, with the avowed intention of persuading Governor Faubus to withdraw his order, but this effort failed. Adams then asked the President to meet with Governor Faubus personally in a last attempt to have a peaceful settlement. The President asked my political opinion. I told him Governor Faubus was running for re-election and I thought he undoubtedly thought he could not allow the black children into the high school without being defeated at the polls, and therefore, I predicted, the President could not persuade the Governor to reverse his position.

Eisenhower decided to hold the meeting anyway. They met at Newport, R.I. At the conclusion we joined them, and the President told us they had agreed that the black children would be admitted to the high school. Everyone was relieved over the apparent agreement. I knew Eisenhower was a very persuasive person, but I was incredulous at Faubus's apparent capitulation, and the apparent abrupt end of a Constitutional crisis of such import. Governor Faubus returned to Arkansas. He kept the National Guard blockading the school doors to entry of the black children. When the President heard this, he telephoned me in Washington where I had returned. "You were right" he said. "Faubus broke his word." I could tell he was furious. His voice was tense. He was acting as a military Commander-in-Chief, dealing with Faubus as a subordinate who had let him down in the midst of battle.

In the meantime, members of the White Citizens Councils, formed throughout the South to combat enforcement of the *Brown* decision, began arriving at Little Rock from other states and the situation was getting out of hand. In the opinion of Mayor Mann of Little Rock who wired us and telephoned, lives were endangered. The FBI agents on the spot agreed. Governor Faubus was refusing at the same time to obey an order of the Federal Court. I presented our opinion to the President that in this state of affairs, where the Constitution as interpreted in the *Brown* case was being defied by the Governor and rioting was increasing, he had a Constitutional power and duty to enforce the law.

Only one effective way remained to enforce the law: Federal troops. Secretary Brucker of the Army was alerted. The President said to me. "In my career I learned that if you have to use force, use overwhelming force and save lives thereby." He ordered the 101st Airborne Division, which he knew had crowd control experience, to go to Little Rock.

Simultaneously, the President nationalized the Arkansas National Guard. The deadlock was broken and the black children entered the high school. The television screens around the country dramatized the events. These were rerun all over the world. It was as though South Africa had lifted its apartheid restrictions.

The black children, who must have been frightened, behaved magnificently then and throughout the ensuing weeks when the classroom atmosphere was electrically charged with emotion. No wonder when one considers that the white children had been brought up to believe that segregation was not only legal (under the Supreme Court's former opinion in the *Plessy* case) but justifiable and "natural." The Mayor, the School Board and especially the Superintendent and school teachers deserve great credit for

their actions. And through the ensuing years, the nation watched sympathetically and with pride, the progress of those beleaguered black school children in their mature years. The U.S. armed forces on the spot performed with restraint and common sense in carrying out their unpleasant duty. There was no loss of life.

I went over the manuscript of Eisenhower's draft of a speech with him and we made some changes to meet legal requirements. As soon as the speech was delivered Southern members of Congress reacted vehemently. Senator Russell of Georgia compared Eisenhower's tactics to Hitler's. A second Reconstruction period with "carpet bagger" government of the South was predicted by some Southern officials and newspapers, and you can be sure that I was a target in the storm. Looking back at the turbulent events, I can only conclude that Eisenhower's decisive action at Little Rock crushed the forces behind the Southern Manifesto. Eventual enforcement of the *Brown* case was assured. I was particularly happy that, when the Little Rock lawsuit reached the Supreme Court, it unanimously upheld the constitutionality of the President's actions.

Eisenhower did not comment publicly on the rightness or wrongness of the *Brown* decision during his Presidency but years later in this *Waging Peace* he stated he thought the case was rightly decided.

#### THE NATIONAL EMERGENCY ANTI-PROFITEERING ACT OF 1990

Mr. PRESSLER. Mr. President, last week I joined my colleague, Mr. LIEBERMAN, in introducing the National Emergency Anti-Profiteering Act of 1990.

On September 3, I returned from an official, 4-day trip to Saudi Arabia. While there, we met with King Fahd, Prince Abdallah, and Prince Faisal. Before this visit, I held several public listening meetings in South Dakota. The primary complaint at these meetings was the excessive rise in gasoline prices. The public feels they are being exploited. I agree. Price gouging must stop. That's why we are introducing this tough, new legislation to prohibit profiteering.

Under our bill, the President may declare a national economic emergency for an essential commodity such as petroleum products when an abnormal market disruption exists. A "national economic emergency" may result from extraordinary weather conditions, acts of nature, large energy failures, civil disorder, or, as is now the case; military action. The emergency stands for 180 days from the declaration date, and extensions of 90 days may be added. Sellers of that essential commodity are then prohibited from charging an excessive price; that is, one not justified by the actual costs, plus a reasonable profit.

Profiteering not only includes the charging of an excessive price, it also refers to the excessive restrictions placed upon the sale, or transportation of an essential commodity. Petroleum products, primarily crude oil and other

distillates like propane, gasoline, diesel, and home heating fuels are presently threatened. In our bill, any profits earned through such profiteering will be taken, and fines of up to \$500,000 and up to 5 years imprisonment are penalties which can be imposed.

As with the *Exxon Valdez* disaster and last winter's cold snap, the Iraqi invasion of Kuwait has resulted in skyrocketing prices of both crude oil and propane. Consumers have been hit hard by these increasing prices. Last week, in Rapid City, SD, gasoline prices rose another 5 cents per gallon. To the east, in Sioux Falls, gasoline prices have risen by 20 cents and diesel by 30 cents since the beginning of August. Similar increases have occurred across the country and consumers are outraged.

The United States needs to become more self-sufficient in the production, exploitation, and refining of crude oil. We must increase our research on other sources of energy, thereby lessening our dependency on other nations for oil.

Since Saddam Hussein's invasion of Kuwait, a major crude oil shortage has not occurred. However, a crisis mentality grips the oil market. Suppliers are using Saddam Hussein's international crimes as an excuse for charging increased prices. Actual costs: that is, those of acquiring, producing, selling, transporting and delivering the product, are expected to rise in the future. Anticipation of an oil shortage has led to an increase in the price of petroleum products. Yet actual oil supplies are adequate. An oil shortage might never develop if this crisis is resolved peacefully and weather conditions are normal. In the meantime, the additional profits being reaped by someone in the oil supply chain will remain in their pockets. The consumer of oil products will be the loser.

Consumers should not be subjected to excessive oil prices based on pure speculation. Oil prices have climbed nearly 50 percent since Iraq invaded Kuwait. Consumers understandably fear further price speculation. They recall what happened in the 1973 OPEC oil embargo, and the Iranian revolution of 1978-79.

South Dakota farmers and ranchers buy more propane and diesel fuel during harvest, planting, and haying seasons. The price of these petroleum distillates tends to rise slightly each year during such key periods. The increase is higher than usual this year. Already, South Dakotans are suffering from higher petroleum prices. As one of them told me, "I don't begrudge anyone a profit, but this is unreasonable." The average consumer perceives the prices charged by oil companies as excessive and above the reasonable profit level. Similar complaints were heard last winter. At the request of

Senator HEINZ and myself, the General Accounting Office began an investigation in March to look into the substantial price increases of home heating fuel and propane last December. The legislation we introduced last week is an effort to avoid a repetition of that episode and the current oil price crisis. If enacted quickly, it could even help identify any existing profiteering.

We must minimize our excessive dependency on oil as a source of energy. Alternatives such as ethanol and methanol do exist, but are in limited use. Ethanol, derived primarily from corn, usually is 10 percent of the gasoline blend. The use of these alternative automotive fuels, has several important dimensions. It directly affects our agricultural and trade policies, energy security, air quality, and global warming.

Brazil has a very successful ethanol program, one we can learn from. Much of its automotive fleet operates on pure ethanol. Our Midwestern States have the largest concentration of alcohol fuel usage, but due to the expense and the limited production of alcohol-run automobiles, utilization even there is lower than what it could be. We are now faced with the perfect opportunity to expand the use and accessibility of alternative fuels. We need to encourage, develop, and broaden the use of alternative fuels.

We need long-term solutions. In the meantime, our bill and the convening of an emergency oil price task force would help stop the unwarranted, excessive price increases. Such a task force would act as a profiteering watchdog and would help to build up economic confidence.

This act is designed to prohibit any potential profiteering that may take place during a declared national economic emergency. Commodities essential to the U.S. economy, and to the general public, would be sheltered from any excessive price hikes brought on by producers. Market prices should not be raised at a faster rate than increases in actual costs. Penalties of 5 years imprisonment, fines of \$500,000, civil remedies, and the taking of all profits earned through profiteering are included in the act.

Tough new laws are needed to stop outrageous price gouging from occurring again and again. Our bill is designed to protect the consumer from money-hungry profiteers. I urge my colleagues to join us in supporting this bill.

#### LEAVING WELFARE BEHIND

Mr. MOYNIHAN. Mr. President, I wish to call my colleagues' attention to an article in yesterday's New York Times by Lisa W. Foderaro.



The Times reports that we have a successful welfare program operating in Westchester County, NY. The article tells the story of a 34-year-old single mother, Ester Fuller, who has spent her entire adult life on welfare. Ms. Fuller is now obtaining the basic education and skills to begin a career in radiology. In other words, Ms. Fuller has started down a road that leads away from dependency toward self-reliance.

This is precisely what we meant to have happen when we enacted into law the Family Support Act of 1988. We redefined the AFDC Program from an income maintenance program with a minor education and employment component to an education and employment program with an income maintenance component. To quote Ms. Fuller, "For so many years there was a support system. They sent you checks, and everything was fine. But now all of a sudden they're trying to get you out on your own in the world." The article continues, "Miss Fuller is proud that she is a new role model for her children, Shelton, 10 and Shadonna, 7, and that one day she will have the means to move out of public housing." Ms. Fuller personifies the notion of mutual obligation that was at the heart of the argument for the act: that individuals have the right to be supported in adversity by the State, and in return have the obligation to emerge from that adversity.

Ms. Fuller and others like her are in the process of emerging from their adversity and their dependence. Credit for making that possibility a reality should go to those who have expedited the implementation of Family Support Act programs. Specifically, credit should go to Westchester County Executive Andrew P. O'Rourke, who designed a program that effectively meets not only the educational needs of participants but also the labor force needs of the community. Mr. O'Rourke has created a model for other localities to follow.

Additionally, a great deal of credit should go to Anne B. Barnhart, the new—and first—assistant secretary for family support. The position was created in the 1988 act to provide new leadership and direction to this vital effort. Secretary Barnhart has overseen the Federal effort to provide timely information and assistance to those States and localities eager to begin programs.

I ask unanimous consent that the above mentioned New York Times article be printed in the RECORD.

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

[From the New York Times, Sept. 14, 1990]

LEAVING WELFARE BEHIND BY DEGREES

(By Lisa W. Foderaro)

VALHALLA, NY, September 13.—Every day, Esther Fuller wakes up in a Yonkers hous-

ing project crawling with crack dealers, plastered with graffiti and reeking of urine, and every night, she tucks her two children into bed there. But in between, on the rolling campus of Westchester Community College here, her life is undergoing a great, if gradual, change.

At 34 years old, her entire adulthood spent on welfare, Miss Fuller is mastering linear equations, working with additive inverses and figuring out the meaning of words like "prodigy" and "fertility" by considering their contexts. Next year, after two semesters of remedial education, she plans to begin two years of work toward an associate degree in radiology.

With a nudge and a prod from Westchester County, Ms. Fuller and dozens of other welfare mothers are going to college to turn themselves into dieticians, nurses, respiratory technicians, phlebotomists and radiologists. The county, with the help of state and Federal financing, is paying for it all; tuition, tutoring, transportation, day care, lunches, books and school supplies.

"It's a little scary," Miss Fuller said as she took a break recently between her math and writing classes. "For so many years there was a support system. They sent you checks, and everything was fine. But now all of a sudden they're trying to get you out on your own in the world."

#### REQUIRED PARTICIPATION

The health-care training is part of a larger county program, Moms on the Move, which reflects the changes in welfare programs nationwide. States and municipalities are going beyond menial labor to offer more substantial opportunities as a result of the 1988 Family Support Act, which required that most welfare recipients participate in government-sponsored educational and job programs.

Westchester has organized its program to try to solve two problems simultaneously by matching a pool of bright but idle single mothers, as well as a few single fathers, with the shortage of health-care professionals.

"The practical reality is that jobs are going begging in area hospitals," said Dr. Margaret Olson, director of Special Student Services at Westchester Community College, which is a sponsor of the program with the county. "And when these women were 5 years old, many of them said they wanted to be nurses or teachers, so the socialization is already there."

Although she faces four tough semesters of college-level courses after this one, Miss Fuller is proud that she is a "new role model" for her children, Shelton, 10, and Shadonna, 7, and that one day she will have the means to move out of public housing.

#### HAVING "A CAREER, NOT A JOB"

"Mainly, I look at myself differently," she said. "I'm a lot more positive. My attitude is to just go out in the world and get it and bring it back."

Shelton, who dreams of becoming a jazz drummer, sees himself in a different light, too. "I want to go to college and have a career, not a job," he said the other day after stepping off a school bus in southwest Yonkers.

New York State is requiring all counties to devise a program combining jobs and education. The state recently told Westchester that 311 of its welfare recipients must be enrolled in a program, but the county has already far surpassed that figure. Some 3,200 people out of 17,000 on public assistance are now taking part in public works projects,

job training or education programs, and the county plans to test and screen thousands more.

In the last year, in return for their checks, more than 2,000 home-relief recipients performed 242,000 hours of work for towns and community organizations, while another 2,000 were placed in mandatory drug- and alcohol-treatment programs.

#### WORK-STUDY PROGRAMS

While 88 single parents are taking part in the health-care component of Moms on the Move, which began as a pilot project in January, another 122 are attending Westchester Community College in a work-study program in engineering and technical fields; a pre-freshman program to help new students with remedial writing, reading and math skills, and an "English as a second language" program.

The driving force behind the welfare programs in Westchester is the County Executive, Andrew P. O'Rourke, who has a personal motivation as well as the goal of saving taxpayer money. His mother was on welfare throughout his childhood in Hell's Kitchen on Manhattan's West Side, he said.

"I remember it well, and I don't remember anything nice about being on welfare," Mr. O'Rourke said. "We're giving people a real shot at a future as opposed to staying on the welfare treadmill."

Last year, the county sent letters to mothers on welfare whose youngest children were older than 6, telling them to take a five-hour basic skills test or lose their benefits. Of the 235 tested, 42 percent were considered ready for college-level work. The county will test another 750 to 1,000 this fall. Mothers whose children are older than 3 will also be notified this fall, reflecting a change in state and Federal mandates.

#### PRaise FOR SOCIAL SERVICES

The county has committed \$964,000 to the Moms on the Move program, with three-quarters of that to come from Federal and state sources.

In the past, the mothers who are now in Moms on the Move saw the Department of Social Services primarily as unhelpful and unfriendly. But now they are effusive with praise for the county, and seem to share its goals.

"I'm here because my mother was on welfare, and I didn't want the cycle to continue," said Joyce Torres of Yonkers, a 25-year-old mother of two who at 14 was married in Puerto Rico. She is studying to be a nurse.

"For once, the Department of Social Services is doing something for us," said Bernitha Lopez, 34, of Mount Vernon, who is studying to be a respiratory therapist. "They're giving us the opportunity of a lifetime. You can either stay home and watch soap operas or you can come to school and get a career."

"They don't want anyone to fail," Miss Fuller said. "They're always keeping an eye on you. They're behind you pushing."

Through the program, Ms. Lopez and Miss Fuller have become fast friends, helping each other juggle homework and housework, classes and cooking. "She gets on my case," Miss Fuller said. "Sometimes I need that."

#### TRIBUTE TO ALTHEA SIMMONS— A GIANT ON CIVIL RIGHTS

Mr. KENNEDY. Mr. President, last week America lost a great champion in the continuing struggle to fulfill the

constitutional promises of equal justice for all, when Ms. Althea T.L. Simmons, the director of the Washington Bureau of the National Association for the Advancement of Colored People, passed away.

Althea Simmons was a tireless and effective champion of civil rights. As the NAACP's chief legislative strategist on Capitol Hill, she played a key role in enacting many critically important laws, including the Voting Rights Act, the legislation establishing a national holiday to honor Dr. Martin Luther King, Jr., the Civil Rights Restoration Act, and the Fair Housing Act of 1988.

Althea Simmons was especially effective in communicating with Senators and Representatives from across the political spectrum and in educating us about the issues. In a very real sense, she was the 101st Senator on civil rights, and she made an extraordinary difference in the lives and well-being of millions of Americans seeking their birthright as citizens of this country entitled to equal justice and equal opportunity.

Every American committed to the cause of civil rights will miss the strength, the wisdom, and the presence of Althea Simmons. I extend my deepest sympathy to her family and to her colleagues.

Mr. President, I ask unanimous consent that a tribute to Althea Simmons by the leaders of the NAACP and an obituary from the Washington Post be printed in the RECORD.

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

#### STATEMENT OF THE NAACP

The National Association for the Advancement of Colored People profoundly regrets the death, on September 13, 1990, of this treasured member of the NAACP family for some 3½ decades. Since 1979 she had served with great distinction, as Director of our Washington Bureau and Chief Lobbyist. She was widely respected as one of Capitol Hill's most effective lobbyists. Prior to this post she served as Associate Director of Branch & Field Services, where she had responsibilities of supervising the NAACP nation-wide network of branches, field staff, membership and youth and college division. She also held the positions of NAACP National Education Director, National Training Director, and Voter Registration Projects Director. A former college teacher and a newspaper woman, she was a graduate of Louisiana's Southern University, in business; University of Illinois, in marketing and Howard University's School of Law, Washington, DC. Among many awards and honors she received, are Washburn University's Presidents Award; Howard University's Alumni Award for post graduate achievement in law and public services; National Bar Association's Gertrude E. Rush Awards; Delta Sigma Theta's Patricia Roberts Harris Award and Links, Inc. National Trends and Services Award. Miss Simmons was a widely sought speaker throughout the nation for church, education, political, business, fraternal and professional forums. She was a member of Asbury United Methodist

Church, Washington, DC and chaired the committee on corporate fiduciary responsibility and committee on legal concerns of The United Methodist Church Board of Pensions. She is survived by a sister, Earledean V.S. Robbins, San Francisco, nieces, Robin Simmons Robbins, Alfreda Wall, Jacqueline Glover, Sharon Simmons; nephews Brett Simmons Robbins, Michael and Darryl Simmons. Wake will be held on Wednesday, September 19, 1990, 6-9PM, Asbury United Methodist Church, 11th and K Streets, NW., Washington, DC. Funeral, Thursday, September 20, 1990, 11AM, also at Asbury United Methodist Church. She will be greatly missed by all of us, but her contributions to our cause will be enduring. Those wishing to do so, may send memorial contributions to the NAACP, 4805 Mount Hope Dr, Baltimore, MD 21215.

WILLIAM F. GIBSON,  
Chairman.

BENJAMIN L. HOOKS,  
CEO, Executive Director.

HAZEL N. DUKES,  
President.

[From the Washington, Post, Sept. 15, 1990]

#### ALTHEA SIMMONS, NAACP OFFICIAL, DIES

Althea T.L. Simmons, 66, the chief of the NAACP's Washington bureau since 1979 and the organization's chief Washington lobbyist, died of respiratory failure Sept. 13 at Howard University Hospital. She had undergone a hip operation.

Miss Simmons joined the NAACP in the mid-1950s. Before moving here, she was associate director of branch and field services in the organization's headquarters in New York. Her duties there included supervising branches and field staff around the nation, membership activities and the youth and college division.

In Washington, Miss Simmons played a role in shaping policies and legislation in civil rights. She remained active in connection with the civil rights bill recently passed by Congress, although she had been hospitalized for four months.

Much of her most valuable work, however, was keeping track of policymakers in a quiet way. She described this in a speech at an NAACP regional banquet in Northern Virginia in 1979.

"It's not enough to just listen to the politicians at election time," she said, "Start monitoring how they vote. Often they will say something on the floor of the House or Senate just to get into the Congressional Record, but they vote just the opposite."

In 1989, she said it was necessary to keep up pressure on matters of concern to blacks and other minorities "because if you don't people will think the problem is solved."

And when L. Douglas Wilder was elected in Virginia last year, becoming the first black elected governor or, Miss Simmons said. "Black [candidates] have to appeal to both blacks and whites. . . . You have to tread a very tight line. . . . I don't think this means any great healing of tensions between races, but it's a breakthrough."

A resident of Washington, Miss Simmons was born in Shreveport, La. She graduated from Southern University and received a law degree from Howard University. She also studied marketing at the University of Illinois.

Her many honors included the President's Award of Washburn University, the Howard University Alumni Award for Postgraduate Achievement in Law and Public Service, the Gertrude E. Rush Award of the National Bar

Association, the Patricia Roberts Harris Award of Delta Sigma Theta Sorority and the National Trends and Services Award of Links, Inc.

Miss Simmons was a member of Asbury United Methodist Church in Washington, and she served on various committees of the United Methodist Church Board of Pensions. She was a member of the Delta Sigma Theta Sorority.

Survivors include a sister, Earledean V.S. Robbins of San Francisco.

#### A REMARKABLE CAREER OF PUBLIC SERVICE

Mr. KENNEDY. Mr. President, it is an honor to congratulate Dr. Paul D. Parkman, who is retiring after 30 years of splendid service to public health. Those of us who have followed his accomplishments over his many years of Government service know that he exemplifies what is best about America. As an individual, and as a researcher, he has always combined intellectual brilliance with deep compassion for the afflicted. Now that he is retiring as the director of the center for biologics evaluation and research of the Food and Drug Administration, it is an appropriate time to honor this man's extraordinary accomplishments.

Paul Parkman is one of the giants of modern medicine. Through a variety of research and administrative positions at the Walter Reed Army Institute of Research, the National Institutes of Health, and the Food and Drug Administration, he has helped shape the course of medical science. Whether as a researcher in the laboratory, or as the administrative head of one of the most influential scientific institutions in the world, Dr. Parkman has nurtured the development of new technologies that are revolutionizing medicine and the world.

Because of his modesty, Dr. Parkman has never sought the limelight. As a result, far too few people appreciate the contributions he has made to their health and welfare. Foremost among these contributions was his remarkable effort to eradicate the threat of rubella, often known as German measles. Although the rubella virus is relatively innocuous in most individuals infected by it, it has a devastating effect on children born to women who became infected while in the early stages of pregnancy. Children are born mentally retarded or deaf. Others have severe eye problems, heart disease, or a myriad of other debilitating health conditions.

Before the work of Dr. Parkman and his colleague, Dr. Harry M. Meyer, Jr., physicians were helpless in fighting the virus and the harm it brought. As a young pediatrician and virologist, Dr. Parkman dedicated himself to the eradication of rubella epidemics, and embarked on research to isolate the virus. Within a few years at Walter Reed's Institute of Research, he suc-

ceeded in isolating the rubella virus. Following this breakthrough, he joined Dr. Meyer at the National Institutes of Health in developing a rubella vaccine and the first widely used test to detect antibodies to the virus.

These brilliant advances effectively eliminated the threat that rubella posed to society. Within a few years following the development of the vaccine and test, rubella epidemics ceased. Thousands of children who otherwise would have been mentally or physically disabled as a result of rubella were spared and enabled to live healthy and productive lives. The true impact of Dr. Parkman's work has had on the lives of these children, their families and society is incalculable, as is the debt of gratitude the Nation and the world owe him.

Dr. Parkman has earned numerous awards during his illustrious career, including the most prestigious honors bestowed by the Department of Health and Human Services, the Public Health Service, and the Food and Drug Administration. In 1966, he received a letter of commendation from President Lyndon Johnson for his work.

Dr. Parkman has also received numerous awards from organization's such as United Cerebral Palsy Association, the Association of Retarded Citizens, the Food and Drug Institute, and Parent's magazine. I am proud to say that the Joseph P. Kennedy, Jr. Foundation, with which my family and I have had a long association, selected Dr. Parkman as one of its honorees in 1977.

It is interesting, but by no means surprising, to note that Mother Theresa of Calcutta was also a Kennedy Foundation's honoree that year. Although these two individuals come from dramatically different backgrounds and disciplines, Mother Theresa and Dr. Parkman share a commitment to bettering the lives of the less fortunate in the world. Both individuals, in their unique ways, have used their talents to the utmost of help humanity.

Dr. Parkman has not only used his ability as a researcher to help his fellow human beings, but has also used his considerable skill as an administrator to promote medical science and safeguard the Nation's health. As director of the Food and Drug Administration's Center for Biologics, Dr. Parkman has had primary responsibility for assuring the safety and efficacy of biological products used for the prevention, diagnosis, and treatment of disease. These include a vast number of variety of essential products such as blood components, vaccines, antibody tests for detecting infectious diseases, and genetically engineered agents for treating disease like AIDS and cancer.

Dr. Parkman has been at the cutting edge of medical science. Because of his

leadership, the Food and Drug Administration is prepared to meet the unprecedented demands of biotechnology. The Government will miss him, but I am sure that he will continue to play a vital role in shaping the destiny of the Nation's health care and science policies for many years to come.

Dr. Parkman's achievements have been matched by few men or women. He created knowledge where there was only ignorance, and hope where there was hopelessness. Paul Parkman has made the world a better place, and I am proud to know him. I congratulate him on his outstanding career and service, and I wish him a long and happy and productive retirement.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### OLDER WORKERS BENEFIT PROTECTION ACT

The PRESIDING OFFICER. Under the previous order, the hour of 2:30 having arrived, the Senate will proceed to the consideration of S. 1511, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1511) to amend the Age Discrimination in Employment Act of 1967, to clarify the protections given to older individuals in regard to employee benefit plans, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Labor and Human Resources, with an amendment to strike out all after the enacting clause, and insert in lieu thereof the following:

##### SECTION 1. SHORT TITLE.

This Act may be cited as the "Older Workers Benefit Protection Act".

##### TITLE I—OLDER WORKERS BENEFIT PROTECTION

##### SEC. 101. FINDING.

The Congress finds that, as a result of the decision of the Supreme Court in *Public Employees Retirement System of Ohio v. Betts*, 109 S.Ct. 256 (1989), legislative action is necessary to restore the original congressional intent in passing and amending the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), which was to prohibit discrimination against older workers in all employee benefits except when aged-based reductions in employee benefit plans are justified by significant cost considerations.

##### SEC. 102. DEFINITION.

Section 11 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630) is amended by adding at the end the following new subsection:

"(l) The term 'compensation, terms, conditions, or privileges of employment' encompasses all employee benefits, including such benefits provided pursuant to a bona fide employee benefit plan."

##### SEC. 103. LAWFUL EMPLOYMENT PRACTICES.

Section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) is amended—

(1) by striking subsection (f) and inserting the following new subsection:

"(f) It shall not be unlawful for an employer, employment agency, or labor organization to take any action otherwise prohibited under subsection (a), (b), (c), or (e)—

"(1) where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age, or where such practices involve an employee in a workplace in a foreign country, and compliance with such subsections would cause such employer, or a corporation controlled by such employer, to violate the laws of the country in which such workplace is located;

"(2)(A) to observe the terms of a bona fide seniority system that is not intended to evade the purposes of this Act, except that no such seniority system shall require or permit the involuntary retirement of any individual specified by section 12(a) because of the age of such individual; or

"(B) to observe the terms of a bona fide employee benefit plan where, for each benefit or benefit package (as permissible under section 1625.10, title 29, Code of Federal Regulations, as in effect on June 22, 1989), the actual amount of payment made or cost incurred on behalf of an older worker is no less than that made or incurred on behalf of a younger worker, except that—

"(i) it shall not be unlawful to observe the terms of a bona fide voluntary early retirement incentive plan that furthers the purposes of this Act; and

"(ii) no such employee benefit plan or voluntary early retirement incentive plan shall excuse the failure to hire any individual, and no such employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 12(a), because of the age of such individual; and

"(3) to discharge or otherwise discipline an individual for good cause.

An employer, employment agency, or labor organization acting under paragraphs (1) or (2) shall have the burden of proving that such actions are lawful in any civil enforcement proceeding brought under this Act."

(2) by redesignating the second subsection (i) as subsection (j); and

(3) by adding at the end the following new subsections:

"(k) A seniority system or employee benefit plan shall comply with this Act regardless of the date of adoption of such system or plan.

"(l)(1) In the case of a defined benefit plan (as defined in section 3(35) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(35))), it shall not be a violation of subsection (a), (b), (c), or (e) solely because the plan provides, on a permanent basis, for—

"(A) the attainment of a minimum age as a condition of eligibility for normal or early retirement benefits;

"(B) payments that constitute the subsidized portion of an early retirement benefit; or

"(C) social security supplements for plan participants that commence before the age and terminate at the age (specified by the plan) when participants are eligible to receive reduced or unreduced old-age insurance benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.), and that

do not exceed such old-age insurance benefits.

"(2)(A) It shall not be a violation of subsection (a), (b), (c), or (e) solely because following a contingent event unrelated to age—

"(i) the value of any retiree health benefits received by an employee eligible for an immediate pension; and

"(ii) in any case in which retiree health benefits as described in clause (i) are provided, the value of any additional pension benefits that are made available solely as a result of the contingent event unrelated to age and that make the individual eligible for not less than an immediate and reduced pension,

are deducted from severance pay made available as a result of the contingent event unrelated to age.

"(B) For an employee who receives immediate pension benefits that are actuarially reduced under subparagraph (A)(i), the amount of the deduction available pursuant to subparagraph (A)(i) shall be reduced by the same percentage as the reduction in the pension benefits.

"(C) For purposes of this paragraph, severance pay shall include that portion of supplemental unemployment compensation benefits (as described in section 501(c)(17) of the Internal Revenue Code of 1986) that—

"(i) constitutes additional benefits of up to 52 weeks;

"(ii) has the primary purpose and effect of continuing benefits until an individual becomes eligible for an immediate and unreduced pension; and

"(iii) is discontinued once the individual becomes eligible for an immediate and unreduced pension.

"(D) For purposes of this paragraph, the term 'retiree health benefits' means benefits provided pursuant to a group health plan covering retirees, for which—

"(i) the package of benefits provided by the employer for the retirees who are below age 65 is at least comparable to benefits provided under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.); and

"(ii) the package of benefits provided by the employer for the retirees who are age 65 and above is at least comparable to that offered under a plan that provides a benefit package with one-fourth the value of benefits provided under title XVIII of such Act.

"(E)(i) If the obligation of the employer to provide retiree health benefits is of limited duration, the value for each individual shall be calculated at a rate of \$3,000 per year for benefit years before age 65, and \$750 per year for benefit years beginning at age 65 and above.

"(ii) If the obligation of the employer to provide retiree health benefits is of unlimited duration, the value for each individual shall be calculated at a rate of \$48,000 for individuals below age 65, and \$24,000 for individuals age 65 and above.

"(iii) The values described in clauses (i) and (ii) shall be calculated based on the age of the individual as of the date of the contingent event unrelated to age. The values are effective on the date of enactment of this subsection, and shall be adjusted on an annual basis, with respect to a contingent event that occurs subsequent to the first year after the date of enactment of this subsection, based on the medical component of the Consumer Price Index for all-urban consumers published by the Department of Labor.

"(iv) If an individual is required to pay a premium for retiree health benefits, the

value calculated pursuant to this subparagraph shall be reduced by whatever percentage of the overall premium the individual is required to pay.

"(F) If an employer that has implemented a deduction pursuant to subparagraph (A) fails to fulfill the obligation described in subparagraph (E), any aggrieved individual may bring an action for specific performance of the obligation described in subparagraph (E). The relief shall be in addition to any other remedies provided under Federal or State law."

#### SEC. 104. EFFECTIVE DATE.

(a) IN GENERAL.—This title and the amendments made by this title shall become effective on the date of enactment of this Act.

(b) APPLICABILITY.—Except as provided in subsection (c), this title and the amendments made by this title shall apply to—

(1) all actions or proceedings brought under the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.) after June 23, 1989; and

(2) all actions or proceedings brought under such Act prior to June 23, 1989, that were pending on June 23, 1989.

(c) COLLECTIVELY BARGAINED AGREEMENTS.—With respect to any action or proceeding brought after June 23, 1989, pertaining to a collective bargaining agreement—

(1) that is in effect as of the date of enactment of this Act;

(2) that terminates after such date of enactment;

(3) any provision of which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4)); and

(4) that contains any provision that would be superseded by this title and the amendments made by this title, but for the operation of this section,

this title and the amendments made by this title shall not apply until the termination of such collective bargaining agreement or June 1, 1992, whichever occurs first.

#### TITLE II—WAIVER OF RIGHTS OR CLAIMS

##### SEC. 201. WAIVER OF RIGHTS OR CLAIMS.

Section 7 of the Age Discrimination and Employment Act of 1967 (29 U.S.C. 626) is amended by adding at the end the following new subsection:

"(f)(1) An individual may not waive any right or claim under this Act unless the waiver is knowing and voluntary. Except as provided in paragraph (2), a waiver may not be considered knowing and voluntary unless at a minimum—

"(A) the waiver is part of a written agreement between the individual and the employer;

"(B) the waiver specifically refers to rights or claims arising under this Act;

"(C) the individual does not waive rights or claims that may arise after the date the waiver is executed;

"(D) the individual waives rights or claims only in exchange for consideration in addition to anything of value to which the individual already is entitled;

"(E) the individual is advised in writing to consult with an attorney prior to executing the agreement;

"(F)(i) the individual is given a period of at least 21 days within which to consider the agreement; or

"(ii) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or

class of employees, the individual is given a period of at least 45 days within which to consider the agreement;

"(G) the agreement provides that for a period of at least 7 days following the execution of such agreement, the individual may revoke the agreement, and the agreement shall not become effective or enforceable until the revocation period has expired;

"(H) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the employer informs the individual in writing, at the commencement of the period specified in subparagraph (F), as to—

"(i) any class, unit, or group of employees covered by such program, any eligibility factors for such program, and any time limits applicable to such program;

"(ii) any demotion, termination, or other adverse action that the employer either knows or should know may occur if the individual declines to participate in such program, and the approximate date when such adverse action reasonably may be anticipated to take effect;

"(iii) the job titles and ages of all individuals eligible or selected for the program; and

"(iv) the job titles and ages of all individuals in the same plant, facility, or organizational unit who are not eligible or selected for the program; and

"(I) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the employer agrees to reimburse the employee for 80 percent of the fees and costs for services provided by the employee's attorney in connection with the waiver request up to an amount equivalent to a maximum for any individual employee of 10 hours at the attorney's usual hourly rate, and the employer so informs the individual as part of the advice required under subparagraph (E).

"(2) A waiver in settlement of a charge filed with the Equal Employment Opportunity Commission, or an action filed in court by the individual or the individual's representative, alleging age discrimination of a kind prohibited under section 4 or 15 may not be considered knowing any voluntary unless at a minimum—

"(A) subparagraphs (A) through (E) of paragraph (1) have been met; and

"(B) the individual is given a reasonable period of time within which to consider the settlement agreement.

"(3) In any dispute that may arise over whether any of the requirements, conditions, and circumstances set forth in paragraph (1) or (2) have been met, the party asserting the validity of a waiver shall have the burden of proving in a court of competent jurisdiction that a waiver was knowing and voluntary pursuant to paragraph (1) or (2).

"(4) No waiver agreement may affect the Commission's rights and responsibilities to enforce this Act. No waiver may be used to justify interfering with the protected right of an employee to file a charge or participate in an investigation or proceeding conducted by the Commission."

##### SEC. 202. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this section, the amendment made by section 201 shall become effective on the date of enactment of this Act.

(b) CONSIDERATION AND REVOCATION OF AGREEMENTS; EMPLOYMENT TERMINATION

PROGRAMS.—Subparagraphs (F) through (I) of section 7(f)(1), and all of section 7(f)(2), of the Age Discrimination and Employment Act of 1976 (as added by section 201 of this Act) shall apply only to waivers first offered or executed more than 60 days after the date of enactment of this Act.

(C) **RULE ON WAIVERS.**—Effective on the date of enactment of this Act, the rule on waivers issued by the Equal Employment Opportunity Commission and contained in section 1627.16(c) of title 29, Code of Federal Regulations, shall have no force and effect.

### TITLE III—SEVERABILITY

#### SEC. 301. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected thereby.

**Mr. METZENBAUM.** Mr. President, on behalf of the Committee on Labor and Human Resources, and with the consent of the chairman, I send to the desk a modification of the committee substitute.

I advise the Chair and my colleagues that the majority of the members of the Committee on Labor and Human Resources have authorized me to present and make this modification.

The **PRESIDING OFFICER.** The Senator has the right to modify the committee amendment, and the amendment is therefore so modified.

The committee amendment, as modified, is as follows:

In lieu of the matter proposed to be inserted, insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Older Workers Benefit Protection Act".

### TITLE I—OLDER WORKERS BENEFIT PROTECTION

#### SEC. 101. FINDING.

The Congress finds that, as a result of the decision of the Supreme Court in *Public Employees Retirement System of Ohio v. Betts*, 109 S.Ct. 256 (1989), legislative action is necessary to restore the original congressional intent in passing and amending the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), which was to prohibit discrimination against older workers in all employee benefits except when age-based reductions in employee benefit plans are justified by significant cost considerations.

#### SEC. 102. DEFINITION.

Section 11 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630) is amended by adding at the end the following new subsection:

"(1) The term 'compensation, terms, conditions, or privileges of employment' encompasses all employee benefits, including such benefits provided pursuant to a bona fide employee benefit plan."

#### SEC. 103. LAWFUL EMPLOYMENT PRACTICES.

Section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) is amended—

(1) by striking subsection (f) and inserting the following new subsection:

"(f) It shall not be unlawful for an employer, employment agency, or labor organi-

zation to take any action otherwise prohibited under subsection (a), (b), (c), or (e)—

"(1) where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age, or where such practices involve an employee in a workplace in a foreign country, and compliance with such subsections would cause such employer, or a corporation controlled by such employer, to violate the laws of the country in which such workplace is located;

"(2)(A) to observe the terms of a bona fide seniority system that is not intended to evade the purposes of this Act, except that no such seniority system shall require or permit the involuntary retirement of any individual specified by section 12(a) because of the age of such individual; or

"(B) to observe the terms of a bona fide employee benefit plan—

"(i) where, for each benefit or benefit package, the actual amount of payment made or cost incurred on behalf of an older individual is no less than that made or incurred on behalf of a younger individual, as permissible under section 1625.10, title 29, Code of Federal Regulations (as in effect on June 22, 1989); or

"(ii) that is a voluntary early retirement incentive plan consistent with the purposes of this Act,

except that no such employee benefit plan or voluntary early retirement incentive plan shall excuse the failure to hire any individual, and no such employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 12(a), because of the age of such individual; and

"(3) to discharge or otherwise discipline an individual for good cause.

An employer, employment agency, or labor organization acting under paragraphs (1) or (2) shall have the burden of proving that such actions are lawful in any civil enforcement proceeding brought under this Act."

(2) by redesignating the second subsection (i) as subsection (j); and

(3) by adding at the end the following new subsections:

"(k) A seniority system or employee benefit plan shall comply with this Act regardless of the date of adoption of such system or plan.

"(l) Notwithstanding clause (i) or (ii) of subsection (f)(2)(B)—

"(1) It shall not be a violation of subsection (a), (b), (c), or (e) solely because—

"(A) an employee pension benefit plan (as defined in section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2)) provides for the attainment of a minimum age as a condition of eligibility for normal or early retirement benefits; or

"(B) a defined benefit plan (as defined in section 3(35) of such Act) provides for—

"(i) payments that constitute the subsidized portion of an early retirement benefit; or

"(ii) social security supplements for plan participants that commence before the age and terminate at the age (specified by the plan) when participants are eligible to receive reduced or unreduced old-age insurance benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.), and that do not exceed such old-age insurance benefits.

"(2)(A) It shall not be a violation of subsection (a), (b), (c), or (e) solely because following a contingent event unrelated to age—

"(i) the value of any retiree health benefits received by an individual eligible for an immediate pension; and

"(ii) in any case in which retiree health benefits as described in clause (i) are provided, the value of any additional pension benefits that are made available solely as a result of the contingent event unrelated to age and that make the individual eligible for not less than an immediate and unreduced pension,

are deducted from severance pay made available as a result of the contingent event unrelated to age.

"(B) For an individual who receives immediate pension benefits that are actuarially reduced under subparagraph (A)(1), the amount of the deduction available pursuant to subparagraph (A)(i) shall be reduced by the same percentage as the reduction in the pension benefits.

"(C) For purposes of this paragraph, severance pay shall include that portion of supplemental unemployment compensation benefits (as described in section 501(c)(17) of the Internal Revenue Code of 1986) that—

"(i) constitutes additional benefits of up to 52 weeks;

"(ii) has the primary purpose and effect of continuing benefits until an individual becomes eligible for an immediate and unreduced pension; and

"(iii) is discontinued once the individual becomes eligible for an immediate and unreduced pension.

"(D) For purposes of this paragraph, the term 'retiree health benefits' means benefits provided pursuant to a group health plan covering retirees, for which (determined as of the contingent event unrelated to age)—

"(i) the package of benefits provided by the employer for the retirees who are below age 65 is at least comparable to benefits provided under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.); and

"(ii) the package of benefits provided by the employer for the retirees who are age 65 and above is at least comparable to that offered under a plan that provides a benefit package with one-fourth the value of benefits provided under title XVIII of such Act.

"(E)(i) If the obligation of the employer to provide retiree health benefits is of limited duration, the value for each individual shall be calculated at a rate of \$3,000 per year for benefit years before age 65, and \$750 per year for benefit years beginning at age 65 and above.

"(ii) If the obligation of the employer to provide retiree health benefits is of unlimited duration, the value for each individual shall be calculated at a rate of \$48,000 for individuals below age 65, and \$24,000 for individuals age 65 and above.

"(iii) The values described in clauses (i) and (ii) shall be calculated based on the age of the individual as of the date of the contingent event unrelated to age. The values are effective on the date of enactment of this subsection, and shall be adjusted on an annual basis, with respect to a contingent event that occurs subsequent to the first year after the date of enactment of this subsection, based on the medical component of the Consumer Price Index for all-urban consumers published by the Department of Labor.

"(iv) If an individual is required to pay a premium for retiree health benefits, the value calculated pursuant to this subparagraph shall be reduced by whatever percent-

age of the overall premium the individual is required to pay.

"(F) If an employer that has implemented a deduction pursuant to subparagraph (A) fails to fulfill the obligation described in subparagraph (E), any aggrieved individual may bring an action for specific performance of the obligation described in subparagraph (E). The relief shall be in addition to any other remedies provided under Federal or State law.

"(3) It shall not be a violation of subsection (a), (b), (c), or (e) solely because an employer provides a bona fide employee benefit plan or plans under which long-term disability benefits received by an individual are reduced by any pension benefits paid to the individual that the individual voluntarily elects to receive."

#### SEC. 104. RULES AND REGULATIONS.

Notwithstanding section 9 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 628), the Equal Employment Opportunity Commission may issue such rules and regulations as the Commission may consider necessary or appropriate for carrying out this title, and the amendments made by this title, only after consultation with the Secretary of the Treasury and the Secretary of Labor.

#### SEC. 105. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this section, this title and the amendments made by this title shall apply only to—

(1) any employee benefit established or modified on or after the date of enactment of this Act; and

(2) other conduct occurring more than 60 days after the date of enactment of this Act.

(b) COLLECTIVELY BARGAINED AGREEMENTS.—With respect to any employee benefits provided in accordance with a collective bargaining agreement—

(1) that is in effect as of the date of enactment of this Act;

(2) that terminates after such date of enactment;

(3) any provision of which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4)); and

(4) that contains any provision that would be superseded (in whole or part) by this title and the amendments made by this title, but for the operation of this section,

this title and the amendments made by this title shall not apply until the termination of such collective bargaining agreement or June 1, 1992, whichever occurs first.

#### (c) STATES AND POLITICAL SUBDIVISIONS.—

(1) IN GENERAL.—With respect to any employee benefits provided by an employer—

(A) that is a State or political subdivision of a State or any agency or instrumentality of a State or political subdivision of a State; and

(B) that maintained an employee benefit plan at any time between June 23, 1989, and the date of enactment of this Act that would be superseded (in whole or part) by this title and the amendments made by this title but for the operation of this subsection, and which plan may be modified only through a change in applicable State or local law,

this title and the amendments made by this title shall not apply until the date that is 2 years after the date of enactment of this Act.

(2) ELECTION OF DISABILITY COVERAGE FOR EMPLOYEES HIRED PRIOR TO EFFECTIVE DATE.—

(A) IN GENERAL.—An employer that maintains a plan described in paragraph (1)(B)

may, with regard to disability benefits provided pursuant to such a plan—

(i) following reasonable notice to all employees, establish new disability benefits that satisfy the requirements of the Age Discrimination in Employment Act of 1967 (as amended by this title); and

(ii) then offer to each employee covered by a plan described in paragraph (1)(B) the option to elect such new disability benefits in lieu of the existing disability benefits, if—

(I) the offer is made and reasonable notice provided no later than the date that is 2 years after the date of enactment of this Act; and

(II) the employee is given up to 180 days after the offer in which to make the election.

(B) PREVIOUS DISABILITY BENEFITS.—If the employee does not elect to be covered by the new disability benefits, the employer may continue to cover the employee under the previous disability benefits even though such previous benefits do not otherwise satisfy the requirements of the Age Discrimination in Employment Act of 1967 (as amended by this title).

(C) ABROGATION OF RIGHT TO RECEIVE BENEFITS.—An election of coverage under the new disability benefits shall abrogate any right the electing employee may have had to receive existing disability benefits. The employee shall maintain any years of service accumulated for purposes of determining eligibility for the new benefits.

(3) STATE ASSISTANCE.—The Equal Employment Opportunity Commission, the Secretary of Labor, and the Secretary of the Treasury shall, on request, provide to States assistance in identifying and securing independent technical advice to assist in complying with this subsection.

(4) DEFINITIONS.—For purposes of this subsection:

(A) EMPLOYER AND STATE.—The terms "employer" and "State" shall have the respective meanings provided such terms under subsections (b) and (i) of section 11 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630).

(B) DISABILITY BENEFITS.—The term "disability benefits" means any program for employees of a State or political subdivision of a State that provides long-term disability benefits, whether on an insured basis in a separate employee benefit plan or as part of an employee pension benefit plan.

(C) REASONABLE NOTICE.—The term "reasonable notice" means, with respect to notice of new disability benefits described in paragraph (2)(A) that is given to each employee, notice that—

(i) is sufficiently accurate and comprehensive to appraise the employee of the terms and conditions of the disability benefits, including whether the employee is immediately eligible for such benefits; and

(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

(d) DISCRIMINATION IN EMPLOYEE PENSION BENEFIT PLANS.—Nothing in this title, or the amendments made by this title, shall be construed as limiting the prohibitions against discrimination that are set forth in section 4(j) of the Age Discrimination and Employment Act of 1967 (as redesignated by section 103(2) of this Act).

#### TITLE II—WAIVER OF RIGHTS OR CLAIMS

##### SEC. 201. WAIVER OF RIGHTS OR CLAIMS.

Section 7 of the Age Discrimination and Employment Act of 1967 (29 U.S.C. 626) is amended by adding at the end the following new subsection:

"(f)(1) An individual may not waive any right or claim under this Act unless the waiver is knowing and voluntary. Except as provided in paragraph (2), a waiver may not be considered knowing and voluntary unless at a minimum—

"(A) the waiver is part of an agreement between the individual and the employer that is written in a manner calculated to be understood by such individual, or by the average individual eligible to participate;

"(B) the waiver specifically refers to rights or claims arising under this Act;

"(C) the individual does not waive rights or claims that may arise after the date the waiver is executed;

"(D) the individual waives rights or claims only in exchange for consideration in addition to anything of value to which the individual already is entitled;

"(E) the individual is advised in writing to consult with an attorney prior to executing the agreement;

"(F)(i) the individual is given a period of at least 21 days within which to consider the agreement; or

"(ii) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the individual is given a period of at least 45 days within which to consider the agreement;

"(G) the agreement provides that for a period of at least 7 days following the execution of such agreement, the individual may revoke the agreement, and the agreement shall not become effective or enforceable until the revocation period has expired;

"(H) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the employer (at the commencement of the period specified in subparagraph (F)) informs the individual in writing in a manner calculated to be understood by the average individual eligible to participate, as to—

"(i) any class, unit, or group of individuals covered by such program, any eligibility factors for such program, and any time limits applicable to such program; and

"(ii) the job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same job classification or organizational unit who are not eligible or selected for the program.

"(2) A waiver in settlement of a charge filed with the Equal Employment Opportunity Commission, or an action filed in court by the individual or the individual's representative, alleging age discrimination of a kind prohibited under section 4 or 15 may not be considered knowing and voluntary unless at a minimum—

"(A) subparagraphs (A) through (E) of paragraph (1) have been met; and

"(B) the individual is given a reasonable period of time within which to consider the settlement agreement.

"(3) In any dispute that may arise over whether any of the requirements, conditions, and circumstances set forth in paragraph (1) or (2) have been met, the party asserting the validity of a waiver shall have the burden of proving in a court of competent jurisdiction that a waiver was knowing and voluntary pursuant to paragraph (1) or (2).

"(4) No waiver agreement may affect the Commission's rights and responsibilities to enforce this Act. No waiver may be used to justify interfering with the protected right of an employee to file a charge or partici-

pate in an investigation or proceeding conducted by the Commission."

SEC. 202. EFFECTIVE DATE.

(a) **IN GENERAL.**—The amendment made by section 201 shall not apply with respect to waivers that occur before the date of enactment of this Act.

(b) **RULE ON WAIVERS.**—Effective on the date of enactment of this Act, the rule on waivers issued by the Equal Employment Opportunity Commission and contained in section 1627.16(c) of title 29, Code of Federal Regulations, shall have no force and effect.

**TITLE III—SEVERABILITY**

SEC. 301. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected thereby.

**Mr. METZENBAUM.** Mr. President, am I correct in stating that the committee reported substitute, as modified, is now pending before the Senate and considered original text for the purposes of further amendment?

**The PRESIDING OFFICER.** The Senator is correct.

**Mr. METZENBAUM.** I want to advise my colleagues that the modification we have made is amendment No. 2666, which appeared in the CONGRESSIONAL RECORD last Friday at page S13217.

Mr. President, I am proud to be an original cosponsor and strong supporter, along with Senators PRYOR, HEINZ, and JEFFORDS, of S. 1511, the Older Workers Benefit Protection Act. We are joined by more than 40 other Senators as sponsors, and more Senators whom I know are supportive of this critical legislation.

I want to commend Senator PRYOR for his leadership on this bill, and his commitment to protect millions of older Americans against the scourge of employment discrimination. The Age Discrimination in Employment Act [ADEA] is this Nation's fundamental law safeguarding the civil rights of older Americans in the workplace. The notion that the ADEA permits employers to discriminate intentionally against older workers by denying them basic employee benefits solely on the basis of their age seems preposterous. But in June of last year, in the now-infamous case called Public Employees Retirement System of Ohio versus Betts, the Supreme Court interpreted the ADEA to permit precisely this type of arbitrary age discrimination.

The Betts decision was profoundly wrong. The Supreme Court callously disregarded the wishes of Congress, and recklessly turned its back on the regulations enforced by six Presidential administrations over the past 20 years. The Court's decision also runs counter to the judgment of virtually every lower court that has considered the issue. Moreover, the Court flatly

rejected the position taken by the Bush administration's own Justice Department.

We should have no illusions here. The discrimination we are talking about is direct, deliberate, and devastating. June Betts was a speech pathologist in Hamilton County, OH. At age 61, she became disabled with Alzheimer's disease, but she was denied disability retirement solely because she was above the age of 60. June Betts entered the work force at an advanced age, as do millions of women who raise families before taking on additional career responsibilities. Because she was not a long-term employee, her retirement benefits based on age and service were only \$158.50 a month. Had she received a disability pension, as every worker who became disabled at age 60 or below received, she would have had an additional \$200 per month. She is now destitute in a nursing home, about to go on Medicaid.

What happened to June Betts was a tragedy and a disgrace. A woman who worked as hard as she could for as long as she could has been made a second-class citizen solely because of her age.

But what happened to June Betts is not unique. Take the case of Harry Sousa, a rubberworker from Rhode Island, who spoke eloquently of his plight during the Senate hearings last fall. Mr. Sousa lost his job in a plant shutdown. After more than 30 years on the job, he was entitled to almost 2 years severance pay. But Sousa was denied \$33,000 in severance solely because his age made him eligible for retirement. How absurd can we be? How absurd can we get?

Every day, older workers, many of whom are the most loyal, most experienced and most dedicated workers on the job, are the victims of inexcusable discrimination simply because of their age. The Older Workers Benefit Protection Act will make clear once and for all that June Betts, Harry Sousa, and millions like them may not be treated as second-class citizens.

A summary of the act describes its three main features in some depth. I ask unanimous consent that the summary be included in the RECORD at the conclusion of my statement.

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

(See exhibit 1.)

**Mr. METZENBAUM.** Mr. President, I am pleased that the bill as reported from the Labor and Human Resources Committee has the strong support of the American Association of Retired Persons, the Older Women's League, the National Council on Senior Citizens, the Leadership Council of Aging Organizations, and numerous other senior citizen groups. Also expressing support for S. 1511 are the AFL-CIO, the United Autoworkers, the United

Steelworkers, AFSCME, the Service Employees, and other labor organizations.

At the same time, Mr. President, I am sad to say that the White House currently opposes this bill. That opposition is of ominously recent vintage.

For the past 8 years, the Reagan administration supported older workers by prosecuting employers who violated the equal benefit equal cost rule. The Bush administration began on the right foot, by arguing on behalf of Mrs. Betts in the Supreme Court last year. The EEOC then worked with Members of Congress to craft a bill that would overturn the Betts decision. The EEOC testified that it would support the bill if we made one change. We made that change, exactly as the administration asked us to. We also made other changes, but every one was a change favoring employers, a concession to employer's stated desire for greater flexibility.

Then in March, the Bush White House—the White House that talks about a kinder, gentler nation—announced that it opposed the bill that was to help the senior citizens of this country. The letter was shocking because it rejected or questioned positions previously taken by the Bush Justice Department and the Bush EEOC. I want to emphasize this fact. Last year, the Bush administration argued on behalf of June Betts in the Supreme Court. The administration argued that the equal cost-equal benefit rule was precisely what Congress intended in the ADEA, and was correct as a matter of public policy. Now, the administration takes a 180-degree turn, and takes a position diametrically opposed to the position they took in the Court.

I ask unanimous consent that the Bush administration's brief to the Supreme Court in the Betts case be printed in its entirety at the conclusion of my remarks.

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

(See exhibit 2.)

**Mr. METZENBAUM.** Mr. President, there has been no acknowledgment of this blatant about face. As a matter of fact, Mr. President, I am frank to say to you, I do not believe the President of the United States is aware of what has gone on. I cannot believe that this President has done a 100 percent turn around. I believe that some of those who are the men who are domestic policy leaders, and the so-called this and that, are the ones who caused the turn around. My guess is the President does not know about it, and at some point they will come a long and say you have to veto the bill. I cannot believe that the President himself has made this turn about with respect to the senior citizens of this country.

I cannot recall a situation in which an administration has walked away from its own position in the Supreme Court and then repudiated its own testimony before the House and the Senate.

This happened within the space of a few months. Now they want to pretend that there has been no change. I want the American people to know; I want millions of older workers of this country to know. This is the administration that has really been talking about making things better, making things gentler, kinder, for the people of this country. And now I cannot believe, and am not willing to believe, that this same administration wants to abandon the senior citizens of this country. Ronald Reagan was not known as a stalwart protector of civil rights for the downtrodden or disadvantaged, but this White House wants to take away civil rights that even the Reagan White House fought to protect.

What has happened is clear. A few corporate lobbyists, well-heeled, well-paid lobbyists, have bent the ear of the White House staff; they have urged that American business be given the freedom to discriminate in the name of "employer flexibility." I do not believe that those lobbyists speak for the great body of American employers in this country. I do not believe that they speak for more than a handful, but they have the ear of some of the policymakers in the White House.

As a consequence, this administration seems ready to abandon civil rights, to jettison equal treatment, to sanction blatant discrimination. Somehow, because it is only age discrimination, because it involves difficult pension issues, because it is complex, these White House bureaucrats are saying no to employee benefit protection.

Make no mistake, there are complex aspects to this legislation; I recognize that. There were complex aspects to the ADEA when we first enacted the law. There were complex aspects to the recently enacted plant closing law, and to the 1990 Civil Rights Act, which we will enact in the near future. But complexity is no excuse for discrimination. Complexity should not justify inaction. Complexity must not become a cloak for hypocrisy.

I cannot believe there is this kind of insensitivity in the Bush administration. Carolyn Betts could not believe it either. She wrote to President Bush on May 9, pleading for support on her mother's behalf. These are her words:

Please once again support this bill, for the same reasons you supported it before: older workers, like June Betts, deserve to be treated fairly and honestly in all aspects of their employment and deserve the benefits they have earned.

I ask unanimous consent that the full text of her letter be printed at the conclusion of my statement.

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

(See exhibit 3.)

Mr. METZENBAUM. Carolyn Betts has received no response, regrettably. She wants to believe that the President of the United States has been given bad advice, that if he just knew what was going on, he would do the right thing and restore the civil rights of millions of older Americans.

Well, I say to you, Mr. President, now is your chance. The American people are watching. Older Americans are watching. Will you agree that workplace protection for millions of older Americans must be restored immediately? We hope so, Mr. President. We certainly hope so.

Mr. HATCH. Mr. President, in addition to my concerns about the substance of this bill and its several substitute amendments, I want to express my consternation over the process that has been employed for its consideration by the Senate.

I do not question the sincerity of my colleagues who are the sponsors of this legislation, Senators PRYOR, METZENBAUM, and HEINZ, who have worked diligently to achieve an appropriate solution in this area. I share their interest in addressing the central issue in the Betts decision.

I agree that we need to ensure that older workers are protected against arbitrary age discrimination in employee benefits. I agree with that. Senator KASSEBAUM and I have proposed legislation which closes this gap in current law. Our bill, S. 2831, would correct the Supreme Court's decision in Betts, and it would do it appropriately.

Let me make it clear to all of my colleagues at the outset that I want to have a bill.

What I am unwilling to accept, however, is a bill that discourages and disrupts bona fide employee benefit arrangements that Congress ought to be encouraging. We ought to be protecting these benefits for the sake of all workers in this country, including our older workers.

Nor am I willing to support a bill that costs State and local governments tens of millions of dollars, and some estimate as high as better than one-half billion dollars, at a time when we are all suffering from budget problems, just to have more rules and regulation from the Federal Government.

But the proponents of S. 1511 are today asking that the Senate proceed on a bill which, at least to my knowledge, the vast majority of Senators have barely had enough time to read, let alone analyze. My staff received the latest version—at least I think it is the latest—Friday afternoon at about 4 p.m.

In just the past week, we have been provided with three versions of a substitute amendment. Before last week, of course, there had been two substantially different versions of the bill.

What is before us today, unless I have lost count, is version five of S. 1511. Thus, we are being asked to accept that, having gotten it wrong on tries one, two, three, and four, the proponents finally got it right in version five. Unfortunately, that just is not the case.

I, for one, cannot blindly accept, without any time for comment and analysis by affected parties, that they have adequately corrected the flaws we have identified in the previous incarnations of this bill.

I know that the proponents will accuse me of trying to delay action on the bill first introduced 13 months ago.

Senator METZENBAUM has already criticized me in a CONGRESSIONAL RECORD statement for my unwillingness to "take risks" in the effort that he and I had undertaken to try to resolve this issue. Well, I plead guilty as charged.

As much as I would like to achieve a satisfactory resolution of this issue, Senator METZENBAUM is correct. I am reluctant to take risks with people's future. I am reluctant to take risks with senior citizens and with those who I think will be hurt by this bill. I am reluctant to take risks with all the employees who probably will be hurt by the way this present substitute is written, even though there have been some changes.

I am unwilling to risk the viability of employee disability benefits. I am unwilling to risk employee severance or early retirement payments.

I am unwilling to risk the principle of collective bargaining or the integrity of collective bargaining of benefit plans. I am unwilling to jeopardize the early retirement incentive plans that are attractive to many older working Americans and to the businesses that offer them.

I am unwilling to impose tens of millions, if not hundreds of millions, of dollars worth of compliance costs on State and local governments, whose only recourse will be to raise taxes and cut benefits. That is what it comes down to. If this bill is passed, they are going to have to raise taxes or cut benefits, because we want to change the law that will not be beneficial to begin with.

The stakes here are too high, and we need more debate on this bill, not less. This is an extraordinarily complex and technical issue. We all have an obligation to try to understand the details and the consequence of what we are doing here. This is an important set of issues. I do not think it is unreasonable to want sufficient time to review



and consider revised versions of the bill.

## EXHIBIT 1

## SUMMARY OF S. 1511—THREE MAIN FEATURES

There are three main aspects to this legislation. First, the bill restores the bipartisan pre-Betts understanding of the employee benefit provisions of the ADEA. It does so by reaffirming the "equal benefit or equal cost" principle, a principle that reflects common sense as well as Congressional intent. An employer must provide older workers with benefits at least equal to those provided for younger workers, unless the employer can prove that the cost of providing an equal benefit is greater for an older worker than for a younger one. Because age-related cost differences do exist for some benefits (such as life insurance or disability), employers who demonstrate such a cost differential may comply with the ADEA by expending equal amounts for the benefit per employee. This "equal benefit or equal cost" rule is fair to employees because it encourages employers to provide equal benefits for older workers. It also is fair to employers because it gives them the flexibility to provide unequal benefits if they have sufficient age-based cost justifications.

As part of restoring the bipartisan pre-Betts understanding of the ADEA, the bill makes clear that all benefit plans are covered by the Act, including plans that were established prior to the passage of the ADEA in 1967. We do not approve of racially discriminatory practices implemented prior to the 1964 Civil Rights Act; similarly, there is no reason to sanction age discrimination simply because it has been around for decades.

The second major theme of this bill is the flexibility given to employer practices in the area of early retirement. At the request of the Bush Administration, we have clarified that early retirement incentive practices that are truly voluntary and that are consistent with the purposes of the ADEA are lawful regardless of whether they satisfy the "equal benefit or equal cost" principle. This clarification adopts verbatim language recommended by the Bush Administration in its letter to the House this past March.

In addition, at the request of unions and employers, we have added "safe harbor" provisions protecting certain broadly used retirement practices. These practices are (1) the use of pension supplements known as "Social Security bridge payments"; and (2) the use of subsidized early retirement benefits. Moreover, we have allowed employers that offer retiree health benefits to offset severance payments by the value of the retiree health benefits. These various safe harbor provisions give employers additional flexibility in benefits planning, including some options that were not available to them under pre-Betts law.

The third and final major theme of the legislation is to assure that older workers will not be coerced or manipulated into waiving their rights as a condition of participating in an exit incentive or other group termination program. The assurance is provided through certain requirements that must be met before older workers lawfully may waive their rights under the ADEA. The most important requirements are that older workers have adequate information about the exit incentive program and that they have the option to seek legal advice as to whether they should waive their rights.

## EXHIBIT 2

[In the Supreme Court of the United States, October Term, 1988—No. 88-389]

PUBLIC EMPLOYEES RETIREMENT SYSTEM  
OHIO, APPELLANT v. JUNE M. BETTS

On Appeal From the United States Court of Appeals for the Sixth Circuit

Brief for the Equal Employment Opportunity Commission as Amicus Curiae Supporting Appellee

INTEREST OF THE EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

The Age Discrimination in Employment Act (ADEA), 29 U.S.C. 621 et seq., generally proscribes discrimination against employees age 40 and older. This case involves the meaning of Section 4(f)(2) of the Act, 29 U.S.C. 623(f)(2), which authorizes employers to observe the terms of employee benefits plans in certain circumstances even though older employees are disadvantaged as a result. The Equal Employment Opportunity Commission (EEOC) enforces the ADEA (29 U.S.C. 626) and has issued regulations concerning the meaning of the exception at issue (29 C.F.R. 1625.10). Accordingly, the EEOC has a substantial interest in the resolution of the question presented.<sup>1</sup>

## STATEMENT

Appellee June Betts was hired by the Hamilton County, Ohio, Board of Mental Retardation and Developmental Disabilities in 1978 at age 55. In 1985, when she was 61, Bett's employer determined that she could no longer perform her job for medical reasons and informed her that she could either retire or be placed on medical leave with no pay and no medical benefits. J.S. App. A23. Had she been under 60, she would have had a third option: disability retirement. That option was foreclosed to her, however, because of a provision in Ohio's pension law preventing persons over 60 from receiving disability pensions and allowing them to receive only regular age retirement pensions. Betts chose to retire and is currently receiving retirements benefits of \$158.50 per month (*id.*)<sup>2</sup>

The district court concluded that appellant, the Public Employees Retirement System of Ohio (PERS), had impermissibly discriminated against Betts because of her age. Section 4(a)(1) of the Age Discrimination in Employment Act (ADEA), 29 U.S.C. 623(a)(1), provides that "[i]t shall be unlawful for an employer to . . . discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age." The Ohio employee benefit plan, the court stated, is contrary to Section 4(a)(1) because "[o]n its face and in its effect, the disability retirement plan denies benefits to certain employees because they are sixty years of age or older." J.S. App. A23.

The district court rejected PERS' claim that its age-based denial of disability bene-

<sup>1</sup> This case does not affect the Federal Government as an employer, because under 29 U.S.C. 630(b) it is not an "employer" for purposes of the statutory provision at issue. A separate self-contained section of the ADEA, 29 U.S.C. 633a, governs federal agencies *Lehman v. Makshian*, 453 U.S. 156, 168 (1980).

<sup>2</sup> The difference between ordinary retirement benefits and disability retirement benefits in Bett's case comes about because of a provision added to Ohio Rev. Code Ann. § 145.36 (Anderson 1982 & Supp. 1987) in 1976, which states that "[i]n no case shall a disability retirement benefit be less than thirty per cent . . . of [an employee's] final average salary."

fits was protected under Section 4(f)(2) of the ADEA, 29 U.S.C. 623(f)(2), which provides that "[i]t shall not be unlawful for an employer . . . to observe the terms of . . . any bona fide employer benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of" the Act. The court agreed with the EEOC's interpretative regulation, which construes this provision to "permit age-based reductions in employee benefit plans where such reductions are justified by significant cost considerations." J.S. App. A28, quoting 29 C.F.R. 860.120(a)(1) (1969) (currently designated 29 C.F.R. 1625.10(a)(1)). Here, the court concluded, the discrimination "is not justified by significant cost considerations and therefore, it is not the type of plan contemplated by the exception." J.S. App. A29.<sup>3</sup>

A divided court of appeals affirmed. J.S. App. A2-A19. It agreed with the Seventh Circuit that "where, as in the present case, the employer uses age—not cost, or years of service, or salary—as the basis for varying retirement benefits, he had better be able to prove a close correlation between age and cost if he wants to shelter in the safe harbor of" Section 4(f)(2). J.S. App. A5, quoting *Karlen v. City Colleges of Chicago*, 837 F.2d 314, 319 (7th Cir.), cert. denied, No. 87-1831 (June 6, 1988). Here, the court concluded, "[d]espite having every opportunity, the defendants declined to introduce any cost figures or other economic justification for the different treatment of employees over sixty." J.S. App. A6.

## SUMMARY OF ARGUMENT

PERS discriminated against Betts on account of her age, as she would receive more than double the amount of the benefits she currently receives if she had become disabled before, rather than after, turning 60. It is undisputed that, in the absence of Section 4(f)(2), PERS would be liable under Section 4(a)(1) of the ADEA.

From the time of the enactment of the ADEA to the present, the two federal agencies that have administered the Act have consistently interpreted Section 4(f)(2) as requiring some sort of cost justification in order to permit an employer to avoid a charge of discrimination. 29 C.F.R. 860.120(b) (1969) (34 Fed. Reg. 9709 (1969)) (Department of Labor regulation); 29 C.F.R. 1625.10(a)(1) (current EEOC regulation). That construction is fully consistent with the language of the provision. In enacting Section 4(f)(2), Congress meant to shield employee benefit plans that disadvantage older employees only where employers present reasonable economic justifications for doing so. This conclusion draws support from Congress' use of the phrase "such as a retirement, pension, or insurance plan." The thread common to those sorts of plans is that they entail costs that typically increase as employees age. *EEOC v. Westinghouse Electric Corp.*, 725 F.2d 211 (3d Cir.), cert. denied, 469 U.S. 820 (1984); *EEOC v. Borden's, Inc.*, 724 F.2d 1390 (9th Cir. 1984). Alternatively, the cost-justification rule can be derived from the requirement that a plan

<sup>3</sup> The district court also concluded that because Betts was disqualified from obtaining disability benefits she had been forced to retire involuntarily. The court therefore held that PERS had violated Section 4(f)(2)'s proscription against "requir[ing] or permit[ting] the involuntary retirement of any individual . . . because of the age of such individual." J.S. App. A30-A32. The court of appeals did not address that conclusion.

not serve a "a subterfuge to evade the purposes of" the Act. One purpose of the ADEA is to abolish arbitrary discrimination against older employees, i.e., discrimination that has no foundation in legitimate cost differences between older and younger employees. *EEOC v. City of Mt. Lebanon*, 842 F.2d 1480 (3d Cir. 1988), *Cipriano v. Board of Education*, 785 F.2d 51 (2d Cir. 1986).

The legislative history also supports the conclusion that employers must provide an economic justification before they may discriminate against older employees in the provision of an employee benefit. Senator Javits, who introduced the amendment that became Section 4(f)(2), explained at the time he introduced it that it was intended to allow employers to provide different benefits to older employees "because of the often extremely high cost of providing certain types of benefits to older workers." 113 Cong. Rec. 31,254-31,255 (1967), reprinted in U.S. Equal Employment Opportunity Commission, *Legislative History of the Age Discrimination in Employment Act 145-146* (1981). Since the exception was intended to authorize employers to grant lesser benefits to older employees where benefits are more costly to provide to those employees, it is sensible to require employers to provide a cost justification for their discrimination in order to invoke Section 4(f)(2).

The courts below correctly concluded that PERS is not shielded by Section 4(f)(2) because it has offered no economic justification whatever to explain why persons who become disabled before age 60 are entitled to greater benefits than employees who become disabled after turning 60. PERS argues that it need not offer any justification for its discriminatory treatment because Congress intended to allow employers to discriminate in the provision of employee benefits as long as the discrimination is not a cover for forcing older employees to retire. But neither the language of the statute nor its legislative history provides support for the contention that Congress intended to grant employers the right to discriminate arbitrarily in the provision of employee benefits except in that limited circumstance. Finally, there is no merit to PERS' suggestion that its plan is protected because it was established prior to the enactment of the ADEA, since the discriminatory provision at issue was added in 1976, after the ADEA took effect.

#### ARGUMENT

OHIO'S PUBLIC EMPLOYEES RETIREMENT SYSTEM VIOLATED THE AGE DISCRIMINATION IN EMPLOYMENT ACT BY DISQUALIFYING BETTS FROM RECEIVING DISABILITY BENEFITS SOLELY ON ACCOUNT OF HER AGE SINCE IT PROVED NO ECONOMIC JUSTIFICATION FOR ITS DISCRIMINATORY TREATMENT

#### A. The Public Employees Retirement System Discriminated Against Betts By Denying Her Disability Benefits

The Ohio statute at issue, Ohio Rev. Code Ann. § 145.35 (Anderson 1982 & Supp. 1987), is discriminatory on its face, as it provides that only employees who have "not attained age sixty" may apply for disability benefits. The statute thus conflicts with Section 4(a)(1) of the ADEA, 29 U.S.C. 623(a)(1), which makes it unlawful for employers to "discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of the individual's age." There is no question that the application of Section 145.35 had a discriminatory effect here, since the monthly retirement benefit that Betts ini-

tially received was less than half of the amount of the disability benefit that she would have received if she had not been barred from applying for those benefits. Indeed, under the Ohio Public Employees Retirement System a recipient of disability benefits does not cease to receive those benefits after reaching age 60; consequently, if Betts had become eligible to obtain disability benefits at age 59, she would continue to receive at least 30 percent of her salary after she turned 60 rather than the lesser retirement benefit that she receives instead. In short, an employee disabled before age 60 is treated significantly differently than an employee disabled after age 60 even if the younger and older employees have identical years of service, identical disabilities, and identical salaries. Thus, this case involves disparate treatment of an employee on account of her age.

#### B. The EEOC's Regulations Properly Interpret Section 4(f)(2) To Shelter Provisions In Employee Benefit Plans Reducing The Amount Of Benefits Paid To Older Employees Only Where Economic Considerations Justify Such Treatment

The dispositive question is whether the disparate treatment afforded Betts under Ohio law is protected under Section 4(f)(2), which authorizes an employer to observe the terms of "any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of" the Act. The federal agencies charged with enforcement of the ADEA have long construed this provision to permit age-based differentials in employee benefits only where such differences are justified by significant cost considerations. That construction is consistent with both the language of Section 4(2)(f) and its purposes, as revealed by the legislative history. The lower courts therefore correctly ruled that PERS may not rely on Section 4(f)(2) unless it can demonstrate a significant cost justification for its refusal to extend disability retirement benefits to persons over age 60.

1. Shortly after the enactment of the ADEA in 1967, the Department of Labor, which originally administered the Act, issued an interpretation of Section 4(f)(2). That interpretation allowed employers to discriminate against older employees in the provision of employee benefits where the cost of such benefits was more expensive for older employees. It stated: "[A]n employer may provide lesser amounts of insurance coverage under a group insurance plan to older workers than he does younger workers, where the plan is not a subterfuge to evade the purposes of the Act. A retirement, pension, or insurance plan will be considered in compliance with the statute where the actual amount of payment made, or cost incurred, in behalf of an older worker is equal to that made or incurred in behalf of a younger worker, even though the older worker may thereby receive a lesser amount of pension or retirement benefits or insurance coverage." 29 C.F.R. 860.120(a) (1969); 34 Fed. Reg. 9709 (1969). Thus, as the Department understood Section 4(f)(2) shortly after its enactment, it permitted, for example, employers to contribute \$100 annually towards the purchase of term life insurance for all employees, even though \$100 would buy twice as much coverage for a 35-year-old employee as it would for a 55-year-old employee.

The Department also understood that Section 4(f)(2) did not authorize discrimination against older employees with respect to

benefits that were not more costly to provide older employees. Noting that "[n]ot all employee benefit plans but only those similar to the kind enumerated in section 4(f)(2) of the Act come within this provision," the Department opined that in the normal case Section 4(f)(2) would not shield discrimination against older employees under the terms of profit-sharing plans. 29 C.F.R. 860.120(b) (1969); 34 Fed. Reg. 9709 (1969). Thus, in the Department's view, by the phrase "employee benefit plan such as a retirement, pension, or insurance plan" in Section 4(f)(2) Congress limited the exception to plans where the cost of providing benefits increases as employees age.

In 1979, the responsibility for enforcing the ADEA was transferred from the Department of Labor to the EEOC. Reorg. Plan No. 1 of 1978, 3 C.F.R. 321 (1978). The EEOC adopted the Department of Labor's interpretation of Section 4(f)(2). The current EEOC regulations state that "its purpose is to permit age-based reductions in employee benefit plans where such reductions are justified by significant cost consideration." 29 C.F.R. 1625.10(a)(1). Like the Department of Labor's 1969 regulations, the EEOC's regulations provide that "[a] benefit plan will be considered in compliance with the statute where the actual amount of payment made, or cost incurred, in behalf of an older worker is equal to that made or incurred in behalf of a younger worker, even though the older worker may thereby receive a lesser amount of benefits or insurance coverage" (ibid.).

Thus, the agencies responsible for administering the ADEA have consistently agreed—from the time of its enactment more than twenty years ago to the present—that Section 4(f)(2) is designed primarily to permit cost-justified discrimination against older workers in the provision of employee benefits. This Court has relied on "the consistent interpretation of the administrative agencies charged with enforcing" the ADEA. *Western Air Lines v. Criswell*, 472 U.S. 400, 412 (1985); see also *Skidmore v. Swift & Co.*, 323 U.S. 134, 139-140 (1944). "[T]he EEOC's cost justification requirement constitutes the type of longstanding and contemporaneous agency interpretation deserving recognition *EEOC v. City of Mt. Lebanon*, 842 F.2d 1480 (3d Cir. 1988).

2. The interpretation of Section 4(f)(2) adopted by the federal agencies charged with its enforcement is fully compatible with the statutory language. The cost-justification requirement can be derived either from the phrase "bona fide employee benefit plan such as a retirement, pension, or insurance plan," as some courts have held, or it can be viewed as implicit in the requirement that a plan not be "a subterfuge to evade the purposes of" the Act, as other courts have suggested. Whichever phrase is given primary emphasis, the courts of appeals agree that the cost-justification standard is supported by the statutory language.

When Congress adopted the "safe harbor" provision codified as Section 4(f)(2), it listed as illustrative examples of the type of benefit plans it had in mind retirement, pension, and insurance plans. A common feature of such plans is that they tend to entail costs that rise with the age of the beneficiary. To be sure, the cost of providing benefits to Older employees under retirement, pension, and insurance plans do not always increase as the age of employees increases. But they commonly do. Most obviously, it costs more to obtain term life insurance as employees age. In addition, health insurance may be

more expensive to obtain for older employees. And it might be more expensive to provide the same defined benefit under a retirement or a pension plan to an employee who began work at age 55 than to an employee who began working at a much younger age. See 113 Cong. Rec. 31,255 (1967), reprinted in U.S. Equal Employment Opportunity Commission, *Legislative History of the Age Discrimination in Employment Act 146* (1981).

The Third Circuit in *EEOC v. Westinghouse Electric Corp.*, 725 F.2d 211, 224, cert. denied, 469 U.S. 820 (1984), agreed that Section 4(f)(2) incorporates an "age-related cost factor," and it grounded that requirement in the phrase "bona fide employee benefit plan such as a retirement, pension, or insurance plan."<sup>4</sup> In *Westinghouse*, the employer had refused to provide layoff benefits to employees age 55 and over because they qualified for retirement benefits (*id.* at 214-215). The court of appeals noted that it was "aware that the words 'such as a retirement, pension or insurance plan' were added in a descriptive sense" to Section 4(f)(2) (*id.* at 224). However, the court stated, "their description contains substance" (*ibid.*). As the court stated, those sorts of plans are "indicative of the types of plans in which Congress intended to allow age discrimination; they are of the type whereby the cost of benefits increases with age," since "[t]he thread common to retirement, insurance and pension plans \* \* \* is the age-related cost factor" (*ibid.*).

Similarly, the Ninth Circuit in *EEOC v. Borden's, Inc.*, 724 F.2d 1390, 1396 (1984), concluded that "Borden's severance pay policy is not an 'employee benefit plan such as a retirement, pension, or insurance plan.'" The court explained that Congress "meant to encourage the hiring of older workers by relieving employers of the duty to provide them with equal benefits—where equal benefits would be more costly for older workers" (*ibid.*). Since severance benefits do not vary depending on the age of the worker, the Ninth Circuit, following the Third Circuit's approach in *Westinghouse*, held that the employer's severance pay policy was "a 'simple fringe benefit,' outside the scope of" Section 4(f)(2) (*id.* at 1397).<sup>5</sup>

Other courts of appeals have emphasized Section 4(f)(2)'s requirement that a plan not be "a subterfuge to evade the purposes of" the Act.<sup>6</sup> As in any other disparate treat-

ment case, the question whether an employer's discriminatory treatment of older employees is a subterfuge must focus on whether the employer had a valid reason for its action or whether its stated reason is a pretext for proscribed behavior. Thus, courts must determine whether the employer's motive was nonpretextual. Cf. *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981). In the context of Section 4(f)(2), this means the employer must demonstrate a legitimate business reason for treating older employees less generously than younger employees. As a rule, that will generally require the employer to show that it is more expensive to provide the benefit in question to older employees.

Like this case, *EEOC v. City of Mt. Lebanon*, 842 F.2d 1480, 1484 (3d Cir. 1988), involved a plan under which older employees were barred in some circumstances from receiving disability benefits, and had to settle for lesser retirement benefits. The court stated that the question presented was whether the employer "created the plan as a subterfuge to evade the ADEA prohibition of age discrimination" (*id.* at 1488). It concluded that Congress enacted Section 4(f)(2) because it "recognized the greater expense incurred by employers providing benefit programs for older employees," and decided that "employers should be relieved of the obligation of providing older employees with benefits equal to benefits for younger employees when it would be more costly to do so" (*id.* at 1489). Accordingly, the court held that "[i]n order to 'cost justify' a reduced level of benefits for older employees, and thereby disprove subterfuge, an employer must establish a connection or nexus showing how general cost savings data supports the extent of reductions in its particular plan" (*id.* at 1492). Similarly, the Second Circuit in *Cipriano v. Board of Education*, 785 F.2d 51, 57, 58 (1986), concluded that an incentive plan under which an employer gave bonuses to employees between 55 and 60 if they retired, but did not offer similar bonuses to older employees, was a "subterfuge to evade the purposes of the Act" in the absence of evidence showing a legitimate business reason for discriminating against the older employees.<sup>7</sup>

While the courts of appeals have emphasized different language in the text of Section 4(f)(2), they have generally agreed that where "the employer uses age—not cost, or years of service, or salary—as the basis for varying retirement benefits, he had better be able to prove a close correlation between age and cost if he wants to shelter in the safe harbor of section 4(f)(2)," *Karlen*, F.2d at 319; *Pet. App. A5*. That conclusion is fully warranted by the language of Section 4(f)(2) which limits its coverage to certain types of employee benefit plans characterized by age-related costs ("a plan such as a retirement, pension, or insurance plan"), and by the language that proscribes plans

provided that the lower level of benefits is justified by age-related cost considerations." 29 C.F.R. 1625.10(d).

The Second Circuit in *Cipriano* stated that it "would not wish to be understood as endorsing every detail of the regulations." 785 F.2d at 58. However, it held that an employee benefit plan that discriminated against older employees would not be protected by Section 4(f)(2) in the absence of a showing by the employer that it had "a legitimate business reason for structuring the plan as it did" (*ibid.*). The Second Circuit thus plainly rejected PERS' position, which is that it may discriminate against older employees in the provision of employee benefits as long as it does not try to force them to retire. See *App. Br. 26, 48*.

that undermine the basic antidiscrimination rationale of the Act (a plan that is "a subterfuge to evade the purposes of" the Act).<sup>8</sup>

3. If there were any doubt about whether the EEOC's cost-justification standard is consistent with the statutory language, that doubt is resolved by the legislative history. As introduced by Senator Yarborough in 1967, Section 4(f)(2) of the bill that became the Age Discrimination in Employment Act provided only that it would not be unlawful for an employer "to separate involuntarily an employee under a retirement policy or system where such policy or system is not merely a subterfuge to evade the purposes of this Act." S. 830, § 4(f)(2), 90th Cong., 1st Sess., reprinted in U.S. Equal Employment Opportunity Commission, *Legislative History of the Age Discrimination in Employment Act* [hereinafter *Legislative History*] 68 (1981). The bill as introduced made no reference to any circumstance that might authorize employers to discriminate against older employees in the provision of benefits. The drafters of the bill, which was termed the administration bill, probably thought such a provision unnecessary because the 1965 report of the Secretary of Labor on the problems of older employees noted that "[r]elatively few employers \* \* \* cited the costs of providing pension and insurance benefits as significant barriers to employment of older persons." Report of the Secretary of Labor to the Congress under Section 715 of the Civil Rights Act of 1964, *The Older American Worker: Age Discrimination in Employment 16* (1965), reprinted in *Legislative History* at 33.

Senator Javits, however, thought that employers were concerned about the cost of providing some types of employee benefits to older persons. He criticized the administration bill for "not providing] any flexibility in the amount of pension benefits payable to older workers depending on their age when hired." *Age Discrimination in Employment: Hearings on S. 830 and S. 788 Before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare* [hereinafter *Senate Hearings*], 90th Cong., 1st Sess. 27 (1967). In his view, "faced with the necessity of paying greatly increased premiums," employers might "look for excuses not to hire older workers" (*ibid.*).

Senator Smathers, a cosponsor of the administration bill, shared this concern. He

<sup>4</sup> The Department of Labor similarly emphasized in 1969 that "[n]ot all employee benefit plans but only those similar to the kind enumerated in section 4(f)(2) of the Act come within this provision." It therefore concluded that Section 4(f)(2) would not shield discrimination against older employees in the provision of profit-sharing benefits because the cost of providing those benefits does not increase as employees age. 29 C.F.R. 860.120(b) (1969); 34 Fed. Reg. 9709 (1969).

<sup>5</sup> The discrimination here is not excused because, while denying Betts disability benefits, PERS has provided her with lesser benefits of a type listed in the statute. The employees in *Westinghouse* who were denied layoff benefits were also provided retirement benefits, but the court properly concluded that the fact that the layoff plan "is tied to Westinghouse's Pension Plan does not negate the fact that it is more analogous to a 'fringe benefit' than to the types of employee benefit plans covered under 4(f)(2)." 725 F.2d at 225. Moreover, even if a plan is of the sort enumerated in the statute, that does not mean that any discrimination against older employees under the terms of the plan, no matter how arbitrary, should be excused.

<sup>6</sup> The EEOC's current regulations provide that "a plan or plan provision which prescribes lower benefits for older employees on account of age is not a 'subterfuge' within the meaning of section 4(f)(2),

<sup>8</sup> At the end of its opinion in *United Air Lines, Inc. v. McMann*, 434 U.S. 192, 203 (1977), this Court stated that it found nothing to indicate that Congress intended to require an employer that established a retirement plan long before the enactment of the ADEA "to show an economic or business purpose in order to satisfy the subterfuge language in the Act." Contrary to appellants (Br. 22), we do not think that that statement has binding force following Congress's enactment of the 1978 amendment to Section 4(f)(2) negating the holding in *McMann*. Pub. L. No. 95-256, § 2(a), 92 Stat. 189. In any event, the statement appears to have been tied to the situation presented in that case, where the discriminatory provision had been added to the plan at issue prior to the enactment of the ADEA. Here, in contrast, the discriminatory provision in Ohio law was added in 1976, after the ADEA was enacted and after it was amended to apply to the States. Thus, no pre-ADEA provision is involved here. See pages 25-26, *infra*. Furthermore, the Court in *McMann* did not focus on the language of Section 4(f)(2) referring to plans "such as a retirement, pension, or insurance plan" or the legislative history showing that Congress plainly intended to require employers to provide an economic justification where lesser benefits are provided to older employees, but instead focused on the question presented in that case. See pages 14-20, *infra*.

agreed with Senator Javits that "[a]s presently drafted, the bill would probably be interpreted to require that workers hired for the first time between the ages of 45 and 65 be given the same private pension rights and other fringe benefits that workers are given who began with the employer at younger ages, thus ignoring the fact that providing fringe benefits for the former can be expensive." Senate Hearings at 29-30. He therefore suggested an amendment "somewhat along the lines of the following: \* \* \* Nothing in this Act shall be construed to make unlawful the varying of coverage under any pension, retirement, or insurance plan or any plan for providing medical or hospital benefits or benefits for work injuries, where such variance is necessary to prevent the employer's being required to pay more for coverage of an employee than would be required to provide like coverage for his other employees" (id. at 30).

The next day, Senator Javits stated on the floor of the Senate that he would seek to amend the administration bill in a way that incorporated his and Senator Smathers' concerns. The proposed amendment, which was similar to Section 4(f)(2) as ultimately enacted, provided that it would not be unlawful for an employer "to observe a seniority system or any retirement, pension, employee benefit, or insurance plan, which is not merely a subterfuge to evade the purposes of this Act." 113 Cong. Rec. 7077 (1967), reprinted in Legislative History at 72. Senator Javits explained that under his amendment "an employer will not be compelled to afford older workers exactly the same pension, retirement, or insurance benefits as younger workers and thus employers will not, because of the often extremely high cost of providing certain types of benefits to older workers, actually be discouraged from hiring older workers." 113 Cong. Rec. 31,254-31,255 (1967), reprinted in Legislative History at 145-146 (emphasis added). According to its drafter, therefore, a key purpose of Section 4(f)(2) was to allow employers to pay lesser benefits to older employees where it cost more to provide those benefits to older persons. See also 113 Cong. Rec. 34,746 (1967) (employers need not provide "special and costly benefits" to older employees) (remarks of Rep. Daniels), reprinted in Legislative History at 157).

Senator Javits' amended version of Section 4(f)(2) had another effect as well. In a colloquy with Senator Javits, Senator Yarborough asked: "Say an applicant for employment is 55, comes in and seeks employment, and the company has bargained for a plan with its labor union that provides that certain moneys will be put up for a pension plan for anyone who worked for the employer for 20 years so that a 55-year-old employees \* \* \* will not be able to participate in that pension plan because unlike a man hired at 44, he has no chance to earn 20 years retirement." 113 Cong. Rec. 31,255 (1967), reprinted in Legislative History at 146. Senator Javits agreed that his amendment protected an employer in such a situation from a claim that it discriminated against older employees who would not be eligible to participate in the pension plan (ibid.) See also H.R. Rep. 805, 90th Cong., 1st Sess. 4 (the exception permits "employment without necessarily including such [older] workers in employee benefit plans" (1967), reprinted in Legislative History at 78; 113 Cong. Rec. 34,746 (1967) (older employees need not "be included in all employee benefit plans") (remarks of Rep. Dan-

iels), reprinted in Legislative History at 157).

Thus, in addition to allowing employers to decrease the amount of benefits paid to older employees where it costs more to provide those benefits to them, Senator Javits' version of Section 4(f)(2) was intended to allow employers to bar older employees from participating in certain plans altogether when they could not work for the employer long enough to qualify for participation in the plan. The decision to permit employers to enforce waiting periods for the vesting of pension benefits, like the decision to allow them to provide reduced benefits in some circumstances, was based on economic considerations. The amounts employers must pay into certain employee benefit plans such as defined benefit pension plans,<sup>10</sup> depends on actuarial predictions of the amounts that ultimately will have to be paid in benefits. It would upset the predictions on which contributions has been based, and the actuarial soundness of some plans, if a large number of employees previously thought to be ineligible for pensions suddenly became entitled to benefits.<sup>11</sup>

<sup>10</sup> PERS notes (Br. 37) that Senator Javits believed that the ADEA was not the place to "fight[] the pension battle." See 113 Cong. Rec. 7076 (1967), reprinted in Legislative History at 71. By that remark, Senator Javits was not suggesting that any type of discrimination in the provision of employee benefits should be permissible under the ADEA. Rather, he was aware that some pension plans in existence then had very long periods before benefits vested, such as the 20-year period in the plan hypothesized by Senator Yarborough, and he thought that such requirements should be changed by comprehensive pension legislation rather than by an age discrimination statute. A major change made by the Employee Retirement Income Security Act of 1974 (ERISA), of which Senator Javits was a sponsor, was that entitlement to benefits paid by qualified pensions plans must vest partially after five years of service and totally after ten years of service. 29 U.S.C. 1053.

<sup>11</sup> Defined benefit plans are pension plans where retirees receive a fixed amount per month based on factors such as final salary and years of service. They differ from defined contribution plans, under which an employer regularly contributes a percentage of an employee's compensation to an account, and the employee is entitled to the account upon retirement. See 29 U.S.C. 1002(34) & 1002(35).

<sup>12</sup> PERS (Br. 33) and amicus National Public Employers Labor Relations Association (Br. 29) note that Senator Smathers' suggested amendment, which expressly authorized variation in employee benefits where it is more expensive to provide certain benefits to older employees, was not enacted. Contrary to their suggestion, however, that in no way implies that Congress rejected his concerns. Senator Smathers never actually proposed an amendment to the Senate, but instead suggested at a hearing language "somewhat along the lines of the following." Senate Hearings at 30. Senator Javits plainly understood his amendment, which borrowed its reference to pension, retirement, and insurance plans from Senator Smathers' suggestion, to accomplish the result Senator Smathers desired, as he stressed that where the "high cost of providing certain types of benefits to older workers" exceeded the cost of providing those benefits to younger employees, employees would "not be compelled to afford older workers exactly the same pension, retirement, or insurance benefits." 113 Cong. Rec. 31,225 (1967), reprinted in Legislative History at 146 (emphasis added).

Moreover, Senator Javits could not have adopted Senator Smathers' suggested language exactly because it did not allow employers to bar older employees from participating in employee benefit plans altogether where they could not work for the employer long enough to qualify. Senator Smathers' language authorized "variance" only. In the case of the 55-year-old employee hypothesized by Senator Yarborough in his colloquy with Senator Javits, Senator Smathers' proposed language would have required that the 55-year-old receive a lesser pension if he worked to age 65, whereas the

The concern with costs that animated the original enactment of Section 4(f)(2) was confirmed in 1978, when Congress amended Section 4(f)(2) by adding a clause providing that no employee benefit plan may "require or permit the involuntary retirement of any individual \* \* \* because of the age of such individual." Pub. L. No. 95-256, § 2(a), 92 Stat. 189.<sup>12</sup> The purpose of the amendment was to overturn the result in *United Air Lines, Inc. v. McMann*, 434 U.S. 192, 193 (1977), where this Court held that involuntary retirements were permitted by Section 4(f)(2). In so ruling, the Court stated that it had found "nothing to indicate Congress intended wholesale invalidation of retirement plans instituted in good faith before its passage, or intended to require employers to bear the burden of showing a business or economic purpose to justify bona fide pre-existing plans." 434 U.S. at 203. In the course of explaining the decision to overturn this result, Senator Javits, asserted that the Court had erred by stating that an economic justification was not required to shield discrimination in the provision of employee benefits: "The meaning of the exception, as I stated in a colloquy with Senator Yarborough on the Senate floor, was that an 'employer will not be compelled under this section to afford to older workers exactly the same pension, retirement, or insurance benefits as he affords to younger workers.'" 124 Cong. Rec. 8218 (1978), reprinted in Legislative History at 539. By that statement, Senator Javits indicated, he had meant that "[w]elfare benefit levels for older workers may be reduced only to the extent necessary to achieve approximate equivalency in contributions for older and younger workers" (ibid.).

4. Finally, the EEOC's interpretation of Section 4(f)(2) not only comports with the language and legislative history of the Act, it also finds support in important policy considerations. The cost-justification standard imports an objective criterion for determining the scope of the Section 4(f)(2) exemption—whether the disparate treatment of older workers can be justified by significant differences in the costs of providing benefits to older workers. The objective nature of the standard should result in more predictable enforcement, which in turn should encourage voluntary compliance and facilitate long-range planning in the development of employee benefit plans. The cost-justification criterion also supplies a general, neutral standard for assessing all types and varieties of employee benefit plans, regardless of the particular label that may be attached to those plans. Finally, and most importantly, the EEOC's standard follows directly from the ADEA's anti-discrimination principle. When it costs the same to provide a particular benefit to an older employee and a younger employee, then there is no relevant difference between the two that would justify disparate treatment. But when it costs significantly more to provide a benefit to an older employee, it cannot fairly be said that the two employees are so similarly situated that it would be unfair to differentiate between them in the provision of benefits. The cost-justification standard therefore advances the most basic purpose

terms of the hypothetical plan bargained by the employer and its union required 20 years of employment for an employee to qualify for a pension.

<sup>13</sup> The guidelines that the Department of Labor issued in 1969 provided that involuntary retirement was permitted by Section 4(f)(2). 29 C.F.R. 860.110(a) (1969); 34 Fed. Reg. 9709 (1969).

of the ADEA; ending discrimination against older employees in the workplace.

C. Because Ohio's Public Employees Retirement System Has Offered No Economic Justification For Its Refusal To Pay Disability Benefits To Employees Over Age 59, Its Discrimination Against Older Employees Is Not Shielded By Section 4(f)(2)

PERS has not demonstrated that its disability benefits plan is the sort of plan where costs increase with the age of the participant.<sup>13</sup> Indeed, as the court below stated, "[d]espite having every opportunity, the defendants declined to introduce any cost figures or other economic justification for the different treatment of employees over sixty." J.S. App. A6.<sup>14</sup> That defect is fatal, since Section 4(f)(2) is an affirmative defense on which the defendant bears both the burden of production and persuasion. *Karlen*, 837 F.2d at 318, *Cipriano*, 785 F.2d at 57-59. In any event, there is no good reason to assume without evidence that disability benefits become more costly as employees get older. While older employees may be more likely to become disabled (a point on which there is no evidence), the court of appeals correctly noted that "the employee who becomes disabled at a younger age should draw more in benefits over the course of his lifetime than the employee who becomes disabled at 60 or older." J.S. App. A6. Thus, it may be that it is actually more expensive to provide disability benefits to younger workers.

Nor is PERS' discrimination justified because employees like Betts, unlike younger employees who become disabled, are eligible for retirement benefits under Ohio law. The explanation does not square with the effect of the Ohio statutes, since employees who obtain disability benefits do not cease to receive them when they turn 60. Rather, they continue to receive disability benefits at the rate of at least 30 percent of their "final average salary" (Ohio Rev. Code Ann. § 145.36 (Anderson 1982 and Supp. 1987), even after they turn 60 and become eligible for retirement benefits instead of disability benefits. Thus, contrary to PERS' explanation (Br.48), the disability plan provides income to employees who have an alternative source of income.

Even if PERS disqualified all recipients from receiving disability benefits once they became eligible to receive retirement benefits, its plan would still not be shielded by Section 4(f)(2). The federal agencies administering the ADEA have concluded that employers may in certain circumstances reduce disability benefits, or replace them with lesser retirement benefits, as recipients age and become entitled to other benefits. But the circumstances in which disqualification is permitted do not include the situation presented here. In 1978, the Department of Labor noted that disability benefits are typically intended "to replace, at least partially,

income which an employee would have earned but is unable to earn because of disability." 43 Fed. Reg. 43,266. Requiring disability benefits to continue without reduction until age 70 (the age at which mandatory retirement was permissible at that time), the Department continued, "rests on the unwarranted assumption that a worker who suffers from a long-term disability would in the absence of the disability, have worked until age 70" (id. at 43,267). Data that the Department's Bureau of Labor Statistics had gathered showed that "the most common age at which employees retire is 65" and that, for "individuals still employed at age 60 (or later), the average remaining worklife is about 5 years" (ibid.). Accordingly, the Department concluded, employers should be allowed to cut off disability payments "at age 65 for any employee who becomes disabled at age 60 or less" and "5 years after the disability occurred" when employees become disabled after age 60 (ibid.).

The EEOC has adopted that approach. 29 C.F.R. 1625.19(f)(1)(ii). Its regulations also note that "[c]ost data may be produced to support other patterns of reduction as well" (ibid.). Here, PERS' reduction of benefits does not fall into the safe harbor provided by the regulations, and it has produced no cost data at all to justify its approach.

D. Appellant Errs In Contending That Section 4(f)(2) Authorizes Arbitrary Discrimination Against Older Employees Under Employee Benefit Plans And That Its Plan Is Exempt As A Pre-ADEA Plan

1. PERS contends (Br. 26) that, under Section 4(f)(2), "any plan designed to provide employees with benefits unrelated to salary or wages is exempt from the prohibitions of the Act, provided the plan was not conceived to avoid the statute's specified purposes of facilitating the employment of older workers." PERS' amici similarly argue that Section 4(f)(2) excuses all discrimination pursuant to an employee benefit plan that is not a sham.<sup>15</sup> That construction, which has no support at all in the many decisions of courts construing Section 4(f)(2), totally ignores the statutory phrase, "such as a retirement, pension, or insurance plan." Indeed, PERS states, contrary to the Third Circuit in *Westinghouse* (725 F.2d at 224), that that phrase "merely provides examples of the plans protected by the exemption; it does not purport to define or qualify it" (Br. 28). But if Congress had not meant to limit the types of plans protected by Section 4(f)(2), it would have omitted the phrase, so that the provision reached employee benefit plans without exception. PERS' construction also ignores the abundant legislative history showing that Congress was concerned, not with all employee benefit plans, but with plans with legitimate waiting periods and plans that provide benefits that cost more for older employees.

Moreover, PERS fails to comprehend that Section 4(a)(1) of the ADEA not only prohibits refusals to hire older employees, it also proscribes "discrimin[ation] against any individual with respect to his compensa-

tion, terms, conditions, or privileges or employment because of such individual's age." That prohibition follows from Section 1(b) of the Act, 29 U.S.C. 621(b), which provides that the purposes of the ADEA include "prohibit[ing] arbitrary age discrimination in employment" as well as "promot[ing] employment of older persons." As this Court has stated repeatedly, "[a] benefit that is part and parcel of the employment relationship may not be dolled out in a discriminatory fashion, even if the employer would be free . . . not to provide the benefit at all." *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 121 (1985) (quoting *Hishon v. King & Spalding*, 467 U.S. 69, 75 (1984)).

That PERS' construction of Section 4(f)(2) is faulty is made plain by consideration of its effects, since it would allow any sort of discrimination against older employees in the provision of employee benefits. As the Seventh Circuit stated in *Karlen*, if an employer told its employees that "at age 65 you lose your free parking space (or dental insurance, or any other fringe benefit), [it] would be guilty, prima facie, of age discrimination." 837 F.2d at 318. Yet PERS' proposal would authorize just such arbitrary discrimination, since presumably it would not interfere with the "employment of older workers" (Br. 26). Indeed, PERS appears to believe that the fact that it hired Betts at age 55 insulates it from liability as long as it does not arbitrarily terminate or refuse to promote her (Br. 29, 48). If it had cut off her dental insurance or eliminated her parking space, solely on account of her age, and offered no justification for doing so, such acts would be permissible under PERS' construction of Section 4(f)(2), just as it contends that it may deny her disability benefits without providing any cost justification for its discriminatory behavior. But Congress did not intend to authorize employers arbitrarily to discriminate against older persons in the provision of employee benefits.

2. PERS also argues (Br. 16-23) that its plan is exempt from liability under Section 4(f)(2) because it was established in 1933. There is no merit at all to that claim. The discriminatory provision in PERS' plan was added in 1976, two years after the ADEA was amended to apply to the States. See 29 U.S.C. 630(b)(2); Pub. L. No. 93-259, § 28(a)(2). Until that time, disability benefits (which are and were generally calculated like retirement benefits under Ohio law) were not required to be at least 30 percent of the employee's final average salary, and hence employees like Betts were not disadvantaged by the provision making them ineligible for disability benefits. Only with the enactment of the 1976 amendment were employees over 60 deprived of a significant benefit available to employees under 60. All of the courts of appeals that have concluded that pre-ADEA employee benefit plans are exempt from its requirements have noted that a different result would follow if, as here, the relevant provision had been addressed after the enactment of the ADEA. *EEOC v. Cargill*, 855 F.2d 682, 686 n.4 (10th Cir. 1988); *EEOC v. County of Orange*, 837 F.2d 420, 423 (9th Cir. 1988); see also *EEOC v. Home Insurance Co.*, 672 F.2d 252, 259 (2d Cir. 1982).<sup>16</sup>

<sup>13</sup> Because Betts had five years of service, she qualified for disability benefits under Ohio law. Ohio Rev. Code Ann. § 145.35 (Anderson 1982 & Supp. 1987). Accordingly, Congress's interest in enacting Section 4(f)(2) to authorize employers to establish legitimate waiting periods before employees are entitled to participate in employee benefit plans, which was stressed by Senator Yarborough in his colloquy with Senator Javits (113 Cong. Rec. 31,255 (1967), reprinted in Legislative History at 146), is not implicated by this case.

<sup>14</sup> In its court of appeals' brief, PERS conceded that "(t)here was no evidence before the court concerning the potential increased cost to PERS based on the greater frequency of incidence of disability within the excluded age group." PERS' C.A. Br. 27.

<sup>15</sup> The National Public Employers Labor Relations Association, for example, contends (Br. 13-14) that an employee benefit plan may discriminate against older employees except where "it is specifically designed involuntarily to deprive older workers of terms and conditions of employment that younger persons enjoy—for example, a plan that is purposefully designed and used as a cover for the involuntary retirement of older persons."

<sup>16</sup> Consequently, this Court need not address the question whether all pre-ADEA plans are exempt from the anti-discrimination provision of the Act under Section 4(f)(2). Although this Court in *McMann* (434 U.S. at 197-198, 203) expressed the view that a pre-1967 benefit plan could not be a "subterfuge to evade the purposes of the Act,"

## CONCLUSION

The judgement of the court of appeals should be affirmed.

Respectfully submitted,

WILLIAM C. BRYSON,

*Acting Solicitor General.*

THOMAS W. MERRILL,

*Deputy Solicitor General.*

CHRISTOPHER J. WRIGHT,

*Assistant to the Solicitor General.*

CHARLES A. SHANOR,

*General Counsel.*

GWENDOLYN YOUNG REAMS,

*Associate General Counsel.*

HARRY F. TEPKER, Jr.,

*Attorney.*

*Equal Employment Opportunity  
Commission.*

JANUARY 1989.

## EXHIBIT 3

WASHINGTON, DC,

May 9, 1990.

President GEORGE BUSH,  
*The White House,  
Washington, DC.*

DEAR MR. PRESIDENT: I am writing to you on behalf of my mother, June Betts. She is unable to write to you herself since she suffers from Alzheimer's Disease and is bedridden in a nursing home. My mother is the plaintiff in Public Employees Retirement System of Ohio versus Betts. This is the case in which the Supreme Court said it was permissible for employers to discriminate against older workers in employee benefits.

Until recently, your Administration has been a strong and important supporter of my mother's efforts to obtain her full and fair disability benefits from the State of Ohio, after being disabled due to Alzheimer's Disease. Your strong support in the Supreme Court, not only in a brief but in oral argument, supporting my mother's case, as well as in testimony before Congress, encouraged my family to continue to fight for my mother's rights after losing our case in the Supreme Court.

Now, you have abruptly abandoned your support for my mother's cause. In a letter to Rep. William Goodling dated March 27, 1990, Mr. Roger Porter ignored your Administration's prior support for the Older Worker's Benefit Protection Act (S. 1511/H.R. 3200) and threatened a veto of this bill. This legislation was introduced to reverse the Supreme Court's ruling in my mother's case and to insure that she, and thousands of other older workers, do not lose benefits they have already earned.

Today, my mother is unable to recognize her family or to care for herself. She suffers from the final stages of Alzheimer's Disease, partial paralysis due to a stroke, and inoperable breast cancer. Before her illness my mother was the most independent and resourceful person I knew. She was committed to public service and helping other, less fortunate people. For almost 30 years, she

those statements should not be thought to be binding where Congress has overruled the holding of the case and has indicated its express disapproval of the Court's reasoning (see H.R. Conf. Rep. 950 at 8, reprinted in Legislative History at 519). The better view, we think, is that a provision that existed prior to 1967 can be said to be contrary to the Act's purpose of eliminating arbitrary discrimination against older employees, even though it could not have been enacted to evade the ADEA itself. Moreover, Congress in 1967 made clear that the Act applied "to new and existing employee benefit plans, and to both the establishment and maintenance of such plans." H.R. Rep. 805, 90th Cong., 1st Sess. 4 (1967); S. Rep. 723, 90th Cong., 1st Sess. 4; reprinted in Legislative History at 77, 108.

raised her children and served sincerely and conscientiously as the wife of a parish priest. When her children left home, mother returned to school, obtained a master's degree and in 1978, at age 54, she began a career as a speech pathologist for retarded children and adults with the Hamilton County (Ohio) Board of Mental Retardation. In 1982, my parents were divorced.

About this time, mother began exhibiting signs of what doctors at first thought was an emotional breakdown. Although her condition got worse and worse, she continued working, paying her taxes and contributing to her church and community. The rapid onset of what was finally diagnosed as Alzheimer's meant that she was demoted to lower paying jobs with less responsibility. By the time she was too ill to work, she was babysitting for retarded adults. Mother was distraught, but not beaten—after losing her job, she continued to volunteer at a camp for retarded children for a short time until that, too, became impossible for her to do.

Mother was forced to leave work because of Alzheimer's at age 61, but Ohio PERS refused her a disability benefit solely because she became disabled after age 60. Frankly, Mr. President, if my mother had given up sooner, and left work when she first became ill at age 58, she would be getting a much higher benefit. But, mother didn't want to quit work and become dependent upon anyone. As a result, my mother receives only \$158 per month in early retirement benefits, rather than \$350 per month in disability retirement benefits that she would receive if she had left work when she was younger and first became ill.

Ohio PERS is penalizing my mother for working as long as she was physically and mentally able to work, by denying her the benefits she has earned. But, self-sufficiency and work were important to my mother; she would never have considered leaving before she had to. This summer, mother's financial assets will be exhausted and she will become a ward of the State and a recipient of Medicaid assistance. Of all these tragedies, this last one is probably the one that would most appall and embarrass her.

My mother sued Ohio PERS for age discrimination, and won in the federal district and appellate courts. When Ohio PERS appealed to the U.S. Supreme Court, your Administration not only filed a "friend of the court" brief on my mother's behalf, but orally argued before the Court, saying that for 20 years, the Age Discrimination in Employment Act (ADEA) had prohibited the type of discrimination Ohio PERS was engaged in. After we lost before the Supreme Court, the EEOC, testifying for your Administration before the U.S. Senate and House of Representatives, supported legislation introduced to reverse my mother's case and restore this long-standing interpretation of the ADEA.

Despite all this, Mr. Porter's letter stated that you might veto this legislation. My family and I were shocked and disappointed to learn of this change of heart. Mr. Porter's letter never refers to your Administration's Supreme Court brief, oral argument or Congressional testimony. Indeed, it directly, and without explanation contradicts your Administration's previous public statements on many of the issues pertinent to this bill.

My family and I cannot understand what has caused this abrupt change in your position. Certainly, no one is more deserving of your support than my mother, who spent her life helping others. She is not asking for

a handout—she is asking only for the benefits she worked for and earned.

My mother is just one person among many. And, her problem is one that faces many women who, after one career raising their families, return to the labor force. How many millions of other midlife and older women workers will lose their benefits before employers are once again prohibited from discriminating against them?

It was to prevent what happened to my mother that the ADEA for 20 years prohibited employers from discriminating on the basis of age in employee benefits. Most employers complied with the law; unfortunately for my mother, Ohio did not.

I plead for your support on my mother's behalf, because she is powerless to plead for herself. Please once again support his bill, for the same reasons you supported it before: older workers, like June Betts, deserve to be treated fairly and honestly in all aspects of their employment and deserve the benefits they have earned.

Very truly yours,

CAROLYN A. BETTS.

(Mr. ROBB assumed the chair.)

Mr. HATCH. As much as I salute their efforts to work out certain problems in this bill, I, for one, am simply unwilling to accept the representations of proponents that this new version of S. 1511 resolves many or most of the flaws in this legislation.

Let me review the history of S. 1511. Let me first make this point once again. We have had, over the course of these last 2 years, dozens of Labor Committee bills come to this floor. A great number of them have been amended time after time after time on the floor. We have had versions 1, 2, 3, 4, and 5, after we get to the floor.

Plant closings was a perfect illustration. The floor manager was my dear colleague Senator METZENBAUM. But that changed almost virtually every day on the floor. You could go through a whole raft of other bills that came from the Labor Committee where we had versions 1, 2, 3, and 4. We have had a number of them this year. It makes me wonder if we need the Labor Committee. Why do we not just bring the bills to the floor and redo them right here, which is what we are doing all the time on them?

One reason is we cannot seem to resolve them in the committee; the committee is so overwhelmingly balanced to one side that the committee cannot get it right because they do not have to negotiate in committee, so they wait until we get between the committee and the floor to really sit down and try to resolve it then. Then we get to the floor and realize it is still not resolved. Maybe that is the way some people negotiate. I like to negotiate and get the thing done right.

Let me review the history of S. 1511.

On August 3, 1989, proponents introduced version 1 of the legislation. It was a four-page bill. They stated:

Our goal was to carefully and narrowly draft this provision so as to only return to pre-Betts law and interpretation, and in

doing so not settle pre-Betts debates over the EEOC's interpretation of its regulations.

Then, almost 7 months later on the eve of the Senate Labor Committee markup of that bill on February 28 of this year, we saw version 2 of the bill for the first time. It was voted out of the committee the very next day.

I tell you this is complex stuff; this is not easy to fathom. I bet there are not five Senators in the whole Senate who understand what is going on here. That is how difficult it is.

Version 2 of the bill was no longer four pages, the number of pages when the first version was filed. It was now 17 pages; a 17-page bill. Version 2 of this bill was described by proponents as "addressing major concerns raised by employers and labor organizations."

Let us look very briefly at version 2. Let us see if that version did any better than the first in achieving the stated objectives of the proponents which was a return to a pre-Betts law, Betts being a Supreme Court case that changed the law.

First, that version, version 2, like version 1, placed the burden of proof on the employer, the defendant, in other words, in these cases, to prove that its practices came within the exception for "reasonable factors other than age," set forth in section 4(f)(1) of ADEA, or the underlying act that is the focus of this bill.

Thus, notwithstanding the representation by proponents that this bill was narrowly drafted to only return to pre-Betts law, the bill turned out to go much farther. This conclusion was also reached in a Congressional Research Service report. The Congressional Research Service, for those who are watching and listening, is a non-partisan research service that benefits and helps us, who are here in the Congress, to do a better job.

They concluded, in their Congressional Research Service report, that this provision of the ADEA, Age Discrimination Act section 4(f)(1), was never even addressed by the Supreme Court's Betts decision. Also by placing the burden on the employer, as S. 1511 does, it runs afoul of the vast majority of circuit courts that considered this issue prior to the Betts decision.

In all respects, this provision is an example of the extent to which this bill overreaches and goes beyond claims and representations made by sponsors.

Second, version 1 would have outlawed most if not all commonly accepted early retirement incentive programs in a manner inconsistent with the pre-Betts law.

Version 2 and 3 fared no better. Now we are presented with version 5, which purports to do what versions 1, 2, 3, and 4 claimed to do, but did not do. I am not sure that version 5 does the

job either. In fact, I am quite sure it does not. Do we not owe it to the older workers of this country who benefit from the voluntary early retirement plans to make sure? It seems to me we do.

Third, there is the issue of the impact that this bill will have on State and local governments. Look. Our Federal Government is over \$3 trillion in debt. We are facing a \$300 billion deficit this year. We do not have any money to spare, nor do we need to overregulate ourselves any more than we are, because we are overregulated to death now.

And, I might add, the States are not all in that great position either. They cannot afford to have saddled them with unnecessary new regulations that probably will stifle a lot of the benefits to all employees in these areas. They cannot really stand to have that happen to them, and at the same time all the concomitant costs that come from it.

The first two versions of this bill made no special provisions for the States.

This leaves some States with no option other than to substantially cut back disability benefits for all employees and many States with no option at all but to raise taxes. That is what this bill does to them.

We are suffering, as a Federal Government, from too many deficits. Now we are going to increase the suffering of the States, letting them suffer along with us, and creating more deficits than they otherwise would have.

What are they going to do? They are going to have to raise taxes. If I were a Governor, I would be up in arms on this bill. A lot of Governors and State legislators are up in arms about this bill.

We just received a letter from one of the leading Texas Democratic State legislators saying, "My gosh, this thing is going to kill us, it is going to hurt us."

I ask unanimous consent that a letter dated September 14, 1990, to Hon. LLOYD BENTSEN from Gibson D. Lewis, Speaker of the House of Representatives of Texas, be printed in the RECORD.

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

TEXAS HOUSE OF REPRESENTATIVES,  
Austin, TX, September 14, 1990.

HON. LLOYD BENTSEN,  
U.S. Senate, Senate Hart Office Building,  
Washington, DC.

DEAR LLOYD: I am writing to express to you my concern regarding the deficiencies of the Older Workers Benefit Protection Act (S. 1511) as it impacts the Teacher Retirement System.

Our review of the substitute to S. 1511 leads us to conclude that the latest revision leaves unresolved both of the major problems with the initial legislation. I will address only the more immediate threatening issues to our retirees.

TRS-Care, the group health program with 80,000 retired public school employee members, has as a key cost-containment provision an assumption that participants who qualify for Medicare Part B (i.e., those over 65 years of age) secure such coverage for themselves. S. 1511 would in our view disallow this provision and force a dramatic rise in cost in the program for the state and/or the retirees.

As you strive to bring discipline to the Federal budget I know that you can appreciate that at this juncture the last thing the state budget needs is additional costs mandated by Federal law. I urge you to consider carefully the impact of this legislation upon the already tight state budget.

Thank you for your assistance in this matter.

Sincerely,

GIBSON D. (GIB) LEWIS,  
Speaker.

Mr. HATCH. Mr. President, like I say, this leaves some States with no option other than to substantially cut back disability benefits for all employees, and many States with no option at all but to raise taxes.

Some State estimates of the cost of complying with version 2 of this bill are as follows: New York State Teachers Retirement System—just the State teachers retirement system—\$77 million. I wonder how Governor Cuomo likes that. Being a more liberal Governor, he probably thinks, well, we can tax the people that \$77 million, but I bet he does not. I bet he is concerned about it. I bet the teachers are concerned about it.

The Texas State Teachers Retirement will be \$106 million, which they are going to have to raise because of this bill and the way it is written.

The State of Maine, \$50 to \$100 million—how is the State going to come up with \$50 to \$100 million?

And all 50 States are going to be hit by this same type of problem because of this bill, the way it is written.

It is one thing to want to solve problems, and I know my distinguished friend from Ohio does want to do that, and I know he is very sincere. My friend from Arkansas is very sincere. It is one thing to want to solve problems, but it is another thing to do it this way.

At least 18 State employee or State teacher retirement systems that I am aware of have written to Congress expressing concern about this legislation. We also heard from the National Conference of State Legislatures as well.

Version 5 now purports to mitigate the costs on certain States. This is good. At least the major proponents realized that there are major compliance costs involved here.

But, since version 4 has been available for less than a week, and version 5 for less than 3 days, it is virtually impossible to know with any certainty just how this fix works, and how effective it will be, and whether it will resolve to some degree this massive li-

ability problem of the States without disrupting their employee disability benefit programs, among others.

What is more, in Friday's version of this bill, which the distinguished Senator just substituted, the provision which sponsors said would minimize the need for additional benefits in expenditures was revised again.

So, it turns out that all the rushing around that the affected parties were doing to try to evaluate this new substitute was a completely wasted effort since the Senate is considering yet a different version of this bill.

And to get my support, they are going to have to do that. I may not be important in the support of this bill, but I think it would be a good thing if they worked with us to resolve these problems. I think they will be much happier with the way the States receive this bill, much happier the way the business community will receive this bill, much happier the way the aging community will receive this bill.

I am not talking about the aging activists. They think they have the upper hand here and will get the bill through regardless.

I have to tell you the administrations indicated they will veto this bill if it comes through with these types of provisions in it, and the business community is up in arms, the State legislators are up in arms. I hope we resolve it. I hope good faith will resolve this because I would like to resolve the Betts decision and go back to pre-Betts law. This goes far beyond that.

It is quite an imposition to require constituents to hit a moving target like this one that is changing almost daily. I am glad it is, because the changes at least are movements in the right direction. They are just not far enough along. At first glance it appears this new version, designed to fix the problem of State and local compliance costs, does not take care of 100 percent of the costs.

At least preliminary concerns have been raised by affected parties regarding the workability of various procedural aspects of this so-called election process.

There are numerous complex issues raised by this legislation. I hope my colleagues share my concern that we are legislating in the dark and that, Mr. President, is a pretty rotten way to legislate.

There can be no mistake about what is at stake here. This is an extremely far-reaching piece of legislation that will have a tremendous impact on the structure and allocation of employee benefits.

Have we not learned anything from our recent experiences with catastrophic health care and section 89? In both cases, we rushed to enact laws we thought the public wanted. The fact was that we enacted legislation with nice titles and noble purposes, but

gave short shrift to the mechanics of the law's implementation.

Some have characterized the debate on this particular bill as one which pits private employers against employees. Nothing could be farther from the truth.

There is an easy way for employers to get around the requirements of this bill. I might as well tell you that.

They can avoid costly litigation over early retirement programs and simply achieve necessary work force cutbacks by laying off employees. That is all they have to do. But how does that benefit anybody?

They can avoid litigation over whether disability or severance payments are properly allocated by either not providing such benefits at all or by cutting back benefits for younger and middle-age workers.

That is the way to get around it. They do not want to. They would like this to be a fair system but economically they are going to have to do that if this bill passes in its present form. How does that benefit the aging employees in this country? How does that benefit all other employees in this country?

This essence of this legislation is how benefits are allocated among various groups.

Every version of S. 1511 I have seen so far represents an unprecedented effort by Congress to micromanage benefit plan arrangements. This is a role best left to employers, unions, and State legislatures.

That is where it ought to be. They will do a good job. They will do it in the most efficient of ways. They will do it in a way that will work. There will be incentives there. The people will have their retirement and disability programs if we allow the system to work the way it should work. Let us overrule Betts, but let us do it the right way and put the obligation of things in the hands of those that know how to do it and know what to do and have to meet the burdens as a result of doing it.

As the United Auto Workers Union has explained:

S. 1511 would prohibit the integration of employee benefit plans, such as severance or supplemental unemployment benefit plans and pension plans. The UAW has negotiated integrated benefit programs with many companies.

A lot of other unions are trying to do that. This bill will stop that stone dead.

We believe that this type of approach represents the best method of assuring the continuation of income and health care throughout the lifetime of workers and their families. If these integrated benefit programs are made unlawful, this will simply permit a small group of workers to "double dip" at the expense of all workers and retirees.

That is not fair and that is not going to work. And that is going to hurt an awful lot of good people.

Accordingly, we believe that S. 1511 should be amended to expressly permit integrated benefit programs.

That is what the UAW said.

This bill, however, continues to outlaw the practices advocated by the UAW which are so beneficial to employees.

The UAW now I suppose supports this version of the bill. But what they said there still applies. Let me just repeat it again because it is very important stuff. The UAW, I think, pretty well summarized the problems with this bill and they have not changed even though the UAW has said they are going to support the bill. They said:

S. 1511 would prohibit the integration of employee benefit plans, such as severance or supplemental unemployment benefit plans and pension plans. The UAW has negotiated integrated benefit programs with many companies. We believe that this type of approach represents the best method of assuring the continuation of income and health care throughout the lifetime of workers and their families. If these integrated benefit programs are made unlawful, this will simply permit a small group of workers to "double dip" at the expense of all workers and retirees. Accordingly, we believe that S. 1511 should be amended to expressly permit integrated benefit programs.

I do not know why the UAW would now support this bill because none of those problems were resolved in the latest version of this bill, nor will they be resolved unless we can somehow work out the last few remaining but very important problems with this bill.

And they are not only important, they are going to make difference whether this bill really works or not, or whether it is vetoed or not.

This bill continues to outlaw the practices advocated by the UAW which are so beneficial to employees.

In my view, the rationale for how the proponents have chosen to draw the line between which practices are prohibited remains entirely unclear.

And, Mr. President, because this bill would force the reallocation of benefits, it is even more unclear how S. 1511 would benefit older workers.

So I really urge my colleagues to consider this legislation carefully, to not just look at the fact that there are a number of cosponsors. Virtually none of them know what is in this current version of the bill.

I think we owe that much consideration to the workers of this country. After all, it is their benefits that are at stake. We owe that much to the younger and middle-aged employees of this country. Their benefits are at stake. I think we owe that much to the business community in this country. Although they would love to have these programs and want them to



work, there are a lot of them going to be cut out because they are not going to pay the extra costs that is going to come from complying with the approaches in this bill.

If we want to overrule Betts and we want to get to the point where we have pre-Betts law and we want to be able to resolve problems in a reasonable and satisfactory way, then I have to say the Hatch-Kassebaum substitute does this job. In other words, I want a change in the law. I want to overrule Betts. But to do it this way, you are going to have the same problem, to a more or less degree, that you had with section 89 with regard to the catastrophic health benefit. The people are going to be so doggone mad, within the next 5 years, of what we did here, if we pass this bill and a veto is not sustained, they are going to be so doggone mad at all of us that we are going to be back here scrambling to try to resolve it like we tried to resolve section 89.

I have to tell you it is better to do it now. I really believe that we can do it if we would just get together and not worry so much about the activists but worry about those who are subject to the Age Discrimination in Employment Act, the ADEA, which we will be talking about in the next few days.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Arkansas [Mr. PRYOR].

Mr. PRYOR. Mr. President, in a few moments I may respond briefly to the opening statement of the Senator from Utah.

But, first, as a general statement, let me just say, Mr. President—and I say this respectfully—it is very difficult for me at this point to believe that we are back on the floor of the U.S. Senate having to argue again for what most of us have believed to be a basic right. This has been rectified in the past. Most Americans, including a woman from Ohio, the constituent of Senator METZENBAUM and Senator GLENN, believed that the Age Discrimination in Employment Act protected workers from arbitrary age discrimination in the workplace. Unfortunately, as Mrs. Betts so sadly discovered, this is not the case.

In 1978, Mr. President, at the age of 55, June Betts was hired as a speech pathologist for the Hamilton County, OH, Board of Mental Retardation. She was a very enthusiastic, dedicated worker, until she began to suffer from the early effects of Alzheimer's disease.

As a public employee of the State of Ohio, Mrs. Betts was covered by Ohio's Public Employees' Retirement System, PERS. In addition to normal retirement benefits, the PERS plan offered employees who become disabled prior to normal retirement age a disability retirement benefit. Even

though Mrs. Betts could have taken disability soon after she became ill, she did not at that point want to retire. She was making a positive and a very, very constructive addition to the profession of teaching the mentally retarded.

Although she began having difficulty later in performing that job, she was determined to continue working. Finally, at the age of 61, she became too disabled to work. She was forced to retire.

Mrs. Betts' disability benefit would have been \$355 a month. However, when PERS was asked to begin the payment to take care of this dedicated, older worker at age 61, the plan's administrator had a different figure in mind. Under PERS, disability retirement was only available to employees who became disabled at an age prior to age 60. Although Mrs. Betts probably was disabled prior to this arbitrary age cliff, her determination to continue working despite her illness actually worked against June Betts. When June Betts was forced to give up her position because her condition had worsened, she had already reached the age of 61. She was, therefore, ineligible for disability under the existing law of the State of Ohio.

The Betts family, Mr. President, was shocked when the plan administrator told them that Mrs. Betts' only option was to take a reduced pension of \$158.50 a month. In essence, PERS refused to provide her with the \$355 benefit offered to other employees simply because she was over the age of 60.

Mr. President, to put this into context, I would like my colleagues to focus for a moment on the absurdity of this discriminatory benefits plan. If a minority was given a lesser benefit simply because of his race or her race, or a woman given a lesser benefit simply because of her sex, can you imagine what an outcry we would see justifiably brewing in our country?

Arbitrary age discrimination in employee benefits was against the law, so the Betts family believed. Congress had said so on two occasions—once in 1967 when it passed the Age Discrimination in Employment Act, and again the Congress spoke in 1978 when it amended that particular act. Moreover, for the past 20 years the Department of Labor, the EEOC, and every other Federal court in America to address this issue basically were in agreement. In fact, for the past 20 years the courts had used a very simple and a very fair standard contained in the Department of Labor and EEOC regulations for determining whether a benefit plan violated the law of this land as the "equal benefit or equal cost" rule which was designed to allow employers to take into account that the cost of some benefits increases with age.

The rule allowed an employer to provide lesser benefits to older employees as long as that employer could show that the cost of the benefits for older workers was at least equal to the cost of the benefits of younger employees.

Using the "equal benefit or equal cost" standard, the Betts family won their case in the Federal district court and the Circuit Court of Appeals levels. However, in June of 1989, the Supreme Court of the United States abandoned this 20-year-old test and, instead, decided that in passing the ADEA, that Congress never intended to protect older workers from discrimination in employee benefits.

Mr. President, I respectfully submit that the Supreme Court was dead wrong in this decision. The bill we are debating today makes it unmistakably clear that Congress intends to protect the employee benefits of our Nation's older workers. In doing so, S. 1511 adopts the "equal benefit or equal cost" test as the standard to be used in determining a benefit plan's compliance with the act. And, too, it places the burden of proving this affirmative defense back on the employer where it had been before. It clarifies that the ADEA applies to benefit plans established prior to 1967.

I consider myself a great advocate of the reasonable concerns of business, small and large. I believe the substitute that we have offered and accepted today goes a long way in addressing the legitimate concerns of the employers. Having said this, let me say that cost and convenience have never been valid reasons for race or sex discrimination. I hope my colleagues will follow the debate on S. 1511 and its substitute closely, and I urge them to support this very important and this very sensible piece of legislation.

I ask unanimous consent that at this point a basic three-page summary of the substitute just incorporated into the original text of the bill be printed in the RECORD.

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

#### STATEMENT ON THE SUBSTITUTE

Mr. President, I want to outline the changes made by this substitute amendment, most of which have been made in response to concerns raised by business groups and by public employers.

#### SEC. 103

Section 4(f)(2)(B) has been rearranged to clarify that benefit practices that were permitted under the Equal Employment Opportunity Commission's regulation (29 C.F.R. section 1625.10 as it existed on June 22, 1989) will continue to be allowed. Also, section 4(f)(2)(B)(ii) has been changed to allow an employer to offer any early retirement incentive plan that is consistent with the purposes of the ADEA. This change, suggested by the White House, was made because employers suggested to us that it would be difficult for an employer to show

that an early retirement incentive plan furthers the purposes of the ADEA, as S. 1511 currently requires.

Technical changes have been made to section 4(1). In addition, this section has been rewritten to ensure that the safe harbor currently contained in S. 1511 for subsidized early retirement benefits or social security bridge payments (payments intended to bridge the gap between early retirement and eligibility for social security old age benefits) offered on a permanent basis is extended to cover those offered on a temporary basis as well.

The General Accounting Office has reported that these two types of early retirement benefits make up more than 60% of the early retirement incentive plans offered by employers. By making this change, we have given employers a level of comfort in knowing that these most common forms of early retirement incentives do not violate the ADEA.

Section 4(1)(2), which allows employers to offset severance pay with the value of retiree health benefits, has been changed to clarify that the retiree health plan of the employer must meet the "at least comparable to Medicare" test only once in order to be entitled to the offset.

At the time of the shutdown or layoff that triggers the severance pay, the employer's retiree health plan must be at least comparable to Medicare benefits for retirees who are under age 65, and at least comparable to 1/4 the value of Medicare benefits for retirees age 65 or older. Business groups asked for this change so that employers will know that they do not have to continually change their retiree health plans to keep up with Medicare after they have qualified for and used the offset.

A new paragraph (3) has been added to section 4(1) to deal with the issue of coordination of long term disability benefits and pension benefits. Traditionally, employees who are on disability are considered to still be actively working and not retired. Likewise, employees who choose to retire are not considered to still be actively working. This change creates an offset of pension against disability and makes sure that an employer does not have to pay an employee both of these benefits at the same time.

#### SEC. 104

This section has been added to ensure that regulations issued in connection with this bill will be the result of a coordinated effort among all appropriate departments and agencies of the Administration.

#### SEC. 105

The retroactive application of the bill has been eliminated. Under the substitute, S. 1511 will apply only to conduct occurring more than 60 days after the date of enactment. This gives employers time to react and make any necessary changes in their benefit plans.

Two changes have been made to address the unique problems faced by states and other public employers. First, public employers will be given a delay in the delay in the effective date until 2 years following the date of enactment of this legislation. Most plans can only be changed through a change in the law, and timing is dictated by the schedules of legislatures, city councils or other governing bodies. Public employers, therefore, require much more time to amend their benefit plans that do private employers.

Second, with respect to disability benefits, a public employer will be allowed to choose

to keep its old plan and come into compliance through an election system involving a new nondiscriminatory plan. Employees covered under the old plan must be given 180 days in which to elect to move to the new plan. Those employees who do not make an election within the 180 day window will stay under the old plan.

Almost every public employer is restricted by a statute or constitutional provisions that prohibits reductions in the benefits of public employees. This election system is designed to allow public employers to avoid violating state law while coming into compliance with the bill.

#### WAIVER TITLE

The most significant change in the waiver provisions is the elimination of the requirement that employers reimburse employees for attorney consultation.

Mr. PRYOR. Mr. President, one of the concerns early expressed—and there was some, let us say, confusion, there was not quite clarity I think in any of the proposals—was how S. 1511 addressed retroactivity. The substitute eliminates, totally, clearly, without question, any retroactive thrust of the Betts legislation that is now on the Senate floor.

Finally, Mr. President, my friend and colleague from Utah is an eloquent spokesman on many of these issues but he has been on this floor this afternoon at an earlier time sort of complaining, or expressing reservation about the different versions that have been introduced from August 1989 up until the present point to basically rectify and to clarify the Betts decision.

I can say I have worked very closely with the Senator from Utah and his staff, with the Senator from Ohio and his staff, with all of those concerned on this particular issue. We have worked very closely with Senator HEINZ of Pennsylvania, with Senator JEFFORDS of Vermont, and with many others of our colleagues, attempting to come forward with a piece of legislation that will basically overcome and clarify the Betts decision so that there will no longer be age discrimination in this particular arena of our law.

One of the reasons that we have seen several versions of the so-called Betts bill, one of the reasons that we have seen changes to the original Betts legislation introduced August a year ago, is simply to accommodate the objections, the concerns, and the worries expressed, yes, by some of the labor unions that Senator HATCH has mentioned; yes, by some of the businesses that some of our colleagues have been concerned with; yes, by some of the particular State retirement programs, such as, for example, the State of Maine had a problem with this issue some months ago, and we attempted to accommodate not only the States but labor and business and all concerned with each version, each amendment, and now, hopefully, ultimately, the substitute that has now

been incorporated to this particular piece of legislation.

We will continue, if it is productive, Mr. President, in negotiation at any level—with the White House, with Senator HATCH and his staff, or any Senators who might express concern about this bill. But the end result and the ultimate test is we must outlaw age discrimination that affected a fine person like Mrs. Betts and that could affect ultimately millions of Americans who are going to find themselves in a situation very similar to hers.

Mr. President, at this point I thank the Chair for recognizing me, and I yield the floor.

The PRESIDING OFFICER. Who seeks recognition? The Chair recognizes the Senator from Ohio, Senator METZENBAUM.

Mr. METZENBAUM. Mr. President, I ask unanimous consent to print in the RECORD letters of strong support from the AARP, the AFL-CIO, UAW, Steelworkers, Western Union, and from Union Life Insurance Co., the largest provider of disability insurance in the country.

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

AARP,  
WASHINGTON, DC,  
September 12, 1990.

DEAR SENATOR: The American Association of Retired Persons (AARP) strongly urges your support of S. 1511, the Older Workers Benefit Protection Act, when it comes to the Senate floor in the next few days. This legislation is urgently needed to protect older workers from arbitrary age discrimination in employee benefits.

S. 1511 reverses the Supreme Court's decision in *Public Employees Retirement System of Ohio v. Betts*. The Court held that the Age Discrimination in Employment Act (ADEA) does not cover employee benefits. This decision reversed twenty years of settled regulatory and case law, and ignored the clear legislative history of the ADEA that had required employers to either provide equal benefits to older workers as for younger workers, or at least spend as much to provide the benefit for an older worker as for a younger worker. This workable rule was accepted by business, the courts, employees and federal enforcement agencies.

The Supreme Court's ruling in *Betts* opens the door to arbitrary, unequal treatment for older workers in all types of employee benefits, except pensions. The benefits of millions of older workers are at risk. S. 1511 would substantially restore prior law and protect older workers from arbitrary discrimination in benefits.

At the time of floor consideration, Senator Pryor and other cosponsors will be introducing a substitute for the bill as reported by the Labor and Human Resources Committee. This substitute responds to concerns expressed by the Administration and the business community about key provisions in the bill as reported.

As with any compromise, there are provisions—such as the changes made to the effective date provision—with which AARP takes exception. Despite such misgivings, AARP believes it is essential to pass the substitute to make clear once again that em-

ployers may not arbitrarily reduce or deny older workers benefits.

We urge your support of S. 1511 and also ask for your vote if there is an objection to the motion to proceed. Further, we ask that you oppose any weakening amendments.

Passage of this legislation is critical to protect older workers from age discrimination in employee benefits. Failure to enact S. 1511 will discourage many skilled and experienced older workers from remaining in the labor force and encourage many workers to retire sooner than they might otherwise choose.

If you have any questions or need more information, please contact Michele Pollak, AARP Federal Affairs Department at 728-4729.

Sincerely,

HORACE B. DEETS.

INTERNATIONAL UNION, UNITED  
AUTOMOBILE, AEROSPACE & AGRICULTURAL  
IMPLEMENT WORKERS OF  
AMERICA

Washington, DC, September 12, 1990.

DEAR SENATOR: During consideration of the proposed Older Workers Benefit Protection Act (S. 1511), we understand that Senators Pryor, Metzenbaum, Jeffords, and Heinz intend to offer a substitute for the bill reported by the Labor and Human Resources Committee. The UAW strongly supports this substitute; we urge you to vote for this substitute and if necessary for cloture.

The Pryor-Metzenbaum-Jeffords-Heinz substitute would make a number of changes in the Committee bill, including:

Expanding the safe harbors for early retirement subsidies and social security supplements to include temporary, as well as permanent programs;

Clarifying that early retirement incentive programs are lawful so long as they "are consistent with" (rather than "further") the purposes of the ADEA; and

Making the bill completely prospective, with special delayed effective dates for collectively bargained and state and local government plans.

In our judgment, these changes are all positive and should help to address concerns which have been raised about the legislation. Accordingly, the UAW urges you to give this substitute your enthusiastic support.

The UAW also understands that Senator Hatch may offer additional amendments, including a provision which would allow discrimination against older workers in employee benefit plans provided this serves a "legitimate business purpose". We believe this amendment would undermine the thrust of the legislation. In effect, it would leave intact much of the Supreme Court's decision in *Public Employees Retirement System of Ohio v. Betts*, which immunized virtually all employee benefit plans from age discrimination challenges. The UAW believes that the *Betts* decision was wrong and should be overruled. We therefore urge Senators to vote against this and any other weakening amendments which may be offered by Senator Hatch.

Your consideration of our views on this important issue will be appreciated. Thank you.

Sincerely,

DICK WARDEN,  
Legislative Director.

UNITED STEELWORKERS OF AMERICA,  
Washington, DC, September 12, 1990.

HON. HOWARD METZENBAUM,  
U.S. Senate, Washington, DC.

DEAR SENATOR METZENBAUM: USWA supports S. 1511 which would revise the Supreme Court's *Betts Decision* and clarify the protections given to older workers with regard to employee benefit plans.

The substitute bill assures that early retirement incentive plans, which are consistent with the purposes of the Act, are valid. Furthermore, social security bridge payments for both temporary and permanent programs are recognized as valid enhancements of subsidized early retirement plans.

We support the Pryor, Metzenbaum, Heinz bipartisan substitute which addresses a series of concerns which have arisen during the legislative process. Having reviewed these revisions, USWA remains in strong support of the bill and urges a vote for cloture, against any weakening amendments and for passage.

Sincerely,

JOHN J. SHEEHAN,  
Legislative Director.

AMERICAN FEDERATION OF LABOR  
AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,  
Washington, DC, September 17, 1990.

DEAR SENATOR: It is our understanding that, during consideration of the proposed Older Workers Benefit Protection Act (S. 1511), Senators Pryor, Metzenbaum, Jeffords, and Heinz will offer a substitute for a bill reported by the Labor and Human Resources Committee. The AFL-CIO urges your support for this substitute and, if necessary, for cloture.

In our judgment, this bipartisan substitute will address concerns that have been raised about the legislation in a carefully balanced fashion. We therefore urge support for the substitute and against any weakening amendments that may be offered.

Sincerely,

ROBERT M. MCGLOTTEN,  
Director, Department of Legislation.

UNUM,  
Portland, ME, September 12, 1990.  
HON. HOWARD M. METZENBAUM,  
U.S. Senate, Washington, DC.

DEAR SENATOR METZENBAUM: I am writing in support of the substitute amendment proposed by Senators Pryor, Heinz, Jeffords and yourself to S. 1511, the Older Workers Benefit Protection Act.

UNUM Corporation and its family of insurance companies is the nation's leading provider of group long term disability insurance. Based in Portland, Maine, UNUM provides group long term disability insurance to more employers than any other insurer in the United States. UNUM insures approximately three million workers under 28,245 long term disability policies.

We support your amendment and its reaffirmation of the "equal benefits and equal cost" rule. We believe that the "equal benefit or equal cost" regulation is the appropriate test for the section 4(f)(2) exemption because it is a clear, objective standard that has proved to be valid, reasonable and workable. This standard provides a relatively easy and uniform measurement by which employers and insurers can determine non-discriminatory benefit reductions for older workers. Employers and insurers need a clear standard by which results can be reasonably tested. Without a clear, objective

standard we risk increasing litigation and discriminatory employee benefit plans.

Your amendment, which provides for the integration of voluntary pension benefits with long term disability [LTD] benefits, is acceptable to us and is consistent with disability industry practices. LTD plans are specifically designed to cover the income replacement needs of those people working and intending to remain in the work force. This avoids the possibility of simultaneous payment of LTD and voluntarily-elected pension plan benefits. This is done to avoid both the costs of providing benefits with similar objectives (replacement of lost income) and the distribution of benefits which could add up to more than the person was paid while working; thus, making disability an economically preferable status.

We understand that the legislation would not permit integration of benefits for involuntary receipt of retirement benefits, such as when an employee is compelled to begin collecting retirement benefits at age 70½ due to Internal Revenue Service regulations. In this limited instance, we do not offset LTD benefits for the amounts received from the retirement plan. We also do not integrate with employee-pay-all retirement benefits such as IRAs, TSAs, 401(k)s and rollover plans or the employee-paid portion of defined contribution plans.

Lastly, we understand that the legislation will not impact our ability to integrate LTD benefits with those available from government sources, such as Social Security Disability and Workers' Compensation benefits. These offsets are non-age based offsets and, therefore, should not be affected by this legislation. This integration approach is standard practice for LTD plan design for the same reasons we listed above concerning integration of voluntary retirement benefits, and was permissible under ADEA prior to the *Betts* decision.

We appreciate having the opportunity to work with you and your staff on this very important legislation.

Sincerely,

DONNA T. MUNDT,  
Vice President, External Affairs.

WESTERN UNION,  
Upper Saddle River, NJ,  
September 11, 1990.

HON. HOWARD METZENBAUM,  
Russell Senate Office Building, Washington, DC.

DEAR SENATOR METZENBAUM: During the last several months we have had numerous conversations with you and your staff regarding the potential impact of S. 1511 on Western Union Corporation ("Western Union"). Our concerns have focused on the provisions of S. 1511 which basically prohibit integration of pension and severance benefits and retroactively apply this prohibition to all cases which were pending as of June 23, 1989, the date of the Supreme Court decision in *Public Employees Retirement System of Ohio v. Betts*.

Western Union and its labor unions, Communications Workers of America, AFL-CIO, and its local 1177, and United Telegraph Workers, AFL-CIO, were defendants in an age-discrimination suit brought by the Equal Employment Opportunity Commission ("EEOC") which was pending on June 23, 1989. Because S. 1511 does more than change the law to its pre-*Betts* status, we would be forced to try our case according to new legal standards which differ from the laws in effect at the time the conduct in

question occurred. We believe such a result is unfair.

On April 12, 1990, the Court dismissed the above-referenced case with prejudice pursuant to a joint stipulation of the parties. Notwithstanding this dismissal with prejudice, S. 1511 in its current form would purport to reopen the case and apply a new legal standard. The Justice Department has previously expressed serious reservations about the constitutionality of this retroactivity provision as it would apply to dismissed cases, and we have urged repeatedly that this provision be eliminated or at least modified.

Western Union continues to believe that actuarially-based integrated benefit plans are desirable. As we have previously advised you, however, we recognize the need for Congress to act to close the broad loophole created in the Age Discrimination in Employment Act ("ADEA") in *Betts*. We have reviewed the recently released substitute bill (a copy of which is attached) which has been offered by certain sponsors of S. 1511. We believe that this legislation, which is *prospective only*, addresses our concerns regarding retroactivity. Accordingly, we will support this legislation and we will take whatever steps are necessary to conform our benefit plans to this legislation should it become law.

We commend you for your outstanding leadership in addressing these and other important issues in the United States Senate. We are also deeply appreciative of this time and interest of you and your staff in considering our concerns.

Sincerely,

ROBERT J. AMMAN.

Mr. METZENBAUM. Mr. President, I say to my colleague from Utah, we are ready for any amendments. We would like to move this bill along as promptly as possible. If we have the votes, we have them; if we do not, we do not. I would like to keep the matter rolling. I think we can.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I would like to move it along, too. But this Monday, since there are not going to be any votes, a number of colleagues who have expressed an interest in bringing amendments to the floor are not here. I do not know what to do other than to say I want to protect them now. Let us see if we can get an amendment up there before the day is over. Let me see what can be done. 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. SYMMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### ORDER OF PROCEDURE

Mr. SYMMS. Mr. President, I ask unanimous consent to speak as though in morning business for 2 minutes.

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

#### SAMUEL STRATTON

Mr. SYMMS. Mr. President, I take this opportunity to express my sorrow to the wife of former Congressman Sam Stratton, a Congressman from New York State, who I had the privilege of working with in the House of Representatives for 8 years when I was a Member there.

Sam Stratton was a man who had a very distinguished record in the Congress. He was a great advocate of the peace-through-strength doctrine that has proven to be so correct for our country. He was a great advocate of supporting our troops, our men and women in the armed services, and I think had a very, very successful record in Congress for not only his district in New York State but for this country.

How well I remember January of 1984 when I had the opportunity to visit Jonas Savimbi in Angola, and returned here with the idea that it was time to repeal the Clark amendment which prohibited U.S. assistance to the Angolan freedom fighters. One of the first people I contacted was Sam Stratton in the House and his colleague, then Congressman Jack Kemp. Between our efforts here in the Senate and their efforts in the House, we repealed that amendment, changed United States foreign policy toward Angola, and gave the Angolan citizens the freedom and opportunity to stand up against the Communist government.

I also remember 1972, during the spring offensive in Vietnam, when United States policy seemed to be working and the South Vietnamese Army, with the help of American air power, turned back the attacking army from North Vietnam. For all practical purposes the war had been won. Then, as time went on and Congress lost its support and enthusiasm, Sam Stratton stood on the House floor and fought diligently for the American Congress to continue the support that the Nixon and Ford administration were asking for to support the South Vietnamese army so they could continue to keep the Communists from taking over; how frustrated Sam Stratton was when Congress stopped the support. The war was lost, and millions and millions of people died in Cambodia and South Vietnam after the fact. Many more, as I recall him saying on the House floor, than had been killed in the entire war effort were killed after the United States withdrew because of our failure at that time to continue supporting the South Vietnamese Government. So many great Americans, including the distinguished Presiding Officer, served with such distinction in that war at a time when it was unpopular here at home.

But more than that, more than our losing a good Congressman and a good patriot, I feel that I lost a good friend,

and I express my sympathy to his family. I know that his memory shall live on with his wife, his three daughters and two sons, and his grandchildren. For myself, I will always remember Sam Stratton as a man who was brave, honest, and a great patriot.

I ask unanimous consent that the following obituary in the Washington Post dated September 15 be printed in the RECORD.

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

SAMUEL STRATTON DIES; WAS N.Y. CONGRESSMAN

(By Richard Pearson)

Samuel S. Stratton, 73, a New York Democrat who spent 30 years in the House of Representatives where he became an informed if irascible power on the Armed Services Committee, died Sept. 13 at Shady Grove Adventist Hospital after a heart attack.

He was stricken at the Manor Care nursing home in Potomac, where he had been living since an October 1989 stroke. He also had asthma.

Mr. Stratton won election to the House from an Upstate New York district that included Schenectady in 1958. He stayed in the House until retiring for health reasons in January 1989.

Over the years, he gained a reputation as a mainstream Democrat on domestic issues. But he increasingly found himself out of step with his party on defense issues. He never gave up support for the war in Vietnam and became known as a vocal friend of the Pentagon.

When he left office, he was the fourth-ranking Democrat on Armed Services and chairman of its powerful procurement and military nuclear systems subcommittee.

He favored most proposed increases in defense spending and new weapons systems. He was a leading Democratic voice in the House for the MX missile and B-1 bomber programs. He also favored development of a neutron bomb.

He led fights to overturn the "Clark Amendment" that prohibited covert aid to rebel forces opposing Angola's communist government. He was a consistent supporter of aid to the Nicaraguan contras.

He was a leading congressional opponent of the nuclear freeze movement and maintained that he looked with great skepticism on arms control agreements with the Soviet Union. He was a strident critic of civilian budget analysts who sought to rein in defense budgets and to reform the procurement system.

His thoughts on the military budget may have led to his becoming the only northern member of the Conservative Democratic Forum, a group of Democrats that became to be popularly known as the "Boll Weevils."

Mr. Stratton's role in the House became that of the outraged advocate rather than the painstaking legislative tactician. It was a role some thought more suited to a minority party member than a senior member of a powerful standing House committee.

One measure of Mr. Stratton's isolation within his own party came in 1985 when House Democrats deposed an aging and increasingly ineffective Rep. Melvin Price (D-Ill.) as Armed Services chairman. They passed up Mr. Stratton—among others—to

pick the less senior Les Aspin (D-Wis.) as the new committee chairman.

Probably one of Mr. Stratton's most lasting accomplishments was his successful fight, against nearly the whole of Congress, to prevent the demolition of the Capitol's West Front. The struggle, which became something of a personal crusade, resulted in the Front's being beautifully refurbished and restored.

Samuel Studdiford Stratton, who lived in Bethesda, was a native of Yonkers, N.Y., and a 1937 graduate of the University of Rochester. He received master's degrees from Haverford College and Harvard University. He came to Washington in 1940, spending the next two years as secretary to Rep. Thomas H. Eliot (D-Mass.)

During World War II, he was a combat intelligence officer in the Southwest Pacific theater on the staff of Douglas MacArthur. Mr. Stratton earned two Bronze Star medals. He was recalled to duty during the Korean War.

He was elected to the Schenectady City Council in 1949, where he served until 1956 and fought the Democratic machine and the Republican Party as well as gambling and corruption. He was mayor of Schenectady from 1956 until entering Congress in January 1959.

Over the years, his district was redrawn after each census. Mr. Stratton twice changed districts before Republicans gave up trying to defeat him and gave him a safely Democratic district. He became the dean of the New York delegation in January 1979.

In 1964, he unsuccessfully opposed Robert F. Kennedy for the Democratic nomination for U.S. Senator. Kennedy went on to defeat Sen. Kenneth Keating (R).

Mr. Stratton's survivors include his wife, Joan H., of Bethesda; two sons, Kevin, of Vienna, and Brian, of Clifton Park, N.Y.; three daughters, Lisa Gonzalez of San Mateo, Calif., Debra Mott of Springfield and Kim Petrie of Aspen, Colo.; and eight grandchildren.

Mr. SYMMS. Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mrs. KASSEBAUM. Mr. President, I believe that on this issue, which has been debated to some extent this afternoon, the Older Workers Benefit Protection Act, we should all stand back for a moment and take a long, hard look at what we are doing. In the rush to complete an overwhelming legislative agenda, we are running the risk of approving hastily drafted and potentially costly legislation, simply to meet an arbitrary deadline.

I sometimes think we would be far better off doing less in these last few weeks and doing it well than doing a lot and being very uncertain about what we have done. This is especially true with the legislation at hand.

It is argued that S. 1511 is not new, that this legislation was introduced over a year ago. That is only part of the story. In fact, we are now considering what is the fifth version of exceedingly intricate and complex legislation, the latest draft of which was circulated only last Friday. I think it would be worthwhile to step back a moment and take a look at the complete history of S. 1511.

When originally introduced last year, S. 1511 was touted as a narrow reversal of the Supreme Court's decision in the Betts case. If this had in fact been the case, I would have wholeheartedly supported it. I strongly disagree with the decision in Betts and agree with supporters of S. 1511 that this case should be overruled.

Unfortunately, it became evident in the hearings that, in fact, S. 1511 went much further than merely reversing the Betts decision. For example, S. 1511, as originally drafted, would have prohibited many popular and desirable early retirement incentive programs.

These are programs which benefit the very people S. 1511 was designed to protect—the older workers. Attempting to respond to this and other deficiencies—including onerous and costly retroactivity provisions—the sponsors of S. 1511 offered a second version of the bill. We were told at the time that this version resolved the objections raised with respect to the original bill.

I add that I do think that those who have worked on this and putting forward S. 1511, Senator METZENBAUM and Senator PRYOR, and others, have done so with every effort to try and answer some of the questions that have been raised about the intent and structure of the bill.

This second version, in the view of Senator HATCH, myself, and others, did not go far enough to remedy the substantial problems presented by S. 1511. Consequently, Senator HATCH and I introduced an alternative, S. 2831, which I believe strikes an appropriate balance between protecting the rights of older workers in light of the Betts decision, while still preserving worthwhile employee benefit programs.

Perhaps in response to these unresolved issues, the sponsors of this legislation have now come forward with yet another version, what I now understand is the fifth version of the Betts bill.

Let me say at the outset that I commend those who have been working on this in their good-faith effort to reach a compromise. Each successive version has indeed been a step in the right direction.

But now we are being told once again this latest substitute accommodates all of the major concerns. Perhaps this time it is true. However, the fact remains that no one really comprehends the consequences of this leg-

islation, either in terms of its cost, the extent to which it will eliminate age discrimination, or what its effect will be on private, voluntary employee benefits.

As to the cost of this legislation, let me give you an example just with respect to my own State of Kansas. Initially, the Kansas Public Employees Retirement System had no objections to S. 1511 other than the general complaint that it was an unwarranted Federal intrusion on the State-operated program.

After all, KPERS is, I am proud to say, a well-run State retirement system, in full compliance with all EEOC regulations at the time of the Betts decision. Since S. 1511 is intended to restore the law prior to Betts, one would think KPERS would be in compliance.

However, given the extreme complexity of this legislation, KPERS had to hire an outside consultant to determine what exposure, if any, S. 1511 would create. This was their conclusion:

The proposed legislation is extremely vague and complex and particularly difficult to analyze because of vagueness and ambiguities. Our best estimate is that should the bill be enacted, it would increase the liability of KPERS from \$160 million to \$300 million and increase the annual contribution required by employers (namely, Kansas taxpayers) from \$22 million to \$40 million.

That is the potential cost—\$300 million—to Kansas taxpayers alone, not to mention the cost to the other 49 States. I also understand the cost of S. 1511 to the Federal Government would be in the hundreds of millions of dollars, were it not exempt from this legislation. But does anyone have any idea what the cost of this legislation will have on the private sector? I think we should bear in mind that the additional costs of compliance may ultimately translate into fewer benefits for employees.

I would not be so concerned with cost if I were certain it is necessary to eliminate discriminatory practices in the workplace. I have long been an advocate for the rights of older workers and for protecting their justly earned benefits. That is why I am sympathetic to arguments against the coordination or integration of pensions with other employee benefits.

But if this practice and others are discriminatory, why should the Federal Government be exempt from S. 1511? Why should State governments be permitted, as they are under the latest version of S. 1511, to continue a so-called discriminatory benefit program for current State employees and be required to start a new system only for new employees?

Or, why should certain forms of benefit coordination be permitted under S. 1511 while others are prohibited as

discriminatory? Certainly, these distinctions have no relation to the law prior to the Betts decision. Does S. 1511 truly eliminate discriminatory practices, as it purports to do, or does it merely reflect a series of tradeoffs between special interest groups. That is the only explanation I can give for the crazy-quilt patchwork of this legislation.

However, my greatest concern is the potential effect S. 1511 will have on private employee benefit programs. Let us remember these programs are either offered voluntarily by employers or are collectively bargained. One of the ironies of S. 1511 is that it will prohibit certain programs agreed upon by private parties—by unions and employers.

We should be encouraging employers to offer benefit programs to workers, not discouraging or eliminating popular and beneficial employee benefit programs. The ultimate effect of this legislation may be just that, a reduction or elimination of employee benefits.

I hope we have the opportunity to consider the alternative legislation which Senator HATCH and I introduced. It is not perfect, but I believe it does strike an appropriate balance between protecting the rights of older workers and encouraging employers to offer benefit programs. The alternative would make absolutely clear that early retirement incentive programs are permissible.

It would also require, with respect to coordination of benefits, that certain tests be met to ensure that older and younger workers are treated in a fair manner. The alternative does not alter the burden of proof under current law, nor does it contain onerous and unjust retroactive provisions.

Mr. President, I realize this is very complicated legislation. But if even the experts have a difficult time analyzing the consequences of S. 1511, I think it is time we step back and exercise common sense. Senate bill 1511 raises more questions than it answers.

What will this legislation ultimately cost the taxpayer? Will S. 1511 actually serve to root out age discrimination in all workplaces? Or will it ultimately discourage private employers from offering worthwhile benefit programs in the future? The only thing for certain about S. 1511 is the complete unpredictability of its consequences.

Mr. President, I think there are opportunities for us to work together to achieve a bill that would provide some means of redressing the Betts decision. That certainly would be my hope because I think it is a goal that all of us desire and it is one that I think is desirable for us to achieve in this Congress, if at all possible.

I yield the floor.

Mr. HATCH. Mr. President, I ask for the yeas and nays on the Metzenbaum substitute amendment.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. The yeas and nays are ordered?

The PRESIDING OFFICER. The yeas and nays are ordered.

Mr. METZENBAUM. Mr. President, I think that was accepted. I think it had already been accepted as part of the original text.

The PRESIDING OFFICER. The Chair will clarify. We are under the impression that the request was for the yeas and nays on the committee substitute, as amended.

Mr. HATCH. That was the request.

The PRESIDING OFFICER. The yeas and nays have been ordered.

#### AMENDMENT NO. 2667

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] proposes an amendment numbered 2667.

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

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

At the end of the amendment add the following new section:

"Sec. . Exemption for employee benefit practices applied to the Federal sector.

"(a) Notwithstanding any other provision of title I or the amendments to this title, no provision of any employee benefit program, plan, or arrangement operated by any department, agency, or entity of any State or local government or any nongovernmental employee shall be deemed in violation of this title or the amendments to this title if a similar program, plan or arrangement is in effect for any employee of the United States Government or any Federal employee benefit plan or program.

"(b) The Secretary of Labor, in consultation with the Equal Employment Opportunity Commission, the Office of Personnel Management, and the States, shall issue regulation specifying the provisions of this title."

Mr. HATCH. Mr. President, I am giving a copy of the amendment to the distinguished floor manager for the majority.

I do not want to have laws in this area with regard to pension disability rights, early retirement and so forth, that we impose upon State and local governments and private employers that are different from the laws in the Federal Government.

So basically what this says is:

"(a) Notwithstanding any other provision of title I or the amendments to this title, no provision of any employee benefit program, plan, or arrangement operated by any de-

partment, agency, or entity of any State or local government or any nongovernmental employer shall be deemed in violation of this title or the amendments to this title if a similar program, plan or arrangement is in effect for any employee of the United States Government or any Federal employee benefit plan or program.

"(6) The Secretary of Labor, in consultation with the Equal Employment Opportunity Commission, the Office of Personnel Management, and the States, shall issue regulations specifying the provisions of this title."

Basically, what we are saying here is that if this law passes, I do not want to set up a different set of rules and regulations for the State and local governments and private employers and employees than what we have in the Federal Government. I think it is an appropriate amendment.

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

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. Mr. President, I am prepared to agree to a time certain on this amendment so that we can have a vote in the morning. I am also prepared to allow, through unanimous consent, an opening whereby if the distinguished members on the other side desire to amend this in the second degree, they will have a right to do so with an hour debate equally divided on each amendment, assuming that any additional amendment fails first, an hour, equally divided, for each side.

Is that satisfactory to the distinguished Senator from Ohio?

Mr. METZENBAUM. Mr. President, as I understand it the Senator from Utah is saying that he is prepared to agree to a vote on this amendment tomorrow after an hour's debate, equally divided, with the understanding that managers of the bill on this side of the aisle would have the right to offer a second-degree amendment in the morning, and that in connection with that second-degree amendment, there would be an hour, equally divided, on that second-degree amendment as well.

Mr. HATCH. That is what I am prepared to agree to, if it is all right with the distinguished majority leader. But, as I understand it, he would like a vote on this bill tomorrow morning, or at least on an amendment to this bill tomorrow morning, and I am prepared to move ahead on this basis.

The PRESIDING OFFICER. The Senator from Ohio.

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.

#### MORNING BUSINESS

Mr. METZENBAUM. Mr. President, these requests have all been cleared with the minority leader.

Mr. President, I ask unanimous consent that there now be a period for morning business with Senators permitted to speak therein.

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

#### A REMARKABLE CAREER OF PUBLIC SERVICE

Mr. KENNEDY. Mr. President, a few weeks ago, the Committee on Labor and Human Resources held a hearing on the State of the Food and Drug Administration's Medical Device Program. The Radiologic Health Program has been one of its strongest components. This is attributable to the leadership of the fine gentleman who leads the Center for Devices and Radiological Health, John C. Villforth.

Mr. Villforth has served as Director of the Center since 1982. For the 13 years prior to that assignment, Mr. Villforth ran the much-heralded Radiological Health Program at FDA. As a result of Mr. Villforth's hard work and high-energy leadership, Americans have been protected from radiation produced by a number of products with which they regularly come in contact, such as color TV's, microwave ovens, lasers, tanning devices, and x-ray machines. Mr. Villforth is regarded as a modern-day champion of public health by his coworkers, and associates at FDA, his peers in the radiological health and health physics communities, and his counterparts in other Federal and State agencies with responsibilities in the field of radiation protection.

Mr. Villforth has also received accolades from international radiation protection organizations for his contributions to a broader understanding of radiation science and the human health effects from this natural and man-made phenomenon, as well as to the development of safety standards to protect medical radiation and nuclear workers in this country and around the world.

He is recognized as one of the principal forces behind the establishment of a national consortium of State radiological health agencies. This organization has provided a forum in which radiation experts at the State and Federal level can debate serious issues such as radon in homes, handling and disposal of nuclear waste, nuclear emergency preparedness, and safety inspections of diagnostic x-ray installations. It has also allowed agencies such as

FDA, EPA, NRC, and the Energy Department to effectively coordinate their radiation protection activities and assure effective radiation safety controls at all levels of Government.

Mr. Villforth's presence was also felt during the incident at the Three Mile Island nuclear power facility. As then-HEW's point man, he directed a wide-scale radiation monitoring program to be sure that fresh produce, raw milk, and other food products had not been contaminated by radiation effluents from the plant. He was also instrumental in arranging for the rapid manufacture and acquisition of nearly a quarter of a million bottles of a radioactive iodine blocking drug and the development of a health policy on its proper use.

Mr. Villforth demonstrated that same quality of leadership and mastery of complex scientific and policy issues in carrying out FDA's medical device authorities. Like FDA itself, which is confronted with the ever-increasing challenge to keep pace with the rapid change in medical and food technology, Mr. Villforth's organization shoulders the heavy burden of deciding the commercial fate of newly developed medical products. Advances in microelectronics, computer systems and microprocessors, and biomaterials, coupled with the proliferation of these technological developments from engineering laboratories to the medical arena, makes the task extraordinarily difficult.

Mr. Villforth has met this challenge. He has implemented very complex legislation in a highly professional and responsible manner. His device center has taken great care to block the market entry of products whose safety and effectiveness has not been adequately demonstrated. The center has also shown sensitivity to the demands of modern medicine by developing procedures to ensure that commercial marketing and clinical testing approvals of new products with significant therapeutic and diagnostic promise are granted expeditiously, consistent with sound scientific principles.

Mr. Villforth has also had great success in constructing a national system to identify and correct malfunctioning devices that pose a health threat to consumers. This is a critical part of the FDA Program because even the best engineered and manufactured high-technology pieces of machinery will not necessarily remain defect free over their lifetimes.

In a rather simplistic way, we tend to think of the FDA as a regulatory agency that approves new products and removes those that pose a risk to health. To his credit, Mr. Villforth has resisted this stereotype by working cooperatively with States, consumers, and health professionals on a variety of programs designed to educate them on the proper use of complex devices

and alert them to the possible hazards of improper use. These efforts have been a sterling success and perhaps are the trademark of Mr. Villforth's years of Federal service.

Mr. President, it is important to take note of people like John Villforth, who have committed themselves to improving the public health of our Nation. As a 29-year veteran of the Public Health Service who has attained the rank of Assistant Surgeon General, Mr. Villforth has shown by example how Government can make a difference in people's lives. At the end of this month, Mr. Villforth will end his Federal service. The Nation owes a great debt to him for his public commitment, his superior leadership, and his outstanding record of achievement.

#### SAFE WATER

Mr. AKAKA. Mr. President, in 1978, Congress passed amendments to the Safe Drinking Water Act to ensure that Americans have access to clean and pure drinking water. One would expect that, as the newest Senator from the State of Hawaii, I would find it easy to boast about my State, especially her abundance of clean water. I wish I could report that every time you drink a glass of water in my home State you taste paradise. But I am sorry to say that paradise found is also paradise lost.

Last month I chaired a hearing on Federal hazardous waste sites in Hawaii. We found massive contamination at Schofield Barracks, the State's largest Army base. The aquifer beneath the base is contaminated with trichloroethylene, a known carcinogen. The aquifer has been contaminated for the last 5 years; 5 long years, Mr. President. You can understand why I get upset when I think about the 25,000 residents at Schofield Barracks who must drink this water. This aquifer is their only drinking source. No one should have to turn on their tap water and cringe in horror or hold up a glass of water at an restaurant and wonder what is swimming in there: friend or foe? Or fear that your next shower might just as well coat you with a cancerous agent.

But there is some good news. One week after my hearing, the EPA announced that it was placing Schofield Barracks on its Superfund cleanup list.

Still, the menace persists. I found out just last week that another cancer-causing pollutant has been found at another water source. This time I speak of Hawaii Volcanoes National Park on the big island of Hawaii. Beware, Mr. President, if you dare drink the water. National Park employees will not. They have demanded and been given bottled water to drink.

A notice at each fountain warns that, "This facility contains a trace of the compound tetrachloroethylene. The specific health effect of the compound is unknown at this time." In short, it says, "Drink at your own risk." And despite the fact that the sign says that the specific health effect of the compound is unknown, I did a little homework of my own and found that the health effects are, indeed, known. Drink enough of that water and you will be prone to eye irritation, dermatitis, stomach problems, damage to the central nervous system, respiratory destruction, and, for some, cancer that could lead to death.

The point I am making is that we have been dragging our feet rather than getting off to a running start to protect one of our most precious resources. I want to make it clear that I will continue to press for action from the Department of Defense, the EPA, the U.S. Public Health Service, Hawaii's Department of Health, and other agencies. I will be looking for answers, digging where some might not want me to dig, and focusing attention on areas that have been neglected for too long. I will watch and wait, prod and push, until our water is clean and safe again, until our families have one less thing to worry about, and until Hawaii's once pristine water and land are restored to their former State: paradise found.

#### TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,011th day that Terry Anderson has been held captive in Beirut.

#### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Kalbaugh, one of his secretaries.

#### EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

#### MESSAGES FROM THE HOUSE

At 6 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 bills, without amendment:

S. 2205. A bill to designate certain lands in the State of Maine as wilderness; and

S. 3033. An act to amend title 39, United States Code, to allow free mailing privileges to be extended to members of the Armed Forces while engaged in temporary military operations under arduous circumstances.

#### ENROLLED BILL SIGNED

At 6:16 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker pro tempore [Mr. HOYER] had signed the following enrolled bill:

S. 3033. An act to amend title 39, United States Code, to allow free mailing privileges to be extended to members of the Armed Forces while engaged in temporary military operations under arduous circumstances.

The enrolled bill was subsequently signed by the Acting President pro tempore [Mr. SHELBY].

#### MEASURES HELD AT THE DESK

The following bill was ordered held at the desk until the close of business on September 18, 1990:

H.R. 5400. A bill to amend the Federal Election Campaign Act of 1971 and certain related laws to clarify such provisions with respect to Federal elections, to reduce costs in House of Representatives elections, and for other purposes.

#### ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, September 17, 1990, he had presented to the President of the United States the following enrolled bill:

S. 3033. An act to amend title 39, United States Code, to allow free mailing privileges to be extended to members of the Armed Forces while engaged in temporary military operations under arduous circumstances.

#### REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. PELL, from the Committee on Foreign Relations, without amendment and with a preamble:

S. Res. 186. A resolution relating to the protection of the Antarctic System.

By Mr. PELL, from the Committee on Foreign Relations, with amendments and with a preamble:

S.J. Res. 206. Joint resolution calling for the United States to encourage immediate negotiations toward a new agreement among Antarctic Treaty Consultative parties, for the full protection of Antarctica as a global ecological commons.

#### 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. MOYNIHAN:

S. 3060. A bill entitled the "Zebra Mussel Control Act of 1990"; to the Committee on Environment and Public Works.

By Mr. ARMSTRONG (for himself and Mr. BOREN):

S. 3061. A bill to amend the Internal Revenue Code of 1986 to extend the credit for producing fuel from nonconventional sources to gas produced from oil shale, to allow taxpayers subject to the alternative minimum tax full credit for producing fuel from nonconventional sources, and for other purposes; to the Committee on Finance.

By Mr. LOTT (for himself, Mr. COCHRAN, Mr. BUMPERS, and Mr. PRYOR):

S. 3062. A bill to transfer the responsibility for operation and maintenance of Highway 82 bridge at Greenville, MS, to the States of Mississippi and Arkansas; to the Committee on Environment and Public Works.

By Mr. BAUCUS (for himself, Mr. DASCHLE, and Mr. EXON):

S. 3063. A bill to take additional measures to strengthen economic sanctions against Iraq; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. PELL (by request):

S. 3064. A bill to provide for the implementation of the enterprise for the Americas Initiative, and for other purposes; to the Committee on Foreign Relations.

By Mr. HEINZ (for himself and Mr. SPECTER):

S. 3065. A bill to amend the Wild and Scenic River Act by designating a segment of the Allegheny River in the State of Pennsylvania as a component of the National Wild and Scenic Rivers System; to the Committee on Energy and Natural Resources.

By Mr. SASSER (for himself, Mr. GORE, Mr. DIXON, Mr. FOWLER, Mr. GLENN, Mr. AKAKA, Mr. MOYNIHAN, Mr. ADAMS, Mr. BURDICK, Mr. DODD, Mr. BRYAN, Mr. SHELBY, Mr. PRYOR, Mr. KERRY, Mr. HOLLINGS, Mr. NUNN, Mr. BOREN, Mr. HEFLIN, Mr. SARBANES, Mr. WIRTH, Mr. EXON, Mr. JOHNSTON, Mr. FORD, Mr. DECONCINI, Mr. BUMPERS, Mr. ROCKEFELLER, Mr. CRANSTON, Mr. RIEGLE, Mr. COATS, Mr. DURENBERGER, Mr. DOLE, Mr. D'AMATO, Mr. SYMMS, Mr. WARNER, Mr. CONRAD, Mr. STEVENS, Mr. SPECTER, Mrs. KASSEBAUM, Mr. BURNS, Mr. THURMOND, Mr. McCLURE, Mr. DOMENICI, Mr. COCHRAN, Mr. BOSCHWITZ, Mr. ARMSTRONG, Mr. BOND, Mr. LOTT, Mr. HELMS, Mr. WILSON, Mr. HUMPHREY, Mr. DANFORTH, and Mr. ROTH):

S.J. Res. 365. Joint resolution to designate the month of October 1990 as Country Music Month"; to the Committee on the Judiciary.

By Mr. COCHRAN (for himself, Mr. DURENBERGER, Mr. COATS, Mr. BYRD, Mr. BUMPERS, Mr. PRYOR, Mr. GRAMM, Mr. NUNN, Mr. BOND, Mr. WARNER, Mr. LOTT, Mr. GARN, Mr. HEFLIN, Mr. DANFORTH, Mr. DOLE, Mr. LUGAR, Mr. BENTSEN, Mr. SIMPSON, Mr. ROBB, Mrs. KASSEBAUM, Mr. DOMENICI, Mr. KASTEN, Mr. THURMOND, Mr. JOHNSTON, Mr. FOWLER, Mr. BOSCHWITZ, Mr. ROCKEFELLER, Mr. SHELBY, Mr. CHAFFEE, Mr. HOLLINGS, Mr. BREAUX, Mr. JEFFORDS, Mr. GORE, Mr. REID, Mr. BURDICK, Mr. WALLOP, Mr. MACK, Mr. McCAIN, Mr. SPECTER, Mr. SYMMS, Mr. GRAHAM, Mr. SANFORD, Mr. PELL, Mr. SASSER, Mr. DIXON, Mr. HELMS, Mr. WILSON, Mr. McCLURE, Mr. FORD, Mr. GRASSLEY, Mr. DECONCINI, and Mr. McCONNELL):



S.J. Res. 366. Joint resolution to designate March 30, 1991, as "National Doctors Day"; to the Committee on the Judiciary.

By Mr. BOND (for himself, Mr. BRADLEY, Mr. CRANSTON, Mr. GLENN, Mr. LEVIN, Mr. KERRY, Mr. DIXON, Mr. FOWLER, Mr. BENTSEN, Mr. CONRAD, Mr. SIMON, Mr. MOYNIHAN, Mr. SARBANES, Mr. PELL, Mr. BURDICK, Mr. HOLLINGS, Mr. SHELBY, Mr. SASSER, Mr. GORE, Mr. ADAMS, Mr. SANFORD, Mr. LAUTENBERG, Mr. BAUCUS, Mr. INOUE, Mr. BOSCHWITZ, Mr. COCHRAN, Mr. WARNER, Mr. SPECTER, Mr. COATS, Mrs. KASSEBAUM, Mr. DOMENICI, Mr. D'AMATO, Mr. DURENBERGER, Mr. DANFORTH, Mr. GRASSLEY, Mr. HUMPHREY, Mr. BURNS, Mr. ARMSTRONG, Mr. STEVENS, Mr. CHAFFEE, Mr. WILSON, Mr. JEFFORDS, Mr. HELMS, Mr. HATCH, Mr. WALLOP, Mr. DOLE, Mr. MACK, Mr. GORTON, Mr. LUGAR, and Mr. HEINZ):

S.J. Res. 367. Joint resolution to designate the week of November 11 through 17, 1990, as Gaucher's Disease Awareness Week"; to the Committee on the Judiciary.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ARMSTRONG (for himself and Mr. BOREN):

S. 3061. A bill to amend the Internal Revenue Code of 1986 to extend the credit for producing fuel from nonconventional sources to gas produced from oil shale, to allow taxpayers subject to the alternative minimum tax full credit for producing fuel from nonconventional sources, and for other purposes; to the Committee on Finance.

#### NONCONVENTIONAL FUEL SOURCE DEVELOPMENT TAX CREDIT

● Mr. ARMSTRONG. Mr. President, the recent events in the Persian Gulf, and the resulting increase in oil prices, have served to remind us of the importance of developing domestic alternatives to foreign oil. The United States has no shortage of oil or of other energy sources. The shortage lies in the technology needed to extract the energy at reasonable costs.

For example, the United States has about 600 billion barrels of recoverable high grade crude oil in the shale found in Colorado, Wyoming, and Utah. This represents about 20 times the Nation's current crude oil reserves and is about equal to OPEC's reserves. The problem, of course, is that we don't know how to extract the oil from the shale at a low enough cost to make full development of this important resource worthwhile.

At the present time, there is one commercial scale, demonstration shale oil plant in the entire country. This plant is located in Parachute, CO, and is owned and operated by Unocal. Construction on the facility was begun in 1981 and completed in 1983. The plant was designed to produce 10,000 barrels of oil per day. Today, the primary purpose of the plant is to explore the boundaries of shale oil technology.

As with any new technology, production at the Parachute plant has proceeded in fits and starts. As a result of the collapse in oil prices in the early 1980's, Unocal was forced to write the plant off entirely. Nevertheless, the management of Unocal has resisted strong pressures from shareholders and analysts to close the plant to cut costs because of the importance of exploring the technology fully.

Under continued development and study at the school at hard knocks, sustained production was achieved in 1986. By 1989, production levels had reached 1.5 million barrels, or roughly 50 percent of capacity. And though the plant has lost money in every year of its operation, ever-increasing production levels have brought the losses down from \$103 million in 1987 to \$20 million in 1989.

Understandably, Unocal cannot continue indefinitely to operate a plant that doesn't cover its costs. As a result, this enormously important research facility could be lost to the Nation.

Fortunately, a low-cost solution may be available. Under current law, the Unocal plant qualifies for the "credit for producing fuel from a nonconventional source," section 29 of the Internal Revenue Code. This is a \$3 per barrel credit for the production of nonconventional fuels, including oil from shale. However, the credit is offset by 100 percent of any energy investment tax credits claimed under section 47 of the Internal Revenue Code, and is further reduced by the proportion of the production facility financed with tax-exempt pollution control bonds. These offsets reduce the value of the credit and so make it harder for the shale plant to cover its costs.

I am introducing a bill to allow this important research facility to remain open by placing a 3-year moratorium on the pollution control bond and energy investment offsets against the nonconventional fuels credit. In addition, my bill would correct an oversight in existing statute by extending the credit to gas produced from oil shale and would eliminate the requirement that gas produced from oil shale be sold to an unrelated party. Finally, my bill would ensure that the taxpayer would be able to take the credit regardless of whether the taxpayer is paying regular or alternative minimum tax. The Joint Tax Committee estimated in 1989 that these provisions would cost about \$20 million over the period from 1990 to 1994.

To date, Unocal has invested \$1.2 billion in the Parachute oil shale facility. The Federal Government has spent billions of dollars to fund energy research. Here, we have a private, billion plus dollar research facility to explore a technology to unleash an amount of oil twice that of OPEC's reserves. It seems obvious that \$20 million over

five years, \$5 million in the first year, is a ridiculously cheap price to keep such a facility in operation. As the Persian Gulf crisis makes abundantly clear, it is a price we can ill afford not to pay. ●

By Mr. LOTT (for himself, Mr. COCHRAN, Mr. BUMPERS, and Mr. PRYOR):

S. 3062. A bill to transfer the responsibility for operation and maintenance of Highway 82 Bridge at Greenville, MS, to the State of Mississippi and Arkansas; to the Committee on Environment and Public Works.

#### TRANSFER OF BRIDGE AUTHORITY

Mr. LOTT. Mr. President, for some time, the city of Greenville, MS, has been attempting to negotiate a transfer of the responsibility for the Greenville/Lake Village Bridge to the Mississippi State Highway Commission and the Arkansas State Highway Commission.

Mr. COCHRAN. The city of Greenville was authorized by Congress in 1938 to construct, maintain, and operate the Greenville/Lake Village Bridge—also known as the Highway 82 Bridge—across the Mississippi River.

In 1944, Greenville conveyed to Arkansas that portion of the bridge located in Arkansas, but reserved the right to operate, maintain, and manage the bridge. Now, the city of Greenville wants to transfer maintenance and operation authority to the Mississippi and Arkansas State Highway Commissions.

Mr. LOTT. In a letter dated March 20, 1990, the U.S. Department of Transportation Federal Highway Administration reiterated that special authority was granted to the city of Greenville by Federal legislation which reserved to the Congress the right to alter any part of the authority.

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

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

FEDERAL HIGHWAY ADMINISTRATION,  
OFFICE OF THE ADMINISTRATOR,  
Washington, DC, March 20, 1990.

HON. TRENT LOTT,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR LOTT: Thank you for your February 28 letter to Secretary of Transportation Samuel K. Skinner on behalf of your constituent, the city of Greenville, concerning the proposed transfer of the Greenville/Lake Village Bridge by the city to the Arkansas and Mississippi State Highway Commissions. The Secretary's staff has asked us to answer your letter.

You have asked whether the "franchise" for the maintenance and operation of the bridge can be transferred by the city without the express approval of the U.S. Department of Transportation or further special legislation from the U.S. Congress.

The bridge in question was authorized by special legislation of the U.S. Congress, Act of June 14, 1938, ch. 361, 52 Stat. 681. The legal authorities referred to in that Act, specifically 33 U.S.C. § 491-498 and the Act of March 23, 1906, were transferred to the Department of Transportation in 1966. However, the 1938 law does not grant this department or any other Federal agency authority to alter the responsibility for maintenance, operation, or ownership of the bridge, which was established as a grant condition in 1938.

We believe that further special legislation from the U.S. Congress is necessary to resolve this matter with certainty. The U.S. Congress only gave special authority to the city of Greenville and Washington County under the 1938 Act. It appears the authority can not be now transferred without its authorization. See section 5 of the Act, wherein Congress reserved to itself the "right to alter, amend, or repeal \* \* \* [the Act] \* \* \*."

I appreciate you bringing this matter to my attention. I regret not being able to be of more assistance.

Sincerely yours,

T.D. LARSON,  
Administrator.

Mr. COCHRAN. Mr. President, both the Mississippi and Arkansas State Highway Commissions want to move forward with the transfer of the authority over the Greenville/Lake Village Bridge. The bridge may be transferred to the State Highway Commissions only under a special act of Congress.

Mr. LOTT. Our colleagues from Arkansas, Mr. PRYOR and Mr. BUMPERS, are joining us today in introducing legislation for this purpose. I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 3062

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) all the authorities conferred upon the city of Greenville, Mississippi, and Washington County, Mississippi, by the Act of June 14, 1938 (52 Stat. 681) to operate and maintain a bridge across the Mississippi River (known as the Greenville/Lake Village Bridge or the "Highway 82 Bridge") are transferred, upon the certification required by subsection (b), to the State Highway Commissions of Mississippi and Arkansas, acting jointly.*

*(b) Whenever the Secretary of Transportation determines that the States of Mississippi and Arkansas have entered into a suitable agreement for the continued operation and maintenance of the Highway 82 Bridge at Greenville, Mississippi, the Secretary shall so certify to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives.*

By Mr. PELL (by request):

S. 3064. A bill to provide for the implementation of the Enterprise for the Americas Initiative, and for other purposes; to the Committee on Foreign Relations.

ENTERPRISE FOR THE AMERICAS INITIATIVE ACT

● Mr. PELL. Mr. President, by request, I introduce for appropriate reference a bill to provide for the implementation of the Enterprise for the Americas Initiative, first proposed by President Bush on June 27, 1990, and for other purposes.

This proposed legislation has been requested by the executive branch, 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.

The stated purpose of this legislation is to encourage and support market-oriented reform and economic growth in Latin America and the Caribbean through inter-related actions that will promote investment reforms, debt reduction and environmental protection in that region. Specifically, this legislation contains provisions designed to accomplish the following:

To authorize contributions by the United States for a newly created Enterprise for the Americas Investment Fund which will be established as a special facility of the Inter-American Development Bank. The fund is designed to foster a climate favorable to investment in Latin America and the Caribbean;

To authorize the establishment of an Enterprise for the Americas facility in the Department of Treasury which would conduct debt reduction operations for eligible countries;

To authorize the President to reduce official debt obligations owed to the United States by eligible countries, subject to advance appropriations;

To authorize the use of interest payments on concessional official debts for environmental programs in eligible debtor countries; and

To provide authority for the sale, reduction or cancellation of certain debts owed by eligible countries to be used in a manner designed to facilitate debt/equity or debt-for-nature swaps.

I reserve my right to support or oppose this bill, as well as any suggested amendments to it, when the matter is considered by the Committee on Foreign Relations.

I ask unanimous consent that the bill be printed in the RECORD at this point together with the section-by-section analysis prepared by the administration.

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

S. 3064

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Enterprise for the Americas Initiative Act of 1990".*

TITLE I—PROVISIONS RELATING TO THE ENTERPRISE FOR THE AMERICAS INVESTMENT FUND AT THE INTER-AMERICAN DEVELOPMENT BANK

SEC. 101. UNITED STATES CONTRIBUTION.

(a) CONTRIBUTION AGREEMENT.—The Secretary of the Treasury (hereinafter the "Secretary") is hereby authorized to agree on behalf of the United States to contribute, and to make payment of, a grant of \$500,000,000 to the Enterprise for the Americas Investment Fund (hereinafter the "Fund") to be administered by the Inter-American Development Bank (hereinafter the "IDB").

(b) AUTHORIZATION OF APPROPRIATIONS.—There are hereby authorized to be appropriated to the Secretary without fiscal year limitation and for the purposes of subsection (a), \$500,000,000, to be paid in five annual installments of \$100,000,000 each, beginning in Fiscal Year 1992.

SEC. 102. PURPOSE OF THE FUND.

The purpose of the Fund shall be to provide program and project grants that will advance specific, market-oriented investment policy initiatives and reforms to encourage domestic and foreign investment in Latin America and the Caribbean. The Fund will also finance technical assistance for privatizing government-owned industries; business infrastructure; and worker training and education programs to develop supporting human capital.

SEC. 103. CONTRIBUTIONS FROM OTHER COUNTRIES.

The Secretary may seek contributions to the Fund from other countries.

TITLE II—ENTERPRISE FOR THE AMERICAS FACILITY

SEC. 201. ESTABLISHMENT.

There is hereby established in the Department of the Treasury the Enterprise for the Americas Facility (hereinafter the "Facility").

SEC. 202. PURPOSE.

The purpose of this initiative is to encourage and support market-oriented reform and economic growth in Latin America and the Caribbean through inter-related actions which will promote debt reduction, investment reforms, and environmental protection. The Facility will support these objectives through administration of debt reduction operations for those nations that meet the investment reform and other policy conditions.

SEC. 203. ELIGIBILITY FOR BENEFITS UNDER THE FACILITY.

(a) REQUIREMENTS.—To be eligible for benefits under the Facility, a country must—

(1) be a Latin American or Caribbean country;

(2) have in effect or have received approval for—

(A) an International Monetary Fund (hereinafter the "IMF") standby arrangement, extended Fund arrangement, or an arrangement under the structural adjustment facility or enhanced structural adjustment facility, or in exceptional circumstances, an IMF-monitored program or its equivalent; and

(B) as appropriate, structural or sectoral adjustment loans from the International Bank for Reconstruction and Development (hereinafter the "World Bank") or the International Development Association (hereinafter the "IDA");

(3) have put in place major investment reforms in conjunction with an IDB loan or

otherwise be implementing an open investment regime; and

(4) if appropriate, have agreed with its commercial bank lenders on a satisfactory financing program, including, as appropriate, debt or debt service reduction.

(b) **ELIGIBILITY DETERMINATIONS.**—The President shall determine whether a country is an eligible country for purposes of subsection (a).

### TITLE III—DEBT REDUCTION

#### SEC. 301. REDUCTION OF CERTAIN DEBT.

##### (a) AUTHORITY TO REDUCE DEBT.—

(1) Notwithstanding any other provision of law, the President may reduce the amount owed to the United States or any agency of the United States, and outstanding as of January 1, 1990, as a result of any concessional loan made by the United States pursuant to the Foreign Assistance Act of 1961, as amended, or any credits extended pursuant to title I of the Agricultural Trade Development and Assistance Act of 1954, as amended, to a county eligible for benefits under the Facility.

(2) The authorities of this section may be exercised only to such extent as approved in advance in appropriation acts, as appropriate.

(b) **LIMITATION.**—Any debt reduction authorized pursuant to subsection (a) shall be accomplished at the direction of the Facility by the exchange of a new obligation for obligations outstanding as of January 1, 1990.

(c) **EXCHANGE OF OBLIGATIONS.**—The Facility shall notify the Agency for International Development or the Commodity Credit Corporation of the agreement with an eligible country to exchange a new obligation for outstanding obligations, pursuant to section 301(b), and, at the direction of the Facility, the old obligations shall be canceled and a new debt obligation for the country shall be established, and such agency shall make an adjustment in its accounts to reflect the debt reduction.

#### SEC. 302. REPAYMENT OF PRINCIPAL.

(a) **CURRENCY OF PAYMENT.**—The principal amount of each new obligation issued pursuant to section 301 shall be repaid in United States dollars.

(b) **DEPOSIT OF PAYMENTS.**—Principal repayments of obligations shall be deposited in the account(s) established for principal repayments of the obligations exchanged therefor.

#### SEC. 303. INTEREST ON NEW OBLIGATIONS.

(a) **RATE OF INTEREST.**—New obligations issued by an eligible country pursuant to section 301 shall bear interest at a concessional rate.

##### (b) CURRENCY OF PAYMENT; DEPOSITS.—

(1) **LOCAL CURRENCY.**—If the eligible country has entered into an agreement pursuant to section 403, interest shall be paid in the local currency of the eligible country and deposited in an Environmental Fund as provided in section 403. Such interest shall be the property of the eligible country, and such local currencies shall be used for the purposes, and be subject to joint programming, as specified in the agreement provided for in section 403.

(2) **UNITED STATES DOLLARS.**—If the eligible country has not entered into an agreement pursuant to section 403, interest shall be paid in United States dollars and deposited in the account(s) established for interest payments of the obligations exchanged therefor.

(c) **INTEREST ALREADY PAID.**—If an eligible country enters into an agreement pursuant to section 403 subsequent to the date on

which interest first became due on the newly issued obligation, any interest already paid on such new obligation shall not be deposited into the fund established for the eligible country pursuant to section 401(a).

### TITLE IV—ENTERPRISE FOR THE AMERICAS ENVIRONMENTAL FUNDS

#### SEC. 401. ENTERPRISE FOR THE AMERICAS ENVIRONMENTAL FUNDS.

(a) **ESTABLISHMENT.**—The eligible country shall establish an Enterprise for the Americas Environmental Fund (hereinafter "Environmental Fund") to receive payments in local currency pursuant to section 303(b)(1).

(b) **DEPOSITS.**—Local currencies deposited in accordance with this section shall not be considered assistance for the purpose of any provision of law limiting assistance to a country.

(c) **INVESTMENT.**—Deposits made to an Environmental Fund shall be invested. Notwithstanding any other provision of law, any return on such investment may be retained by the Environmental Fund, without deposit in the Treasury of the United States and without further appropriation by Congress.

#### SEC. 402. DISBURSMENT OF ENVIRONMENTAL FUNDS.

Funds in an Environmental Fund shall be disbursed only pursuant to an agreement entered into pursuant to section 403.

#### SEC. 403. ENVIRONMENTAL FRAMEWORK AGREEMENTS.

The President is authorized to enter into an environmental framework agreement with each country eligible for benefits under the Facility concerning the operation and use of the Environmental Fund for that country. Such agreement should, among other things, specify the means by which point programming shall be accomplished; provide that such Environmental Fund shall be used to provide grants to support environmental projects or programs within such country which are subject to the joint approval of the country and the President; and, when appropriate, seek to maintain the value of the local currency resources of the Environmental Fund in terms of the United States dollar.

#### SEC. 404. ROLE OF NON-GOVERNMENTAL ORGANIZATIONS.

(a) **FRAMEWORK AGREEMENTS AND LOCAL NON-GOVERNMENTAL ORGANIZATIONS.**—In negotiating environmental framework agreements pursuant to section 403, the President should encourage the involvement of local non-governmental organizations having expertise with respect to environmental or conservation matters. In addition, the President should encourage eligible countries to involve representatives of these organizations in decisions on the use of grant funds.

(b) **CONSULTATION ON FUND PROGRAM.**—The President should consult with non-governmental organizations having expertise with respect to environmental or conservation matters regarding the establishment, structure, and operation of the Environmental Fund.

### TITLE V—SALES, REDUCTIONS, OR CANCELLATIONS OF LOANS OR ASSETS

#### SEC. 501. LOANS OR ASSETS ELIGIBLE FOR SALE, REDUCTION, OR CANCELLATION.

(a) Notwithstanding any other provision of law, the President may, in accordance with this title—

(1) sell to any eligible purchaser any loan or portion thereof of an eligible country (as determined pursuant to section 203) or any

agency thereof, that was made pursuant to the Export-Import Bank Act of 1945, as amended;

(2) sell to any eligible purchaser any asset or portion thereof which is acquired by the Commodity Credit Corporation as a result of its status as a guarantor of credits in connection with export sales to an eligible country (as determined pursuant to section 203), in accordance with export credit guarantee programs authorized pursuant to the Commodity Credit Corporation Charter Act, as amended, or section 4(b) of the Food for Peace Act of 1966, as amended; and

(3) upon receipt of payment from an eligible purchaser, reduce or cancel any loan or the amount of any asset or portion thereof referenced in paragraphs (1) or (2) of subsection (a) of this section, provided that any such loan or asset that is sold, reduced, or canceled under this section was made or acquired prior to January 1, 1990, and such sale, reduction, or cancellation would not contravene any term or condition of any prior agreement relating to such loan or asset.

(b) Notwithstanding any other provision of law, the President shall establish the terms and conditions under which loans of assets may be sold, reduced, or canceled pursuant to this title.

(c) Any sale made pursuant to this title by the Export-Import Bank of the United States or the Commodity Credit Corporation of a loan or asset (including any interest therein) to an eligible purchaser under section 503 shall be a transaction not required to be registered pursuant to section 5 of the Securities Act of 1933. For purposes of the Securities Act of 1933, neither the Export-Import Bank of the United States nor the Commodity Credit Corporation shall be deemed to be an issuer or underwriter with respect to any subsequent sale or other disposition of such loan or asset (including any interest therein) or any security received by an eligible purchaser pursuant to any debt-for-equity or debt-for-nature swap.

(d) The Facility shall notify the Export-Import Bank of the United States or the Commodity Credit Corporation of purchasers the President has determined to be eligible under section 503, and shall direct the Export-Import Bank of the United States or the Commodity Credit Corporation to carry out the sale, reduction, or cancellation of a loan or asset pursuant to this section. Such agency shall make an adjustment in its accounts to reflect the sale, reduction, or cancellation.

#### SEC. 502. DEPOSIT OF PROCEEDS.

The proceeds from the sale, reduction, or cancellation of any loan or asset sold, reduced, or cancelled pursuant to this title shall be deposited in the account(s) established for the repayment of such loan or asset.

#### SEC. 503. ELIGIBLE PURCHASER.

A loan or asset may be sold pursuant to this title only to a purchaser who presents plans satisfactory to the President for using such loan or asset for the purpose of engaging in debt-for-equity swaps or debt-for-nature swaps. A loan or asset may be reduced or canceled pursuant to this title only for the purpose of facilitating debt-for-equity swaps or debt-for-nature swaps.

#### SEC. 504. DEBTOR CONSULTATION.

Prior to the sale to any eligible purchaser, or any reduction or cancellation pursuant to this title of any loan made to an eligible country, asset acquired as the result of a

credit guarantee made in connection with export sales to an eligible country, the President should consult with that country concerning, among other things, the amount of loans or assets to be sold, reduced, or canceled and their uses for debt-for-equity swaps or debt-for-nature swaps.

#### TITLE VI—REPORTS

##### SEC. 601. ANNUAL REPORT TO CONGRESS.

Not later than December 31 of each year, the President shall transmit to the Speaker of the House of Representatives and the President of the Senate an annual report on the operation of the Facility for the prior fiscal year.

#### SECTION-BY-SECTION ANALYSIS

##### TITLE I. PROVISIONS RELATING TO THE ENTERPRISE FOR THE AMERICAS INVESTMENT FUND AT THE INTER-AMERICAN DEVELOPMENT BANK

Section 101 provides for contribution by the United States to the Enterprise for the Americas Investment Fund (the "Fund"), an investment fund to be established by the Inter-American Development Bank (the "IDB").

Subsection (a) authorizes the United States to contribute \$500 million to the Fund.

Subsection (b) authorizes appropriations for the contribution.

Section 102 describes the purpose of the Fund. The purpose of the Fund is to foster a climate favorable to investment in Latin American and Caribbean countries. Conditions in Latin America and the Caribbean over the last decade have led investors to look away from the region to other markets. The goal of the Fund is to support the efforts of Latin American and Caribbean nations to carry out investment reforms in order to facilitate foreign investment and the reflow of flight capital. Specifically, the Fund would:

Advance specific, market-oriented investment policy initiatives and reforms; and

Finance technical assistance for privatizing government-owned industries, business infrastructure, and worker training and education programs.

Section 103 provides that the Secretary of the Treasury may seek contributions to the Fund from other countries.

##### TITLE II. ENTERPRISE FOR THE AMERICAS FACILITY

Section 201 establishes the Enterprise for the Americas Facility (the "Facility") in the Department of the Treasury.

Section 202 provides that the purpose of the initiative is to encourage and support market-oriented reform and economic growth in Latin America and the Caribbean through inter-related actions which will promote debt reduction, investment reforms, and environmental protection. The purpose of the Facility is to support these objectives through administration of debt reduction operations for nations that meet certain investment reform and other policy conditions.

Section 203 governs eligibility to participate in the Facility. These criteria are designed to encourage economic reform in Latin American and Caribbean countries, including measures to liberalize investment regimes, and to reach satisfactory agreements with commercial bank creditors.

Subsection (a) provides that an eligible country is one that:

Is a Latin American or Caribbean country; Has in effect an International Monetary Fund (IMF) standby arrangement, extended fund arrangement, or an arrangement

under the structural adjustment facility, or enhanced structural adjustment facility or, in exceptional circumstances, an IMF-monitored program or its equivalent;

As appropriate, has received structural adjustment or sectoral adjustment loans under the International Bank for Reconstruction and Development (World Bank), or the International Development Association (IDA);

Has in place major investment reforms in conjunction with an IDB loan or otherwise is implementing an open investment regime; and

If appropriate, has agreed on a satisfactory financing program with commercial banks, including, if appropriate, debt and debt service reduction.

It is the Administration's intent in implementing this section that official debt reduction negotiations with a country may begin once the country and its commercial bank creditors have agreed in principle on a financing program. However, the President will not finally agree to any debt reduction until the commercial banks and the country have reached a final agreement.

Subsection (b) provides that the President shall determine whether a country is eligible to participate in the Facility pursuant to subsection (a).

##### TITLE III. DEBT REDUCTION

Section 301. Subsection (a) authorizes the reduction of concessional loans extended under the Foreign Assistance Act of 1961 (FAA) and credits extended under title I of the Agricultural Trade Development and Assistance Act of 1954, as amended.

Subsection (b) provides that debt reduction will be accomplished by the exchange of a new obligation for obligations outstanding as of January 1, 1990.

Subsection (c) provides that the responsibility for executing the exchange of obligations that will result in the debt reduction agreed to by the President pursuant to subsection (a) rests with the agency whose loans or credits are affected, and such agency shall act at the direction of the Facility.

Section 302 provides that repayments or principal on new obligations issued pursuant to section 301 shall be paid in U.S. dollars and deposited into the accounts established to receive principal payments on the old debt obligations.

Section 303 provides that the rate of interest on the new obligations shall be a concessional rate and that payment of that interest shall be made in the local currency of the debtor country if that country has entered into an agreement establishing an Environmental Fund into which the interest would be deposited (see title IV); otherwise, interest shall be paid in U.S. dollars into the U.S. Treasury. Interest deposited in the Environmental Fund would be owned by the eligible country, as would any earnings on that interest; the Fund would, however, be subject to joint U.S.-eligible country programming.

Subsection (c) provides that there is no retroactive crediting of interest payments to the Environmental Fund established pursuant to section 401(a) in the event that an eligible country enters into an agreement after the date that interest payments become due on the new obligation.

##### TITLE IV. ENTERPRISE FOR THE AMERICAS ENVIRONMENTAL FUNDS

Section 401. Subsection (a) provides for the establishment of an Enterprise for the Americas Environmental Fund by an eligible country.

Subsection (b) provides that deposits into an Environmental Fund shall not be taken into account for purposes of other provisions of law limiting assistance to a country.

Subsection (c) provides that deposits into an Environmental Fund shall be invested, that earnings form a part of the Fund, and that deposits and any earnings thereon are available for expenditure without further need for an appropriation.

Section 402 provides that funds in a country's Environmental Fund shall be disbursed only pursuant to a broad agreement entered into by the President.

Section 403 authorizes the President to enter into an agreement with each country eligible for benefits under the Facility to determine the operation and use of the Environmental Fund. The agreement should, among other things, provide for joint programming of the Environmental Fund, and specify that the Environmental Fund shall be used to provide grants for environmental projects and programs approved by the President and the eligible country. It is contemplated that local committees, composed of U.S. Governmental representatives, country representatives, and representatives of local private environmental groups, would have a significant role in formulating programs and projects funded by grants from the Environmental Fund, consistent with U.S. foreign assistance objectives.

Section 404. Subsection (a) provides that the President should encourage the involvement of local non-governmental environmental groups in decisions on the use of grant funds and in matters pertaining to the structure and operation of the Environmental Fund programs.

Subsection (b) provides that the President should consult with non-governmental organizations having expertise with respect to environmental or conservation matters regarding the establishment, structure, and operation of the Environmental Fund program.

##### TITLE V. SALES, REDUCTIONS, OR CANCELLATIONS OF LOANS OR ASSETS

Section 501 authorizes the President to sell, reduce, or cancel loans made to an eligible country prior to January 1, 1990, under the Export-Import Bank Act of 1945, as amended, (including direct loans and loans acquired by the Export Import Bank of the United States pursuant to its guarantee and insurance programs) and assets acquired prior to January 1, 1990, as a result of credit guarantees made in connection with export sales to eligible countries under programs authorized pursuant to the Commodity Credit Corporation Charter Act, as amended, or section 4(b) of the Food for Peace Act of 1966, as amended. Any such sale, reduction, or cancellation may not contravene any term or condition of any prior agreement relating to such loan or asset. The President is authorized under section 503 to determine the eligibility of a purchaser; the Facility communicates this determination to the agency whose loans or assets are affected, which is in turn responsible for carrying out the sale, reduction, or cancellation. It is the Administration's intent that any loan or asset sales under this section will be carried out in such a way to maximize return to the U.S. Government.

Subsection 501(c) provides that any loan or asset sale made pursuant to Title V shall be a transaction not required to be registered pursuant to the Securities Act of 1933, and, for the purposes of that Act, neither

the Export-Import Bank of the United States nor the Commodity Credit Corporation shall be deemed to be an issuer or underwriter with respect to any subsequent sale or other disposition of such loan or asset pursuant to a debt-for-equity swap or debt-for-nature swap.

Section 502 requires that proceeds of a sale, reduction, or cancellation of a loan or asset pursuant to section 501 be deposited into the account(s) established for the repayment of that loan or those assets.

Section 503 requires that the loans be sold only to purchasers who present to the President satisfactory plans for engaging in debt-for-equity or debt-for-nature swaps.

Section 504 provides that prior to a loan or asset sale, reduction, or cancellation, the President should consult with the eligible country to which the loans that will be sold, reduced, or canceled relate, specifying the amounts to be affected and their uses for debt-for-equity or debt-for-nature swaps.

#### TITLE VI. REPORTS

Section 601 requires the President to submit an annual report to Congress on the operation of the Facility.●

By Mr. HEINZ (for himself and Mr. SPECTER):

S. 3065. A bill to amend the Wild and Scenic River Act by designating a segment of the Allegheny River in the State of Pennsylvania as a component of the National Wild and Scenic Rivers System; to the Committee on Energy and Natural Resources.

#### DESIGNATION OF SEGMENT OF ALLEGHENY RIVER AS A SEGMENT OF THE NATIONAL WILD AND SCENIC RIVERS SYSTEM.

Mr. HEINZ. Mr. President, I rise today to introduce legislation to designate 85 miles of the Allegheny River in Pennsylvania as a national recreation river under the Federal Wild and Scenic River System.

Twenty-two years ago, Congress enacted the Wild and Scenic River Act to set the policy of the United States of protecting and preserving certain rivers in the United States that possess remarkable scenic, geologic, historic, cultural, or recreational attributes.

In 1978, Congress directed the Forest Service to study 128 miles of the Allegheny River. The Allegheny River is located in northwestern Pennsylvania in the majestic Appalachian Plateau Region. It flows from its origins in Potter County, PA, northwest through a small portion of New York State, and then swings southwest through Pennsylvania, converging with the Monogahela River at Pittsburgh to form the Ohio River. The study focused on a segment of the river from Kinzua Dam to East Brady, PA. It was completed earlier this year by the Forest Service personnel of the Allegheny National Forest who concluded that 85 miles of the river contained outstandingly remarkable values.

Mr. President, this finding is no surprise to those of us familiar with this beautiful area of Pennsylvania. Approximately 30 percent of the 85-mile

river segment winds through the Allegheny National Forest, which is truly one of our National treasures; the remaining portion moves through both public and private lands.

Because no section of the Allegheny River was remote enough or free enough of development to be classified as a wild river area, the 85 miles of the river will be designated as a recreational river.

To ensure that the local citizenry has maximum input into a U.S. Forest Service management plan, this legislation creates two citizen advisory groups to give advice on the establishment of final boundaries, and the management of the river. In addition, this bill authorizes the Secretary of Agriculture to implement interim protection measures to protect the river's remarkable value prior to full implementation of the management plan.

Let me take a moment and explain why protection of this river is important to the rich historical and environmental characteristics of northwestern Pennsylvania.

Various cultures and groups have used the Allegheny River for more than 12,000 years. From prehistoric times to the period of Euro-American settlement, the Allegheny River has been the principal travel route linking the Mississippi and Ohio River area with the Great Lakes. The Seneca Indians used to canoe the beautiful waters of the Allegheny 300 years ago. Among the Indian artifacts on the river is the so-called Indian God Rock, which is listed in the National Register of Historic Places. Early colonists explored and settled along this natural river corridor before the United States was formed. The region was a major strategic objective during the French and Indian wars. Needless to say, during the ebb and flow of human activity, each group of people left their mark; consequently leaving a rich lode of archaeological and cultural artifacts for modern man.

Despite its attractiveness to settlers over the years, the River corridor remains a relatively sparsely populated and naturally forested area. It is habitat for a rich diversity of animal fish, and plant life. For example, the Pennsylvania fish and wildlife database lists 394 species of mammals, birds, amphibians, reptiles, and fish that are likely to be found in the river corridor. Of these species, 34 are designated as State threatened, endangered, or of special concern. Providing additional protections to the river will also provide additional protections to the species who live there. I would mention, Mr. President, that the bald eagle is the only federally listed endangered species known to occur in the corridor. And we are hopeful to foster a resurgence of our national symbol in the Allegheny Forest region with this bill.

Mr. President, this legislation is supported by the entire Pennsylvania congressional delegation. My good friend, Bill Clinger introduced the companion bill in the House of Representatives and has been the driving force behind protecting and preserving this national treasure for the benefit of future Pennsylvanians and all Americans.

Mr. President, I urge all of my colleagues to support this important legislation, and I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3065

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. DESIGNATION OF ALLEGHENY RIVER.

In order to preserve and protect for present and future generations the outstanding scenic, natural, recreational, scientific, historic, and ecological values of the Allegheny River in the State of Pennsylvania, and to assist in the protection, preservation, and enhancement of the fisheries resources associated with such river, section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding the following new paragraph at the end:

"( ) ALLEGHENY, PENNSYLVANIA.—The segment from Kinzua Dam downstream approximately seven miles to the United States Route 6 Bridge, and the segment from Buckaloons Recreation Area at Irvine, Pennsylvania, downstream approximately 47 miles to the southern end of Alcorn Island at Oil City, as generally depicted on the map entitled the 'Middle Allegheny National Recreation River Boundary Map', to be administered by the Secretary of Agriculture as a recreational river through a cooperative agreement (if requested) with the State of Pennsylvania and the counties of Warren, Forest, and Venango; and the segment from the sewage treatment plant at Franklin downstream approximately 31 miles to the refinery at Emlenton, Pennsylvania, as generally depicted on such map, to be administered by the Secretary of Agriculture as a recreational river through a cooperative agreement (if requested) with the State of Pennsylvania and Venango County."

#### SEC. 2. ADVISORY COUNCILS FOR THE ALLEGHENY NATIONAL RECREATIONAL RIVER.

(a) ESTABLISHMENT.—The Secretary of Agriculture (hereinafter in this Act referred to as the "Secretary") shall establish within 120 days after the date of enactment of this Act two advisory councils to advise him on the establishment of final boundaries and the management of the Allegheny National Recreation River, as follows:

(1) The Northern Advisory Council, to provide advice for the management of the segments of the Allegheny National Recreation River between Kinzua Dam and Alcorn Island; and

(2) The Southern Advisory Council, to provide advice for the management of the segment of the Allegheny National Recreation River between Franklin and Emlenton.

(b) NORTHERN ADVISORY COUNCIL.—(1) The Northern Advisory Council shall be composed of nine members appointed by the Secretary as follows:

(A) The Forest Supervisor of the Allegheny National Forest, or his delegate, who shall serve as chair of the Council and be a nonvoting member.

(B) The Secretary of the Department of Environmental Resources of the State of Pennsylvania, or his designee.

(C) 6 members, two from each county from recommendations submitted by the County Commissioners of Warren, Forest, and Venango Counties, of which no fewer than two such members shall be riparian property owners along the Allegheny National Recreation River.

(D) 1 member from a nonprofit conservation organization concerned with the protection of natural resources from recommendations submitted by the County Commissioners of Warren, Forest, and Venango Counties.

(2) Members appointed under paragraphs (1)(C) and (1)(D) shall be appointed for terms of three years. A vacancy in the Council shall be filled in the manner in which the original appointment was made; except that the chairman may appoint a member to fill the remainder of a term of a member described in paragraphs (1)(C) and (1)(D) from recommendations submitted by the County Commissioners of Warren, Forest, and Venango Counties.

(3) Members of the Northern Advisory Council shall serve without pay as such and members who are full-time officers or employees of the United States shall receive no additional pay by reason of their service on the Commission. Each member shall be entitled to reimbursement for expenses reasonably incurred in carrying out their responsibilities under this Act.

(4) The Northern advisory Council shall cease to exist ten years after the date on which the Secretary approves the management plan for the Allegheny National Recreation River.

(c) SOUTHERN ADVISORY COUNCIL.—(1) The Southern Advisory Council shall be composed of seven members appointed by the Secretary as follows:

(A) The Forest Supervisor of the Allegheny National Forest, or his designee, who shall serve as a nonvoting member.

(B) The Secretary of the Department of Environmental Resources of the State of Pennsylvania, or his designee, who shall serve as chairman.

(C) Four members from recommendations submitted by the County Commissioners of Venango County, of which at least one shall be a riparian property owner along the Allegheny National Recreation River.

(D) One member from a nonprofit conservation organization concerned with the protection of natural resources, from recommendations submitted by the County Commissioners of Venango County.

(2) Members appointed under paragraphs (1)(C) and (1)(D) shall be appointed for terms of three years. A vacancy in the county representatives on the Council shall be filled in the manner in which the original appointment was made; except that the chairman may appoint a member to fill the remainder of a term of a member described in paragraphs (1)(C) and (1)(D) from recommendations submitted by the County Commissioners of Venango County.

(3) Members of the Southern Advisory Council shall serve without pay as such and members who are full-time officers or employees of the United States shall receive no additional pay by reason of their service on the Commission. Each member shall be entitled to reimbursement for expenses rea-

sonably incurred in carrying out their responsibilities under this Act.

(4) The Southern Advisory Council shall cease to exist ten years after the date on which the Secretary approves the management plan for the Allegheny National Recreation River.

#### SEC. 3. ADMINISTRATION OF ALLEGHENY NATIONAL RECREATION RIVER.

(a) MANAGEMENT PLAN.—After consultation with the State of Pennsylvania, advisory councils, local governments, and the public, and within 18 months after the date of enactment of this Act, the Secretary shall take such action as is required under section 3(b) of the Wild and Scenic Rivers Act. The river corridor management plan shall include—

(1) a map depicting detailed final landward boundaries and the upper and lower termini of the river;

(2) a program for the management of existing and future land and water use of the river;

(3) a program providing for the coordinated implementation and administration of the plan, including responsibilities of the appropriate governmental units at the Federal, State, and local levels; and

(4) final land use guidelines for land within the river corridor.

(b) INTERIM MEASURES.—Notwithstanding any requirement to the contrary contained in section 6(c) of the Wild and Scenic Rivers Act (16 U.S.C. 1277(c)), as soon as practicable, the Secretary shall issue interim land and water use control measures to be developed and implemented by the appropriate officials, until final guidelines are developed and approved by the Secretary. The interim land use measures shall have the objective of protecting the outstandingly remarkable values, as defined by the Secretary, of the Allegheny National Recreation River by recommending development guidelines for new commercial or industrial uses.

(c) ADMINISTRATION OF CERTAIN SEGMENTS.—(1) Land and mineral rights acquired by the Secretary for the purpose of managing the Allegheny National Recreation River segments located between Kinzua Dam and Alcorn Island shall be added to and become part of the Allegheny National Forest.

(2) Land and mineral rights acquired by the Secretary for the purpose of managing the Allegheny National Recreation River segment located between Franklin and Emmenton may be managed under a cooperative agreement with the State of Pennsylvania.

(d) ACQUISITION OF LAND AND MINERAL RIGHTS.—The authority of the Secretary to acquire lands and mineral rights outside the boundary of the Allegheny National Forest for purposes of managing the Allegheny National Recreation River is limited to acquisition by donation or with the consent of the landowner. The Secretary may acquire scenic easements for the purposes of managing the river.

#### SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out this Act.

Mr. SPECTER. Mr. President, today I am pleased to join Senator HEINZ in introducing legislation to designate certain segments of the Allegheny River of Pennsylvania as a part of the National Wild and Scenic Rivers System. Management of these portions of the Allegheny under the Wild and Scenic Rivers program will help preserve the outstanding scenic, recre-

ational, historic, and ecological values of the Allegheny River.

In this country we continue to struggle to achieve an appropriate balance in our approach to the environment, one which will allow man to develop a long-term, productive relationship with the natural world.

The Wild and Scenic Rivers System represents a balanced approach to land management that allows for productive interaction between man and nature. This program affords the people of this country the opportunity to enjoy fully the natural values of rivers such as the Allegheny while ensuring the long-term preservation of those values so that future generations may enjoy the same benefits.

This legislation, a companion to a bill originally introduced by Representative BILL CLINGER which has the cosponsorship of the entire Pennsylvania House delegation, has been developed through extensive consultation with the Forest Service, local and county governments, and members of the public. Numerous hearings were held in communities along the Allegheny, giving citizens an opportunity for significant input into the proposed designations. One of the most important provisions of this legislation provides for the use of locally appointed committees to determine land use policy. These committees will include Forest Service officials, representatives from the Pennsylvania Department of Environmental Resources, riparian property owners from the impacted areas, and members appointed by the county commissioners of the affected counties. This will ensure that local citizens will have input into the final land management plan approved by the Secretary of Agriculture.

Mr. President, this legislation represents another small but important step in our efforts to preserve, protect, and enhance the natural heritage and beauty of our great Nation. I am proud to join my colleague from Pennsylvania in sponsoring this important legislation to make further contributions to the Wild and Scenic Rivers program which benefits not only Pennsylvanians, but also citizens all across our country. Accordingly, I urge my colleagues to join me in supporting this legislation.

By Mr. COCHRAN (for himself,  
Mr. DURENBERGER, Mr. COATS,  
Mr. BYRD, Mr. BUMPERS, Mr.  
PRYOR, Mr. GRAMM, Mr. NUNN,  
Mr. BOND, Mr. WARNER, Mr.  
LOTT, Mr. GARN, Mr. HEFLIN,  
Mr. DANFORTH, Mr. DOLE, Mr.  
LUGAR, Mr. BENTSEN, Mr. SIMP-  
SON, Mr. ROBB, Mrs. KASSE-  
BAUM, Mr. DOMENICI, Mr.  
KASTEN, Mr. THURMOND, Mr.  
JOHNSTON, Mr. FOWLER, Mr.

BOSCHWITZ, Mr. ROCKEFELLER, Mr. SHELBY, Mr. CHAFEE, Mr. HOLLINGS, Mr. BREAUX, Mr. JEFFORDS, Mr. GORE, Mr. REID, Mr. BURDICK, Mr. WALLOP, Mr. MACK, Mr. MCCAIN, Mr. SPECTER, Mr. SYMMS, Mr. GRAHAM, Mr. SANFORD, Mr. PELL, Mr. SASSER, Mr. DIXON, Mr. HELMS, Mr. WILSON, Mr. MCCLURE, Mr. FORD, Mr. GRASSLEY, Mr. DECONCINI, and Mr. McCONNELL:

S.J. Res. 366. Joint resolution to designate March 30, 1991, as "National Doctor's Day"; to the Committee on the Judiciary.

#### NATIONAL DOCTOR'S DAY

● Mr. COCHRAN. Mr. President, today I reintroduce a joint resolution designating March 30, 1991, as "National Doctor's Day." Because we were unable to get "Doctor's Day" designated in time for the March 30, 1990, celebration, I am introducing a revised joint resolution for continued recognition of the invaluable contribution physicians have made to the Nation and continue to make in our daily lives.

Physicians promote the science and art of medicine and the betterment of public health. Through their efforts—in practice, research, teaching, and medical administration—the discoveries and applications of medical science and medical knowledge become real for each of us.

Approximately 586,000 physicians in the 37 specialties practice medicine in the United States today, each playing an important role in meeting America's medical needs. We all have felt the comfort of receiving care from a trusted family doctor and the confidence of having unusual medical questions answered by competent specialists.

Doctor's Day was first observed regionally on March 30, 1935, when it was begun by the Southern Medical Association in St. Louis, MO. Since then, it has been observed yearly in many States to show appreciation for the role of physicians in caring for the sick, advancing medical knowledge, and promoting improved public health. Recognition of March 30, 1991, as "National Doctor's Day" would add significantly to this fine tradition.

I am pleased to sponsor this joint resolution, and I hope other Senators will support its passage.●

By Mr. BOND (for himself, Mr. BRADLEY, Mr. CRANSTON, Mr. GLENN, Mr. LEVIN, Mr. KERRY, Mr. DIXON, Mr. FOWLER, Mr. BENTSEN, Mr. CONRAD, Mr. SIMON, Mr. MOYNIHAN, Mr. SARBANES, Mr. PELL, Mr. BURDICK, Mr. HOLLINGS, Mr. SHELBY, Mr. SASSER, Mr. GORE, Mr. ADAMS, Mr. SANFORD, Mr. LAUTENBERG, Mr. BAUCUS, Mr. INOUE, Mr. BOSCHWITZ, Mr.

COCHRAN, Mr. WARNER, Mr. SPECTER, Mr. COATS, Mrs. KASSEBAUM, Mr. DOMENICI, Mr. D'AMATO, Mr. DURENBERGER, Mr. DANFORTH, Mr. GRASSLEY, Mr. HUMPHREY, Mr. BURNS, Mr. ARMSTRONG, Mr. STEVENS, Mr. CHAFEE, Mr. WILSON, Mr. JEFFORDS, Mr. HELMS, Mr. HATCH, Mr. WALLOP, Mr. DOLE, Mr. MACK, Mr. GORTON, Mr. LUGAR, and Mr. HEINZ):

S.J. Res. 367. Joint resolution to designate the week of November 11 through 17, 1990, as "Gaucher's Disease Awareness Week"; to the Committee on the Judiciary.

#### GAUCHER'S DISEASE AWARENESS WEEK

● Mr. BOND. Mr. President, today I am introducing a joint resolution to designate the week of November 11 through 17, 1990, as "Gaucher's Disease Awareness Week."

Gaucher's disease is a rare hereditary condition that attacks living cells and affects their metabolic functions. The deficiency caused by Gaucher's disease results in the enlargement of the spleen, damage to the liver, skin discoloration, pink eye, and bone lesions. The disease occurs when the body fails to produce an essential enzyme that normally breaks down or metabolizes a body chemical. It is a debilitating and chronic disease most common among those of Jewish heritage.

Fortunately, the Food and Drug Administration is approaching the final stage in granting full approval for Ceredase, the first treatment for Gaucher patients. This is encouraging news for the approximately 5,000 chronic Gaucher's disease sufferers in the United States. However, because of the difficulty and expense of producing this substance, supplies will be extremely limited.

The joint resolution I am introducing today calls for national attention to focus on Gaucher's disease the week of November 11, 1990. The resolution also recognizes the contributions made by the National Gaucher's Disease Foundation. I am hopeful that with continued research we will someday see a cure for Gaucher's disease.

Fifty Senators have already joined me in cosponsoring this resolution and I would like to thank them for their support. I highly encourage all my colleagues who have not joined me in support of this resolution to do so.●

#### ADDITIONAL COSPONSORS

S. 1400

At the request of Mr. KASTEN, the name of the Senator from Florida [Mr. MACK] was added as a cosponsor of S. 1400, a bill to regulate interstate commerce by providing for a uniform product liability law, and for other purposes.

S. 1511

At the request of Mr. PRYOR, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 1511, a bill to amend the Age Discrimination in Employment Act of 1967 to clarify the protections given to older individuals in regard to employee benefit plans, and for other purposes.

S. 2198

At the request of Mr. BRADLEY, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 2198, a bill to amend title XIX of the Social Security Act to reduce infant mortality through improvement of coverage of services to pregnant women and infants under the Medicaid Program.

S. 2246

At the request of Mr. BRADLEY, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 2246, a bill to amend title XVIII of the Social Security Act to provide improved Medicare home health benefits, and for other purposes.

S. 2489

At the request of Mr. LEAHY, the name of the Senator from Washington [Mr. ADAMS] was added as a cosponsor of S. 2489, a bill to improve the nutritional health of needy Americans, to provide emergency food assistance, to authorize several vital nutrition programs, and for other purposes.

S. 2653

At the request of Mr. BURNS, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of S. 2653, a bill to permit States to waive application of the Commercial Motor Vehicle Safety Act of 1986 with respect to vehicles used to transport farm supplies from retail dealers to or from a farm, and to vehicles used for custom harvesting, whether or not such vehicles are controlled and operated by a farmer.

S. 2813

At the request of Mr. GRAHAM, the names of the Senator from Maine [Mr. COHEN], the Senator from North Carolina [Mr. SANFORD], the Senator from South Carolina [Mr. HOLLINGS], the Senator from North Dakota [Mr. BURDICK], the Senator from Arizona [Mr. DECONCINI], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Georgia [Mr. FOWLER], the Senator from Nevada [Mr. REID], and the Senator from Washington [Mr. ADAMS] were added as cosponsors of S. 2813, a bill to authorize the minting of commemorative coins to support the training of American athletes participating in the 1992 Olympic Games.

S. 2819

At the request of Mr. MOYHINAN, the names of the Senator from Nebraska [Mr. EXON] and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of S. 2819, a bill to amend

title XVIII of the Social Security Act to provide coverage of services rendered by community mental health centers as partial hospitalization services, and for other purposes.

S. 2831

At the request of Mr. HATCH, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of S. 2831, a bill to amend the Age Discrimination in Employment Act of 1967 to extend the protections of such act to employee benefits in a manner that permits and encourages employee benefit arrangements that are beneficial to employees generally, including older workers, and for other purposes.

S. 2844

At the request of Mr. MITCHELL, the names of the Senator from Florida [Mr. GRAHAM], the Senator from Nebraska [Mr. EXON], and the Senator from Michigan [Mr. LEVIN] were added as cosponsors of S. 2844, a bill to amend the Public Health Service Act to provide for the establishment, with State loan repayment programs, of demonstration programs to recruit and train physicians and other health care personnel to provide medical services in rural communities, and for other purposes.

S. 2901

At the request of Mr. PRYOR, the names of the Senator from Hawaii [Mr. AKAKA], the Senator from Iowa [Mr. HARKIN], the Senator from Washington [Mr. ADAMS], the Senator from Louisiana [Mr. JOHNSTON], the Senator from North Dakota [Mr. BURDICK], and the Senator from Mississippi [Mr. COCHRAN], were added as cosponsors of S. 2901, a bill to amend the Internal Revenue Code of 1986 to simplify the application of the tax laws with respect to employee benefit plans, and for other purposes.

S. 2902

At the request of Mr. PRYOR, the names of the Senator from Mississippi [Mr. COCHRAN], the Senator from Hawaii [Mr. INOUE], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Michigan [Mr. LEVIN], the Senator from Oklahoma [Mr. BOREN], and the Senator from Idaho [Mr. SYMMS] were added as cosponsors of S. 2902, a bill to amend the Internal Revenue Code of 1986 to clarify portions of the Code relating to church and welfare benefit plans, to modify certain provisions relating to participants in such plans, to reduce the complexity of and to bring workable consistency to the applicable rules, to promote retirement savings and benefits, and for other purposes.

S. 2921

At the request of Ms. MIKULSKI, the name of the Senator from Louisiana [Mr. JOHNSTON] was added as a cosponsor of S. 2921, a bill to remedy the serious injury to the United States

shipbuilding and repair industry caused by subsidized foreign ships.

S. 3021

At the request of Mr. DOLE, the names of the Senator from Kentucky [Mr. McCONNELL] and the Senator from Arizona [Mr. McCAIN], were added as cosponsors of S. 3021, a bill to establish national voter registration procedures for Presidential and congressional elections, and for other purposes.

S. 3035

At the request of Mr. LIEBERMAN, the names of the Senator from New Jersey [Mr. LAUTENBERG] was added as a cosponsor of S. 3035, a bill to protect the national security by prohibiting profiteering of essential commodities during periods of national emergency.

S. 3051

At the request of Mr. PRESSLER, the names of the Senator from Kansas [Mrs. KASSEBAUM], the Senator from North Carolina [Mr. HELMS], and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of S. 3051, a bill to reduce the pay of Members of Congress corresponding to the percentage reduction of the pay of Federal employees who are furloughed or otherwise have a reduction of pay resulting from a sequestration order.

SENATE JOINT RESOLUTION 342

At the request of Mr. SIMON, the names of the Senator from Minnesota [Mr. BOSCHWITZ], the Senator from Michigan [Mr. LEVIN], the Senator from Tennessee [Mr. SASSER], the Senator from Alaska [Mr. MURKOWSKI], the Senator from North Dakota [Mr. CONRAD], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Vermont [Mr. JEFFORDS], the Senator from Ohio [Mr. GLENN], the Senator from California [Mr. WILSON], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Wisconsin [Mr. KOHL], the Senator from South Dakota [Mr. DASCHLE], the Senator from Florida [Mr. MACK], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Connecticut [Mr. LIEBERMAN], and the Senator from Florida [Mr. GRAHAM] were added as cosponsors of Senate Joint Resolution 342, a joint resolution designating October 1990 as "Ending Hunger Month."

SENATE JOINT RESOLUTION 346

At the request of Mr. BOSCHWITZ, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of Senate Joint Resolution 346, a joint resolution to designate October 20 through 28, 1990, as "National Red Ribbon Week for a Drug-Free America."

SENATE JOINT RESOLUTION 347

At the request of Mr. BURNS, the names of the Senator from California [Mr. CRANSTON], the Senator from Delaware [Mr. BIDEN], the Senator

from Florida [Mr. GRAHAM], the Senator from Michigan [Mr. LEVIN], the Senator from Pennsylvania [Mr. SPECTER], the Senator from South Carolina [Mr. HOLLINGS], the Senator from New York [Mr. MOYNIHAN], the Senator from Arizona [Mr. DeCONCINI], the Senator from Maryland [Ms. MIKULSKI], the Senator from North Dakota [Mr. CONRAD], the Senator from Nevada [Mr. BRYAN], the Senator from Georgia [Mr. NUNN], the Senator from Pennsylvania [Mr. HEINZ], the Senator from Montana [Mr. BAUCUS], the Senator from Minnesota [Mr. DURENBERGER], the Senator from California [Mr. WILSON], the Senator from Indiana [Mr. COATS], the Senator from Florida [Mr. MACK], the Senator from South Dakota [Mr. PRESSLER], the Senator from Indiana [Mr. LUGAR], the Senator from Idaho [Mr. McCLURE], the Senator from New Mexico [Mr. DOMENICI], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Iowa [Mr. GRASSLEY], the Senator from Wyoming [Mr. SIMPSON], the Senator from South Carolina [Mr. THURMOND], the Senator from Virginia [Mr. WARNER], the Senator from North Carolina [Mr. HELMS], the Senator from Kansas [Mrs. KASSEBAUM], and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of Senate Joint Resolution 347, a joint resolution designating April 7 through 13, 1991, as "National County Government Week."

SENATE RESOLUTION 296

At the request of Mr. ROTH, the names of the Senator from South Carolina [Mr. HOLLINGS], the Senator from Mississippi [Mr. LOTT], the Senator from Illinois [Mr. SIMON], and the Senator from Oregon [Mr. PACKWOOD], were added as cosponsors of Senate Resolution 296, a resolution to express the sense of the Senate the support of Taiwan's membership in the General Agreement on Tariffs and Trade.

## AMENDMENTS SUBMITTED

## OLDER WORKERS BENEFIT PROTECTION ACT

## HATCH AMENDMENT NO. 2667

Mr. HATCH proposed an amendment to the bill (S. 1511) to amend the Age Discrimination in Employment Act of 1967 to clarify the protections given to older individuals in regard to employee benefit plans, and for other purposes; as follows:

At the end of the amendment add the following new section:

"SEC. . Exemption for employee benefit practices applied to the federal sector.

"(a) Notwithstanding any other provision of title I or the amendments to this title, no provision of any employee benefit program,



plan, or arrangement operated by any department, agency, or entity of any State or local government or any nongovernmental employee shall be deemed in violation of this title or the amendments of this title if a similar program, plan, or arrangement is in effect for any employee of the United States Government or any Federal employee benefit plan or program.

"(6) The Secretary of Labor, in consultation with the Equal Employment Opportunity Commission, the Office of Personnel Management, and the States, shall issue regulations specifying the provisions of this title."

#### ADMINISTRATIVE CONFERENCE OF THE UNITED STATES AU- THORIZATION ACT

##### BIDEN AMENDMENT NO. 2668

Mr. METZENBAUM (for Mr. BIDEN) proposed an amendment to the bill (H.R. 3897) to authorize appropriations for the Administrative Conference of the United States for fiscal years 1991, 1992, 1993, and 1994, and for other purposes, as follows:

On page 2, line 4, beginning with "\$2,150,000" strike out all through the period on line 6, and insert in lieu thereof: "\$2,100,000 for fiscal year 1991, \$2,200,000 for fiscal year 1992, \$2,300,000 for fiscal year 1993, and \$2,400,000 for fiscal year 1994."

#### AUTHORITY FOR COMMITTEES TO MEET

##### COMMITTEE ON ARMED SERVICES

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet in open session during the session of the Senate on Monday, September 17, 1990 at 2 p.m. to receive testimony on the national security implications of nuclear testing agreements.

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

##### COMMITTEE ON THE JUDICIARY

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on September 17, 1990, at 10 a.m., to hold a hearing on the nomination of David H. Souter, to be Associate Justice of the Supreme Court of the United States.

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

#### ADDITIONAL STATEMENTS

##### CLEAN AIR CONFERENCE COMMITTEE

● Mr. LIEBERMAN. Mr. President, as the members of the clean air conference committee begin discussions on the provisions relating to motor vehicles, we again have received evidence of the potentially lethal effect of

carbon monoxide, which is emitted primarily from cars and trucks.

In a major study reported recently in the *Annals of Internal Medicine*, doctors report that levels of carbon monoxide sometimes experienced by urban dwellers in the normal course of their outdoor exercise can lead to fatalities in patients with cardiac disease.

The study concludes that "environmental exposure to carbon monoxide under certain (urban) circumstances might actually precipitate sudden death." While levels of carbon monoxide in the blood required to produce those effects are "relatively high," they could be encountered under certain common city circumstances.

This means, according to the experts, that heart patients should not exercise in areas with high pollution, such as jogging trials along highways.

Nine million Americans suffer from heart disease. What is particularly disturbing is that many of these Americans have been told recently that they should exercise because it will prolong their lives. Now, we have evidence that in high-pollution areas this exercise may have exactly the opposite effect.

Mr. President, this recent news should serve as a graphic reminder as the conference on the Clean Air Act proceeds that carbon monoxide can kill. I urge the conferees to accept the tough standards established in the Senate bill for regulation of motor vehicles, which produce up to 90 percent of all carbon monoxide.●

##### TRIBUTE TO WILLIAM J. DUNN

● Mr. LUGAR. Mr. President, on the morning of September 2, 1945, aboard the U.S.S. *Missouri* afloat in Tokyo Bay, Gen. Douglas MacArthur accepted the unconditional surrender of the Japanese Empire. Perched upon one of the ship's massive gun turrets in order to report this formal end to World War II was William J. Dunn, a fellow Hoosier and undeniably one of the most esteemed war correspondents covering the war in the Pacific Ocean. Nearly 5 years in the field brought Bill Dunn to that climatic moment.

Born the son of a Methodist minister in the small town of Rosedale, IN, a young Bill Dunn would quit his \$18 a week job at a South Bend soda fountain to become a high school sports reporter for the local newspaper. After many successful years in journalism, Dunn was named the first U.S. radio correspondent for CBS News assigned to the Far East. His assignments made him an unofficial expert in the region.

William Dunn covered the entire battle for Java and The Netherlands East Indies. And when Japanese forces overran Java, causing a pullout of American forces, Bill Dunn was one of a handful of correspondents stranded there. He was able to escape the island

aboard a Dutch freighter, the *MS Janssens*, which set sail for Fremantle, Australia. Those on board endured both a broken ship's rudder and being trailed by an enemy submarine. After the ship was attacked by Japanese Zero bombers, the entire Indonesian crew elected to be put back ashore on Java. The balance of the journey had to be made with remaining Dutch naval personnel, wounded U.S. sailors from the U.S.S. *Marblehead* and passengers such as Dunn who volunteered for crew duty.

After successful docking in Australia, Dunn was assigned to cover General MacArthur's command and waded ashore beside the general during the landing at Red Beach, Leyte.

Before he finished, William Dunn would travel the world, endure extreme conditions, and log more hours covering Pacific events than any other correspondent. He interviewed hundreds of civilians, servicemen, military commanders, and government emissaries, including the likes of Douglas MacArthur, Chiang Kai-shek, and Chou En-lai.

Yet according to his loyal friends, Bill Dunn has never forgotten his Indiana roots and in his early eighties has completed his memoirs of the war in the Pacific based on nearly 1,000 broadcast scripts, the originals of which are now housed in the University of Notre Dame archives in his hometown of South Bend, IN.

It is for these reasons that I take this opportunity to honor native Hoosier, patriotic American, and one of this Nation's most respected war journalists, William J. Dunn.●

#### CONGRATULATIONS TO THE BOYNTON ELEMENTARY SCHOOL

● Mr. FOWLER. Mr. President, I congratulate the Boynton Elementary School of Ringgold, GA, on its well-deserved honor the National School of Excellence Award given by the Department of Education.

Boynton Elementary School was selected through the Department of Education's Blue Ribbons Schools Program, a national school improvement strategy that identifies unusually successful schools. Boynton competed against all kinds of schools for this honor: Public and private schools; inner city, suburban and rural; consistently high achieving and improving; and schools in both affluent and financially struggling districts.

The Blue Ribbon Schools Program has been in operation for 8 years. Since 1982, close to 2,000 schools have been identified and recognized nationally. The Georgia Department of Education nominated Boynton and in turn a review panel consisting of prestigious educators and noneducators with a

strong commitment to educational excellence screened all 497 nominations.

Schools are judged on a number of research-based criteria such as visionary leadership; sense of shared purpose among faculty, students, parents, and community; and a climate that is conducive to effective teaching and teacher growth and recognition.

In light of the current status of education in America, I hope other schools will strive to emulate the high standards of excellence of Boynton Elementary School. My congratulations to Sharon Brock, the faculty and administration, and the students on achieving this distinction.●

#### A COMMITMENT TO FIRE SAFETY

● Mr. SIMON. Mr. President, I would like to bring to the attention of my colleagues the achievements of First Alert, an Illinois based company that is the world's largest manufacturer of home fire safety products.

This year, First Alert, which is the trade name used by BRK Electronics, will celebrate its 20th anniversary in business. In addition, this fall they will manufacture their 100 millionth smoke detector.

Twenty-six years ago, BRK Electronics began developing a commercial smoke detector. Within 4 years they began designing a self-contained, battery-operated smoke detector for residential use. These residential smoke detectors were the first to pass the stringent tests of Underwriter's Laboratories.

In 1970, Pittway Corp. purchased BRK from its original owners and began an intense development program to produce a wide range of smoke detectors both for commercial and residential use. Soon after, major retail companies began to carry BRK battery-operated units.

Not only was BRK the pioneer for further market development in the smoke detector industry, they were the first, and still the only, smoke detector manufacturer to increase our fire safety awareness by advertising on national television.

BRK has become the world's largest smoke detector manufacturer by catering to over 32 countries worldwide. It is still the only significant smoke detector manufacturer based in the United States. Besides making us safer with smoke detectors they have also successfully manufactured a full line of residential fire extinguishers, rechargeable flashlights and lanterns, lighting and timing devices, passive infrared motion detectors, radon testing kits, 9-volt batteries, and industrial time switches.

First Alert has set a goal of making the 1990's a fire-free decade. Clearly this fine company has devoted itself to the prevention of fire deaths and

damage. I am grateful for the work First Alert has done and proud to have them as an Illinois-based company.●

#### THE PLIGHT OF REFUGEES FROM KUWAIT AND IRAQ

● Mr. SIMON. Mr. President, the victims of Iraq's illegal and unconscionable invasion and occupation of Kuwait number in the millions. They include American and other Western hostages who must be freed unconditionally and immediately, the Kuwaiti people who now suffer under a foreign and, by all accounts brutal rule, and the hundreds of thousands of foreign workers now stranded on the borders of Jordan and Turkey.

These foreign workers, many of whom are Indians, Pakistanis, Sri Lankans, Bangladeshis, and Filipinos, are in particularly bad shape. We have all seen them on television, camped out in the desert in tents—or worse—deprived of the basic necessities of life, including water and food.

The home governments of these displaced persons bear the first responsibility for aiding and repatriating their citizens. It is an enormous and urgent task for governments that are already under severe fiscal strain. This strain has been made worse by the loss of financial remittances from their citizens in the Persian Gulf. These nations ought to do their utmost in this urgent humanitarian endeavor.

Their plight, however, is an international tragedy, deserving broad international assistance. Support from the United Nations is necessary and commendable. Our own Government is assisting through contributions to the International Organization for Migration. In addition, I am pleased to note that Americans originally from these countries are helping; I would like to single out the Federation of India Associations of Chicago which has established a gulf relief fund. This sort of voluntary assistance is in the great tradition of American aid to those in need.

Kuwait and Saudi Arabia have already pledged to pay a substantial portion of the Desert Shield costs and to assist nations adversely affected by the U.N.-mandated trade embargo. They and other gulf nations should also contribute funds to the governments of those nations with large numbers of guest workers to be repatriated. Such funds should be designated for the express purposes of transporting these persons back to their homelands and of assisting their resettlement. Together, the nations of the world can alleviate the plight of these refugees, and show their compassion for these victims of Saddam Hussein.●

#### SEVEN MINNESOTA ELEMENTARY SCHOOLS RECEIVE AWARDS

● Mr. BOSCHWITZ. Mr. President, I rise today to congratulate seven elementary schools in Minnesota as they receive a well-deserved and respected honor, the National Schools of Excellence Award given by the Department of Education. These outstanding Minnesota schools are Aquilla Primary Center in St. Louis Park, Cedar Island Elementary in Maple Grove, Dassel Elementary in Dassel, Sunnesyn Elementary in New Hope, Hayes Elementary in Fridley, Oak Park in Stillwater, and the Blake Schools in Hopkins.

These schools were selected through the Department of Education's Blue Ribbon Schools Program, a national school improvement strategy that identifies unusually successful schools. Aquilla, Cedar Island, Dassel, Sunnesyn, Hayes, Oak Park, and Blake competed against all kinds of schools for this honor: public and private schools; inner city, suburban, and rural; consistently high achieving and improving; and schools in both affluent and financially struggling districts.

The Blue Ribbon Schools Program is 8 years old. Since 1982, close to 2,000 programs have been identified and recognized nationally under this program.

Schools are judged on a number of criteria such as visionary leadership; sense of shared purposes among faculty, students, parents, and community; and a climate that is conducive to effective teaching, teacher growth, and recognition.

In light of the current status of education in America, I hope other schools will follow the high standards of excellence of these fine Minnesotan institutions. Again, Mr. President, I extend my hearty congratulations to the faculty, administration, and students of these excellent schools.●

#### LINGUISTIC ISOLATION

● Mr. SIMON. Mr. President, the massive foreign language deficiency we have in our educational system is a concern of the military, and it is a concern of people in the business community.

Recently, in the bulletin of the Council of State Governments was a column by their editor, Dag Ryen: "Facing the one-two punch in Europe." The article reinforces the argument for this need.

We really have to be doing much better than we are now doing.

Next year, we will reauthorize the Higher Education Act, and my hope is that we can put some stimulus into it to move in a more constructive direction.

I ask to insert the Dag Ryen piece into the RECORD.

The article follows:

**FACING THE ONE-TWO PUNCH IN EUROPE**

Sweeping changes are taking place in Europe, changes that are likely to set the tone for international economic affairs over the next several decades. Democratic reforms in Eastern Europe and the culmination of Western European integration in 1992 will create a new economic order, the potential consequences of which stagger the imagination.

Americans are awakening to the magnitude of these changes. Government and business leaders are eager to establish contacts with potential European partners, looking for new markets and investment ideas.

But in many ways, Americans are late entries in this race for economic opportunity. The doors to trade with Eastern Europe have been inching open for years. Bolstered in part by more than \$10 billion in exports to the Soviet Union and Eastern Europe, West Germany has surpassed the United States as the world's number one exporting nation.

If the United States wants to be a player in the European game, it will take some doing. Most importantly, our business and government leaders will have to develop the skills and expertise to deal with the complex bureaucracies, diverse ethnic backgrounds and, at times, sophisticated political structures of an increasingly powerful Europe. We have a long way to go.

Let's face it. Most Americans don't know where Eastern Europe ends and Western Europe begins. Our understanding of the history, languages or culture of the European states leaves a lot to be desired. Yet that kind of understanding is exactly what is needed to develop mutually beneficial relations.

Whether the states individually or the United States as a whole can capitalize on developments in Europe depends in large part on whether we can overcome our shortcomings. The European nations have special needs, priorities and tastes. Anyone who understands the unique requirements of each nation stands a better chance of success.

Let's consider a few examples where improving our knowledge base could help our position in Europe. The most important is language. Unfortunately, foreign language instruction in the United States lags far behind other major industrialized nations. To make matters worse, second and third generation Americans have not been very good at maintaining their heritage, reducing a potential source of language and cultural expertise.

Norwegians commonly joke that there are more of them in the United States than in Norway. Yet barely 3 percent speak fluent Norwegian. Many U.S. cities boast a sizable Polish community. In fact the 1980 census identified 8.2 million Americans of Polish extraction. But less than 10 percent actually speak Polish.

Another common pitfall is the tendency to lump European countries together, ignoring individual strengths and weaknesses. Shortages of various commodities are common, but vary from country to country and from region to region. U.S. television news teams in Moscow are fond of juxtaposing empty meat shelves with the long lines outside the new McDonald's. Yet the Soviet Union's population on the whole is well fed. According to a recent UNICEF report, the Soviet people have available to them 128 percent of their daily per capita calorie re-

quirement. The comparable figure for the United States is 140 percent.

In the UNICEF listing, Czechoslovakia ranks ahead of the United States at 143 percent. Other meat shortages notwithstanding, Czechoslovakia has the fourth largest per capita pork consumption in the world.

Finally, it is important for us to be sensitive to the history of the European continent. Considering the cataclysmic forces that enveloped Europe in 1939, it is ironic that some American grade school textbooks still give the dates of World War II as 1941-45.

In these and other ways, Americans harbor potentially damaging false impressions about the European continent and its people. In dealing with European leaders during the critical years ahead, it will be doubly important to understand their needs and their perspective on international developments.

State and national leaders are to be commended for their courage in taking on this tremendous challenge. But they better do their homework.

In keeping with the trend toward international political harmony, President Bush has called for a gentler, kinder nation. However, if we are to protect our position as an important contributor to the international economy, we must also become a wiser, more cosmopolitan nation.—DAG RYEN.●

**MEASURE HELD AT DESK—H.R. 5400**

Mr. METZENBAUM. Mr. President, I ask unanimous consent that H.R. 5400, the campaign finance bill, be held at the desk until the close of business Tuesday, September 18.

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

**ADMINISTRATIVE CONFERENCE OF THE UNITED STATES AUTHORIZATION ACT**

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 823, H.R. 3897 reauthorizing the Administrative Conference.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3897) to authorize appropriations for the Administrative Conference of the United States for fiscal years 1991, 1992, 1993, 1994, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

**AMENDMENT NO. 2668**

(Purpose: To modify the authorization of appropriations for the Administrative Conference of the United States)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM], for Mr. BIDEN, proposes an amendment numbered 2668.

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

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

The amendment is as follows:

On page 2, line 4, beginning with "\$2,150,000" strike out all through the period on line 6, and insert in lieu thereof: "\$2,100,000 for fiscal year 1991, \$2,200,000 for fiscal year 1992, \$2,300,000 for fiscal year 1993, and \$2,400,000 for fiscal year 1994."

Mr. BIDEN. Mr. President, on July 12, 1990, the Committee on the Judiciary favorably reported S. 2224, a bill to authorize appropriations for the Administrative Conference of the United States for fiscal years 1991, 1992, 1993, and 1994. At that time, the committee also reported H.R. 3897, a companion bill passed by the House. I rise today to offer an amendment to this legislation and to encourage its passage.

The Administrative Conference has been in existence since 1968. For more than 20 years, the Conference has studied the fairness and efficiency of the administrative procedures used by Federal agencies and has made recommendations to Congress and the President for the improvement of those procedures.

No other entity engages in the work performed by the Administrative Conference. Its unique studies often result in recommendations that save the Federal Government significant amounts of money by eliminating or reforming wasteful procedures used by executive branch agencies. It is worth noting that the Administrative Conference has effectively performed this valuable service despite being one of our smallest Federal agencies.

Mr. President, the amendment I offer today would reduce by small amounts the annual authorization ceilings contained in the legislation as introduced. The Judiciary Committee believes that the funding levels set forth in this amendment are more in keeping with current concerns about Government spending and the Federal budget deficit.

As amended, this legislation will continue to provide the Conference with adequate funding. The \$2.1 million authorized for this coming year will allow the Administrative Conference to receive the full amount of the appropriation it has requested for fiscal year 1991 and to meet its statutorily mandated salary and benefit increases without any reduction in spending on current programs. Moreover, the Conference's funding ceiling will be increased each of the 4 years of the authorization period.

In closing, I would like to mention an issue that merits the continued at-

tention of the Judiciary Committee. Congress has, in the past, enacted legislation directing the Administrative Conference to undertake special projects that could not be funded within the spending limits established by the Conference's authorization. In these instances, it has been necessary for Congress to provide a separate authorization so that the special project could be undertaken.

A question remains as to whether these independent authorizations should be replaced by higher general funding ceilings. The committee intends to revisit this issue in accordance with its oversight function.

Mr. President, I urge by colleagues to join me in supporting the reauthorization of the Administrative Conference.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2668) was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall the bill pass?

So the bill (H.R. 3897), as amended, was passed.

Mr. METZENBAUM. Mr. President, I move to reconsider the vote.

I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that Calendar No. 820, the Senate companion bill, be indefinitely postponed.

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

#### NATIONAL RED RIBBON WEEK FOR A DRUG-FREE AMERICA

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of Senate Joint Resolution 346 designating "National Red Ribbon Week;" that the Senate then proceed to its immediate consideration; that the joint resolution be deemed read a third time and passed; that the motion to reconsider be laid upon the table and the preamble be agreed to.

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

The joint resolution (S.J. Res. 346) and its preamble are as follows:

#### S.J. Res. 346

Whereas alcohol and other drug abuse has reached epidemic proportions and is of major concern to all Americans;

Whereas alcohol and other drug abuse is a major public health threat and is one of the largest causes of preventable disease, disability, and death in the United States today;

Whereas alcohol and other drug abuse costs the United States nearly \$100,000,000,000 each year;

Whereas illegal drug use is not limited to persons of a particular age, gender, or socioeconomic status, as evidenced by the fact that—

(1) 23,000,000 Americans age 12 and over currently use illicit drugs;

(2) a nationwide Weekly Reader survey revealed that, of the 68,000 fourth graders polled, 34 percent reported peer pressure to try wine coolers, 41 percent to smoke, and 24 percent to use crack or cocaine; and

(3) Americans age 15 to 24 have a higher rate of deaths due to accidents, homicides, and suicides, many of which are related to drug and alcohol abuse, than any other age group;

Whereas the drug problem appears to be insurmountable, but the United States has begun to lay the foundation to combat it;

Whereas the United States must continue the important strides made to combat alcohol and other drug abuse;

Whereas the most recent national polls reveal that—

(1) the United States has made progress in combating alcohol and other drug abuse;

(2) there has been a steady decline in the reported use of marijuana on a daily basis by high school seniors since 1979;

(3) marijuana use among high school seniors was at its lowest level in 11 years in 1987;

(4) there was a significant drop in the use of cocaine in 1987; and

(5) the number of high school seniors associating great risk with trying cocaine once or twice rose from 34 percent in 1986 to 48 percent in 1987;

Whereas illicit use of stimulants and sedatives continues to decline among high school seniors, college students, and young adults in general;

Whereas public opinion polls demonstrate that the American people consider drug abuse one of the most serious domestic problems facing the United States and have begun to take steps to fight it;

Whereas the National Federation of Parents for Drug-Free Youth has declared October 20 through 28, 1990, as "National Red Ribbon Week for a Drug-Free America", has organized the National Red Ribbon Campaign to coordinate the week, has established the theme "Line Up to Sign Up for a Drug-free Decade" for the week, and has called for a comprehensive public awareness, prevention, and education program involving thousands of parents and community groups across the country;

Whereas other outstanding groups and agencies, including the Parents Communication Network, the National Crime Prevention Council, the Federal Bureau of Investigation of the Department of Justice, the United States Conference of Mayors, the National Governors' Association, the Chiefs of Police Drug Task Force, Congressional Families for Drug Free Youth, the Parents' Resource Institute on Drug Education (PRIDE), the Outdoor Advertising Associa-

tion of America, the National Association of State Alcohol and Drug Abuse Directors, Just Say No International, the Corporation Against Drug Abuse (CADA), the National Association of Broadcasters, the National School Boards Association, the Washington Regional Alcohol Program (WRAP), the National Prevention Network, the Office for Substance Abuse Prevention of the Department of Health and Human Services, the National Parents and Teachers Association, the General Federation of Women's Clubs, the American Council for Drug Education, Youth to Youth, the Drug Enforcement Administration of the Department of Justice, national youth organizations, and national service organizations, have demonstrated leadership, creativity, and determination in efforts to achieve a drug-free America;

Whereas the National Red Ribbon Campaign is headed by President and Mrs. George Bush as national honorary chairpersons, and by a distinguished national advisory committee, including Bill Cosby, Tom Landry, Joan Lunden, Boone Pickens, and Peter Ueberroth;

Whereas any use of an illegal drug is unacceptable, and the illegal use of a legal drug cannot be tolerated; and

Whereas alcohol and other drug abuse destroys lives, spawns rampant crime, undermines our economy, and threatens our national security; Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That—*

(1) the period of October 20 through 28, 1990, is designated as "National Red Ribbon Week for a Drug-Free America";

(2) the President is authorized and directed to issue a proclamation calling on the people of the United States—

(A) to observe the week by holding meetings, conferences, and fundraising activities to support community and alcohol education, and with other appropriate activities, events, and educational campaigns; and

(B) both during the week and thereafter, to wear and display red ribbons to present and symbolize commitment to a healthy, drug-free lifestyle, and to develop an attitude of intolerance concerning the use of drugs; and

(3) Congress recognizes and commends the hard work and dedication of concerned parents, youth, law enforcement, educators, business leaders, religious leaders, private sector organizations, and Government leaders in combatting the abuse of alcohol and other drugs.

#### EMERGENCY MEDICAL SERVICES WEEK

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Joint Resolution 568, designating "Emergency Medical Services Week," just received from the House.

The PRESIDING OFFICER. The resolution will be stated by title.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 568) designating the week of September 16, 1990, as "Emergency Medical Services Week."

There being no objection, the joint resolution (H.J. Res. 568) was consid-

ered, ordered to a third reading, read the third time and passed.

The preamble was agreed to.

Mr. METZENBAUM. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of Senate Joint Resolution 359, the Senate companion, and that the measure be then indefinitely postponed.

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

#### EXECUTIVE SESSION

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations:

Calendar 968. Larry Brown, Jr., to be a member of the National Council on Disability;

Calendar 969. Helen W. Walsh, to be a member of the National Council on Disability;

Calendar 971. Bernard F. Burke, to be a member of the National Science Board;

Calendar 972. Thomas B. Day, to be a member of the National Science Board;

Calendar 973. James J. Duderstadt, to be a member of the National Science Board;

Calendar 974. Edwin D. Williamson, to be legal adviser of the Department of State;

Calendar 975. Robert F. Goodwin, to be a Commissioner on the part of the United States on the International Joint Commission;

Calendar 976. Joseph F. Glennon, to be a member of the Advisory Board for Cuba Broadcasting;

Calendar 977. Carolyn D. Leavens, to be a member of the Board of Directors of the Overseas Private Investment Corporation for a term expiring December 17, 1990;

Calendar 978. Carolyn D. Leavens, to be a member of the Board of Directors of the Overseas Private Investment Corporation;

Calendar 979. James D. Watkins, to be the representative of the United States of America to the 34th session of the general conference of the International Atomic Energy Agency;

Calendar 980. Richard T. Kennedy to be an alternate representative of the United States of America to the 34th session of the general conference of the International Atomic Energy Agency;

Calendar 981. Michael H. Newlin, to be an alternate representative of the United States of America to the 34th session of the general conference of

the International Atomic Energy Agency;

Calendar 982. Kenneth M. Carr, to be an alternate representative of the United States to the 34th session of the general conference of the International Atomic Energy Agency;

Calendar 983. Tom C. Korologos, to be a member of the U.S. Advisory Commission on Public Diplomacy; and All nominations placed on the Secretary's desk in the Foreign Service.

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

Mr. METZENBAUM. I further ask unanimous consent that the nominees be confirmed en bloc, that any statements appear in the RECORD as if read, that motions to reconsider be laid upon the table en bloc, that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

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

The nominations considered and confirmed en bloc are as follows:

#### NATIONAL COUNCIL ON DISABILITY

Larry Brown, Jr., of Maryland, to be a member of the National Council on Disability for a term expiring September 17, 1992.

Helen Wilshire Walsh, of Connecticut, to be a member of the National Council on Disability for a term expiring September 17, 1993.

#### NATIONAL SCIENCE FOUNDATION

Bernard F. Burke, of Massachusetts, to be a member of the National Science Board, National Science Foundation for a term expiring May 10, 1996.

Thomas B. Day, of California, to be a member of the National Science Board, National Science Foundation for a term expiring May 10, 1996.

James Johnson Duderstadt, of Michigan, to be a member of the National Science Board, National Science Foundation for a term expiring May 10, 1996.

#### DEPARTMENT OF STATE

Edwin D. Williamson, of South Carolina, to be Legal Adviser of the Department of State.

#### INTERNATIONAL JOINT COMMISSION, UNITED STATES AND CANADA

Robert F. Goodwin, of Maryland, to be a Commissioner on the part of the United States on the International Joint Commission, United States and Canada.

#### EXECUTIVE OFFICE OF THE PRESIDENT

Joseph Francis Glennon, of Florida, to be a member of the Advisory Board for Cuba Broadcasting for a term expiring October 27, 1991.

#### U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Carolyn D. Leavens, of California, to be a member of the Board of Directors of the Overseas Private Investment Corporation for a term expiring December 17, 1990.

Carolyn D. Leavens, of California, to be a member of the Board of Directors of the Overseas Private Investment Corporation for a term expiring December 17, 1993.

#### DEPARTMENT OF STATE

James D. Watkins, of California, to be the Representative of the United States of America to the 34th Session of the General

Conference of the International Atomic Energy Agency.

Richard T. Kennedy, of the District of Columbia, to be an Alternate Representative of the United States of America to the 34th Session of the General Conference of the International Atomic Energy Agency.

Michael H. Newlin, of Maryland, to be an Alternative Representative of the United States of America to the 34th Session of the General Conference of the International Atomic Energy Agency.

Kenneth M. Carr, of California, to be an Alternate Representative of the United States of America to the 34th Session of the General Conference of the International Atomic Energy Agency.

#### U.S. ADVISORY COMMISSION ON PUBLIC DIPLOMACY

Tom C. Korologos, of Virginia, to be a Member of the U.S. Advisory Commission on Public Diplomacy for a term expiring July 1, 1993.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

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. HEINZ. 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 PRESIDING OFFICER (Mr. AKAKA). The Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I ask unanimous consent that I might speak as in morning business.

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

Mr. HEINZ. I thank the Chair. (The remarks of Mr. HEINZ pertaining to the introduction of S. 3065 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

#### INTERSTATE TRANSPORT OF WASTE

Mr. HEINZ. Mr. President, last week, the Senate was debating Senator Coats' legislation on the interstate transport of waste, and we will return to that subject tomorrow. I rise at this point to make some comments on that legislation because, as I understand it, the time set aside for the debate, an hour, between the hours of 4 and 5 o'clock will, in fact, unfortunately, coincide with the conference on the housing bill, to which I am a conferee. So I wanted to share with my colleagues my observations on that amendment.

I do so, in fact, Mr. President, because I think it is true that our Nation is today engaged in a new war between the States, a garbage war created in

part by a capacity shortage that is reaching a crisis level. In the next 10 years, one-third of our landfill capacity will be full. They will be closed. At the same time, waste generation has increased by some 80 percent since 1969, just 20 short years ago.

Each of us on average throws away about 3.6 pounds of garbage every day. That does not sound like a lot, but it is enough to annually fill a convoy of 10-ton trucks, 145,000 miles long, when you count all the men, women and children in the United States. Let me repeat that. When we throw away, each man, woman, and child, the average of about 3.5 pounds of garbage each day, it is enough to annually fill a convoy of 10-ton trucks, 145,000 miles long, more than 7 times the circumference of the Earth.

Disposal capacity has, in fact, reached a critical point at a time when it is nearly impossible to site new disposal facilities. Nobody wants a landfill in their back yard. My State of Pennsylvania will run out of landfill capacity within 5 years and, as I indicated, we are not unique.

This landfill capacity crisis, Mr. President, has resulted in a relatively new commercial enterprise, one which has burdened our highways and byways with hundreds of thousands of huge garbage trucks crisscrossing this Nation looking for someplace to dump their loads, and that someplace tends to be in a State other than the State where the garbage was generated.

My home State of Pennsylvania faced, as we mentioned earlier, with its own capacity problems, is according to the Congressional Research Service, the second largest importer of waste in the Nation. That is not necessarily the way we wanted it, but that is the way it is working out.

I am not here to say that Pennsylvania does not export some trash, some garbage, some waste, but we do so at much smaller volumes than we receive them, and the point which is important, is that as long as our State is forced to accept tons and tons, indeed over 3.4 million tons last year alone, my State will be that much more crippled in its efforts to find capacity for our own waste. These volumes of out-of-State garbage are unpredictable; they are uncontrollable. That makes, at this point, any planning effort by our State on what comes in from others, absolutely futile. Good, solid, long-term planning is essential to solving our Nation's waste disposal problem.

Late last year, this Senator, together with my colleague, Senator SPECTER, introduced legislation which would require each State to create a comprehensive management plan to reduce the growing amount of waste in their own State and to lay out a strategy for managing the waste generated by their own citizens and businesses.

There are in the bill of the Senator from Indiana [Mr. COATS] similar planning requirements, and that is particularly appreciated. Such provisions are critically, indeed, absolutely essential to resolving our near crisis, protecting our environment and bringing an end to this increasing acrimony between neighbors.

Mr. President, I yield the floor.

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

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

#### UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President and Members of the Senate, we are attempting to organize the Senate schedule in such a way as to permit the prompt and expeditious handling of the business before the Senate, as well as accommodate the schedules of the several Senators who are participating in the budget summit negotiations now ongoing at Andrews Air Force Base. I myself have participated in a few of those meetings, although most of them have occurred while I have been here, so I know from my own experience and also from discussing it with the Senators who are there on a full-time basis, that it is very important they be able to continue their deliberations and to minimize the time when they will have to return to vote. So I will shortly propound a unanimous-consent request, which has been cleared by the distinguished Republican leader, which is intended to change the times of several of the votes tomorrow so as to compress them into the shortest period of time to minimize the interruption for those Senators who will be at Andrews participating in those discussions on tomorrow.

Accordingly, Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10 a.m. on Tuesday, September 18; that the time for the two leaders be reserved for their use during the day; that there then be a period of morning business not to extend beyond 10:30 a.m. with Senators permitted to speak therein for up to 5 minutes each; that at 10:30 a.m. the Senate resume consideration of S. 1511, and at that time, 10:30 a.m., either Senator PRYOR or Senator METZENBAUM be recognized to offer a second-degree amendment to the pending Hatch amendment No. 2667; that there be 2 hours for debate on both the first- and second-degree

amendments; that at the conclusion, or yielding back of that time, the Senate stand in recess to accommodate the respective party conferences until 2:15 p.m.; that the votes on the second-degree amendment and on the Hatch amendment, as amended, if amended, occur without any intervening action immediately upon the conclusion of the vote ordered to occur at approximately 2:25 p.m. on the Executive Calendar treaties; that no other second-degree amendments, other than the one mentioned in this consent agreement request, be in order to the Hatch amendment, that the previous consent for the completion of H.R. 5311, the D.C. appropriations bill, be altered so that it commences upon disposition of the Hatch amendment No. 2667 to the age discrimination bill.

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

#### PROGRAM

Mr. MITCHELL. Mr. President, I will explain the schedule for tomorrow as now agreed upon.

From 10 to 10:30 tomorrow morning, there will be a period for morning business. Between 10:30 and 12:30 p.m., there will be debate on a second-degree amendment which will be offered at 10:30 by either Senator PRYOR or Senator METZENBAUM to the pending Hatch amendment to the age discrimination bill, S. 1511.

Following completion of that debate, which is expected to be completed at about 12:30, the Senate will recess for the party conferences until 2:15 p.m.

At approximately 2:25 p.m., under a prior order, the Senate will vote on Executive Calendar treaties.

Immediately upon the completion of that vote, the Senate will vote on the second-degree amendment to the Hatch amendment, that is, on the amendment to be offered by Senator PRYOR or METZENBAUM.

Upon the completion of that vote, the Senate will vote on the Hatch amendment, as amended, if amended. Upon the completion of the vote on the Hatch amendment, the Senate will return to consideration of the D.C. appropriations bill. Under that previous order, there will then be 1 hour of debate on the Coats amendment to that bill. Upon the completion of that debate or the yielding back of that time, there will then occur a vote on the Coats amendment to the D.C. appropriations bill, to be followed by a vote immediately thereafter on final passage of the D.C. appropriations bill.

So the sequence will involve a series of votes, first on Executive Calendar treaties, then on the Pryor-Metzenbaum amendment to the Hatch amendment to the age discrimination bill, then on the Hatch amendment to the age discrimination bill, then fol-

lowing a brief period of debate on the Coats amendment to the D.C. appropriations bill, and then on the D.C. appropriation bill itself.

Depending upon the length of time used for the Coats amendment debate, this should all be compressed into a period of approximately 2 hours tomorrow afternoon, and we will attempt tomorrow afternoon to further reduce that period of time with the cooperation of the interested Senators.

I thank all Senators for their cooperation because it is important that we organize this schedule in a way that accomplishes both of the objectives I stated at the outset.

Mr. President, for the record, I want to make one modification to my earlier statement. Under the previous order with respect to the D.C. appropriations bill, the Coats amendment is itself an amendment to a Nickles amendment to the bill. Upon the completion of the Coats amendment, the Nickles amendment would have to be disposed of. I understand that is expected to occur by a voice vote since the relevant and substantive issue involved is contained in the Coats amendment.

So there will be no misunderstanding, we will have to dispose of the Nickles amendment upon the completion of the Coats amendment prior to proceeding to the final passage of the D.C. appropriations bill, but that should be just a voice vote that will only take a few moments.

Mr. President, I want to thank again all of the Senators, several of them, whose participation in gaining this agreement and consent had to be obtained. I thank them for their consideration, as well as the distinguished Republican leader with whom we have consulted in organizing this schedule.

## RECESS UNTIL 10 A.M. TOMORROW

Mr. MITCHELL. Mr. President, if there is no further business to come before the Senate today, I now ask unanimous consent that the Senate stand in recess under the previous order until 10 a.m. tomorrow, Tuesday, September 18.

There being no objection, the Senate, at 7:20 p.m., recessed until Tuesday, September 18, 1990, at 10 a.m.

## NOMINATIONS

Executive nominations received by the Senate September 17, 1990:

### DEPARTMENT OF STATE

LEONARD H.O. SPEARMAN, SR., OF TEXAS, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE KINGDOM OF LESOTHO.

THE FOLLOWING-NAMED PERSONS TO BE REPRESENTATIVES AND ALTERNATE REPRESENTATIVES OF THE UNITED STATES OF AMERICA TO THE FORTY-FIFTH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS:

REPRESENTATIVES:

THOMAS R. PICKERING, OF NEW JERSEY.  
ALEXANDER FLETCHER WATSON, OF MASSACHUSETTS.

ALTERNATE REPRESENTATIVES:

JONATHAN MOORE, OF MASSACHUSETTS.  
JACOB STEIN, OF NEW YORK.  
SHIRIN R. TAHIR-KHELI, OF PENNSYLVANIA.  
MILTON JAMES WILKINSON, OF NEW HAMPSHIRE.

### INTER-AMERICAN FOUNDATION

JAMES R. WHELAN, OF VIRGINIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE INTER-AMERICAN FOUNDATION FOR A TERM EXPIRING SEPTEMBER 20, 1994, VICE HAROLD K. PHILLIPS, TERM EXPIRED.

### DEPARTMENT OF THE TREASURY

JOHN MICHAEL MERCANTI, OF PENNSYLVANIA, TO BE ENGRAVER IN THE MINT OF THE UNITED STATES OF PHILADELPHIA, PENNSYLVANIA, VICE ELIZABETH JONES, RESIGNED.

### MARINE MAMMAL COMMISSION

PAUL K. DAYTON, OF CALIFORNIA, TO BE A MEMBER OF THE MARINE MAMMAL COMMISSION FOR THE TERM EXPIRING MAY 13, 1992, VICE WILLIAM W. FOX, JR., RESIGNED.

### NATIONAL COUNCIL ON DISABILITY

MARY ANN MOBLEY-COLLINS, OF CALIFORNIA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 1991, VICE JONI TADA, TERM EXPIRED.

### IN THE AIR FORCE

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY DESIGNATED BY THE PRESIDENT UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 601, AND APPOINTMENT AS SENIOR AIR FORCE MEMBER, MILITARY STAFF COMMITTEE OF THE UNITED NATIONS, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 711:

#### To be lieutenant general

MAJ. GEN. CHARLES A. MAY, JR., ~~xxx-xx-xxxx~~ UNITED STATES AIR FORCE.

### In the navy

THE FOLLOWING-NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

#### To be admiral

ADM. POWELL F. CARTER, JR., U.S. NAVY, ~~xxx-xx-xxxx~~.  
THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

#### To be admiral

VICE ADM. PAUL D. MILLER, U.S. NAVY, ~~xxx-xx-xxxx~~.  
THE FOLLOWING-NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF VICE ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

#### To be vice admiral

VICE ADM. ROGER F. BACON, U.S. NAVY, ~~xxx-xx-xxxx~~.  
THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF VICE ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

#### To be vice admiral

REAR ADM. HENRY G. CHILES, JR., U.S. NAVY, ~~xxx-xx-xxxx~~.

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF VICE ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

#### To be vice admiral

REAR ADM. WILLIAM A. DOUGHERTY, JR., U.S. NAVY, ~~xxx-xx-xxxx~~.

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED WHILE SERVING IN A POSITION OF IMPORTANCE AND RESPONSIBILITY DESIGNATED BY THE PRESIDENT UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 601(A), AND TO BE APPOINTED AS SENIOR NAVY MEMBER OF THE MILITARY STAFF COMMITTEE OF THE UNITED NATIONS UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 711:

#### To be vice admiral

REAR ADM. LEIGHTON W. SMITH, JR., U.S. NAVY, ~~xxx-xx-xxxx~~.

### In the air force

THE FOLLOWING AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR PROMOTION IN THE RESERVE OF THE AIR FORCE UNDER THE PROVISIONS OF SECTIONS 593 AND 8379, TITLE 10 OF THE UNITED STATES CODE, PROMOTIONS MADE UNDER SECTION 8379 AND CONFIRMED BY THE SENATE UNDER SECTION 593 SHALL BEAR AN EFFECTIVE DATE ESTABLISHED IN ACCORDANCE WITH SECTION 8374, TITLE 10 OF THE UNITED STATES CODE. (EFFECTIVE DATE FOLLOWS SERIAL NUMBER.)

### LINE OF THE AIR FORCE

#### To be lieutenant colonel

MAJ. CHARLES O. BARRY III, ~~xxx-xx-xxxx~~ 6/14/90  
MAJ. HUGH T. BROOMALL, ~~xxx-xx-xxxx~~ 6/20/90  
MAJ. DONALD A. BUBB, ~~xxx-xx-xxxx~~ 4/23/90  
MAJ. ROBERT A. CRON, ~~xxx-xx-xxxx~~ 5/14/90  
MAJ. JUSTIN W. FISHER, ~~xxx-xx-xxxx~~ 6/26/90  
MAJ. WILLARD G. HILL, ~~xxx-xx-xxxx~~ 6/1/90  
MAJ. JOHN C. HOFFMAN, ~~xxx-xx-xxxx~~ 6/27/90  
MAJ. IVAN B. KELLY, ~~xxx-xx-xxxx~~ 5/23/90  
MAJ. LEONARD C. KESSELRING JR., ~~xxx-xx-xxxx~~ 6/15/90  
MAJ. GARY D. LANHAM, ~~xxx-xx-xxxx~~ 5/2/90  
MAJ. RICHARD L. MCCULLOUGH, ~~xxx-xx-xxxx~~ 5/15/90  
MAJ. MICHAEL A. PORTELE, ~~xxx-xx-xxxx~~ 7/2/90  
MAJ. CHARLES E. WEST, JR., ~~xxx-xx-xxxx~~ 6/27/90

### IN THE AIR FORCE

THE FOLLOWING NAMED OFFICERS FOR PROMOTION IN THE UNITED STATES AIR FORCE, UNDER THE APPROPRIATE PROVISIONS OF SECTION 624, TITLE 10, UNITED STATES CODE, AS AMENDED, WITH DATES OF RANK TO BE DETERMINED BY THE SECRETARY OF THE AIR FORCE, AND THOSE OFFICERS IDENTIFIED BY AN ASTERISK FOR APPOINTMENT IN THE REGULAR AIR FORCE UNDER THE PROVISIONS OF SECTION 531, TITLE 10, UNITED STATES CODE, PROVIDED THAT IN NO CASE SHALL THE OFFICERS BE APPOINTED IN A GRADE HIGHER THAN INDICATED.

### LINE OF THE AIR FORCE

#### To be colonel

THOMAS D. ACCOLA, ~~xxx-xx-xxxx~~  
JAMES E. ALFORD, ~~xxx-xx-xxxx~~  
KIRBY E. ALLEN, ~~xxx-xx-xxxx~~  
GARY A. AMBROSE, ~~xxx-xx-xxxx~~  
RAYMOND A. AMTMANN, ~~xxx-xx-xxxx~~  
RICHARD G. ANNAS, ~~xxx-xx-xxxx~~  
BRIAN A. ARNOLD, ~~xxx-xx-xxxx~~  
GAIL I. ARNOTT, ~~xxx-xx-xxxx~~  
ROBERT M. ATKINSON, ~~xxx-xx-xxxx~~  
RALPH H. AUSTIN, ~~xxx-xx-xxxx~~  
ROBERT A. AUSTIN, ~~xxx-xx-xxxx~~  
LARRY D. AUTRY, ~~xxx-xx-xxxx~~ 6/2/90  
JOSEPH G. AVON, ~~xxx-xx-xxxx~~  
HOWARD S. BAER, ~~xxx-xx-xxxx~~  
CHARLES E. BAILEY, ~~xxx-xx-xxxx~~  
DON E. BAKER, ~~xxx-xx-xxxx~~  
JACK T. BAKER, ~~xxx-xx-xxxx~~  
ROBERT W. BAKER, ~~xxx-xx-xxxx~~  
WILLIAM H. BAKER, ~~xxx-xx-xxxx~~  
JEFFREY W. BALDRIGE, ~~xxx-xx-xxxx~~  
MARGARET K. BALDWIN, ~~xxx-xx-xxxx~~  
ROBERT H. BALLARD, ~~xxx-xx-xxxx~~  
TERRY L. BALVEN, ~~xxx-xx-xxxx~~  
RAYMOND H. BARKER, JR., ~~xxx-xx-xxxx~~  
BARRY W. BARKSDALE, ~~xxx-xx-xxxx~~  
ROCKY E. BARNARD, ~~xxx-xx-xxxx~~  
JOHN L. BARRY, ~~xxx-xx-xxxx~~  
HARVEY D. BARTEL, ~~xxx-xx-xxxx~~  
ROBERT H. BASKETT, ~~xxx-xx-xxxx~~  
ROY H. BASS, JR., ~~xxx-xx-xxxx~~  
HAYNES M. BAUMGARDNER, JR., ~~xxx-xx-xxxx~~  
ALLAN K. BEAN, ~~xxx-xx-xxxx~~  
JOHN S. BEATTIE, ~~xxx-xx-xxxx~~  
EUGENE F. BEAUVAIS, ~~xxx-xx-xxxx~~  
ANTHONY W. BELL, JR., ~~xxx-xx-xxxx~~  
GERALD E. BENSON, ~~xxx-xx-xxxx~~  
RALPH G. BENT, II, ~~xxx-xx-xxxx~~  
HARRY D. BEPLAY, ~~xxx-xx-xxxx~~  
JOSEPH J. BERARDINO, ~~xxx-xx-xxxx~~  
JAMES A. BERES, ~~xxx-xx-xxxx~~  
EARL D. BICE, ~~xxx-xx-xxxx~~  
GEOFFREY T. BISHOP, ~~xxx-xx-xxxx~~  
ROBERT J. BITTNER, ~~xxx-xx-xxxx~~  
KENNETH L. BLACK, ~~xxx-xx-xxxx~~  
LARRY W. BLACK, ~~xxx-xx-xxxx~~  
ROBERT E. BLACK, ~~xxx-xx-xxxx~~  
THOMAS J. BLACK, III, ~~xxx-xx-xxxx~~  
GAY D. BLACKMORE, ~~xxx-xx-xxxx~~  
CHARLES R. BLAKE, ~~xxx-xx-xxxx~~  
JAMES P. BLANCO, ~~xxx-xx-xxxx~~  
JOAN W. BLANKENBEKER, ~~xxx-xx-xxxx~~  
THOMAS J. BLYSTAD, ~~xxx-xx-xxxx~~  
GERALD V. BOESCHE, ~~xxx-xx-xxxx~~  
RUSSELL L. BOGGESS, ~~xxx-xx-xxxx~~  
WAYNE R. BOLES, ~~xxx-xx-xxxx~~  
RUSSELL T. BOLT, ~~xxx-xx-xxxx~~  
JAROMIR J. BON, ~~xxx-xx-xxxx~~  
RAYMOND G. BONESTEEL, ~~xxx-xx-xxxx~~  
JAMES W. BOSWELL, ~~xxx-xx-xxxx~~  
TERRENCE W. BOTT, ~~xxx-xx-xxxx~~  
CHARLES L. BOUBOULIS, ~~xxx-xx-xxxx~~  
JAMES T. BOWEN, ~~xxx-xx-xxxx~~  
FRANK L. BOYD, JR., ~~xxx-xx-xxxx~~  
JOHN T. BOYD, ~~xxx-xx-xxxx~~  
MILTON E. BRANCH, JR., ~~xxx-xx-xxxx~~

PAUL L. BRANDENBURG, xxx-xx-xxxx  
 LOUIS D. BRAUN, III, xxx-xx-xxxx  
 JAMES E. BRECHWALD, xxx-xx-xxxx  
 HOWARD M. BRILLIANT, xxx-xx-xxxx  
 FRED N. BROWN, JR., xxx-xx-xxxx  
 RICHARD S. BROWNELL, xxx-xx-xxxx  
 LAWRENCE A. BRUCK, xxx-xx-xxxx  
 RICHARD T. BRYAN, xxx-xx-xxxx  
 WALTER E. L. BUCHANAN, III, xxx-xx-xxxx  
 ANTHONY F. BUQUOR, xxx-xx-xxxx  
 ANNETTE L. BURR, xxx-xx-xxxx  
 RICHARD O. BURROUGHS, xxx-xx-xxxx  
 STANLEY L. BUSBOOM, xxx-xx-xxxx  
 RAY L. CADDELL, xxx-xx-xxxx  
 STEVEN E. CADY, xxx-xx-xxxx  
 STEVEN A. CAINE, xxx-xx-xxxx  
 PATRICK A. CALDWELL, xxx-xx-xxxx  
 MICHAEL R. CALLAWAY, xxx-xx-xxxx  
 MARION E. CALLENDER, JR., xxx-xx-xxxx  
 JOHN A. CANN, JR., xxx-xx-xxxx  
 JOHN H. CAMPBELL, xxx-xx-xxxx  
 WILLIAM H. CAMPBELL, xxx-xx-xxxx  
 WILLIAM J. CANAVAN, xxx-xx-xxxx  
 TIMOTHY N. CAREY, xxx-xx-xxxx  
 DOUGLAS M. CARLSON, xxx-xx-xxxx  
 GERALD C. CARPENTER, xxx-xx-xxxx  
 MICHAEL F. CARPENTER, xxx-xx-xxxx  
 LARRY A. CARR, xxx-xx-xxxx  
 LARRY G. CARTER, xxx-xx-xxxx  
 STEPHEN P. CARTER, xxx-xx-xxxx  
 LOUIS J. CASAMAYOU, xxx-xx-xxxx  
 JOHN M. CASE, JR., xxx-xx-xxxx  
 THOMAS E. CEDEL, xxx-xx-xxxx  
 PHILIP R. CELMER, III, xxx-xx-xxxx  
 ROBERT R. CHAPIN, xxx-xx-xxxx  
 BRENT E. CHAPMAN, xxx-xx-xxxx  
 RAYMOND C. CHAPMAN, JR., xxx-xx-xxxx  
 EDDY J. CHELKOWSKI, xxx-xx-xxxx  
 KEVIN J. CHENEY, xxx-xx-xxxx  
 STONEY P. CHISOLM, xxx-xx-xxxx  
 MICHAEL A. CHRISTENSEN, xxx-xx-xxxx  
 CHARLES E. CINNAMON, xxx-xx-xxxx  
 DWIGHT E. CLARK, xxx-xx-xxxx  
 SAMUEL H. CLOVIS, JR., xxx-xx-xxxx  
 JAMES R. COATES, xxx-xx-xxxx  
 JAMES T. COBB, xxx-xx-xxxx  
 ROBERT D. COFFMAN, xxx-xx-xxxx  
 EDWIN W. COHRS, xxx-xx-xxxx  
 ZOLLIE D. COLE, xxx-xx-xxxx  
 DOUGLAS R. COLEMAN, xxx-xx-xxxx  
 KEVIN A. COLLINS, xxx-xx-xxxx  
 ELLIS K. CONOLEY, xxx-xx-xxxx  
 MICHAEL J. COOK, xxx-xx-xxxx  
 SHARLA J. COOK, xxx-xx-xxxx  
 BOYCE D. COOK, xxx-xx-xxxx  
 CRAIG R. COONING, xxx-xx-xxxx  
 THOMAS R. COOPER, xxx-xx-xxxx  
 LARRY J. COPELAND, xxx-xx-xxxx  
 WILLIAM J. CORBETT, III, xxx-xx-xxxx  
 STEPHEN R. CORNISH, xxx-xx-xxxx  
 LARRY P. CORNWELL, xxx-xx-xxxx  
 ROBERT E. CORSI, JR., xxx-xx-xxxx  
 ARTHUR J. CORWIN, xxx-xx-xxxx  
 RONALD T. COVAIS, xxx-xx-xxxx  
 PHILIP A. COVELL, xxx-xx-xxxx  
 NEAL D. COYLE, xxx-xx-xxxx  
 JOHN W. CRAIG, xxx-xx-xxxx  
 CHARLES J. CRAWFORD, xxx-xx-xxxx  
 CHARLES E. CROOM, JR., xxx-xx-xxxx  
 DAVID P. CSINTYAN, xxx-xx-xxxx  
 CHARLES N. CULBERTSON, xxx-xx-xxxx  
 ROGER A. CUNNING, xxx-xx-xxxx  
 ALEXANDER B. CURRIE, xxx-xx-xxxx  
 THOMAS W. DALEY, xxx-xx-xxxx  
 JOHN W. DALTON, xxx-xx-xxxx  
 JAMES C. DANDO, xxx-xx-xxxx  
 HENRY J. DARIES, xxx-xx-xxxx  
 GERRY R. DAUGHERTY, xxx-xx-xxxx  
 JAMES N. DAVIS, xxx-xx-xxxx  
 ROBERT F. DEBUSK, III, xxx-xx-xxxx  
 ROBERT G. DEFEO, xxx-xx-xxxx  
 GEORGE DEFILIPPI, JR., xxx-xx-xxxx  
 JACK D. DELIGANS, JR., xxx-xx-xxxx  
 RICHARD E. DELONEY, JR., xxx-xx-xxxx  
 WAYNE E. DEREU, xxx-xx-xxxx  
 ROBERT J. DESUTTER, JR., xxx-xx-xxxx  
 DAVID R. DICK, xxx-xx-xxxx  
 JAMES G. DICKENSHEETS, xxx-xx-xxxx  
 ROBERT P. DICKEY, xxx-xx-xxxx  
 JOSEPH T. DICKMAN, xxx-xx-xxxx  
 ROBERT R. DIERKER, xxx-xx-xxxx  
 WALTER R. DILL, xxx-xx-xxxx  
 GARY D. DILLS, xxx-xx-xxxx  
 JOHN S. DOLAN, xxx-xx-xxxx  
 KENNETH L. DOLLAR, xxx-xx-xxxx  
 JAMES L. DONNELLY, xxx-xx-xxxx  
 PAUL R. DORDAL, xxx-xx-xxxx  
 JOHN W. DOROUGH, JR., xxx-xx-xxxx  
 LESLIE R. DRAKE, xxx-xx-xxxx  
 JOHNNY B. DRURY, xxx-xx-xxxx  
 DAVID A. DUCK, JR., xxx-xx-xxxx  
 GEORGE T. DUCKER, xxx-xx-xxxx  
 DAVID M. DUESLER, xxx-xx-xxxx  
 JACK E. DUGAS, JR., xxx-xx-xxxx  
 MICHAEL A. DUNGAN, xxx-xx-xxxx  
 JAMES C. DUNN, III, xxx-xx-xxxx  
 JACOB D. DUSTIN, xxx-xx-xxxx  
 CECIL L. EASON, JR., xxx-xx-xxxx  
 GLENN C. EASTERLY, xxx-xx-xxxx  
 THOMAS E. EICHHORST, xxx-xx-xxxx  
 ROBERT J. ELDER, JR., xxx-xx-xxxx  
 GERALD G. ELLMYER, xxx-xx-xxxx  
 ROBERT W. ELSASS, JR., xxx-xx-xxxx  
 ROGER E. ELSTUN, xxx-xx-xxxx  
 JAMES D. EMERY, JR., xxx-xx-xxxx  
 MICHAEL H. ENGELMEYER, xxx-xx-xxxx  
 JAMES M. ENGER, xxx-xx-xxxx  
 JAMES B. ENGLE, xxx-xx-xxxx  
 JAMES W. ENGLE, xxx-xx-xxxx  
 BRIAN A. ERICKSON, xxx-xx-xxxx  
 PAUL W. ESSEX, xxx-xx-xxxx  
 RICHARD G. EVANS, xxx-xx-xxxx  
 WALTER J. EVANS, xxx-xx-xxxx  
 WILLIAM J. EVANS, JR., xxx-xx-xxxx  
 MARK G. EWIG, xxx-xx-xxxx  
 ROBERT G. FAHL, xxx-xx-xxxx  
 DAVID P. FAIRCLO, xxx-xx-xxxx  
 STEPHEN H. FARISH, xxx-xx-xxxx  
 KENNETH B. FAULHABER, xxx-xx-xxxx  
 MICHAEL L. FAUST, xxx-xx-xxxx  
 RICHARD E. FAVELA, xxx-xx-xxxx  
 ALAN C. FELDKAMP, xxx-xx-xxxx  
 JAMES G. FERGUSON, xxx-xx-xxxx  
 GEORGE C. FERKES, xxx-xx-xxxx  
 WALTER L. FILIPEK, xxx-xx-xxxx  
 GERALD F. FLANAGAN, JR., xxx-xx-xxxx  
 SCHUYLER FOERSTER, xxx-xx-xxxx  
 DAVID A. FONTANA, xxx-xx-xxxx  
 ROBERT G. FORD, xxx-xx-xxxx  
 DAVID M. FORE, xxx-xx-xxxx  
 THOMAS P. FOSS, xxx-xx-xxxx  
 FREDERICK J. FOSTER, xxx-xx-xxxx  
 WILLIAM E. FRANTA, xxx-xx-xxxx  
 WILLIAM M. FRASER, III, xxx-xx-xxxx  
 JAMES G. FROMM, xxx-xx-xxxx  
 DANIEL T. FUCCI, xxx-xx-xxxx  
 RICHARD D. GADDIE, xxx-xx-xxxx  
 RALPH R. GAJEWSKI, xxx-xx-xxxx  
 ALBERT R. GALANTE, xxx-xx-xxxx  
 MICHAEL R. GALLAGHER, xxx-xx-xxxx  
 RICHARD N. GALLOWAY, xxx-xx-xxxx  
 DAVID P. GAMBONE, xxx-xx-xxxx  
 RICHARD GAMMON, xxx-xx-xxxx  
 FRANCIS K. GEISLER, JR., xxx-xx-xxxx  
 DAVID B. GEORGE, JR., xxx-xx-xxxx  
 SALVATORE J. GIAMMO, xxx-xx-xxxx  
 JOHN P. GIBEAU, xxx-xx-xxxx  
 ROBERT A. GIBSON, xxx-xx-xxxx  
 JOHN A. GILBERT, xxx-xx-xxxx  
 PETER M. GILL, xxx-xx-xxxx  
 MARK D. GILSON, xxx-xx-xxxx  
 STEVEN F. GLANTZ, xxx-xx-xxxx  
 DANIEL W. GOFFARD, xxx-xx-xxxx  
 THOMAS J. GODFREY, xxx-xx-xxxx  
 WILLIAM E. GOODWIN, xxx-xx-xxxx  
 JOHN W. GORMAN, xxx-xx-xxxx  
 EDWARD H. GOSSLING, III, xxx-xx-xxxx  
 JAMES M. GRANT, xxx-xx-xxxx  
 MICHAEL L. GRAVES, xxx-xx-xxxx  
 JOHN R. GREEN, xxx-xx-xxxx  
 WILLIAM V. GREEN, IV, xxx-xx-xxxx  
 SAMUEL L. GRIER, JR., xxx-xx-xxxx  
 RICHARD C. GROESCH, xxx-xx-xxxx  
 RICHARD R. GROSS, xxx-xx-xxxx  
 ANTHONY W. GROVES, xxx-xx-xxxx  
 MICHAEL L. GUIDRY, xxx-xx-xxxx  
 PAUL M. GUTTMAN, xxx-xx-xxxx  
 JOHN M. HAAS, xxx-xx-xxxx  
 STEVEN C. HAFNER, xxx-xx-xxxx  
 FREDDY M. HAGGARD, xxx-xx-xxxx  
 ROBERT M. HAIL, xxx-xx-xxxx  
 LOUIS C. HALL, JR., xxx-xx-xxxx  
 BILLY J. HALL, JR., xxx-xx-xxxx  
 WILLIAM F. HALL, xxx-xx-xxxx  
 ROYCE J. HALSTEAD, xxx-xx-xxxx  
 STEPHEN O. HAMMOND, xxx-xx-xxxx  
 STEPHEN W. HANES, xxx-xx-xxxx  
 JOSEPH C. HANNIGAN, xxx-xx-xxxx  
 JOHN W. HARBISON, xxx-xx-xxxx  
 SUSAN J. HARGER, xxx-xx-xxxx  
 JOHN S. HARP, xxx-xx-xxxx  
 ELKTON E. HARRINGTON, III, xxx-xx-xxxx  
 JERROLD B. HARRINGTON, xxx-xx-xxxx  
 HAROLD J. HARRIS, xxx-xx-xxxx  
 JOHN H. HARRIS, JR., xxx-xx-xxxx  
 PHILLIP L. HARRIS, xxx-xx-xxxx  
 KENT E. HARRISON, xxx-xx-xxxx  
 THOMAS D. HATCHER, xxx-xx-xxxx  
 JAMES C. HAVARD, xxx-xx-xxxx  
 GILBERT R. HAWK, xxx-xx-xxxx  
 KEITH D. HAWKINS, xxx-xx-xxxx  
 ROBERT S. HEAPS, xxx-xx-xxxx  
 RICHARD S. HEFNER, xxx-xx-xxxx  
 JAMES B. HENDERSON, JR., xxx-xx-xxxx  
 JOHN P. HENLEY, xxx-xx-xxxx  
 PETER J. HENNESSEY, xxx-xx-xxxx  
 STEPHEN G. HENRICH, xxx-xx-xxxx  
 CHESTER G. HERBST, JR., xxx-xx-xxxx  
 ROBERT E. HERGENROTTER, xxx-xx-xxxx  
 ROBERT L. HERKLOTZ, xxx-xx-xxxx  
 AUBIN M. HIGGINS, xxx-xx-xxxx  
 DALE C. HILL, xxx-xx-xxxx  
 CHARLES D. HILLEBRAND, xxx-xx-xxxx  
 LLOYD R. HISH, xxx-xx-xxxx  
 DAVID L. HOPFSTADTER, xxx-xx-xxxx  
 JACK R. HOLBEIN, JR., xxx-xx-xxxx  
 FRANK O. HOLDER, JR., xxx-xx-xxxx  
 WILLIAM J. HOLLAND, III, xxx-xx-xxxx  
 GERALD G. HOLLINGER, xxx-xx-xxxx  
 WILLIAM E. HOLTkamp, III, xxx-xx-xxxx  
 DAVID R. HONEYWELL, xxx-xx-xxxx  
 HUNTER S. HOPSON, JR., xxx-xx-xxxx  
 STEPHEN M. HORN, xxx-xx-xxxx  
 JOHN R. HORNOR, xxx-xx-xxxx  
 VINCENT W. HORRIGAN, xxx-xx-xxxx  
 HAROLD W. HOSACK, JR., xxx-xx-xxxx  
 THOMAS R. HOSKINS, xxx-xx-xxxx  
 JAMES B. HOUSTON, JR., xxx-xx-xxxx  
 ROBERT M. HOWE, JR., xxx-xx-xxxx  
 RONALD P. HUBBARD, xxx-xx-xxxx  
 LAWRENCE R. HUEY, xxx-xx-xxxx  
 JOHN B. HUNGERFORD, JR., xxx-xx-xxxx  
 ROBERT D. HUNTER, xxx-xx-xxxx  
 SCOTT D. INGRAM, xxx-xx-xxxx  
 GEORGE R. JACKSON, xxx-xx-xxxx  
 PHILLIP L. JACKSON, xxx-xx-xxxx  
 VICTOR D. JAROCH, xxx-xx-xxxx  
 GREGORY T. JAY, xxx-xx-xxxx  
 RONALD W. JAYNE, xxx-xx-xxxx  
 OWEN E. JENSEN, xxx-xx-xxxx  
 ROBERT W. JENSEN, xxx-xx-xxxx  
 WILLIAM E. JOHNS, xxx-xx-xxxx  
 ERIC N. JOHNSON, xxx-xx-xxxx  
 FREEMAN L. JOHNSON, xxx-xx-xxxx  
 HUBERT O. JOHNSON, II, xxx-xx-xxxx  
 KATHLEEN JOHNSON, xxx-xx-xxxx  
 WILLIAM R. JOHNSON, JR., xxx-xx-xxxx  
 LAFAYETTE J. JONES, JR., xxx-xx-xxxx  
 PETER E. JONES, xxx-xx-xxxx  
 ROBERT G. JONES, xxx-xx-xxxx  
 ROBERT R. JONES, xxx-xx-xxxx  
 RODNEY P. JONES, xxx-xx-xxxx  
 SAMUEL M. JONES, xxx-xx-xxxx  
 STEVEN R. JONES, xxx-xx-xxxx  
 WALTER I. JONES, xxx-xx-xxxx  
 ROBERT A. JUDAS, xxx-xx-xxxx  
 JOSEPH C. JUSTICE, xxx-xx-xxxx  
 GORDON D. KAGE, II, xxx-xx-xxxx  
 PETER C. KAMINSKI, xxx-xx-xxxx  
 ROBERT J. KARNER, xxx-xx-xxxx  
 LARRY R. KEARNS, xxx-xx-xxxx  
 STEVEN M. KELLER, xxx-xx-xxxx  
 GARY M. KELLY, xxx-xx-xxxx  
 MICHAEL G. KING, xxx-xx-xxxx  
 JAMES A. KINGSLEY, xxx-xx-xxxx  
 THOMAS C. KLEIV, xxx-xx-xxxx  
 DUANE W. KNIGHT, xxx-xx-xxxx  
 DANIEL G. KNIOLA, xxx-xx-xxxx  
 WARREN I. KNOUFF, xxx-xx-xxxx  
 DAVID P. KNOWLES, xxx-xx-xxxx  
 DANIEL J. KOHN, xxx-xx-xxxx  
 DUNCAN G. KOLLER, xxx-xx-xxxx  
 DAVID C. KOLODZINSKI, xxx-xx-xxxx  
 CRAIG L. KOONTZ, xxx-xx-xxxx  
 ROBERT W. KOOP, xxx-xx-xxxx  
 JOSEPH N. KRUPPA, JR., xxx-xx-xxxx  
 DENNIS W. KULLANDER, xxx-xx-xxxx  
 FRANK P. LABELLE, JR., xxx-xx-xxxx  
 LAWRENCE N. LACEY, xxx-xx-xxxx  
 RICHARD F. LACH, xxx-xx-xxxx  
 PHILLIP E. LACOMBE, xxx-xx-xxxx  
 THOMAS S. LAMPLEY, xxx-xx-xxxx  
 GERALD M. LANE, xxx-xx-xxxx  
 CHARLES M. LANG, JR., xxx-xx-xxxx  
 RICHARD D. LARKINS, xxx-xx-xxxx  
 DENNIS R. LARSEN, xxx-xx-xxxx  
 LANNY J. LARSON, xxx-xx-xxxx  
 KATHY LASAUCE, xxx-xx-xxxx  
 THEODORE W. LAY, II, xxx-xx-xxxx  
 PAUL J. LEBRAS, xxx-xx-xxxx  
 CRAIG M. LEE, xxx-xx-xxxx  
 GORDON K. W. LEE, xxx-xx-xxxx  
 MELVIN K. F. LEE, xxx-xx-xxxx  
 MICHAEL G. LEE, xxx-xx-xxxx  
 TERRY S. H. LEE, xxx-xx-xxxx  
 ROBERT A. LEECH, xxx-xx-xxxx  
 DAYRE C. LIAS, xxx-xx-xxxx  
 ARTHUR J. LICHTER, xxx-xx-xxxx  
 RICHARD A. LIEN, xxx-xx-xxxx  
 CHARLES R. LINN, xxx-xx-xxxx  
 DAVID W. LINN, xxx-xx-xxxx  
 CHARLES B. LONG, xxx-xx-xxxx  
 LEVI D. LOWMAN, JR., xxx-xx-xxxx  
 LUKE L. LUCAS, xxx-xx-xxxx  
 MICHAEL A. LUFFRED, xxx-xx-xxxx  
 THOMAS P. LUTTERBIE, xxx-xx-xxxx  
 MICHAEL J. LYGA, xxx-xx-xxxx  
 STEPHEN D. MACARTHUR, xxx-xx-xxxx  
 DAVID F. MACGHEE, xxx-xx-xxxx  
 FRANK J. MACH, xxx-xx-xxxx  
 GENE A. MADDING, xxx-xx-xxxx  
 STEPHEN B. MADDOX, xxx-xx-xxxx  
 MARCOS J. MADRID, xxx-xx-xxxx  
 THOMAS A. MAHR, xxx-xx-xxxx  
 SANFORD D. MANGOLD, xxx-xx-xxxx  
 DENNIS P. MARKISELLO, xxx-xx-xxxx  
 ROBERT T. MARLOW, xxx-xx-xxxx  
 CHARLES W. MARTIN, xxx-xx-xxxx  
 RICHARD P. MARTIN, xxx-xx-xxxx  
 STEPHEN G. MASCHUE, xxx-xx-xxxx  
 GEORGE M. MATTINGLEY, JR., xxx-xx-xxxx  
 GILBERT E. MAYEUX, II, xxx-xx-xxxx  
 MICHAEL P. MCCALL, xxx-xx-xxxx  
 BENJAMIN F. MCCARTER, xxx-xx-xxxx  
 JOHN A. MCLANATHAN, JR., xxx-xx-xxxx  
 MICHAEL G. MCCONNELL, xxx-xx-xxxx  
 GUY F. MCCrackEN, xxx-xx-xxxx  
 WILLIAM M. MCCRARY, xxx-xx-xxxx  
 ROBERT N. MCNEANEY, xxx-xx-xxxx  
 MAURICE L. MCFANN, JR., xxx-xx-xxxx  
 EDWARD J. J. MCGANN, JR., xxx-xx-xxxx  
 STUART R. MCGHEE, xxx-xx-xxxx  
 CARL A. MCINTIRE, III, xxx-xx-xxxx  
 WILLIAM E. MCKEEVER, xxx-xx-xxxx  
 DOLAN M. MCKELVY, xxx-xx-xxxx  
 JAMES L. MCKINLEY, xxx-xx-xxxx



DANIEL J. MCMORROW, xxx-xx-xxxx  
MICHAEL F. MCPHERSON, xxx-xx-xxxx  
ROBERT C. MEAD, xxx-xx-xxxx  
ROY D. MEADOWS, xxx-xx-xxxx  
BILLY G. MEAZELL, xxx-xx-xxxx  
JOHN W. MEINCKER, xxx-xx-xxxx  
ROBERT L. MEINERT, xxx-xx-xxxx  
HAL R. MEYER, xxx-xx-xxxx  
DALE W. MEYERROSE, xxx-xx-xxxx  
RICHARD P. MICHAUD, xxx-xx-xxxx  
GORDON R. MIDDLETON, xxx-xx-xxxx  
ALLYN K. MILLS, xxx-xx-xxxx  
KING L. MILLS, III, xxx-xx-xxxx  
FRANK J. MISCIASCI, JR., xxx-xx-xxxx  
HENRY R. MITCHELL, xxx-xx-xxxx  
JOHN C. MOLLISON, JR., xxx-xx-xxxx  
RICHARD P. MOORE, xxx-xx-xxxx  
ROBERT P. MOORE, xxx-xx-xxxx  
JAMES W. MOREHOUSE, xxx-xx-xxxx  
CHARLES R. MORRIS, xxx-xx-xxxx  
ROBERT C. MORRIS, JR., xxx-xx-xxxx  
JAMES E. MORRISON, xxx-xx-xxxx  
DAVID J. MORROW, xxx-xx-xxxx  
ROBERT A. MOYER, xxx-xx-xxxx  
DANIEL J. MURAWINSKI, xxx-xx-xxxx  
DANIEL L. MURPHY, xxx-xx-xxxx  
DENNIS L. MURPHY, xxx-xx-xxxx  
KENNETH E. MURPHY, xxx-xx-xxxx  
PAUL E. MURR, xxx-xx-xxxx  
TERRANCE L. MURTAUGH, xxx-xx-xxxx  
ANTHONY E. NADDEO, xxx-xx-xxxx  
BILLY B. NAPIER, xxx-xx-xxxx  
KENT D. NELSON, xxx-xx-xxxx  
LESTER N. NELSON, xxx-xx-xxxx  
RONALD E. NELSON, xxx-xx-xxxx  
ROBERT W. NEUMANN, xxx-xx-xxxx  
FRANK L. NEWKIRK, xxx-xx-xxxx  
LEE A. NEWMAN, JR., xxx-xx-xxxx  
JOHN B. NIX, JR., xxx-xx-xxxx  
WRIGHT A. NODINE, JR., xxx-xx-xxxx  
DAVID J. NOLTING, xxx-xx-xxxx  
JAMES NORTON, JR., xxx-xx-xxxx  
ROBERT D. ODELL, xxx-xx-xxxx  
JEAN M. OESTREICH, xxx-xx-xxxx  
THOMAS W. OLMSTEAD, xxx-xx-xxxx  
JAMES R. OFFER, xxx-xx-xxxx  
THOMAS A. ORIORDAN, xxx-xx-xxxx  
ROBERT L. OSTRANDER, JR., xxx-xx-xxxx  
JAMES M. OWENDOFF, xxx-xx-xxxx  
RAYMOND W. OWENS, III, xxx-xx-xxxx  
RONALD E. OWENS, xxx-xx-xxxx  
JEFFREY S. PACE, xxx-xx-xxxx  
JOHN M. PACE, xxx-xx-xxxx  
WILLIAM P. PADGETT, xxx-xx-xxxx  
WILLIAM A. PAILES, xxx-xx-xxxx  
ROBERT L. PAINE, xxx-xx-xxxx  
ROBERT C. PAPE, xxx-xx-xxxx  
JAMES S. PARKER, xxx-xx-xxxx  
JAMES L. PATRICK, JR., xxx-xx-xxxx  
IRA S. PAUL, III, xxx-xx-xxxx  
ROBERT W. PAULI, xxx-xx-xxxx  
WILBERT D. PEARSON, JR., xxx-xx-xxxx  
DANIEL G. PENNY, JR., xxx-xx-xxxx  
TIMOTHY A. PEPPE, xxx-xx-xxxx  
JAMES M. PETEK, xxx-xx-xxxx  
BRUCE E. PETERS, xxx-xx-xxxx  
QUENTIN L. PETERSON, xxx-xx-xxxx  
ROBERT A. PETERSON, xxx-xx-xxxx  
RONALD J. PETERSON, xxx-xx-xxxx  
THOMAS M. PETTITMERMET, xxx-xx-xxxx  
JOHN J. PETTY, xxx-xx-xxxx  
CLYDE B. PHILLIPS, III, xxx-xx-xxxx  
JAMES G. PHILLIPS, xxx-xx-xxxx  
ROBERT D. PHILLIPS, xxx-xx-xxxx  
DONALD A. PHILPITI, xxx-xx-xxxx  
GARY J. PHILPITS, xxx-xx-xxxx  
JOHN B. PIAZZA, xxx-xx-xxxx  
RONALD L. PIERCE, xxx-xx-xxxx  
HEDY C. PINKERTON, xxx-xx-xxxx  
ROBERT J. PIRRIE, xxx-xx-xxxx  
CHARLES W. PITTS, xxx-xx-xxxx  
DAVID E. POPP, xxx-xx-xxxx  
JEFFREY M. POSNER, xxx-xx-xxxx  
THEODORE R. POWERS, JR., xxx-xx-xxxx  
JUSTUS V. PRICE, JR., xxx-xx-xxxx  
JOHN C. QUANDT, xxx-xx-xxxx  
JEFFREY A. RAMEL, xxx-xx-xxxx  
DAVID M. RANDERSON, xxx-xx-xxxx  
CRAIG P. RASMUSSEN, xxx-xx-xxxx  
DAVID C. RAUHECKER, xxx-xx-xxxx  
THOMAS E. REA, xxx-xx-xxxx  
JOHN A. REDDY, xxx-xx-xxxx  
CLARK G. REID, xxx-xx-xxxx  
DONALD S. REID, xxx-xx-xxxx  
RICHARD S. REID, JR., xxx-xx-xxxx  
LOREN M. RENO, xxx-xx-xxxx  
JAMES R. RHOADES, xxx-xx-xxxx  
REGNER C. RIDER, xxx-xx-xxxx  
DAVID M. RIGSBEE, xxx-xx-xxxx  
RICHARD H. RIMA, xxx-xx-xxxx  
VERNON S. RITCHEY, xxx-xx-xxxx  
RICHARD A. RITTER, xxx-xx-xxxx  
EARNEST O. ROBBINS, II, xxx-xx-xxxx  
JAMES N. ROBINSON, xxx-xx-xxxx  
JOHN R. ROBINSON, II, xxx-xx-xxxx  
AARON B. ROGERS, JR., xxx-xx-xxxx  
ANTHONY J. ROGET, xxx-xx-xxxx  
JAMES E. ROPER, xxx-xx-xxxx  
JERRY L. ROSS, xxx-xx-xxxx  
STEVEN J. ROSS, xxx-xx-xxxx  
RICHARD S. ROSZAK, xxx-xx-xxxx  
BENJAMIN S. ROTZ, xxx-xx-xxxx

THOMAS G. RUNGE, xxx-xx-xxxx  
WILLIAM C. RUSBY, xxx-xx-xxxx  
ROBERT L. RUTH, xxx-xx-xxxx  
CHARLES M. RUTLAND, xxx-xx-xxxx  
WILLIAM E. RUTTER, xxx-xx-xxxx  
JOSE L. SAENZ, xxx-xx-xxxx  
ARTHUR J. SAITTA, xxx-xx-xxxx  
THOMAS A. SAMPLES, xxx-xx-xxxx  
RAMON SANDOVAL, JR., xxx-xx-xxxx  
VINCENT J. SANTILLO, II, xxx-xx-xxxx  
RALPH S. SAUNDERS, JR., xxx-xx-xxxx  
JAMES A. SCHEIDEMAN, xxx-xx-xxxx  
JAMES M. SCHLICK, xxx-xx-xxxx  
MICHAEL W. SCHOENFELD, xxx-xx-xxxx  
MARVIN A. SCHOTT, xxx-xx-xxxx  
RICHARD W. SCHUETZ, xxx-xx-xxxx  
WILLIAM L. SCHWETKE, xxx-xx-xxxx  
DONALD C. SCOTT, xxx-xx-xxxx  
JAMES G. SCOTT, JR., xxx-xx-xxxx  
MICHAEL R. SCOTT, xxx-xx-xxxx  
WILLIAM A. SCOTT, xxx-xx-xxxx  
DONALD G. SEARLES, xxx-xx-xxxx  
JAMES F. SHAMBO, xxx-xx-xxxx  
GEORGE P. SHAMER, II, xxx-xx-xxxx  
JEFFREY S. SHAYER, xxx-xx-xxxx  
CHRIS W. SHAW, xxx-xx-xxxx  
DAVID W. SHOEMAKER, JR., xxx-xx-xxxx  
GARY L. SHOEMAKER, xxx-xx-xxxx  
RANDY C. SIEPMANN, xxx-xx-xxxx  
TERRY R. SILVESTER, xxx-xx-xxxx  
LARRY C. SIMMONS, xxx-xx-xxxx  
CHARLES N. SIMPSON, xxx-xx-xxxx  
CARL D. SKAKAL, JR., xxx-xx-xxxx  
ROBERT A. SKOLASKY, xxx-xx-xxxx  
JAMES H. SLAGLE, xxx-xx-xxxx  
JOHN T. SLANKAS, xxx-xx-xxxx  
DAVID F. SLAGHTER, xxx-xx-xxxx  
JOHN T. SMALL, JR., xxx-xx-xxxx  
DAN O. SMITH, xxx-xx-xxxx  
GEORGE B. SMITH, xxx-xx-xxxx  
JAMES B. SMITH, xxx-xx-xxxx  
LARRY F. SMITH, xxx-xx-xxxx  
ANDREW W. SMOAK, xxx-xx-xxxx  
MICHAEL E. SOLOMON, xxx-xx-xxxx  
DAVID L. SONNENBERG, xxx-xx-xxxx  
DAVID W. SPICER, xxx-xx-xxxx  
DAVID L. SPRACHER, xxx-xx-xxxx  
LEON A. STAMM, xxx-xx-xxxx  
RONNIE A. STANFILL, xxx-xx-xxxx  
F. RANDALL STARBUCK, xxx-xx-xxxx  
WILLIAM N. STARNES, JR., xxx-xx-xxxx  
WILLIAM R. STEELE, xxx-xx-xxxx  
HERBERT N. STEINER, xxx-xx-xxxx  
JOSEPH C. STEIN, xxx-xx-xxxx  
JOSEPH P. STEIN, xxx-xx-xxxx  
JAMES J. STERZINGER, xxx-xx-xxxx  
WILLIAM E. STEVENS, xxx-xx-xxxx  
BILLY K. STEWART, xxx-xx-xxxx  
GARY L. STEWART, xxx-xx-xxxx  
WILLIAM K. STILLWELL, xxx-xx-xxxx  
RICHARD R. STIMER, JR., xxx-xx-xxxx  
RICHARD L. STOCCHETTI, xxx-xx-xxxx  
LARRY W. STONE, xxx-xx-xxxx  
DAVID E. STOREY, xxx-xx-xxxx  
JAY P. STRETCH, xxx-xx-xxxx  
DAVID C. STRICK, xxx-xx-xxxx  
STEVEN R. STURM, xxx-xx-xxxx  
RONALD J. SULLIVAN, xxx-xx-xxxx  
RAYMOND D. SUMMERS, xxx-xx-xxxx  
TIMOTHY P. SUTHERLAND, xxx-xx-xxxx  
CHARLES M. SWAGER, xxx-xx-xxxx  
JOHN G. SWAIN, III, xxx-xx-xxxx  
GEORGE H. SWEETNAM, JR., xxx-xx-xxxx  
OZRO S. SWETT, JR., xxx-xx-xxxx  
ELMER F. SYMSACK, xxx-xx-xxxx  
ROMAN SYNCHAK, xxx-xx-xxxx  
THOMAS E. SYSTER, xxx-xx-xxxx  
FRANK R. TAGUE, xxx-xx-xxxx  
TERRY R. TALBOT, xxx-xx-xxxx  
VICTOR J. TAMBONE, xxx-xx-xxxx  
JOHN G. TAYLOR, III, xxx-xx-xxxx  
LOUIS S. TAYLOR, xxx-xx-xxxx  
JERRY L. THIGPEN, xxx-xx-xxxx  
KENNETH L. THOMAS, xxx-xx-xxxx  
JERRY J. THORIUS, xxx-xx-xxxx  
FREDERICK G. THOUROT, III, xxx-xx-xxxx  
THOMAS E. THURSTON, xxx-xx-xxxx  
DANIEL M. TIBBETTS, xxx-xx-xxxx  
TIMOTHY T. TIMMONS, xxx-xx-xxxx  
ROBERT J. TOMCZAK, xxx-xx-xxxx  
THOMAS A. TOOPS, xxx-xx-xxxx  
OLIVER D. TOWNS, xxx-xx-xxxx  
RAY E. TOWNSEND, xxx-xx-xxxx  
CARY R. TRAFONT, xxx-xx-xxxx  
LEONARD J. TROVERO, JR., xxx-xx-xxxx  
ALAN E. M. TUCKER, xxx-xx-xxxx  
GARY L. TUCKER, xxx-xx-xxxx  
CHARLES F. TURK, xxx-xx-xxxx  
MARC C. TURNER, xxx-xx-xxxx  
RONALD F. TUTTLE, xxx-xx-xxxx  
BRUCE L. ULLMAN, xxx-xx-xxxx  
DAVID C. UNDERWOOD, xxx-xx-xxxx  
DENNIS D. UNDERWOOD, xxx-xx-xxxx  
ROBERT F. UNGER, xxx-xx-xxxx  
JEFFREY L. UPP, xxx-xx-xxxx  
DALE M. VANDEHEY, xxx-xx-xxxx  
JOHN M. VOLPE, xxx-xx-xxxx  
MICHAEL G. VOSMEIER, xxx-xx-xxxx  
MICHAEL VOSS, xxx-xx-xxxx  
JAMES D. WALKER, xxx-xx-xxxx  
RONALD R. WALL, xxx-xx-xxxx  
KENNETH V. WALSH, xxx-xx-xxxx

WILLIAM L. WALTERS, xxx-xx-xxxx  
GLENN C. WALTMAN, xxx-xx-xxxx  
SCOTT L. WANGEN, xxx-xx-xxxx  
JOSEPH B. WARREN, II, xxx-xx-xxxx  
RONALD H. WASSOM, xxx-xx-xxxx  
RICHARD L. WEAVER, xxx-xx-xxxx  
RUSSELL L. WEAVER, JR., xxx-xx-xxxx  
WILLIAM S. WEAVING, xxx-xx-xxxx  
RICHARD E. WEBBER, xxx-xx-xxxx  
GARY L. WEIKEL, xxx-xx-xxxx  
STAN G. WEIR, xxx-xx-xxxx  
MICHAEL WEITMAN, xxx-xx-xxxx  
MICHAEL P. WEITZEL, xxx-xx-xxxx  
J. D. WELLS, xxx-xx-xxxx  
MICHAEL P. WELSH, xxx-xx-xxxx  
DAYLE A. WEST, xxx-xx-xxxx  
GREGG A. WHEELER, xxx-xx-xxxx  
CULLEN L. WHITE, xxx-xx-xxxx  
ROBERT E. WHITE, xxx-xx-xxxx  
CHARLES J. WHITECHURCH, xxx-xx-xxxx  
JOHN C. WHITESIDE, III, xxx-xx-xxxx  
JAMES F. WHITING, xxx-xx-xxxx  
CARLETON H. WHITTAKER, JR., xxx-xx-xxxx  
MICHAEL P. WIEDEMER, xxx-xx-xxxx  
FRANK B. WILLE, xxx-xx-xxxx  
FREDERICK L. WILLIAMS, xxx-xx-xxxx  
JAMES E. WILLIAMS, xxx-xx-xxxx  
ROBERT O. WILLIAMS, xxx-xx-xxxx  
ROBERT T. WILLIAMS, xxx-xx-xxxx  
RONALD C. WILLIAMS, xxx-xx-xxxx  
RONALD S. WILKKE, xxx-xx-xxxx  
BARRY S. WILSON, xxx-xx-xxxx  
ROBERT S. WILSON, xxx-xx-xxxx  
RONALD A. WINTER, xxx-xx-xxxx  
GARY A. WINTERBERGER, xxx-xx-xxxx  
GARY M. WISTROM, xxx-xx-xxxx  
THOMAS V. WITTMAN, xxx-xx-xxxx  
JOHN D. WOLF, xxx-xx-xxxx  
NEAL E. WOLFARD, JR., xxx-xx-xxxx  
DAVID R. WOLFE, xxx-xx-xxxx  
JAMES C. WOLFE, xxx-xx-xxxx  
ROBERT E. WOLFF, xxx-xx-xxxx  
ROBERT R. WOODS, xxx-xx-xxxx  
MICHAEL W. WOOLEY, xxx-xx-xxxx  
CHARLES K. YARD, xxx-xx-xxxx  
PHILIP K. YASUHARA, xxx-xx-xxxx  
HERMAN W. YOUNGBLOOD, xxx-xx-xxxx  
JONATHAN E. ZALL, xxx-xx-xxxx  
GLENN R. ZAUBER, xxx-xx-xxxx  
ROBERT A. ZIENER, xxx-xx-xxxx  
JAMES F. ZORN, xxx-xx-xxxx

CHAPLAIN CORPS

To be colonel

JACK W. ELLIOTT, xxx-xx-xxxx  
RALPH A. GUETERSLOFF, xxx-xx-xxxx  
JAMES P. HALL, xxx-xx-xxxx  
WILLIAM P. HANRAHAN, xxx-xx-xxxx  
DONALD R. HUDSON, xxx-xx-xxxx  
RICHARD K. KNOWLES, xxx-xx-xxxx  
ROBERT S. LEEDS, xxx-xx-xxxx  
BOBBY C. THORNTON, xxx-xx-xxxx  
ROGER A. WITHEE, xxx-xx-xxxx

JUDGE ADVOCATE

To be colonel

JOHN M. ABBOTT, xxx-xx-xxxx  
ALBERT J. CUNNINGHAM, JR., xxx-xx-xxxx  
BRADLEY J. DEAUSTIN, xxx-xx-xxxx  
THOMAS J. FISCUS, xxx-xx-xxxx  
CRAIG L. HEAD, xxx-xx-xxxx  
LAKE B. HOLT, III, xxx-xx-xxxx  
MICHAEL J. HOOVER, xxx-xx-xxxx  
DOUGLAS H. KOHRT, xxx-xx-xxxx  
MICHAEL N. MADRID, xxx-xx-xxxx  
RICHARD A. MCDONALD, xxx-xx-xxxx  
SUSAN P. MCNEILL, xxx-xx-xxxx  
JEFFREY R. OWENS, xxx-xx-xxxx  
JOEL M. OXLEY, xxx-xx-xxxx  
MARK L. SUCHER, xxx-xx-xxxx  
CHARLES H. WILCOX, II, xxx-xx-xxxx

NURSE CORPS

To be colonel

MARTHA C. MARON, xxx-xx-xxxx  
KATHRYN M. RAINES, xxx-xx-xxxx  
NINA K. RHOTON, xxx-xx-xxxx  
MYRIAM SANTIAGO, xxx-xx-xxxx  
ELIZABETH A. SCANNELL, xxx-xx-xxxx  
BONNIE J. SCUDDER, xxx-xx-xxxx  
SUANNE SMITH, xxx-xx-xxxx  
SANDRA L. STANLEY, xxx-xx-xxxx  
MARY P. SULLIVAN, xxx-xx-xxxx  
CAROL A. TOMS, xxx-xx-xxxx

MEDICAL SERVICE CORPS

To be colonel

ROBERT H. BRANNON, xxx-xx-xxxx  
DARRELL E. EICKHOFF, xxx-xx-xxxx  
TIMOTHY J. ELDER, xxx-xx-xxxx  
JACK A. GUPTON, xxx-xx-xxxx  
JAMES J. HOOPER, III, xxx-xx-xxxx  
STEPHEN P. JONES, xxx-xx-xxxx  
JOHN D. LABASH, xxx-xx-xxxx  
ROBERT J. MOSS, JR., xxx-xx-xxxx  
ROLAND J. ROGER, xxx-xx-xxxx  
GARY J. SEITZ, xxx-xx-xxxx  
JOHN R. SHEEHAN, xxx-xx-xxxx

ROBERT E. SHIELDS, [redacted]  
JAMES T. VANDEHEY, [redacted]

BIOMEDICAL SCIENCES CORPS

To be colonel

- THOMAS R. ADAMS, [redacted]
- ROBERT N. BROOKS, [redacted]
- MICHAEL H. BROWNE, [redacted]
- ROBERT L. CRANE, [redacted]
- RAY M. CROSBY, [redacted]
- JAMES E. DALE, [redacted]
- LYNN A. FRANCIS, [redacted]
- JOHN G. GOLDEN, [redacted]
- JAY M. HOWARD, [redacted]
- NEIL J. LAMB, [redacted]
- JAMES M. LIVINGSTON, [redacted]
- EDWARD F. MAHER, [redacted]
- JOSEPH A. MARTONE, [redacted]
- GERALD J. MERRITT, [redacted]
- SUSAN R. OKONSKI, [redacted]
- LINDA J. TOWNSEND, [redacted]
- THOMAS J. WALKER, [redacted]
- GARY A. WANDMACHER, [redacted]
- RONALD D. WARNER, [redacted]

CONFIRMATIONS

Executive Nominations Confirmed by the the Senate September 17, 1990:

NATIONAL COUNCIL ON DISABILITY

- LARRY BROWN, JR., OF MARYLAND, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 1992.
- HELEN WILSHIRE WALSH, OF CONNECTICUT, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 1993.

NATIONAL SCIENCE FOUNDATION

BERNARD F. BURKE, OF MASSACHUSETTS, TO BE A MEMBER OF THE NATIONAL SCIENCE BOARD, NATIONAL SCIENCE FOUNDATION FOR A TERM EXPIRING MAY 10, 1996.

THOMAS B. DAY, OF CALIFORNIA, TO BE A MEMBER OF THE NATIONAL SCIENCE BOARD, NATIONAL SCIENCE FOUNDATION FOR A TERM EXPIRING MAY 10, 1996.

JAMES JOHNSON DUDERSTADT, OF MICHIGAN, TO BE A MEMBER OF THE NATIONAL SCIENCE BOARD, NATIONAL SCIENCE FOUNDATION FOR A TERM EXPIRING MAY 10, 1996.

DEPARTMENT OF STATE

EDWIN D. WILLIAMSON, OF SOUTH CAROLINA, TO BE LEGAL ADVISER OF THE DEPARTMENT OF STATE.

INTERNATIONAL JOINT COMMISSION, UNITED STATES AND CANADA

ROBERT F. GOODWIN, OF MARYLAND, TO BE A COMMISSIONER ON THE PART OF THE UNITED STATES ON THE INTERNATIONAL JOINT COMMISSION, UNITED STATES AND CANADA.

EXECUTIVE OFFICE OF THE PRESIDENT

JOSEPH FRANCIS GLENNON, OF FLORIDA, TO BE A MEMBER OF THE ADVISORY BOARD FOR CUBA BROADCASTING FOR A TERM EXPIRING OCTOBER 27, 1991.

U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

CAROLYN D. LEAVENS, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION FOR A TERM EXPIRING DECEMBER 17, 1990.

CAROLYN D. LEAVENS, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE

OVERSEAS PRIVATE INVESTMENT CORPORATION FOR A TERM EXPIRING DECEMBER 17, 1993.

DEPARTMENT OF STATE

JAMES D. WATKINS, OF CALIFORNIA, TO BE THE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE THIRTY-FOURTH SESSION OF THE GENERAL CONFERENCE OF THE INTERNATIONAL ATOMIC ENERGY AGENCY.

RICHARD T. KENNEDY, OF THE DISTRICT OF COLUMBIA, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE THIRTY-FOURTH SESSION OF THE GENERAL CONFERENCE OF THE INTERNATIONAL ATOMIC ENERGY AGENCY.

MICHAEL H. NEWLIN, OF MARYLAND, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE THIRTY-FOURTH SESSION OF THE GENERAL CONFERENCE OF THE INTERNATIONAL ATOMIC ENERGY AGENCY.

KENNETH M. CARR, OF CALIFORNIA, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE THIRTY-FOURTH SESSION OF THE GENERAL CONFERENCE OF THE INTERNATIONAL ATOMIC ENERGY AGENCY.

U.S. ADVISORY COMMISSION ON PUBLIC DIPLOMACY

TOM C. KOROLOGOS, OF VIRGINIA, TO BE A MEMBER OF THE UNITED STATES ADVISORY COMMISSION ON PUBLIC DIPLOMACY FOR A TERM EXPIRING JULY 1, 1993.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

FOREIGN SERVICE

FOREIGN SERVICE NOMINATIONS BEGINNING PHILIP-MICHAEL GARY, AND ENDING BRIAN R. STICKNEY, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 10, 1990.