The Senate met at 9:10 a.m., on the expiration of the recess, and was called to order by the Honorable Her­ bert Kohl, a Senator from the State of Wisconsin.

The PRESIDING OFFICER. The prayer will be offered by the Reverend John E. Stait, Assistant to the Chap­ lain.

PRAYER

The Reverend John E. Stait, Assistant to the Chaplain, U.S. Senate, Washington, DC, offered the following prayer:

Let us pray:

Verity I say unto you, Whatever ye shall bind on earth shall be bound in heaven, and whatsoever ye shall loose on earth shall be loosed in heaven.—Matt. 18:18 KJV.

Except the Lord build the house, they labour in vain that build it: except the Lord keep the city, the watchman waketh but in vain.—Psalm 127:1 KJV.

Almighty God of the Universe, Lord of Heaven and Earth. It is an awesome responsibility we have on Earth to be involved in government, to bind things on Earth that have eternal significance even in ways we are completely unaware of.

Our forefathers were aware of the sacredness of the task and even designed our Nation's Capitol like a cathedral as a constant reminder. Help the Senators and all in leadership to be reminded. Help them to be aware of You and to be receptive of Your guidance in their lives. Help us all to be receptive and aware of whether we are cooperating with You or laboring in vain.

In the name of Him who promised to be with us always, even unto the end of the world. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U. S. SENATE,
PRESIDENT PRO TEMPORE,
WASHINGTON, DC, OCTOBER 24, 1990.

To the Senate:

Under the provisions of Rule I, Section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable Herbert Kohl, a Senator from the State of Wisconsin, to perform the duties of the Chair.

Rossler C. Byrd, President pro tempore.

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

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tem­ po re. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tem­ po re. Under the previous order, there will now be a period for the transac­ tion of morning business not to exceed beyond the hour of 9:30 a.m.

In my capacity as a Senator from the State of Wisconsin, I suggest the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tem­ po re. Without objection, it is so ordered.

SENATOR WILLIAM COHEN HAS MADE A LASTING CONTRIBUTION TO INTELLIGENCE OVERSIGHT

Mr. BOREN. Mr. President, in January 1987, Senator Bill Cohen of Maine became vice chairman of the Senate Select Committee on Intelligence. With the close of this Congress he will step down from that position as his 8-year term as a member of the committee comes to an end. It has been my privilege to chair the committee and to work closely with Senator Cohen during these past few years. When the history of the intelligence oversight process is written, no one will have made more long lasting contributions to the fairness and effectiveness of that process than my colleague from Maine.

Working closely with another person on a daily basis on highly sensitive issues related to national security certainly gives an opportunity for evaluating that person and his performance. My experience in working with Senator Cohen these past 4 years has left me with the greatest admiration for his ability, his moral courage, and his true love for his country. Time and time again he set aside his own personal interest in order to protect the national interest. While we are of different parties and sometimes have honest differences of opinion, I have deep respect for him as a person and as a Senator. Senator Bill Cohen would easily make any list of the most capable half dozen Members of the Senate. He ranks with the best of those who have served in this great institution over the past two centuries.

From the very beginning Senator Cohen and I attempted to work together as a team to establish a bipartisan spirit in the Intelligence Committee. We knew that on issues of national security, we needed to think as Americans and not as Republicans or Democrats. In that spirit we created a nonpartisan policy in the hiring of professional committee staff.

Senator Cohen also strongly supported strict rules and policies to stop the leaking of sensitive information to restore confidence and trust in the intelligence oversight process. No compromise of any important sensitive information has occurred as a result of actions by committee members or staff during his 4 years that Bill Cohen has served as vice chairman of that committee.

During the Cohen vice chairmanship, the committee has been restructured with periodic and systematic tracking and review of all covert action programs in force.

A new special audit unit has been formed as a part of the Senate Intelligence Committee staff to provide independent information about the operation of our most secret programs. This is the first time that the oversight process has had that kind of independent monitoring capability. The office of a statutory inspector general has also been established at the CIA.

Senator Cohen also assisted in negotiations with the White House on a series of reforms in the way in which covert action programs are initiated. Included in these reforms is a requirement that Presidential covert action orders or findings be written and nonretroactive, and include information about any involvement by other governments or private parties. These are the most significant reforms to result from the Iran/Contra hearings.

Senator Cohen has taken the lead in efforts to strengthen the counterintelligence program in the Government in order to reduce the costly compromises of technical and military programs of spies and foreign agents.
He has helped to begin a process for reshaping the CIA and the Intelligence Community to meet new challenges in a post-cold war environment. As economic competition begins to replace military competition, economic conflicts pose greater risks than superpower confrontations, the CIA will need very different capabilities especially in the area of human intelligence and analysis. Bill Cohen has made the most important contribution to that process of change.

The Intelligence Committee is a unique committee. The members are asked to serve as trustees for the rest of the Senate and for the American people. It was established to make certain that the most secret programs of our Government would be carried out in an effective and cost-efficient manner, and above all in a manner consistent with the democratic and moral values of the American people. For the past 8 years as a member of the Senate Intelligence Committee, and the last 4 years as its chairman, Senator Bill Cohen has measured up to the trust which has been placed in him. Without regard to party or faction, Senator Cohen deserves the appreciation of all Americans. He is a statesman in an era in which statesmanship has been tragically in short supply.

Mr. President, I thank my colleagues. I yield the floor.

Mr. KERREY addressed the Chair. The ACTING PRESIDENT pro tem. The Senator from Nebraska is recognized.

Mr. KERREY. Mr. President, let me add to the remarks of the distinguished Senator from Oklahoma.

I, too, share his admiration for the distinguished Senator from Oklahoma. I yield to Senator Cohen as being a leading figure in making certain that our intelligence operation is an effective one.

If it were to be written a couple of years from now it is apt to be the case that the distinguished Senator from Oklahoma would be identified as well as someone who has brought new credibility, and as well I think a new focus to the operation of our Intelligence-gathering work. He certainly has made it an awful lot easier for those of us who are not on the Intelligence Committee to understand what needs to be done, to understand the relationship of this effort to our own efforts, and had made it an awful lot easier for us to be comfortable in fact that this operation is being done with the best interests of the United States in mind.

I applaud the efforts of the distinguished Senator from Maine whom he identified in his remarks.

THE GULF CRISIS

Mr. KERREY. Mr. President, in a matter of days, and hopefully a matter of hours, Congress will adjourn. We will leave Washington quickly. We will return home trying to persuade constituents out of their sound instinct that this Congress has done very little to reduce the deficit, invest in America's future, or otherwise advance their interests.

Depending upon where we live, we will go home to an economy either in a recession, or where people will be wondering when the slowdown will reach them. We will hear stories about capital shortages—in thrifts, banks, and in insurance companies—made worse by our end game deficit reduction dance with the President.

Between our adjournment and the beginning of the next Congress the news will focus upon domestic issues. I predict the President will take note of this and will present a State of the Union Address which includes an aggressive and underfunded domestic agenda.

Before the beginning of the next Congress the political and economic scene in the Soviet Union will deteriorate further. The Conventional Force Treaty presented at Paris at the Conference on Security and Cooperation in Europe will seem hopelessly behind the times. And Soviet strategic capabilities—which still drive our own nuclear modernization efforts—will look much different to us as the Soviet republics pull further and further apart.

When we return to Congress, the strategy needed for America's defense will appear different. Not only will our current funding levels look excessive, but the nature of the risk will continue to change before our eyes. Perhaps then we will begin a serious discussion of military conversion rather than merely the accounting expressions and recalculations which have followed this year's analysis of the peace dividend. This military conversion will require a commitment of Americans like the one given in any war. Business as usual will not work. Appropriations cannot be a process dominated by legislative or executive pork. What is needed for the 1990's is a higher purpose: the rebuilding, retraining, and retooling of America.

This year the gulf crisis made us timid in addressing domestic needs; next year it must be more bold. Next year it will be clear: A convergence of the end of the cold war, the cost of the gulf effort, and economic stagnation will necessitate a new look at the future.

Mr. President, I raise not just to predict what we will face when we return in January, but also because I am deeply concerned that our departure will complete another kind of convergence, a convergence of forces pulling us toward war in the Persian Gulf.

For this month we leave more than Washington. We also leave over 200,000 American troops and their commanders stationed in the gulf—hot, frustrated, impatient. We leave with the Army commander asking the President for authority to deploy an additional 100,000 GIs.

We leave a President who has been known to use force when Congress was out of session. We leave a Secretary of Defense who confided "it was an advantage that Congress was out of town" when he first deployed troops to the gulf. We leave a Secretary of State who says it is impossible to rely on advance congressional authorization before using force in the gulf. And we leave an administration, on the verge of midterm elections, the strength of its convictions newly challenged, grappling with a bungled budget, a looming recession, and declining popularity.

I do not believe this or any President would ever unleash a war for political purposes. But I am not convinced this administration will do everything in its power to avoid war with this constellation of influences tugging at it to take action.

Mr. President, if ever there was an avoidable war, it is this one. If ever there was a circumstance where the political leaders with the responsibility to make the final decisions are afraid of the political consequences of falling, it is this one.

The United States and the broad international coalition we have assembled have the upper hand in the gulf. Our hand has been strengthened by an unprecedented, effective economic embargo, and military blockade; strengthened by the successful assembly of troops that stopped Iraqi aggression at the Saudi border; strengthened by the determined certainty that atrocities by Saddam Hussein to grab Kuwait's northern oil fields. The question is:
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WHERE does the administration's principled unwillingness to pursue diplomatic solutions lead? It could lead to the kind of overreaction to terrorism that has crippled U.S. foreign policy more than once in recent history. It could lead to the martyrdom of Saddam Hussein. It could lead to an expenditure of American blood and treasure which has been authorized by neither the American public nor its Representatives in Congress.

I have lived through two wars—one cold and one hot. I confess that the results of each of those wars changed my initial thoughts about their merits. I did not fight in World War II, although I may have been born because of it. My memories begin instead with the early days of the cold war. Duck and cover drills; Weekly Reader and Readers Digest stories about the dangers of Communist subversion. Although I grew up amid the violent energy of those who feared the red tide, my cold war experiences did not make me a passionate anti-Communist.

My participation in the fight against the Communists of North Vietnam was a direct consequence of the draft and a sense of duty than it was a response to the call to "pay any price, bear any burden." The more advanced my military training the less thought I gave to the political objectives of my enemy.

But after returning to the United States and upon my release from the Philadelphia Hospital I was asked: For that cause, and this cost, would I do it again? My answer was: "No, I would not."

I denied my own bitterness and confusion. Consumed by anger toward leaders and promised peace with honor, secret plans to end the war, appeared phony and insincere. That Nation made an important and firm containment.

Sustained over time. That is not true for our economic response. That experience stands in sharp contrast to the verdict I have reached about the cold war, some four decades after its historic beginning. Today I look at the new freedoms and promise that fill people's lives in the former Eastern bloc. I hear the grateful words of Vaclav Havel and Lech Walesa. And I know that while they have secured their own liberty, our Nation made an important contribution to Eastern Europe's freedom with our patient policy of quiet pressure and firm containment.

We were right, across those decades, to commit our resources; to draw the line; to expose the egalitarian rhetoric of Stalin and his heirs as a flimsy front for the hard realities of persecution, murder, and the gulag. Likewise, we were right if we exercised the same patience and seriousness of purpose in ending the violence that has since claimed the lives of Nelson Mandela and others whose humanity has been denied by apartheid in South Africa.

We are right, in the same way, to stand up to Saddam Hussein. We are right if we work to establish a genuinely international force—not one where Iraq's aggression against Kuwait has crippled. We are right if we work to establish a genuinely international force—not one where the Gulf States will keep the gulf to the real battle for our way of life here at home. For we will not find our moment of opportunity out on the midnight sands of the Arabian Peninsula. That opportunity is here, in the spirit of our families; in the hands of our workers; in the minds of our students; in the hopeful eyes of our children. I pray President Bush will understand and remember that during the weeks to come.

Mr. President, in a few moments the distinguished Senator from Massachusetts will lead an effort to override the veto of the civil rights legislation, legislation important to provide equality in the workplace. In addition to that, there is a whole range of issues that I believe we must pay attention to at home if we are going to build the kind of strength this Nation is going to need if it is going to advance in the 21st century with the capacity to still stand forcefully for all men and women in the world and lead the world.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

CIVIL RIGHTS ACT OF 1990—VETO

The ACTING PRESIDENT pro tempore. The Chair lays before the Senate the President's veto message on S. 2104, which the clerk will state.

The legislative clerk read as follows:
Yeto message on S. 2104 entitled "Civil Rights Act of 1990."

The veto message is as follows:

To the Senate of the United States:

I am today returning without my approval S. 2104, the "Civil Rights Act of 1990." I deeply regret having to take this action with respect to a bill bearing such a title, especially since it contains certain provisions that I strongly endorse.

Discrimination, whether on the basis of race, national origin, sex, religion, or disability, is worse than wrong. It is a fundamental evil that tears at the fabric of our society, and one that all Americans should want to oppose. That requires rigorous enforcement of existing antidiscrimination laws. It also requires vigorously promoting new measures such as this year's civil rights bill.

Differences. Despite the use of the term "civil rights" in the title of S. 2104, the bill actually employs a maze of highly legalistic language to introduce the destructive force of quotas into our Nation's employment system. Primarily through provisions governing cases in which employment practices are alleged to have unintentionally caused the disproportionate exclusion of members of certain groups, S. 2104 creates powerful incentives for employers to adopt hiring and promotion quotas. These incentives are created by the bill's new and very technical rules of litigation, which will make it difficult, if not impossible, to challenge legitimate employment practices. In many cases, a defense against unfounded allegations will be impossible. Among other problems, the plaintiff often need not even show that any of the employer's practices caused a significant statistical disparity. In other cases, the employer's defense is confined to an unduly narrow definition of "business necessity" that is significantly more restrictive than that established by the Supreme Court in Griggs and in two decades of subsequent decisions. Thus, unable to defend legitimate practices in court, employers will be driven to adopt quotas in order to avoid liability.

Proponents of S. 2104 assert that it is needed to overturn the Supreme Court's Wards Cove decision and restore the law that had existed since the Griggs decision. However, as I have pointed out, the Griggs decision does not in fact codify Griggs or the Court's subsequent decisions prior to Wards Cove. Instead, S. 2104 engages in a sweeping rewrite of two decades of Supreme Court jurisprudence, a rewriting that appears in no language in the title of the Court and that is contrary to principles acknowledged even by Justice Steven's dissent in Wards Cove: "The opinion in Griggs made it clear that a neutral practice that operates to exclude minorities is nevertheless lawful if it serves a valid business purpose."

I am aware of the dispute among lawyers about the proper interpretation of the law, but the fact remains that S. 2104, however it is phrased, is not in any sense identical to the bill actually employed by Griggs or the subsequent cases. I urge the Senate to adopt a resolution to which they have agreed in the Labor Committee to preserve the existing law.

Our goal and our promise has been equal opportunity and equal protection for all citizens. This bill does not offer the legislation that the law expects.

Again, I urge the Congress to act on my legislation before adjournment. In order truly to enhance equal opportunity, however, the Congress must also take action in several related areas. The elimination of employment discrimination is a vital element in achieving the American dream, but it is not enough. The absence of discrimination will have little concrete meaning unless jobs are available and the members of all groups have the skills and education needed to qualify for those jobs. Nor can we expect that our young people will work hard to prepare for the future if they grow up in a climate of violence, drugs, and hopelessness.

In order to address these problems, attention must be given to measures...
that promote accountability and parental choice in the schools; that strengthen the fight against violent crime; and drug dealers in our inner cities; and that help to combat poverty and inadequate housing. We need initiatives that will empower individual Americans and enable them to reclaim control of their lives, thus helping to make our country's promise of opportunity a reality for all. Enactment of such initiatives, along with my Administration's civil rights bill, will achieve real advances for the cause of equal opportunity.

GEORGE BUSH.

THE WHITE HOUSE, October 22, 1990.

The Senate proceeded to reconsider the bill.

The ACTING PRESIDENT pro tempore. The question is, Shall the bill (S. 2104) have precedence over other business.

Mr. KENNEDY addressed the Chair.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I understand that the remaining time prior to 11:30 a.m. is equally divided; is that correct?

The ACTING PRESIDENT pro tempore. The Senator is correct.

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

Mr. President, with this shameful veto, President Bush has placed himself on the wrong side of history and the wrong side of civil rights.

The two-century-old struggle to erase the legacy of slavery and redeem the promise of America for all citizens has not been a partisan effort. It has been a joint national undertaking, and it has brought great credit to both political parties in recent years.

The landmark civil rights laws enacted by Congress in the past quarter century were achieved in a spirit of true national reconciliation.

Distinguished Senators from the Republican and Democratic Parties came together, putting principle above partisanship, in order to advance the uniquely American ideals of equal justice under law and equal opportunity for all.

That bipartisan tradition in Congress has continued to this day.

The Civil Rights Restoration Act, the Fair Housing Amendments Act, the Americans with Disabilities Act—one would be law today if it were not for the leadership of Republican as well as Democratic Senators.

The Civil Rights Act of 1990 is part of that historic tradition.

It was introduced with bipartisan support earlier this year in response to a series of Supreme Court decisions that were clear setbacks for civil rights.

Throughout the past 8 months, Senators Metzenbaum, Simon and I, and Senators Jeffords, Danforth, Specter and others, have worked together to refine the issues and develop broad support for this legislation. To a large extent, I believe we have succeeded.

Unfortunately, that bipartisan effort has not been matched by the Administration. From the outset, the President's advisers have viewed the Supreme Court's retreats on civil rights as victories for their narrow constituencies, not as defeats for the Nation's high ideals. Attorney General Thornburgh has referred to those decisions as cases won by the Justice Department. White House Counsel Boyden Gray believes that the key Supreme Court case which this bill is seeking to reverse—the Wards Cove decision—was correctly decided.

Perhaps the full story will never be known about the events of the past 8 months that led us to this veto. At several stages along the way, many of us genuinely believed that the White House was negotiating in good faith. But on every occasion when we felt a compromise was within our grasp, the White House advisers always pulled back, and raised additional objections or submitted patently unreasonable new proposals.

To some extent, President Bush is at the mercy of his lawyers. The Civil Rights Act of 1990 involves a number of complex legal issues that are difficult for laymen to understand. Any lawyer worth his salt, and certainly not a lawyer who is an adviser to the President of the United States, should throw sand in the gears of civil rights. Yet that is what Attorney General Thornburgh and White House Counsel Boyden Gray have done.

I am not alone in this view. Many, many people with whom I have talked in recent weeks and who are familiar with the negotiations on this bill are deeply troubled by this veto. They feel that the White House advisers have done a serious disservice to the President and to the country. Instead of searching in good faith for a compromise, the White House has negotiated in bad faith and sought to cover up its opposition to civil rights.

Although there are other important provisions in this legislation, the issue that has dominated the many months of this debate is how to deal with so-called "disparate impact" cases. In these cases, intentional job discrimination is not alleged, but job discrimination still results—because certain subtle and not-so-subtle practices used by employers in making decisions it is difficult for victims of this insidious form of job discrimination to win their case in court.

All of us in Congress who are committed to civil rights recognized the inherent implications of the Wards Cove decision. There was an immediate outcry over what the Court had done.

From the beginning, a key component of the momentum driving the Civil Rights Act of 1990 was the need to overturn the Wards Cove ruling and reinstate the Griggs case. This bill has been vetoed—not because we failed to achieve that goal in our legislation—we did. It has been vetoed because the administration, while paying lip service to reinstating Griggs, is bent on salvaging as much of the Wards Cove decision as it can.

That is why the quota argument is such a transparent smokescreen for the administration's antivils rights position.

No one has to guess about whether this legislation would encourage employers to resort to quotas. It will not. For 18 years, the rule of law we are trying to reinstate was on the books. It was the law of the land from 1971 to 1989. Throughout all those 18 years, there is not a shred of evidence that any employer felt obliged to resort to quotas.

Ask your lawyers, Mr. President, how this can possibly be a quota bill, if the very same rule of law was in effect for 18 years, and it never led to quotas.

This is an antidiscrimination bill, not a quota bill. And if President Bush were genuinely committed to civil rights, he would have signed it instead of vetoing it.

Throughout the legislative process, we have repeatedly modified the provision to ensure that it fairly and clearly reflects the Griggs decision.

We modified it first as a result of discussions with Senator Danforth. We modified it in an effort to address the concerns raised by the administration during the course of our negotiations.
We modified it a third time by including the text of the amendment proposed on the Senate floor by Senator Paxon, declaring that the mere existence of a statistical imbalance in an employer’s work force or the amount of race, color, religion, sex or national origin does not create a violation of the law.

To remove any doubt about how one could interpret the issue, we added a fourth modification; making it clear that the act should not be construed to “require or encourage employers to adopt hiring or promotion quotas.”

Finally, we modified the bill a fifth time, to include two worthwhile suggestions by Senator Harkin, which further clarified the application of the business necessity test, and to make three other significant compromises proposed by Senator Harkin relating to other provisions of the bill.

Senator Harkin had been the leading opponent of the bill when it was originally offered by the Senate. He urged us to accept these modifications in good faith—and we did. He urged the President to accept them too, because he was satisfied that they were sufficient to keep this legislation from becoming a quota bill.

Five times, we modified the legislation to eliminate any possibility that it could lead to quotas. Five times, the President’s advisers refused to agree. But in the wake of all these modifications, after the long and intense debate about the quota issue, in light of the strong legislative history we are making, it is impossible to believe that any court or any reasonable Presidential adviser would interpret the Civil Rights Act of 1990 as requiring quotas.

The changes we have made have also satisfied many neutral observers, including conservative columnist James J. Kilpatrick. Still, the administration persists in calling this a quota bill, even though the charge is clearly false.

No one wants a quota bill. Quotas are the issue.

The millions of working women who would benefit from this legislation—the millions of black Americans and Hispanic Americans and other minorities in the work force—are not asking for quotas or any other special advantage. They are asking for simple justice.

All they are asking is to be free of discrimination on the job. All they want is a fair opportunity—an equal opportunity—the same equality of opportunity that all other Americans have to use their God-given talents. That opportunity is the defining quality of the Nation, the ideal for which people have fought and died since 1776. It is what makes America America today.

Instead of supporting the Civil Rights Act as he should, the President has now offered so-called compromise legislation that would leave wide gaps in our anti-discrimination laws. His proposal would fail to overrule key aspects of the Wards Cove decision that was not even brought to bear. It would permit employers to apply a lesser legal standard than the Griggs rule. As a result, many employers would be able to escape having unfair practices challenged in court.

The second major issue in this legislation involves adequate remedies for women or religious minorities who are victims of intentional discrimination on the job. Under a serious double standard in current law, only racial minorities—not women or religious minorities—are entitled to recover compensatory and punitive damages for intentional job discrimination.

That double standard is unacceptable. The Civil Rights Act of 1990, will permit victims of sex or religious discrimination to obtain compensatory damages, just as victims of racial discrimination are allowed to do.

It also permits women and religious minorities to obtain punitive damages; but in a key compromise in this legislation, the punitive damages are capped at $150,000 or the amount of the compensatory damages, whichever is greater.

The White House bill cuts back drastically on the damages to which women and religious minorities would be entitled. It attempts to ban the right to a jury trial.

It limits victims of discrimination to a maximum award of $150,000 for all damages, compensatory as well as punitive. In addition, under the administration’s proposal, no damages at all would be available, unless a court finds that such damages must be awarded in order to deter the employer from engaging in discriminatory practices and is otherwise in the public interest.

These limitations would give courts vast discretion to deny any meaningful remedy to victims of even the most offensive types of sexual and religious discrimination on the job. It would mean, for example, that in many cases, victims of vicious and repeated sexual harassment in the workplace, who often suffer physical and mental trauma requiring medical treatment, would not even be reimbursed for the expenses caused by the discrimination, let alone recover the full damages to which they should be entitled.

The White House proposal would also permit repetitious challenges to consent decrees that have been entered in numerous jurisdictions as part of good faith efforts to resolve festering job discrimination cases and put an end to litigation.

The Civil Rights Act of 1990, strikes a fair balance by prohibiting subsequent challenges to consent decrees in cases where a party’s interests had been adequately represented by other persons in a previous unsuccessful challenge to the decree.

Once again, we see the hypocrisy of the Administration’s position. The President has criticized other portions of this bill for promoting excessive litigation. Yet he is quick to invite excessive litigation when the issue is re-opening long-settled consent decrees.

In addition, the Administration’s bill is prospective only. A vote to sustain this veto, therefore, would offer no relief to Brenda Patterson and the more than 200 other victims of intentional racial discrimination whose cases have been dismissed under the Supreme Court’s erroneous decision in the Patterson case.

A vote to sustain this veto would give no relief to the millions of women who endure humiliating sexual harassment on the job, who are denied equal opportunity in hiring and promotion, and who are subjected to discriminatory work conditions.

A vote to sustain this veto is to tell Mayor Richard Arrington and the people of Birmingham, AL, and many other communities across the country, that they will have to endure repeated, divisive efforts to reopen consent decrees in discrimination cases that were settled long ago.

The Senate does not have to accept these unsatisfactory results, even if the White House does. President Bush was wrong to veto this civil rights bill.

Congress can override the veto, if the Senate is true to the historic bipartisan ideals that have enabled the Nation to continue to move forward, not backward, on civil rights.

Certainly, this veto contravenes the basic principles for which George Bush has stood in his long and distinguished career in public life.

Many of us hoped that the Willie Horton strategy adopted by President Bush as a candidate in the 1988 Presidential campaign was an aberration that would never be repeated. But it does not appear to be. When the chips are down, President Bush, like candidate Bush, is willing to divide the Nation for narrow or partisan advantage.

It is bad enough to resort to such disgraceful tactics in a political campaign. But it is far more serious when a President of the United States, who is supposed to be the President of all the people, dishonors his high office, abuses the noble cause of civil rights, and stoops to divisive appeals to prejudice and resentment. President Bush has taken the low road on civil rights, but that is no reason for the Senate to take it too.

Civil rights is the unfinished business of the United States. In the long run, there is probably nothing that matters more to the future of the country than how we deal with the issue of race and discrimination. This
is no time for America to retreat on civil rights. It is wrong, for short-term political gain, to jeopardize the long-term interests of the Nation.

Some of the proudest moments in our history have occurred when Senators from both parties joined together to enact historic civil rights legislation. Let us do so now, by voting to enact the Civil Rights Act of 1990.

I withhold the remainder of my time.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Utah (Mr. Hatch).

Mr. HATCH. Mr. President, pure and simple, take it from me, this is still a quota bill, and it is still a litigation bonanza for lawyers, two of the most important reasons that President Bush has cited for vetoing this bill. By the way, those are not the only reasons he cited, but those are two of them. I think he considers both of those reasons.

This bill is going to cost American society billions of dollars through the years because it is not a civil rights bill. It is an employer-employee relations bill, except for the override of the Patterson versus McLean case which would take care of Brenda Patterson. We are prepared to do that right now. We are for overruling the Patterson versus McLean case.

We are also for overruling the Lorance case with regard to seniority systems. The Lorance case basically said you only have a cause of action from the time an intentionally discriminatory seniority system was instituted. We would overrule it so that they have a cause of action when the initial injury occurs, something that the other side will not do for a substantial number of American citizens under the Martin versus Wilks case, the way this bill is written. It is written just one way to take care of one group of people, but it does not take care of other groups of people.

Now those two—the overrule of the Patterson versus McLean case and the overrule of the Lorance case—we will agree to right now. Those are the civil rights aspects of this bill.

I just came from the President of the United States, from the Oval Office. I know George Bush, and I know that the distinguished Senator from Massachusetts knows George Bush very well. The American people have observed him, and I think they look at George Bush and they say here is a truly moderate, decent man who listens to everybody—feels that this is a quota bill, and a litigation bonanza for lawyers, or a lawyers' relief act—which is what we do around here; we benefit the legal profession more than anybody else—then I think people in their minds are singing if not outright, then there must be something wrong with this bill.

Because this is the President who advocated—and by the way, this is the Senator who advocated—for the most accepted bill in the last two decades, and that is the Americans with Disabilities Act. I helped put that through, and I advocated it, even though I know it is going to be an expensive bill. It is written right, it is fair, it does not discriminate against other people, it has no quotas in it, and it is not a lawyers' relief act.

This is the President who put it through. I do not think they could have gotten it through with most other Presidents. So do not make the argument that George Bush is mistaken here.

The fact is, George Bush does understand this bill and it is not just the quota aspect that bothers him, it is not just the lawyers' relief act that bothers him. I am going to mention some of the other things that bother this President of the United States, and properly so.

Mr. President, I urge my colleagues to sustain the President's well-justified veto of the so-called Civil Rights Act of 1990.

Americans want a piece of the American dream; they want no part of a quota. Americans want an equal chance to succeed in the job market; they do not want preferential treatment on the basis of race, ethnicity, color, religion, or gender.

Title VII of the 1964 Civil Rights Act promises every American equal opportunity.

The Civil Rights Act of 1990, in stark contrast, promises preferential treatment on the basis of race, ethnicity, color, religion, and gender for some Americans.

The Civil Rights Act of 1990 promises reverse discrimination against Americans who themselves are guilty of no wrongdoing.

Title VII of the 1964 Civil Rights Act promised colorblind treatment of all Americans in the workplace, where every citizen should be treated on the basis of his or her talents and merit.

The Civil Rights Act of 1990 promises to make race, color, religion, and gender a conscious part of an employer's treatment of American workers. This bill promises to move America away from its ideals, not toward them, as title VII intended.

The Civil Rights Act of 1990 promises that some Americans will be denied an equal chance to a day in court. These Americans will be effectively denied the right to challenge a consent decree or litigated judgment, entered in a case to which they were not a party, at the time the decree or judgment operates to harm him or her. I believe this is the first time in over 25 years, perhaps the first time ever, that Congress has restricted or threatened to restrict the right for persons asserting constitutional equal protection claims and statutory civil rights claims.

The Civil Rights Act of 1990, this bill, promises an increase in tension and discord in the workplace. This bill, with its many provisions aimed at helping lawyers, is a litigator's dream come true. Take it from me, I used to be a litigator. It will prolong disputes and make them more difficult to settle.

The explanation in the joint statement of continuing problems with this bill.

Take the Wards Cove case, and quotas and disparate impact cases.

No. 1. Broad-scale, across-the-board attacks on all employer practices are still permitted by this bill. Even with the language I tried to craft, that is true. And, by the way, we crafted the language, and in the joint statement of the conference committee, they completely took that away. So do not say it does not have quotas. They took it away. There is no need to prove a specific practice causes a disparity between the percentage of a group in a job and the percentage of that group in the relevant labor pool. The bill says if certain records are maintained, only then is the plaintiff eventually required to identify specific practices responsible in whole or in significant part for the disparity. Unfortunately, the conference committee of this Senate has restricted or eliminated this part of the language entirely. The bill's language, it seriously waters down the language in the bill by eliminating the requirement that the requirement only rules out practices that make a trivial or insubstantial contribution to the disparity. So what we thought we had, they took away in the joint statement. Moreover, the bill makes the use of subjective practices such as supervisory evaluations, interviews, and reference checks, much more difficult if not impossible to defend.

No. 2. This bill, as it is currently written, still shifts the burden of persuasion in disparate impact cases to employers, compelling employers to prove their innocence even though they did not bring the case. The case was brought against them. It is a complete turn around in American jurisprudence. This change alone converts title VII from a statute whose touchstone is equal opportunity for individuals into one that is based on results—quotas—for groups.
No. 3, the definition of business necessity is much more burdensome than current law. Griggs prohibit adoption of only minimum standards in the workplace. The bill requires an employer to prove its challenged practices bear a significant relationship to successful performance of the job.

In contrast, the Griggs case, which the proponents have always said they have tried to codify in this bill, says that employer practices must have a manifest relationship to the employment in question.

Industrial psychologists say the significant relationship test is a more difficult standard than the manifest relationship test. With respect to successful performance of the job—that language means only minimal standards are acceptable. What that means is that employers, if this bill passes, will have to hire on the basis of the lowest common denominator. They will no longer have the right to hire the most qualified employee for the job. If that happens, it will be cheaper to do it.

Any higher standard which falls with a disparate impact on a group is illegal, because it is not related merely to successful job performance, but to a level of performance beyond the minimum necessary to be successful.

Again, the employer will have to hire on the least common denominator basis; no longer will be able to say we want to hire the most qualified person for this job so we can have the best employment situation we can have.

No. 4, the surest way for an employer under this bill to avoid a costly lawsuit it cannot win, and huge liability for this job so we can have the best level of performance beyond the minimum necessary to be successful.

To successful job performance, but to a basis; no longer will be able to say we can have.

No. 5, let me talk about the right of an individual citizen to have his or her day in court. While better notice is given to employees not parties to the case under this bill, they and many others are barred from challenging implementation of a consent or litigated judgment after it harms them. This is unfair—as the bill has always been in this regard. And the same double standards I have always criticized remain embedded in this section. For example, when the Government sues an employer on behalf of a group of persons, members of that group can still sue an employer after entry of a consent decree if the consent decree does not provide them with backpay or a job.

Mr. BRYAN assumed the Chair.

Mr. HATCH. Mr. President, but an employee harmed by implementation of the same consent decree, is effectively barred from being heard, even though they were never a party to it. Moreover, the bill allows challenges to seniority systems but not consent decrees when they operate to harm someone.

No. 6. Let me move to title VII, and this argument that this is a litigation bonanza for lawyers and that the bill contains incentives to litigate, not settle cases.

Let me go to my point No. 6. The bill permits injunctive relief, attorneys' fees and costs in mixed motive cases overturning a Justice Brennan opinion in Price Waterhouse and encouraging litigation. Even Justice Brennan, one of the all-time most liberal Justices on the Court, a man I happen to admire and love, but nonetheless a liberal, even Justice Brennan is not good enough to satisfy that. Thus, even when an employer has selected a better qualified applicant over a lesser qualified applicant, the employer can still be sued in litigation costly to defend, even though they selected the person for the right reasons.

No. 7, in title VII intent cases, the bill adds unlimited compensatory damages and up to $150,000, or the total of his or her back pay for the penalty for an employer who under this bill to avoid a costly law suit. They and many others are barred by quota.

No. 8, in title VII intent cases, the bill modifies the statute allowing an employer to condition offers under this bill, the person can seek retroactive seniority loss since 1990, and 2 years of back pay.

Moreover, he or she will be able to seek uncapped compensatory damages and punitive damages of $150,000, or the total of his or her back pay in uncompensatory damages for lowered earnings, pain, suffering and other damages since 1990.

Oddly, here again, civil rights plaintiff to continue the case after being harmed, but an innocent person harmed by the implementation of a consent or litigated judgment is effectively barred from bringing a constitutional or a statutory civil rights claim.

I cannot understand, for the life of me, why people cannot see that. We tried to resolve that, and we could not.

No. 11: It helps lawyers, again, by encouraging a 1986 Supreme Court decision by Justice Stevens in Evans versus Jeff D., which allows a defendant, such as an employer, to condition the bill modifies the statute allowing an employer to condition a lump sum settlement offer on the plaintiff's waiver of attorney's fees and costs, and the plaintiff must pay out the fee with or his or her own lawyer.

This provision of the bill will likely have a serious adverse impact on the ability of parties to settle the cases, because now it is in the lawyers' interest to encourage cases by overturning a 1985 decision by Justice Stevens in Marek versus Chesney, thereby making the recovery of attorneys' fees even easier than it is today, much easier.

Under current law, suppose a plaintiff rejects an employer's formal settlement offer. The plaintiff is entitled to attorneys' fees he incurs from the date he rejected the offer. So it is an incentive under current law to get matters settled amicably and get the person back to work.

Under this bill, however, the plaintiff is entitled to such fees even after rejecting the offer, even if they do not obtain a judgment as large as the employer's earlier offer. This is a further incentive not to settle a case. It is a further incentive for lawyers to pursue it all the way to trial, because they are going to get more fees and we are all going to pay it. Every citizen in this country. The increased cost of goods and services is going to pay for this lawyers' relief bill.


This opens the door to many state claims. For example, suppose an employer lays off an employee for intentionally discriminatory reasons in 1990, but the employee does not bring a title VII action within 6 months. Under current law, this person has foregone his or her title VII claim. They have to move, act expeditiously; it is only fair.

The persons is later rehired in 1995 under this bill, the person can seek retroactive seniority loss since 1990, and 2 years of back pay.
It is not a civil rights bill. It is a relief bill for lawyers, and it is a quota bill.

Mr. President, I would like to yield, because the Senator has to go to another meeting, 5 minutes to the distinguished Senator from Kansas.

Mr. KENNEDY. Will the Senator yield for a brief question?

Mr. HATCH. Sure. Can I yield on the Senator's time?

Mr. KENNEDY. Yes, I minute. Why then did the Senator recommend to the President of the United States that he support this legislation?

Mr. HATCH. The Senator never personally recommended to the President of the United States that he support this legislation, even if he takes the Hatch language.

The reason he did not is because I did not like that language. My commitment was this: I would do the best I could to try to put it together. It was the best we could do. I said that if they would change this bill the way I would like it changed, then I would vote for it. I have to vote on it, and then whether or not the President would do it. They would not.

So I said I would at least give it to the President, which the distinguished Senator from Pennsylvania did, and if he decided to accept it, I would then support the bill based upon that.

But I also said from the beginning that if he did not decide to take it, that I would fight this bill with everything I had because I still do not think these problems are solved.

Mr. KENNEDY. Did you recommend to the President that he do support it?

Mr. HATCH. No, I never did personally.

Mr. KENNEDY. But did you recommend to the President that you could support this legislation?

Mr. HATCH. I was willing to recommend to the President that if he took this bill—

Mr. KENNEDY. That you could support it?

Mr. HATCH. With the changes, that I would support him, but no—

Mr. KENNEDY. Mr. President, I have to reserve the remainder of my time.

Mr. HATCH. Let me answer the question.

Mr. KENNEDY. On the Senator's time.

Mr. HATCH. I will answer it on my time. Even the language that was accepted, even that language was changed in the language of the managers. As I pointed out here in my earlier remarks, even that language was changed in exactly what we had really done in one of the most important sections, so I could not have supported this under any circumstances with that change. And they knew it.

I was a little shocked to find that even the language I did not think was great, but nevertheless something that if the President wanted it, he could take it, even that language's meaning was changed in the joint statement of the conference committee.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY addressed the Chair.

Mr. HATCH. I would like to yield to the distinguished—I believe I have the floor.

Mr. SPECTER addressed the Chair. The PRESIDING OFFICER. The Senator has the floor.

Mr. HATCH. I would like to yield 5 minutes to the distinguished Senator from Kansas.

Mrs. KASSEBAUM addressed the Chair.

THE PRESIDING OFFICER. If the Senator will suspend. The floor manager on the Republican side has yielded time to the Senator from Kansas.

Mr. SPECTER addressed the Chair. Mr. KENNEDY addressed the Chair. Mrs. KASSEBAUM. I would like to yield to the Senator from Pennsylvania.

Mr. KENNEDY. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his parliamentary inquiry.

Mr. KENNEDY. As I understand the regular order, the Senator gains recognition, and then those who have the responsibility for giving time then grant the time. That is the procedure. That is correct.

Mr. KENNEDY. So the Senator cannot, as I understand it—an individual Senator has to get recognition in their own right, and then the floor manager to that has the responsibility to yield the time, am I not correct?

The PRESIDING OFFICER. That is correct.

Mr. KENNEDY. So, Mr. President, I want recognition myself, and I yield myself 20 seconds. I want the record to point out that the language of the managers was submitted to the Senator from Utah for requested changes or alterations, and no such alterations or changes were made. That language was effectively cleared, and now I would yield 10 minutes to the Senator from Pennsylvania.

Mr. SPECTER addressed the Chair. The PRESIDING OFFICER. The Senator from Kansas has been recognized.

Mr. HATCH. Mr. President, I think the manager has preferential right. I want to answer that 20-second statement, and then I will be happy to yield the floor.

I hope that the distinguished Senator from Kansas will be able to get the floor, because she is only going to take 5 minutes and she has to go.

Mr. President, my good friend from Massachusetts complains that we did not alert him to the subtle slants contained in the key of legislative history.
Mr. KENNEDY. Mr. President, may I have the attention of the distinguished Senator from Pennsylvania. I understand the difficulty of the Senator from Massachusetts in this regard. He was neither my preferred language, nor did it address all of my concerns. I never met with the President on this. The distinguished Senator from Pennsylvania did, Had I met with him, we would have had to see what happened.

Once it became clear that a compromise could not be worked out, someone else wanted to use the language for their purposes, that was a process that did not involve me. And given how I was going to vote, I certainly was in no position to request or demand changes in the joint statement.

Mr. President, I understand the difficulty of the Senator from Massachusetts in this regard. He was neither present nor was he represented in any conversations I had on this particular bill. Now, I have to say I for one wish we could have solved this problem. I would ask my friend from Massachusetts to support the bill. Now, I have to say I for one wish we could have solved this problem. I would ask my friend from Massachusetts to support the bill.

But at this juncture, I will proceed on the 10-minute allocation and seek unanimous consent for an additional 10 minutes, with a lesson to this Senator to be here at all times. There will be no unanimous-consent agreement entered into where I have an interest without the express reservation.

Mr. President, I would begin by disagreeing with both of my distinguished colleagues. I disagree with the distinguished Senator from Massachusetts when he raises arguments of bad faith. I have been intimately involved with both sides on this matter, and I do not believe there has been bad faith. Beyond that, I think it is totally counterproductive to talk about bad faith. I think that we would have had an agreement before this time had such allegations not been made.

I also disagree with my colleagues from Massachusetts when he brings Willie Horton into this argument and seeks to bring that issue into the President's motivation on civil rights. Willie Horton has nothing to do with the issue at all. Senator HATCH presented it to the President's representatives the afternoon after we agreed to it. I would submit, Mr. President, that it was clear to those watching that it will be clear to those watching that the language is not perfect, and said he would reserve the right to vote against the bill if the President opposed it and disagreed with Senator HATCH's recommendations.

Senator HATCH said he did not present it to the President. I do not think that has anything to do with the issue at all. Senator HATCH presented it to the President's representatives the afternoon after we agreed to it. Senator HATCH says he did not meet with the President. He said he met with the President this morning. But the critical aspect on whether this is a quota bill and the critical aspect on whether Senator HATCH made an agreement, found it acceptable although not perfect, and said he would recommend it to the President is the fact of the matter.

If my distinguished colleague from Utah disagrees with that, I invite him to take every time, up to a minute, to state his disagreement.

Mr. HATCH. Mr. President, I think the prior, if the Senator will yield to me, debate showed that I made it clear what my position was during the prior debate, I did not believe in the language. I was willing to recommend it to the President. If he was willing to take it, I would have supported the President, but it was not language that pleased me.

Then in the prior debate on this, I made it very clear that the more I read it, the more I study it, the less I like it now; but it is an improvement. There is no question, the language is an improvement.

I commend the distinguished Senator from Pennsylvania for helping to bring it about. I commend the distinguished Senator from Massachusetts for accepting it. It certainly is an improvement over what the language was.

But if you read it, and read it carefully, it still does not solve the quota
provisions. Certainly nothing we did really solved the litigation bonanza aspects of the bill.

So I would not like to have a twist put on this to make it look like I reneged on an agreement, because if the President later takes that language, as something I did not like it, I would have held my nose and voted for this bill. But he did not. He was smart enough to realize it did not solve all the problems that he wanted solved. I had made it clear from the beginning if he did not, I was going to support him.

So I hope that clarifies it once and for all.

Mr. SPECTER. Mr. President, I think that does clarify it. When you boil down what the distinguished Senator from Utah has said, he does not disagree with my factual characterization that he found it acceptable, not perfect; and that he agreed to recommend it to the President, but he reserved the right to vote against it if the President opposed it.

Mr. HATCH. If the Senator will yield for 10 seconds on my time, I do disagree with that factual statement. The Senator’s word “acceptable” has been used throughout this, and I have not made a big fuss about it. I think the very tenor of my statement is that it was not totally acceptable to me, but if the President wanted it, it would be acceptable and I would vote for it. That is the only condition on which I intended to use the word “acceptable.”

So I disagree with the statement but I have to say this: The Senator is right. We made a valiant effort, mainly because of his insistence that we did. I give him credit for that.

At one time I thought maybe this would be enough for the President to support this bill. But he did not. I made it clear right from the word go that unless I got everything I wanted, all the changes I wanted, I could not support the language. If he did, I would have, like I say, voted for it and supported the President. But I also told his representatives that if he did not, that I was going to fight the bill.

Mr. SPECTER. I accept Senator HATCH’s modifications. He did not find it totally acceptable. He only found it acceptable. But that is the point. Mr. President, the point is what is acceptable. The point is not what satisfies all of our wishes. We ought to learn in this body, Mr. President, in this Senate, we ought to learn it in this country, that everybody cannot have his or her way about everything.

Right now there is a bitter dispute going on in the Congress about the budget. We are sent to Washington to practice the art of the possible and to do the Nation’s business. Everyone cannot have everything that he or she wants. Neither can Senator HATCH have everything that he wants.

Never mind that it is not totally acceptable, and a commitment was made to recommend it to the President with the limitation that if the President opposed it, Senator HATCH reserved his right to vote against it.

Mr. President, there has been much argument about whether this is or is not a quota bill. Again, I refer to the acceptability found by the distinguished Senator from Utah. If ORRIN HATCH accepted a bill, you can bet your bottom dollar it was not a quota bill. Let me tell you something else. If ARLEN SPECTER accepted a bill, it was not a quota bill. There is nothing that I personally abhor more, Mr. President, than quotas. When the time came for me to go to college a few years ago, I found my entry blocked because there were quotas on how many young Jewish students could go to colleges in this country. Quotas are an anathema to me, just like they are an anathema to most Americans. This is not a set-aside bill, and this is not a quota bill. The details of the bill prove that.

Mr. President, the burden of proof is on the plaintiff to prove with particularity the specific practice or practices which have resulted in the disparate impact. Only at that juncture does the employer have the obligation to come forward and show business necessity.

When the distinguished Senator from Utah says that the employer has to prove his innocence, and that it is a complete turnaround in American jurisprudence, that simply is not so. It is an affirmative defense which is well recognized for more than 200 years in American jurisprudence. And as an affirmative defense, it is the employer who has the burden to make the showing.

Mr. President, it is still my hope that there will be an agreement on this civil rights legislation. I say that, Mr. President, because there are still many of us who are working actively towards that end.

Mr. SPECTER. I ask unanimous consent that I be permitted to speak an additional 10 minutes, Mr. President.

Mr. HATCH. Mr. President, I understand it is very difficult to do that. Could the Senator complete his remarks, even though he is on the other side? I understand Senator KENNEDY’s time is very limited. I could be allotted, but I could yield him some minutes so that he can complete his statement. He has been a sincere and dedicated participant in this complete debate; I have nothing but respect for him.

Mr. SPECTER. I will proceed as expeditiously as I can. But it will take less time without interruptions.

Mr. HATCH. I yield 5 minutes from of course, to the distinguished Senator from Pennsylvania. During that time, I hope he will not characterize my position anymore.

Mr. SPECTER. No deals. [Laughter.]

The PRESIDING OFFICER. The Senator from Pennsylvania is yielded 5 minutes, chargeable to the time under the control of the Senator from Utah.

Mr. SPECTER. I thank my friend from Utah both for yielding the time and for this prior acceptance.

Mr. President, I was saying that in the spring President Bush called three of us into his office, and it was Senators DANFORTH, JEFFORDS, and myself, and that we try to work out a compromise.

A week ago Sunday, a week ago Sunday when the President was in the midst of his budget negotiations, he called again on the phone and spent considerable time again urging that a settlement be reached.

Last Thursday afternoon when a number of us met with the President, again he urged that a settlement be reached.

Mr. President, this legislation is not as complicated as the SALT II treaty. One of the things we learned in SALT II was the comment by the distinguished Soviet negotiator that a third of the business was done in the first 2 months, a third of the business was done in the next 2 years, and the final third of the business was done in the last 20 minutes. That is what is referred to as the end game. I should not call anything a game because it is not a game around here. But they call it the end game because in the final analysis we cannot come to terms until the end.

Mr. President, I submit to you that we are very, very close. We met with representatives of the President, and for all practical purposes worked out particularity. The issue of business necessity is really very, very close. This is an argument about whether it should be significant in a relationship with successful job performance, or a manifest relationship with job performance.

Mr. President, if you submit that question to 20 scholars on the English language, they would split as to which was the more exacting standard, significant or manifest. Late yesterday afternoon I talked to a principal sponsor on the House side, and he is still willing to work out a compromise.

Last night the Republican leader, Senator DOLE, Senator JEFFORDS, and I...
talked about the legislation. Senator Dole was on his way to the White House to talk about the budget and said he would take up the matter again with the President. There are other issues that have been involved with the President who are still prepared to work all night tonight. And we are going to be here for a few more days, Mr. President. We can yet bring this matter to close.

I feel very strongly that minorities and women have good reason to believe they are not getting a fair share of job opportunities in the United States. We have talked about discrimination on this floor. Mr. President, Bill Coleman, who was first in his class at Harvard Law School, could not get a job, and had to travel from Philadelphia to New York.

The morning newspaper talks about Gov. Mario Cuomo, who was first at his class at Fordham and could not get an interview on Wall Street.

I was not first in my class at Yale, but underwent a reviewed job discrimination because I was Jewish and specifically could not get a job.

There is plenty of job discrimination that goes on in America today, and it is high time we stop deciding major issues in this country by 5-4 decisions by the Supreme Court and high time that in the Senate and Congress we all stop maneuvering for every last ounce of advantage.

We reached a milestone on principles of justice and civil rights in 1954 when the Supreme Court handed down the unanimous decision in Brown versus Board of Education. I vetoed by the President, and millions of Americans are grossly dissatisfied.

When Senator Harken talks about litigation and the bonanza for lawyers, I think it would be repugnant and terri­ble if 65 percent of this body votes in favor of the Civil Rights Act and it is vetoed by the President, and millions of Americans are grossly dissatisfied.

When Senator Harken talks about litigation and the burdens for lawyers, the bitterness which will be spawned by that kind of a result will be overwhelming and will produce more litigation, bitterness and strike. I was dis­patched from Philadelphia in the sixties and saw a lot of problems, which I am not going to recount now.

I am very concerned about my party, to be partisan for just 1 minute, which has been tagged as the party of the rich, and unfairly so. In the arguments now going on about the tax bill, and as being tagged as the party of special interests. I am concerned about my colleagues, and there are at least 8, 10, perhaps 12 Republicans who want to vote for this bill, who have urged the President to sign a civil rights bill; but out of loyalty to the President they may stay with him here, and they will suffer defeat at the polls, because this is a bill which ought to be signed for America.

I came to this body in the 1980 election, and we are now missing a half­dozen of our colleagues who, out of loyalty to an abstract principle, which did not stand up, on Social Security and other matters, are not here today because they did not vote the way they should have voted in the interest of justice for the American people.

This bill provides a level playing field. When I got into this bill—and I consulted both sides—I brought in an experienced lawyer in this field who represented defendants, Mark Klugh­er, from my former law firm in Phila­delphia. And this bill has detailed ex­penses of defendant’s rights, by putting a wider variety of proof. It is a bill for civil rights, not a quota bill, and we ought to work out a consensus on it. I yield the floor.

Mr. HATCH. Mr. President, let me briefly respond on the burden of pers­suasion issue. The Senator from Penn­sylvanias is wrong: Wards Cove marks no change in Supreme Court jurispru­dence on this point. The burden of persuasion to prove discrimination—not a mere statistical imbalance—must be proved to the exclusion of all other reasonable inferences. This is hardly unusual.

I ask unanimous consent to insert in the Record at the end of these re­marks a copy of a July 16, 1990, memo­randum on this point, from my staff to Senator Specter’s staff, which I also shared with Senator Specter in July.

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

(See exhibit 1.)

Mr. HATCH. Mr. President, I might also add, one of the remarks made during the months-long debate on this bill is, “there were no quotas under Griggs, so why fear quotas under this bill?” The answer is simple. This bill does not restore Griggs, it overturns it. It drastically rewrites the disparate impact theory developed in Griggs and its progeny before 1989. It does not re­quire the plaintiff to focus on his or her lawsuit on a particular practice caus­ing the disparity, but it gives the burden of persuasion to the employer to prove its innocence upon a mere showing of a relevant disparity; and it dramatically increases the burden on the employer by changing the Griggs definition of “business necessity.”

In Griggs and subsequent cases, the Supreme Court made clear that definition is “manifest relationship to the employment in question,” not the new language of this bill. I have addressed each of these points in great detail in earlier debates on this bill.

EXHIBIT 1
MEMORANDUM

JULY 16, 1990.

To: Richard Hertling.
From: Mark Disler.

BURDEN OF PERSUASION IN DISPARATE IMPACT CASES

I realize that, in Griggs, the Court said, “Controls have placed on the employer the burden of showing that any given require­ment must have a manifest relationship to the employment in question.” 401 U.S. at 432. Other Supreme Court disparate impact cases have referred to the employer’s obliga­tion to “show,” “prove,” and “articulate” to the fullest relationship to the employment. But these terms are fully consistent with a burden of production—as the Supreme Court held in a Title VII intent case in Brown v. Board of Education, 433 U.S. 24, 25 (1978).

Basically, in Swiney, the appellate court had imposed a heavier burden on an em­ployer in an intent case than the Supreme Court had imposed in its caselaw. In an intent case, once a plaintiff establishes a prima facie case, the burden shifts back to the employer is one of production. Once the employer articulates a reason for its em­ployment decision, the burden shifts back to the plaintiff to show that the explanation is a pretext, merging with the plaintiff’s ul­timate burden of persuasion.

The appellate court in Swiney miscon­strued some words—“articulate,” “show,” and imposed a heavier burden on the em­ployer. The Supreme Court, in a two-para­graph opinion, is a significant distinction between merely “articulat[ing] some legitimate, non-discriminatory reason” and “articulating and emphasizing the McDonnell Douglas analysis in Furnco Construc­tion Co. v. Waters, 438 U.S. 567 (1978), we stated that “[t]o dispel the adverse inference from a prima facie case on the part of the employer in an intent case, the employer need only articulate some legitimate, nondiscrim­inatory reason for the employment decision, and this is shown by the employer’s rejection of the plaintiff’s claim in its final decision, such as quoting McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). We stated in McDonnell Douglas that the plaintiff must ‘articulate and emphasize the McDon­nells analysis in the case.”

Like a number of lower court decisions, this case is a clear case on the party with the greater access to such evidence.” 569 F.2d 169, 177 (CA1 1978) (emphasis added).

While words such as “articulate,” “show,” and “prove.” may have or less similar meanings depending upon the context in which they are used, we think that there is a significant distinction between these terms. The term “articulate” is used for demonstrating and emphasizing the McDonnell Douglas analysis in Furnco Construc­tion Co. v. Waters, supra, we made it clear that the former will suffice to meet the employ­ee’s prima facie case of discrimination. Because the Court of Appeals appears to have imposed a heavier burden on the employer than Furnco warrants, its judgment is vacated and the case is remanded for reconsider­ation in the light of Furnco, supra, at 578, 439 U.S. 24, 25 (1978).” (Footnotes omitted.)

In short, these terms are consistent with a burden of production. All of the lower court cases Bill Coleman cites which use terms like “prove,” “show,” and “demonstrate,” thus, are of no help in the analysis of the Supreme Court’s precedent. Swiney is the key, as well as Beazer, to the Supreme Court’s principle on the burden of persuasion.

In Swiney, the Court said the context of the words used is important. In Beazer, the Court said, “At best, [plaintiff’s] statistical showing is weak, even if it establishes a prima facie case of discrimination, it is assuredly rebutted by the employ­ee’s ‘job-related’ * * * burden of showing.” 109 S. Ct. 75, 82 (1988).
to carry respondents' ultimate burden of proving a violation of Title VII." 440 U.S. at 567 and n. 31. In context, it is clear that the Boeing Co. case was primarily about the "business necessity" defense. Although we have said that an employer has "the burden of showing that any given requirement must have a manifest relationship to the employment in question." "Grippo," 401 U.S. at 432, such a formulation should not be interpreted as implying that the ultimate burden of proof can be shifted to the defendant. On the contrary, the ultimate burden of proving that discrimination against a protected group has been caused by a specific employment practice remains with the plaintiff at all times. Thus, when a plaintiff has made out a prima facie case of disparate impact, and when the defendant has met its burden of producing evidence that its employment practices are based on legitimate business reasons the plaintiff must prove that his practice has an undesirable racial effect, without a similarly undesirable racial effect, would also serve the employer's legitimate interest in efficient and effective performance, and its interest in the employment relationship." Albemarle Paper Co., 422 U.S. at 425, 96 S.Ct. at 2375 (citation omitted).

The burden of persuasion is on the plaintiff in a Title VII disparate impact case has been the law in the Third Circuit since 1981. I gave you NAACP v. Medical Center, which used Title VII principles to determine the burden of persuasion in Title VI cases (Title VI bans racial discrimination in federally-aided programs.) It concluded, relying on Albemarle, Sweeney, and Bazer, that the burden that shifts to the employer in Title VII disparate impact cases is one of production, not persuasion. Judge Higginbotham sat on that case. Later that year, relying on this decision, the Third Circuit squarely held in a Title VII disparate impact case that: "As with claims of discriminatory intent, the burden of persuasion remains at all times with the plaintiff." "Croker v. Board of Trustees, 662 F 2d at 991, 981 (3rd Cir. 1981). This statement appears in Part IV of the opinion. Judge Higginbotham joined two other judges on a Section 1981 issue. Both dissenters specifically state that they join Part IV. I have not searched through all of Higginbotham's opinion, but in any event he did cite Croker's passages on point, which in turn cite NAACP v. Medical Center, Wilmore v. City of Wilmington, 699 F.2d 667, 670 (3rd Cir. 1983).

A key point on all of this: the harm under this theory of Title VII is a disparate impact caused by a neutral, identified device or practice principally related to employment in question. That is why placing the burden on the plaintiff to prove each element of the offense, including that a job practice is not manifestly related to the employment in question, is appropriate. Under current case law, the plaintiff's task is to establish a prima facie case of statistical disparity actually caused by a specified practice(s), the employer must explain its justification for the practice. This, the plaintiff need not disprove every conceivable justification for an employment practice, but only that proffered by the employer.

If, in contrast, Congress now shifts the burden of persuasion to employers, 25 years of express Title VII policy is irrevocably changed. This is what will become illegal: a mere racial imbalance in a job. In other words, by "converting the employer's explanation into an affirmative defense upon the showing of mere imbalance, even if current case law on causation is retained, the ultimate burden of proof is simply shifted to employers, thus converting the employer's defense into a "affirmative defense" of business necessity." This is a new, "business necessity" defense. I am also sorry that the efforts of those who have worked so hard have failed when we were not very far apart on the actual words that either side would accept.

Obviously, the major reason advanced for the veto is the speculation that the congressional bill will promote quotas. The theory goes that the defense of discrimination actions will become so expensive and difficult to win that employers will simply hire and promote by the numbers and thus avoid ever being sued in the first place.

I believe that this is a false issue. I do not believe that quotas will be the inevitable result of this bill. However, the subject of quotas is an easy target; it is an easy rallying cry in opposition to any civil rights measure, and this one is no exception.

It is too bad that this brand has been placed on our bill. I believe that the availability of the quota charge has made it too easy for some representatives of the administration to avoid real negotiations on the issues. For too long the administration has been placed on our bill. I believe that the availability of the quota charge has made it too easy for some representatives of the administration to avoid real negotiations on the issues. For too long the administration was able simply to oppose our bill without having to work to shape it in a way that it could support. In fact, only when pressured by the impending close of this session of Congress have we discovered the administration's view on the real issue, which is, what should businesses be allowed to get away with under the guise of business necessity? What loopholes should we allow in the law to protect business practices which are shown to discriminate against women and minorities? That's what this whole business necessity dispute is all about.

Finally, there is substantial agreement that the Lorance and Price Waterhouse cases need to be overturned as well.

Where do we disagree? We disagree principally on the definition of "business necessity." In other words, we disagree on the degree of permissible discrimination.

I had the opportunity recently to spend some time talking to the President on the issue of civil rights. I am absolutely convinced that he wants what the proponents of this legislation want—a solid bill that will overturn Ward Cove and restore the Griggs standard.

However, I cannot say that the President's desires have been reflected in the proposals from the White House. The proposal made on September 21 was nothing short of outrageous. And on the most important issue, this weekend's proposal was a step backward.

I was sorry to hear the President had, in fact, vetoed the civil rights bill. I am sorry because I think this is the wrong decision and an unnecessary decision. I am also sorry that the efforts of those who have worked so hard have failed when we were not very far apart on the actual words that either side would accept.

One last observation: Justice Brennan wrote in Price Waterhouse v. Hopkins in 1989: "conventional rules of civil litigation generally apply in Title VII cases, citing Price Waterhouse Co. v. Hopkins, 493 U.S. 241, 109 S. Ct. 1070 (1989). One such rule is that when a party has the ultimate burden of proof in a case, the party must come forward with evidence of justification, but does not shift to such party the burden of proof in the sense of burden of proof in the sense of burden of showing that any given practice is in fact a business necessity." 440 U.S. at 425, 98 S.Ct., at 2375. I am also sorry that the efforts of those who have worked so hard have failed when we were not very far apart on the actual words that either side would accept.
The definition of business necessity which the administration sent us is even more loophole oriented than some of the previous versions we had seen. The wording of the "defended by" version drafted by the administration would allow employers to push virtually all employment practices into the second category and justify them, when they are proven to discriminate, on the basis of ordinary business objectives rather than on the basis of their ability to predict which employees will be successful on the job.

The reason that this lesser standard is opposed by the civil rights community is that it could provide justification for practices which had been previously outlawed or were viewed as inherently suspect under the more stringent Griggs standard. Of particular concern in this regard is the possibility that actual—or simply perceived—business costs, and especially health costs, would once again be raised as excuses to deny employment opportunities to women.

Limiting business costs is inherently a legitimate employer goal. Most employers are in business to make a profit. It is simple economics that to the extent they are able to control or reduce their profitability will be enhanced. It is academic that employers are in business to make a profit. It is simple economics that to the extent they are able to control or reduce their profitability will be enhanced. It is simple economics that to the extent they are able to control or reduce their profitability will be enhanced. It is simple economics that to the extent they are able to control or reduce their profitability will be enhanced.

The question is whether such cost control incentives could be supported under the more lenient standard as a basis for permitting continued use of discriminatory employment practices. Under the stricter Griggs standard, such a rationale has repeatedly been rejected.

The proposal received from the administration on September 21 sheds light on what there is to fear in this situation. There's an incredible step backward in terms of both the negotiations and the law.

This proposal would have sanctioned not only the loopholes we had agreed to, but some fairly outrageous ones as well—legitimate customer preference, for example. The customer's always right? Even if he does not want to deal with Jews, women, or blacks? Many cases involving the rights of women would be effectively overruled if we were to embrace this concept.

Another good one is "promotional potential". Mr. Griggs only wanted a job as an entry level laborer, but just in case he might wind up being president of Duke Paver some day, he was going to need that high school diploma. These concepts are outdated, outmoded and, for the time being at least outlawed.

The administration's approach on this issue represents a veritable opening of the Pandora's box of discrimination horrors. First, this is true because the "defended by" version of the configuration allows an employer accused of discrimination to construct its defense on an after-the-fact basis. This does not encourage employers to think through their potential liability before the fact to remove any discriminatory impact from them before a charge is filed. Thus, the issue of whether there is discrimination gets addressed only in the context of a litigation. And promotion of litigation was assumed to be the great failing of the congressional bill.

The second concern here is that the definition of business necessity permits the employer to choose the actual standard against which the suspect employment policy is to be measured. The more granting of this choice would not be so problematic to the supporters of civil rights if the standard in the second sentence paragraph was higher than the first. From my point of view, it should be more difficult to justify a discriminatory practice which promotes an employer's ability to get more qualified workers. This could be done by making the second standard relate to a compelling business objective or some other heightened level of interest. However, the administration proposal reverses this priority and, thus, makes it possible for an employer to justify all practices on the basis of merely significant business objectives, which may be unrelated to job performance. It is academic that employers faced with this choice will opt for the lesser standard, thus rendering moot the Griggs concept of job relatedness. This will obviously put us into all new territory rather than returning us to the land mapped out by the Griggs decision.

Finally, the ultimate guardian of the Pandora's box of discrimination has been the U.S. Supreme Court. However, in recent years a slim conservative majority on the Court has shown a marked willingness to abandon this role. Clearly, the faith of the civil rights community that its interests will be protected by the Court has been shaken. Now, with the confirmation of the latest Justice, that majority has solidified and may well become entrenched on the right for years to come.

The shift in the makeup of the majority on the Court leads the supporters of civil rights to be concerned that the guardian of the Pandora's box of discrimination will become even less diligent in the performance of this vital duty. This is yet another reason that we feel the need to secure the locks on the box by reaffirming and strengthening the protections provided by the civil rights laws. While we have no great faith in the Court's resolve on civil rights issues, the administration should be able to take heart that its point of view will be represented.

We have been down this road many times before. Throughout the mid-eighties, the Civil Rights Restoration Act was greeted by all sorts of dire predictions.

The recent recession is the currency of our trade, but the dire predictions are seldom borne out in practice. The Grove City bill has not crippled our country, indeed it has strengthened it. So, too, will the Civil Rights Act of 1990.

Yes, there are substantial areas of agreement. But it is only half a loaf. Our country cannot be nourished by such a paltry serving. We must enact this legislation.

I will vote to override the veto of this important legislation because I believe that it is necessary and proper. I do not believe in or support quotas any more than do the most outspoken opponents of this bill, and I would not vote for legislation which mandated or promoted them. This is not a quota bill; it is truly a civil rights bill which sounds of high moral principles. We cannot let a well tried fabric of law protecting those principles be punched full of loopholes. We should vote to overturn the President's veto.

The PRESIDING OFFICER. Who yields time?

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

Mr. METZENBAUM. Mr. President, I rise not to talk about the formalities of this legislation, not to talk about disparate impact or about quotas or some of the legalisms that the lawyers have been talking about in all the meetings at the White House, but to talk about the impact that this bill will have and can have on women and minorities.

This is not a new issue for America. We have lived with this issue for a long time. I remember when I introduced a bill in 1943 in the Ohio General Assembly to ban discrimination based upon race, color, creed, or national origin. At that time, that bill was considered horrendous legislation, that was radical.

What we are talking about is the right of some poor man or woman to get a job. That is all this is about. This is a jobs bill. This is a bill that says that you ought to be able to work instead of having to go on welfare. And when you apply for a job, you ought not to be discriminated against because of the color of your skin, or because you are a woman instead of a man. All this other gobbledygook is good for the lawyers. It is the kind of stuff Washington thrives on. But people do not care about it out in the countryside. What they know is that
this bill has to do with whether you can get a job.

If you believe people should be working rather than on welfare, then you ought to be for this bill because this bill says you cannot discriminate against minorities, you cannot discriminate against women. I think that every one of us on the floor of the U.S. Senate should not focus on all this gobbledygook that they are talking about at the White House, regardless of who is right or wrong. The issue is, do you believe that a person ought to have an opportunity to get a job without taking into consideration the question of whether or not the person is black or Hispanic or native American, or whatever the case may be, or whether that person is a woman? That is what this bill is all about. And there is nothing else that is involved other than that.

Mr. President, I urge my colleagues who are always talking about people being on welfare to say this is a bill to take people off of welfare and give them a chance to go to work.

I urge my colleagues to vote to override this veto. This will give people in this country a chance to work, not to be forced on the welfare rolls. This will give people a chance to be judged on the basis of their merits, not on the basis of color of their skin or on their gender. Mr. President, I want to discuss the implications of this misguided veto on this Nation.

Last week, on the floor of the U.S. Senate, I asked President Bush to cut through the rhetoric, ignore the labels, and sign this critical measure into law. Regrettably, for millions of America's working women and minorities, President Bush did not take my advice. Instead, he listened to the corporate lobbyists. He succumbed to their incessant, but false, drumbeat of "quotas, quotas, quotas." He followed the guidance of his cloistered White House inner circle, who want nothing more than to see something bigger than buzzwords like "quotas" or "disparate impact" or even "civil rights."

This bill is about the very fiber of our Nation. We are a nation of immigrants. Tens of millions of people have flocked to our shores looking to make a better life for themselves and their families. America has been a beacon of freedom, a haven of opportunity. We have welcomed people with open arms. Together we have made this country the greatest Nation in the history of the world.

The magnet that has drawn people to America is the promise that every person has a fair chance, based on ability, to make it in our society. That is the very essence of the American dream. And that is what President Bush has threatened by this veto.

He has changed the rules for women and minorities who want better lives for themselves and their families. These people are not seeking a Government handout. They want work, not welfare. They want jobs and the chance to prove themselves.

That is not too much to ask. But this veto means that it will be much easier for employers to discriminate against workers because of their race or gender. It will be much easier for women and minorities to be denied jobs or promotions, even though they are qualified to perform the work in question. The President's veto threatens to crush the hope and the opportunity for a better life for millions of women and minority families. That simply is not the American way.

Mr. President, we all must live with the consequences of our decisions. President Bush has cast his lot with wealthy corporate interests. This Senator will cast his vote for the millions of women and minority workers who are striving to achieve the American dream.

When it comes to civil rights, George Bush is following in lockstep in the path of Ronald Reagan. President Reagan was the first President in over a century to veto a civil rights bill. But Congress would not ignore the needs of the people-not just wealthy corporate lobbyists who have power to get access to the White House. This veto is a slap in the face to millions of Americans who are struggling to get a fair chance to prove themselves.

That is what makes this veto all the more devastating. The issue goes beyond the mere technical terms of this legislation. The American people have never been about something bigger than buzzwords like "quotas" or "disparate impact" or even "civil rights."

This bill is about the very fiber of our Nation. We are a nation of immigrants. Tens of millions of people have flocked to our shores looking to make a better life for themselves and their families. America has been a beacon of freedom, a haven of opportunity. We have welcomed people with open arms. Together we have made this country the greatest Nation in the history of the world.

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Mr. President, we have made so much progress in civil rights, yet remain so far away.

We have relied upon the Civil Rights Act of 1964 for 26 years. That landmark legislation has been the foundation upon which our efforts to erase the blight of bigotry and promote equal rights in the workplace and in the marketplace have been based. Yet recent decisions by the Supreme Court have delivered a near mortal blow to the future vitality of the act. The Civil Rights Act of 1990, which I cosponsored, was designed specifically to overrule those cases, restore our civil rights laws and revitalize our national quest for equality.

Mr. President, I was quite disappointed to learn of the President’s veto. I think he received very bad advice, and neither he nor this Nation were well served by this decision.

While we are all aware of the countless hours spent in negotiations to hammer out a compromise and how close the conferees and the administration were to a mutually acceptable result. Apparently, however, too many lawyers spent too much time on legal niceties and subtle distinctions. So much so, in fact, that the purpose behind the bill has been lost. In short, they lawyered it to death.

The legions of lawyers have been arguing about burdens of proof, the burdens on people who have been the victims of employment discrimination continue. Those of us who have been involved in difficult negotiations on other pieces of legislation realize that at some point, you must decide whether you want a bill or you want to make a statement. I regret that, once again, both the Congress and the administration seem more interested in making points than in coming to agreement. There are no winners or losers in this game, only victims.

Mr. President, I will vote to override the President’s veto when the Senate votes on this matter later this morning.

Mr. President, let me quickly summarize that I believe that guaranteeing civil rights remains still one of the top pieces of unfinished agenda on our Nation’s business. I think ensuring equal opportunity for all Americans is certainly one of the highest commitments we all have. To me, this bill is but a building block that is so important in the field of employment but it, in itself, does not answer our entire problem today.

Let me take my State as an example. Oregon has always been proud of its progressivism, always proud of its classical liberalism, always proud about being the first or second in the Nation. Oregon won second in the Nation in its fair employment practice act, won first in the Nation in its public accommodation act, won first in the Nation in its migratory labor legislation.

But last week we concluded a trial in my State of Oregon, a trial that had followed a criminal trial, a civil action, of a young Ethiopian standing on a baseball field in Portland being beaten to death by hoodlums with baseball bats representing one of the regional organizations. The jury found $12½ million of damages. That is not going to bring him back. Not only did they find in the criminal action the individuals’ guilt but they related the message of hate that led to this kind of bizarre action on our streets.

I want to say that I suppose there are advantages in not being a lawyer. I have seen and observed the countless hours that have gone into the negotiations to hammer out a compromise on other issues and then we realize that there is a time that comes when you have to either make a compromise work or you are more interested in making a statement.

I would like to have had less emphasis on hammering out the lawyers and more focus upon getting a bill. That is not our choice here today. In fact, I think perhaps this bill was lawyered to death. And we are not then winners or losers. We are all victims of this particular process. I think, when the legions of lawyers have been arguing about burdens of proof, the burdens on the people who have been victims of employment discrimination continue.

And I emphasize that the bottom line is there are no winners or losers in this game, only victims.

I shall vote to override the President’s veto and I am very hopeful we can find a solution to this very shortly thereafter.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. Mr. President, I yield 8 minutes to the distinguished Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Mr. President, as the distinguished Senator from Utah has said, there are many different issues which have justified the President’s veto of this bill. The litigation bonanza which it could create ironically is not denying rights to access to the courts to people not parties to lawsuits which have created a quota or affirmative action systems, to challenge those quotas, but I wish to devote my time here to one single central issue, the definition of the phrase created by the courts to parties to lawsuits which have created a quota or affirmative action systems, to challenge those quotas, a phrase created by the courts and to this point defined by the courts.

Remember, Mr. President, as should the people of the United States, that the central portion of this debate has not directed itself to the definition of to or to the sanctions against intentional discrimination. The 1964 Civil Rights Act deals very expressly and well with that. Numerous lawsuits alleging intentional discrimination have been won and nothing in this debate derogates from the ability to prevail to sue.

The central issue here is the degree to which the courts of the United States should be authorized and directed to penalize employers who without any intention to discriminate whatsoever nevertheless have groups of employees which do not reflect precisely the demographic pattern of eligible employees, whether by race, religion or gender, or the like.

I repeat that, Mr. President. We are dealing here with a historical and flagrantly unconstitutional characterization which almost by definition is not discrimination at all.

In a decision rendered by the Supreme Court of the United States last year called Wards Cove, which also has been the central area of controversy, the Supreme Court said that once that disparate pattern, that disparate impact has been shown successfully by an employee, that is the employer’s burden.

Though we have phrased the query differently in different cases, it is generally well established that at the justification stage of such a disparate impact case, the dispositive issue is whether a challenged practice serves, in a significant way, the legitimate employment goals of the employer.

The touchscreen of this inquiry is a reasoned review of the employer’s justification for his use of the challenged practice. A mere inspection of the employment goals which the employer has chosen to pursue is not sufficient, because such a low standard of review would permit discrimination to be practiced through the use of spurious, seemingly neutral employment practices. At the same time, though, there is no requirement that the challenged practice be ‘essential’ or ‘indispensable’ to the employer’s business in order to justify it. The degree of scrutiny would be almost impossible for most employers to meet and would result in a host of evils we have identified above.

That host of evils are self-imposed quotas, to the great majority of the Supreme Court itself.

Mr. President, it seems difficult for me to hear from anyone here what is wrong with that definition of business necessity which become the defense of any and all unintentional discrimination shown by employment population.

Now, this bill, while it seeks to reverse or change a number of decisions quite validly, expressly goes after that definition.

When the distinguished Senator from Massachusetts introduced this bill, his precise language was that in order to show ‘business necessity’, the practice had to be essential to the employer’s business, exactly what the Supreme Court had said was next to impossible for any employer to prove.
It was the design of this bill, when it was introduced, to say that a mere showing of disparate impact, a mere showing of an employee population which was at variance with that of the surrounding community, would be enough to prove discrimination. In the course of negotiations over the bill, that word has disappeared. We now have a 36-line definition of business necessity which will keep lawyers at work for 50 years.

But a precise overruling of this Supreme Court decision on this point remains in this bill and thus its intention and the intention of its sponsors remains the same. Employers will not be able to justify, for all practical purposes, any disparity between their employee populations and the populations of the community as a whole.

Contrary to the statement of the distinguished Senator from Ohio, this is not a dispute about whether or not people will get jobs. It is whether or not we will determine who gets jobs on the basis of their merit and their qualifications or simply make those decisions on the basis of race, religion, and gender.

It is a radical departure from the philosophy of the Civil Rights Act of 1964. It goes away from our theory that judgments should be based on merit.

As for the proposition for which they began this debate that the Wards Cove case makes it impossible for employees alleging discrimination to win disparate impact cases, Mr. President, the statistics of the last year show that to be false.

In that period of time there have been 27 cases based on this disparate impact; 12 of them have been won by employees asserting discrimination, 13 by employers in their defenses and 2 have not yet reached final decision. That opens the same percentage which litigation resulted in before the decision in the Wards Cove case.

Those of us on this side of this debate are concerned with the components of the bill simply to codify the precise language of the so-called Griggs decision. The bill introduced by the Senator from Kansas [Mrs. Kassebaum] and myself did so word for word. Mr. President, we were rejected.

The proponents of this bill do not want the language of the Griggs decision. They have turned it down. They do not want a direct reversal, a codification of the Griggs decision. They turned that down. They want language which will make it impossible for employers to prove business necessity and they want employers to be forced, in order to prevent constant litigation, to defend themselves by establishing their own quotas.

This bill does not require quotas directly by Government action, but it requires employers who wish to stay out of the courts to establish quotas on their own employee population in order to be able to stay in business.

The veto of the President of the United States should be upheld.

The PRESIDING OFFICER (Mr. Romn). The time yielded to the Senator from Washington has expired.

Who yields time?

Mr. HATCH. Mr. President, I yield 5 minutes to the distinguished Senator from Kansas.

The PRESIDING OFFICER. The Senator from Kansas is recognized for up to 5 minutes.

Mrs. KASSEBAUM. Mr. President, along with many of my colleagues, I am deeply disappointed that we have reached this vote. We have tried for months in many negotiations and many meetings, to restore the necessary balance to our civil rights laws.

I think all of us agree on that goal and no one more than President Bush. But it has not been achieved. For that reason, President Bush vetoed this bill and I will vote to sustain the veto.

It is the President's view a view I strongly share, that legislation is needed to address the Supreme Court decisions handed down last year that have weakened civil rights protections.

These rulings have swung the pendulum in favor of employers and against the real and potential victims of discrimination and harassment.

Unfortunately, in seeking to correct these problems, I believe the legislation before us swings the pendulum too far the other way in favor of employers and against employees. This bill does not restore the balance that existed before the Supreme Court rulings last year. It unsettles civil rights laws in sweeping and fundamental ways that are as disturbing as the effects of the court rulings.

We are not certain what will happen under this bill, and I think it is this ambiguity that causes all of us some concern.

Many of the arguments on this bill have focused on the issue of quotas. Supporters of this legislation argue this bill will force employers to resort to quotas to protect themselves from a flood of lawsuits that this legislation could well trigger. Supporters of the bill reject this argument as flatly unfounded.

Mr. President, I do not know if this bill will lead to hiring quotas and the truth is that I do not believe that anyone else in this Chamber knows whether it will or will not. What we all do know, however, is that this legislation sets aside existing legal terms and definitions that have been well defined through years of court decisions. In their place we are creating new terms and definitions that will require many more years of litigation to become clear.

The distinguished Senator from Washington (Mr. Gorton) has just carefully and eloquently delineated the problems with how we define business necessity, and I will not go into that any further.

My colleagues in the House issued a statement that the right to sue, all the promises in the world are empty promises to women. Mr. President, I just do not believe that is so. We have made advances. Those who are trying to find substitute language to the present Griggs decision Hawkins bill have made advances. These, too, have been delineated earlier and I will not go into that any further.

Winds of change are taking place in the labor force today, and I am not sure what the results will be. I seriously question at this point, Mr. President, whether we should go that much further in continuing to set higher standards and bring new remedies while we are unsure of the results.

I would like to call attention to a case decided earlier this month by the U.S. Court of Appeals for the Second Circuit, which upheld a firing on what could be a precedent-setting ground. According to the court, if there is clearly stated public policy—in this case that sexual harassment in the workplace is forbidden—that doctrine takes priority over the terms of a union contract. "In sum," the court said in its ruling, "there is an explicit, well-defined, and dominant public policy against sexual harassment in the workplace." And if that is the case—and who knows whether this would be upheld if it is appealed to the Supreme Court—clearly it shows some of the conflicts, concerns and tensions that we see developing in the workplace.

This bill takes steps that Congress refused to take when it passed the landmark Civil Rights Act of 1994. For the first time, we are opening every employer in America to lawsuits for unlimited compensatory damages—damages for pain and suffering—when they are accused of discrimination. This applies to the largest corporations as well as small businesses to city and county governments, school boards, universities, and every other employer that could be brought into court to defend themselves from multi-million-dollar lawsuits.

Supporters of this legislation argue that this is only fair when an employer is guilty of intentional discrimination. I would agree completely with that argument, but I always get stopped by one vital point that is absolutely central to this bill—the proving of guilt.

In 1992, Congress decided that affixing blame and extracting monetary vengeance was a sidetrack that our civil rights laws must not go down. It was clearly understood then, if not now, that endless lawsuits could tear
us apart, pitting workers against em­ployers, and each other, in the work­place. I believe that this is something that we must continue to take into consideration.

President, the goal of our civil rights laws is to correct injustice and end inequality. There is no higher pur­pose that we can set, and there is no lower standard that we should accept. We have not fully achieved that goal yet. Indeed, there is much that re­mains to be done. If I thought that this legislation would advance us closer to our goal, I would support it. I do not regard myself as a rightwing extremist. I feel very strongly about this issue. But we have to be careful and consider its larger impact, just as we are attempting to end discrimina­tion.

I do not understand why we have failed to come to agreement on this matter—which we all agree must be addressed. We have come so close, and yet it remains divided. If an issue cried out for reason and calm deliberation, this is one. If reason des­erts us now, I fear for what might happen.

But, Mr. President, I want you to know I believe this should be the first issue before us when we come back in the next Congress, and I pledge to make every effort to achieve language that we can agree to on all sides.

The PRESIDING OFFICER. The additional time yielded to the Senator from Kansas has expired. Who yields time?

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, on behalf of the majority leader, I ask unanimous consent that the vote on the President's veto message occur at 12 noon; and that the time from 11:30 to 11:45 be under the control of the Republican leader; and the time from 11:45 to 12 noon be under the control of the majority leader; and that the previous order on the foreign opera­tions bill remain in effect.

Mr. EXON. Mr. President, I rise today to support an override of the President's veto of the Civil Rights Act of 1990.

I have followed the debate on this bill closely and have had many con­cerns over the provisions in this im­portant bill. As my colleagues well know, I was the only Senator from this side of the aisle to vote against in­voking cloture on the bill. I agreed to support the bill on final passage only after assurances were provided that further improvements would be made in conference.

This bill concerns a highly technical and complex area of our laws. To make matters much worse, there are about as many interpretations of the effects of this bill as there are attor­neys. And that means there are many, many different views on this bill even within the Senate.

Not only are there differing inter­pretations of how this bill would change the law, but there are also inter­pretations of what the law was and how it was changed under the "Wards Cove" court decision. Given the confus­ing and conflicting views regarding this legislation, it is easy to lose sight of what should be the common goal of Congress and our President—equal employment opportunity for all Americans.

In the area of civil rights, our Nation has made much progress in a short period of time. Yet the hurdles that we now face are higher and perhaps more numerous. Our Nation now read­ily rejects the messages of racial and religious hate groups. Yet discrimina­tion in the form of a statistical threat to the American community. If allowed to smolder, covert discrimina­tion can easily catch fire.

I am concerned about the manner in which our Nation's commitment to civil rights has in recent years been slowly unraveled by the Supreme Court. While we may need to regroup our efforts at times, we should never retreat from a commitment to equal opportunity for all.

This bill will stop the retreat that was led by the Court. It will further our commitment against sex discrimi­nation by expanding the remedies available to those who are victims. Our Nation's women have made a great strides toward equality in recent years, yet there remains much room for im­provement.

I share our President's view that the Nation now chart a course that leads to further equal rights. Discrimination as a cure for discrimination rarely makes sense. For that reason, I sought lan­guage in the bill that clearly stated that quotas would not be mandated. That language has been included in this bill as additional assurances that hiring quotas are not the means endorsed by this bill.

Section 13 of the bill states:

Nothing in the amendments made by this act shall be construed to require or encourage an employer to adopt hiring or promo­tion quotas on the basis of race, color, relig­ion, sex, or national origin. • • •

In addition, the bill assures that the "mere existence of a statistical imbalance in an employer's work force on account of race, color, religion, sex, or national origin is not alone sufficient to establish a prima facie case of dispar­ate impact violation."

Not only were changes made to the bill to clarify its intent concerning quotas, but changes have also been made that address the concerns raised by my friend and colleague from Utah, myself, and others regarding the com­parable worth issue.

This is a much different, and better bill than was originally introduced.

I have been impressed by the fact that changes have been made and that compromises have indeed been forged. I hope that it shows the American people that it might increase civil rights litiga­tion and would be of the most bene­fit to the legal profession. Unneces­sary and costly litigation can be pro­found detriment to the ability of our Nation to compete in the world markets.

Included in the bill is a provision, sought by myself and others, that caps punitive damages at $150,000, or the Thirteenth Amendment's limits on suits for damages. I can well understand why many defen­dants advocate a smaller cap on damages or even no damages at all. But the intent of the cap is not to pro­tect employers from liability for dis­crimination in the employment process, but to protect employers from unfounded litiga­tion spurred on by the possibility of unlimited financial awards.

In this regard, I have joined with Senator Payor in asking the GAO to conduct a study to estimate the cost of the billions of dollars that have been spent in the last 3 years of the Civil Rights Act of 1990 should it become law. The study will focus on whether this bill encourages insubstantial claims of employment discrimination and will be a valuable resource in re­viewing the impact of this bill over the next few years.

Mr. President, I am very disappoint­ed that the bill has come to this point. I have long agreed that some changes need to be made in our civil rights laws. Both sides of this issue have negotiated in good faith ef­forts to develop a bill. Our President has made many suggestions for this bill that were incorporated. Many others have made valuable contributions. While all of us might want something a little different here, or a little different there, this bill is a worthy compromise that should have been supported by our President and that deserves the support of the U.S. Senate.

This bill has the strong support of many thoughtful and influential mem­bers from the President's own party. That simply would not be the case if this bill only contained some of the changes that this bill was intended to accomplish. I am very afraid that the Presi­dent’s veto of the Civil Rights Act of 1990 has further opened the divisions,
caused by discrimination, that continue to plague our society.

In the wake of the veto of our President on this bill and urge my colleagues to do so as well.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I have a problem here. In trying to accommodate the majority and minority leaders, we have changed the time from 11:30 for an absolute set vote that a lot of people have been relying upon, to 12.

I did not realize this was a problem, but it is a problem to some who have to make other appointments. So I wonder if we can get the majority leader up here and see if we can work out this time so it does not inconvenience so many other Senators.

Mr. KENNEDY. Mr. President, I yield 5 minutes to the Senator from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey, Mr. BRADLEY, is recognized for up to 3 minutes.

Mr. BRADLEY. Mr. President, unfortunately President Bush has decided to follow in the footsteps of his predecessor and vanquish civil rights instead of validating them. With his decision to veto the Civil Rights Act of 1990, President Bush renews the promise that opportunity will be based on ability and not frustrated by an employer's wrong-headed notion about irrelevant factors.

President Bush's action would return us to a day when discrimination in hiring and promotion was routinely taken for granted for 18 years. The bill is supported by a broad array of civic and religious groups that are unalterably opposed to quotas. The bill which Congress approved was what the court had held for 18 years.

What we want is a society free of discrimination, with sufficient legal remedies for those who find themselves victims of discrimination.

The Senate took the President's stated objections seriously and, in all, 30 amendments were added to meet the objections of the White House and the Justice Department. Yet the President still chose to veto this bill.

Mr. President, consider whether the President was serious when he said he wanted to sign a civil rights bill that restored the standards originally set by the Supreme Court this year. We should not play politics with the basic rights of Americans to equal justice.

I say to my distinguished colleagues on the other side, I know that within the Republican Party there is a very severe division between those elements of the party that want to make progress on civil rights, and those elements of the coalition that want to turn the clock back.

This is a moment of judgment.

There are many Senators on the other side of the aisle who care as fervently about civil rights as anyone on this side of the aisle. But the problem is a coalition that is built in part upon elements that want to turn the clock back in this country.

I appeal to my colleagues on the other side of the aisle on this vote, at this moment in our Nation's history, when the President has wrongly yielded to the temptations of a small faction of his party, to vote to override this veto. Because to vote not to override the President's veto will make this a sad day for this country, a sad day that many Senators on the other side of this aisle will regret as time passes.

There are certain moments in this life when you either choose to move forward or you choose to step backward. On the issue of civil rights, the progress must always be forward.

The PRESIDING OFFICER. The time allocated to the Senator from New Jersey has expired. Who yields time?

Mr. KENNY. Mr. President, I yield 3 minutes to my colleague, Senator KERRY.

The PRESIDING OFFICER. The Senator from Massachusetts [Mr. KERRY] is recognized for up to 3 minutes.

Mr. KERRY. Mr. President, I thank my distinguished senior colleague, and I congratulate him for his extraordinary leadership in this effort. I am not here today at a moment when the President has denied the Congress the work that it has pursued so diligently and, I think, so effectively and cautiously with respect to this legislation.

This is not a quota bill. That has been said again and again. A majority of the U.S. Congress passed the bill and so stated this fact. It is an antidiscrimination bill, a bill that seeks to redress wrongs committed against our citizens that for years we have said we would redress and reestablish the same standard that has applied over the years in the effort to redress those grievances. The President's veto is, I think, an appeal to fear. It is an appeal to some of the worst instincts in people, not the best, and it is a statement about relationships and power. It is a statement that this statement will not sit lightly with those in this country who depend upon us to try to defend their rights.

Counts of our citizens, not just those who are people of color, but with this bill, the hundreds of thousands of citizens—daily try to overcome obstacles that are placed against them in the workplace, and this bill was carefully structured to guarantee the access and protection which we have promised in the Constitution and the laws of this country. The veto of the President's veto, we have not only a denial of the reality of that access, but also a statement by this President and by the White House about its attitude toward that access.

In many ways, it is this statement about attitude that is far more damaging than perhaps even the hiatus between the veto and our efforts, should it be sustained, to be able to address the legal questions of how people achieve that access.

Mr. President, I believe that achieving access is a promise that has been broken over and over again in recent years. It is such a significant promise that is important to people at this point in time, given the increasing spread between rich and poor, the increasing number of homeless, the diminishment of the pie for which people are going to try to vie for economic opportunity; that to deny that promise with a veto of this legislation is to deny a part of ourselves and who we are.

The veto override we will undertake today is unfortunate, because it did not have to end up this way. After months and months of work by many people the President decided to oppose civil rights, to oppose the public interest and to veto legislation designed to stop discrimination.

My colleagues on both sides of the aisle and in both Houses of Congress, operated diligently and in good faith, trying time and again to address the concerns raised by the White House and the President. Yet, for every step forward, we took 10 steps backward. Each time we moved forward in the spirit of cooperation and compromise, the administration moved us 10 steps backward with more concerns and more issues, until finally only one issue was left: quotas.

The charge that this bill creates quotas is simply not true. This bill is not a quota bill; it is an antidiscrimination bill. In fact, the bill specifically states that nothing in the bill should be interpreted even to encourage employers to adopt quotas, let alone require them to do so. This bill is an antidiscrimination bill to protect victims of discrimination.

The President's veto was wrong on substance and wrong on politics. It is a mistake that the people of this country and the world will remember.

Mr. President, this bill is neither a quota bill nor a radical departure from basic civil rights law. What this bill at-
tempts to do is to restore the 18 years of experience that we have lived under since the Supreme Court ruled on employment discrimination in the Griggs case. The businesses throughout this country functioned effectively for those 18 years under the Griggs standard. During that time we heard no manufactured hue or callous indifference, but the bill also sets a limit on the amount of punitive damages an individual may recover from an employer. The false characterizations of this bill made by those who oppose it do a grave disservice to the millions of working men and women in this country who have benefitted and are still able to benefit from the protections we attempt to reestablish with this bill made by those who oppose it do a grave disservice to the millions of working men and women in this country who have benefitted and are still able to benefit from the protections we attempt to reestablish with this bill.

Our country is built on—in fact was founded on—the principle that all men are created equal, and that principle has guided us for more than two decades. The businesses throughout this country functioned effectively for decades.

It is our responsibility as legislators to ensure that the fundamental rights, liberties, and principles established in our founding documents are available to all Americans—not just to some Americans. As a result of the President's veto on Monday, millions of Americans who face employment discrimination—black Americans, women, Jews, Catholics, native Americans, Irish Americans, the disabled—have no effective remedy against this discrimination. This is just plain wrong.

Despite its proud history in helping achieve racial justice and equality in America, the Supreme Court recently began to turn its back on injustice and discrimination. In a series of decisions last year, the Court dramatically weakened key Federal civil rights laws passed by Congress and placed a tragic stamp of Government approval on job bias.

This bill is designed to correct those decisions, to restore the full force of the antidiscrimination laws which have guided us for more than two decades. I will vote to override President Bush's veto. I sincerely hope that my colleagues will join me in fighting injustice and inequality by overriding this veto.

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

Mr. HATCH. I yield 2 minutes to the Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I think it is very important that the President's veto be sustained. I am saddened that the rhetoric on this issue has deteriorated in some circles to the point there is a suggestion that if you do not support this legislation, you are somehow a racist. That kind of discussion is damaging both to the speaker and to the listener. We do not need that. No one in this body deserves that kind of vicious and stupid innuendo.

This is an issue of how closely the Congress of the United States is going to micromanage the day-to-day business decisions of our Nation's employers, that is all. An official of an employer group said it best Tuesday morning. "If you can get hauled into the court by the numbers, if you can get sued by the numbers, then you will hire by the numbers." That means quotas. That is what this is. It is an issue of whether or not we are going to enact a law that in effect, creates a presumption that an employer is a racist. There are those who will deny this, but that is the effect of this bill. Sometimes you cannot match the employment roster with the diversity of the community. This legislation ignores that very real fact of life.

The President is very disappointed. He wanted to sign a civil rights bill. We didn't send him one. We sent him a "quiet quota" bill. This bill makes race the sole criteria of employment decisions. That is racism—not civil rights.

I hope my colleagues hear me on this. We have to come back and redress this. We were presented with a very cleverly crafted and drafted bill, and we did not get a proper opportunity to debate it. Remember what happened on this bill. It was so important that we just chopped everything up and went right ahead with it, and that is how we got to this point. My hunch is, if we sustain the veto, within minutes we will be back in business and we will get something before we go out of session.

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

Mr. BOSCHWITZ. Mr. President, I would like to ask a question of the Senator from Utah, as well as the Senator from Massachusetts.

I hired, as I told you, hundreds of people in my business career, and I told you the instance of one fellow who worked for a moving company, North American Van Lines. They used to send them all over the country. He would not be home for weeks. He drove up into the parking lot of my retail store with this big truck, came in and applied for a job. I was just really interested in getting that truck out of the parking lot. But he wanted to be home with his kids and everybody and not be gone for 4 weeks at a time. So I thought he was well-motivated, and I thought he really had the motivation to sell, and I hired him. He is still with us today, as a matter of fact.

My question to you is that those kinds of hiring practices—mine were always very informal; I sized up the people and hired or did not hire them—in those kinds of hiring practices today before this bill, would a statistical disparity result or would a lawsuit lie if there were statistical disparities, as they say?

Mr. HATCH. Today, no.

Mr. BOSCHWITZ. The second part of the question is, if the Senator from Massachusetts, if he would answer it, will it apply after this bill?

Mr. HATCH. On a pure statistical basis, that lawsuit would not lie today because the plaintiff has to show the disparity and then point at the specific business practice that caused it.

If this bill passes, all the plaintiff would have to do is show the disparity because they can then allege all the employer's practices caused it. Thus, you are going to be in a lawsuit based primarily on the statistical disparity. It does change the law. It will change the burden of persuasion to the employer. The burden of proof would be on the employer and you are going to find yourself in litigation you never were in before.

Mr. BOSCHWITZ. I might say, I was never sued nor sued anybody in my entire business career. I ask the same question of the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, the question is an excellent question. I would quote from the legislation:

"The mere existence of a statistical imbalance in an employer's workforce on account of race, color, religion, sex, or national origin is not alone sufficient to establish a prima facie case of disparate impact violation.

Just the fact you have a statistical difference is not sufficient. You have to demonstrate, you have to show what the particular practice is that causes the effective discrimination. That statistical imbalance in and of itself does not permit a prima facie case.

The PRESIDING OFFICER. Who yield time?
Mr. HATCH. Mr. President, needless to say, my original statement is corrected by the time I have reached, because you would not be in today because of the way this bill was written. I reserve the remainder of my time.

Mr. BOSCHWITZ. I say to my friend from Utah, the provision in the bill that the Senator from Massachusetts cited—

Mr. HATCH. We have run out of time, but I ask unanimous consent to put into the Record the provision of the bill and the answer to that and I will bring it to my colleague. My time has expired.

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

The language added in conference purporting to address the quota problem, and referred to by Senator Kennedy, occurs at paragraph 4 in section 4. That language states:

The mere existence of a statistical imbalance in an employer's work force on account of race, color, religion, sex, or national origin is not alone sufficient to establish a prima facie case of disparate impact violation.

I respect this effort to ameliorate the quota problem of this bill. I do not believe, however, it addresses the problems I have been mentioning for months in any real way.

At the outset, let me note that the language on its face is not even keyed to individual jobs. To say that racial or gender imbalance in an employer's entire work force is not alone sufficient to establish a prima facie case of disparate impact violation does not address the fact that these disparate impact cases, since 1971, have been basically aimed at particular jobs within an employer's work force.

Moreover, as explained by its supporters, this amendment merely requires statistical comparisons between the racial composition of the jobs at issue and the racial composition of the qualified population in the relevant labor market or applicant pool. But, as I have argued for months, this does not solve the quota problem. Let's use plumbers as one example in the Senate committee report's minority view. Suppose a person from a specific group is rejected for a job at a plumbing company. Twenty percent of the plumbers in the relevant geographical labor market are from that group; but only 10 percent of the company's plumbers are from the group. The rejected applicant sues, alleging illegal disparate impact under this bill. All the plaintiff would have to do is show that in the relevant labor market 20 percent of the plumbers are from the group, that the employer has filled its plumbers jobs at only half of that percentage, and allege that a group—or all—of the company's hiring practices cause the imbalance. At this point, the plaintiff wins, unless in a rebuttal in which the employer argues the statistical disparity is not unfair. The employer can prove its innocence, which can only be done after a much stricter standard than the Supreme Court set forth in Griggs v. Duke Power Co.

My concern is absolutely no different if the comparison is between the pool of qualified applicants for a job and those selected for the job.

All this without any allegation that say a plaintiff cannot compare a group's percentage of plumbers at a company with the percentage of that group in the general population—but that doesn't solve the problems. In short, a mere imbalance alone in a job between those selected for the job and those qualified for it in the relevant labor pool, is still the basis of a claim under this bill. Moreover, a plaintiff never alleges an imbalance anyway; he or she always alleges that employer practices, together with the statistical imbalance, are illegal. This language does not solve the problem.

As Professor of Law at Wayne State University and former member of the Senate committee report's minority views, I believe, however, it addresses the problems I have been mentioning for months in any real way.

In the first, in a disparate impact challenge, the relevant statistical imbalance is usually with a given job classification. That is, the plaintiff does not argue that the employer's workforce as a whole has only 8% blacks when it should have 14% blacks. Instead, it argues that the percentage of blacks in its workforce is only 8% blacks instead of 14% in its machinist classification. On its face, then, this provision seems not to be responsive to the objection that an imbalance of this kind alone should not be sufficient to establish a prima facie case.

The second problem with the above "disclaimer" is that it is not clear what else a plaintiff is to show to establish the prima facie case. The plaintiff is not going to assert the "mere existence of statistical imbalance" alone. Under the bill, the plaintiff will argue that an unidentifiable "group of employment practices" has caused the imbalance. Although such an assertion seems to be sufficient, to establish the prima facie case, it is really no different from simply allowing a plaintiff to challenge the imbalance "alone.""
colleagues will persist until the bill is enacted into law.

Sincerely yours,
Rev. Theodore M. Hesburgh, C.S.C.

YALE LAW SCHOOL,
New Haven, CT, October 23, 1990.

Senator Edward M. Kennedy
Chairman, Labor and Human Resources Committee, U.S. Senate, Washington, DC.

Dear Senator Kennedy: I was very disappointed by President Bush's decision to veto the Civil Rights Act of 1990. I think that the bill that you co-sponsored represented a responsible, bi-partisan effort to put employment discrimination law back on track after the unfortunate Supreme Court decisions in 1989. I hope, sincerely, that the Congress will keep the faith with the thousands of minorities and women who look to the federal courts for vindication of their rights by overriding the veto and making this important legislation the law of the land.

I understand that the Bush Administration has offered an alternative bill to the Civil Rights Act of 1990, suggesting that it would achieve many of the objectives of the vetoed bill without presenting "quotas." I have had an opportunity to review the Administration's proposal and its Section-By-Section Analysis. My firm conclusion, after careful review, is that the Administration's proposals, in several respects, the problems caused by the 1989 Supreme Court decisions and is not sufficiently corrective, even where changes in the post-1989 case law are made.

Let me give just a few examples. First, under the Administration's bill, the definition of "business necessity" turns on whether the employer decides to defend an employment practice "as a measure of job performance or not." If the employer opts for the former approach, then the practice must "bear a significant relationship to successful performance of the job." However, if the latter approach is chosen, the practice need only "bear a significant relationship to a significant business objective of the employer." Moreover, the bill authorizes a court to look, among other things, "prior successful experience" in determining whether the "business necessity" test is met. Let me say that this approach makes a charade of employment discrimination law by giving employers broad latitude to adopt practices that do not evaluate applicants according to merit but rather rely upon stereotypes and outmoded views as to the proper roles of racial minorities and women. This bill stands Grips on its head.

Second, Section 6 of the Administration's bill does not respond adequately to the undermining effect that Martin v. Wilks has had upon consent decrees in employment discrimination suits. As drafted, the bill would continue to allow such decrees open to collateral attack years after they go into effect. The consequence of this half-measure would be to continue the "chilling effect" of Wilks with respect to voluntary resolution of disputes as Congress envisioned when it enacted Title VII.

Third, Section 8 of the bill, far from achieving a parity between racial minority plaintiffs and white plaintiffs, would further discriminate against women. Senator Kennedy's stated goals of restoration and protection of employees from discriminatory practices. The conference report passed by the Senate and the House would have created a system where employers must hire by quotas or face litigation.

The President has negotiated in good faith for months with the author of the bill to draft language consistent with the goals of Title VII as adopted by the Congress in 1964. At that time, the Congress specifically rejected quota hiring and the idea that preferential treatment should be granted in employment practice based on statistics.

Unfortunately, supporters of S. 2104 would not come to agreement with the Bush administration and passed a bill which would necessitate quota hiring and encourage plaintiff attorneys to file discrimination suits whenever they can show a mere statistical imbalance in an employer's work force.

The President has submitted lame to the Congress which addresses the major problems of S. 2104 and would protect employees from discrimination. The President's recommendation would effectively prohibit discrimination in the workplace without placing employers at substantial risk when hiring. The Administration's bill would create substantial confusion with respect to employment practices established by the Supreme Court in situations where such arrangements have been entered into voluntarily, as in Weber, or as a result of court order, as in Local 28. This would be an unfortunate revision of Title VII, in my estimation. It would deprive both employees and courts of valuable tools to ensure that systematically discriminatory practices are thoroughly eradicated.

Time does not allow me to go into further detail with respect to the deficiencies of the Administration's bill and the unfortunate consequences, whether intended or not, that would flow from its enactment. However, I hope that these comments are sufficient to support my statement that the bill is not an adequate substitute for the Civil Rights Act of 1990 and deserves to be firmly rejected by the Congress.

Sincerely,

Drew S. Days III,
Professor of Law.

Mr. THURMOND. Mr. President, the President has vetoed the so-called civil rights bill and I believe he has used good judgment in doing so.

This legislation was introduced in response to recent Supreme Court decisions in the area of employment discrimination, particularly concerning job assignments. The bill attempts to cut back on the types of de jure discrimination that have been recognized as permissible by the Supreme Court for many years.

The supporters of S. 2104 made cosmetic changes in conference which did nothing to alter the substantive impact of this legislation if it becomes law.

To blunt criticism, new language was added to assert that nothing in the bill would "require or encourage an employer to adopt a quota hiring or promotion system" and that "裁员 prohibits (employers) from offering other legitimate business justifications that have been recognized as permissible by the Supreme Court for many years."

The supporters of S. 2104 made cosmetic changes in conference which did nothing to alter the substantive impact of this legislation if it becomes law.

Mr. President, in short the maladies with S. 2104 were not cured in conference. The conference report passed by this Congress remains a quota bill, not a civil rights bill. The President was compelled to veto this legislation.

I urge my colleagues to vote with the President and sustain his veto.

Mr. BURNS. President, I rise today to voice my support of the President's veto on Senate bill 2104, the 1990 Civil Rights Act.

No one in the Congress will stand before his constituents and the Nation and announce he or she is against civil rights. Every one believes in equal rights for all Americans regardless of race, sex, religion, or ethnicity, as required by title VII of the Civil Rights Act of 1964. I am no different.

However, I have some problems with this piece of legislation.

First and foremost, under this bill, employers who have not filled their jobs by quota would be presumed to be guilty of discrimination in every instance, and they would bear the
burden of proving their innocence. The notion that a person should be judged and hired or promoted because he or she is the most qualified, regardless of sex, race, national origin, or region, would be discarded.

Instead, employers are being told that race, sex, national origin, and religion must become the paramount factor in every employment decision.

Second, this bill adds compensatory and punitive damages and jury trials for certain cases. If a person is a member of a protected class and if that person applies for an open position but is not offered a job, that person can file suit alleging an intentional discrimination.

Undoubtedly, the opportunity to recover damages under these circumstances will create an explosion of expensive, unnecessary litigation.

Third, this bill would eliminate the right of nonminority members to challenge any quotas that discriminate against them. This bill is a quota bill. It would allow groups to file a civil rights case by simply showing that an employer is hiring in proportion to the number of available minority workers.

This bill allows a plaintiff to prevail on the bases of statistical imbalance without requiring evidence of intentional discrimination.

For that reason, the bill creates an obvious, powerful pressure toward quota hiring. This bill would force employers to adopt hiring and promotion quotas to avoid court fights they cannot win.

Mr. President, I believe that the Kennedy quota bill does more harm than good in its attempt to help civil rights.

If we don't sustain the President's veto, the bill will place another regulation upon small businesses in America. This bill would also apply to State and local governments. The Federal government would once again pass a law that is costly and cumbersome for local governments, placing further strain on local budgets and forcing an increase in the local tax base to enforce the Federal mandate.

I wish this body would have had the opportunity to vote up or down on the Kasasebaum-Gorton alternative but we didn't. Obviously, it is just a few days before an election, and posturing, rather than sound public policy, have become the primary focus of the debate.

I intend to vote to sustain the President's veto and hope the 102d Congress can produce a better piece of legislation next year.

Thank you Mr. President. I yield the floor.

Mr. HOLLINGS. Mr. President, I rise to endorse an override of the President's veto of the Civil Rights Act of 1990. High passion and abstruse legal distinctions have characterized debate on this legislation, but I know its passage results from a unified, simple urge to fulfill America's promise of equal opportunity and equal protection for all.

This legislation overrules the Wards Cove Packing Co. v. Antonio, Patterson v. McLean Credit Union, Martin v. Wilkes, Lorance v. AT&T, and other Supreme Court decisions. This array of cases documents a shift in the Court's decision to interpret basic civil rights laws which were thought to be settled accomplishments by most Americans.

Such weakening changes require legislative redress. Unlike other nations, the United States was constituted by political documents guaranteeing freedom and equal rights.

Under the Wards Cove decision, the Court weakened the 1896 standard under which an employee could prove a prima facie case of disparate impact, and under which an employer could construct a "business necessity" defense. While a small percentage of civil rights cases involve disparate impact analysis, most of the debate has concerned the section of the bill clarifying these standards. The resulting conference report includes a sensitive and sensible restoration of the law as from 1971 until 1989. I cannot stress strongly enough that, despite misinformation spread about this bill, these disparate impact standards did not result in quota hiring and will not in the future. In short, I do not support quotas and this is not a quota bill.

This bill also overrules Patterson v. McLean Credit Union, which the Court found that an 1866 Civil Rights Act (section 1981) guaranteeing all persons "the same right to make and enforce contracts" as is enjoyed by white citizens does not prohibit racial harassment on the job. Mr. President, it is clear to any citizen that this decision twisted the spirit of the law, and the current legislation is needed to restore its intent. Congress did not go to the trouble of prohibiting racially biased contracts in law, only to have contracts implemented in a racially biased way.

Consideration of section 1981 brings up a point of inconsistency in current law which is addressed by the legislation before us. While victims of discrimination on the basis of race may seek monetary damages under section 1981, similar victims of other forms of discrimination cannot seek the same remedies. The Civil Rights Act of 1990 ensures that individuals of any race, gender, or religious affiliation are protected equally under the law.

In Lorance v. AT&T Technologies, the Court found that the 30-day statute of limitations for reporting title VII violations protected women employees form even challenging allegedly discriminatory layoffs, because the seniority system on which the layoffs were based had been in place for 3 years before. This is an outrageous circumvention of the intent of title VII.

When employees move quickly to challenge employment decisions, the Court should slam the door in their face because questionable rules for the decision were set up long before the alleged discrimination occurred. Conversely, the Court is wrong to encourage employees to prevent the expiration of the 3-year period before any discriminatory effect has been felt.

In these and other cases, the Court has wrongly interpreted congressional intent, and has weakened our country's guarantees. The Supreme Court has assessed laws protecting our most hard-fought gains without proper regard for legislative history or its own precedents. Americans deserve better, and I am glad to help set the record straight by supporting this legislation.

Mr. ADAMS. Mr. President, over the last several months, a great deal of discussion has taken place on the floor of the U.S. Senate by supporters and opponents of this legislation concerning the case of Antonio v. Wards Cove Packing Co. Now it turns out that the primary reason for the President's decision to veto the entire Civil Rights Act of 1990, is because he objects to our effort to deal with that specific Supreme Court decision. For most of my colleagues, Wards Cove is a confusing legal issue, a complicated civil rights case, and a devastating landmark Supreme Court decision. The underlying discussion before us is the Civil Rights Act of 1990, a bill that was reported out of the Senate Labor Committee on April 4, 1990, the 18th anniversary of the assassination of Dr. Martin Luther King. I deeply regret that the problems of the Wards Cove Packing Co. ever reached the U.S. Supreme Court, and that those problems are now cited as a justification for vetoing this landmark legislation. Quite frankly, this case may well stand as a classic example of how bad cases make bad law.

Mr. President, I expect that I am the only Member of this body who has ever worked at a salmon cannery like Wards Cove. I know and respect the Seattle family that owns the company, and I have a longstanding friendship with the workers, who spend long hours under difficult conditions in Alaska during the summer salmon season. I know the system that developed over the years in that cannery. During my first summer in Alaska, I
spent much of my non-working hours in the bunkhouse that was overwhelmingly inhabited by Filipino workers. For me it was a valuable, transitory experience, and something that has remained with me over the many years that have passed since that summer. I feel I owe it to those of my fellow workers who never made it beyond that bunkhouse, and the cannery, to speak out about the system that existed when I worked in Alaska, and existed at the time this lawsuit was filed. I do not intend to point the finger of blame in any direction, but I feel strongly that this is not the time nor the place to end the discussion regarding the purpose or effect of the system that developed over the years at Wards Cove, and in the Alaska canning industry.

What concerns me most about this discussion, is the suggestion that some injustice will be done by sending the Wards Cove case back to the western district of the Supreme Court for further examination, rather than to have it remanded for trial, as was suggested by an 11-member panel of the Ninth Circuit Court of Appeals in a decision entered on September 2, 1987. In that decision, the court noted: In assessing how racial labeling and segregated housing and mess facilities may cause an adverse impact, we suggest that the court consider the message that such practice conveys to the general population.

The court went on to state: The cannery workers argue persuasively that the companies’ use of separate hiring channels and world-of-mouth recruitment, and their failure to announce vacancies should serve to excuse the cannery workers from having to prove the adverse impact of the practices in question. The court went on to state that the attorneys for the plaintiff cannery workers have expended thousands of dollars in costs, and have received no fees, so the burden of pursuing this matter has not been borne solely by the plaintiffs. The court has been subjected to no “litigation bonanza” for the affected workers in this litigation. Speaking as one whose career horizons were not limited by the 5 summers I worked in Alaska with my Filipino coworkers, I urge my colleagues to step aside and allow the party litigants to either negotiate a settlement, or litigate this case to final resolution at the trial level. For these reasons, I believe we should vote to override the President’s veto of the Civil Rights Act of 1990.

I compliment the Senator from Massachusetts for the long hours he has spent shaping this legislation, and working with the administration to find the middle ground around which consensus can be forged. I oppose any effort that would relieve Wards Cove Packing Co., and future companies whose practices are challenged by women and minorities, of their obligation to show that past discriminatory hiring practices have been identified by the Ninth Circuit as needing further examination at the trial level. This body should not refuse to support a renewed civil rights bill.

President Bush’s so-called compromise bill would wash away years of progress in protecting civil rights. The Bush proposal would allow employers to claim business necessity that could result in businesses refusing to hire someone because of the attitudes or prejudices of clients and customers. It is bad enough that the Bush administration refuses to support a renewed civil rights bill—but the President’s compromise represents an enormous loophole that will actually condone intentional discrimination.

I urge all of my colleagues to reject the administration’s plan, override President Bush’s veto and pass a Civil Rights Act to ensure that our Nation’s progress continues. The road from the days of drafting the Constitution to protect the freedom of religion, to the suffragettes to the dark days of Selma and on has been rocky. Mr. President. But we continued the march for equality and freedom—and we cannot and should not turn back now.

Mr. President, I ask unanimous consent that a copy of an editorial on this subject by the Denver Post appear in the Record.
Mr. President, our Nation was founded upon principles of equality and a respect for individual freedom that sought to establish throughout our society a system of fairness for all; a system that would enable anyone, regardless of who they are or from what background or make-up they come, to have as much of an opportunity as anyone else to get a job, advance in that job, and succeed in life. All would have that opportunity because they would be judged upon their abilities.

To much of our Nation's history has been a history of the struggle to realize that ideal, and it has been a difficult struggle that at times has threatened to tear our Nation apart. Every generation has struggled with it, and it fought a war over it.

For the racial and cultural minorities of our Nation, and for many, many women who have been the victims of discrimination the struggle has been hard felt, and it continues. Today we still struggle to decide the opportunities that should be their right.

What we are trying to do today is to take a few more steps toward that ideal of equal opportunity. It is a very difficult task since it is often difficult to judge how any law we enact will be interpreted, and what effects it will have.

Yet, it is a tremendously important task, and we must do the best we can. I believe this bill we are considering today is a very positive step forward for civil rights in this country. To the many in our country who have been discriminated against because of the color of their skin, or their gender, or their religion, this bill says we very much want you to have a fair chance to get a job and to move ahead in that job.

I believe this bill is a good bill. And I do not believe that it is the kind of detailed arguments that only lawyers would seem to care about.

The debate of these issues thus may sound dry and overly technical. But the definitions make a great deal of difference in civil rights law. These terms help from the basis of important antidiscrimination and civil rights law. Thus, these terms bear a direct relation to the ability of Americans, including women and minorities, to be able to participate in the job market without fear of discrimination. This is the basic promise of fairness—that we owe—to all Americans. And carrying out that basic promise of fairness is what the debate of the past year has been about.

The 1989 rulings affected some of these definitions, and they need our attention. We cannot get cramped interpretations of our national civil rights statutes to go unnoticed. We need a civil rights bill that clarifies just exactly what we mean when we say, "All Americans deserve a guarantee that their civil rights will be protected, and we will provide that guarantee."

I am disappointed that the situation now before us has occurred. I would have preferred to see a negotiated resolution to this matter, rather than a veto and an override. During the Bush Presidency, I have not voted once to override a Presidential veto. But in this case I shall. I have given the measure before us a lot of thought, and I do not think that this bill is a "quota bill." It may not be perfect, but it is a good bill. And I do not believe that it will cause employers to adopt hiring quotas.

I hope we will be able, even in this 11th hour, to work out a compromise. Regardless, I will be voting to override this veto. The conference bill before us is needed to counteract the harmful and cramped 1989 Supreme Court decisions; it is a solid bill; and it will help ensure not quotas, but fairness, in the workplace.

Mr. DOMENICI. Mr. President, today the Senate will vote on whether or not to override the President's veto of S. 2104, the Civil Rights Act of 1990. I support this critical legislation that would strengthen our civil rights laws prohibiting discrimination in employment, and I will vote to override this veto.

Mr. President, our Nation was founded upon principles of equality and a respect for individual freedom that sought to establish throughout our society a system of fairness for all; a system that would enable anyone, regardless of who they are or from what background or make-up they come, to have as much of an opportunity as anyone else to get a job, advance in that job, and succeed in life. All would have that opportunity because they would be judged upon their abilities.
he has struggled to see that the requirements of this bill are fair for employer and employee. He is concerned that this bill will place too great a burden upon employers and that they will essentially be forced to adopt quotas.

I share his concern about quotas, and the need to be cautious in what we do, but I disagree with the President's views on the impact this bill will have.

The language in this bill that relates to the quota issue would, in my opinion, do the following. In cases where a charge of discrimination is based upon a legitimate showing of disparate impact—that is, a clear showing that an employment practice, or practices, cause a significant imbalance between the pool of applicants and those hired or promoted—the burden of defending the employment practices leading to the disparate impact shifts to the employer. This would reverse the 1989 Wards Cove decision.

This burden would require that the employer make the best access and best understanding of the employment practice or practices being challenged, must demonstrate that the challenged practices bear a "significant relationship to successful performance of the job." This language is drawn, word for word, from 1971 Griggs decision. That decision first set forth the way disparate impact cases should be handled.

The interpretations of key phrases like "significant relationship to successful performance of the job" have been at the center of the debate over this bill. I believe what we all have been striving for, and what this bill does, is to adopt the standard set forth in the Griggs case, and used by the courts up to the time of Wards Cove.

Now Griggs said a number of things, and we could argue about what all the words mean. However, I believe the way this bill would be interpreted is this: employers faced with the burden of defending their practices must do more than just provide a reasonable rationale for the existence of a practice which is clearly impeding job opportunity for minorities, women, and others.

Employers must show, with some evidence beyond their own subjective beliefs, that the challenged employment practice tells the employer something meaningful about the applicant and the applicant's ability to do the job in question. It says to employers, the practices you use to judge potential employees should be considered carefully and must significantly relate to real employment questions.

As long as the procedures used to judge applicants have a real, and well-considered, basis for evaluating applicants, employers are not liable and should not resort to quotas. Quotas have not been the legacy of disparate impact cases since Griggs, and we are, essentially, restoring the standard to what it was before Wards Cove. We are not intending to impose any burden beyond what we had before.

Let me also say that this does not mean that employers should not be able to demonstrate the relative merit of applicants. This bill does not require employers to hire or promote those from protected groups, just as long as they are minimally qualified. Such an interpretation directly contradicts the decision in Griggs, and we have expressly stated that the purpose of this part of the bill was to codify Griggs.

I believe, Mr. President, that we are not putting forth with this bill a new standard that employers must meet. It says that we believe Wards Cove went too far, and we want this law to mean what it meant before Wards Cove. Such a declaration will not end the debate about what exactly is required of employers in each case but I think it does show that this bill does not intend to impose upon employers a greater standard than that which existed before Wards Cove and since Griggs. On this point, the record is very clear.

Let me also comment on the other important provision of this bill. S. 2104 would amend section 1981, a post-Civil War statute prohibiting discrimination in the making and enforcement of contracts, so that it includes coverage of the full performance of a contract. This will provide protection from on-the-job racial and sexual harassment.

The bill would also make illegal any discriminatory act that is a motivating factor in an adverse employment action against an employee. This enables employees to challenge practices that are clearly illegal, yet damages would not be allowed if the same adverse employment action would have resulted even without the discriminatory act.

Regarding consent decrees that implement desegregation plans, this bill would limit the ability of outside parties to challenge and disrupt such decrees, such as for example, the number of exceptions from this exclusion to assure that all interested parties retain the opportunity to make a fair challenge to a consent decree.

S. 2104 would allow the filing period for discrimination claims to start at the point where discriminatory practices actually cause harm, rather than when the practices were adopted. These provisions would assure that the statute of limitations would not expire before a practice, such as a discriminatory seniority system, actually harms someone.

The last significant provision in the bill would allow for the awarding of compensatory and punitive damages for discrimination carried out with malice or with reckless or callous indifference. This section would grant victims of intentional sexual, religious, and ethnic discrimination the same rights to damages currently available to racial minorities under section 1981. There would be a $150,000 cap on punitive damages.

Undoubtedly, Mr. President, the court will have decided how all this is to be applied. That is unavoidable, and would have to be faced by whatever bill we adopt. I am confident that once the courts begin to settle what is required and what is not, that this bill will stand. I am confident that it will do much to give women, blacks, Hispanics, and others a fair shot at a job or promotion—one they should have, and one for which our Nation has long struggled.

Mr. DODD. Mr. President, I rise today to strongly urge my colleagues to join me in voting to override the President's veto of the Civil Rights Act of 1990.

As we all know, the Supreme Court last week set back the clocks of the civil rights movement. And, President Bush has now endorsed that retreat. President Bush's veto is a slap in the face for all working women and minorities in this Nation.

The President has courted civil rights groups and publicly spoken of his support for a civil rights bill. And, for over a year, the President has used the same excuse for not supporting the Civil Rights Act of 1990. Each time the Congress has sent the President a bill for discussion, he has cried "quotas." Well, I am sick of hearing the quota plea.

Time and time again, my colleagues in the Congress have amended the Civil Rights Act to ameliorate the President's concerns about quotas. As early as July, Senator Kennedy offered a committee substitute to amend the definition of business necessity and include language that specifically stated that the bill should not lead to quotas. We thought that they will changes would bring the President's support. But we thought wrong. So, we amended the bill further. Once again, the President came back with the "Q-word."

It will not take a Ph.D. in political science to figure out that the President has never intended to sign a civil rights bill. Simply put, his promises have been empty. He would rather bow to the most conservative elements of his party—than protect the rights of working Americans. On a matter as important as civil rights, he has turned his back on the increasing number of women and minorities entering the work force.

The Civil Rights Act of 1990 is not a quota bill. How many times do we have to say it? The measure in its current form reflects the many changes made by the Congress to assure busi-
nesses that a strengthening of the civil rights law would not lead to quotas.

Mr. President, I will vote to override the President's veto. Every working American, regardless of their gender, race or religious affiliation, deserves equal treatment under the law. It is their right under the Constitution. And, the Civil Rights Act of 1990 provides such protection. For this reason, I once again urge my colleagues to join me in supporting the Civil Rights Act and vote to override the President's veto.

Mr. HELMS. Mr. President, I support the President's veto of the so-called Civil Rights Act of 1990.

Before the alarm bells start going off in the media and the civil rights establishment, it is essential that all of us take a step back and remember just what civil rights actually mean.

We should also remember which group would reap the benefits of this legislation: Lawyers across the land would soon discover a cash cow in this legislation–more appropriately called The Civil Relief Act for Lawyers of 1990.

Mr. President, civil rights are carefully crafted limitations on the power of government. These rights identify the things that government is prohibited from doing to any citizen–regardless of race, creed, or color.

The Bill of Rights, for example, lists a number of things that this Government does not have the power to do. The first amendment states clearly that “Congress shall make no law” prohibiting the freedom of speech and the press. The rights guaranteed by the first amendment are rights that every American holds–not just the privileged few in the media. We all have the same rights regardless of our position in society.

The conference report on civil rights shows just how far we have come from the original understanding the founders had of rights. In the report before us, civil rights are rewritten to represent a massive redistribution of benefits and privilege from those who–according to some–have too much of it, in favor of those with supposedly too few. In order to redistribute these benefits, the coercive powers of the Government are allowed to grow and to threaten hard working people in the name of civil rights.

Mr. President, where civil rights once meant a check on government abuse of individuals' rights, we now have a bill which expands government power to the point where the rights of all citizens are in danger. As I said, the only class of Americans who benefit from this bill are the lawyers who will enter what George Will calls a potential "litigation bonanza.""
the long, slow, and arduous path toward assuring all Americans of their fundamental right to equal opportunity in the workplace. I fervently urge all my colleagues to reject the President's weak alternative to the Civil Rights Act of 1990 and join with me in overriding his ill-advised veto. I urge my colleagues to join us in sending a strong signal to the working women and men of this country, and to the Supreme Court, that we will not tolerate discrimination—we will not turn away from more than 100 years of slow progress toward equality.

I believe that had the President not listened so intently to the rhetoric of his advisers and, instead, had personally examined the provisions of the Civil Rights Act of 1980, he would have recognized that none of the bill's provisions could be construed as pressuring businesses into adopting hiring or promotion quotas. If he had examined the bill, I believe the President would have found that the bill is simply an antidiscrimination bill. It is not in any way, shape, or form a quota bill.

Our distinguished colleagues who worked long and hard on this bill have not been belied, responded to every legitimate objection raised against this bill. They have crafted a bill that removes any reasonable doubt about quotas. At the administration's urging, they changed the language of the bill to reflect Griggs versus Duke Power Co., the prevailing interpretation of civil rights law for 17 years, until the Supreme Court's 1989 decisions. Yet, the allegations continue, and they trouble me deeply.

Allegations that this is a quota bill do an incredible disservice to the millions of women and minorities who stand to gain the fundamental right of equality through passage of this legislation. No one, not even the Members of the Senate, the House, or the administration—supports quotas. I certainly do not. I firmly believe that merit, not race or sex, should determine who is hired for a job. And through the excellent efforts of Senators KENNEDY, JEFFORDS, DANFORTH, DeCONCINI, SPECTER, and others, the bill's provisions make clear that quotas are not advocated, mandated, or intended. Indeed, the bill specifically says that nothing in the bill "shall be construed to require or to encourage an employer to adopt hiring or promotion quotas."

The bill also effectively addresses two issues important to many of my colleagues, me, and our business constituencies: The status of the law regarding disparate impact cases and jury awards of punitive damages. During the House-Senate conference, provisions were adopted limiting punitive damage awards and clarifying that in cases involving disparate impact, the mere existence of a statistical imbalance in an employer's work force on account of race, sex, religion, or national origin is not alone sufficient to establish a prima facie case of disparate impact violation.

Mr. President, the evolution of civil rights laws in this country has been long and arduous. The Supreme Court's decisions last year and the President's veto this week make clear that we have by no means reached a point where we can be complacent. The burden is on us, the Members of Congress, to restore equality and equal justice for all Americans. That is the goal of the Civil Rights Act of 1990, and that is why we must override the President's veto. Thank you.

Mr. AKAKA. Mr. President, I rise this morning to express my deep disappointment over the President's veto of the Civil Rights Act of 1990. President Bush, through his action, now has the dubious distinction of being only the third President in our Nation's history to veto a civil rights bill.

Those of us who support civil rights are right in our argument that the bill is simply an antidiscrimination bill. It is not in any way, shape, or form a quota bill.

I urge my colleagues to overturn the President's veto. We were promised a President's veto. We were promised a President's veto. Thank you.

Mr. President, it is time to leave behind 18th-century attitudes about women and minorities.

When we talk about gender and skin color, we are talking about God-given attributes. But God has also given us the attribute of equality. Is it too much to ask that employers recognize this bill; and you can be sure that no Senator whose name is Mikulski would support a quota bill; and you can be sure that no Senator whose name is Mikulski would support a quota bill; and you can be sure that no Senator whose name is Mikulski would support a quota bill.

Mr. President, we are on the brink of the 21st century. It is time to leave behind 18th-century attitudes about women and minorities.

We have tried this bill. We have tried this bill. We have tried this bill. We have tried this bill.

And the women who are bringing and they would have hearings. And they would have hearings. And they would have hearings. And they would have hearings.

The President, however, said he vetoed the bill because he thought it imposed quotas. This is unique—the bill is about basic civil rights affecting women and minorities—it is not about quotas. Despite what the White House has claimed, this was never the intent of the bill. In fact, the bill was modified in direct response to concerns about quotas.

I urge my colleagues to overturn the President's veto. We were promised a President's veto. We were promised a President's veto. Thank you.
I came to politics through social work and community organizing, but I intend to fight for the women who will come to this body through law and business, through education and through engineering.

I will fight to overturn this veto of legislation that would ensure their civil rights, and I urge my colleagues to do the same. I will fight to get on with fulfilling the American dream and the hopes of our Founding Fathers.

Mr. WIRTH. Mr. President, I rise to urge all of my colleagues to vote to override President Bush's veto of the Civil Rights Act of 1990.

In declaring ourselves a free nation, one of the basic ideals defining ourselves was that of equality. At that time, the national perception of just whom should be treated equally was fairly limited. But as social norms were dispelled and mind sets broadened, there came to understand that when stating that all men are created equal, that we mean that all people are created equal.

The history of America in the last three decades has been marked by long struggle to widen this mindset—to assure all Americans equality in the voting booth, in the workplace and equality in the marketplace. This is the legacy of Martin Luther King, Jr.'s, odyssey and martyrdom; it is also the legacy of thousands of other Americans who courageously broke color barriers in the classroom, the lunch counter, and the polls.

After three decades of progress in support of civil rights, I am truly appalled that the Bush administration is willing to turn the clock backward and reverse the gains our Nation has made in assuring equality of opportunity.

A President of the United States should lead and come to understand that when stating that all men are created equal, that we mean that all people are created equal.

Mr. President, I ask unanimous consent that a copy of an editorial on this subject by the Denver Post appear in the Record.

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

[From the Denver Post, Oct. 23, 1990]

On Rights, Bus Is Wrong

George Bush's veto yesterday of the most salient civil rights measure of recent years shows both his hypocrisy and opportunism on the issue.

The measure, passed last week by both the U.S. House and the U.S. Senate, would have overturned six U.S. Supreme Court decisions that crippled the right of American workers to be free from constitutional and religious discrimination on the job.

The measure had been painstakingly written to assure all Americans equality in the workplace.

By the President's action both truth and opportunity are lost.

The proposal also would have given employees added protection by making it difficult for workers to collect punitive damages from discrimination suits.

But Bush, who claims he wants to attract more blacks, Hispanics and women to the Republican Party, hasixed this carefully worded proposal on the flingrayly untrue pretense that it would encourage employers to hire according to quotas.

To compound his offense, Bush offered a substitute that would negate most of the on-the-job progress women and minorities have made since the early 1960s. For example, Bush's proposal would let employers use the discredited excuse of "customer relations" to defend racial or sexual discrimination.

Bush wants to be seen as promoting civil rights, so he can solicit votes from women and minorities. But he doesn't want to actually do anything that might advance the cause, let alone defend the GOP's right wing.

Colorado's Democratic senator and three Democratic representatives voted for the congressional measure. But the state's Republican delegation: Sen. William Armstrong; and Reps. Hank Brown, Joel Hefley and Dan Schaefer voted "no." It seems that these Coloradans are racist; instead, the votes appeared to have been cast out of party loyalty.

But being loyal sometimes means having to tell the leader that they don't agree, and Bush is radically wrong on this issue.

Both Colorado's senators and all six of its representatives should affirm their belief in equal rights by casting their votes to override Bush's veto. Civil rights shouldn't be a partisan concern.

Mr. LEVIN. Mr. President, I rise to urge my colleagues to join me in working to override President Bush's misguided veto of the Civil Rights Act of 1990.

This legislation deserves the President's support and I regret his opposition. This bill would restore some of the gains we fought for hard for the 1960's and 1970's that were lost in a few Supreme Court decisions in the 1980's. Those decisions last year took us backward. This bill would overturn those decisions and take us forward.

For instance, it would grant women and ethnic minorities the same remedies that are currently provided to persons discriminated against based on their race. And it would restore what has always been assumed to be the clear intent of Congress that employment discrimination laws cover the period after a person is hired as well as the hiring process itself.

The President's advisers are misrepresenting this bill. This is not a quotas bill. It has nothing to do with quotas. The bill explicitly states that it does not require quotas and should not be read or interpreted in any way to promote quotas. To say it's a quotas bill is a lie.

The bill explicitly states that it does not require quotas and should not be read or interpreted in any way to promote quotas. To say it's a quotas bill is a lie.

The President's veto of this legislation is inconsistent with everything our country stands for and has fought for. We have fought to stamp out discrimination. We have not yet reached the day where we can say that discrimination is in our past. We have not yet arrived at the point where people are always judged on the basis of their ability and not on their sex, the color of their skin, or the sound of their last name. This bill would have taken us closer to that day.

I ask my colleagues to join in the effort to move forward by supporting this legislation. I wish the President was supporting this effort, but he is not. He has chosen to take the advice of his strategists. It's now up to the American people and Congress to show the President that we won't go back.

Mr. MITCHELL addressed the Chair.
The PRESIDING OFFICER. The Chair reminds the Senator he controls 30 seconds.

The majority leader.

Mr. MITCHELL. Mr. President, I have asked the Sergeant-at-Arms to present the distinguished Republican leader, and in accordance to accommodate the interest of all Senators, I now ask unanimous consent that the vote occur at 11:50 this morning, with the remaining 20 minutes to be divided: 5 minutes for the distinguished Republican leader and 15 minutes to the majority leader.

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

Under the revised unanimous consent order, the Republican leader is responsible for some of us who have never voted against civil rights. I believe the President is correct. We run around putting labels on things, saying this is a civil rights bill; this is a reform bill; if you vote against it, somehow you are ant civic or reform. Maybe that is the way the press plays it, but in my view you have to look beyond the label.

This was a tough decision for President Bush. I am here to say that he is prepared between now and the time this Congress adjourns sine die to help pass a civil rights bill, a real civil rights bill, not a quota bill, and sign that bill into law.

For those who are on the other side, if this veto is sustained, as I hope it will be, then if you are serious about civil rights and not some job, work-related placement type bill, then I think you will find you will have a lot of support on this side of the aisle.

The President said from day one he wanted to sign a civil rights bill. That has always been his goal. That is why he has walked the extra mile. When it was child care, he walked the extra mile. When it was clean air, he walked the extra mile. When it was the budget process, he walked the extra mile.

I can tell you the President feels the same about civil rights; he is willing to walk the extra mile but not go over the cliff, as some would have him do. But Congress in this case has dropped the ball. It has chosen to deliver not a civil rights bill but a bill with a civil rights label—a label that masks the harsh realities of America with the good character and merit do not count and where due process, the right to one's day in court, is nothing more than an empty slogan.

I suppose, Mr. President, that it comes with the territory, too. When all the smoke has cleared, when all the partisan sniping is finally put to rest, Americans will thank President Bush because the President has made the right choice.

He has chosen equality of opportunity over equality of results. He has chosen to recognize the good and the bad in America. He has chosen to restore title VII, not to distort title VII by transforming it into a national tort law. He has chosen common sense over a twisted logic that will allow lawyers to reap a windfall in the name of racial justice. And the President, to his credit, has said "No" to a bill that stands not for civil rights, as most Americans understand the term, but for quotas, quotas, quotas, and more job quotas.

In a few moments I will introduce the President's civil rights proposal. The President's proposal is fair; it is responsible, and it guarantees a Rose Garden signing ceremony yet this week. If others on the other side are serious, they can have it. They can have a civil rights bill, not a jobs quota bill, not a quota bill, but a bill that can have that this week. I do not have any doubt they can leave here tonight at midnight. It will probably be more like Thursday or Friday.

Mr. MITCHELL. Mr. President and Members of the Senate, race has been the most divisive issue in American history.

Race was at the heart of our Nation's most devastating war, the Civil War. Race discrimination distorted the development of democratic systems in many States for more than a century after that war. Race discrimination deformed the lives of millions of Americans, black and white, for many decades.

Today, overt racism is rare. The vast majority of Americans believe that each of us should be judged on the basis of our efforts and our abilities, not on the basis of our skin color or our ancestry.

But the legacy of our racial history remains a potent force for exploitation. It is a sad truth that in the past decade relations between the races in our country have deteriorated.

It is also a sad truth that there have been some, black and white, who have chosen to exaggerate those tensions for their own purposes.

A decade of accumulated race-baiting on both sides has injured our society. Americans have been encouraged to blame national problems on each other, rather than to join together to search for solutions.

The President's veto of the Civil Rights Act of 1990 is deeply regrettable. It rejects a modest legislative proposal that would reverse the tragic trend of recent years.

The President's veto is also a rejection of the aspirations of American women. In recent decades, women have entered the work force by the millions, for the most part because of economic need. For the most part, the workplace has welcomed them. Their skills have helped our economy grow. Their wages have helped lift their families' living standards.

But in some ways, the workplace has created barriers to the entry and promotion of women as it long did for Americans. The harsh realities of civil rights enforcement today is a multiracial goal. The civil rights of white working women as well as black women and men and other minorities all depend on the protection of our laws.

But with his veto, the President has rejected that fact. He has turned his back on working men and women, white and black whose rights would be protected by this bill.

The Civil Rights Act of 1990 would restore to the law the interpretation of job-place discrimination which was the law of the land from 1971 to 1989. It would restore explicitly to the law the understanding that a contract cannot be formed by the making and breaking of the performance. And it explicitly instructs the courts that it is not to be construed to require any form of quota.

Under the 1971 Griggs ruling by the Supreme Court, which was the effect of this law for nearly 20 years, no quotas were imposed, no unseen quotas were covertly implemented, no major additional costs to the business community accrued.

Yet this measure, which restores the law to its prior condition, a condition where no quotas existed, has been vetoed on the pretense that it would require quotas.

That allegation is disheartening.

It is discouraging that almost 40 years after the Supreme Court ruling in Brown versus Board of Education, a full quarter-century after passage of the Voting Rights Act and the Civil Rights Act, a full quarter century since America's conscience was awakened by the use of attack dogs and fire hoses against peacefully assembled American citizens—it is discouraging to learn that we have come so far in time but so short a distance in understanding.

The bill the President vetoed does not constitute a major shift in civil rights law. It does not grant discontented employees carte blanche to harass their employers. It requires the same stiff burdens of proof that were required before 1989. It grants no novel relief to those who are able to meet these substantial requirements.

Yet, despite months of protracted negotiations to meet the President's stated goal of wanting a bill that would reverse these Supreme Court rulings, we were still met with a veto. The President has also vetoed a bill. The bill does not require quotas. Indeed, it explicitly rejects quotas.
The President says he supports the goal of the legislation—workplaces free of the practices that lead to race-based or gender-based discrimination. He claimed he wanted to sign such a bill.

But when Congress gave him the opportunity to sign such a bill he chose to veto it instead.

The vetoed bill explicitly instructed the courts that no quota-style employment action is required or condoned by this law.

It retained the defense of business necessity with which employers have successfully defended against these suits for almost 20 years. It created no novel causes of action against employers. It did not impose novel demands on corporate employment practices. It did not require quotas. It would not result in quotas. It did not deserve a veto.

It deserved support because it restored to this area of law the most fundamental American value: equality of opportunity.

The bill would not have mandated equal results. It simply required that everyone get a fair chance. That is the goal and the promise of our system: That every American is entitled to fair treatment, every single American.

It is one of our proudest boasts that in America, no matter who your parents, no matter if they were rich or poor, black or white, Asian or Hispanic, you have a fair chance, an equal opportunity to compete with the most well-born, the best-connected, the most fortunate people in our society.

That fair chance was given to so many of us in past decades. We are now trying to ensure it for others in the future, those who face barriers of a different kind, barriers of race or sex or ethnic origin.

It is the most basic American promise: a promise we cannot deny to some Americans unless we want to see it eroded for all Americans.

If today we suggest that a certain degree of unfairness in the workplace is acceptable, if we suggest that reflexive prejudices should not necessarily be penalized, then how long will it be before we accept the claim that segregated workplaces or segregated neighborhoods or segregated schools reflect free choices which we should not disrupt?

If we accept the idea that a little bit of discrimination does not matter much in the larger scheme of things, then when that discrimination is turned against us, what will be our protection?

It has been much too long since an American leader reminded us that we are one Nation; that the laws we depend upon must serve all of us, not just the favored few; that the fair chance we seek for ourselves must also be available to our neighbor; that our neighbor is an American deserving of the same freedoms and rights we take for granted.

Abraham Lincoln said that a nation cannot endure half slave and half free. He was right, although it took a ruinous war to prove it.

It took the civil rights marches of the 1960's to remind us that the rule of law cannot endure when the protection it guarantees to all is systematically denied to some.

Today we face no immediate crisis, no civil war, no civil disobedience, but the challenge is no less critical.

It is the fundamental challenge of America: to assure every American a fair chance; the equal opportunity promised by our Constitution. The Civil Rights Act of 1990 is designed to meet that challenge. It seeks to assure all Americans, those who are black, Asian, Hispanic, and women that in the workplace, they will be judged on their skills and their work, not on their skin color or their gender.

Yet we have a veto by a President who says he wants a civil rights bill. We have a veto justified by vague speculative fears of a very specific and precise bill.

It is hard to avoid the conclusion that this veto has little to do with the content of this legislation and much to do with political perceptions. That is a shame.

It is a rejection of the harsh history through which all Americans, black and white together, have come in the last quarter century.

We fought segregation by law and action. We fought discrimination based on fears and silent hatreds. We sought to give all Americans, black and white, the economic and personal security that would allow them to see each other as fellow Americans, not as potential threats.

The racial tragedy of America has been that our history is bound together and we will succeed or fail together, but that is also our great hope.

Ours will never be, like South Africa, two nations inhabiting the same continent. We will always strive for the goal of a unified nation, with liberty, justice, opportunity and respect for all.

We have come a long way toward that goal. But now we see that the road still stretches far ahead of us.

The promise of our Constitution and our law is so great. It has been such an inspiration to other nations and other societies.

In the past year, there have been stirring events abroad, as the people of Eastern Europe come to grips with the distortions communism forced upon their societies for 40 years. The peoples of the Soviet Union now struggle with the deformations that communism brought to their societies for 70 years.

We know that none of these societies will be able to overcome the legacy, however unsought, however unfair. Unlike those societies, America does not have to overcome 40 or 70 years of repression. But, like them, we are not free of our own history. In that history, racism and its legacy are a central fact.

The legacy of our national history is something none of us can escape. That legacy has left Americans of all colors with responsibilities as well as rights.

One of those responsibilities is to create the conditions in our society and in the hearts and minds of our children which will prevent for all time a recurrence of the darkest days of racial conflict in the past. That is a responsibility for parents, teachers, and leaders of all races. Sadly, for the past decade, our leaders have not fulfilled this responsibility. In the black community, some voices that should be spoken of constructive action have turned instead to recrimination. In the white community, some leaders who should have reminded us of our moral responsibilities sought, instead, to remind us of our differences.

That is why the Civil Rights Act of 1990 is so important. It seeks to restore the common American understanding that ours is a nation based on equality, on fairness, and on justice.

The President’s veto of this bill does him and his office no honor.

The veto does not reflect a President of the people, a President whose vision of a kinder and gentler nation restored American spirits and hopes.

The veto does not reflect a President who sees our society brightened by a thousand points of light.

The bill deserved the strong support it received from the Congress last week. The President’s veto of the bill deserves our equally strong rejection and override.

I urge every one of my colleagues to vote to override the President’s unwise veto of this important civil rights bill.

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

The PRESIDING OFFICER. All time having been yielded back, under the previous order there will be about 1 minute until the vote would begin.

Several Senators addressed the Chair.

Mr. HATCH. Have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays are automatically ordered on override.

The Chair recognizes the Senator from Illinois.

Mr. SIMON. I have 1 minute. I ask unanimous consent to address the Senate for 1 minute on the relations of the President.

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

Mr. SIMON. Mr. President, let me point out one thing that happened in
conference. Because we went out of our way to meet the objections of the President on this matter of quotas, this language that keeps coming up, and we bent over backward, two of the African-American members of that conference committee voted against it in conference. We had gone so far. A majority voted for it.

But I just mention this because we have an opportunity to see that opportunity is here for all Americans. I note the presence of some members of the Congressional Black Caucus. We ought to be listening to them as we listen to our conscience in voting on this veto override. I hope we do the right thing.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Under the previous order, Mr. President, a rollcall vote on final passage of the foreign operations appropriations bill was scheduled to take place immediately following this vote.

In an effort to accommodate the interests of the schedule of some Senators, I ask unanimous consent that that vote now occur following the first rollcall vote on the NEA amendments to the Interior appropriations bill, which will be the pending business following completion of this vote.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

If not, without objection it is so ordered.

Mr. MITCHELL. Mr. President, I want to take a moment to extend my sincere gratitude to Senator Leahy, the manager of the foreign operations appropriations bill, for the relentless and tireless effort he made to get that bill cleared of the many complications which it had as it now commences to proceed to a rollcall vote on it early this afternoon.

The PRESIDING OFFICER. The hour of 11:50 having arrived, the question is, Shall the bill pass, the objections of the President of the United States to the contrary notwithstanding? The yeas and nays are required.

The clerk will call the roll.

The assistant legislative clerk called the roll.

The PRESIDING OFFICER (Mr. GRAHAM). Are there any other Senators in the Chamber who desire the vote?

The result was announced—yeas 66, nays 34, as follows:

Yeas—66

Adams Breaux Danforth
Akaka Bryan Daschle
Baucus Bumpers DeConcini
Bentsen Burdick Dixon
Biden Byrd Dodd
Bingaman Boren Domenici
Boren Cohen Durenberger
Boschwitz Conrad Exxon
Bradley Cranston Ford
Fowler Kerrey Pell
Glenn Kerry Pryor
Gore kaleck Riegle
Harkin Leahy Robb
Heflin Lieberman Rockefeller
Hollings Mikulski Sasser
Inouye Mitchell Shelby
Jeffords Moynihan Simon
Johnston Nunn Speicker
Kennedy Pakwood With

NAYS—34

Armstrong Belms Roth
Bond Burns Rudman
Burke Kasebaum Simmons
Coats Kasten Simpson
Cochran Lott Stevens
D’Amato Lugar Symms
Dole Mack Thunmond
Garner McCain Wallor
Gorton McClure Warner
Gramm McConnell Wilson
Grassley Murkowski
Hatch Nickles

Mr. DOLE, I ask that it be temporarily laid aside.

Is there objection to temporarily laying aside the motion to table? Without objection, it is so ordered.

The PRESIDING OFFICER. Is there objection to temporarily laying aside the motion to table? Without objection, it is so ordered.

The Senator from Wyoming.

Mr. WALLOP. I thank the leaders. I also suggest to them the remarks I am about to make may be interrupted in order to bring to a conclusion those negotiations that are now on the floor.

The PRESIDING OFFICER. Is there objection to that request?

Will the Senate suspend?

The Senate from Wyoming.

Mr. WALLOP. Mr. President, it had been my purpose to introduce a joint resolution calling for a declaration of war against the government of Saddam Hussein and Iraq. It is clear to me that despite the gasps of amazement, outrage, and dismay that this action would have caused, its effect might well have been salutary.

Even mentioning such an intention on my part is bound to elicit shock, Mr. President, but hear me out. A declaration of war is not—let me repeat not—a call to combat, but a declaration of national purpose.

War does not necessarily entail the clash of armed forces, but it is a contest of wills and of opposing interests, which must be backed up by the moral and material readiness to fight if necessary.

A declaration of war defines the circumstances of basic conflict between states. It may lead to a variety of outcomes, depending on the will and capabilities of the antagonists. But it leaves no doubt in the mind of either side as to the other’s purpose. Yet such doubt does exist today with respect to Operation Desert Shield.

For the past few weeks the American people have watched the lamentable spectacle of their Government in disarray amounting to near paralysis. We are still struggling to pass a budget that will forestall the dread Gramm-Rudman-Hollings tax from falling, though I for one would be perfectly content to see it fall.

This sorry travesty is not simply a failure of competence on the part of the Congress or the administration as many Members aver. We are for the most part intelligent, competent, and hard-working men and women. Most of us have the best interests of the Nation at heart.

No, Mr. President, what we are experiencing is much worse than a failure of competence. It is a failure of princi­ple, a collective loss of understanding, a mass lapse of judgment, such that neither the Congress nor the executive branch any longer seems capable of interpreting facts correctly. and of taking the necessary action dictated by the facts.
Mr. President, when muddle and confusion hold sway over the budget process, then we get at worst a shutdown, at best a budget for the period—to be sure no small matter to those Federal employees whose livelihoods are affected, or we get an increase in taxes, to be sure no small matter to hard-working Americans.

But when muddle and confusion hold sway over military operations, then we face far more than a temporary inconvenience. We court disaster. We face the needless deaths of young Americans in faraway places. We risk permanent damage to vital national interests.

In warfare there is a direct relationship—a synergism—between the combatant nation’s purposes in the conflict and the conduct of the war at the operational or tactical level. No military commander can ever be assured of victory. But clear and sound national policy, goals, and overall strategies generally contribute to success on the battlefield. On the other hand, lack of clarity of purpose, with flawed goals and policies, inevitably lead to operationally needless loss of life.

I remember vividly the words of Senator Hollings in 1983, when we deployed a marine amphibious unit to Lebanon without a clear purpose. Senator Hollings said: "If they are there to fight, they are too few. If they’re there to die, they are too many."

As it happened, they went there to die. The terror bombing of the marine barracks in Beirut on October 23, 1983, killed 241 marines and sailors, the worst loss of life in the U.S. military since the Vietnam War. This happened not because of the incompetence of the marines, but because muddle and confusion at the top tricked down to the tactical and operational level and sowed the seeds of disaster.

This is the issue that I want to address, Mr. President. The same uncertainty and confusion that spelled disaster in Lebanon are now creeping into our Persian Gulf operation, and hold the same potential for disaster.

A number of recent events and developments have brought me to this point. First, the Foreign Relations Committee, in a hearing with Secretary of State Baker last week, admonished the Bush administration not to launch an offensive operation against Iraq unless avoiding a shuttle diplomacy without carefully consulting the Congress. And some Senators even suggested that the President should ask for a formal declaration of war before engaging in hostilities, and so he should.

Article 1, section 8 of the Constitution is clear and unequivocal: Congress has the power to levy war. But I feel that the Foreign Relations Committee has missed the larger point. That is, I propose not merely a question of congressional prerogative—far from it. I believe the founders conferred this power on the Congress for a loftier purpose than to instigate a constitutional game of chicken with the executive every time we face a foreign threat.

The power to declare war should not be seen as an impediment to the executive branch; it is a congressional obligation, in the right circumstances. It contributes to victory by ensuring first a clear understanding of the war aims, and of gaining the Nation’s commitment to those aims.

The Bush administration appears to differ with the Congress over the interpretation of the constitutional provisions to declare and prosecute a war. I can appreciate the administration’s desire to avoid a major political battle and constitutional crisis on the eve of conflict, and while U.S. troops are at risk. Yet, I do not understand why the Secretary of Defense fears that a formal declaration would result in loss of surprise. A declaration of war certainly does not oblige him immediately to launch an offensive, or a military action of any kind.

But rather than clarify our purposes in the Gulf, the actions of the Congress have only added to America’s confusion. Mr. President, in the budget debate last Wednesday in this Chamber, some of my colleagues trivialized the national interests at stake in Saudi Arabia and the Persian Gulf, repeating the canard that we are only interested in cheap oil. They invoked the gulf crisis to justify a tax increase.

This has persuaded me that we are not all thinking clearly or seriously about our reasons for being there. It is time we do start to think about these things, and about how we are going to bring the conflict to a successful conclusion that we are there.

For all these reasons, I believe that a debate on a declaration of war would be the best means to force ourselves to begin thinking more rigorously about our national interests, our policy goals, and our military and diplomatic strategy. Perhaps then Mr. President, our purposes—and the national commitment needed to ensure success—will become clear.

So let us not delude ourselves, Mr. President. There is ample evidence in the actions of the administration that confusion has begun to set in. The President is placing more emphasis on the process rather than on the substance of our policy. The administration displays an excessive preoccupation with stroking and pacifying the coalition, as if that coalition itself were the object of the exercise. The lowest common denominator then sets the coalition’s policy. We become enmeshed in the process of debating and passing U.S. resolutions, as if mere words have ever stopped aggression.

So I conclude, Mr. President, to raise the question of a declaration of war. I am not eager to see carnage or bloodshed. On the contrary, I believe that armed conflict must be the last resort, and I hope that we can achieve our aims short of open war.

And I do wish to raise an important question: do we wish to see decisive, forceful action by the administration, or undermine the clear warmaking prerogatives of the President implicit in the Constitution.

Nonetheless, someone must raise these questions. We must know what we are about.

A declaration of war requires passage of a joint resolution in both Houses. Mr. President, sadly, there is no force in the Persian Gulf supposed to bring it to completion before both houses.

It would be easy were I to introduce it merely refer it to committee and we would not see it again before this was over.

And were I to do that and we were to debate that, its failure would only add to the sense of the irresolution on the part of America. So I offer these few observations instead as a means of raising the issue.

Mr. President, it is necessary to recognize that our Nation is poised on the threshold of war, formally declared or otherwise. As we face such a serious possibility, and since the Congress has the constitutional prerogative to declare war, we have an obligation to demand of ourselves and of the Commander in Chief: Precisely what are our military forces supposed to accomplish, and how are they supposed to accomplish it? It is necessary to consider in our own minds the relationship between our ends and our means in this conflict.

Since World War II, few of America’s deployments of military forces overseas have been successful. Korea, Vietnam, and our recent involvement in Lebanon turned into national tragedies, not because we faced such a serious possibility, and since the Congress has the constitutional prerogative to declare war, we have an obligation to demand of ourselves and of the Commander in Chief: Precisely what are our military forces supposed to accomplish, and how are they supposed to accomplish it? It is necessary to consider in our own minds the relationship between our ends and our means in this conflict.

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women in the gulf region. The operations is a superb feat of logistics and the diplomacy that accompanied it was equally skillful, adding considerably to our combat power and providing vital political support. So I wholeheartedly endorsed the strategy and my hat is off to the President and the Secretary of Defense for these initial successes.

But now I begin to see serious cracks in the edifice. Drift, muddle, and confusion are beginning to replace the confident spirit of August. Now we seem uncertain what to do with the forces we have amassed.

So let us face the fundamental questions about our purposes. If the answers are adequate, then let us solemnly commit ourselves. If the answers are not adequate or forthcoming, then I for one will do my utmost to get our forces withdrawn before they become involved in bloodshed that is either meaningless or counterproductive, or before we find ourselves diplomatically obliged to a humiliating withdrawal. The president has not warned doggerel repeated about our President: "The noble Duke of York, he had 10,000 men. He marshalled them up hill, and then, he marched them down again."

Mr. President, I must ask my colleagues to consider: Why is it that we Americans, and not the rest of the world, are now constrained to face such a decision. After all, President Bush has said repeatedly that this conflict is not a case of the United States versus Iraq; but rather Iraq versus the whole world. I wish that were true, but it is not. Why not?

First, President Bush himself has underlined the bilateral nature of the conflict by sending his video tape message to the Iraqi people. I will argue later that the content of that message was false. For now I simply note that the President was speaking for himself—or for the U.S. Government. The Secretary General of the United Nations did not deliver the message to Iraq on behalf of the world. King Fahd nor President Mubarak delivered it on behalf of the Arab world.

Nor did Mr. Bush even speak for the other States that are nominally on our side in this conflict. While the President's words said that Saddam Hussein was confronting the whole world, his act argued that the quassel is with the United States.

Second and more important, the essentially bilateral nature of the conflict is made unmistakable by the current position of the forces deployed. Other nations have sent token forces. We are glad to have them. But the anti-Iraq coalition stands or falls on what the vast bulk of the forces—American forces—do.

Third, while our Turkish, Egyptian, Saudi, and Gulf State allies have interests at stake greater than ours, it is just plain fanciful to conjure up an image of the world's great, anti-Iraq coalition against Saddam Hussein. Our Arab friends are fearful of being swamped by a wave of popular favor from Saddam that grows with each day of our sufferance. The rest of the Arab States, a deal, they just might take it, leaving us to hold the bag.

Iraq has basically joined Iraq. Nor should this be assumed. It is simply a modern, Middle East version of the Hitler-Stalin pact. And the Soviet Union, rhetoric aside, is on Iraq's side as well. Its economic and military advisors, numbering in the hundreds and perhaps thousands, are keeping the Iraqi military together, and the Soviets will be marketing Iraqi oil through Iran. In fact, the cash-starved Soviets have much to gain from the high oil prices caused by the conflict.

Most of our European and Japanese allies are clearly anxious for a graceful exit from the impasse. In short, the whole world is against Saddam Hussein, but the Americans can manage to defeat him.

But, Mr. President, what does it mean for us to defeat him? How can we do it? Always we come face to face with these unavoidable questions. We as a government have not answered them adequately, and have not made a commitment of purpose that matches our commitment of troops and resources. That is why we ought to debate the concept of a declaration of war.

Mr. President, it is possible for democratic nations to fight wars without declaring them, or by calling them by other names—police actions for example—just as it is possible for men and women to live together without declaring marriage, or by calling their habitation by other names. But declarations of war, like declarations of marriage, are useful because they force people to ask themselves, "What am I doing?" and, once they understand, to make the sort of commitment that enhances the prospects of securing our long-term interests.

What are our long-term interests in the Persian Gulf and Arabian peninsula? First, we must have absolute freedom of navigation and commerce in the Persian Gulf. Second, we must keep the world's oil tap—the power to set oil prices—out of Saddam Hussein's grasp. If he can control such a vast reservoir of a critical global resource, the major portion of the world's petroleum; if he can set world oil prices rather than the market, then we will no longer be a secure power, much less a great power. Third, American interests require that no single, warlike, aggressive power gains hegemony over the entire gulf and Arabian peninsula, which contain not only the bulk of the world's crude oil supply but also adjoin some of the most strategic littoral and maritime choke-points on the globe.

So what then threatens our interests? Quite simply, the regime of Saddam Hussein; its control over its people, its great military power, including chemical weapons, someday soon possibly nuclear weapons, and an array of ballistic missiles to deliver them; its exploitation of the volatile Arab temperament, and its vaulting ambition.

The invasion of Kuwait and the threats to Saudi Arabia are only symptons, manifestations of the Iraqi threat. If we limit our purpose to safeguarding Saudi Arabia from invasion, or even the withdrawal of Iraqi forces from Kuwait, we will be making the most dreadful of mistakes because we may well get our wish, but still leave Saddam Hussein with power to dominate the Arab world and set the world price of oil.

The successes, even the safety of Saudi Arabia is unachievable if we make that our ultimate goal. It is absolutely impractical to garrison a line in the sand for a long period. But even if it could be done it would not solve our basic problem. Indeed, an American, non-Muslim, garrison permanently encamped on the holy soil of Islam would soon unite the Arab masses against us. A passive line in the sand would predicate the initiative to Iraq, and the spirit of Saddam Hussein would triumph.

Furthermore, the sovereignty of Kuwait by itself is an illusory goal. Saddam Hussein might make a withdrawal under a face-saving formula, promising elections or even a return to the status quo ante, but now that he has depopulated Kuwait of half its people and replaced them with Iraqis, he could easily manipulate elections, undermine the government. He might even let the Emir return on condition that Kuwait be demilitarized. In any case the Government of Kuwait would exist by Iraqi sufferance. The rest of the Gulf States would live under his shadow. Even a successful war which stopped at liberating Kuwait would not fulfill any national purpose.

Saddam, having survived that war with his internal power and most of his military intact, would be an Arab hero-martyr much as Gamal Abdul Nasser became after he lost the 1967 war with Israel. In the long run, Saddam's political-military supremacy would achieve all the goals he set for himself in 1990. He would come to dominate the entire gulf, and very possibly absorb our other Arab allies on the Arabian Peninsula into a new war-like empire, fueled by the immense natural wealth of the region.

What about the embargo? That, of course, is a set of means, not an end. What the embargo can achieve is not
up to us. It is up to the world’s nations that can join in it to a greater or lesser extent. Who can doubt that Saddam’s defiance of the United States encourages cracks in the united front to grow, especially when the United States is willing to accept more verbal assurances of Soviet compliance even in the face of their blatant noncompliance.

I am referring specifically to the Soviet regime’s word of support combined with its effective management of the Iraqi military supply system. Why should any nation suffer the pinch of an embargo when our Government is so willing to whistle in the dark? The success of the embargo also depends on the Iraqi regime’s willingness to kill those who dissent. Who can doubt that willingness in light of Saddam’s bloody history?

Let us then ask what Saddam Hussein can do to win? To defeat the line of our blunders in Korea, Vietnam, the Grenada.

Mr. Bush told them that United States objectives were strictly to free Kuwait and leave the implication however unintentional that regardless of what might happen the United States would leave the Iraqi people to Saddam’s tender mercies. No wonder Saddam Hussein was so eager to broadcast the President’s message in Iraq. It can only have helped strengthen Saddam’s message that the United States is contemptible and in the end must lose.

Let us now send the Iraqi people another message. Let us make unmistakable our willingness to remove the regime that oppresses them as well as Kuwait. That message must assure Iraq that whatever happens, Saddam Hussein and his henchmen will be out of power, and the future of Iraq will be at the hands of a freely elected Iraqi Government.

The second message is that unless Saddam Hussein relinquishes power, his life will be required, and anyone else who stands with him. I tell you, Mr. President, we cannot make war merely to kill poor Iraqi draftees. To fight without a clear purpose is to make war on soldiers, not with soldiers, and is obscenely immoral. No, Mr. President, we dare not measure our success by counting the bodies of Iraqi civilian. If we ever do, we may just say that I am not prepared to answer to this House. I do not know how much time he will take. I think the other side can tell.

Other than that, we have some amendments in disagreement that we will recede to. I know my ranking colleague, the Senator from New Hampshire (Mr. RUDMAN) — we have an amendment on the Securities and Exchange Commission, which will only take a few minutes to explain. That will be adopted, I take it, unanimously.

But the distinguished Senator from Pennsylvania had an amendment to an amendment in concurrence thereof relative to a free trade zone. I know he will want a little time on that. I understand the Senator from Iowa will want to be heard on it. They can tell us what the time will be. Then we can agree to it.

Mr. WALLOP. Mr. President, I might just say that I am not prepared to give an answer to the Senator. I will search one out immediately. I do not know where the Senator from Iowa is, but we will set about trying to do that. Until such time, I would actually with-
Mr. BYRD. Mr. President, I yield to the distinguished Senator from Maryland (Mr. SARBANES) for the purpose of his making a unanimous-consent request as agreed to in any statement that he wishes to make.

The PRESIDING OFFICER. Without objection, the Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, I listened very carefully to the distinguished Senator from Wyoming as he spoke just a few minutes ago. I think he has raised some very fundamental questions which the Members of this body need to give some careful thought to. I am not fully prepared to address all of the points that he raised, obviously, at this point.

But in order to help to contribute to that dialog, I will ask unanimous consent to include in the Record immediately following this statement, two articles which appeared in the papers recently. One by William Bragg Ewald, Jr., who worked for President Eisenhower on his White House staff, was an assistant to him on his Presidential memoirs and the author of three books, including one entitled "Eisenhower the President: Crucial Days, 1951-1960." The article is entitled "What Ike Would Do in the Gulf."

I think it is a very thoughtful analysis of the situation and how he at least envisions that President Eisenhower would have responded to this situation. The essential theme is that he would have taken an international approach. In fact, the subheading to it is, "As in 1958, in Lebanon, he would urge the U.N. to take over." I think it is an interesting perspective.

But I also submit for the Record an article by Zbigniew Brzezinski, which appeared in the New York Times, entitled "Patience in the Persian Gulf, Not War." This discusses the two approaches and the consequences and the ramifications of the likelihood of success; and I think, again, this raises a number of very important questions which need to be addressed by the Members of this body as we think about the very fundamental issues which the Senator from Wyoming raised in his thoughtful statement.

I ask unanimous consent that those articles be printed in the Record. The articles were ordered to be printed in the Record, as follows:

WHAT IKE WOULD DO IN THE GULF
(By William Bragg Ewald, Jr.)

GREENWICH, CT.—Late last month, Iraqi soldiers took over an American air base in Kuwait. He had gone there three days before the Aug. 2 invasion after repeated re-assurances from the State Department that nothing untoward was going to happen. The soldiers took him first to Baghdad, then to a military installation as part of Iraq's "human shield." Finally, came word of his release in response to a desperate appeal from his mother to President Saddam Hussein.

Throughout this nightmare, punctuated by long stretches in which we knew nothing of his whereabouts, we prayed he and the other hostages would survive the ordeal. But we also prayed that the blood of the Americans would be spared, we feared, by a foreign policy of which all Americans could be proud.

Today at a crossroads. One way leads to another Vietnam, the policy of American macho unilateralism. The other way is the way of President Dwight Eisenhower, which President Bush largely has followed so far.

As a member of Eisenhower's White House staff, as assistant to him on his Presidential memoirs and as author of three books of my own on his administration, I believe I know what he would do in the Persian Gulf.

He would not go it alone. At Dienbienphu in 1954 he saw many reasons to go into Vietnam—but only in company with allies, a large international alliance. He couldn't put such an alliance together. So he stayed out, and thus avoided U.S. humiliation.

He would work with the U.N. In a single day in 1958, Ike sent some 15,000 soldiers and marines into Lebanon, the biggest U.S. military deployment since the end of World War II— sending one entitled "Eisenhower the President: Crucial Days, 1951-1960." The article is entitled "What Ike Would Do in the Gulf."

I think it is a very thoughtful analysis of the situation and how he at least envisions that President Eisenhower would have responded to this situation. The essential theme is that he would have taken an international approach. In fact, the subheading to it is, "As in 1958, in Lebanon, he would urge the U.N. to take over." I think it is an interesting perspective.

But I also submit for the Record an article by Zbigniew Brzezinski, which appeared in the New York Times, entitled "Patience in the Persian Gulf, Not War." This discusses the two approaches and the consequences and the ramifications of the likelihood of success; and I think, again, this raises a number of very important questions which need to be addressed by the Members of this body as we think about the very fundamental issues which the Senator from Wyoming raised in his thoughtful statement.

I ask unanimous consent that those articles be printed in the Record. The articles were ordered to be printed in the Record, as follows:

WHAT IKE WOULD DO IN THE GULF
(By William Bragg Ewald, Jr.)
Arab and American bloodshed, and almost regar­dless of the issues involved, the political attitudes might be reflected throughout the Middle East. Thus, fortunately, it does not pose the danger of a crisis that is too serious to be confronted. None­theless, if mishandled, the crisis could prompt devastating consequences for the world economy, perhaps as well as for Arab and Israeli societies, and the organization of an unprecedented world­wide United Nations alliance against Iraq again becomes a real possibility.

But a growing chorus of experts is urging a different course—away from interna­tionals and toward the Lone-Rangerism that gave us Vietnam. That option remains very much alive.

Ike has left us a valuable lesson in the uses of military power, thereby dealing not only with the Baghdad Strait but also with the threat of the Baghdad military machine. Given the enormous stakes, it is important to assess these alternatives carefully, for their costs and prospects of success differ significantly.

The peace agreement strategy will require time to prove itself. It may take months to convince Saddam Hussein that the coalition's unity will survive and that any leakage in the embargo will be insufficient to prevent a massive deterioration in Iraq's economy and social well-being. This will impose major demands on the demo­cracies of Western Europe and on the United States to sustain a massive embargo, and almost inevitably generate major regional instability throughout the Middle East.

It is thus a crisis that is too serious to be resolved by one capital alone and too dangerous to be addressed on the basis of hysteria. It calls for thorough strategy consultations among the countries concerned—including, beyond the democrati­c West, the leaders of moderate Arab countries—outsiders by Saddam Hussein's aggres­sion—regarding the issues involved, the poli­cies to be pursued and the costs to be as­sumed.

As its point of departure, a collective strategic response to the Iraqi challenge must be based on shared perspectives regarding these central concerns:

1. A regional approach with an eye to a stable access by the West to reasonably priced oil, which in prac­tical terms means assuring the security of Saudi Arabia and the Emirates from any further Iraqi pressures or aggression;

2. A solution short of war that maintains the security of the Palestinians and the Arab world from any further Israeli pressures or aggression;

3. A solution that will not only meet the American and the international coalition's security concern. (Additionally, and depending on whether the crisis is resolved peacefully or militarily, the future of Saddam Hussein's personal leadership may or may not be addressed by the international community.)

All three of these issues involve objectives that are highly important to both the Arab and the American peoples. But unlike the first two, these goals are equally urgent or vital. But there is consensus not only in the West but also among the moderate Arabs regarding the importance of the first two issues. At the same time, the imperative needs to deter any Iraqi move against Saudi Arabia. This objective is so vital to the well-being of the United world of Western, that the United States, right­ly and courageously, was prepared to fight even alone. That is why it is immediately deployed such large forces to the region. There is little doubt that other states, both Arab and non-Arab, would also join in a common effort if the Iraqi Army were to strike further south.

The consensus is less strong and strategic options become more divergent, regarding the other two issues. Subtle differences emerge once the surface is scratched as to what precisely should be the international coalition's objectives and how they should be pursued.

WHAT IS TO BE DONE?

Broadly speaking, two strategies are emerging. The first favors sustained international pressure on Iraq through the em­bargo to compel its withdrawal from Kuwait. The second favors an immediate and powerful call for peace that, if it has any chance of success, means reallocating the economic costs of the embargo, and compelling the United States to send a massive military force to the Gulf. This strategy argues that force should be used to resolve the crisis—and that the crisis can and other forces not accustomed to the technological performance of weapons and the international embargo, which itself will itself initiate hostilities. If it initiates hostilities, it will have the support of its own people, but it would also put the United States at the center of the storm. The National Security Council, with its sinuous as currently some desire. However, a partial success on the status of Kuwait, a success certainly short of “unconditional surrender” by Iraq. More likely, the eventual success of the peaceful strategy will re­quire, at some point, quiet, behind-the-scenes negotiations regarding the issues that are not the same. If one succeeds, it would be difficult for the United States alone to oppose it. Moreover, it is likely that by then the peaceful strategy would have imposed substantial (indeed, unaccept­able) costs on both parties, even though it would have spared everyone from potentially massive blood­shed. Thus there is bound to be some inter­national predisposition to settle, even if the outcome were to be not quite as unconditional as currently some desire. However, the military strategy would have to take the initiative of clearing Kuwait—and other territories of the Iraqi military power unresolved.

And why some are arguing that the peaceful strategy cannot work and that the crisis must be resolved by force of arms. The military strategy—the critics point out—has three additional possibilities. There is no longer the deadline of late October (thus before the American Congressional elections) but in late January. The reason for the latter deadline is that the onset of the fierce sandstorms that follow the winter season would adversely affect the technological performance of weapons and impose additional difficulties on the American and other forces not accustomed to desert warfare.

The military option would have to deal si­multaneously with the goal of liberating Kuwait and of destroying Iraqi military
power for the simple reason that is not possible to do the first without the second. A conventional ground attack on Kuwait would likely cost a prohibitive sum, and perhaps even impossible to execute without a deployment of forces vastly larger than even the currently projected deployment and numbers of American troops. Military action will therefore require an all-out air assault on Iraq's political and military command centers, key military concentrations, industrial installations, and targets, in addition to some unavoidable ground fighting. Particularly intensive effort would need to be devoted preemptively, any Iraqi capacity to retaliate through missile strikes with chemical weapons.

A particular complication pertaining to the air assault is that its effectiveness would be greatest if it came as a sudden bolt out of the blue. But that could only be the case if it was undertaken solely on the American initiative, since only American airpower would be capable of undertaking this task effectively.

The decision to initiate hostilities through a decapitating air attack would thus have to be made solely by Washington, without any agreement or consultation with the other powers that are participating in the anti-Iraq coalition, especially Arab one. That could breed political resentments and even political friction that America would probably find itself increasingly isolated in the world arena.

There exists a domestic American complication to be noted here. An American bolt-out-of-the-blue attack would not only strain allied relations. If the resulting hostilities were permitted to develop and prolong indefinitely, the U.S. Congress might be outraged that its constitutional prerogative of declaring of war was not respected. Yet a declaration of war would be incompatible with any surprise attack.

In any case, the military operations, to be effective, will have to combine major air and ground initiatives, the former to paralyze Iraq's capacity to respond and the latter to destroy such installations in other gulf states. The price of the war would be staggering; any Iraqi capacity to retaliate through missile strikes with chemical weapons.

The financial costs of the war by themselves would also be extraordinarily high. It has been estimated that with a war of this scope the costs of large-scale combat could amount to about $1 billion per day. An economic and financial world crisis might thus prove an unavoidable consequence.

It is hard to predict whether the American public, after the likely initial surge in patriotic emotions, would long support such an operation. Parents and others would almost certainly begin to ask whether American lives should be sacrificed for the sake of the wealthy rulers of Kuwait. Arguments about the sanctity of the international order might cease to have much appeal once American fatalities begin to rise into the thousands. There is also the risk that at some point the public might blame Israel for allegedly having pressed America to go to war against Iraq for the sake of Israeli interests.

The military strategy thus suffers from fundamental liabilities. Its costs could prove prohibitive, its success is not easy to define in terms of the time involved and the scope of the required effort, and its dynamic consequences, could have a regionally destructive ripple effect.

The military strategy thus suffers from fundamental liabilities. Its costs could prove prohibitive, its success is not easy to define in terms of the time involved and the scope of the required effort, and its dynamic consequences, could have a regionally destructive ripple effect.

On balance, therefore, the better part of wisdom is for the existing international coalition to pursue the strategy of sustained pressure, and to apply that pressure under the protection of credible military power that deters any Iraqi military countermoves.

The bottom line is this: there is no easy solution to the crisis. The peaceful strategy of sustained pressure suffers from obvious limitations and has its costs. Moreover, it will not resolve fully all of the central problems generated by the Iraqi aggression. But it imposes enormous punitive pains on Iraq, at a cost and a risk to America that is incomparably lower than the costs and risks of preventive war. Hence patience and prudence are to be preferred over the leap into the abyss of warfare. The basic fact is that the overall situation in the region is so unstable that no military solution is feasible. It confidently postulates that the productive termination of the ongoing crisis at a cost that is predictable and reasonable. Destroying Iraq but not totally eliminating that Middle Eastern power has to be advocated as a rational calculus.

Given the stakes, it is particularly urgent that our leaders and the leaders of the advanced democracies—with America has already successfully assured the deterrence of further Iraqi aggression—sit down together, carefully
Mr. BYRD. Mr. President, at such time as the distinguished Senator from South Carolina (Mr. HOLLINGS) calls up his conference report on the Commerce, State, Justice, appropriations, I ask unanimous consent that there be a time limit, over all on that conference report, and any amendments in disagreement thereto, of not to exceed 15 minutes.

Mr. HOLLINGS. Ten minutes to each Senator.

Mr. HEINZ. Twenty minutes equally divided.

Mr. BYRD. Between Mr. HOLLINGS and Mr. HEINZ.

Mr. HOLLINGS. That is correct.

Mr. BYRD. Very well. Furthermore, Mr. President, that any amendments thereto be limited to two, at most.

Mr. HOLLINGS. We have two amendments in disagreement that we will proceed to. We have one that is on the Securities and Exchange Commission. It is the language relative to a fee. It has been checked with the Banking Committee on both the Republican and Democratic sides. I know it has been cleared on both sides. Let us take this thing through. We will take 15 minutes and pass the thing. I will take less.

Mr. BYRD. I ask that such amendments be limited thereto.

Mr. HEINZ. Reserving the right to object, and I shall not object, I want to be clear on whether amendments to any amendments in disagreement were in order.

Mr. BYRD. I understood it would be limited—

Mr. HOLLINGS. Limited to Senator Hearst amendment and the amendment on SEC. That is undisputed.

Mr. HEINZ. No other either first- or second-degree would be in order?

Mr. BYRD. Exactly.

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

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I ask unanimous consent that there be a period for morning business immediately following the disposition of the conference report.

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

COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, FISCAL YEAR 1991—CONFERENCE REPORT

Mr. HOLLINGS. Mr. President, I submit a report of the committee of conference on H.R. 5021 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5021) making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1991, and for other purposes, have met, after full and free conference, and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the Record of October 23, 1990.)

Mr. HOLLINGS. Mr. President, let me explain the parliamentary situation. What we have in true disagreement are two amendments, No. 155 and No. 164. Number 155 provides funds for the Radio and Television Marti, on which we will recede to the House. Amendment 164 deals with limitations on postemployment activities of the U.S. Trade Representative. We will recede to the House on that particular amendment.

Regarding that amendment, I would like to discuss the reason this was put in the Senate's bill, and passed this body without a dissenting vote. Amendment 164 extends current law's 1-year prohibition on representing foreign governments. It prohibits the U.S. Trade Representative, our top trade official, after leaving the job, from representing foreign governments for 5 years.

Great changes are taking place around the globe. Democratic principles are sprouting in Eastern Europe and the Soviet Union. As the world moves away from the cold war, we find ourselves playing a new game: the trade war. It is a no-holds-barred struggle among nations for market share and standard of living in a largely zero-sum world marketplace. To date, not only is the United States losing this new contest, we still haven't the foggiest idea how the game is played. Rather than mobilize for the new challenge of government-controlled capitalism in the cold war, recent administrations have opted for the equivalent of unilateral disarmament.

Let's be clear where America stands in decades after World War II. The United States has been the world's largest creditor to world's fastest debtor in just 8 years. After running trade surpluses from 1945 through 1970, and as late as 1975, our trade deficit rose to a high of $900 billion. This stunning economic reversal was America's dutiful sacrifice on the altar of free trade.

Well, now in the post-cold war era, our economic security is part and parcel of national security. If anyone doubts this, you need look no further than the Persian Gulf. If economic interests are to be elevated to the same national priority as defense and foreign policy, then we must take a closer look at the laws governing those who represent foreign governments and foreign companies on trade and economic issues. If Colin Powell resigned as Chairman of the Joint Chiefs of Staff tomorrow, and 1 year later, he was advising Saddam Hussein, we would be outraged. Yet, this happens every day in the trade war, and no one says a thing.

Congress has the responsibility to safeguard the integrity of the Government's decisionmaking process and strengthen the American public's confidence in it.

Mr. President, according to Business Week magazine, the Japanese Government and Japanese companies spend $100 million a year for Washington lobbyists, lawyers, and political advisors. They employ over 100 lobbying, public relations and law firms to represent their interests. We can compare this to the $52 million in salaries for all 535 Senators and Congressmen.

As Pat Choate reports in the September issue of the Harvard Business Review, between 1973 and 1990, one-
half of our former U.S. Trade Representatives have represented foreign interests in the private sector. These and other examples lead me to conclude that our cargo policy is not the fault of the Japanese, or the British, or the Dutch. It is our fault if we allow it to continue to undermine the faith in our system of government.

While I am yielding on this today to the House’s wishes, I intend to continue to pursue changes in our current ethics laws in the next session.

Then two other amendments, No. 9 and No. 139. No. 9 would be an amendment on which the distinguished Senator from Pennsylvania would present in conformance an amendment thereto. No. 139 deals with the Securities and Exchange Commission. So I want to present that one in particular, so that that is clearly understood to be a user fee and not a tax.

creases proposed by the administra­tion conference report that down. Now we have gone along in concurrence an amendment thereto.

ment for law enforcement agencies. In construction appropriation, the conference report of the Committee of conference on the Senate numbered 5 to the aforesaid bill, and concur therein with an amendment as follows:

in lieu of the matter stricken and inserted by said amendment, insert: $2,000,000

Resolved, That the House rescind from its disagreement to the amendments of the Senate numbered 3 to the aforesaid bill, and concur therein with an amendment as follows:

in lieu of the sum proposed by said amendment, insert: $110,550,000

Resolved, That the House rescind from its disagreement to the amendment of the Senate numbered 4 to the aforesaid bill, and concur therein with an amendment as follows:

in lieu of the sum proposed by said amendment, insert: $36,200,000

Resolved, That the House rescind from its disagreement to the amendment of the Senate numbered 6 to the aforesaid bill, and concur therein with an amendment as follows:

in lieu of the matter stricken and inserted by said amendment, insert: and for economic development assistance as provided by the Public Works and Economic Development Act of 1965, as amended, and Public Law 91-304, and such laws that were in immediate effect on September 30, 1962, $209,000,000: Provided, That during fiscal year 1991 local commitments to guarantee loans shall not exceed $150,000,000 of contingent liability for loan principal: Provided further, That none of the funds appropriated or otherwise made available under this heading may be used directly or indirectly to pay attorneys’ or consultants’ fees in connection with securing grants and contracts made by the Economic Development Administration: Provided further, That the Economic Development Administration shall not implement the funding policy for research and development as stated in the Federal Register notice of May 24, 1990 to reduce the grant of each university center from the Fiscal Year 1990 level and that any changes in individual grant amounts be made on the basis of failing to conform to the EFA grant agreements in place in fiscal year 1990, other than the funding policy for the University Center program as stated in the Federal Register notice of May 24, 1990: Provided further, That any reduction in an

Resolved, That the House rescind from its disagreement to the amendment of the Senate numbered 1 to the aforesaid bill, and concur therein with an amendment as follows:

Resolved, That the House rescind from its disagreement to the amendment of the Senate numbered 2 to the aforesaid bill, and concur therein with an amendment as follows:

Resolved, That the House rescind from its disagreement to the amendment of the Senate numbered 3 to the aforesaid bill, and concur therein with an amendment as follows:

Resolved, That the House rescind from its disagreement to the amendment of the Senate numbered 4 to the aforesaid bill, and concur therein with an amendment as follows:

Resolved, That the House rescind from its disagreement to the amendment of the Senate numbered 5 to the aforesaid bill, and concur therein with an amendment as follows:

Resolved, That the House rescind from its disagreement to the amendment of the Senate numbered 6 to the aforesaid bill, and concur therein with an amendment as follows:

Resolved, That the House rescind from its disagreement to the amendment of the Senate numbered 1 to the aforesaid bill, and concur therein with an amendment as follows:

Resolved, That the House rescind from its disagreement to the amendment of the Senate numbered 2 to the aforesaid bill, and concur therein with an amendment as follows:

Resolved, That the House rescind from its disagreement to the amendment of the Senate numbered 3 to the aforesaid bill, and concur therein with an amendment as follows:

Resolved, That the House rescind from its disagreement to the amendment of the Senate numbered 4 to the aforesaid bill, and concur therein with an amendment as follows:

Resolved, That the House rescind from its disagreement to the amendment of the Senate numbered 5 to the aforesaid bill, and concur therein with an amendment as follows:

Resolved, That the House rescind from its disagreement to the amendment of the Senate numbered 6 to the aforesaid bill, and concur therein with an amendment as follows:
be subject to the reprogramming procedures stated in section 606 of this Act.

ECONOMIC DEVELOPMENT REVOLVING FUND (RECESSION)

Of the unobligated balances in the Economic Development Revolving Fund, $35,000,000 are rescinded.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 7 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert: $27,018,000:

Provided, That these funds may be used to monitor projects approved pursuant to title I of the Public Works Employment Act of 1976, as amended, title II of the Trade Act of 1974, as amended, and the Community Employment Enhancement Act of 1977. Notwithstanding any provision of this Act or any other law, funds appropriated in this paragraph shall be used to fill and maintain forty-nine positions designated as Economic Development Representatives out of the total number of permanent positions funded in section 202 of the Economic Development Administration for the fiscal year 1991, of which no more than two positions shall be designated as National Economic Development Representatives.

Provided further, That such positions shall be maintained within an organizational structure that provides at least one full-time EDR in each state or such portion of a state as the Secretary of the Economic Development Administration for fiscal year 1991, of which no more than two positions shall be designated as National Economic Development Representatives.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 10 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum named in said amendment, insert: $43,099,000:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 12 to the aforesaid bill, and concur therein with the following amendments:

In lieu of the sum named in said amendment, insert: $42,549,000:

In lieu of the sum named in said amendment, insert: $24,873,000:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 15 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum named in said amendment, insert: $5,000,000:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 20 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum named in said amendment, insert: $4,200,000:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 26 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum named in said amendment, insert: $49,100,000:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 35 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed by said amendment, insert:

SEC. 105. (a) Funds appropriated by this Act to the National Institute of Standards and Technology of the Department of Commerce for the Advanced Technology Program shall be available for award to companies or to joint ventures under the terms and conditions which are consistent with the original purpose of the program, in addition to any terms and conditions established by rules issued by the Secretary of Commerce.

Costs shall be derived from a program only if:

(A) the Secretary of Commerce finds that the company's participation in the Advanced Technology Program would be in the economic interest of the United States, as evidenced by investments in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States); significant contributions to employment in the United States; and agreement with respect to any technology arising from assistance provided by the Secretary of Commerce to promote the manufacture of products resulting from that technology in the United States;

(B) either:

(i) the company is a United States-owned company; or

(ii) the Secretary of Commerce finds that the company has a parent company which is incorporated in a country which affords the United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those funded through the Advanced Technology Program, and affords adequate and effective protection for the intellectual property rights of United States-owned companies; and

(ii) the Secretary of Commerce determines that the company, the country of incorporation of the parent company of a company, or the joint venture has satisfied any of the criteria set forth in this subsection, and that it is in the national interest of the United States to do so.
(3) As used in this section, the term "United States-owned company" means a company that has a majority ownership or control by individuals who are citizens of the United States.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 41 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum "$222,140,000" named in said amendment, insert: "$235,140,000"

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 43 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum of "$334,103,000" named in said amendment, insert: "$334,803,000"

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 44 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum of "$352,953,000" named in said amendment, insert: "$373,953,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 45 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum of "$874,085,000" named in said amendment, insert: "$877,085,000"

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 48 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum of "$28,217,000" named in said amendment, insert: "$27,217,000"

In lieu of the sum of "$20,214,000" named in said amendment, insert: "$19,614,000"

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 54 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert:

**ADDITIONAL PROVISION**

Federal Prison Industries, Inc., is authorized and directed to enter into a contract to carry out an independent market study at a cost not to exceed $250,000. The study shall be conducted by a private sector market analysis firm, that is not affiliated in any way with the Federal Prison Industries or the Bureau of Prisons. Federal Prison Industries is directed to report the results of this study to Congress not later than nine (9) months from the enactment (or effective date) of this Act. The study shall include an analysis and appropriate recommendations to Congress concerning the following:

1. Identify potential new product lines for prison-made products, which will have a minimal impact on the private sector;
2. Analyze the impact that Federal Prison Industries has had on certain private sector industries (furniture, textiles, printing, electronics and apparel) in terms of production levels, employment levels, and annual sales to Federal government departments and agencies;
3. Provide, after consulting with the Department of Labor and the Department of Commerce, an estimate of the number of jobs displaced in the private sector (on an industry-breakdown basis) by the operation of Federal Prison Industries;
4. Analyze whether Federal departments and agencies should consider placing limits on the market share that Federal Prison Industries can obtain in specific products or product lines; and
5. Determine whether the current law governing Federal Prison Industries should be retained or revised.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 55 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum of "$91,467,000" named in said amendment, insert: "$87,916,000"

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 56 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed in said amendment, insert: "$475,000,000"

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 67 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert: "$50,000,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 82 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the phrase "closed in fiscal year 1991 and thereafter" in the first sentence of subsection (b)(1)(A) of said amendment, insert: "During fiscal year 1991 with respect to the purpose of participating in multi-jurisdictional drug task forces."

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 74 to the aforesaid bill, and concur therein with amendments as follows:

In lieu of the first sentence of subsection (b)(1)(A) of said amendment, insert:

"There is hereby waived for fiscal year 1991 for grants awarded to state and local governments for the purpose of participating in multi-jurisdictional drug task forces."

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 75 to the aforesaid bill, and concur therein with amendments as follows:

In lieu of the first sentence of subsection (b)(1)(A) of said amendment, insert:

"There is hereby waived for fiscal year 1991 for grants awarded to state and local governments for the purpose of participating in multi-jurisdictional drug task forces."

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 76 to the aforesaid bill, and concur therein with amendments as follows:

In lieu of the matter inserted by said amendment, insert:

**INTERAGENCY LAW ENFORCEMENT ORGANIZED CRIME DRUG ENFORCEMENT**

For necessary expenses for the detection, investigation, and prosecution of individuals involved in organized crime drug trafficking, not otherwise provided for, $329,000,000, of which $20,000,000 shall remain available until expended: Provided, That any amounts obligated from appropriated funds under authorities available to the organizations reimbursed from this appropriation: Provided further, That any unobligated balances remaining available at the end of the fiscal year shall revert to the Attorney General for reallocation among participating organizations in the succeeding fiscal year, subject to the reprogramming procedures described in section 605 of this Act.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 55 to the aforesaid bill, and concur therein with the following amendments:

In lieu of the phrase "$1,687,862,000" named in said amendment, insert: "$1,673,862,000"

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 56 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the phrase "$696,900,000" named in said amendment, insert: "$694,340,000"

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 59 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the phrase "$883,501,000" named in said amendment, insert: "$884,000,000"

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 64 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the phrase "$1,357,843,000" named in said amendment, insert: "$1,357,843,000"

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 66 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the phrase "$1,690,962,000" named in said amendment, insert: "$1,690,962,000"

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 67 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the phrase "$1,690,962,000" named in said amendment, insert: "$1,690,962,000"

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 74 to the aforesaid bill, and concur therein with amendments as follows:

In lieu of the phrase "$1,690,962,000" named in said amendment, insert: "$1,690,962,000"

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 75 to the aforesaid bill, and concur therein with amendments as follows:

In lieu of the phrase "$1,690,962,000" named in said amendment, insert: "$1,690,962,000"
forty-five minute inspection standard and for the ensuing fiscal year and a full and financial condition of the Immigration
a necessary but secondary) result of a significant inspection or preinspection services rendered only with respect to immigration
zen by-pass, the number of passengers for transportation to which documents or tickets used by passengers travelling to the United States;
provision for the administration of said account.

The amounts required to be refunded from the Land Border Inspection Fee Account for fiscal years 1992 and thereafter shall be refunded in accordance with estimates made in the budget request of the Attorney General for those fiscal years: Provided, That any proposed changes in the amounts designated in said budget requests shall only be made after notification to the Committee on Appropriations of the House of Representatives and Senate Committee on Appropriations of section 606 of Public Law 101-162.

The Attorney General will prepare and submit annually to the Congress statements of financial condition of the Land Border Inspection Fee Account, including beginning account balance, revenues, withdrawals, and ending account balance and projections for the ensuing fiscal year.

The program authorized in this subsection shall terminate on September 30, 1993, unless further authorized by an Act of Congress.

The provisions set forth in this subsection shall take effect 30 days after submission of a written plan by the Attorney General detailing the proposed implementation of the project specified in subsection (a)(1).

If implemented, the Attorney General shall prepare and submit on a quarterly basis, until September 30, 1993, a statutory report on the land border inspection project.

Resolved, That the House recede from its amendment to the amendment of the Senate numbered 83 to the aforesaid bill, and concur therein with an amendment as follows:

Sec. 211. (A) Notwithstanding any other provision of law, the Iowa Power Inc. and Redlands Inc., owner of the proposed Walnut Creek NWR, shall be required to obtain a permit from the Federal Service Administration, for the construction of the project specified in subsection (a)(1).

(B) The proposed project shall be implemented on September 30, 1993, unless further authorized by an Act of Congress.

(C) The provisions set forth in this subsection shall take effect 30 days after submission of a written plan by the Attorney General detailing the proposed implementation of the project specified in subsection (a)(1).

(D) If implemented, the Attorney General shall prepare and submit on a quarterly basis, until September 30, 1993, a statutory report on the land border inspection project.

Resolved, That the House recede from its amendment to the amendment of the Senate numbered 83 to the aforesaid bill, and concur therein with an amendment as follows:

One Member of the House of Representatives and one Member of the Senate shall be required to obtain a permit from the Federal Service Administration, for the construction of the project specified in subsection (a)(1).

(B) The proposed project shall be implemented on September 30, 1993, unless further authorized by an Act of Congress.

(C) The provisions set forth in this subsection shall take effect 30 days after submission of a written plan by the Attorney General detailing the proposed implementation of the project specified in subsection (a)(1).

(D) If implemented, the Attorney General shall prepare and submit on a quarterly basis, until September 30, 1993, a statutory report on the land border inspection project.

Resolved, That the House recede from its amendment to the amendment of the Senate numbered 83 to the aforesaid bill, and concur therein with an amendment as follows:

One Member of the House of Representatives and one Member of the Senate shall be required to obtain a permit from the Federal Service Administration, for the construction of the project specified in subsection (a)(1).

(B) The proposed project shall be implemented on September 30, 1993, unless further authorized by an Act of Congress.

(C) The provisions set forth in this subsection shall take effect 30 days after submission of a written plan by the Attorney General detailing the proposed implementation of the project specified in subsection (a)(1).

(D) If implemented, the Attorney General shall prepare and submit on a quarterly basis, until September 30, 1993, a statutory report on the land border inspection project.

Resolved, That the House recede from its amendment to the amendment of the Senate numbered 83 to the aforesaid bill, and concur therein with an amendment as follows:

One Member of the House of Representatives and one Member of the Senate shall be required to obtain a permit from the Federal Service Administration, for the construction of the project specified in subsection (a)(1).

(B) The proposed project shall be implemented on September 30, 1993, unless further authorized by an Act of Congress.

(C) The provisions set forth in this subsection shall take effect 30 days after submission of a written plan by the Attorney General detailing the proposed implementation of the project specified in subsection (a)(1).

(D) If implemented, the Attorney General shall prepare and submit on a quarterly basis, until September 30, 1993, a statutory report on the land border inspection project.
(8) The Comptroller General of the United States, who shall serve as the chairperson of the Commission.

The Commission shall submit to the Congress a report containing the findings of the Commission and specific proposals for legislation and administrative actions that the Commission has determined to be appropriate.

The Commission shall cease to exist upon the expiration of the sixty-day period beginning on the date on which the Commission submits its report under subsection (p).

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 87 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed by said amendment, insert:

SEC. 302. (a) Notwithstanding any other provision of law, for fiscal years 1991 and 1992, the provisions of the Office of Management and Budget Circular A-76 and any similar provisions in any other order or directive shall not apply to activities conducted by the Federal Bureau of Prisons, Federal Bureau of Investigation, Drug Enforcement Administration, Immigration and Naturalization Service, United States Attorneys, United States Marshals Service, the Office of Inspector General, and any of the litigating activities of the Department of Justice, unless such provisions are specifically approved by an Act of Congress.

(b) For fiscal years 1991 and 1992, no reduction in resources for the Justice Department activities described in subsection (a) shall be effected pursuant to the provisions of the Office of Management and Budget Circular A-76 and any other order or directive unless specifically provided therefore by an Act of Congress.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 87 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert: of which not to exceed $3,000,000 may be available for reimbursement, and to publicize the availability of records, as authorized by section 36 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2762), and in addition

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 92 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed by said amendment, insert: Provided, That the obligation of funds for the Department of State Telecommunications Network (DOSTN) shall be subject to the reprogramming provisions of section 606 of this Act: Provided further, That the Secretary of State shall submit a report to the appropriate committees of the Congress not later than December 1, 1990, which justifies the requirement for the Department of State Telecommunications Network (DOSTN)

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 92 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed by said amendment, insert: of which not to exceed $100,000 may be available for the purpose of preparations for the 1992 United Nations Conference on Environment and Development.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 92 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed by said amendment, insert: Provided, That the obligation of funds for the Department of State Telecommunications Network (DOSTN) shall be subject to the reprogramming provisions of section 606 of this Act: Provided further, That the Secretary of State shall submit a report to the appropriate committees of the Congress not later than December 1, 1990, which justifies the requirement for the Department of State Telecommunications Network (DOSTN)

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 100 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed by said amendment, insert: of which not to exceed $50,000 and inserting in lieu thereof $100,000; and

(b) by striking out "$2,000,000" and inserting in lieu thereof "$100,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 100 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum $1,598,623,000" named in said amendment, insert $1,589,124,000.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 105 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed by said amendment, insert: of which not to exceed $50,000.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 105 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum $1,598,623,000" named in said amendment, insert $1,589,124,000.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 107 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert: of which not to exceed $50,000.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 107 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed by said amendment, insert: of which not to exceed $50,000.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 100 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert: of which not to exceed $50,000.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 100 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed by said amendment, insert: of which not to exceed $50,000.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 105 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed by said amendment, insert: of which not to exceed $50,000.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 105 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed by said amendment, insert: of which not to exceed $50,000.
countries with which the United States has a treaty for the execution of penal sentences, and

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 120 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed by said amendment, insert: $33,761,000

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 110 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed by said amendment, insert: $40,095,000

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 135 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum "$40,095,000" named in said amendment, insert: $40,095,000

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 143 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert: nothing herein shall preclude the Small Business Administration from publishing in the Federal Register, proposed rules, nor shall anything herein apply to any common rate or charge applicable to multiple Federal departments and agencies, including the Small Business Administration; nor may any of the funds provided in this paragraph restrict in any way the right of association of participants in such program.

ADMINISTRATIVE PROVISIONS

(INCLUDING TRANSFER OF FUNDS)

SEC. 1. DEPUTY ADMINISTRATOR.

(a) Section 4 of the Small Business Act is amended by striking "The Administrator is authorized to appoint a Deputy Administrato" and inserting in lieu thereof the following: "The President also may appoint a Deputy Administrator, by and with the advice and consent of the Senate.

(b) The provisions of subsection (a) of this section shall apply to any vacancy in the position of Deputy Administrator of the Small Business Administration after the effective date of this Act.

SEC. 2. JOINT VENTURES WITH TRIBALLY OWNED ENTERPRISES.

Section 602 of the Business Opportunity Development Reform Act of 1988 (17 U.S.C. 637 note) is amended by striking the end of subsection (b) and inserting in lieu thereof the following: "October 1, 1992" and inserting "$2,500,000".

SEC. 3. INTEREST RATE ON CERTIFIED DEVELOPMENT COMPANY LOANS.

Section 112 of the Small Business Administration Reorganization Act of 1988 (Public Law 100-590) is amended by striking the end of subsection (c) "October 1, 1990" and inserting in lieu thereof the following: "October 1, 1992".

SEC. 4. NATURAL RESOURCE DEVELOPMENT.

The Small Business Act is amended by adding the following new section:

"Sec. 24. (a) The Administrator is authorized to make grants to or enter into contracts with any State for the purpose of contracting with small businesses to plant trees on land owned or controlled by such State or local government. The Administrator shall require as a condition of any grant or modification thereof under this section that the applicant also contribute to the project a sum equal to at least 25 per centum of a particular project cost from non-Federal sources other than the State Government. Such non-Federal money may include inkind contributions, including the cost or value of providing care and maintenance for a period of time after the planting of the trees, but shall not include any value attributable to the land on which the trees are to be planted, nor may any part of any such money be used to pay for land or tree charges. Provided, That not less than onehalf of the amounts appropriated under this
section shall be allocated to each state, the District of Columbia, and the Common-wealth of Puerto Rico on the basis of the population of such states. The new amount for each area as compared to the total population in all areas as provided by the Census Bureau of the Department of Commerce in the annual population estimate most current. The Administrator may give a priority in awarding the remaining one-half of such funds to any state that agrees to contribute more than the requisite 25 per cent.

(b) In order to accomplish the objectives of this section, the Administrator, in consultation with appropriate Federal agencies, shall be responsible for formulating a national small business tree planting program. Based on this program, a State may submit a detailed proposal for tree planting by contract.

(c) To encourage and develop the capacity of small business concerns, to utilize this important segment of our economy, and to permit rapid increases in employment opportunities in local communities, grants are directed to utilize small business contractors or concerns in connection with the planting of such trees. The Contractor, or contractors, shall, to the extent practicable, divide the project to allow more than one small business concern to perform the work under the contract.

(d) For purposes of this section, agencies of the Federal Government are hereby authorized to engage in small business development with State foresters or other appropriate officials by providing without charge, in furtherance of this program, technical services with respect to the planting and growing of such trees.

(e) There are authorized to be appropriated to carry out the objectives of this section, $15,000,000 for fiscal year 1991 and $30,000,000 for each of the fiscal years 1992 through 1994, and all of such sums may remain available until expended.

(f) Notwithstanding any other law, rule, or regulation, the administration shall publish in the Federal Register proposed rules and regulations implementing this section within sixty days after the date of enactment of this section and shall publish final rules and regulations within one hundred and twenty days of the date of enactment of this section.

(g) As used in this section:

(1) the term 'local government' includes political subdivisions of a State such as counties, parishes, cities, towns and municipalities;

(2) the term 'planting' includes watering, application of fertilizer and herbicides, pruning and shaping, and other subsequent care and maintenance for a period of three years after the trees are planted; and

(3) the term 'State' includes any agency thereof.

(h) The Administration shall submit annually to the President and the Congress a report on activities within the scope of this section.

SEC. 5. SMALL BUSINESS DEVELOPMENT CENTERS.

(a) Section 21 of the Small Business Act is amended by striking the second proviso in subsection (a)(4) and inserting in lieu thereof the following: "Provided further, That no recipient of funds under this section shall receive a grant which would exceed its pro rata share of a $70,000,000 program based upon the population to be served by the Small Business Development Center as compared to the population of the United States, plus $100,000 for each State but no State shall receive less than $200,000;"

(b) Section 204 of the Small Business Development Center Act of 1980 (Public Law 96-302), as amended, is hereby repealed; and

(c) (1) In the case of the provisions in subsection (a)(4) made by subsection (a) of this section shall apply to contracts, grants or cooperative agreements for performance commencing on or after October 1, 1991; contracts, grants or cooperative agreements for performance commencing prior to such date shall remain available until expended in the event of performance without regard to this amendment and according to the State's pro rata share of a $65,000,000 program as compared to the total population in all areas as provided by the Census Bureau of the Department of Commerce in the annual population estimate used for calendar year 1990 agreements, plus $50,000 for each State but no State shall receive less than $200,000.

SEC. 6. SMALL GRANTS ELIGIBILITY.

Section 21 of the Small Business Act is amended by striking the period at the end of the first sentence of paragraph (1) of subsection (a) and inserting the following: "Provided, That after December 31, 1990, the Administration shall not make a grant to any applicant other than an institution of higher education as a Small Business Development Center unless the applicant was receiving a grant (including a contract or cooperative agreement) on such date. The Administration shall require any applicant for a grant under this section to agree to contribute not less than 25 per centum of the funds on performance commencing on or after January 1, 1992 to have its own budget and to provide institutional support services to the small business community."

SEC. 7. CENTRAL EUROPEAN ENTERPRISE DEVELOPMENT.

The Small Business Act is amended by adding the following new section:

"SEC. 25. (a) There is hereby established a Central European Small Business Enterprise Development Commission (hereinafter in this section referred to as 'the Commission'). The Commission shall be comprised of a representative of each of the following: the Small Business Administration, the Association of American Universities, and the Association of Small Business Development Centers.

(b) The Commission shall develop in Czechoslovakia, Poland and Hungary hereinafter referred to as 'designated Central European countries') a self-sustaining system to provide management and technical assistance to small business owners.

(1) Not later than 30 days after the effective date of this section, the Commission, in consultation with the Small Business Development Center for Interna­tional Development, shall enter a contract with one or more entities to-

(1) determine the needs of small businesses in the designated Central European countries for management and technical assistance;

(2) evaluate appropriate Small Business Development Center-programs which might be replicated in order to meet the needs of each such country; and

(3) identify and assess the capability of educational institutions in each such country to develop a Small Business Development Center-type program.

(2) Not later than 18 months after the effective date of this section, the Commission shall review the recommendations submitted to it and shall enter into contract or cooperative agreement to establish a three-year management and technical assistance demonstration program.

(c) (1) In order to be eligible to participate, the educational institution in each designated Central European country shall-"
ed to participate in this demonstration pro-
gram, with improved online access to public
and private technology services and exper-
tise, so as to accelerate the transfer of tech-
nology and expertise to small businesses to
improve the productivity and economic
competitiveness of these small businesses.

"The Small Business Development Center,
which is funded by the Administra-
tion, is eligible to receive an additional
grant to provide access to online data bases
as authorized by subsection (a) providing it
contributes at least a fifty percent matching
contribution.

The grants authorized by this section shall be used to-
(1) defray all or part of the cost of access-
ing data bases from private vendors for a
limited period of time,
(2) demonstrate to small businesses the
benefits of accessing such data bases, and
(3) provide small businesses to use such
data bases to access technical information
and services.

(b) AUTHORIZATION.—There is authorized to
be appropriated to the Small Business Ad-
ministration for each of fiscal years 1991
and 1992, $1,200,000 to carry out the terms of
this agreement as Small Business Act.

SEC. 16. CONTINUATION OF AUTHORITY.

Notwithstanding any other provision of
law, an amount shall be made available
from the unobligated balances in the Business
Loan and Investment Fund to make a grant
designated in Public Law 100-459 in subsection (c)
under the heading "Economic Development Assistance Programs", at a
funding level not less than the level provided
during fiscal year 1990, and notwithstanding
any other provision of law, an amount shall be made available from
unobligated balances in the Business Loan and Investment fund to make a grant to the first entity designated in Public Law 100-
459 in subsection (c) under the heading "Economic Development Assistance Pro-
grams" at a funding level not less than the level provided during fiscal year 1990 to such entity.

SEC. 17. COOPERATIVE AGREEMENTS.

Section 7(b) of the Small Business Com-
puter Security and Education Act of 1984
(15 U.S.C. 633 note) as amended, is further
amended by striking "October 1, 1989" and

SEC. 18. AMENDMENT FROM DEPARTED.

In addition such sums as may be neces-
SARY
Resolved, That the House recede from its
disagreement to the amendment of the Senate numbered 144 to the aforesaid bill, and concur therein with an amendment as follows:
In lieu of the sum named in said amend-
ment, insert: $13,000,000
Resolved, That the House recede from its
disagreement to the amendment of the Senate numbered 148 to the aforesaid bill, and concur therein with an amendment as follows:
In lieu of the sum "$189,708,000" named in said amendment, insert: $163,151,000
Resolved, That the House recede from its
disagreement to the amendment of the Senate numbered 162 to the aforesaid bill, and concur therein with an amendment as follows:
In lieu of the sum of "$2.28" in subpar-
agraph (1) of said amendment, insert: "$2.22
In lieu of the term "6 cents" in subpara-
graph (2) of said amendment, insert: "6.00001
Resolved, That the House recede from its
disagreement to the amendment of the Senate numbered 165 to the aforesaid bill, and concur therein with an amendment as follows:
In lieu of the matter proposed by said amendment, insert:
SEC. 600. The funds of this title or any other Act may be used to appro-
tion for the development of any supercomputer to any country whose government the Presi-
dent, after consultation with appropriate au-
tority, determines to be assisting Iraq to im-
prove its ballistic missile technology or chemical, bio-
logical, or nuclear weapons capability and so reports to the Congress.

(b) None of the funds in this title or any other Act may be used to appro-
tion for the development of any supercomputer to any country whose nationals are assisting Iraq to im-
prove its rocket technology or chemical, bio-
logical, or nuclear weapons capability: Pro-
vided, That this provision shall apply only if the President determines that the govern-
ment of the country has made inadequate ef-
forts to restrict such involvement by its citi-
zens or corporations and so reports to the Congress.

Resolved, That the House insist on its amend-
ment of the Senate numbered 164 to the aforesaid bill.

Mr. HOLLINGS. Mr. President, I move to concur in the amendment of the House to the Senate amendment No. 139 in disagreement with an amendment as follows:
The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:
The PRESIDING OFFICER. The amendment will be stated.

The Senators from South Carolina, Mr. HOLLINGS, proposes an amendment numbered 3123. Beginning with the sum of "$160,185,000" in the pending amendment, strike all through the end of the paragraph and insert: "$171,485,000", of which not to exceed $100,000 may be made available to a conference of the International Organizations of Securities Commissions and, for 1991 only, not to exceed $100,000 shall be available to host a conference of the International Organizations of Securities Commissions, such sum to cover related translation, printing, facility and other nec-
essary logistic and administrative expenses:
Provided, That immediately upon enact-
ment of this Act, the rate of fees under sec-
tion 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) shall increase from one-fifth-
eth of 1 per centum to one-fourth of 1 per

centum and such increase shall be deposited in the revolving collection fund appro-

The PRESIDING OFFICER. The question is on agreeing to the motion.
The motion was agreed to.

Mr. HOLLINGS. Mr. President, I yield now to our distinguished col-
leagues from Pennsylvania.

AMENDMENT IN DISAGREEMENT NO. 9

The PRESIDING OFFICER. If the Sen-
ator will withdraw, the clerk will report
the remaining amendment in disagreement, amendment No. 9.

The legislative clerk read as follows:
Resolved, That the House recede from its
disagreement to the amendment of the Senate numbered 9 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert:
and engaging in trade promotional activi-
ties abroad without regard to the provi-
sions of section 7(a) of 44 U.S.C. 3702 and 3703;
full medical coverage for dependent mem-
ber of immediate families of employees sta-
tioned overseas; travel and transportation of
employees of the United States and For-

AMENDMENT NO. 3123 TO AMENDMENT

Mr. HOLLINGS. Mr. President, I move that the Senate concur in the amendment of the House to amend-
ment No. 139 with an amendment which I send to the desk.
Mr. HEINZ. Mr. President, I move that the Senate concur in the House amendment with an amendment which I send to the desk.

The PRESIDING OFFICER. The clerks report as follows:

The Senator from Pennsylvania (Mr. HEINZ) proposes an amendment numbered 3124.

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

The PRESIDING OFFICER. Is there objection to the request of the Senator from Pennsylvania?

Mr. HARKIN. I do not have a copy of the amendment, Mr. President.

Mr. HEINZ. If the Senator will withdraw, I will explain exactly what the amendment does.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Pennsylvania?

Mr. HARKIN. I do not object.

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

The amendment is as follows:

In lieu of the matter stricken and inserted by said amendment, insert the following and enacting in trade promotional activities abroad without regard to the provisions of law set forth in 44 U.S.C. 3702 and 3703; full medical coverage for dependent members of immediate families of employees stationed overseas; travel and transportation of employees of the United States and Foreign Commercial Service officer stationed abroad with two points abroad, without regard to 49 U.S.C. 1317; employment of Americans and aliens by contract for services abroad; rental of space abroad for periods not exceeding ten years, and expenses of alteration, repair, or improvement; purchase or construction of temporary demountable exhibition structures for use abroad; payment of tort claims, in the manner authorized in the first paragraph of 26 U.S.C. 2672 when such claims arise in foreign countries; not to exceed $330,000 for official representation expenses abroad; and purchase of passenger motor vehicles for official use abroad not exceeding $50,000 for official insurance on official motor vehicles, rent lines and teleype equipment: $185,620,000 to remain available until expended of which $3,000,000 shall be for support costs of a new materials center in Amex, Iowa, and of which $7,135,000 is for the Office of Textiles and Apparels, including $315,000 for grant to the Tailored Clothing Technology Corporation: Provided, That the provisions of the first sentence of section 108(c) and all of section 108(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2458(f) and 2458(c)) shall apply to the foreign trade zone legislation:

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I thank the Senator from Iowa.

What I have sent to the desk is exactly the same as most of the text of amendment No. 9 except that it strikes the last sentence of that amendment which directs the establishment of a foreign trade zone in the United States or activities, and that if I believe is to be established in Cedar Rapids, IA.

I come to the floor as a member of the Finance Committee, which has jurisdiction over this matter, as somebody who helped write over the years and perfect the foreign trade zone legislation. There are simple, clear procedures that the House, were any hearings held on this subject. There has been, I can tell my colleagues for a fact, no consideration, even the most cursory consideration by the committee of jurisdiction, Finance, on this subject.

There has been no apparent floor debate until just now, and most important of all, the safeguard that exists with the Foreign Trade Zones Board, which is an opportunity for public comment, has not been afforded.

Finally, of course, this is legislation on an appropriations bill, and under other circumstances it would be subject to an objection on that ground.

Mr. President, I reserve the remainder of my time and hope the Senate will see fit to agree to the amendment I have offered.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Before I yield our time on this side to the distinguished Senator from Iowa, I wish to make a statement.

Mr. President, we had the formal conference on October 18, after several days of intense negotiations with the House managers to work out the 167 Senate amendments to the bill. While this may appear to be an unusual number of amendments, it is par for the course with this bill. As the Senators will recall, our House colleagues only appropriated for authorized programs and sent to the Senate a bill consisting of only 31 pages. When we got to the conference, however, the House gave us their full agenda.

The distinguished ranking minority member and former chairman, the junior Senator from New Hampshire (Mr. RUDDMAN), was with me during re-
gottations with the House managers despite his heavy schedule of Ethics Committee meetings. In an entirely bipartisan fashion, Senator RUDMAN and I negotiated agreements on as many of the issues as possible.

The major issue on which we could not initially reach an agreement with the House negotiators was the Kasten amendment on the ban of supercomputer sales to countries which are aiding the Iraqi war effort. The compromise language the House conference insisted on is not satisfactory to either Senator KASTEN or myself, but it became clear during conference that they would not budge from their position. The compromise does give the President the tools he needs to stop such exports if he chooses. I give credit to the senior Senator from Wisconsin [Mr. Kasten], for raising this issue, and I give notice to the administration that we will be monitoring this situation very carefully.

Mr. President, when the Senate approved H.R. 5021 on October 11, the total new budget authority in the bill was $19,058,879,000. Due to the House's original bill not including unauthorized programs, the Senate amount was $8,714,963,000 over the level approved by the House. The conference agreement totals $18,358,768,000 and is within the section 302(b) allocation for the subcommittee.

WAR ON DRUGS

As has been the case for the past several years, the conference agreement reflects our continued commitment to escalate the war on drugs. Specifically, if we take into account the nonrecurring costs associated with prison construction money provided last year, the conference agreement for the Justice Department reflects a $133,000,000 percent increase in the amount provided in fiscal year 1990. Similarly, the Judiciary recommendations are $254 million, or 15 percent above the fiscal year 1990.

Mr. President, we want to move this bill along so I will highlight the major law enforcement program increases included in the conference report now before us:

U.S. attorneys. An increase of $154 million of which $109 million covers the cost of annualizing prosecutors provided in the 1990 drug bill and $45 million supports additional positions financial institution prosecutions.

U.S. Marshals. An increase of $43.3 million to support judicial protection, prisoner transportation and detention, and management of the seized assets program.

Support of U.S. prisoners. An increase of $34.6 million to support the housing of unsentenced Federal prisoners in State and local jails as well as $15 million to support the Cooperative Agreement Program.

Organized crime drug enforcement. An increase of $113 million to support requested program increases for the following agencies: FBI, IRS, INS, Customs, BATF, DEA, and U.S. attorneys.

Federal Bureau of Investigation. An increase of $87 million of which $39.8 million will support 164 new agents and 414 new professional, technical, administrative, and clerical employees to help the FBI enhance its investigation of financial institution fraud cases.

Drug Enforcement Administration. An increase of $146 million to support the hiring of 408 new agents, expansion of domestic enforcement, additional aircraft, and relocation of DEA's airwing to Fort Worth, TX.

Prison construction. $374.4 million to expand capacity of the Federal prison system by 6,175 beds through the construction of four particularly complex, 1 long-term medical care unit, expansion at 6 existing institutions detention units at 7 existing institutions, and conversion of military facilities.

Prison, salaries and expenses. An increase of $231 million to finance the care of a prison population increase of 6,050 (56,400 to 62,450), as well as the activation of 1 new prison and expansion projects at 13 existing institutions.

State and local drug grants. An increase of $92 million to expand the program, of which $17 million will support NCIC 2000. Language in the conference agreement also retains the current 75/25 Federal-State match for the drug grant program.

FINANCIAL INSTITUTION FRAUD INVESTIGATION AND PROSECUTION

Mr. President, deeply concerned with the spiraling number of failures of financial institutions, particularly savings and loans, and the overwhelming evidence of criminal conduct related to these failures, the conference agreed to the Senate initiative greatly expanding funding for financial institution fraud investigations and prosecutions. Specifically, the conference agreement provides an additional $106.8 million above the President's request for savings and loan investigations and prosecutions. The breakdown of these increases are as follows:

Federal Bureau of Investigation +$47,300,000
United States Attorneys +$45,000,000
Criminal Division +$6,200,000
Civil Division +$4,900,000
Tax Division +$3,400,000

Total +$106,800,000

OTHER HIGHLIGHTS

Mr. President, the conference agreement recommends additional important provisions, including:

For the Census Bureau's periodic census account, the conference agreement provides $272,700,000, an increase of almost $3,000,000 over the Senate level. This should provide more than enough funds to conduct a special census for the Federated States of Micronesia as directed in the Senate report and requested by Senator Inouye.

A hundred nine million dollars is provided for the Economic Development and Economic development activities.

Within NOAA, $47,000,000 is provided for the Climate and Global Change Program, a substantial increase over last year's level of $18,000,000; $154,000,000 is appropriated for the National Weather Service modernization program, including procurement of new weather balloons. The funding will also meet 20 percent of the reorganization we have incurred to these organizations.

The request of $225,000,000 for the Ready Reserve Force of the Maritime Administration is also provided. My colleagues might be interested to know that 40 vessels from the Reserve Force have been deployed for Operation Desert Shield.

In September, the President requested $14,249,000 to increase Arab broadcasts of the Voice of America to the Middle East; the conference has included this funding within the amount provided to the U.S. Information Agency.

Mr. President, this has been a difficult year in which to address new spending items, but we have done the best job that can be done, under the circumstances. I appreciate the fine work of all the members of the subcommittee, and I yield the floor to the distinguished minority member if he would like to add anything.

Mr. President, there is also a unique thing that has to be commented upon. I have the privilege of having the distinguished John Shank work with Dorothy Seder of my staff on this bill. Mr. Shank is the counsel for the Republican side. We are getting too ecumenical around here. We have been in Washington too long. I want to thank Senator RUDMAN for loaning me the services of John Shank as well as thank Dorothy Seder.

As to the Senator from Pennsylvania's amendment, let me say that this provision was worked out on the House side, the House included this measure. It was included without any objection, as I understand it, over on the House side.
As manager from this side, I think on this particular point on a matter that does concern me as well as it does the Senator from Pennsylvania, that we move along now and get our conference reported out.

Let me yield time to the distinguished Senator from Iowa.

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

The PRESIDING OFFICER. The Senator has 8 minutes.

Mr. HARKIN. Mr. President, I rise in opposition to the motion of the distinguished Senator from Pennsylvania.

Mr. President, we have a lot of foreign trade zones in the United States. The last count that I have here, there were 165 foreign trade zones plus 177 special purpose subzones in the United States. A lot of these have been established in the past. I note that there is at least one, if not more than one, in the State of Pennsylvania right now.

I would like to add for the benefit of Senators that the House Ways and Means Committee does not have, at this point, any objection to this. There were no objections raised on the House floor whatsoever from the jurisdictional committee. The objection came from the administration, and the administration's objection was that Cedar Rapids, IA, is not big enough, not enough activity; it is too small.

Well, now, what is good for the goose is good for the gander. We can have foreign trade zones in the large cities. And here is a small city, a little over 100,000 in population. Sure, it is not as big as Philadelphia, but we have industries in Cedar Rapids that employ people that can use goods coming from a foreign country just like they do in Philadelphia. They have a foreign trade zone in Philadelphia. Why should we not have one in Cedar Rapids, IA? It is not taking jobs away from anybody in the United States.

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

Mr. HARKIN. I did not take any of the Senator's time. I want to make my statement.

Mr. President, the administration's objection was it was not big enough. But what we are talking about here is - and it is not just the company that was mentioned by the Senator from Pennsylvania, PMX. We have a company which makes industrial tire chain; another which makes laminated paper; it has as a number of different businesses interested in having a foreign trade zone in Cedar Rapids. We are talking about maybe $150 million capital investment; hundreds of jobs.

I can tell you in the State of Iowa that is important. We were No. 2 only to West Virginia in the last 10 years in the percentage of our people that left the State. We are looking to diversify our economy. We have lost a lot of farmers in the last 10 years. It has hurt our towns.

All we are asking for here is for a foreign trade zone so that people can work there, they can bring in goods from different countries, assemble it there and transship it out of this country. They do it in Philadelphia. They do it in several hundred other cities in the United States. That is all we are asking for here.

As I said, there were no objections raised on the House floor. There are objections from the Ways and Means Committee. I have heard no objections from anybody else on the Finance Committee on this side. Only today this objection comes on the floor. Well, I suspect there may be more to it than this.

Mr. President, there is nothing amiss with this. It was put in by the House. It was accepted in conference by the distinguished chairman of the committee. I have heard nothing here until the Senator from Pennsylvania just got up to oppose it.

But we are talking about a much needed provision for a small city in the State of Iowa which is going to provide much needed jobs in an economy that has been wrecked over the last 10 years. So I hope that the motion by the Senator from Pennsylvania would not be upheld and at the proper time I am going to move to table that motion. Because, as I said, there is absolutely no reason to strike this, no reason whatsoever.

We are not taking any jobs from Pennsylvania. We are not hurting anybody. All we are doing is providing for the city of Cedar Rapids something that Philadelphia, PA has. That is the only thing we are doing. Mr. President.

How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 3 minutes and 45 seconds.

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

Mr. HARKIN. Now I am delighted to yield.

Mr. HEINZ. Can the Senator tell me if application was made to the Foreign Trade Zone Board, as the law requires?

Mr. HARKIN. It is my information and belief, based upon representations made to this Senator, that many inquiries were made about applying for this. They were told to forget it, because Cedar Rapids was not big enough. Mr. President.

Mr. HEINZ. Is the Senator aware, notwithstanding what anybody is told, that his constituents not only have a right to apply, but if they want due process, need to exercise their right to due process by applying? The first and foremost right of due process to them, to Cedar Rapids, and to other citizens in Iowa, as I am sure the Senator knows, is a public hearing. Can the Senator tell me if a public hearing was ever held on this, as is required?

Mr. HARKIN. I cannot answer whether there was a public hearing held or not. All I know is that representation has come to me from the Senator from Cedar Rapids that this Senator received from the community in Cedar Rapids was that time and time again they were told, that, because of their size, and level of activity it would be fruitless and useless to apply.

Again, Cedar Rapids does not have a lot of money. We do not have the wherewithal of a big city like New York or Los Angeles over something like that. When a small community is told to forget about it—and they are strapped for money anyway—are they going to waste a lot of money hiring lawyers and everything else to make all these applications and stuff when they are told at the beginning that is not going to do them any darn good at all? Of course, they are not. So they come to the right place and that is the Congress of the United States to help them out a little bit, and that is what we are trying to do right here.

Mr. President, how much time do I have remaining?
October 24, 1990

The PRESIDING OFFICER. The Senator has 1 minute and 6 seconds remain­
ing.

Mr. HARKIN. Mr. President, I would just again respond to the Sena­tor that it was size. I am told they success­fully apply because there was not enough businesses there involved in foreign trade.

Well, it is sort of a chicken and egg. If you do not have the businesses, you cannot apply. But if you cannot apply, you will not get the businesses. So we are trying to break the chicken and egg cycle here. If we get them a fore­eign trade zone, we will have the busi­nesses there.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator has 38 seconds remaining.

Who yields time?

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

Mr. BYRD. Mr. President, there is not time enough remaining for a quorum call.

The PRESIDING OFFICER. There are 4 minutes remaining, total time; 37 seconds to the Senator from Iowa, 3 minutes and 23 seconds to the Senator from Pennsylvania.

Mr. HARKIN. Mr. President, if the Senator would be willing to yield back his time, I will yield back all of my time.

Mr. HEINZ. Mr. President, could the Senator withhold 1 minute? I was ad­vised Senator Specter was coming over. I want to give him that opportu­nity.

The PRESIDING OFFICER. The Senator from Pennsylvania is recog­nized. The time will be charged to the Senator from Pennsylvania.

THE CALENDAR

Mr. BYRD. Mr. President, I ask unanimous consent to proceed for 2 minutes without the time being charged to either side.

The PRESIDING OFFICE. Without objection, it is so ordered. The Senator from West Virginia.

Mr. BYRD. Mr. President, I take this time to conduct a little morning business at the request of the majority leader.

NUTRITION LABELING AND EDUCATION ACT OF 1990

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 784, H.R. 3562, the nut­rition labeling bill; that an amend­ment by Mr. Mitchell on behalf of Senators Metzenbaum and Hatch be agreed to; that statements by Senators Metzenbaum and Mitchell, and col­loquies between Senators DeConcini and Metzenbaum, and between Sena­tors Symms and Metzenbaum appear in the Record as stated in their entirety; that an amendment on behalf of Senators Jeffords and Kolln be agreed to; printing of a statement by Mr. Kolln be agreed to; all amend­ments be agreed to and the bill be ad­dressed to third reading and passed, the motion to reconsider be laid on the table, and that motions to reconsider en bloc be agreed to.

The PRESIDING OFFICER. With­out objection, so ordered.

1. Page 2, line 22, strike "and", page 3, line 2, strike the period and insert "," and, and after line 2 insert the following:

"(E) any vitamin, mineral, or other nutri­tient required to be placed on the label and labeling of food under this Act before Octo­ber 1, 1990, if the Secretary determines that such information will assist consumers in maintaining healthy dietary practices.",

2. Page 11, strike lines 12 through 21 and re­designate paragraphs (3) and (4) as para­graphs (2) and (3).

3. Page 3, strike lines 3 through 7 and insert in lieu thereof the following: "The Secretary, if any information required to be placed on the label or labeling by this subparagraph or sub­paragraph (2A) to be highlighted on the label or labeling by larger type, bold type, or contrasting color if the Secretary deter­mines that such highlighting will assist con­sumers in maintaining healthy dietary prac­tices.".

4. Page 9, line 24, strike "shall" and insert "may" and page 4, line 1, strike "may".

5. Page 6, line 23, strike "of labeling" and insert "or labeling".

6. Page 9, line 5, strike "may" and insert "shall" and in line 6 insert after "form" the follow­ing: "prescribed by the Secretary".

7. Page 17, insert after line 2 the follow­ing:

"(D) Subparagraph (2) does not apply to a claim described in subparagraph (1A) which uses the term "diet" and is contained in the label or labeling of a soft drink if (i) such claim is contained in the brand name of such soft drink, (ii) such brand name was in use on such soft drink before October 25, 1989, and (iii) the use of the term "diet" was in conformity with section 105.66 of title 21 of the Code of Federal Regulations. Such a claim is subject to the requirements of paragraphs (2) and (3), and on page 28, insert after line 20 the following:

"(e) Construction—

(1) The Nutrition Labeling and Educa­tion Act of 1990 shall not be construed to preemp­t any provision of state law, unless such provision is expressly preempted under section 403A of the Federal Food, Drug, and Cosmetic Act.

(2) The amendment made by subsection (a) shall not be construed to apply to any require­ment respecting a claim made in the label or labeling of food which is exempt under subclause (i) or (ii) of section 403(g)(5)(A).

(3) The amendment made by subsection (a) shall not be construed to affect preemption, express or implied, of any such requirement of a State or political subdivision, which may arise under the Constitution, any provi­sion of the Federal Food, Drug, and Cosmetic Act not amended by subsection (a), any other Federal law, or any Federal regu­lation, order, or other final agency action re­viewable under chapter 7 of title 5, United States Code.

15. Page 26, line 5, strike "The" and insert "For the purpose of implementing section 403A(a)(3), the"

16. Page 9, line 9, page 11, line 24, and page 12, line 3, strike "18" and insert "24".

17. Page 22, lines 9, 15, and 18, strike "18" and insert "24".

18. Page 27, lines 6 and 17, strike "18" and insert "24".

19. Page 27, line 20, strike "24" and insert "30".
Page 31, line 2, strike "18" and insert "24".
Page 33, line 15, strike "9" and insert "18".
Page 33, line 19, strike "18" and insert "24".

17. Page 3, line 9, strike "labeled in" and insert "labeled required by" and strike "or (1)(D)" and insert "(1)(E)", and strike "or (1)(D)" and insert "(1)(E)", and strike "or (1)(E)" and insert "(1)(E) or (1)(E)".

18. Page 13, line 5, after "the" in the following clauses: A through C of", in line 17 strike "subparagraph (3)" and insert "subparagraph (3) or 5(D)", and beginning in line 23 strike "(4)(A)(i), (4)(A)(ii), and (4)(A)(iii) and (4)(B)(ii), (4)(C)(i) and (4)(C)(ii) and (4)(C)(iii)".

19. Page 20, line 11, strike "(v)" and insert "(v)".

20. Page 22, line 5, strike "and", line 8, strike the period and insert in lieu thereof", and after line 8 insert following: "shall establish, as required by section 403(r)(5)(D), the procedure and standard respecting the validity of claims made with respect to a dietary supplement of vitamins, minerals, herbs, or other similar nutritional substances and shall determine whether claims of nutrient content or health claims for dietary supplements are made. In the following procedures and standards, and diseases meet the requirements of sections 403(r)(5)(D) and 403(t)(5)(D), and beginning in line 23 strike "(A)(ii), (A)(iii), and (C)(ii) and (D)(i)" and insert "(A)(ii) and (A)(iii)".

21. Page 24, line 21, strike "which" and insert "that" and in line 22, strike "which" and insert "that".

22. Page 28, line 17, and page 33, line 13, strike "and "(D)".

Mr. METZENBAUM. Mr. President, I want to begin by congratulating my colleague from Utah, Senator Harken, for his outstanding contribution to the development of this legislation. By providing the public with better nutrition information, this bill makes a major step forward in enabling consumers to select foods to protect and improve their health.

In the course of developing the Metzenbaum-Hatch amendment, a number of questions have arisen that need to be addressed. The first of these involves the provisions of the bill relating to dietary supplements. It is obvious from the language of the amendment, and from what I said in the Metzenbaum-Hatch manager's statement—placed in the Record separately—that the Secretary has complete discretion to decide the appropriate standard for establishing the validity of health claims for dietary supplements. Under this provision, the Secretary could establish the same procedure and standard for dietary supplements as the bill adopts for health claims on conventional foods, or he could establish a more restrictive or less restrictive procedure and standard. It is my view that there is no reason to do anything other than utilize the same procedure and standard for dietary supplements.

Whatever approach the Secretary takes, he must establish a system that evaluates the validity of health claims for dietary supplements. The system must be based on the same considerations that guide other agency decisions: public health, sound scientific principles and consumer fraud.

It is also obvious from the amendment that there are many other factors which the Secretary will want to take into consideration in determining the appropriate procedure and standard for health claims for dietary supplements. The bill imposes no restrictions on the factors which the Secretary can consider.

Another issue involves the exemption from the nutrition labeling requirements imposed by section 403(q) (1)-(4) with regard to food that is processed and prepared primarily on the premises and sold at that establishment to consumers for consumption at home or elsewhere. This exemption recognizes that when food is processed and prepared primarily on the premises and sold there, as in the prepared foods sold in supermarkets, the use of the term "light" is not confusing. The exemption labeling is not appropriate. On the other hand, if the preparation or processing of food is standardized and is accomplished primarily at another establishment and the same food is then shipped to a retail food store in a form that requires minimal or no further processing, nutrition labeling can be easily accomplished and is required.

Another issue involves State nutrition labeling requirements for restaurants. Because food sold in restaurants is exempt from the nutrition labeling requirements of section 403(q) (1)-(4), the bill does not preempt any State nutrition labeling requirements for restaurants. If States do require such labeling in restaurants, it is important that they make every effort to make those requirements consistent with the requirements of this bill. To the extent that a consistent format and content is used, consumers will be able to make greatest use of the nutrition information.

Another issue involves the provision of the bill which allows States to enforce the nutrition labeling requirements established by this bill. The concern involves the proper disposition of a case brought by the State when the Food and Drug Administration settles an enforcement proceeding regarding the same violation while the State's suit is pending. In such a circumstance, the court would be expected to dismiss the State's action if the FDA action resolves all matters pending before the court.

The last issue involves the Secretary's responsibility under the bill to regulate nutrient content claims which use certain "descriptor" words, like "low-fat" and "light." The Secretary is required to define the regulations the terms which may be used to characterize the level of a nutrient in food. In determining which terms to allow, the Secretary should consider the different ways such terms are used today. For instance, the word "light" has been used in a variety of different ways, including with regard to calories, fat, color and texture. By considering current uses and current consumer understanding of such terms, the Secretary can best decide how to define the term under this bill.

Mr. President, Senator Harken and I were the primary authors of the amendments made by the Senate to the Hatch bill. As they are the authors of the amendment and the managers of the bill in the Senate, we want to comment on two matters contained in the bill as amended by the Senate. In addition to our comments here as managers, we both will have statements on other aspects of the bill, as amended.

The first matter involves the subject of preemption. We want to clarify that nothing in section 4 of the bill, as amended, prevents a State from acting under State law to address an emergency.

The second matter involves the subject of dietary supplements. Congress has long acknowledged the unique nature of dietary supplements and the role they play in the diet of many Americans. Many individuals choose to use dietary supplements in an effort to assure balanced, complete nutrition and to help prevent chronic disease.

The Senate substitute to this bill handles health claims for dietary supplements differently from health claims for conventional food products. The substitute sets forth a mechanism for the consideration of health claims for conventional food products and requires that such food with such a claim not be treated as a drug under the provisions of the Federal Food, Drug and Cosmetic Act. The substitute spells out the standard and the procedure by which such claims will be regulated. We believe that this substitute provides that dietary supplements will not be subject to the mechanism for conventional food products but will be subject to a procedure and standard that the Secretary is to establish, by regulation, for the consideration of health claims for dietary supplements. In addition, the substitute requires that such a claim not be treated as a drug under the provisions of the Federal Food, Drug and Cosmetic Act.
factors which are relevant for consideration, the following two factors:

The rapid pace of scientific advances linking nutritional substances to the maintenance of long-term human health and the prevention of long-term disease; and

The ways in which dietary supplements are marketed and used by individuals differently from conventional food facts.

Mr. MITCHELL. Mr. President, I commend my distinguished colleague from Ohio, Senator METZENBAUM, for his diligent efforts to produce a sound piece of consumer legislation, the Nutrition Labeling and Education Act of 1990.

The nutrition labeling bill will require the Food and Drug Administration to develop standardized nutrition labels for our foods, and to regulate the use of special nutritional claims that may appear on food packages. These rules will apply to such terms as "lite" and "reduced," as well as regulatory restrictions regarding the effect of certain nutrients on disease—such as "reduces the risk of cancer."

The elements of this bill will help all consumers to better understand and improve their eating habits by providing uniform nutritional information in a coherent and understandable format. When a special nutritional claim appears on a food package, consumers will know that the claim has been approved by the Food and Drug Administration on the basis of scientific evidence.

This is an important piece of legislation for the American consumer, and for the American food industry as well. Throughout the development of this legislation, Senator METZENBAUM has worked closely with consumer and industry groups alike, eventually building a general consensus for a workable food labeling program.

It is also important that this program, which requires nationally uniform nutritional labeling, is sensitive to the regulatory roles played by the states. This bill has been refined to provide national uniformity where it is most necessary, while otherwise preserving state regulatory authority where it is appropriate.

Overall, the Nutrition Labeling and Education Act of 1990 represents a careful balance of firm regulation and enough flexibility to ensure that the labeling program can accommodate the diversity of our food supply and the various needs of our consumers. I believe that American consumers want and deserve accurate nutrition labeling, and I therefore support passage of this bill.

Mr. DeCONCINI. Mr. President, at this time I would appreciate engaging the distinguished manager of this bill, Senator METZENBAUM, in a colloquy. It is my understanding that the bill requires the Secretary of the Department of Health and Human Services to define descriptors used to characterize the level of a nutrient in a food. Is that correct?

Mr. METZENBAUM. Yes, that is correct.

Mr. DeCONCINI. When seeking to define how "light" might be used, would it be within the authority of the Secretary to consider permitting the use of the term "light" on foods that show a reduction of calories, fat or sodium as compared to another food?

Mr. METZENBAUM. As the Senator knows, the bill does not specify how the term "light" should be defined or how the Secretary should permit the term to be used. However, the bill gives the Secretary broad authority to develop an appropriate definition, so the Secretary certainly could consider permitting the term "light" to be used in the manner you describe.

Mr. DeCONCINI. When seeking to define "light," would it be within the authority of the Secretary to consider, in addition to comparative claims, permitting the use of the term "light" on foods, such as entrees, meals or dinners, which consumers find useful in the reduction or maintenance of body weight? Entrees, meals and dinners which make significant nutrient contributions and are prepared with ingredients that are inherently low in calories or ingredients selected for their low calorie content should be permitted to use the term light.

Mr. METZENBAUM. Yes, for the reasons I just described, the Secretary could consider permitting the term to be used in the manner you describe. After receiving a wide range of comments and recommendations, the Secretary would decide on an appropriate definition.

Mr. DeCONCINI. I thank the distinguished Senator from Ohio for discussing this term with me. I recognize that there have been past abuses in regard to light products, and that this bill seeks to stop those abuses. However, it would seem to me that the definition for light so narrow and rigid that few products would be able to comply with it. Consumers have become more knowledgeable about the importance of diet and health, and it would be unfortunate if they were denied an effective tool in helping to identify foods which are useful in reducing weight while also making a significant positive nutrient contribution.

Mr. SYMMS. Mr. President, I have some questions about the amendment proposed for H.R. 3562. I will ask those questions shortly, but first, I want to express my reservations about not only this bill, but also the way in which the Senate has considered the bill.

Had it not been for my eagle-eyed colleague from Utah, Senator HATCH, we might have completely run over by a bill sent to use from the House with serious flaws in an effort to "pass something" in these closing hours of the 101st Congress. Senator HATCH wisely slowed this process down by insisting on the amendment we are considering here today. I congratulate him on vastly improving the bill with that amendment.

Aside from this approach which largely avoided serious committee hearings and public comment here in the Senate, I also believe this bill will further extend the regulatory hand of government into the lives of American consumers. This bill will direct the Secretary of Health and Human Services to write new regulations to govern what can and cannot be used in the label and labeling of foods and foods for special dietary use. Even with the improved approach to expanding this regulation under Senator HATCH's amendments, American consumers will find it difficult to get the whole story about the health benefits of certain foods and food supplements unless the regulators at the Department of Health and Human Services agree to allow it. Another chink will be taken out of the armor of freedom and the free-market.

However, there are a few questions I have about this bill before it moves any further. Perhaps the Honorable Senator from Ohio, Mr. METZENBAUM, could respond to each of these questions. Mr. President, does the Senator from Ohio yield?

Mr. METZENBAUM. Yes, Mr. President, I will yield.

Mr. SYMMS. I thank the Senator. First, in the seventh paragraph of the amendment, where a new subparagraph "(D)" is inserted after line 19 on page 20 of the bill, is it the Senator's understanding that the phrase or the use of the term "nutrition substances" would include substances which the Food and Drug Administration includes in the April 1, 1990, edition of 21 Code of Federal Regulations, chapter 1, section 105.3, described as "other dietary property" used for "supplementary or fortifying the ordinary or usual diet?"

Mr. METZENBAUM. Yes, that is my understanding of the intent of this amendment. I agree that the term "other nutritional substances" would include items currently described as "other dietary property" under that Food and Drug Administration regulation.

Mr. SYMMS. I thank the Senator from Ohio. For clarification, I would like to reprint at this point in the RECORD 21 C.F.R., chapter 1, section 105, subparagraph (iii).

"(iii) Uses for supplementary or fortifying the ordinary or usual diet with the vitamins, mineral or other dietary property. Among particular use of a food is a special dietary use, regardless of whether such food also
purports to be or is represented for general use.

Also, I want to clarify a few of the many kinds of foods and articles included in this understanding by the Senate that the language in this bill is at least as encompassing as the language in current regulations. What follows is a list of a few of the items and claims that I believe would fall under the "other similar nutritional substances" category established by this bill:

Primrose oil, black currant seed oil, cold-pressed flax seed oil, "Barley green" and similar nutritional powdered drink mixes, Coenzyme Q10, enzymes such as bromelain and quercetin, amino acids, pollutants, propolis, royal jelly, garlic, orotates, calcium-EAP (colline phosphate), standials, hydrogen peroxide (H2O2), nutritional antioxidants such as a superoxide dismutase (SOD), and herbal tinctures.

Would the Senator agree that, to the extent these items are currently included in the description of "other dietary property" by Food and Drug Administration regulations, these items and items similar to them are or would be included in the definition of "other similar nutritional substances"?

Mr. METZENBAUM. Yes, the Senator's analysis of the definition of the phrase "other similar nutritional substances" is a correct one. This phrase would include items now included in the description of "other dietary property." I agree with the Senator on this point.

Mr. SYMMS. Again, I thank the Senator. This nuance of law is important to clarify and I appreciate the Senator's assistance in that regard.

Mr. HATCH. Mr. President, I am pleased to join my colleague, Senator METZENBAUM, in putting forward compromise legislation to change our Nation's food labeling laws. The compromise that we reached, while not perfect, will help American consumers become more informed on the value of improved nutrition to their health care needs.

One of the least expensive changes we could make in this country to reduce our health care costs would be to increase our efforts in the area of health promotion and disease prevention. During 1986, Americans spent nearly $438 billion, $1.2 billion per day, for health care. Yet, two of every three deaths in this country were premature. Most of these deaths could have been prevented through appropriate use of preventive services and behavior changes.

Heart disease, cancer, and stroke — our No. 1, 2, and 3 causes of death — still take an incredible toll in our society. In 1990, they took an estimated 1.6 million lives and cost $137 billion in medical care and lost productivity. Diet has been implicated as a factor in all three of these diseases as well as large number of others.

To the extent that the American people do not adopt sound dietary practices, they will be truly unhealthy. To the extent that Americans are not healthy, our health care delivery system may pay a high price. But, most tragically, millions of Americans die each year.

Our effort to educate consumers on dietary practices has been less than adequate. It is now time that we have legislation requiring accurate and uniform nutrition labeling on all processed packaged foods.

As I have pushed for changes in our Nation's food labeling laws, there are four criteria by which I evaluate such legislation:

First, I believe that what appears on the food labels should be based on science. Consumers should have modern, scientific diet and health information on the label so that they can make informed judgments as they shop at the Nation's 177,500 supermarkets and grocery stores.

Second, manufacturers should have the economic incentives they need to create and innovate so that we have more and more low-fat, reduced sodium, and high-fiber foods come onto the market. We should not deter such benefits for the consumer.

Third, the consumer should be able to read the full nutrient disclosure statement and make a judgment whether or not to buy a product. Consumers should not be denied information they want in the form they want it — on product labels on supermarket shelves.

Fourth, it is wrong to permit each of the 50 States to require manufacturers of 20,000 packaged food items to display different health and diet information on identical products sold throughout this country. And, it is wrong to burden the manufacturer with the fear of potentially 50 different lawsuits from 50 different State attorneys general, even if similar cases have been dismissed or settled.

Today's compromise goes a long way toward many of these goals. It will mandate that all processed package foods have uniform nutritional labels. This legislation does require the listing of specific macronutrients and a listing of those micronutrients that would be important to American's daily diet. In addition, this compromise allows more discretion by the Secretary of Health and Human Services to decide what, where, and how nutrition labeling shall be done.

A second important element which, when implemented, will bring a sense of order to the understanding of terms communicated on food products. This compromise requires the Secretary of Health and Human Services to require nutrition labeling. Today, there is confusion about terms that are used when products are advertised as being "light," or "free," or "high". By virtue of this compromise, the Secretary will define specific terms within a set period of time. Consumers will benefit because of this legislative change.

Another part of this legislation establishes specific mechanisms when health claims and any claim that may be made. A health or diet claim may not be made about a product unless there is premarket approval or unless it is in a category of "preapproved claims" as defined in the bill. In order to get preapproval for a claim, there must be publicly available scientific evidence and significant scientific agreement that the claim is accurate while reviewed with the totality of publicly available scientific evidence.

The legislation requires the Secretary to review and establish standards for health claims to be made regarding the following nutrients and diseases: calcium and osteoporosis, dietary fiber and cancer, lipids and cardiovascular disease, and dietary fiber and cardiovascular disease.

While these types of claims will largely be allowed, it is my hope that other claims will be able to be made. If the present standard and procedure outlined in this bill become too arduous, I will ask my colleagues to carefully examine these provisions. Food companies should be able to advertise the health benefits of their product as long as these claims are not false or misleading. Such advertising encourages food companies to produce healthier foods.

The compromise bill also recognizes the important role of vitamins and minerals in maintaining a balanced diet and in helping to prevent certain serious illnesses and health problems. In recent times, much of the focus has been directed toward macronutrients. However, we should not lose sight of the value of micronutrients.

The compromise thus incorporates what I consider to be an essential right of our citizens to have access to vitamins, minerals, herbs and other nutritional supplements without fear of their being branded unlawful drugs. Section 403(r)(5)(D) takes that further step by bringing the same protection to claims for dietary supplements — under the new section 201(g)(1), a dietary supplement will not be considered a drug solely because it carries a valid health claim.

Because of the historically distinct role of dietary supplements from conventional foods, the compromise also provides an exemption for dietary supplements from the mandatory regulations and scientific agreement standard articulated in section 403(r)(3).

By their very nature, the dietary supplements must be marketed so that consumers are well informed of the health or disease-prevention benefits that may be conferred. Greater flexibility is thus required to permit communication of these benefits. This increased regulatory flexibility is also
mandated by the very rapid pace of scientific advances here and abroad linking the prevention of long-term disease to improved nutritional supplementation. For these reasons, a more lenient standard for dietary supplement labeling is needed.

Finally, the compromise makes clear that the national uniformity in food labeling that is set forth in the legislation has absolutely no effect on preemption of State or local requirements that relate to such things as warnings about foods or components of food. Taken together, the uniformity provisions and the language agreed to in this compromise are an important first step in achieving a rational, uniform system of food regulation in this country.

Specifically, the uniformity amendment has two components. First, it states that the carefully crafted uniformity section of this legislation is limited in scope. That section does not preempt or affect a requirement respecting a statement in the labeling of foods with respect to warnings concerning the safety of a food or a component of a food. An example of such a warning would be a statement required under a state law regarding the possibility of an allergic reaction from a component of a food.

Perhaps more important is the second rule of construction embodied in the amendment, which makes it abundantly clear that the lack of preemption of such warning requirements in the legislation is not extrapolated through overzealous statutory interpretation, to imply that preemption of such warning requirements is somehow affected by the enactment of limited preemption in this legislation. Specifically, the amendment provides that the bill "does not affect preemption, express or implied, of any State or Federal requirement that arises under the Constitution, any other provision of the Federal Food, Drug, and Cosmetic Act, any other Federal law, or any regulation, order or other final agency action reviewable under the Administrative Procedure Act".

Thus, in the example I have given, although the provisions of this bill may not preempt a State warning requirement for listing the allergenic properties of a food component, that very same State warning may be preempted by virtue of the Constitution, another statutory provision, or agency action. This result is an essential element of the compromise embodied in the uniformity provisions of this legislation. The decision of the Congress in this legislation to specifically preempt certain State or local requirements is not evidence, one way or the other, of any congressional view about the existence of preemption which may arise from other existing legal authorities or actions.

It is important that we recognize that the limited preemption in this bill in only one step toward expanding uniformity of labeling laws and food safety requirements through existing law as well as future legislation. In addition, the credibility and effectiveness of Federal policy in this area, inconsistent State and local laws seriously disrupt food manufacturing and distribution, resulting in higher prices for consumers. Moreover, they frustrate food safety and nutrition education efforts by presenting consumers with varying and inconsistent information and warnings. In sum, we simply must remember that a warning on everything means a warning on nothing.

Mr. President, the major complaint against uniformity is preemption of State regulation. Over the last decade or so, it has been suggested by some that Federal food safety and labeling enforcement is not as vigorous or responsive to the needs and wishes of consumers as it should be. To that allegation, the answer is not for each State to go about its own way, but for Members of Congress, like us here today, to recognize that there is an appropriate level of Federal activity. It is up to us to make order out of chaos in the regulation of food and to give consumers confidence in place of uncertainty. It has not been since the 18th century that we have had thousands of individual and local food markets in this country. Today, we have a single food supply. Therefore, we need a single, integrated, and coordinated system with an appropriate allocation of regulatory responsibility among the Federal, State, and local governments.

And, we need this for a reason: We must have confidence in the safety of our national food supply; and, we must have certainty in making informed decisions so they can adopt sound dietary practices.

Mr. President, I hope all Members will share my goal: mandatory nutrition and food labeling. Consumers want this information. Consumers need this information. I urge my colleagues to support this compromise bill.

Mr. JEFFORDS. Mr. President, I commend my colleagues—Senator METZENBAUM and Senator HATCH for all their efforts to ensure clear and accurate food labeling. I fully support them in this effort and, in fact, voted for S. 1425, the nutrition labeling bill reported out by the Senate Labor and Human Resources Committee last July. However, H.R. 3562, the nutrition labeling bill we are considering today is somewhat different from S. 1425.

In particular, section 8 of H.R. 3562, would change the current process for determining and amending standards of identity for food. Standards of identity are requirements defined by the Secretary of Health and Human Services for various food products to assure a reasonable standard of quality. The Jeffords-Kohl amendment will retain the process for amending certain identity standards of misleading identity by preserving the current process for amendment of a standard with its system of checks and balances. It will also assure that certain new amendments of identity will be afforded the same valued protections provided in current law.

Specifically the food labeling bill that we are considering today, repeals the current law process for issuing and amending standards of identity for food and replaces it with a new process. The new process is not as thorough as current law as it no longer requires that a hearing on standards of identity take place before an administrative law judge. The new process is particularly problematic for the dairy industry, as dairy markets are built on the high quality and recognized consistency of the products. This is assured by standards of identity. Standards of identity for dairy products are comparable to the brand name recognition many other nongeneric products enjoy. Should a standard of identity be changed without a thorough examination of the issue, changes could be made that undermine the solid foundation on which dairy markets were established, damaging the long standing reputation of these valued products.

Our amendment, through protecting the process provided for in current law, furthers an important objective of this bill, ensuring that people will not be misled as to the contents of those dairy products so familiar to our households.

I want to thank the sponsors of this legislation, in the Senate and the House, for their willingness to accept this amendment. I also want to thank Senator Kohl, and his staff for their efforts, as well as the interested parties who met on Monday afternoon to work out the details of this amendment.

Mr. President, I urge passage of this legislation.

On page 29, strike lines 11 and 12 and insert in lieu thereof, the following: Sec. 701(e) (21 U.S.C. 371(e)) is amended by striking out "Any action for the issuance, amendment, or repeal of any regulation under section 401, 403(j), 404(a), 406, 501(b), or 502(d) or (h) of this Act, and any action for the issuance, amendment, or repeal of any definition and standard of identity under section 401 of this Act for any dairy product including products regulated under parts 131, 133 and 135 of title 21, Code of Federal Regulations or maple syrup (regulated

Mr. KOHL. Mr. President, I would like to take just a moment to thank the sponsors of this legislation, Senator Jeffords and Senator Hatch, for their willingness to work with Senator Jeffords and me to make a small but important change to this legislation.

The amendment that Senator Jeffords and I are offering is designed to preserve the integrity of new and existing standards of identity for dairy products. The amendment requires the continuation of the current process under section 401 of the Food, Drug, and Cosmetic Act for an amendment or repeal of a standard of identity, whether existing or new, will be reviewed, and the industry has worked hard to protect the integrity of its products through the standard of identity. The current section 8 of H.R. 3562 does not, in my mind, provide for an evaluation of changes in standards of identity that I believe are necessary to protect the integrity of these products. While I would have preferred to see section 8 of this legislation deleted entirely, I am willing to accept this compromise amendment in an effort to see this important legislation move this year.

I am hopeful that this amendment will continue to allow the dairy industry ample opportunity to assist in the development of dairy products that meet the needs of consumers as well as the interests of the dairy industry.

I thank the managers of this bill and their staffs for their help in crafting this amendment. And I want to commend both Senator Metzenbaum and Senator Harkin for their tireless work in developing and moving this important legislation this year.

Under the previous order, the amendments were ordered to be engrossed and the bill read a third time. The bill (H.R. 3562), as amended, was read the third time and passed.

STUDENT RIGHT-TO-KNOW AND CAMPUS SECURITY ACT—CONFERENCE REPORT

Mr. BYRD. Mr. President, I submit a report to the committee of conference on S. 580 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The conference report requires institutions of higher education receiving Federal financial assistance to provide certain information with respect to the graduation rates of student-athletes at such institutions having met, after full and free conference, have agreed to recommend and do recommend to the Senate the following text of this report, signed by all of the conferees.

Mr. BRADLEY. Mr. President, about 2½ years ago, with Congressmen En Towns and Tom McMillen, I introduced the Student-Athlete Right to Know Act in an effort to help student-athletes make better decisions about which college to attend. The legislation required colleges to report on the graduation rates of their student-athletes.

Over the course of the past 2½ years, this legislation has undergone intense scrutiny and modification. Changes in the bill often tend to water down the intent of the original legislation to make it more palatable to different constituents. I am pleased to say that this is not the case with this bill.

The legislation now before us requires all colleges to report on the graduation rates of their entire student body as well as their student-athletes. My colleagues have come to realize that all students need better information in choosing a college. I believe that this is landmark consumer legislation for students and student-athletes.

We have all heard about both the highlights and pitfalls of participating in intercollegiate athletics. Many high school and college athletes dream of playing for a Division I team and, perhaps, of a professional sports career. Yet only 1 out of every 100 high school athletes will receive a scholarship to play at a Division I college. Most of those lucky few can expect a pressure-packed environment where academics and athletics collide in a world with heavy demands and little time. And even fewer of those who do play in this high pressure league will ever make it to the pros. In 1988, 12,000 men played college basketball, but only 161 were drafted by the NBA. Of the 161 who were drafted, only a few will play more than 3 or 4 years.

Single-minded devotion to athletics among our Nation's schools and colleges can lead to exploitation and abuse of the student-athlete. The result can be a sad story. Too frequently the student-athlete, failing his or her courses or not carrying a full load, exhausts eligibility, loses an athletic scholarship, and drops out of school—with no education, no training, and only a few memories, perhaps a trophy, for comfort. A recent General Accounting Office report indicated that the graduation rate of basketball and football student-athletes who attend Division I schools is very poor. It is my understanding that at one Division I institution, the graduation rate was actually zero, where 75 percent of students on basketball scholarships during the decade of 1972-83.

That should not happen. With the proper balance between academics and athletics, sports can provide the means to a well-rounded education that may not be attainable. Many athletes have applied the discipline of the arena to the classroom and have gone on to satisfying careers. We need more stories built on good habits and opportunities seized.

That is why I introduced the Student-Athlete Right to Know Act in the Senate. As introduced, it was a consumer information bill for student-athletes and their families. Student-athletes about to enter college should be consumers of education and participants in sports, if our priorities are in order. As such, they are entitled to the relevant and basic consumer information that is an essential part of an informed choice. The choice of which college or university to attend is likely to be one of the most important decisions of a young person's life. A potential student-athlete and his or her family are entitled to a direct and valid answer to the question, "If I enter your college or university as a freshman on an athletic scholarship in my sport, what are the chances that I will graduate within a year or 2 of those in my entering class?"

This legislation requires colleges and universities to report graduation rates, including the graduation rates of student-athletes broken down by sport, race, and (for proprietary institutions) sex. The information is to be made available to high school students and student-athletes, their families, and high school guidance counselors, coaches, and principals to aid them as they choose the schools they will attend.

Last January, the NCAA—in a nearly unanimous vote—adopted requirements consistent with this legislation. And I understand that the National Association of Intercollegiate Athletics and the National Junior College Athletic Association are also taking steps along this line. I applaud their actions.

Education is the passport to a productive and rewarding life in our society. The challenge of a college experience should not simply be "making the team" or becoming an All-Star, but preparing to be a good citizen, friend, and family member. Our student-athletes must participate in sports as they pursue the primary goal of an education for life, rather than...
trying to obtain an education in the process of working in revenue-producing sports.

The Student-Athlete Right to Know Act is one important step in straightening out these priorities. It seeks to strengthen the role of athletics, rather than weakening the role of athletics. It will help all students make better choices, now that the legislation has been broadened to get graduate rate information to all students. I believe that informed choice will lead to a real education and a college degree. Adoption of these requirements is the right thing to do, and it is right for Congress to do it now for more students.

Last, Mr. President, I want to take this opportunity to thank the chairman of the Senate Labor Committee, Senator Kennedy, for his continued commitment to this legislation. His concern for students and his commitment to this legislation is obvious. This legislation is better because of his efforts. I urge the adoption of this conference report.

Mr. Kennedy, Mr. President, today the Senate will approve the conference report of the Student Right To Know and Campus Security Act of 1990. I believe that this vitally important legislation will help students and their families make informed decisions about which college to attend. This is the most important piece of education accountability legislation ever approved by the Congress.

Mr. President, the decision to attend a particular institution of higher education is one of the most important choices facing young Americans. In making this choice, they should have information available to them that lets them judge their chances of completing that education.

The bill will guarantee them that opportunities to succeed. Colleges will be required to provide students, and prospective students, with the graduation rate of full-time, degree seeking students at the institution. These data must be interpreted carefully, but they will give students more information than they have ever had before.

The bill will also ensure that students-athletes have information about their chances of earning their college degree. Earlier this year the Labor Committee held a hearing in which the General Accounting Office (GAO) described the academic performance of student athletes. The record was shocking, especially for students receiving athletic scholarships in football and basketball.

Some athletic associations, such as the National Collegiate Athletic Association (NCAA), have begun to ensure that this information is available to prospective student-athletes. I applaud that effort. But I am glad that this legislation will guarantee that this information is available at all colleges and universities.

This legislation also requires institutions to disclose the rates of crime on their campuses. It is of utmost importance that we make this information available to all of our nation's colleges and universities as tranquil and idyllic places. Many times they are.

But college campuses are not walled off from the broader community. And, for the record, the recent work of the University of Florida showed, students are not immune to violent crimes.

Under this bill, institutions must make information about campus crime available to their students and employees at least once a year. They must also give students information about institutional security policies, practices and procedures. We all recognize that merely providing information will not prevent crimes from occurring, but making these materials available will enable students to judge the safety of their campus and to better protect themselves.

In drafting this bill, I have tried to pay particular attention to the reporting burden that we will impose on the colleges and universities. We have worked closely with the higher education community to ensure that the students have access to the information but in a way that does not overwhelm the institutions that must provide the data. If there are technical problems in the implementation of these provisions, we will address them during the reauthorization of the Higher Education Act in the next Congress.

Mr. President, I would like to recognize several important people and thank them for their efforts on behalf of this legislation. First, the distinguished senior Senator from New Jersey [Mr. Bradley]. He and I introduced the Student Athlete Right To Know Act in the last Congress and have worked closely to enact it in this Congress. Ken Apfel of his staff was of great assistance as we put this legislation together.

Senators Specter and Gore were strongly committed to the campus security provisions of this legislation. I appreciate their efforts in making this bill possible.

I would also like to recognize the contributions of Connie and Howard Cleary to the campus crime provisions of this bill. In April 1986, their daughter was murdered in her dormitory room at Lehigh University. Since then, they have organized a clearinghouse of information about campus crime. They have also worked for the passage of State and Federal legislation that would require colleges to disclose information about campus crime. This legislation owes much to their hard work and advocacy.

I also wish to recognize the hard work by many others on this bill. I would like to recognize Senator Pell and Charlie Bouthot of his staff, Senator Kaseness and Becky Koslow of her staff, Senator Harkin and Laurie Chivers of his staff, Senator Cochran and Doris Dixon of his staff, and Senator Thurmond and Craig Metz and Ken McAdams from his office. Terry Hartle, Rusty Harbar and Adele Robinson of the Labor Committee staff spent many long hours working on this bill.

Mr. President, this is vitally important legislation. It is a necessity that we work together to get this bill enacted.

Mr. Gore, Mr. President, today I am very pleased to join the distinguished chairman of the Senate Committee on Labor and Human Resources in supporting final passage of the Student Right To Know and Campus Security Act. This legislation will make available crucial information concerning student athlete graduation rates and campus crime and security policies and statistics to students attending postsecondary institutions in this country.

Last November, I, along with Senator Kennedy, introduced the Campus Safety and Security Act, which addressed the urgent need to heighten student and employee awareness of what is happening where they live and work. I am pleased that the substitute bill that Senator Kennedy offers today includes a significant portion of the Campus Safety and Security Act. As the incidence of crime on college campuses has risen in recent years, it has become apparent that action must be taken to make our campuses safer for our Nation's young people.

It is no secret that crime rates have grown at an alarming pace the last few years. Each time we open a newspaper or turn on the television, we are reminded of the figures and the reality of people being killed, lives are being destroyed, and businesses and neighborhoods are being threatened. In recent weeks, we have all been shocked and saddened by the brutal slayings of five college students in off-campus apartments in Gainesville, FL.

At first glance, a college campus appears to offer students the security and comfort of home. Many students consider their college environment to be as safe as their own backyard. Unfortunately, the fact is that the college campuses and surrounding areas are as vulnerable to crime as any other environment. The Carnegie Foundation for the Advancement of Teaching revealed in its recent report, "Campus Life: In Search of a Community," that one in four student affairs officers responding to a survey conducted by the foundation, state that crime on their campuses has risen during the last 5 years. According to the report, students are responsible for 78 percent of sexual assaults on
campus. In fact, a recent Towson State study reports that much of the crime committed on college campuses is committed by students.

Many of campus crimes are petty thefts and other relatively minor acts; but some of these crimes have tragic consequences. A student named Tom Baer was fatally stabbed at a fraternity house in Tennessee. A young woman, Jeanne Cleary, in Pennsylvania was awakened in her campus dormitory room by another student who was robbing the room. He then brutally attacked, sexually assaulted, and killed her.

Tragedies such as these have shaken public consciousness and caused students, parents, and other concerned citizens, on and off campus, to unite in demanding that steps be taken to prevent such brutal acts from happening again. Howard and Constance Cleary, the parents of the young woman killed in Pennsylvania, last year devoted themselves to passing a Pennsylvania law that now ensures college employees and students are aware of crimes committed on their campus and the school's security policies. Tom Baer's parents helped draft and pass a similar law in my home State of Tennessee. I had the opportunity to meet with both families and am deeply inspired by their commitment to this issue.

Many colleges and universities are becoming more aggressive in improving security on campus. The Carnegie Foundation report chronicles many different accounts of better lighting, escort services, emergency phone systems, and strengthened police forces.

The State laws and individual institutional initiatives are important steps, but we are a long way from solving the problem. There is a strong need for basic uniformity in requirements and standards because the problem still exists.

Two daughters of a friend of mine tried to get information about all types of crimes on their college campus as part of an educational program on self-defense. They were told they couldn't have this information. Crimes themselves are tragic enough, especially when the victims are young people. But to deny college students information that would help them protect themselves only serves to make the situation worse.

Since introducing campus crime legislation last fall, I have heard from parents and young people from around the country whose lives have been impacted by crime on campus. Each person asks, "What can we do to make these campuses safer for our children or friends or classmates?" There is no easy answer. But it is clear that a strong defense is knowledge of what is happening in one's environment.

As a father myself, I want my children to grow up understanding that they need to take precautions. And I want them to grow up with the right to find out what they need to know to protect themselves.

The Student Right to Know and Campus Security Act amends the Higher Education Act to require colleges and universities throughout the Nation to compile an annual report which provides statistics for certain crimes committed on campus for the most recent academic year and during the two preceding school years for which data is available and information on campus security policies. The institution must make this information available to students, employees, and applicants for enrollment.

This bill seeks to better equip students with knowledge of crime prevention through informing them of current campus security policies, procedures and practices, including information concerning security for campus facilities; campus law enforcement; a description of the means of deterring campus crime.

Central to fostering a safer environment for young people is the institution's duty to warn students about possible dangers on campus. With proper warning, an individual is more likely to take extra measures to ensure his or her personal safety. I believe that the knowledge of crime on and off campus committed against students will encourage victims to report any violation of their rights.

Many institutions and some State legislatures have taken great steps to heighten students' and employees' education on campus and taken other preventative actions to ensure campus safety. However, not all institutions are willing to provide this information, much less encourage students and employees to obtain it. This legislation will bring uniformity to campus crime statistic disclosure requirements at postsecondary institutions throughout the United States.

Upon passage of this bill, we will be one step closer to making safer the campuses of our Nation's colleges and universities. It is my hope that along with new State laws, it will encourage institutions to take assertive action to protect their students and employees.

I congratulate Senator KENNEDY and others on their work on this bill and I join my colleagues in supporting final passage of this legislation.

Mr. SPECTER. Mr. President, as original sponsor of S. 1925, the Crime Awareness and Campus Security Act of 1989, I am pleased to support passage of the conference report on the Student Right to Know Act of 1990, an important first step to improve campus security standards and awareness nationwide.

The Student Right to Know Act includes provisions similar to my bill to require colleges and universities that participate in Federal student assistance programs to report campus crime statistics and security policies. The act requires that such reports be sent to all current students and employees, as in part, to prospectively know the means of deterring campus crime. These reports must include a detailed description of current campus security procedures and practices, and statistics concerning the occurrence of violent crimes against students, such as murder, rape, robbery, and aggravated assault, as well as drug and liquor law violations.

The crime awareness and campus security provision was based on a Pennsylvania law enacted due largely to the efforts of Connie and Howard Cleary whose daughter Jeanne was brutally raped and murdered at Lehig University in 1986. Their crusade on behalf of other parents awakened in their campus dormitory, which provided statistics for certain crimes against students, such as murder, rape, robbery, and aggravated assault, as well as drug and liquor law violations.

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cause it dealt with off-campus students who reside in private housing. Opponents of this provision claim that including students in this category is beyond the scope of university responsibility. I have to approve the agreement to hearing from the Secretary of education that it is not different for these students, but a number of factors need to be taken into consideration. A good portion of students at American colleges live off-campus. Many colleges simply cannot guarantee on-campus housing for students beyond their freshman year. In addition, the boundaries between college property and the local community are often blurred. I believe that what happens to these students reflects on overall safety and ought to be reported.

Mr. President, we cannot rest with passage of this conference report. This act, while being helpful in the fight to remove barriers that prevent Americans from doing business in Czechoslovakia, will not eliminate the problem. I will be monitoring the effectiveness of this legislation. I believe it is a good start in the right direction, and I look forward to hearing from the Secretary of Education who is instructed by this act to review the campus crime statistics and report to the Congress by September 1, 1995.

Mr. President, I urge the conference report be agreed to.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXTENSION OF MOST-FAVORED-NATION TREATMENT TO THE PRODUCTS OF CZECHOSLOVAKIA

Mr. BYRD. I ask unanimous consent that the Senate proceed to the immediate consideration of House Joint Resolution 649, approving the extension of most-favored-nation treatment to the products of Czechoslovakia. That the joint resolution be passed; a statement by Mr. Bentsen appear in the Record as though stated in full; and the motion to reconsider be laid on the table.

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

Mr. BENTSSEN. Mr. President, I rise in support of H.J. Res. 649, a joint resolution approving both the extension of most-favored-nation (MFN) treatment to products imported from the Czech and Slovak Federal Republic—Czechoslovakia—and the trade agreement with Czechoslovakia that the administration recently submitted to Congress.

The trade agreement was signed in April, and the Czechoslovaks have been waiting patiently now for 6 months for us to approve the agreement. The administration delayed in sending the agreement to the Congress until we corrected a possible constitutional defect in the statutory mechanism that had been established for approving such trade agreements. The necessary correction was made in the Customs and Trade Act of 1989, which we approved in early August, and which was signed into law on August 20, 1990.

This emerging democracy clearly deserves our support. Czechoslovakia has witnessed tremendous political and economic changes over the past year. The Havel government has begun a radical overhaul of the country, ending political repression and curtailing the police and security apparatus. New laws have been passed guaranteeing freedom of expression, speech, religion, and the press.

The Havel government has also introduced legislation intended to strengthen market mechanisms and accelerate Czechoslovakia's economic integration into the West. Czechoslovakia is a charter member of the General Agreement on Tariffs and Trade and, in September, became a member of both the International Monetary Fund and the World Bank.

This trade agreement will pave the way for closer trade ties between our two countries. The agreement provides for reciprocal MFN treatment, which means that United States exports to Czechoslovakia, as well as our imports from Czechoslovakia, will no longer face punitive tariffs. In addition, the agreement contains a number of provisions designed to make it easier for American companies to do business in Czechoslovakia. Included in the agreement are measures to encourage the mounting of trade promotion events; ease the establishment of business offices and the direct hire of employees; and improve the transparency of laws and regulations affecting trade and commercial matters. Additional provisions require that trade between the two countries be conducted in convertible currencies and that both countries provide nondiscriminatory treatment with respect to a range of financial transactions. It provides that hard currency earnings from trade may be immediately repatriated. Further, Czechoslovakia has agreed to improve its intellectual property laws with respect to patents, copyrights, trade secrets, and computer chip designs.

In short, this agreement will help us cut through some of the red tape that had made it difficult for United States companies to conduct their day-to-day activities. It will clearly improve the access that our companies will have to the Czechoslovak market, and help them regain some of the ground that they may have lost to their European and Japanese competitors.

House Joint Resolution 649 and the trade agreement with Czechoslovakia, will benefit both American and Czechoslovak companies, and I believe we should approve the resolution without further delay.

Mr. CRANSTON. Mr. President, the Senate has just acted upon a very important legislative initiative granting most-favored-nation trading status to Czechoslovakia.

Extending most-favored-nation status to Czechoslovakia holds numerous benefits for both the United States and this new democracy. First and foremost, our action today evidences our support and confidence in Czechoslovakia's bold move toward self-determination.

Second, MFN allows Czechoslovakia's economy to be transformed. It does so by allowing the CSFR to be more involved in international trade and thus increase its hard currency earnings.

Finally, MFN status moves the United States and Czechoslovakia into a new phase in bilateral trade. This relationship and the opportunities it creates for joint ventures, investments, and the exchange of goods and technologies, will inure to the economic benefit of both nations and strengthen our cultural ties.

In sum, I congratulate the people of Czechoslovakia and the American people for bringing this change to fruition.

So, the joint resolution (H.J. Res. 649) was ordered to a third reading, read the third time, and passed.

MEASURE INDEFINITELY POSTPONED—SENATE JOINT RESOLUTION 361

Mr. BYRD. Mr. President, I ask unanimous consent that Calendar Order No. 997, Senate Joint Resolution 361, be indefinitely postponed.

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

AMENDING THE CONTROLLED SUBSTANCES ACT

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 787, S. 1829, a bill to amend the Controlled Substances
Act to further restrict the use of steroids and human growth hormones; statements be printed in the Record at this point on behalf of Senators Boren and Thurmond as though read, an amendment offered by Mr. Humphrey be considered agreed to; a statement by Mr. Humphrey appear at this point in the Record as though read; the bill be considered read a third time and passed; and the motion to reconsider be laid on the table.

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

Mr. BIDEN. Mr. President, today the Senate will take action on a bill to address one of America's most serious drug problems: the abuse of anabolic steroids. Though we do not hear much about it, the fact is that steroid abuse is nearly as widespread as the use of crack cocaine is among male high school students.

As many as 500,000 male high school seniors use, or have used, steroids; one-third of these users are 15 or younger; 40 percent of these users are hard-core abusers.

The use of steroids by our young people is troubling, and steroids are a dangerous threat to the physical and mental health of millions of young people. Steroids can cause serious physical disorders, including sterility in men, an increased risk of cardiovascular disorders, and liver and kidney disease.

In addition, various psychological effects have been linked to steroid use. A soon-to-be-released study will reveal that steroid users, like alcoholics, have increased risks of developing personality disorders including frequent episodes of depression, anxiety, and violence during steroid use.

But the use of steroids by our best and brightest athletes is troubling not just because of the serious health consequences. What is troubling about steroid use by young athletes is that it undermines these values, including integrity, dedication, drive, and sportsmanship, and it turns to dishonesty.

An athlete does not have to take steroids to become a champion. I am proud of Mike Hall, who is a native of Delaware.

To further restrict the use of steroids and human growth hormones; statements be printed in the Record at this point on behalf of Senators Boren and Thurmond as though read, an amendment offered by Mr. Humphrey be considered agreed to; a statement by Mr. Humphrey appear at this point in the Record as though read; the bill be considered read a third time and passed; and the motion to reconsider be laid on the table.

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An athlete does not have to take steroids to become a champion. I am proud of Mike Hall, who is a native of Delaware.

Despite the serious threats that steroids pose to our young people, the Federal Government's response has been—at best—anemic. A year-long investigation by the Judiciary Committee revealed startling information about our current steroid control efforts.

First, one-third of the illegal steroid supply is diverted from legitimate U.S. drug manufacturers.

Second, the FDA has only 38 full-time personnel to control a $300 to $400 million illegal steroid trade.

Third, the FDA Investigators have neither the authority nor the expertise to attack the increasingly sophisticated steroid trade—they cannot carry guns, they cannot execute search warrants, and they cannot conduct undercover investigations; and

Fourth, the FDA does not require drug producers to submit information on the amount of steroids that they produce. As a result, the FDA has no idea whether steroid production is increasing or decreasing, whether prescriptions have increased or decreased, or the amount of diversion occurring in the steriod industry.

Despite these glaring deficiencies in our steroid control efforts, the administration's response has been to propose a new interagency task force to further study the problem.

But when there are half a million kids who are taking steroids—threatening their physical and mental well-being for years to come—we need to do more than just conduct a study. We need to mount an effective national crackdown on the use of steroids.

That is why I introduced S. 1829, the Steriods Trafficking Act of 1990. This bill would attack the problem by designating anabolic steroids as a schedule II substance, in the same category as cocaine. Specifically the bill would further restrict the use of steroids in four ways:

First, it would increase steroid trafficking penalties to match the penalties for selling cocaine and other dangerous drugs.

Second, it would impose tight record keeping and production control regulations to prevent the diversion of legally produced steroids into the illicit market.

Third, it would give the Drug Enforcement Administration and authority and responsibility to investigate violations involving the illegal production, distribution, or possession with intent to distribute steroids; and

Fourth, the bill would require U.S. demand reduction agencies to incorporate steroids in all federally supported drug abuse prevention, education, and treatment programs.

For many young athletes steroids hold the promise of perfection. The promise is shattered, however, when individuals are faced with the brutal reality of steroid abuse: steroids not only cause physical damage but can cause severe psychological disorders, including addiction, depression, and violence.

Attempting to strengthen the body, a steriod user can destroy his mind.

Finally, I would like to thank Senator Thurmond, co-chairman of the Judiciary Committee substitute of S. 1829, for his assistance in helping this legislation move swiftly through committee.

I ask unanimous consent that an article on Mike Hall be printed in the Record.

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

PERSONALITY OF THE YEAR—HALL HONORED FOR CONTRIBUTION TO YOUTH

SKEAPOR—World champion heavyweight powerlifter Mike Hall has been named as the Leader and State Register 1990 "Personality of the Year."

The purpose of the award, which will be awarded annually, is to recognize outstanding personalities who have contributed to the betterment of the community.

Hall, a former resident of Laurel, is being recognized for his continued involvement in promoting a positive role model for youth all over the world and for promoting anti-substance abuse programs.

Recognized and revered all over the world as "the strongest natural man," Hall has dedicated his powerlifting career to giving the youth a message that says "no" to drugs and alcohol.

"A lot of people say 'Oh, the kids are something else nowadays.' It's not that; it's just that they've got a lot to go through," Hall said in a recent interview.

"They don't have any role models. I used to look up to the president, look up to other role models, doctors and preachers; nowadays, it's sort of hard for kids to find good role models because society is messing up so much," he said.

Beginning his powerlifting at a young age, Hall started by lifting car wheel rims and cinder blocks attached to the ends of tree branches.

At the age of 15, weighing about 225 pounds, he was rated second statewide in weightlifting. Now at age 32, Hall weighs in at a massive 380 pounds and is ranked as one of the most powerful lifters in the world.

He has won numerous titles, including three world titles and eight national titles.

He has the all-time high lift of 633 pounds as a powerlifter. He has also been named "the strongest natural man" by the Most Powerful Lifters in the World.

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In June, Mike Hall will travel to Paris, France, to compete in the World Drug-Free Powerlifting Championships.

In a letter to Hall announcing his selection as the 1990 "Personality of the Year," the Leader and State Register news editor, Tony Windsor, stated:
"Mike, you have spent many years dedicating the passion of your powerlifting career to fuel the fires of hope in America's youth."

"You have given these kids a role model that they can look up to; someone they can see as living proof that there is much in life to be gained through natural efforts and

"You are a true leader in the war against substance abuse and have recognized the need to keep the broad use of natural substances away from the nation's youth, long before many who stand on the front lines today."

"But the central provision of this amendment remains the same: RICO actions may not be based upon any nonviolent demonstration, assembly, protest, rally, or similar form of public speech."

So this RICO free speech amendment has already gained wide approval in Congress. Moreover, it enjoys the support of outside groups ranging from the American Civil Liberties Union to various prolife organizations. It has also been endorsed by civil libertarians and first amendment advocates, such as Harvard Law professor, Alan Dershowitz.

Let me briefly outline the background and purpose of this amendment.

RICO's original purpose was straightforward and sound. It was designed as a powerful tool for prosecutors to use in their efforts to battle the infiltration and corruption of legitimate businesses by organized crime and racketeers. And in fact, RICO has served us well when it has been employed for this sound original purpose.

Almost as an afterthought, Congress included provisions for private parties to bring civil actions under RICO, in the hope that private enforcement could serve as a supplement to Government prosecutions. And since the new targets of these civil actions were organized crime and racketeers, Congress provided that private plaintiffs could obtain the same sweeping remedies made available in RICO suits brought by the Government, including treble damages and recovery of attorney's fees.

To put it mildly, the RICO statute brought us much more than we bargained for. RICO's original purpose as a tool for prosecuting racketeers has been all but eclipsed by its development as an all-purpose tool for aggressive lawyers in ordinary civil litigation. The flood of civil RICO suits has reached the point where Chief Justice Rehnquist has called on Congress to reform RICO as a tool to suppress protest and demonstrations. In the hope that private enforcement could serve as a supplement to Government prosecutions. And since the new targets of these civil actions were organized crime and racketeers, Congress provided that private plaintiffs could obtain the same sweeping remedies made available in RICO suits brought by the Government, including the need for Congress to reform RICO to prevent its misapplication to demonstrations and protests.

Professor Dershowitz provided a compelling statement in support of this reform in a letter to the Senate Judiciary Committee, which I will briefly quote:

The implications of applying RICO to political protesters are frightening and dangerous to the great tradition of nonviolent protest in this country. Especially at a time when we are seeing an increase in political treble damages throughout the world... it is tragic to see our laws being used to frighten protesters by threatening their pocketbooks as well as their liberty.

While RICO actions are the targets of some RICO suits, the same legal theory can be used to justify RICO suits against protesters of any political or ideological persuasion. Anyone who is offended or irritated by political or ideological persuasion. Anyone who is offended or irritated by a vigorous public demonstration now has a convenient and effective tool to silence the demonstrators: Hire a pushy lawyer and have him file the broadest possible RICO complaint, naming anyone even remotely connected with the demonstration as a co-conspirator in a racketeering scheme.

Mr. President, it is clear that RICO has no proper application to these press freedom of speech in this country..."
demonstration and protest cases. RICO’s unlimited breadth and draconian remedies present an intolerable threat to free speech. My amendment will make it clear that the term “rack­eteering activity” as used in RICO does not extend to nonviolent protests and demonstrations and that no RICO civil action can be based on such conduct. It is also the intent of this amendment to make it clear that those who participate peacefully in a demonstration may not be subjected to RICO claims merely because other participants may have engaged in unlawful acts.

I urge all my colleagues to support this effort to eliminate a serious threat to civil liberties by supporting the RICO free speech amendment.

So, under the previous order, the bill (S. 1829), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed as follows:

S. 1829

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

TITLE I—ANABOLIC STEROIDS

SEC. 101. STEROIDS LISTED AS CONTROLLED SUBSTANCES.

(a) ADDITIONS TO SCHEDULE II OF THE CONTROLLED SUBSTANCES ACT.—Subdivision (b) of schedule II of section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) is amended by inserting at the end thereof the following:

"(22) Anabolic steroids:"

(b) DEFINITION.—Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended by adding at the end thereof the following:

"(41) term ‘anabolic steroids’ means—"

(A) any drug that is chemically and pharmacologically related to the male hormone testosterone and that promotes or purports to promote muscle growth, including any of the following:

(1) methandrostenolone,
(2) methyltestosterone,
(3) oxymetholone,
(4) stanozolol,
(5) oxandrolone,
(6) dihydrotestosterone,
(7) testosterone, or preparation containing a substance represented or labeled as being or containing any such drug; and

(B) any substance which is purported, represented or labeled as being or containing any such drug.

"(23) of schedule II of section 202(c) of the Controlled Substances Act (21 U.S.C. 829(a))."

"(24) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect 90 days after the date of enactment of this Act.

SEC. 102. REGULATIONS BY ATTORNEY GENERAL.

(a) ABUSE POTENTIAL.—The Attorney General, upon the recommendation of the Secretary of Health and Human Services, shall, by regulation, exempt any compound, mixture, or preparation containing a substance represented or labeled as being or containing any such drug, and a drug listed in paragraph (41) of section 102 of the Controlled Substances Act (as added by section 101 of this Act) from the application of all or any part of the Controlled Substances Act if, because of the concentration, preparation, mixture or delivery system, it has no significant potential for abuse, and, at a minimum, shall exempt estrogens, progestins and corticosteroids.

(b) DRUGS FOR TREATMENT OF RARE DISEASES.—If the Attorney General finds that a drug listed in paragraph (41) of section 102 of the Controlled Substances Act (as added by section 101 of this Act) is:

(1) approved by the Food and Drug Administration as an accepted treatment for a rare disease or condition, as defined in section 526 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 356b); and

(2) does not have a significant potential for abuse, the Attorney General may exempt such drug from any production regulations otherwise issued under the Controlled Substances Act as may be necessary to ensure adequate supplies of such drug for medical purposes.

(c) DOWNSIZING OF REGULATIONS.—The Attorney General shall issue regulations implementing this section not later than 45 days after the date of enactment of this Act, except that the regulations required under subsection 102(a) shall be issued not later than 180 days after the date of enactment of this Act.

TITLE II—HUMAN GROWTH HORMONE

SEC. 201. AMENDMENT TO THE FOOD, DRUG AND COSMETIC ACT.

Section 303 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 333) is amended by inserting a new subsection (e) as follows:

"(e)(1) Except as provided in paragraph (2), whoever knowingly distributes, or possesses with intent to distribute, human growth hormone for any use in humans other than that mentioned in subsection (2) of this section, shall be punished by not more than 10 years in prison, such fines as are authorized by title 18, United States Code, or both."

"(2) Whoever knowingly distributes, or possesses with intent to distribute, human growth hormone for any use in humans other than that mentioned in subsection (2) of this section, shall be punished by not more than 5 years in prison, such fines as are authorized by title 18, United States Code, or both.

(3) Any conviction for a violation of paragraphs (1) and (2) of this subsection shall be considered a felony violation of the Controlled Substances Act for the purposes of forfeiture under section 413 of such Act.

(4) As used in this subsection the term ‘human growth hormone’—"

(A) somatrem, somatropin, and any of their analogs; and

(B) any substance which is purported, represented or labeled as being or containing any such drug.

"(3) of title 18, United States Code, as added by adding at the end the word “but” such term does not include participation in, or the organization or support of, any nonviolent demonstration, assembly, protest, rally, or similar form of public speech; and

FISHERY RESOURCES OF THE GREAT LAKES

Mr. BYRD. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Calendar order No. 921, H.R. 4299, regarding fishery resources of the Great Lakes, and that the bill be considered a third time and passed, and the motion to reconsider be laid on the table.

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

So the bill (H.R. 4299) was ordered to third reading, read the third time, and passed.

INJURY PREVENTION AND CONTROL ACT

Mr. BYRD. Mr. President, I ask unanimous consent the Senate proceed to the consideration of Calendar order No. 717, H.R. 5113, the Injury Prevention and Control Act; the subcommittee amendment on behalf of Mr. KENNEDY be agreed to; the statement by Mr. KENNEDY in support thereof appear in the record as though stated; and that the bill be advanced to third reading, passed, and the motion to reconsider be laid on the table.

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

Amendment No. 3128

Strike out all after the enacting clause and insert in lieu thereof the following:

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The motion was agreed to.
Mr. HARKIN. I move to reconsider the vote.
Mr. INOUYE. I move to lay that motion on the table.
The motion to lay on the table was agreed to.
Mr. HOLLINGS. Mr. President, I move concurrence in amendment No. 9.

The PRESIDING OFFICER. The question is on agreeing to the motion.
The motion was agreed to.
Mr. HOLLINGS. Mr. President, that concludes the consideration of the conference report on State-Justice-Commerce. I thank my distinguished colleague, Senator Ruum, and staff.

Mr. KASTEN. Mr. President, I rise today to voice my strong objection to the conference agreement that purports to stop the export of supercomputers to Iraq.

I, with Senator INOUYE, offered a solid, strong, and serious amendment that would have denied funding for any export program or activity which provides supercomputer technology to countries which are aiding Iraq in the acquisition of nuclear, biological, chemical, or ballistic missile technology. It is hard to imagine opposition to this anti-Iraq amendment, but some members of the House proved me wrong.

My amendment was simple in its intent. It did not penalize American business. Rather, it made countries decide what was more important, a relationship with the United States or a relationship with Iraq's military machine. My amendment sought to put pressure on countries seeking our supercomputer technology to make that choice.

I believe that the choice is a simple one. However, my colleagues in the House made the wrong choice. They were concerned about the free flow of trade. Mr. President, I am an ardent defender of free trade. But the Nation's security interests are more important.

In conference, House lawmakers refused to accept my language. One was quoted in a recent New York Times article as saying, that the Senate language would have "impeded American exports."

Yes, but what exports, and for what?
How can anyone oppose an amend-
ment that cuts off specific exports when those exports may very well be used to support the chemical and nuclear clear war machine of Iraq? It makes no sense. Since the imposition of the U.N. sanctions, no trade whatsoever can flow to Iraq. My amendment simply reinforces what the world has already said through its support of the embargo.

Mr. President, I cannot support this weak and ineffective language. The conference agreement guts our bipartisan amendment and fails to address the real problem, the flow of high technology to Iraq's war machine. My amendment was aimed at restricting the proliferation of weapons technology.

The justification for denying a supercomputer to a country that is aiding Iraq in its development of its military program is simple:

First, a supercomputer can simulate the thrust of a rocket engine. Second, it can calculate the heat and pressure on a warhead entering the atmosphere; and Third, it can simulate virtually every other force affecting a missile from launch to impact. For countries like Iraq, trying to develop a missile program, this technology can cut dramatically the development time, costs and the need for flight tests of a madman's weapons arsenal.

The problem with this new language is its lack of direction and enforcement. According to the language, "this provision shall apply only if the President determines that the government of the country has made inadequate efforts to restrict such involvement by its citizens." * * *" This provision does not require the President to do anything if he chooses not to.

But, it is acceptable to the Department of State and Commerce. Those two agencies of the American Government lobbied hard to defeat the Senate provision. The Department of State was too concerned about saving strong relations with countries dealing with Iraq. The Department of Commerce wanted free and unfettered trade. But nobody wanted to stop the proliferation of this high technology to wayward countries. This is unconscionable.

Mr. President, the defeat of our bipartisan amendment is a sad commentary. Our national security should be our prime objective. But some people in our government and in our business community have mixed up the priorities. I believe time will prove my approach to be right.

CIVIL RIGHTS ACT OF 1990—VETO

The PRESIDING OFFICER. The question occurs on the motion to table the motion to reconsider the vote wherein the Senate failed to override the President's veto of S. 2104. The motion to table the motion to reconsider was agreed to.

FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS, FISCAL YEAR 1991

The Senate resumed with the consideration of the bill.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I ask unanimous consent that it be in order to offer an amendment on behalf of Senators Kennedy and Stevens, extending to the American hostages held in Lebanon the same health benefits as those accorded the United States hostages held in Iraq and Kuwait previously granted in this bill; that the amendments be deemed agreed to; and that the provision for a rollcall vote on final passage on the bill, previously entered, now take place.

Mr. BYRD. Mr. President, I cannot hear the Senator.

The PRESIDING OFFICER. The Senator is correct. The Senate will be in order. The Senator will suspend until the Chair obtains order.

Mr. BYRD. Mr. President, what is the request? I was not able to hear it.

Mr. LEAHY. Mr. President, if the distinguished Senator will yield, the request is to make a modification on an earlier amendment by the distinguished Senator from Alaska (Mr. Stevens) and the distinguished Senator from Massachusetts (Mr. Kennedy) regarding those people held hostage in Lebanon and Kuwait and elsewhere. Apparently the way it was originally worded, as I understand it, there were a couple that had been left out of previous actions. It was done unanimously here in this body and this is to correct it.

The PRESIDING OFFICER. Is there objection to the request by the Senator from Vermont? Hearing no objection, it is so ordered.

Mr. DURENBERGER. Mr. President, I rise today to support final passage of the fiscal year 1991 Foreign Operations bill. We have debated and dispensed with a wide variety of relevant issues. Per usual practice with the foreign operations bill, many of these issues are extremely controversial.

As the Senate prepares to vote on final passage of this bill, I would like to comment on two of its more controversial provisions: aid to El Salvador and Egyptian debt forgiveness.

On military aid to El Salvador, the Senate debate focused on how to condition the aid to affect and influence people and events in El Salvador. It contains punitive sanctions against the government for human rights violations; and, through a series of conditions, the provisions attempt to provide incentives for future actions.

Mr. President, there have been many articulate and impassioned statements made in this body about El Salvador, United States policy, and congressional actions pertaining to both. I must confess, however, to a deep sense of frustration about this debate.

I have observed and participated in every vote pertaining to El Salvador for many years. In my own, personal assessment, Congress has substantially overestimated its ability to influence people and events in El Salvador. We have overestimated our ability to legislate into existence the kind of democratic state in El Salvador, to problems that have existed for many years and will take many more years to finally and fully resolve.

Mr. President, I am very skeptical about the value of conditioning this aid. I am not at all convinced that we in this country or in this Congress have nearly as much influence and leverage as we'd like to think.

It remains my view that we're placing far too much emphasis on these conditions. We debate the nuances, the signals, the messages that we think we're sending. But it is very difficult for me to conclude that themes we think we're sending are being received as intended.

It is far more likely that the different audiences will interpret the messages in ways that best suit their purposes and agendas, regardless of our intentions. It appears to me sometimes that we in Congress think we can pull strings here and make them act there according to our dictate. Mr. President, I am not persuaded that's the case.

Mr. President, I must say that part of my frustration with this debate results from what appears to be a void of leadership from the administration on this issue. I understand that the administration attempted to negotiate compromise positions with the proponents of the committee provisions, and that those discussions didn't get very far.

Those discussions may be one thing, but I believe we would have been better served if there was a more active leadership role from the administration in helping to craft the kind of bipartisan solution that we achieved regarding Nicaragua last year. That is a sterling example of what we can achieve when we work together to solve seemingly intractable policy issues.

Mr. President, let me conclude my comments on the military aid question by restating my conviction that much of this debate is off the mark. I remain skeptical about the value and importance of the conditions and their potential for success.
I'm not at all convinced that any of the provisions, neither those contained in the Graham/McCain amendment nor those in the committee bill, will have the desired impact. My deepest hope remains that the people of El Salvador will soon enjoy the peace, security, and prosperity that they so deeply desire and richly deserve.

Mr. President, I'd like to shift gears for a moment to the question of debt forgiveness for Egypt.

As the record of the Senate debate will show, I supported the administration's proposal to forgive Egypt's debt. I did so, however, reluctantly and with personal reservations. As my colleagues and my constituents know, I have spoken out against debt forgiveness as a way of rewarding Egypt for its courageous leadership in the gulf crisis and for assisting it financially to deal with the burdens the crisis has generated.

I want to emphasize very strongly that I commend the courageous and heroic efforts taken by President Mubarak in the gulf crisis. He has valiantly led the Arab world's response to the egregious Iraqi actions.

But despite my personal misgivings about the mechanism the administration has chosen, I feel a deep sense of obligation to support our President in this time of crisis. No, I don't believe debt forgiveness is the best way to go, but it is the way the President has chosen.

There comes a time, and that time is now, when the greater national interest must prevail. Today, that means standing along side and support President Bush during these difficult and challenging times.

I am sufficiently convinced that we now must continue on this path and carry through on the President's commitment and policy.

I continue to believe, however, that the steps that I have been better served if he had consulted more fully with the Congress on this issue prior to its disclosure. Secretary Baker assures me that the plan was leaked to the press before the administration had the opportunity to consult with the Congress.

This is unfortunate because I sincerely believe that had the President and Secretary discussed the matter with Congress, we would have been able to devise more cooperatively a plan to assist Egypt that would have broad support.

It has become clear in recent weeks, however, that rejecting this administration proposal would have grave political and economic implications for President Mubarak at home and could potentially weaken Egypt's commitment to the United States-led efforts against Saddam Hussein. Secretary Baker has emphasized this point quite strongly in recent weeks.

Given that Egypt's participation and leadership is so vital and important to the international coalition against Saddam's aggression, I am sufficiently convinced at this point, that we must proceed with the President's plan.

To do otherwise would jeopardize President Mubarak and Egypt's essential participation in the gulf crisis. Such a development would work to our fundamental and lasting disadvantage.

Thank you, Mr. President. I yield the floor.

Mr. LAUTENBERG. Mr. President, I rise in support of the fiscal year 1991 foreign aid appropriations bill. I want to commend the chairman and ranking member for an excellent job in fashioning a bill that I sincerely believe that had the President consulted more fully with Congress, we would have been better served.

There are also reports that Jordan received $68 million in military and $35 million in economic assistance mission for Iraq along the gulf crisis. Some oil from Iraq. In October, there were reports of food sent by Jordanian children to Iraqi children. There were also reports that Jordan operates a joint air force squadron with Baghdad, continues to permit Iraqis to fly reconnaissance missions along its border with Israel, and that it may be using its American made F-5 aircraft to conduct military reconnaissance missions for the gulf crisis.

There have also been press reports that other countries had considered sending food and other supplies to their citizens trapped in Kuwait. Map of these countries are traditional recipients of U.S. aid, and may receive more aid this year. For example, Jordan received $68 million in military aid and $35 million in economic aid in fiscal year 1990, and the House approved an earmark of $50 million in military and $35 million in economic support funds.

Absent compelling humanitarian or other reasons, we should not reward countries that support the Saddam Hussein regime with the help of our scarce aid dollars. Effective enforcement of the economic embargo of Iraq is the key to bringing about the withdrawal of Iraqi soldiers from Kuwait peacefully.

If the embargo falls, military force may be necessary. Thus, the fate of

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THE FISCAL YEAR 1991 FOREIGN AID APPROPRIATIONS

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October 24, 1990

CONGRESSIONAL RECORD—SENATE

Given that Egypt's participation and leadership is so vital and important to the international coalition against Saddam's aggression, I am sufficiently convinced at this point, that we must proceed with the President's plan.

To do otherwise would jeopardize President Mubarak and Egypt's essential participation in the gulf crisis. Such a development would work to our fundamental and lasting disadvantage.

Thank you, Mr. President. I yield the floor.

THE FISCAL YEAR 1991 FOREIGN AID APPROPRIATIONS

Mr. LAUTENBERG. Mr. President, I rise in support of the fiscal year 1991 foreign aid appropriations bill. I want to commend the chairman and ranking member for an excellent job in fashioning a bill that I sincerely believe that had the President consulted more fully with Congress, we would have been better served.

There are also reports that Jordan received $68 million in military and $35 million in economic assistance mission for Iraq along the gulf crisis. Some oil from Iraq. In October, there were reports of food sent by Jordanian children to Iraqi children. There were also reports that Jordan operates a joint air force squadron with Baghdad, continues to permit Iraqis to fly reconnaissance missions along its border with Israel, and that it may be using its American made F-5 aircraft to conduct military reconnaissance missions for the gulf crisis.

There have also been press reports that other countries had considered sending food and other supplies to their citizens trapped in Kuwait. Map of these countries are traditional recipients of U.S. aid, and may receive more aid this year. For example, Jordan received $68 million in military aid and $35 million in economic aid in fiscal year 1990, and the House approved an earmark of $50 million in military and $35 million in economic support funds.

Absent compelling humanitarian or other reasons, we should not reward countries that support the Saddam Hussein regime with the help of our scarce aid dollars. Effective enforcement of the economic embargo of Iraq is the key to bringing about the withdrawal of Iraqi soldiers from Kuwait peacefully.

If the embargo falls, military force may be necessary. Thus, the fate of
Mr. President, I am also pleased that this bill also contains provisions I authored that would: First, require the U.S. directors of international financial institutions to vote against loans to countries that are on the terrorist list kept by the Secretary of State pursuant to the requirements of the Export Administration Act. Second, require additional sanctions that are on the terrorist list from receiving bilateral foreign aid, except where humanitarian concerns justify such aid.

These provisions are aimed at curbing the activities of various states which support and sponsor international terrorism. They would do so by making sure that the benefits of American friendship, such as foreign aid and international lending assistance, do not go to countries that, by their presence on the terrorist list, have been found to have a consistent pattern of state support for terrorism.

I am also pleased that this bill earmarks $45 million within the refugee account for resettlement of Soviet Jews within Israel. Soviet Jews continue to arrive in Israel at levels not imagined 6 months ago by even the most optimistic officials. It is now expected that over 100,000 Soviet Jews will arrive in Israel during 1990 alone. With heightened anti-Semitism and harassment of Jews in the Soviet Union, the numbers are sure to increase in 1991.

The historic influx of Soviet immigrants will breathe new life into Israel and give new hope to its future. These immigrants bring with them new ideas, talents, and energy. Many have advanced skills that will be critical to bringing Israel into the 21st century as a technological leader. Their enthusiasm for their new home will reinvigorate Israel and strengthen her for the challenges to come. Escaping the religious persecution and harsh anti-Semitism of the Soviet Union, they have a keen appreciation for the safe harbor that a Jewish homeland can provide.

We must do what we can to assist Israel in this historic endeavor. It is a monumental task to transport and integrate these Soviet Jews into a new society and way of life. The burden on Israel's already trapped resources is large. These Soviet immigrants need many kinds of help once they arrive in Israel. They need homes and jobs. Most of them must learn Hebrew. Despite their skills and education, many have no identity of their own within state borders. None have any experience living in a free and democratic society.

They need help to adjust and to become a part of the State of Israel. This bill also contains, in addition to Israel's $3 billion in aid, a package of provisions to help her address the new threats to her security resulting from the Persian Gulf crisis. These provisions would allow her to receive United States military aid within the first 30 days of the fiscal year, would allow the United States military to stockpile $200 million in spare parts and ammunition in Israel, which Israel could use in an emergency, allow her to convert up to $200 million from United States economic aid to military purposes, allow her to pay for defense equipment from a special defense fund, and reauthorize her stockpile over 3 years, instead of reauthorizing her stockpile over 3 years, instead of requiring her to pay the whole cost up front, and give the President discretion to draw down $700 million in defense stocks and provide that defense equipment to Israel.

Israel has had to increase her military readiness because of the Persian Gulf crisis, and her military edge has been seriously eroded. She has had to prepare for any contingency, including a chemical or biological weapons attack from Iraq. Further, the possibility of sales of sophisticated weapons to countries still at war with Israel poses new risks to her ability to defend herself from attack.

Since steps have already been taken to help Egypt, Turkey, and other countries supporting United States policy in the gulf to deal with the economic effects of the crisis, this aid is consistent with our overall policy in the region.

Israel remains our staunchest ally in the Mideast. She has been extremely helpful in the current crisis, providing Israel with intelligence on Iraq, guaranteeing Jordan's integrity against Iraqi aggression, and enabling Egypt and Syria and send troops to Saudi Arabia without fear of weakening their defenses along Israel's borders. We must do everything we can to ensure that she has the resources necessary to defend against Iraqi aggression.

Mr. President, I urge my colleagues to support this bill.

The $75 million for UNICEF, a leader in the field of child survival and development, will help fund its widely known work in immunizations and oral rehydration therapy, and emergency response for children. UNICEF helps 35 million children's lives annually, and our support of its efforts enables us to contribute in areas where bilateral assistance is not feasible. The funding provided to UNICEF will save some of the 9 million children who die each year from preventable causes. The $100 million provided for child survival activities is also vital to accelerating achievements in primary health care for children. These programs and AID's efforts in immunization and oral rehydration therapy, as well as helping to implement other low-cost preventative health measures, and prevent additional hundreds of thousands of child deaths annually.

The $10 million we have provided for AID's program to eliminate vitamin A deficiencies is also a critical part of preventative health care measures that can reduce child deaths as well as prevent blindness. The potential reduction in mortality rates that can be achieved through relatively simple and low-cost supplement procedures, and the 250,000 children still being blinded due to vitamin A deficiencies each year are an important reason to provide this funding.

The $2 million provided for the U.N.'s Capital Development Fund provides financial assistance for small grants to developing countries in economic development and self-reliance in the poorest countries. It has had impressive results in such countries, in spite of its relatively small size. And funding U.N.'s International Fund for Agriculture at $30 million will help increase food production in the poorer developing regions of the world.

Mr. President, in short, I am pleased that this bill includes many provisions that express our Nation's priorities in helping ameliorate the poverty and disease faced by children and adults in the developing world. These programs are, to me, a critical part of our foreign aid efforts around the world, and I am pleased that this bill addresses those priorities in a meaningful way. I urge my colleagues to support this bill.

Mr. LAUTENBERG. Mr. President, I rise in support of the fiscal year 1991 foreign aid appropriations bill, and in particular, to draw my colleagues' attention to the bill's provision of $15 million for AID grants to United States private voluntary organizations to establish programs in Lithuania, Latvia, and Estonia to accelerate private market economies.
Mr. President, this provision expresses Congress' concrete support for the hard-won independence of Lithuania, Latvia, and Estonia during this difficult period of struggle for their independence. This money will help move them along toward economic independence. They must persevere in their struggle for complete political independence and self-determination.

Mr. President, 1990 marks the 50th anniversary of the Soviet occupation of Estonia. Each one had its own culture, national identity, and traditions. By invading these clearly independent states, the Soviet Union violated the Helsinki Final Act, an agreement it had voluntarily signed.

Throughout the illegal incorporation into the Soviet Union, the people of Lithuania, Latvia, and Estonia have endured great hardship. Over 600,000 Baltic people were deported to gulags in Siberia and elsewhere. The Soviets strangled the freedom of these people as part of their cultural, religious, and national traditions through their deliberate policy of Russification. The Soviet Union attempted to cut over 5 million people off from their cultural heritage.

Yet, despite these terrible trials, the Baltic peoples have triumphed over oppression and resisted despair. They have never lost their vision of themselves as free people who would someday control their own destiny. They have never lost hope. During the long, dark night of Stalinism, they nursed the light of freedom with courage and fortitude. Despite war and oppression, they maintained their languages, religions, and ideals. In the face of the violence done to them, the Baltic people maintained their languages, religions, and ideals.

Mr. President, in July, Serbia engineered a referendum to declare Kosovo, the Serbian and Yugoslav federal authorities may affect other republics and regions, and may, in fact, be the principal threat to Yugoslavia's stability and ultimately, its continued growth and economic development.

For these reasons, I am pleased that the amendment I have written into the bill expresses the priority our Nation attaches to seeing an improvement in the situation in Kosovo and Yugoslavia in general. I also ask unanimous consent that a copy of a letter I wrote to Secretary Baker on this subject be included following my statement. There being no objection, the letter was ordered to be printed in the Record, as follows:


Mr. President, I rise in support of the fiscal year 1991 foreign aid appropriations bill, and in particular, an amendment I cosponsored to deny funds to republics in Yugoslavia unless the aid will be used in a republic which has held democratically elected free, multi-party elections and is not engaged in systemic abridgment of human rights. The amendment was adopted unanimously during consideration by the full Senate Appropriations Committee.

This provision sends a clear message to the Federal Government of Yugoslavia and to each Republic about our concern for human rights—in Kosovo and throughout Yugoslavia. And, it attempts to put teeth into our concerns.

Mr. President, in July, Serbia engineered a referendum to declare Kosovo the equivalent of a republic, the Serbian authorities dissolved Kosovo's Parliament, assuming legislative and administrative powers in Kosovo. They also dismissed the editors of Kosovo's main Albanian-language newspapers and the managers of its radio and television stations, and dismissed thousands of Albanian workers who were replaced by Serbs.

These events represent serious curtailments of basic human rights which violate Yugoslavia's Helsinki obligations. The dispersal of peaceful Albanian demonstrations by the authorities, often through the use of force, mass arrest, constitutes a further abridgement of rights and reflects an attitude which stresses conflict over dialogue.

The violations of human rights in Kosovo are perhaps the worst and most widely known symptoms of more general problems in Yugoslavia. The way this situation is handled by the Lithuanians, Latvians, and Estonians recently have taken bold and courageous steps to reestablish their independence from the Soviet Union. Defying world opinion and admonitions to put their dreams aside for a better time, they seized the opportunity to press forward toward the realization of their dream of independence. At this critical moment in their 50-year struggle for freedom, the United States must support their aspirations. Now more than ever, it is important to recognize and reaffirm the dream of Baltic freedom.

We must also do all we can to prevent the use of military force and economic coercion against these brave people. To encourage a peaceful, negotiated solution to the conflict, President Gorbachev's recent meeting with Baltic leaders, and his decision to give them the long-awaited promise that the republics will cancel their declarations of independence in order to begin negotiations on Baltic independence, are promising signs that a settlement may be near.

The United States is known around the world as a protector of liberty. We cherish the right of every person to participate in the activities and traditions of his own culture and religion. For this reason, we must show our continued support for those brave individuals who, despite their oppression, still dare to long for freedom.

Mr. President, I believe this small but significant grant of money will help accelerate the day when the Baltic States are once again free, and demonstrate our continued solidarity with their struggle.

AID TO YUGOSLAVIA

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These events represent serious curtailments of basic human rights which violate Yugoslavia's Helsinki obligations. The dispersal of peaceful Albanian demonstrations by the authorities, often through the use of force and mass arrest, constitutes a further abridgement of rights and reflects an attitude which stresses conflict over dialogue.

The violations of human rights in Kosovo are perhaps the worst and most widely known symptoms of more general problems in Yugoslavia. The way this situation is handled by the Serbian and Yugoslav federal authorities may affect other republics and regions, and may, in fact, be the principal threat to Yugoslavia's stability and ultimately, its continued growth and economic development.

For these reasons, I am pleased that the amendment I have written into the bill expresses the priority our Nation attaches to seeing an improvement in the situation in Kosovo and Yugoslavia in general. I also ask unanimous consent that a copy of a letter I wrote to Secretary Baker on this subject be included following my statement.

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


Mr. JAMES A. BAKER III, Secretary of State, Washington, DC, December 24, 1990.

I laud the Administration's policy of pressuring the Yugo­slavian Federal Government to make good on its Helsinki obligations, and urge you to continue to press the Yugo­slav government to make good on its Helsinki obligations, and urge you to continue to press the Yugo­slav government to make good on its Helsinki obligations, and to make clear to them that their hopes for increased American business investment are jeopardized by the current situation.

Finally, Ambassador Kampelman raised the issue of Kosovo at the Helsinki Conference in Copenhagen and that the Administration publicly expressed its concern about the situation in Kosovo, especially the Helsinki Commission, of which I am a member, has also tried to bring pressure to bear to improve the situation in Kosovo and end human rights violations. Despite our efforts, I remain concerned that the succession of events over the last year and the continued lack of a peaceful dialogue between interested parties in Kosovo raise the chances of further human rights violations, large scale unrest, and more cease fire violations. The situation thus requires our continued attention and pressure.

Mr. President, Serbia engineered a referendum to delay free, multi-party elections until after its communist-controlled parliament adopted a new constitution. When the ethnic Albanian majority of the Kosovo Legislature voted to declare Kosovo the equivalent of a republic, the Serbian authorities dissolved Kosovo's Parliament, assuming legislative and administrative powers in Kosovo. They also dismissed the editors of Kosovo's main Albanian-language newspapers and the managers of its radio and television stations, and dismissed thousands of Albanian workers who were replaced by Serbs.

These events represent serious curtailments of basic human rights which violate Yugoslavia's Helsinki obligations. The dispersal of peaceful Albanian demonstrations by the authorities, often through the use of force and mass arrest, constitutes a further abridgement of rights and reflects an attitude which stresses conflict over dialogue.

The violations of human rights in Kosovo are perhaps the worst and most widely known symptoms of more general problems in Yugoslavia. The way this situation is handled by the Lithuanian, Latvian, and Estonian peoples as free people who would one day control their own destiny. They have never lost hope. During the long, dark night of Stalinism, they nursed the light of freedom with courage and fortitude. Despite war and oppression, they maintained their languages, religions, and ideals. In the face of the violence done to them, the Baltic people responded with peace. They have earned our praise, and deserve our hope that they will soon enjoy its fruit.

The Lithuanians, Latvians, and Estonians have been treated as second-class people who would someday control their own destiny. They have never lost their vision of themselves as free people who would one day control their own destiny. They have never lost hope. During the long, dark night of Stalinism, they nursed the light of freedom with courage and fortitude. Despite war and oppression, they maintained their languages, religions, and ideals. In the face of the violence done to them, the Baltic people responded with peace. They have earned our praise, and deserve our hope that they will soon enjoy its fruit.

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known symptoms of more general problems in Yugoslavia. The way this situation is handled by the Serbian and Yugoslav federal authorities as well as the republics may affect other cases and may, in fact, be the principle threat to Yugoslavia's stability, and ultimately, its continued growth and economic development.

One very disturbing factor is the attitude of Serbian and Yugoslav federal authorities as well as the republics. President Markovic asked the Yugoslav government that this problem has been able to unilaterally override the constitutional division of powers between the federal government and the republics and provinces which signed the Helsinki Final Act. Therefore, it is incumbent on that government to take steps to fulfill its obligations.

Finally, it should be made clear to the Yugoslav government that this problem has tarnished the image of Yugoslavia, and could hurt its ability to attract American investment. President Markovic asked the Serbian federal government bears ultimate responsibility for what occurs in Kosovo, saying: "It is incumbent on the ethnic majorities in Kosovo" to create a "system to assure the security and fundamental human rights of all national and ethnic minorities living within its territory." But the constitutional division of powers between the federal government and the republics and provinces is clearly no longer in effect. Serbia has been able to unilaterally override the 1974 Yugoslav constitution which provided for the autonomy of Kosovo. It was the government of Yugoslavia, not the republics and provinces, that signed the Helsinki Final Act. Therefore, it is incumbent on that government to take steps to fulfill its obligations.

I urge you to keep the pressure on the Yugoslav government through every available channel to ensure that the human rights abuses and assure that its Helsinki promises are fulfilled.

Thank you for your help in this matter.

Sincerely,

FRANK R. LAUTENBERG

REOPENING OF PALESTINIAN SCHOOLS AND UNIVERSITIES IN THE WEST BANK AND GAZA

Mr. President, I wish to speak in favor of the compromise language that has been adopted on the subject of reopening of the schools and universities in the Israeli occupied West Bank and Gaza Strip. One of the bipartisan recommendations of the United States is to reconcile our desire to support a key ally in the Middle East—Israel—and still speak out in defense of human rights in the occupied territories. I believe the compromise language strikes a balance between these two important objectives.

To understand the need for the current language; it is important to review some of the history of this issue. In 1995, the Senate called for the reopening of all West Bank schools and universities in October 1987; claiming that they were centers of violence.

On July 26, 1989, I offered an amendment calling for Israel to reopen the schools, which the Senate approved unanimously. I introduced this amendment because I felt the closing of schools for political reasons was an unjustifiably punitive act by the Israeli authorities. At the same time, reestablishing a more normal educational environment on the West Bank would be an important step toward creating a climate which is more conducive to progress toward peace.

On July 22, 1989, Israel reopened the schools, only to close them again in November 1989. In January of this year, the United States and Israel again closed all the schools. On February 26, Israel announced it would slowly begin to reopen community colleges, technical schools, and teacher's training colleges.

On May 18, Senator Kasernen Bosch and I introduced Senate Resolution 288 calling for Israel to reopen all the Palestinian universities, which had been closed for over 2½ years. This resolution has been cosponsored by eight other Senators: Inouye, Kerry, Leahy, Dole, Jeffords, Lugar, McClure, and Murkowski.

On August 30, Israel announced that it was reopening the University of Bethlehem—one of six universities in the occupied territories.

Like all my colleagues, I deplore the violence that took place on the Temple Mount on October 6, 1990. Unfortunately, the Israeli authorities have responded by once again closing Palestinian elementary grades 5 to 8 and secondary schools.

In my judgment, the closing of schools is an improper response to the stated objective of reducing violence in the occupied territories. Many children are severely affected by the actions of a few. It has been shown that when youngsters are kept out of school for any length of time, particularly younger children, it greatly slows their cognitive development.

Rather than foreclosing the opportunity for Palestinian children to receive an education, Israel should focus on the root causes of violence in the occupied territories.

Prior to the events of the last weeks, Israel was considering reopening the remaining universities on a case by case basis in the coming months. It is my hope that all of the universities can also be reopened as soon as possible so that the young adults of the West Bank can focus on the positive improvement of their lives and not just the violence that has been so prevalent in recent years.

Not only will doing so help foster a climate for peace; it will also bring Israel into compliance with the Geneva Convention articles concerning the administration of occupied territories.

I believe the reopening of Palestinian schools and universities will be helpful in encouraging a new era of goodwill.

Mr. PACKWOOD. Mr. President, I rise today to comment on world progress toward population stabilization and to note the need for increased efforts in this area. It is appropriate to raise this issue because today we vote on H.R. 5114, the foreign operations bill, without Senator Wirth's amendment which would have overturned the Mexico City policy. That is unfortunate. That ill-advised and counterproductive policy keeps the United States from funding family planning through any organization which even tells women that abortion is an option. Once again, as in the title X reauthorization bill, we have failed to stop the population control organizations which informing women of their medical options is the same as using United States dollars to perform abortions. It is not. But the continuing confusion of abortion with the family planning issue is greatly hurting our efforts to bring world population under control.

I have spent some time pouring over a chart which was recently given to me by the population crisis committee, an organization which is doing an excellent job of educating Congress and the public on population issues. The chart, which is entitled "1990 Report on Progress Toward Population Stabilization," shows family planning data on reproductive policy. The United States dollars to perform abortions. The chart, which is entitled "1990 Report on Progress Toward Population Stabilization," shows family planning data on reproductive policy keeps the United States from funding family planning through any organization which even tells women that abortion is an option. Once again, as in the title X reauthorization bill, we have failed to stop the population control organizations which informing women of their medical options is the same as using United States dollars to perform abortions. It is not. But the continuing confusion of abortion with the family planning issue is greatly hurting our efforts to bring world population under control.

Why should this concern us? I think the answer is best explained with a quote by Dwight D. Eisenhower:

Once, as President, I thought and said that birth control was not the business of our Federal Government. The facts, however, are that the population explosion is the world's most critical problem.

At an earlier point in my Senate career, I regularly reported world population figures to my colleagues on the Senate floor. I did this not to be a doomsayer, but because there are critical facts the United States cannot responsibly ignore. Population is an exacerbating factor in the creation of...
hunger, disease, environmental damage and resource depletion.

The Sierra Club testified in April before the House Subcommittee on Foreign Operations that the number of human beings the Earth is called upon to sustain has an enormous effect on our planetary ecosystem. And a 1990 study by Paul J. Werbos for Negative Population Growth, Inc., reports that population growth is a major obstacle to our ability to convert to sustainable energy technology. Yet the alarming fact is we have not yet come to grips with population increases. The Population Crisis Committee reports that if present birth and death rates continue, the world population will double in 39 years.

We do not need to let that happen. We have a window of opportunity in the 1990's to have a serious impact on the population crisis. I have long been a vocal advocate of strong U.S. participation in family planning, and I deployments the fact that confusion over the abortion issue keeps us from going forward in this area with all deliberate speed. The stakes are high, and we do not have unlimited time. I urge my colleagues' support for domestic and international family planning.

Theyeas and nays have been ordered the clerk will call the roll.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass.

Mr. LEAHY. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. LEAHY. Mr. President, I move that the Senate insist on its amendments, request a conference with the House, and the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer [Mr. KERREY] appointed Mr. LEAHY, Mr. INOUYE, Mr. JOHNSTON, Mr. DECONCINI, Mr. LUTENBERG, Mr. HARKIN, Ms. MIKULSKY, Mr. BYRD, Mr. KASTEN, Mr. HATFIELD, Mr. D'AMICO, Mr. RUDMAN, Mr. SPECTER, Mr. NICKLES, and Mr. STEVENS as conferees on the part of the Senate.

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, FISCAL YEAR 1991

The Presiding Officer. Under the previous order the clerk will report the pending business, H.R. 5769, the Interior appropriations bill.

The legislative clerk read as follows:

A bill (H.R. 5769) making appropriations for the Department of the Interior and related agencies, Mr. RUDMAN, Mr. SPECTER, Mr. NICKLES, and Mr. STEVENS as conferees on the part of the Senate.

AMENDMENT NO. 3119 TO COMMITTEE AMENDMENT ON PAGE 101

The PRESIDING OFFICER. The pending question is amendment No. 3119 offered by the Senator from North Carolina to the committee amendment on page 101 of the bill.

TIME LIMITATION AGREEMENT

Mr. BYRD, Mr. President, I ask unanimous consent that time for the debate on this measure be limited to 1 hour, to be equally divided and divided between the distinguished Senator from Idaho [Mr. McCLURE] and the Senator from North Carolina.

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

Mr. BYRD. Mr. President, for the information of Senators now, what we have here—I believe I state it correctly, or will state it correctly—we have a maximum of six amendments, that may be called up, and they all deal with NEA, the National Endowment for the Arts. There is a time limitation on those amendments of 1 hour on each, with the exception of one amendment on which there are 2 hours, which means there are 7 hours of debate on six amendments and there is 1 hour of debate overall on the bill now under the control of the two managers.

I think one might assume with some degree of certainty that there will be rollcall votes on those six amendments, and beginning at 2:30 p.m.— circa 2:30 p.m.—today we have 7 hours plus 105 minutes, or an hour and a half, making a total of 8½ hours at best unless the time is yielded back or not used.

That would mean, then, at the earliest we can count on bringing to a conclusion this bill is by 11 o'clock tonight. I am going to insist that the Senate stay in session until we complete this bill tonight.

The Senate took up this bill the day before yesterday. The Senate, on reacknowledgment of the previous order the clerk last Tuesday, a week ago, reported it out of the subcommittee and the full committee a week ago. So the Senate has moved expeditiously, But we cannot wait another day. The bill has to go to conference. I would hope that we would have the cooperation of all Senators, and if some Senators can restrain their eagerness to exercise their vocal chords and not use all of the time, it might help all of us to get home and get a little sleep which knits up the raveled sleeve of care.

Mr. President, let me just say a few words now and I will ask that I may use such time as I may consume to set the background of the stage for the NEA discussion.

Mr. McCLURE. Mr. President, before doing that will the Senator yield briefly?

Mr. BYRD. I yield.

Mr. McCLURE. I thank the Senator for yielding.

I join with him in the hope that we will not consume all of the time on each of these amendments and we may find a way as the afternoon goes on and the subject becomes more repetitious, although slightly varied by the subject matter of the amendment, we will be able to not consume all of the time allotted to the amendments.

For the information of the Members and their scheduling of their activities this afternoon, the first amendment has a 1-hour time limit, the second one that will be considered has a 2-hour time limit, and the remainder have a 1-hour time limit.

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Mr. BYRD. Mr. President, I ask unanimous consent that no other amendment or matter may be taken up in the Senate this afternoon without the consent of the two managers of the bill. And we will be very liberal and
The committee recommendation also includes a proposed reduction funding of $5 million below the funding level requested in the President's budget for the NEA. I would note that the House-passed version of this Interior bill included a recommended increase in NEA's funding of $5 million, to a level of $180 million, for fiscal year 1991. The reduction proposed by the committee will provide the Senate with a broader array of options when our conferees meet with those from the House to consider the appropriate funding level for the NEA and the appropriate use of those funds.

Mr. President, this issue has consumed the Senate during the entire course of the consideration of NEA funding this fiscal year. It is not an issue to deal with lightly. But given the press of business to be completed prior to sine die adjournment, I urge adoption of the committee recommendation as a reasonable, temporary solution and as a means to expedite conference on the Interior appropriations bill so that it may proceed to conference, where I can assure my colleagues that it will receive full attention.

This is not to say that the measure cannot be improved.

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

The PRESIDING OFFICER. Who yields time?

Mr. HELMS. Mr. President, I yield myself such time as I may require on the amendment.

Incidentally, I ask unanimous consent that the amendment be printed in the Record at this point.

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

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

On page 101, line 23, strike "none" and all that follows through the period on page 102, line 7, and insert in lieu thereof the following: "None of the funds appropriated under this Act may be used by the National Endowment for the Arts in the so-called art field."

Mr. HELMS. Mr. President, perhaps a review of the history of this issue for the past 15 months would be useful at this time.

Let me say to the distinguished Senator from West Virginia, my friend, Bob Byrd, that I have always had high respect for him. That respect was enhanced in July 1989, when I came to this floor and he was managing Department of the Interior Appropriations for fiscal year 1990. I showed him some of the so-called art that the taxpayers were subsidizing and he replied, "Good grief, I will take your amendment." And there it began.

After I offered my amendment to prohibit the funding of obscenity, I was greeted with hoots and jeers all across this country, and have been for the past 15 months. One Senator now boasts that he has raised $1 million for my opponent in North Carolina. I repeat, that they are entitled to have a pipeline to the pocketbooks of the American people to subsidize whatever they want to do in the so-called art field.

Sure, I voiced concern then, and I voiced concern concerning legislation to a conclusion does not rest with the managers of this Appropriations Committee regarding the funding for the National Endowment for the Arts reflect the concerns that have been voiced by many in this Chamber about the appropriate use of taxpayer dollars for so-called works of art.

The committee recommendation continues language enacted in this bill last year with respect to obscenity and the use of NEA funds. The language has been continued in this bill because of the failure of the Congress to enact the reauthorization legislation for the endowments. The language contained in the committee-reported bill reflects a compromise that was developed after many, many hours of deliberation and conference on the Interior bill last year. It is, by nature, a compromise that everyone cannot be satisfied with, but it is an attempt to provide guidance to the Chairman of NEA as grant decisions are made. Rather than attempt to craft new language which would likely consume an inordinate amount of floor time during debate on this bill, the managers recommended to the Appropriations Committee that the matter be brought to the floor and not be taken up in the committee and that last year's language be continued at that point.

Additionally, the committee has proposed striking the House version of the NEA reauthorization bill which was added in its entirety to the Interior bill during floor action in the House. The Interior appropriation bill is not the proper place to resolve the authorization of NEA, NEH, and IMS for the next 5 years. The Senate has authorized NEA, NEH, and IMS, the responsibility of which is to report such legislation and move the relevant bill through the Senate debate and action. In this case, the Senate Labor and Human Resources Committee reported out its version of the NEA reauthorization language last month. Floor action has yet to be taken on that legislation. The responsibility for moving that legislation to a conclusion does not rest with the managers of this Interior appropriation bill.

The committee bill also strikes the House provision which would have prohibited the NEA from using any appropriated funds for the preparation of an affidavit regarding the use of grant monies. By proposing to strike the language, the committee has not required the preparation or signature of any such affidavit. The committee has placed the responsibility for this decision with the Chairman of the NEA, who ultimately bears the responsibility for the use of any grant funds awarded.

The committee recommendation also includes a proposed reduction funding of $5 million below the funding level requested in the President's budget for the NEA. I would note that the House-passed version of the Interior bill included a recommended increase in NEA's funding of $5 million, to a level of $180 million, for fiscal year 1991. The reduction proposed by the committee will provide the Senate with a broader array of options when our conferees meet with those from the House to consider the appropriate funding level for the NEA and the appropriate use of those funds.

Mr. President, this issue has consumed the Senate during the entire course of the consideration of NEA funding this fiscal year. It is not an issue to be dealt with lightly. But given the press of business to be completed prior to sine die adjournment, I urge adoption of the committee recommendation as a reasonable, temporary solution and as a means to expedite conference on the Interior appropriations bill so that it may proceed to conference, where I can assure my colleagues that it will receive full attention.

This is not to say that the measure cannot be improved.

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

The PRESIDING OFFICER. Who yields time?

Mr. HELMS. Mr. President, I yield myself such time as I may require on the amendment.

Incidentally, I ask unanimous consent that the amendment be printed in the Record at this point.

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

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

On page 101, line 23, strike "none" and all that follows through the period on page 102, line 7, and insert in lieu thereof the following: "None of the funds appropriated under this Act may be used by the National Endowment for the Arts to promote, distribute, disseminate, or produce materials that depict or describe, in a patently offensive way, sexual or excretory activities or organs."

Mr. HELMS. Mr. President, perhaps a review of the history of this issue for the past 15 months would be useful at this time.

Let me say to the distinguished Senator from West Virginia, my friend, Bob Byrd, that I have always had high respect for him. That respect was enhanced in July 1989, when I came to this floor and he was managing Department of the Interior Appropriations for fiscal year 1990. I showed him some of the so-called art that the taxpayers were subsidizing and he replied, "Good grief, I will take your amendment." And there it began.

After I offered my amendment to prohibit the funding of obscenity, I was greeted with hoots and jeers all across this country, and have been for the past 15 months. One Senator now boasts that he has raised $1 million for my opponent in North Carolina. I repeat, that they are entitled to have a pipeline to the pocketbooks of the American people to subsidize whatever they want to do in the so-called art field.

Sure, I voiced concern then, and I voiced concern concerning legislation to a conclusion does not rest with the managers of this Appropriations Committee regarding the funding for the National Endowment for the Arts reflect the concerns that have been voiced by many in this Chamber about the appropriate use of taxpayer dollars for so-called works of art.

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the allocation of the $170 million in this bill for the NEA for the coming year. The NEA will receive that much or more for the next several years.

Well, that approaches $1 billion that we have spent in the NEA—$1 billion to waste it. And they have demonstrated at the National Endowment for the Arts that they have little concern about how the taxpayer money is spent.

The funds involved may be regarded by some as trivial. I do not consider it that way. But I will acknowledge that the Federal Government spends more than that amount in a few hours.

No, what is really at stake is whether America will allow the cultural high ground in this Nation to sink slowly into an abyss just to placate people who clearly seek or who are willing to destroy the Judeo-Christian foundations of our Republic. That is what is at issue. It is in that light that I am obliged to bring to the floor the subject of the National Endowments for the Arts again, and that is why my amendment is now pending.

I do not play the nonsense about censorship somehow being involved in the Federal Government refusing to automatically grant funds to self-proclaimed artists. There is a great deal of difference—all the difference in the world—between censorship and sponsorship. We are talking about sponsorship.

These artists who have their minds in the gutter are free to do whatever they want to do on their own time and with their own money. I have often said, Mr. President, that people who want to scrawl dirty words on the men's room walls are free to do it, but that they want to do it on their own time and with their own money. I have often seen this language from last year's amendment and deleted the House's prohibition on NEA's requiring artists to sign an agreement with the NEA, as a condition of receiving the money, that they will abide by this congressional restriction.

So, I thank my friend from West Virginia. He sincerely abhors obscenity, he regards this dis­gusting, revolting practice is by the National Endowment for the Arts. Just look at the Mapplethorpe art, which most Americans regard as obscene, is not covered by the technical legal definition of obscenity in the committee amendment. As I said, the language that my friend from West Virginia has included in the bill is identical to that contained in last year's conference report.

I say again, that is not even a figleaf. It does not prevent these sleazeballs from getting themselves naked on the stage, rubbing chocolate on themselves and saying: Look at me, I am an artist. It has not prevented it and it will not.

It fails to restrict the NEA in terms of supporting patently offensive works, and that is because the language in the bill allows the NEA to fund anything that the so-called experts at the National Endowment for the Arts happen to consider to have some artistic merit. That is a loophole wide enough to drive six Mack trucks through abreast.

During the debate last year, Senator after Senator expressed disgust with the Mapplethorpe photos and declared that such art never should have been funded. But they did not vote that way because the pressure was put on. Yet the language included in last year's conference report creating the loophole that I just mentioned will, as a result of the Mapplethorpe obscenity trial in Cincinnati, allow the National Endowment for the Arts to continue to fund materials such as the disgusting portion of the Mapplethorpe works—again and again and again.

Last year, Congressman Yates, as well as sources from the NEA, and a recent distinguished Los Angeles law firm, said that, in each of their opinions, the language in last year's Interior appropriations conference report—which is identical to the language in this bill—would not be a practical matter, provide any degree of content control over what the National Endowment for the Arts decides to fund.

For instance, in an exchange with Congressman Rohrabacher in the House last year, Representative Yates said, "Funding of obscene art was not effectively prohibited by the conference report's compromise language." At least he was honest about it. I do not agree with Congressman Yates, but he told the truth about this.

Then the Los Angeles Times quoted James Fitzpatrick, a prominent arts lawyer, as concluding that the conference report "fails completely to achieve any degree of subject matter control." The Los Angeles paper even quoted unidentified sources within the NEA itself as saying, "The wording appears to be so vague that virtually no artistic subject matter would be taboo."

Mr. President, who are we trying to kid? This Senate will do one of two things. It will do something to stop this revolting practice by the National Endowment for the Arts by adopting my amendment or it will not. I am going to give them a chance to vote on it. I rather imagine that millions of Americans will be looking at this vote.

Last year's conference report language, which is identical to the pending committee amendment which I seek to amend, has this to say:

If any of the funds authorized to be appropriated for the National Endowment for the Arts or the National Endowment for the Humanities may be used to promote, disseminate or produce materials which, in the judgment of—

Get this—

which in the judgment of the National Endowment for the Arts or the National Endowment for the Humanities may be considered obscene, including but not limited to depictions of sadomasochism, homoeroticism, the sexual exploitation of children or individuals engaged in sex acts and—

Get this—

which, when taken as a whole, do not have serious literary, artistic, political or scientific value.

See? there is that loophole with those six Mack trucks racing down upon you. The taxpayers better get out of the way because the NEA is going to stick it to them again if this committee amendment, to which I am offering an amendment—if this amendment stands as is. If that hap-
pens, the taxpayers are going to have it stuck to them again.

The conference report adopted this language. I believe the art community insisted that we must use the Supreme Court standard from the Miller case to restrict Federal funding for obscenity. But what no one bothers to mention when they talk about the Miller case, is that it was not a standard that the Government has to meet before it may refuse to pay for patently offensive material. In the Miller case, Mr. President, the Supreme Court held that materials cannot be banned—bear in mind that word “banned.” I am not talking about banning anything. I am talking about subsidizing it or rewarding it with the taxpayers’ money.

But the Miller case said, “Material cannot be banned unless the average person, applying the community standard, would find that the work, taken as a whole, appeals to prurient interest in sex, depicts or describes in a patently offensive way sexual conduct, and—there you go—when taken as a whole, lacks serious literary, artistic, political, or scientific value.”

That means that even if a work appeals to prurient interest, even if a work depicts or describes sexual or excretory activities or organs, it cannot be banned unless the average person, applying the community standard that the Government has to meet before it may refuse to pay for patently offensive material, finds that the work, taken as a whole, lacks serious artistic, political, or scientific value.

But the issue today—and I hope the distinction can be understood—is not whether we ban something. It is whether we will require the taxpayers to support it, subsidize it, and reward it with their money. I imagine if you put it to a referendum of the American people, it would be about 90 to 1 against using their money for this purpose.

The bottom line is that the committee cannot bear in mind that by its financial sponsorship of the American people, it would be about 90 to 1 against using their money for this purpose.

I ask unanimous consent that the following articles—none of which have been subsidized by the NEA—be printed at the conclusion of my remarks: an editorial from the Paducah Sun on August 30, 1990; an article by Paul Greenberg that was in today’s Washington Times; a resolution passed by the Southern Baptist Convention at its national convention in New Orleans this past summer; an article I submitted for the NOVA Law Review last spring; and an article by André Ryerson that appeared in the Heritage Foundation’s fall 1990 Policy Review.

Mr. President, I will reserve the remainder of my time, and I yield the floor.

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

[From the Paducah Sun, Aug. 30, 1990]

QUEST FOR MONEY, NOT ARTS FREEDOM

They call it a fight for rights, for constitutional principles, for artistic freedom. They say they are striking a blow against censorship and on behalf of elevating the national cultural level.

What malarkey. Why can’t they just be honest and admit that what they really want is to get their hands on more federal tax dollars? “They” are the so-called artists who are exterminating the American rose, who have knocked it off by their own generous, unquestioning Uncle Sam.

Four of the artists, outraged that their National Endowment for the Arts funding for this year was cut in legally contem­plating lawsuits. Their weeping supporters gathered last week to castigate NEA Chairman John Frohnmayer, who made the decision, and Sen. Jesse Helms, who has become the arts elite’s symbol for the Philistines who would trample creative liberty to death. It’s popular in those circles to assert that Sen. Helms is not qualified to judge art. Maybe not. But compared to those connoisseurs who believe Karen Finley is worthy of federal patronage by spurning chocolate sauce over herself, the senator from North Carolina is qualified to be curator of the Louvre.

The four artists who find being weaned from the federal tax dollar so traumatic were caught in new law that denies grants for work deemed to be obscene or sacrilegious. And that was the law over the infamous Mapplethorpe and Serrano exhibits, which initiated the national debate on the entire NEA program.

There can be no allowance for the obscenity-sacrilege issue that gives the controversy its emotional edge.

What bothers a lot of ordinary people is that the NEA is financing the work of the Robert Mapplethorpes and Anne Sprinkles, their government seems to turn hostile to the values held by them and society in general. There is a disturbing perversion when the state sees evil and calls it virtue, sees ugliness and calls it beautiful, sees silliness and calls it profound. If this is cultural warfare, as some believe, government not only is taking sides, it’s taking the wrong side.

It’s not enough for the NEA to say that out of thousands of grants, only a relatively few are offensive. Why should any be? How would the Urban League respond if told that of 1,000 restaurants in a city, only a couple of dozen refused to serve African-Americans? To hear some tell it, suspension of federal patronage of the arts and artists would not be enough. They want to vote against the NEA, and vote against the Helms amendment.

The NEA and its beneficiaries had a good thing going until they aroused the American public with their excesses. Now that their “right” of access to the public treasury is being challenged, the arts groups are es­concedly putting down their critics as un­ schooled bumpkins. And every time that happens, the idea is reinforced that the end­owment and its friends are a clubby little clique of elitists.

Creativity is a wonderful thing. It ought to be given as much freedom as possible—and that includes freedom from government sponsorship.

[From the Washington Times, Oct. 19, 1990]

ARTSMANSHIP: THEIR RIGHT TO YOUR MONEY

(By Paul Greenberg)

In a study of American society that has never been bettered, “Democracy in America,” Alexis de Toqueville pointed out that every great political question in such a society sooner or later becomes a legal one. Now, more than a century later, Americans have progressed to the point where every petty question apparently must go to court, too. No matter what Congress does this year, appropriations for federal grants will wind up in a court. You can bet your favorite painting on it.

Item: Four artists plan to sue the National Endowment for the Arts for $1.7 million in purported damages, and the NEA and its supporters have been expected to file counter-suits. What does the NEA think it’s doing by allocating government-sponsored art according to content, or whether there should be federal support for it? A sizable number of observers, this newspaper among them, believe the federal art subsidy is ought to be halted entirely as a matter of principle. When Senator Helms put a stop to all that nonsense from the arts people about censorship and end the gag order over what’s obscene and what’s not.

On the surface, the critics of the NEA program may seem concerned about waste of taxpayers’ money on non-essentials, but it’s the obscenity-sacrilege issue that gives the controversy its emotional edge.
place on the federal dole? That’s something for the courts to decide.

You may remember Miss Finley as the chocolate lady; she has achieved a measure of fame for her uncomplimentary views about the arts. The critics may be di-
vided over whether this is art, but some of us are quite sure that if Miss Finley were moved to the waste. (Chocolate, as a great philoso-
pher once pointed out, is the definitive refu-
tation of the doctrine of free will.)

And her position in this Great Hul-
baloo, though it may be lost in all the grand pronouncements and moving manifestes,
is: not: Is this art? Surely even critics of the NEA’s new caution would not be re-
expected to entrust that timeless question-What Is Art?-to the assorted competencies of Amer-
icans, congressmen, bureaucrats, and jurists.
The relevant question is: Should the public pay for it? That question is sidestepped by
all the cries about the sky falling on the arts in America. Just listen to these cries of
alarm:

"This is no longer a fight about obscenity.
This is about the very principles of democ-
racy and the values of this country."—Mary Schmidt Campbell, New
York City’s commissioner of cultural affairs.

Her way with hyperbole only confirms what a lot of us think about the state of culture
in America. Just listen to these cries of
alarm:

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mous or obscene. Congress unwisely enacted only a severely weakened version of the amendment that does not even prohibit funding for such works as those by Mapplethorpe—which elicits the same controversy. Even so, this weakened amendment has been the target of unfounded and often absurd criticisms.

Critics of the legislation often make the following unfounded and misleading allegations:

1. Restrictions on federal funding for the arts are an example of censorship.

This is a deliberate attempt to confuse censorship with sponsorship. Such deliberate misrepresentations are intellectually dishonest.

The Constitution gives Congress the responsibility and duty to oversee the expenditure of all federal funds—including funding for the arts. The amendment originally proposed, as well as the one passed, was intended to forbid the federal government from taking money from citizens by force and then using it to subsidize or reward obscene or blasphemous art. The amendment clearly limits the issue to the question of whether the government should use tax funds in the role of a patron (sponsor) for such "art." The legislation in no way "censors" artists; it does not prevent artists from producing, creating, or displaying blasphemous or obscene "art" at their own expense in the private sector.

Therefore, sanctions comparisons between the amendment and communist dictatorships in Eastern Europe fall on their face. In communist countries everything is paid for by the government; therefore, if approved by the government, it is not produced. Western democracies, on the other hand, rely on the private sector where ideas are left free to compete with minimal or no governmental participation.

Thus, it should be obvious to all that, despite the amendment, American artists who choose to shock and offend the public can still do so—but at their own expense, not the taxpayers'. Censorship is not involved when the government refuses to subsidize such "artists." People who want to scrawl dirty words on the men's-room wall should furnish their own walls and their own rent and repulsive.

The enormous response I have received from throughout the country indicates that the vast majority of Americans support my amendment which they were aghast to learn that their tax money has been used to reward artists who had elected to depict sadomasochism, perverted homoerotic sex acts, and sexual exploitation of children.

2. Subsidizing some art forms but not others (obscene art) constitutes indirect censorship.

If this is true—and it isn't—the NEA has been involved in censorship business for 25 years, which means that the only way to get the government completely out of the "censorship" business would be for the NEA to lose its grant-making ability. Ely's very nature, the NEA has the duty to establish criteria for funding some art while not funding others. So, those who cry censorship in this regard are ignoring the defect of their logic (or lack thereof). Do they not see that, following their logic, every applicant denied federal funding can then be "censored" by the subjective value judgments of the NEA's artistic panels?

3. Is there such a thing as obscene art?

The vast majority of taxpayers would first ask themselves whether something is obscene—and if it is, then it's not art. However, some verbose art experts—and the NEA—do everything in their power to regard "art" as something that cannot be obscene no matter how revolting, decadent, or repulsive. As NEA's Richard Shaugnessy noted in the Los Angeles Times, "If an [NEA art] panel finds there is serious artistic intent and quality in a particular piece of work, then by definition that is not going to be obscene."

4. Federal funding restrictions must use the obscenity definition outlined by the Supreme Court in Miller v. California?

It is important to remember that the Supreme Court has never established an obscenity definition for the purposes of restricting government funding. But Chairman Frohnmayer and the "arts community" erroneously assert that the Constitution requires that the definition in Miller v. California be used in both restricting federal funding and banning obscenity. However, refusing to subsidize something does not constitute prohibition. An "amendment" that does not even prohibit sexual or excretory activities or organs; and (3) lack serious artistic or scientific value.

Numerous cases show that the Court does not apply the same standards to government's refusal to fund First Amendment activities as it does to the government's efforts to ban such activities. For example, in Maher v. Roe, the Court stated that merely because one has a Constitutional right to engage in an activity, he or she does not have a Constitutional right to Federal funding of that activity. As long ago as 1942, in Wickard v. Filburn, the Supreme Court held that the Commerce Clause did not authorize a federal law which regulated activity in an area of the States because it was not commerce. In Maher v. Roe, the Court held that "the regulation of abortion is substantially related to an important local public interest." Thus, the legal effect of the current law is to ban Miller v. California allowances and perverts into obscenity, under the guise of reason. This is to forbid the government, which delights in ridiculing the values and American culture, to provide support to art which is "art." It's as if the NEA has the duty to provide support for art which is "art," while not funding others.

6. Restrictions on NEA funding are a violation of the First Amendment.

"Arts community" is fond of asserting that prohibiting NEA funding of obscene art will either "destroy art in America" or, at best, "lead to art which is bland." On the other hand, they also argue that the NEA subsidizes. It should be interesting if Congress should decide to adopt the Miller test in its entirety or in its own way to prohibit the NEA from funding obscenity. In fact, I believe the Court would uphold a Congressional prohibition on funding for any patently offensive depictions or descriptions of sexual or excretory activities or organs, regardless of the presence or absence of artistic merit.

It would be interesting if Congress should decide to adopt the Miller test in its entirety because Miller allowed a jury of ordinary citizens to decide if something is or is not obscene. The 1989 amendment approved by Congress on the other hand, effectively grants the NEA and its elitist arts panels sole authority to decide what is or is not obscene for the Federal government.

Thus, the legal effect of the current law is to forbid the NEA from funding obscenity under the guise of reason. This is to forbid the government, which delights in ridiculing the values and American culture, to provide support to art which is "art," while not funding others.

In summary, the National Endowment for the Arts has always had the responsibility to decide what is art. And recently as 1983, the NEA has been insulated from mainstream America. Congress could just adopt my original amendment, and let the "arts community" continue to howl. But there is no such thing as "art"—even when the taxpayers disagree.
Imagine a government so confident of its discernment, and so obvious of this capacity in its citizens, as to declare each year which automobile it considered the most desirable; then, proprio vigore, to award the trophy to Ford for its Cutlass Supreme Sedan, or to Toyota for its Taurus wagon. It is likely that the motor makers would prefer the automobile industry, and joined by the public at large, would be scandalized. In a market economy we expect government to play the role of umpire, ensuring that fair rules of competition prevail, but not otherwise meddling in matters of private choice. This role is clearly perverted by the government’s cherrying for one competitor over another and giving it a seal of approval plus cash rewards. The monarchs of Britain once did so, but republican values in America forbade such royal favors as a matter of principle.

Yet in a realm far less open to laboratory testing than the automobile industry, far more difficult to measure, and engendering less confidence, where personal taste reigns with magisterial indifference to modes of scientific verification, the arts—we find our government selecting art to receive public funds and which are not. That the system has provoked a scandal that has reverberated through the halls of Congress is not especially remarkable. What is remarkable is that it took this long to occur.

AESTHETICS OR SCANDAL

The National Endowment for the Arts (NEA) managed to survive outside the light of public scrutiny for a good quarter century, quietly giving grants to artists of "approved" tendencies. The public was indifferent to art that was subsidized but out of reach. None of the world’s great art until then, that has reverberated through the halls of history. In the 19th century, middle-class norms of decorum and personal vision may well insulate the artist from the virtues of competing visions. In consequence, the presence of artists on government panels distributing grants to other artists is not a guarantee against poor judgment, not to mention板s, cronymism, networks of convenience, political log-rolling, along with ideological self-advancement. All of these charges have been made against those involved in grant-giving at the NEA.

HOW GOVERNMENT CAN HELP

But are we not obligated, as a society, to "do something" for the arts? Is art not one of the highest pursuits of the human psyche, the embodiment of ideals all too unattainable in politics or commerce? Yes. And that is why a free society should follow from the accumulated choices of the people in their natural diversity, whether as individuals or corporately as businesses and philanthropic foun-
dations. It is not the role of government to "assist" the process either by joining in the spontaneous, naturally occurring events of today and another tomorrow, or by trying to check or balance them by throwing state influence and power behind some others.

We lack a conscious, organized, laissez-faire capitalist to the entire question would be that art is a commodity like any other, and truthful, honest dealing should determine the price. If no one wants Jane Doe's poems or John Brown's paintings, they deserve to sit unsold. Certainly government should have no role in paying for products that no individual will buy.

As a point of departure, the laissez-faire or market argument is unassailable. Society as a whole should not pay for what no individual member of it wants. But this argument omits a consideration that does make art different from other products, namely, the unique factor of time required to assess the ultimate value of a work. The examples of William Blake, Van Gogh, Emily Dickinson, and others unappreciated by their contemporaries rightly haunt those who think about the problem. Is there no way to assist, while they are alive, those who are creating the treasures of posterity, but which the marketplace in the short term identifies otherwise?

Some answers are fairly easy. If we want more people to appreciate art, to visit museums with their children, and to invest their talents and time in patronage or purchasing, the appreciation of art is an obvious precondition. Here the function of government through the schools is sensible and desirable, within the competing demands of a school curriculum. Closely related to art education is the preservation and renovation of past, through museums, classical theater, and symphony orchestras. While private philanthropy should be our first preference, a role for government, nonetheless, is wholly acceptable in materially preserving our cultural inheritance about which, thanks to the passage of time, rough consensus reigns. Government also has a special place in choosing the architecture of civic buildings.

It is also the case that public space and buildings can be improved with public art. Indeed, commissioning works for this purpose began with the Parthenon of Athens in the time of Pericles. More innovative modes of patronage have presently prevail, housed in a way that would be a healthy turn. It would be refreshing to see (if only for experimental purposes) a simple vote by visitors to an exhibit of models placed in competition, since the voters would be self-selecting (anyone who cares about public art) whose taste, appreciation, and support often far outstrips that of many foundations, and easily of the National Endowment for the Arts.

**PART-TIME WORK**

Beyond these rather conventional ideas in support of reinforcement past, through museums, classical theater, and symphony orchestras. While private philanthropy should be our first preference, a role for government, nonetheless, is wholly acceptable in materially preserving our cultural heritage about which, thanks to the passage of time, rough consensus reigns. Government also has a special place in choosing the architecture of civic buildings.

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October 24, 1990

We should recall that Shakespeare, Rembrandt, Shelley, Keats, and countless other great artists did not depend on government grants for all their creative energies. Their survival came from private patrons. Even when governments played a role, it was mainly for the purchase of art in public places—usually sculptors or painters of a type which won broad support. The Church was a great institutional patron, whose place today has been largely taken by corporations and foundations that have new in recent decades a widely noted decline in independent taste. An elitist herd mentality has begun to shape the selection process. Corporations looking to the NEA for leadership, the NEA narrowly in thrall meanwhile to the "cutting edge" discerned in provocative "performance art" and whatever else enjoys the passing spotlight of New York fashion.

What is lacking today are bold patrons with genuinely independent taste. We need to think about the problem by remembering that Van Gogh sold exactly one painting in his lifetime. It would be interesting to know who the buyer was. We know it was not a museum, and certainly not a government. It was an individual with the courage of his convictions to purchase the first at all levels of our society, free of government attempts to steer the selection process.

We have no way of knowing how our grandchildren will judge our preference and rearrange our museums. Some humility is in order here. We have no more wisdom about which few living artists will survive the filtering process and enter the pantheon of the finest painters and poets of the age. In some sense, this is a fundamental condition of art.

Art obeys its own peculiar logic, all the more unpredictable that to discover it is precisely the function of genius."
sive way, sexual conduct; and if the fact, I think they are as far away court. They have outlined some defini­
tion of expression will be hurt.

Mr. President, I appreciate what the distributed Senator is trying to do, and I have to say that I appreciate him personally. I think he has created the debate. It has not been an un­healthy debate for the country, but now is an opportunity for all of us to put this debate to rest. I think the way to do that is the amendment that we will file immediately after the disposi­tion of this amendment, whatever its disposition may be.

With that, I yield the floor.

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

Mr. PELL. Mr. President, what is the time situation?

The PRESIDING OFFICER. Nine minutes and 31 seconds to the Senator from North Carolina. The Senator from Rhode Island controls 15 minutes 28 seconds.

Mr. MCCURE. I wonder if the Senator would yield 3 minutes to the Senator from Idaho. I am not in opposition to the amendment. I did want to make some comments with respect to comments made by the Senator from North Carolina.

Mr. PELL. I would like to do it on the time of the Senator from North Carolina, and try to move it along as quickly as possible, but I yield to the Senator from North Carolina.

Mr. MCCURE. I do not want to fly under false colors. I am not opposed to the Senator from North Carolina, but I do want to say this as we start the debate here today. This is an extrem­ely troublesome issue. It is a very diffic­ult one for all of us to handle.

I was anxious to be yielded time from the Senator from Rhode Island, because I am not in opposition to the amendment, but I do not want that position to be overbroadly stated in opposition to all of the activities of the National Endowment for the Arts.

I do believe this country is measured by, and enriched by, the activities in the arts community, broadly speaking. The problem that I have is, I do not see any way for us to really object to the content of the Helms amendment.

Who in the world on this floor wants to say they really are in favor of granting money, taxpayers' money for the ex­position, promotion, distribution, dissemination, or production of materials that are described in the amendment.

The Senator from Utah has indicated that is no way to define this. I suspect that is true. The struggle of the Supreme Court has been, in their restraints on expression under constitu­tional guarantees, the right of expres­sion and, second, with respect to crite­ria, and that is where I am going to have difficulty with the amendment, that will be offered by the Senator from Utah, that it is a criminal standard. There is a differ­ence between what is criminal and what is supportable, and that is the very center of this debate.

The Senator from North Carolina, however, in his opening statement, in­dicated broad opposition of the Na­tional Endowment. I do not have the broad opposition. Neither do I believe that it is impossible for the National Endowment to do a much better job than they have done up until this time.

I have no trouble at all making the National Endowment responsible for their activities. The taxpayers of this country have a right to demand that, and therefore while I do not agree with all the statements made by my friend from North Carolina, as to the National Endowment, I am not in op­position to this amendment. I find nothing wrong with saying to the Na­tional Endowment, you must do cer­tain things. It seems to me, on the face of the amendment, it is not hard to find out who has the responsibility under this amendment. The National Endowment has that responsibility.

I thank the Senator for yielding this time.

Mr. PELL. Mr. President, under this amendment, if it was passed, we would find that Rodin's “The Kiss,” Monet's “Reclining Lady,” and Michelangelo's “David,” could, in some communities, be ruled illegal or unfinanceable.

I am prepared to yield back the remain­der of my time if nobody on this side has anything more to say. I hope it might be the same on the propo­nent's side as well.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I thank the Chair. I wish I could accommodate—no, I do not wish I could accommodate the Senator from Rhode Island. I do not feel I could accommodate him, al­though he is my friend. We went to­gether on a major committee in this Senate.

Mr. President, first on this figure of 85,000 grants. We have asked the NEA to validate that figure but they can't. It is bandied around as if it is fact. It has taken on a life of its own.
We are not talking about 85,000 symphony orchestras or choral groups, or authors. We are talking about sleaze in the art world.

I do not know of anybody who can find any redeeming features in some of the stuff that has been supported. Let me give you a few examples. I am going to have to leave out some words because I do not want to use them on the Senate floor.

For example, the Kitchen Theater in New York City, let us discuss that for just a moment. Does anybody remember Annie Sprinkle? Let me tell you about this act that was indirectly funded by the National Endowment for the Arts. I suppose there may be somebody in this broad land who thinks it has a redeeming feature. But Miss Sprinkle's performance at the Kitchen included what I would consider disgusting live sex acts. She urinated on stage and invited the audience to look at her with a flashlight. She brazenly declared, "Usually I get paid a lot of money for this, but tonight its' Government funded."More than the government, the NEA also helped Illinois State University Gallery in Normal, IL, put on an exhibit entitled "David Wojnarowicz: Tongues of flame." Unbelievably, this man submitted some pictures which were subsidized by the taxpayers. They were more monstrous than the Kitchen, in my judgment, than Robert Mapplethorpe's. I have attempted to have some copies of them sent over here for Senators to look at, if they doubt my word about it. But I will warn them that these pictures display homosexuals actually engaged in ultimate sexual and excretory acts with one another.

The taxpayers money went to fund these. That is the reason I am on the floor.

Yet another offensive project the taxpayers have recently paid for through the NEA is the San Francisco International Gay and Lesbian Film Festival. The NEA gave this 10-day festival—that is what they called it—$9,000 for "administrative costs." More than 100 films were shown with titles which I cannot use on the Senate floor.

But let me read a review of it. "Scenes from some of the films include masturbation, and oral sex between men and men, and women and women," according to a newspaper story.

Karen Finley's little show was entitled "We Keep Our Victims Ready," and this was another one of those Kitchen Theater performances that the NEA decided the taxpayers should support.

Let me say to my friend from Idaho that not once have I advocated the dissolution of the National Endowment for the Arts. I think it is very good to teach kids how to play in the symphony orchestra or to sing or to write or to participate in drama. That is fine as far as I am concerned, even though in this time of budget crises we might think twice about it.

The NEA recently denied funds to a woman named Mrs. Hughes to perform in one of these obscene plays as a result of intense public scrutiny. But the NEA will pay her $15,500 playwriting fellowship based on the script that she wrote for the obscene play. Do you see the pattern?

Now do not talk to me about 85,000 nice grants and 20 obscene ones. In the first place, who knows what has gone on before last year that was not detected? Where do we get the figure of 85,000 for all of the grants? They cannot tell you. They pull this figure of 85,000 out, and they throw it out, and it takes a life of its own. And the American people have it stuck to them again.

Senators can vote as they db alleged may wish. But I am saying to you, Mr. President, that if they vote against this amendment, they are voting in favor of funding for the most vile, most repulsive, most rotten kind of material imaginable.

I yield such time as the Senator from New Hampshire may wish.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. HELMS. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 3 minutes 26 seconds.

Mr. HELMS. I thank the Chair.

Mr. HUMPHREY. Mr. President, I thank the Senator from North Carolina for yielding.

More than that, I want to thank him for his courageous fight against the abuses of the NEA. It takes some courage to do that, Mr. President. The arts community and the entertainment community are very powerful political bodies. The result of intense public scrutiny. But that is not the issue that we are discussing. I hope Senators support him. I would go much farther. I think the Senator from North Carolina for being right on the issue, and having the courage to stand up and make his case so powerfully.

I hope Senators support him. I would go much further than the Senator from North Carolina. Just the other day, I reminded my colleagues, we passed a measure in this body against the vote of this Senator to increase the gasoline tax 9 cents per gallon. That is on top of a 35-cent or 40-cent per gallon increase over the last few months because of the Persian Gulf crisis.

We passed that tax and so many other taxes where the excuse was that there was no more place where we could cut; nothing more that we could cut in the budget. What absolute rubbish. Here is a perfect example of the waste and abuse of taxpayer funds that exists in this budget. The budget is larded with special interest groups like the arts community with a lot of political clout. They raise 1 million bucks to defeat Senator Helms or attempt to defeat Senator Helms, and they get in return a $185 million reward on their appropriations bill for this year alone. That is the kind of payoff that comes from pandering to the arts community. It is an outrage.

We ought to terminate the National Endowment for the Arts because there will be no end to this argument and controversy over what is art and what is not. The Government ought not to be subsidizing this endeavor. If people want to paint anything they want, anything imaginable, fine. They are protected by the first amendment. But there is nothing in the Constitution, Mr. President, as the Senator has pointed out, that obliges the taxpayers to vote for the arts, only for the right.

So I would go much farther. I think the Senator is being too moderate. I would get rid of it. I say get rid of it. I say let us get serious. This is a time of crisis. We cannot afford the wasting of money on such frivolity and decadence. It is outrageous.

The Senator's proposal is much too mild in my opinion but I applaud him for the courage of offering it. I will certainly support him with my vote as I have in the past.

Mr. President, I reserve the remainder of the time for Senator Helms.

Mr. HEINZ addressed the Chair.

Mr. FELL. Mr. President, I yield 2 minutes.

Mr. HEINZ. Mr. President, what we are fundamentally talking about here is whether or not we are going to try to write and impose a certain type of content restriction that goes beyond any definition of obscenity or pornography, I say they are absolutely right. But that is not the issue that we are discussing.

I would like to illustrate it by drawing upon two works of art that probably many of us have seen either in books or we studied them in school. One is the work of Hieronymus Bosch the 15th century northern European painter who depicted the worst personality traits of people in the form of ugly little obscene little people who are half human often engaged in utterly depraved acts painted on canvas or panel, activities that included those that were sexual, or scatological in nature. I have no doubt at the time there were people who found those works extremely alarming, even regul
sive. But today, we view his work not only as art but we view his message, his content, as extremely moralizing because it says to us if you have this kind of tendency, beware, you may turn into the kind of ugly, little creature and engage either symbolically or literally in the worst kinds of acts.

Francisco Goya we accept today as one of the great painters the world has ever known. Nevertheless, he had a gift for caricature. One of his targets was the clergy of the Spanish realm. He depicted corrupt priests actually in the act of thievery or in the act of rape. To the establishment of his day, that was considered blasphemous. And in Spain, in that day and age, that was a very dangerous thing to do. He was denounced and worse.

Yet, the content of his art, however, shocking it may have been to them, today we accept and even praise as an acute and utterly justified form of social criticism.

So Mr. President, in sum, we legislate content at our peril, and I hope we will just trust President Bush's appointment to the National Endowment which has made very few mistakes out of some 80,000-plus decisions.

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

The PRESIDING OFFICER. The Senator from North Carolina controls 24 seconds.

Mr. HELMS. I ask unanimous consent for 1 more minute in addition to that.

Mr. President, I am tempted to ask the Senator from Pennsylvania if the artist whom he identified got a Federal grant from the National Endowment for the Arts. I have no argument with what he said. I am not talking about banning. I am talking about subscribing.

If the Senator will forgive me, I do not follow his line of reasoning. Let me use the remainder of my time to respond to the amendment on which Senators will be voting:

None of the funds appropriated under this act may be used by the National Endowment for the Arts to promote, distribute, disseminate, or produce materials that depict or describe, in a patently offensive way, sexual or excretory activities or organs.

That is all. It does not say ban them. It simply prohibits use of the taxpayer's money. I think that is a fair proposition.

Mr. President, have the yeas and nays been ordered on the amendment? The PRESIDING OFFICER. They have.

Mr. HELMS. I ask unanimous consent that it be in order that I ask for the yeas and nays.

The PRESIDING OFFICER. Is there objection? Without objection.

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

The PRESIDING OFFICER. Is there a sufficient second?
How can we support a bill that in reality censors artists by defining what may be considered obscene so broadly? That, I submit, is not our job.

Members of Congress are in no position to sit as censors over the works of our Nation's artists. I am sure that each of our colleagues has a different eye for what is pornography.

Several weeks ago during a Labor and Human Resources Committee markup, I voted for a bipartisan compromise to reauthorize the Endowment. I voted for this bill with a heavy heart. But the compromise was necessary in order to prevent further damage to the integrity of the National Endowment of the Arts. I did not speak on that compromise, but today we must prevent, if we can, the language contained in this bill.

I ask my colleagues to oppose the language of this appropriations bill. Moreover, the amendment is also similar to language twice. Once during the consideration of the NEA reauthorization, and again during consideration of the Interior appropriations bill. Moreover, the amendment is also similar to language recommended by the independent commission that Congress created just last year to review the Endowment controversy.

The amendment before you is similar to the compromise adopted by the Labor and Human Resources Committee. The House has adopted this language twice. Once during the consideration of the NEA reauthorization, and again during consideration of the Interior appropriations bill. Moreover, the amendment is also similar to language recommended by the independent commission that Congress created just last year to review the Endowment controversy.

The amendment before the Senate today leaves the decision regarding obscenity up to the courts. That is how it should be. The amendment provides that if the court determines a project is obscene, the person or group held to be in violation of the law will face certain sections. The amendment also prohibits funding to a grant for up to 3 years and would have to repay the grant funds to the Government.

After all is said and done, I still have a hard time understanding why we want to punish the NEA. What is this controversy about? It's about a handful of artistic works. Only 25 out of a grand total of 85,000 grants ever awarded by the NEA. I challenge my colleagues to find another federally funded program that enjoys the kind of support and record of achievement as does the NEA.

The last 11 Pulitzer Prize winning plays were developed at NEA funded nonprofit theaters. Some 25 of the 60 local arts agencies have grown into over 2,000 local arts agencies across our country.

As I stated earlier, 85,000 grants have been made in the NEA's 25 years of existence, and only a handful have created this controversy.

The NEA's record of achievement speaks well for itself. We must not abandon our support of the arts. I urge my colleagues to support the pending amendment by Senator Hatch.

Mr. BRADLEY. Mr. President, I am saddened that this debate about restrictions on the first amendment has derailed us from the task of reauthorizing a program that, at a very small cost, has opened the imagination of America. The National Endowments for the Arts and Humanities have touched the lives of nearly every American, bringing paintings, sculpture, symphonies, theater, stories, and dreams into our schools, community centers, and town halls across our land.

Twenty-five years ago, Congress displayed a remarkable prescience about America's purpose in a changing world. In establishing the National Endowment for the Arts and its companion, the National Endowment for the Humanities, we affirmed that our Nation's leadership "cannot rest solely upon superior power, wealth, and technology, but must be solidly founded upon the power of the imagination for the nation's high qualities as a leader in the realm of ideas and of the spirit." As the Soviet threat diminishes, America's purpose in the 1960's will stem not so much from our military strength as from the power of our example. The NEA helps us set an example of a Nation that nurtures the talents of all its citizens and opens the doors to a full, rich public life.

Now that the insight of 1965 that inspired the founding of the NEA has been validated by the events that led to the end of the cold war, it comes as quite a surprise to me and to many of my constituents that this agency should be the object of controversy and suddenly become subject to restrictive legislation. The NEA was founded on a set of principles derived from the principle of democratic pluralism that inspired the Bill of Rights. To refer again to the words of Congress in 1965, "the intent of this act should be the encouragement of free inquiry and expression" and "no undue preference should be given to any particular style or school of thought or expression."

Perhaps we have forgotten how difficult it is to create art which truly enriches, inspires, and educates. It is a process of trial and error, false starts, and unconscious creative surges. The NEA exists not to make art, but to encourage the arts. The NEA helps us set an example of a Nation that nurtures the talents of all its citizens and opens the doors to a full, rich public life.

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Perhaps we have forgotten how difficult it is to create art which truly enriches, inspires, and educates. It is a process of trial and error, false starts, and unconscious creative surges. The NEA exists not to make art, but to make this process possible.

The value of an open creative process to an entire society cannot be judged merely by the few examples of its outcomes, just as the value of the first amendment cannot be judged solely by a few outrageous things that people say. But those seek to constrain and undermine the very purpose of the NEA do just that—take one or two pieces of art and call them typical of the entire institution.

Mr. President, I urge you to allow me to describe for my colleagues briefly a program funded by the NEA that truly typifies the Endowment's work. The Mayors Institute on City Design began in 1986, when the mayors of seven American cities, agreeing together at the University of Virginia for 3 days of intensive conversations among themselves and with urban designers about how to construct humane, livable cities. With the addition of 2 yearly regional institutes in the Midwest and the South, the mayors of 77 cities, representing nearly 34 million people, have now participated in the Mayors Institute for City Design, funded by the Design Arts Program of the National Endowment for the Arts.

Each mayor comes to the institute alone, without staff or files. Each mayor brings a design problem from his or her city, which might range from one as simple as finding a location for a water-front to the design of a sidewalk or a housing project. While the institute ideally helps each city find a solution to each problem, its real purpose is to help the mayors, who may be expert only in politics, finance, or development, open their imaginations about the design of the communities we share. As Mayor Vincent Schoemehl, Jr., of St. Louis put it, the institute "helped me to understand—and to persuade others—that the insight of 1965 of a city successful is the quality of the environment it offers."

Besides Trenton, the Mayors Institute has brought to the University of Virginia the mayors of Newark, NJ, Sharpe James, and the mayor of Princeton, the late Barbara Boggs Sigmund. The program helped each of these mayors find a clear direction for the physical layout of their communities. I describe the Mayors Institute at some length, Mr. President, not because it indicates what the NEA really funds, but because I believe it exemplifies the reasons we have an NEA and the purpose it serves. The communities we live in are going to look like something. They can be unplanned, sterile, havens for crime and cruelty. Or they can be humane and warm, good spaces to work, raise children, or visit a museum on a Sunday afternoon. Only by devoting attention and resources to this project, and by opening our imaginations without restrictions, can we make that happen.

The NEA helps us shape a rich and humane cultural life for our entire people. Others—that we neglect millions of families enjoy the Hoboken Chamber Orchestra, the McCarter Theater Company, the Composers Guild of New Jersey, the Willowbrook Jazz Festival, and more. Young people with talent and ambition found guidance at the New School for the Arts in Montclair, the Center for Innovative Printmaking at Rutgers, the Newark Community School for the Arts, and
other institutions that rely on the NEA to fund their educational programs.

The rich cultural pluralism made possible by the NEA has renewed America’s role as the leader of the world in culture and spirit. Our artistic ancestors are a source of national pride for all of us, and they are made possible only by an open process of creativity and dedication to excellence with no other restrictions. At a time when the nations of the world look to the United States as a model of democratic pluralism and cultural diversity, we must continue to nurture our culture in the spirit of democracy and national purpose. Mr. President, if we are blocked from reauthorizing this important program this year, I hope that very early in the next Congress we will consider the National Endowment for the Arts and the Humanities as a whole and reauthorize their contributions to our society for years to come.

Mr. GRASSLEY. Mr. President, I will not take very long on this matter. There have been just a couple of points I would like to make in support of the amendment offered by my friend from North Carolina.

I have received thousands of letters, e-mails, and phone calls from Iowans expressing their concerns about Federal funding for the arts and endowment.

By an overwhelming margin of 8 to 1, they want Congress to adopt legislation to prevent the flow of Federal funds to offensive and pornographic work.

Clearly, taxpayers are outraged by claims that they must be forced to pay for a photograph of subjects far too obscene for any gentleman to describe.

The reason Congress established the NEA was to promote the arts and to encourage appreciation of the arts throughout the country. This function of the NEA does not require funding projects which stretch the boundaries of public tolerance.

Again, Mr. President, I support the arts and I support the NEA. I also support standards, such as those proposed by the Senator from North Carolina. Only then can we be assured the goals of the National Endowment for the Arts will not be distorted and, instead, Federal sponsorship of quality art programs will be maintained.

Mr. LEVIN. Mr. President, I do not believe that the Government should fund art which has been determined to be obscene by a court that is applying standards required by the Constitution. But, the Helms amendment applies an unconstitutionally vague standard. Later during this debate I will be supporting an amendment which will deny NEA funding for art and apply a constitutional standard.

Mr. PELL. Mr. President, I believe all time has been used up by my adversary, and I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from North Carolina retains 22 seconds.

Mr. HELMS. Mr. President, I yield the remainder of my time.

The PRESIDING OFFICER. The time having been yielded back, the yeas and nays have been ordered.

The clerk will call the roll.

Mr. President, the real focus of this amendment is restricting tax dollars, not restricting art. Artists can do with private funding whatever they like.

There is nothing in the Constitution which guarantees any artist a dime. It is pure arrogance to suggest anything to the contrary.

I recognize that the National Endowment for the Arts has helped make possible many quality programs throughout the country. I hope that it will continue to do so.

But taxpayers should not be forced to pay for a photograph of subjects far too obscene for any gentleman to describe.

The reason Congress established the NEA was to promote the arts and to encourage appreciation of the arts throughout the country. This function of the NEA does not require funding projects which stretch the boundaries of public tolerance.

So, the amendment (No. 3119) was rejected.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the amendment was rejected and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, the conference report on the—

Mr. BYRD. Mr. President, there has been an order entered that no matter or measure may be taken up during the consideration of this bill without the consent of the two managers.

The PRESIDING OFFICER. The Senator is correct. Under the previous order, the Senator from Utah (Mr. HATCH) is to be recognized to offer an amendment.

Mr. BYRD. That is correct. But I understood that the distinguished Senator from Louisiana was going to bring up another matter.

Mr. JOHNSTON. Mr. President, I was going to see, with the concurrence of the managers and with a short time limit, whether we might bring up the Tongass report, which has some time sensitivity because it needs to go into reconciliation. We are trying to get a time agreement, and, as I understand it, the two Alaskan Senators are willing to give that time agreement.

The PRESIDING OFFICER. That would require unanimous consent, because there is a previous order providing for the Senator from Utah (Mr. HATCH) to offer an amendment.

Mr. BYRD. Mr. President, I will be very happy to try to work out something to accommodate the Senator from Louisiana and the Senators from Alaska, but I do not believe they are ready to proceed right at this moment.

Mr. JOHNSTON. Very well. I thought they were here and ready.

Mr. BYRD. I certainly want to try to accommodate the Senator.

In the meantime, I wonder if we could proceed to the Hatch amendment.

The PRESIDING OFFICER. The Senator will suspend.

Mr. HATCH. Will the Senator yield? I will be happy to yield if this will get the work done, but I would just as soon go ahead, too.

Mr. BYRD. I am just looking at the clock.

Mr. JOHNSTON. Mr. President, I wonder if the Senator would permit me to ask the Alaskan Senators if they are willing to go with a 10-minute time limit?

Mr. BYRD. Mr. President, they are so asked.

Mr. President, I yield myself 1 minute from the debate on the pending bill for the Senator to speak, Mr. MURKOWSKI.
Mr. MURKOWSKI. I thank the President pro tempore.

Mr. BYRD. The previous discussion indicated we would be allowed 15 minutes. I believe that was the discussion with the President pro tempore, if my memory serves me correctly.

Mr. BYRD. That was not set in concrete.

Mr. MURKOWSKI. That is true. It was not set in concrete.

Mr. BYRD. We discussed that but since that time—

Mr. STEVENS. Will the Senator yield?

Mr. BYRD. I will be happy to.

Mr. STEVENS. The only urgency is if, as they say, we have to act before the reconciliation bill is closed on the other side in the section of the Interior Appropriations and the Energy Committee here.

Mr. BYRD. I want to accommodate the Senators. Could we do it in 10 minutes?

Mr. STEVENS. I understand that. I do not know why the Senator does not tell them just close the section of that bill. We are not going to stop this bill. It is reluctantly said on my part, but we are not going to stop this bill, so what is the rush?

Mr. JOHNSTON. Can we do it in 10 minutes?

The PRESIDING OFFICER. The Senator from West Virginia retains the floor.

Mr. BYRD. I yield myself 1 additional minute. Can we complete the whole action in 10 minutes?

Mr. HATCH. Will the Senator yield?

I have no objection, if this is important, to interrupt or delay calling up the Senator from West Virginia. He retains the floor. Mr. HATCH.

Mr. HATCH. Will the Senator yield?

Mr. BYRD. The Senator from Utah, I am trying to accommodate the Senators and I will accommodate them. If they need 15 minutes—

Mr. STEVENS. Let me assure the Senator, the President is not accommodating me. I would like to kill this bill but I am not going to kill it because of the circumstances that exist today. But I do not know why people do not take my word that we are not going to stop this bill, I will object from now until we go home, and we will stop it. I object to a limitation on us on a bill where we want to explain why we are going to stop it. I think that is imperative.

Mr. BYRD. Very well, Mr. President. Let us proceed with the pending measure.

The PRESIDING OFFICER. On this amendment, there are 2 hours of debate equally divided and controlled in the usual form between the Senator from Utah (Mr. HATCH) and the majority manager (Mr. Byrd) if he opposes the amendment.

If the majority manager favors the Hatch amendment, the time in opposition is controlled by the Republican leader or his designee.

Mr. BYRD. Mr. President, I yield the time in opposition to the amendment of Mr. McClure.

The PRESIDING OFFICER. Very well. The majority managers yield the time in opposition to the Senator from Idaho.

The Chair will inform the Senator from Utah that we do not have the amendment at the desk.

The Senator from Utah.

AMENDMENT NO. 3130

(Purpose: To require that the National Endowment for the Arts establish review panel procedures and sanctions for persons who produce obscene projects or productions)

Mr. HATCH. Mr. President, on behalf of myself Senators Kennedy, Pell, Kassebaum, Metzenbaum, Durenberger, Simon, Jeffords, Dodd, Chafee, Simpson, Adams, Mikulski, Bingham, Moynihan, Wirth, and Leahy, 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), for himself, Mr. Kennedy, Mr. Pell, Mrs. Kassebaum, Mr. Metzenbaum, Mr. Durenberger, Mr. Simon, Mr. Jeffords, Mr. Dodd, Mr. Chafee, Mr. Simpson, Mr. Adams, Ms. Mikulski, Mr. Bingham, Mr. Moynihan, Mr. Wirth and Mr. Leahy, proposes an amendment numbered 3130.

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:

On page 101, line 22 of the bill, strike all after the period at the end of line 21 and add the following:

"Provided further, That section 10 of the National Foundation on the Arts and the Humanities Act of 1965 (20 U.S.C. 850) is amended—

"(1) in subsection (a)(6), by striking '529' and inserting '332';

"(2) by striking subsections (e) and (f);

"(3) by redesignating subsections (b), (c), and (d) as subsections (e), (f), and (g), respectively;

"(4) by designating the second through the fifth sentences of the existing subsection (a) as subsection (b);

"(5) by designating the sixth through the eighth sentences of the existing subsection (a) as subsection (c);

"(6) by designating the ninth through the eleventh sentences of the existing subsection (a) as subsection (d);

"(7) in subsection (b) (as redesignated by paragraph (4)) by inserting 'including local arts representatives' after 'represent cultural diversity';

"(8) in subsection (c) (as redesignated by paragraph (5)), by striking 'clause (4)' and inserting 'subsection (a)(4)';

"(9) by striking the second sentence of subsection (c) (as redesignated in paragraph (5));

"(10) in subsection (g)(3) (as redesignated by paragraph (3)) by striking the presence of subsection (a) and inserting 'subsection (d)';

"(11) by adding at the end thereof the following new subsection:

"(i) The Chairperson of the National Endowment for the Arts shall develop procedures that—

"(A) ensure that each panel of experts established pursuant to subsection (a)(4) has a wide geographic, aesthetic, ethnic, minority, and other representation by—

"(i) creating an agency-wide panel bank, containing names of both qualified arts professionals and knowledgeable lay persons, from which the Chairperson of the National Endowment for the Arts, or the designee of such Chairperson, and

"(ii) ensuring that such panels, where feasible, have knowledgeable lay persons serving on such panels at all times;

"(B) establish, where feasible, standardized panel procedures;

"(C) ensure, where necessary and feasible, the increased use of site visitations to determine the project's potential for producing the work of an applicant in order to assist the board of experts in making recommendations;

"(D) require a written record summarizing the deliberations and recommendations of each panel of experts;

"(E) require that the membership of each panel of experts serve for a term of not less than 3 years; and

"(F) require all meetings of the National Council on the Arts to be open to the public in accordance with the provisions of section 552b of Title 5, United States Code.

"(2) In making appointments to panels established pursuant to subsection (a)(4), the Chairperson shall ensure that an individual who has a pending application for financial assistance under this Act, or who is an employee or agent of an organization with a pending application, does not serve as a member of any panel before which such application is pending.

The prohibition described in the preceding sentence shall commence with respect to such individual beginning with the date such application is pending and shall continue for so long as such application is pending.

"(3) The Inspector General of the National Endowment for the Arts shall conduct the appropriate reviews to ensure grantee compliance with all regulations that relate to the administration of all programs and operations of the National Endowment for the Arts. This review includes, but is not limited to, grantee compliance with all accounting and financial criteria.

"(4) The procedures described in paragraph (1) shall be developed not later than 90 days after the date of the enactment of this subsection.

"(i) The Chairperson of the National Endowment for the Arts shall establish sanctions for groups or individuals who receive funds pursuant to the provisions of section 5 and use such funds to create, produce, or support a project or production that is intended to be, or change substantially, criminal laws or is found to be a criminal violation of State child pornography laws in the State or States in which the group or individual produces such project or production or in the State or States described in the grant award as the site or sites of the production as determined by a court decision, after final appeals."
"(2) Except as provided in paragraphs (3) and (4), the sanctions described in paragraph (1) shall include—
(A) repayment by the individual or organization that created or produced the project or production found to be obscene or to violate child pornography laws pursuant to the provision of paragraph (1) to the Chairperson of the portion of the funds received under section 5 that were used to create or produce such project or production in accordance with the provisions of paragraph (3); and
(B) ineligibility of the individual or organization that created or produced such project or production if found to be obscene or to violate child pornography laws pursuant to the provisions of paragraph (1) and
(ii) was a defendant convicted in the criminal action described in paragraph (1) to receive funds under this Act for a period not to exceed 2 years.

(3) A period referred to in paragraph (2) to which subparagraph (A) and subparagraph (B) of paragraph (2) applies is not to exceed 2 years.

(4) If a State, local, or regional organization or arts group received funds directly from the Chairperson under section 5 that were used to support a project or production found to be obscene or to violate child pornography laws pursuant to the provisions of paragraph (1) or until repayment of the funds pursuant to the provisions of subparagraph (A) of paragraph (2) required to be repaid pursuant to the provisions of paragraph (1), then such agency or group shall repay such funds to the Chairperson not later than 90 days after the date on which such project or production is found to be obscene or to violate child pornography laws pursuant to the provisions of paragraph (1) or subparagraph (B) of paragraph (2) of this subsection.

(5)(A) Each individual or organization required to repay funds pursuant to the provisions of paragraph (4) shall be ineligible to receive further funds under this Act until such funds are repaid.

(B) If a State, local, or regional agency or arts group is required to repay funds pursuant to paragraph (4), funds required to be repaid pursuant to the provisions of paragraph (1) and subparagraph (B) of paragraph (2) of this subsection, then such agency or group shall be ineligible to receive funds under this Act until such funds are repaid.

(6) The Chairperson of the National Endowment for the Arts shall develop regulations to implement the sanctions described in this subsection.

The PRESIDING OFFICER (Mr. Dixon). The Senator from Utah.

Mr. HATCH. May I reserve the remainder of the time that was yielded to him? I want to thank him for his kind remarks with regard to this amendment.

Mr. President, this amendment that I have offered to the Interior appropriations bill concerns the recent controversy surrounding the National Endowment for the Arts. It has been a very difficult thing for all us.

I would like to express my appreciation to the distinguished chairman of the Appropriations Committee, Senator Byrd, for his work in trying to ensure that the NEA does not fund work which is obscene. I admire the Senator from West Virginia and I appreciate his commitment to carefully and judiciously guard the public funds.

The questionable projects that have been funded by the NEA in the last 2 years has been a cause of concern for every one of us. None of us want to spend hard-earned tax dollars on projects which are offensive to taxpayers. However, the amendment I am offering further strengthens the efforts of the distinguished Senator from West Virginia.

I believe this amendment will help us pass the legislation while protecting the taxpayer funds and at the same time artists', in the plural, freedom of expression.

I appreciate the cooperation of Senators Kennedy, Pell, Kassebaum, and others. We have worked together to fashion language to deal with this issue. It has been a long and very difficult process. I also appreciate the strong support we have received from the members of the Labor and Human Resources Committee. We passed a similar amendment 15 to 1 out of that committee. I think it was a very courageous and good thing to do. The language was adopted from the reauthorization bill which passed out of the committee on a vote of 15 to 1.

Mr. President, I am guided on this issue by the principles: First, that we have a responsibility to the taxpayers we represent to make sure that Federal funds are spent in a manner that is consonant with our American values and, second, that Congress, and this is an important point, Congress cannot effectively micromanage matters that are inherently subjective. We just cannot. If we get into that, we will have as many viewpoints and opinions as we have Members of Congress.

This amendment may not satisfy every single person's concerns on either side of this debate. It does, however, provide a method of enforcement in what I consider to be a constitutional matter. Such a procedure for sanctions has been missing to date, and I view these provisions as significant and as a way to resolve this very serious controversy.

I strongly believe that Congress has the responsibility to the taxpayers of this country to ensure that the National Endowment for the Arts is a vehicle to fund in accordance with these guidelines and to sanction grantees who flout the rules. Congress has never been successful in setting bright line standards when the matter at hand is so subjective in nature, and the subjectivity.

In many Federal activities, we have invested peer review panels with responsibility for making good judgments. I do not believe that we should discard this essential method for making these grants under the National Endowment for the Arts, although this amendment also includes changes to the panel procedures and membership to ensure broader representation and more access to procedures by the public.

The amendment calls for the National Endowment for the Arts to involve Americans in the review process who come from a wide variety of backgrounds and specifically mentions geographic and aesthetic, ethnic and minority representation. An agencywide panelist bank is to be created. It is my understanding that the National Endowment for the Arts will undertake nationwide recruitment of the panelists that will be selected from a diverse pool on a nondiscriminatory basis. We
do not intend that every panel has to have a member representing each geographic area or a particular racial or ethnic group, but by recruiting widely, these review panels will, overall, naturally reflect a cross-section of our people.

The amendment also prohibits persons with a conflict of interest from serving on the panel making decisions about projects which affect them. The endowment should continue to have the responsibility for the distribution of the funds. I do not believe the top 25 orchestras, one of the best ballet companies, and the top five opera companies, and nearly eight times as many museums and art galleries as they had 25 years ago. The people of this country are justifiably outraged by some of these grants and some of the funding of a small number of highly objectionable art works.

As a supporter of the arts, I have been concerned about the views expressed by both taxpayers and artists. I certainly hope each group will listen patiently and openly to the other side as this bill moves through Congress. There clearly are two sides to this issue and neither side can or should be ignored.

I think the distinguished Senator from North Carolina, for all the criticism that has been heaped upon him, has done the country a service because we have been able for the first time to really start telling people the good side of the National Endowment for the Arts and we have had to do it because of the criticisms that have been lodged. But some of the criticisms have been just, too, and we have to take those criticisms seriously.

Congress has to continue to encourage broad support of the arts by ensuring that the Endowment assists projects that support the diversity, talent, beauty, and cultural heritage of the arts in this country, but I believe we can do this without compromising the balance of good taste. I hope you will see that this amendment is a step in the right direction.

I call upon all my colleagues to support it. I surely hope they will. I think it is worthy of their support. I hope, when we vote on it, we can vote overwhelmingly in favor of this amendment. I hope this amendment will help to resolve some of the conflicts that some feel exist in the arts.

Mr. PELL. Mr. President, it is a pleasure to rise as a cosponsor of the amendment put forward by my colleagues to strike a section of the administrative provisions under the heading of the National Foundation on the Arts and Humanities that relates to language established in the fiscal year 1990 appropriations legislation that did the National Endowments on the use of its funds. I am also pleased that the chairman of the Labor and Human Resources Committee and the ranking members of the subcommittee on Education, Arts, and Humanities are joining us in this effort.

I fully respect the position of the distinguished chairman of the Appropriations Committee and could not agree with him more strongly. There is no place in the work of the National Endowment for the Arts. Moreover, I believe we are in complete agreement that very specific steps must be taken by the Congress to ensure the accountability of the taxpayers' dollars as they are distributed by the Endowment in the future. We differ only on the best way to achieve this.

The chairman of the subcommittee that authorizes the National Endowments, I am particularly disappointed that the Appropriations Committee did not take the guidance offered by the Labor and Human Resources Committee. We have spent many months of intense work on these difficult questions and believe the inclusion of the language so overwhelmingly approved by our committee would have been the best course of action. We began our work in earnest last spring with a series of hearings in the subcommittee that explored the Endowment grant process in great detail. Witnesses testified from all corners of the political spectrum and offered thoughtful and useful insights into the controversy which has been with us for over a year and a half now.

The Committee on Labor and Human Resources carefully reviewed the testimony and began a long and thorough process of developing a way to make the Endowment grant process as accountable as possible to the public who is the ultimate sponsor. As one of those who helped establish the Arts Endowment 25 years ago, I am particularly alarmed at how quickly this controversy mushroomed and became distorted. It is truly a case of making a mountain out of a molehill.

As a matter of coincidence it should be noted that fate has not been kind to the original band of lead sponsors of this legislation enacted 25 years ago—indeed, I'm the sole survivor. Two were defeated at the polls, one died, and two went to jail. I make this point, not to show a connection, but as a matter of possible interest to my colleagues.

Our perspective has been skewed and all of the positive things this legislation has accomplished have been largely ignored in this unfortunate debate. We should not be here today talking about obscenity and the NEA.
We should be talking about the cultural life of this country and how the Arts Endowment is so central to its vitality. The committee reviewed many options over the course of the summer. It found itself in a very hard headwind. But because of the extraordinary bipartisan effort of my committee colleagues—and I mention Senator Kennedy, Senator Hatch, Senator Kasetaum, and Senator Metzenbaum in particular—we were able to fashion a proposal that we believe deals with the difficult question of obscenity in a fair and responsible manner.

The Labor and Human Resources Committee met on September 12 and endorsed our proposal by a margin of 15 to 1. The members of the committee showed wisdom and resolve in reporting a strong bill to the Senate that deals with the issue of obscenity in a balanced and rational way.

Our approach not only reflects our goals for the future of the Arts Endowment but it also shows the very high regard we each have for this agency and its mission. I know, too, that the vast majority of Senators know how much the Arts Endowment has accomplished and want to see it continue to thrive in the spirit of bipartisanship and mutual cooperation that has been the hallmark of its existence.

To my great regret, our reauthorization proposal is not likely to be considered by the Senate during this session. This is especially disappointing because we believe we had reached a solution that would find broad support in the full Senate. The House was able to move ahead, however, and pass a bill last week that contains many provisions present in our own bill. I am eager to point out that the House addressed the issue of obscenity in the same manner as the Senate Labor Committee.

The amendment we are now considering takes the very core of our larger reauthorization proposal—the provisions dealing with NEA accountability and obscenity—and substitutes these policies for the obscenity language in the bill before us. By presenting this amendment, we offer Members of the House of Representatives and the Senate the opportunity to respond to the work that he and Senators Kennedy, P very much of my colleagues to support it.

Mr. Hatch. Mr. President, I yield 5 minutes to the distinguished Senator from Vermont. The PRESIDING OFFICER. The Senator from Vermont.

Mr. HATCH. Mr. President, I rise in strong support of the amendment offered by my colleague from Utah. I want to take this time to commend the work that he and Senators Pell, Kennedy, and Kasetaum have done to this extremely difficult and sensitive issue. They have worked out what I think is a very excellent reconciliation of the difficulties we have.

The amendment before us addresses language in the appropriations bill which places content restrictions on NEA grant awards. Instead of requiring the Endowment itself to set standards on what may or may not be obscene, this amendment places that role in the courts where such a decision truly belongs. This avoids the potentially serious constitutional problems which could arise if an administrative agency like the NEA were to make determinations of obscenity. It acknowledges that obscenity and child pornography are not forms of protected speech under the first amendment. Obscenity and child pornography are illegal and thus require strict sanctions against any NEA grantee who is convicted of violating such laws.

If such a grantee is convicted by a court of violating obscenity or child pornography laws, the amendment requires this individual, or organization to repay all Federal grant funds and be ineligible for any Endowment grants for a period of 3 years.

The amendment echoes the findings of the Independent Commission which was established a year ago in this same Interior appropriations bill. The Commission, which made its report to the House on June 25, concluded:

... the National Endowment for the Arts is an inappropriate tribunal for the legal determination of obscenity, for the purposes of either civil or criminal liability. Let me explain why this is such a fundamental distinction.

By placing responsibility on the chairman to determine what is obscene, he or she is placed in an extremely difficult position to decide an issue that he or she is not qualified to make. Although public debate and congressional action have focused on "obscenity," the term is ambiguous. In a narrow, legalistic sense, obscenity involves the exacting standards of proof prescribed most recently by the U.S. Supreme Court in Miller versus California. It is certainly appropriate for the Court to make those decisions.

The other meaning of the term, in common parlance, involves grossly offensive matter—with the term grossly offensive having a different definition depending on the situation.

Therefore, by requiring that the Chairman of the NEA be responsible for determining such an inexplicit term places a tremendous burden upon the Chair.

As the bipartisan independent commission, named by President Bush and the Democratic and Republican leaders in Congress, concluded:

... the NEA is an inappropriate tribunal for the legal determination of obscenity. The Commission believes it inadvisable for the Endowment to attempt to make determinations of what constitutes legal obscenity. The nature and structure of the Endow-
The national attention focused on the issue that has been raised through a Federal-funded program. I think he made it eloquently, and strongly, but I think it needs to be emphasized in this debate.

It almost borders on the ludicrous, Mr. President, I would like to pick up on a point the Senator from Utah made. I think he made it eloquently, and strongly, but I think it needs to be emphasized in this debate.

It almost borders on the ludicrous. Mr. President, that we are here debating this. I would have thought that maybe an amendment was going to be offered that might have been a resolution commending the National Endowment for the Arts.

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So, by the very nature of the program, we end up dealing, from time to time, with artists who are on sort of the cutting edge.

And I think it is very strange to have a tile of artists who are performing things or performing productions, or engaging in the production of art that is not yet commercially acceptable, that is exactly the kind of work that the NEA ought to be involved in, promoting that sort of activity.

Last, I hope that we in this Chamber today, would recognize that, throughout history, it often appears that though the politicians get quickly forgotten, the artists of the day are remembered. That is not always true, but it is from time to time throughout world history. So the signature, the identifying characteristics of a generation, in many ways, are left by the artists which the generation produces, not by the speeches given by Senators, Congressmen, not by Presidents or historians, necessarily, but by what the artists say and perform, do, at any given time in history.

In a sense this great country of ours has always taken pride that we have produced great artists throughout our history, and today we ought to be encouraging even more.

So I hope the Hatch amendment is adopted. I regret it had to be offered. My hope would have been that we would have gone back to what had been done earlier. But if this is the way we are going to achieve the kind of openness in this process that I think is possible, then I am going to strongly support this amendment, because I believe without it we would not end up with an NEA that would perform as well as it has in years past.

Connecticut, like Utah, like Vermont, of course with our Godspeed Opera House, the O'Neill Theater, Hartford Stage, countless other organizations in our State, have benefited through all these years.

But all the basketball playing in the world did not do as much for me as the violin and the opera, if it was not for the NEA helping me there.

I will not bore the Senate tonight, nor do I want to take a lot of time. I am, to this day, in such debt to that caring mother and devoted father for taking time, and for sacrificing to help me to play the violin, the viola, the string base, the organ, and the piano. I am not very good at any of those now, nor do I want to take a lot of time. I am not very good at any of those now, but I was at one time. I have not played the violin since I left high school.

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I liked playing basketball even more. But all the basketball playing in the world did not do as much for me as playing that violin and defending my right to play it with my friends in the school band.

Mr. President, the distinguished Senator from Connecticut hit the nail right on the head when he said that for this little bit of seed money that we give to the National Endowment for the Arts we get billions of dollars of product. Money spent on the arts benefits kids—like that poor kid from the wrong side of the tracks in Pittsburgh named Ozzie Harcensch.

I do not mean to make it so personal. There are millions of kids just like I was, whose only chance to ever play an instrument, see a symphony orchestra, ballet, opera, hear the reading of poetry, or other great works of fiction, or experience real drama, live jazz, arts festivals, or museums, depends upon seed money from the NEA. The few dollars of seed money given to the NEA do produce billions of private contributions and increased cultural offerings all over this country.

I feel the same way the distinguished Senator from North Carolina does about pornography, obscenity, filthy, or critical of our religions. However I do not believe that some restrictions will help further the arts. I think such restrictions will harm the arts. Some will say that my amendment does not do enough.

I think it is a reasonable balance to get us where I think the distinguished Senator from North Carolina would like to see us. I know he is a broad-minded person, and he sees the value in the arts.

I hope that this amendment will be agreed to, because the NEA helps people all over the country experience the arts and I want to see them continue as a viable agency. This is an important decision, and it is not some insignificant debate in the U.S. Senate. Our votes today will make a difference as to whether or not the NEA continues to do the excellent job it has done through all these years.

Mr. President, I feel very deeply about the arts. I am sorry to have unburdened my soul to the degree of telling personal experiences, but personal experiences shape our lives. To my dying day, I will be grateful to that loving mother who only went to the 8th grade, but spent the rest of her life studying literature, poetry, and music, even though she never played an instrument. Her kids benefited from her love of the arts.

I have to say, to my dying day, I will be grateful to her, and for what she taught me. NEA exponentially has done a similar thing for the people of Utah, many of whom would never experience the symphony, the ballet, and the opera, if it was not for the help of this agency.

I reserve the remainder of my time.

Mr. HELMS. Mr. President, I wonder if the Senator will yield 5, 6 minutes to me.

Mr. HELMS. Mr. McClure, I yield 6 minutes to the Senator from North Carolina.

Mr. HELMS. Mr. President, I do not want to offend any Senator. But if there has ever been more irrelevant oratory about a matter in this U.S. Senate than we just heard from several Senators—the saints have been good to me—I have never heard it.

First of all, let us click off a few of them. You always hear that only 20 out of 85,000 grants have been obscene. I tried to get the NEA to justify their assertion that there were 85,000 grants. They cannot do it. Nor can they justify the assertion that only 20
were obscene. The truth of the matter is that they do not know.

In any event, I say to my good friend from Utah—and he is my good friend—Mrs. Helms often says she wants to see Mr. Hatch. I think he is a nice young man. But the Senator from Utah talked about the violin. Well, I played the violin, too, when I was a boy, until the instructor called my mother and said: "I cannot teach him anything."

Mr. HATCH. I can see from the Senator's technique that he did not play it very well. Neither did I, by the way.

Mr. HELMS. I did play the base fiddle, but not very well, and I was once on the board of directors of an opera association. I do not know whether that gives me any credentials to talk about this thing or not.

But we are not talking about violins or symphony orchestras or choral groups. We are talking about the kind of art—and I dislike putting it this way—where a photographer is subsidized and rewarded because he took a picture of a naked man with a riding crop protruding from his rear end. That is what we are talking about. We are not talking about all of the good decent art the taxpayers' money is paying for.

A lot of Senators—I do not know whether there are a lot—but some Senators would like to do away with all the funding. I have never suggested that. The NEA has supported some very good things.

Behind the scenes in the Senate, Mr. President, and perhaps I ought not to do this, but it seems relevant to me, there is another argument which is solidly against any restriction whatsoever on the NEA's funding.

But Mr. President, we are not talking about banning anything. Let that be made clear. We are talking about the use of the taxpayers' money to fund filth. Whether there have been 20 or 10 or 200 offensive grants, nobody knows. Nobody really knows if there have been 85,000 grants. I do not know the exact number. But I do know that even one pornographic photograph by Mapplethorpe is too many for the tax-pliers' money wasted on-like the stuff that has been funded and taxpayers' money wasted on—like the woman who urinated on the stage and invited people to come up and—there is no way to put it delicately—conduct a gynecological examination.

That is what I am talking about Mr. President. That is all I am talking about. That is all I have ever talked about.

We are not talking about the 85,000 grants that the Senate is spending. We are talking about the sleazeballs who have been getting money from the NEA under the pretext of having produced something that they call "art."

I submit to you that that is a farce. It is worse than a farce. It is a fraud upon the taxpayers of the United States of America. I will get outvoted every time, I suppose, but I will keep trying, Mr. President.

I will say one more thing.

I have a friend who came to the office not long ago, and he stopped before the Archives Building on the way to the Capitol to see me.

He walked in and said, "Jesse, I just had an interesting experience." He said, "We stopped at the stop light in front of the Archives Building. I looked on the marble there, and there were the words 'What is past is prologue.' He said, "I thought the cabdriver would say 'I do not know.' But he did not. The cabdriver said, "That means you ain't seen nothing yet."

Assuming that I am still in the Senate next year—I do not know whether I will or not; that is up to the Lord and the people in North Carolina—but assuming that I am here, I say to those in the arts community, and all of the homosexuals and all the rest, who are upset about this amendment, what is past is prologue—You ain't seen nothing yet.

I thank the Senator for yielding. The PRESIDING OFFICER. Who yields time?

Mr. HATCH. I yield 3 minutes to the Senator from Rhode Island.

Mr. CHAFFEE. Mr. President, I would like to join with my colleagues on the Labor Committee in supporting this amendment regarding the National Endowment for the Arts, or NEA. I know that there is a great deal of concern in this body about the Federal funding of the arts via the NEA, and I do not take that concern lightly. But I believe that the amendment proposed by the Senator from Utah, myself, and others is a solid one, and I urge its adoption.

As we all remember, last year the NEA came under intense public and congressional scrutiny for having indirectly supported certain distasteful exhibits by two artists: Robert Mapplethorpe and Andres Serrano. As a result of the uproar, Congress struggled for months with the question of just what the relationship between art and Government should be.

Finally, after some heated floor debate, several rollcall votes, and a lengthy House/Senate conference, an uneasy compromise was forged. Yet, the compromise could not satisfy everyone, and thus it pleased no one. In the meantime, the NEA has spent a year under siege, unable to please anyone.

I was one of the two members who rose in July 1989 to speak against the first NEA amendment. Why did I do so? Not because I had planned to. Not because I am a big fan of the Mapplethorpe portfolio. Not because I think art should be offensive, or pornographic. And not because I believe so-called lascivious artists should prosper on taxpayers' money.

I spoke because in my view, the amendment came dangerously close to prescribing what should constitute "art." And for me, that comes dangerously close to censorship—a very, very slippery area. I do not endorse pornography. No one does. But I also do not want to see doused our much-admired American spirit, our ability to express ourselves freely and creatively. As President Bush has said:

I would prefer (not to) risk censorship, or (get back) (Federal) (money) (implying) (telling) every artist what he or she can paint, or how he or she might express themselves.

There is another argument expressed—that the Government has no business funding the arts at all, especially in this time of budget deficit. Reinforcing that view is the constant reference made to the sick art and immoral trash funded by the NEA. Those references give many the impression that some radical, independent agency known as the NEA has been running amok promoting offensive art since 1965.

I agree that we must be careful to spend money on only those programs that are worthwhile. But I do not think that the majority of people realize to what extent the NEA has touched their communities. It is an agency that has proven itself to be not only worthwhile, but exemplary.
The NEA was created with bipartisan support in 1965 with the goal of fostering professional excellence of the arts, and to create a climate in which the arts may flourish. To that end, the NEA has successfully provided nearly 90,000 grants since its inception. Of these, last year alone 25 have been the subject of controversy. That is a phenomenal track record—one to be very proud of. I would venture that there are very few programs with that kind of track record.

My home State of Rhode Island is small in size, but rich in cultural and artistic activity. For us, the NEA has had a far-reaching and positive impact on our children, our communities, and even our economy. Last year, all 39 cities and towns in Rhode Island participated in arts programs, and more than 2.6 million people attended nonprofit arts events sponsored in part by the NEA. Rhode Island received $796,000 in fiscal year 1989 NEA moneys, benefiting 128 organizations, 500 schools, and 60 artists. The net result? A flourishing, popular public arts program, and a boost of $72 million to the Rhode Island economy.

I might add that NEA moneys are often matched 3:1 by private sector funds, thus generating a tremendous amount of support for, and stimulating public/private partnerships in, the arts. Last year, $153 million in Federal support helped generate $1.4 billion in private sector arts funds. In fact, corporate support for the arts has skyrocketed from $22 million in 1966, to $436 million in 1986. State support has risen likewise: from $2.6 million in 1966, to over $100 million today. Such partnerships bring communities together for the enjoyment and benefit of all involved. Clearly, art activities often act as a catalyst for economic growth, while at the same time helping showcase America's cultural heritage.

We Americans enjoy the arts. In 1985, 29 million people went at least once to a musical play or opera; 25 million watched dance performed on TV; 31 million listened to jazz on the radio; 36 million visited art museums and 96 million Americans read short stories, poetry, or plays. Since 1966, the arts have exploded in growth. The number of art museums nearly doubled in the past 25 years, from 375 to 700. The number of dance companies jumped sixfold, from 37 to 250. Nonprofit theaters went from 56 to 420. So our interest in the arts is strong. Americans are taking an active part in these activities.

But you do not have to be a museum-goer to enjoy the arts. Many daily local activities are arts-oriented. Likewise, contrary to popular belief, NEA funds are not reserved exclusively for art institutions. In fact, the broad, diverse range of individuals and groups that receive NEA support would come as a very big surprise to most. Schools, churches, community groups, and those with mental or physical handicaps, libraries, boys and girls clubs, parks, theaters, and even prisons receive help for their arts and arts-related programs.

NEA has helped our arts programs flourish. That is what it was created to do. And it is working.

Many concerns that have been raised. It would debar from NEA funding for 3 years anyone convicted of creating work that is obscene or that involves child pornography. The question of whether or not a work is obscene would be made by the courts; that is where any debate on obscenity belongs. As they say, you know it when you see it. But getting a crystal-clear definition is next to impossible. So I think that leaving the obscenity question up to the courts is the wise and thoughtful solution.

This conclusion is bolstered by the Independent Commission that Congress set up last year to review the NEA's grantmaking and art standards. The Commission report states that the NEA is "an inappropriate tribunal for the legal determination of obscenity," and that the Commission recommends against legislative changes to impose specific restrictions on the content of works of art." The report closes by saying that "(the NEA record establishes that a relatively small investment of Federal funds has yielded a substantial financial return and made a significant contribution to the quality of American life."

To be honest, I would have preferred a clean NEA reauthorization bill without any restrictions; and last June I joined nine of my colleagues in introducing such a bill. But if we are to have legislative safeguards, if there remains concern about the NEA and its work, then I believe that the compromise草案 drafted by the distinguished Senator from Utah and others is a reasonable solution. At least it is much more workable than what we have seen in the past year.

So let us let the fires of originality burn. There might be some singeing, but I think that is a risk worth taking if we want to allow American creativity to shine. I do not think we want to see safe art—that of the lowest common denominator—become the only art supported by the NEA. The NEA has helped our arts programs flourish. That is what it was created to do. And it is working.

I hope we will adopt the compromise. I thank the Chair.

Mrs. KASSEBAUM, Mr. President, I strongly support the Hatch amendment and am indeed a cosponsor. This amendment incorporates the approach taken by the Labor and Human Resources Committee in a reauthorization bill approved by a 15-to-1 vote in committee. This approach is the culmination on the part of many to try to achieve a compromise that would address the question of accountability on the National Endowment for the Arts. I think that this amendment does that.
There are many people in Kansas as well as, I would suggest, in North Carolina and other parts of this country who support the development of the arts and humanities in this country and do believe that the Federal Government has a role to play. However, we obviously have encountered—and I think rightly so—questions of accountability. There is a certain arrogance that does not bode well for the fine work that has been done by the National Endowment for the Arts through the years. I think this amendment answers those concerns.

I deeply regret that we are not able to consider this issue as part of the full reauthorization bill. Because it appears that the Interior appropriations bill offers our only opportunity to debate the NEA, I believe it is important that the work of the authorizing committee be considered.

This amendment assures accountability in two ways:

First, by assuring that tax funds will not be used to support that which is obscene or is child pornography; and

Second, by making a number of changes in NEA grant procedures.

In brief, the amendment would address the question of Federal funding of obscenity or child pornography by de-barring for at least 3 years anyone for creating such a work and by recouping all Federal funds used to support such work. A determination of whether or not an art work is obscene or is child pornography would be made by the courts.

The reasoning behind this approach is that:

First, it assures taxpayers accountability by making certain that any individual or group responsible for work which is obscene or is child pornography would be punished by debarment. And it assures that the Government gets its money back.

Second, it addresses issues—obscenity and child pornography—for which clear legal standards exist. Such clear standards do not exist for other types of work which many of us might find offensive.

Third, it balances decision-making authority in the hands of those most qualified to make such determinations—the courts. The National Endowment for the Arts is not a judicial body and is poorly equipped to make legal decisions.

In short, we are seeking an approach which made a strong statement regarding the appropriate use of tax dollars, which would establish clear standards, and which would be effectively enforced. I believe this proposal meets these goals. With respect to NEA procedures, we are proposing a number of reforms to be included in the basis NEA statute. The goals behind these changes are:

To broaden input into the process by adding lay people to review panels and requiring rotating panel membership:

To make the process more open by requiring a written record of all panel deliberations and by opening to the public all National Council on the Arts meetings: and

To avoid any possible conflict of interest by barring from panel membership any individual with a grant proposal pending or any employee of an organization with a pending proposal.

Real accountability can be assured only by a sound and open process of grant review. I believe this proposal makes significant improvement in this area.

For 25 years, the NEA has helped nurture our Nation's rich cultural heritage—justifying our celebration of our celebrated institutions, groups, and individuals but also extending the reach of the arts to communities in all corners of our Nation.

Maintaining this proud tradition will be possible only if the American taxpayer can feel confident that the NEA will exercise good judgment in selecting award recipients. I believe this proposal will help bolster that confidence.

I believe this is an answer that we have been seeking in both the House and the Senate to answer the concerns that some have felt, and I think rightly so, about the role and future of the National Endowment for the Arts. I urge my colleagues to lend support to the Hatch amendment.

I yield the floor.

The PRESIDING OFFICER. The time has expired.

Who wishes to yield?

Mr. McClure. Mr. President, I yield myself such time as I might consume.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. McClure. Mr. President, first, I state how firmly I am in opposition to the amendment that is now before this body, and then I wish to ask the sponsor of the amendment one or two questions about the amendment because I want to make certain that I do not mischaracterize the amendment as I speak concerning it.

On page 6 of the amendment, if the Senator will refer to it, there is reference made to "violate child pornography laws." That is found on page 6, lines 7 and 8, and again on page 7, lines d5 through 8, "found to be obscene or to violate child pornography laws." In these references I think it refers back to paragraph No. 1. Paragraph No. 1, I take it, is that paragraph which is found on page 5, lines 6 through 10. Am I correct?

Mr. Hatch. I believe the Senator is correct.

Mr. McClure. The reason I ask that question is in the paragraph it has referred to the child pornography laws. Are these criminal violations of child pornography laws?

Mr. Hatch. That is correct.

Mr. McClure. So we are talking about criminal violations of child pornography laws, therefore criminal laws.

Mr. Hatch. I assume they are child pornography laws, capable of being criminal.

Mr. McClure. I assume if they are criminal laws, there is a criminal statute and a criminal penalty and a criminal trial before they are found guilty of violating the child pornography laws.

Mr. Hatch. That is correct.

Mr. McClure. I think that is the central thrust of that portion.

Mr. Hatch. It is not necessarily have to be a statute. However, the fact is, in most cases it is a statute.

Mr. McClure. I do not know that there is a common law violation of criminal law.

Mr. Hatch. I assume the Senator is right on that.

Mr. McClure. I thank the Senator.

What we really get down to in this debate is whether or not we establish any standards at all. It is not a question of whether or not the NEA has done good work, and I will not even quibble over the numbers of good grants that have been made. I do not care whether it is 50,000, 60,000 or 80,000 or 120,000. I think we would still be here for this debate, that the National Endowment's granting history has been good most of the time. That is not the issue. It is not the issue for this Senator.

The issue is whether or not they have any responsibility to do anything or are they responsible for the content of the arts or the productions which they fund? And there are some who say, no; that it is not our business; they are entitled to do whatever they wish. Indeed, I have heard it said from members of the arts community, "You have a duty to give us money. It is none of your business how we spend it."

I suggest we cannot so easily evade our own responsibilities with respect to the expenditure of the taxpayers' money. Nor do I submit it is possible for us to say to the National Endowment for the Arts, "You have no responsibility for the expenditures of the taxpayers' money." So a simple question, as far as I am concerned, is answered by saying: "Yes, indeed, you
do have responsibility. Yes, indeed, you do have accountability, you, the National Endowment for the Arts, you the Members of the Senate of the United States.

But there are those out there whose hard money goes into these programs have a right to expect that we are trying to make sure that the money that we have taken from them and provided for the support of the arts is expended in a responsible fashion. That is the issue.

I can understand some who say, “No, you do not have any right.” I disagree with them. I think we have a responsibility. The question is does this amendment meet this responsibility? I think not.

We have a choice of saying there will be no standards at all or to attempt to provide some standards or direction to the National Endowment for the Arts so we can determine whether or not they are meeting what we believe is their responsibility. Or we could, as is done in this amendment, say the only standard we can set is criminal violation, as though we are saying that anything that is not criminal deserves our support. How silly can we be to say that anything less than criminal violation, as though we are responsible for how the money is spent? I think that right.

For the National Endowment to say that we did not hand her the check, therefore we are not responsible for what she did, is just an absolute evasion of their responsibility that we think they ought to have.

Now, I will not accept for 1 minute the idea because they did not hand her the check, that they are not responsible. How silly can we be? To say that anything less than criminal deserves the taxpayers’ financial support. It does not.

I do not mean to be unduly personal, but I will give a personal example: I suspect that if a private organization, not funded by the Federal Government through the National Endowment for the Arts, would have Annie Sprinkle performing in Temple Square in Salt Lake City, the Senator from Utah would object.

Mr. HATCH. I think the Senator would object. In fact, the Senator objects to Annie Sprinkle anywhere.

Mr. McClure. I suspect if the Senator from Utah knew that Federal money was supporting the Annie Sprinkle performance in Temple Square, he would get some questions from his taxpayers why did he not do something about that.

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

Mr. McClure. Because the taxpayers will look at us and say, “You are responsible for how the money is being spent.”

Mr. HATCH. Will the Senator yield on that?

Mr. McClure. I am happy to yield. Mr. HATCH. I do not worry about Annie Sprinkle performing in Temple Square. That is not going to happen.

Mr. McClure. No. Now, if the Senator will yield, why is that not going to happen?

Mr. HATCH. For many reasons, which I would just as soon not go into.

One thing I do agree with the distinguished Senator from North Carolina on, is that some of these illustrations he brought up are very serious. They have to be paid attention to. I think Senator Helms has done the country a service in raising the issue.

Mr. McClure. Let me recover my time.

Mr. HATCH. If I could just say one other thing.

Mr. McClure. Surely.

Mr. HATCH. That is, the National Endowment has stated that it did not fund Annie Sprinkle.

Mr. McClure. Come on. I recover my time at this point. I will respond to that.

Mr. HATCH. Might I just answer on my own time?

Mr. McClure. Just a moment, I will yield back in a minute.

Mr. HATCH. I am not saying they did not.

Mr. McClure. I want to respond to that right now.

For the National Endowment to say that we did not hand her the check, therefore we are not responsible for what she did, is just an absolute evasion of our responsibility we think they ought to have.

Now, I will not accept for 1 minute the idea because they did not hand her the check, the idea they are not responsible for what happened; if the National Endowment were to say, we accept responsibility for this and we are going to tighten up on the processes and reviews and see this does not happen again, many of us would feel differently about it.

Now I do not agree with my friend from New Hampshire, who came in a moment ago and in a brief speech indicated he would do away with the whole thing, because I agree with the Senator from Utah, from personal experiences, which I could recite but will not take the time to do so, how much of the arts mean to this Senator. I share many of the experiences that many people across this country share with respect to the enrichment of our lives because of the arts and I support what the National Endowment is supposed to be doing and ought to be doing and most of the time does.

I reject the idea, however, that the National Endowment, because they do good things, should not have responsibility for the bad things which they permit to happen with taxpayers’ money.

Mr. HATCH. Will the Senator yield on that point?

Mr. McClure. Yes.

Mr. HATCH. I do not mean to take the Senator’s time, but I think he has quite a bit of time.

Is the Senator familiar with the GAO report requested by the distinguished Senator from North Carolina? In that GAO report, he asks them to investigate Annie Sprinkle.

As a preface to my comments, I want to say that I do not condone Annie Sprinkle.

Mr. McClure. May I yield on your time?

Mr. HATCH. Sure.

I do not condone Annie Sprinkle. I do not like that type of performance. But I think to use that example, when the GAO report showed that some of the money was given to the Kitchen and was spent a long time before Annie Sprinkle’s show was produced, may not be quite totally fair. Whether that is true or I do not know. All I can say is, I do not like performances like Annie Sprinkle’s any more than the distinguished Senator from Idaho does, or the distinguished Senator from North Carolina does.

The procedures we have in this bill will result in the NEA making grants which clearly identify where the funds go. I think that is going to eliminate questions about whether or not a money was supported by NEA. It is one of the things we tried to do. The procedural changes are as important as, if not more important, than the sanctions we have proposed.

I also think its fair to ask questions of many of the 20 exceptions that have been raised. Suppose there are 100 that are suspect, very questionable and open to criticism. I am not sure any of us would disagree with each other about our right and responsibility to criticize them. The point is, how do we want this agency with an excellent record to be run? Where do we want it to go? Do we want to destroy it or do we want freedom of expression in this country?

I think freedom of expression is very important. I want to support freedom of expression.

Be that as it may, I reserve the remainder of my time.

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

Mr. McClure. Mr. President, I would be happy to have the Senator from Utah yield to the Senator from Kansas.

Mrs. Kassebaum. Will the Senator from Utah yield just a minute so I may respond to the Senator from Idaho?

Mr. HATCH. Yes.

Mrs. Kassebaum. The Senator from Idaho made some very good points, and I agree totally with his comment that there is a responsibility that comes with funding. That is a responsibility that we have, that is a responsibility that the National Endowment for the Arts has.

You ask what, then, has improved as far as accountability—because that is what we are aiming at when you mention a show such as the Annie Sprinkle show. In other words, what would there be in the particular amendment that we are discussing that would not have allowed this type of perform-
I think the statement made by the distinguished Senator from Rhode Island about "you shall not apply any public funds" has absolutely nothing to do with the appropriate process by which you judge whether or not taxpayers' funds should be spent.

Now, a moment ago, I said, would you keep working on You Pie Square in Salt Lake City? My friend from Utah says, well, she will not ever appear there. Well, whether she does or does not appear there, or whether that particular program would or would not be shown in Salt Lake City, is illustrative of the problem that we have when we start trying to say, let us fund the arts but have no standards at all.

If the National Endowment had in the past said these few— and they are few—grants that have been made, that have caused the problem, are aberrations and we are going to stamp them out, then some of us would have trusted the Endowment to indeed attempt to stamp them out. I have a great deal of respect for John Frohnmayer. I have talked to him upon a number of occasions. I know of his personal regard for her, so my comments are not personal in any way. I heard what the Senator said. I think she is dead wrong.

Mr. McCLURE. Mr. President, I say he was going to take steps to stop this. The minute he said I am going to take steps to stop this the arts community descended on him like a ton of bricks and said, what do you mean you are going to stop this? You have no right to try to stop this.

Will he? I do not know. But I have the very strong and grave suspicion that if we lose the attention that is focused on this subject by these kinds of debates, we will see more rather than less of the inappropriate expenditure of taxpayers' money.

I am not willing to see that happen. I, therefore, oppose this amendment even though I think it moves in the right direction because I think it is a sincere attempt to improve the process but will have the result of diverting attention away from something upon which attention should be focused.

Let us not adopt this amendment and say now we have solved this problem. Let us keep a focus on the problem so we do solve the problem.

I will guarantee that every taxpayer in this country will, I hope, continue to focus on our activities, as to whether or not we have met our responsibility to make certain we keep our attention on the National Endowment to make certain they have met their responsibility.

I am happy to yield the Senator 5 minutes.

The PRESIDING OFFICER. The Senator from Indiana is recognized for 5 minutes.

Mr. COATS. Mr. President, I approach this issue as I did in committee as a supporter of the National Endowment. The National Endowment has provided significant amount of financial help to some very important institutions in Indiana: The Indiana Museum of Art, the Fort Wayne Philharmonic—I can go on and on naming important things that the National Endowment has provided. So I approach this issue as someone who wants to see the agency survive and flourish if possible in these tough budget times, but continue its work.

But I also approach this as someone who has personally been deeply offended by some of the works that have been funded with my tax dollars and my constituents' tax dollars; and some who I represent. 6.5 nights a week to people in the State of Indiana, many of whom have been deeply offended that their funds, their hard earned dollars, have gone to support works that are called art but that I think everyone of us knows is not only objectionable but for the most part obscene.

To me this does not seem to be a difficult issue, because we do not have to stand on this floor and debate what the opinion of the arts community is; we do not have to delve into the Supreme Court cases and make a determination as to what is allowed under the first amendment and what is not.

Our responsibility as elected Representatives is to make wise use of the taxpayers' funds that are entrusted to us. For a moment do not see how we can, in the midst of a budget deficit crisis that is going to, unless we pass another continuing resolution, shut down this Government tonight, that has caused months and months of anguished negotiation over a Federal deficit, I do not understand how we can be standing here saying we have no basis to put any restriction whatsoever on how taxpayers' dollars will be spent by an agency that frankly many people would like to just close down in the name of fiscal austerity and just say well, we simply cannot afford it. I did not want to do that.

But I submit unless we can demonstrate to the American people that we can make wise use of their tax dollars, they are going to be demanding that we shut down some of these programs.

I do not think the amendment of the Senator from North Carolina is in any way unreasonable. We are trying to put some preconditions on dispensing of tax dollars for materials that clearly have been and are very offensive to the American public. I know the efforts of the Senator from Utah and others over several months to fashion a process solution to the problem have been laborious and toughly negotiated.

But these are not after-the-fact restrictions. They do nothing to give guidelines to the NEA as to how they shall dispense the funds before the fact.

Simply saying if a court somewhere finds a work obscene, then the artist has to return the money and not be eligible for any future funding for 5 years, is not the kind of restriction and not the kind of stewardship that I would think is needed.
think the American taxpayer expects of us.

In committee I offered an amendment. I am new to this body so I obviously did not understand how this was going to play out. But I thought, how can anybody reject this? Instead of trying to define what is obscene, what art was, and so on, I said let us take the Supreme Court’s definition of obscenity. Let us take the Federal statute that defines child exploitation, the Federal standards on child pornography. Let us just see if we can incorporate those into the law and let that be the basis so we do not have to be censors here on the Senate floor, but so that the NEA has some guidelines which have been sanctioned by the court and by Congress, previously sanctioned. That amendment went nowhere.

Here we are attempting to deal, now, with the committee-designed process which I agree with the Senator from Idaho may be a step in the right direction.

The PRESIDING OFFICER. The Senator is advised that his 5 minutes has expired.

Mr. McCLURE. I yield my colleague 1 additional minute.

Mr. COATS. Mr. President, I think it is important to get to the bottom line. The bottom line is what responsibility do we have to the taxpayers that we represent in the expenditure of Government. Why can we err, let us err on the side of freedom. I think that is not bad advice for this body. I think the proposal from my colleague from Utah, which I am pleased to cosponsor, is sensible middle ground. I think we have an Administration of the National Endowment for the Arts in Mr. Frohmayer who is moving us in the right direction. I think this is the amendment that should be accepted, and then we can go ahead and approve the funding for the National Endowment for the Arts.

Mr. HATCH. I yield 2 minutes to the distinguished Senator from Minnesota.

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

Mr. DURENBERGER. Mr. President, the National Endowment for the Arts (NEA) and the National Endowment for the Humanities (NEH) were created 25 years ago this month. At that time President Lyndon Johnson declared that—

Government can seek to create conditions under which the arts can flourish: through recognition of achievements, through helping those who seek to enlarge creative understanding, through increasing the access to, and knowledge of, our artists and through recognizing the arts as part of the pursuit of American greatness.

Because of the recent controversy associated with the National Endowment for the Arts, I have spent a lot of time reviewing the original mission of the NEA.

Federal involvement in the arts is not new. In the past, Government involvement in the arts meant preserving it as a symbol of status and wealth and limiting its benefits to the elite. Today, Government acts as an equalizer of access and an identifier of quality and achievement. While access and recognition has primarily been the role of the NEA, it’s important to remember that the Federal Government has also supported the arts through other means including tax-exempt status and other preferential treatment under the Tax Code.

I believe the top priority of Federal funding should be to facilitate access to the arts for all Americans—the poor as well as the rich, people who live in New York City as well as people who live in Barrett, MN, population 358.

Has the NEA been successful on this count? It certainly has. When the NEA was established 25 years ago, there were only 37 professional dance companies, today there are over 250; in 1965, there were only 60 professional orchestras, today there are over 212; there were only 56 professional non-profit theaters, today there is a network of over 400.

Today, more people attend cultural events than attend sporting events.

The NEA promotes access by supporting the Prairie Wind Players in Barrett, the Chamber Music Society in St. Cloud, the Superior Symphony, St. Francis Music Center in Little Falls, the Fargo-Moorhead Symphony, the Hengel Museum in New Ulm, and many other small town and rural community arts organizations which are right next door to you and me. The NEA is a network of over 400.

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pleased to say that NEA funds have helped bring her story to life for the many individuals who have not been as fortunate as I to have been personally touched by her.

The second priority of national funding should be to bring recognition to the very best of America's artists. It is quite possible to acknowledge the success of the applicant and to challenge the artist and others to produce. This recognition not only helps a struggling artist get off the ground but also helps facilitate new works and new artists. The private sector will always support the established artist, but it is the aspiring artist, that needs the seed of support and recognition only a national organization like the NEA can bring.

What does this recognition mean for different communities and different States? I know what it has meant for my own State of Minnesota. We have always held a deep interest in the arts, but until the last couple of decades have never been recognized as a leader in the arts. But the efforts Minnesota has made to raise the level of education and community involvement has earned it the recognition of the NEA. And this recognition from the NEA has helped transform Minnesota into a nationally recognized cultural center. Today, it receives the third largest amount of NEA funding, behind only New York and California.

National recognition not only has the benefit of stimulating the artist and the arts community, but also acts as a catalyst for private sector support. In 1988, Endowment grants totaling $119 million generated over $41.6 billion in private funds. National recognition serves as an endorsement of quality and achievement, which enhances the fundraising capabilities of grantees and other arts organizations.

Much of the controversy which has emerged stems from how we go about defining quality art, and deciding which artists will receive national recognition. It is this question that I think is difficult for us as legislators to answer.

I was reminded recently of the incident of the Rivera mural within the Rockefeller Center during the days of the Red scare. Nelson Rockefeller commissioned Diego Rivera to paint a mural in the entrance hall of the main building. The work was done in fresco, in which the plasterer lays up the surface just ahead of the painter who uses water soluble pigments that penetrate into the plaster—so when the plaster dries, the painting is permanent part of the wall. When Rivera finished and went to sign his name, he painted a large head of Lenin and the hammer and sickle, then signed his name.

There was a great uproar and the mural was ultimately destroyed. E.B. White wrote a poem about it which I ask unanimous consent to print in the Record following my remarks.

Mr. DURENBERGER. Mr. President, while this work does not cross the line of obscenity which is the subject of our debate today, I doubt that it illustrates clearly the difficulty one has—especially a legislative body—defining offensive art. Had Rivera painted his mural today, I doubt that it would get a second look.

Those who support restrictions would like us here in Congress to define and legislate against works of art they find offensive or obscene. Obscenity, as defined by Webster's dictionary is "offensive to modesty, or decency." I suppose a lot of art could be classified by some to be offensive to modesty, or decency, as the Rivera mural was years ago, but still not be obscene in the pornographic sense of the word. How is an artist to know, if he or her work will meet this standard?

Is it possible or advisable to add restrictive language prohibiting the NEA from funding obscene art? The Independent Commission instructed by Congress to look into the controversy surrounding the NEA said no. They reported that if the Federal Government chose to fund the arts that legally "what it may not do * * * is to choose those to be funded—and, often more important, those not to be funded—In a manner which punishes what Congress views as dangerous content." The Commission also went on to say that it is "inadvisable for the Endowment to attempt to make determinations of what constitutes legal obscenity." That "the nature and structure of the Endowment are not such that it can make the necessary due process findings of facts and conclusions of law involved in these determinations.

I would like to emphasize that my support for this legislation does not mean that I believe we as a nation should have to put up with art that is obscene or pornographic, in order to allow artistic freedom.

That a concern reflected in thousands of phone calls and letters I have received over the past year from constituents. I share with those constituents an abhorrence of pornography and obscenity and the degradation of respect for persons—especially women in society—and the threat it represents to the moral values we all strive to pass on to our children.

Plain and simple, I could not support this legislation if I felt it somehow sanctioned, supported or encouraged child pornography or obscenity. Obscenity and pornography are illegal and should not be tolerated. I believe this legislation is consistent with that intolerance and illegality—

even strengthening leverage now available through the courts to discourage obscenity and pornography and to punish and remove it when it occurs.

The legislation before us says that we should rely on the long history we have in our courts of defining, discouraging and removing both obscenity and pornography. The legislation says we should rely on the body of law to guide us to mean sure artists are not rewarded with Federal funding for art that has been found in violation of law. And imposes tough sanctions against an artist who is found guilty of violating obscenity or child pornography laws. The bill also makes needed and necessary changes to the grant-making process to increase accountability and to open the process for greater public involvement and understanding.

Mr. President, I want to compliment the work of Senators Pell, Hatch, and Kassebaum for their hard work on this bill and for finding a solution that addresses the problem in a manner that will preserve all the many good things the Endowment has given us over the years. The bill before us is a good one, and I urge my colleagues support.

EXHIBIT 1

I PAINT WHAT I SEE

(A Ballad of Artistic Integrity, on the Occasion of the Removal of Some Rather Expensive Murals from the RCA Building in New York (1969))

"What do you paint, when you paint on a wall?"

"Do you paint just anything there at all?"

"Will there be any doves, or a tree in fall?"

"Or a hunting scene, like an English hall?"

"I paint what I see," Said Rivera.

"What are the colors you use when you paint?"

"Do you use any red in the head of a saint?"

"If you do, is it terribly red, or faint?"

"Do you use any blue? Is it Prussian?"

"I paint what I paint," said Rivera.

"Whose is that head that I see on my wall?"

"And is it Franklin D.? Is it Mordaunt Hall?"

"Is it anyone's head whom we know, at all?"

"A Renselaer, or a Saitonstail?"

"Is it Franklin D.? Is it Mordaunt Hall?"

"Or is it the head of a Russian?"

"I paint what I think," said Rivera.


"And the thing that is dearest in life to me in a bourgeois hall is Integrity;"

"However . . ."

"I'll take out a couple of people drinkin'"

"And put in a picture of Abraham Lincoln;"

"Even give you the head of Lenin, and Tuesday's reaper"

"And still not make my art much cheaper."

"But the head of Lenin has got to stay"

"Or my friends will give me the bird today.

"The bird, the bird, forever."

"It's not good taste in a man like me."

"To question an artist's integrity;"

"To mention a practical thing like a fee,"

"But I know what I like to a large degree,"

"Though art I hate to hamper;"
signing a legislative answer or any
rise to say if this is the place that is
"It's
sion has been to facilitate access to the
er, and everybody else in this
other answer fo r that responsibility.
er, we have not done a good job of
dowment for the Arts to the
going to be responsible for the
in the underlying bill.
in the Labor and Human Resources
the Hatch amendment to substitute
"For
"You
"And
"We must resist the calls to censor-
ship—to return to our Nation's regret-
table periods of Comstock, McCarthy-
and anti-intellectualism.
A century ago, the painter Claude
Monet would probably have been
Boston. This year, his im-
pressionist paintings were the toast of
the city—with rave reviews and un-
recorded waiting lines to view the
exhibition of his work at the Museum
of Fine Arts. This exhibition, too, was
funded in part by the National Endow-
ment for the Arts.
The arts are a measure of our socie-
ty. They chronicle our history, record
our successes, warn of our weaknesses,
expand our understanding, and chal-
lenge us to seek what is best in our-
selves and in our national character. A
nation which censors intellectual and
creative activity does so at great risk to
itself. I am pleased that the Committee on
Labor and Human Resources was able
to recommend bipartisan legislation that
was approved 15-1 by the mem-
bers of the committee. The bill is a
well-constructed and carefully crafted
response to the concerns raised in con-
junction with the Endowment's con-
troversial grants.
 Although the committee worked sep-
arate from the bipartisan Independ-
ent commission appointed by Presi-
dent Bush this past year, we came to
similar conclusions about ways which
the effective and appropriate to
improve the Endowment's grant-
making procedures.
On the issue of obscenity, we were
able to develop a solution to assure
that no Federal funds go to work that
is obscene, or which violates
State child pornography laws. Neither
the NEA, the arts community, or the
members of the Labor Committee sup-
port Federal funding of obscenity. Obscenity is without artistic merit and is not protected by the Constitution. The provisions on obscenity recommended by the Labor and Human Resources Committee represent a bipartisan compromise which, I hope, will be adopted by the conference.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. I yield 2 minutes to the distinguished Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I rise in support of the amendment of the Senator from Utah and in support of the National Endowment for the Arts.

With a relatively small investment of Federal dollars, this much maligned agency has made an enormous contribution to the cultural life of our Nation, bringing theater, ballet, symphonies, public television shows, and great works of art to millions of Americans in their own communities.

It would be a tragic mistake to continue to allow the furor over a few controversial art awards to overshadow the excellent job that the Endowment has been doing. It's time to put this controversy into perspective once and for all.

For the past 25 years, the National Endowment for the Arts has compiled an outstanding record of achievement, encouraging and supporting artists and promoting excellence in dance, theater, music, the visual arts, and other fields. It has helped to make the arts accessible to an ever wider audience, and has leveraged millions of dollars of support for the arts from the private sector. Each Federal dollar invested through the NEA generates $10 in private donations.

To a great extent, the Endowment has been responsible for the explosion of dance companies, theater groups, orchestras, and opera performances which has occurred over the last 25 years. In 1965, when the NEA was authorized, there were only 37 professional dance companies in the United States; today there are at least 250. In 1965 there were 60 professional orchestras; today there are over 200 providing employment to their communities. In the early 1960's there were only 27 opera companies in the United States; today our Nation boasts 113. In 1965, there were 56 professional nonprofit theaters in the United States. Today, there are over 400, and the vast majority of new American plays and playwrights have come from this nonprofit sector. In fact, the last 11 Pulitzer Prize winning plays were developed at NEA-funded nonprofit theaters.

In my own State of Ohio, the Endowment has provided support for a wide range of programs and institutions across the State, including art museums, ballet companies, symphony orchestras, dance groups, folk arts festivals, opera companies, and theater groups.

Let me cite just a few examples of projects which the Endowment has supported recently in Ohio.

The Dayton Contemporary Dance Company, a black modern dance repertoire company, received a grant from NEA which helped support its 21st season, highlighting a new ballet by Ulysses Dove, a rising choreographer who has worked with Alvin Alley and the Paris Ballet.

The Ohio Arts Council used NEA funds to support presentations of master folk artists Lois K. Ide, a quilter from Bucyrus, Donald McConnell, a woodworker from Mount Vernon, and June Radcliff, a country musician from Wellston, and their apprentices.

The Endowment provided a grant to the Mad River Theater Works, which creates new plays based on the culture of the Ohio rural midwest through interviews and oral histories from people of the area.

An NEA grant enabled the Fairmount Theater of the Deaf to tour outside of Ohio, offering performances in schools and elsewhere, often providing its audiences with their first exposure to deaf actors.

The Arts Commission of Greater Toledo received a grant to bring together major arts institutions, small arts groups, arts professionals, and individual artists to collaborate with educators in planning a curriculum for a new regional public school for the creative and performing arts to open in the fall of 1991.

A grant to the Columbus Symphony Orchestra allowed it to expand its educational programs, reaching close to 20,000 high school and elementary students, and to launch a children's chorus.

These and the many other programs supported by the NEA have immeasurably enriched the lives of the citizens of my State.

Endowment support has also contributed to economic development, revitalizing inner cities, stimulating revenue and creating jobs. Cleveland's well-known Playhouse Square, for example, which has brought important cultural and economic advantages to my own home city, was begun with a challenge grant from the National Endowment for the Arts.

The Cleveland Ballet, which has enjoyed Endowment support, employs nearly 300 men and women, and estimates its contribution to the local economy at more than $12 million annually.

These are just a few examples of the many ways in which the Endowment has helped to generate support and enthusiasm for American arts.

It is important to note that the Endowment's peer review system of awarding grants has generally worked well, while protecting artistic freedom from Government control. It is the rare exception when public funds are used to support art which elicits widespread public opposition. Throughout the history of the Endowment, it has awarded more than 85,000 grants, only some 20 of which have stirred controversy. That is a pretty good record. I wonder how many other Federal agencies or departments can match it. Certainly not HUD or the Pentagon.

No doubt, like any system, there are ways it can be improved and fine tuned. The Chairman of the Endowment has already taken a series of steps in this regard. And the amendment offered by the Senator from Utah includes a number of procedural reforms approved by the Labor and Human Resources Committee to increase accountability.

In addition, our amendment addresses responsibly the concerns which have been raised regarding funding of obscenity. The amendment will substitute the compromise language on obscenity, which was approved by the Labor and Human Resources Committee in its reauthorization bill. This language, offered in committee by Senator HATCH, ensures that no Federal funds will be used to support obscenity or child pornography, by debarring those who have been convicted of creating or producing such work and by recouping all Federal funds used to support such work.

Frankly, this approach was not my first choice. I cosponsored and strongly supported the original legislation proposed by President Bush to reauthorize the Endowment without any changes in this area.

However, I believe this is a reasonable and workable compromise, which addresses concerns about obscenity, but puts the issue where it belongs—in the courts. It also avoids the many problems and the chilling effect on artistic expression which have resulted from the current language.

Mr. President, this compromise language was the result of months of bipartisan work by the committee and subcommittee leadership on both sides of the aisle, and I commend them for their efforts to resolve this highly emotional issue. The compromise was approved in committee by a vote of 15 to 1, and is similar to the approach taken in legislation which was overwhelmingly approved in the House just days ago.

I hope my colleagues will accept this reasonable and responsible approach and oppose any restrictive amendments so that we can finally put this issue to rest.

The compromise language is also in keeping with the recommendations made by the bipartisan independent
commission established last year to look into this issue. The commission concluded that the appropriate forum for the determination of obscenity is the court, and recommended against legislation to impose specific restrictions on the content of works of art supported by the Endowment. “Content restrictions,” the commission said, “are inherently ambiguous, and would almost certainly involve the endowment and the Department of Justice in costly and unproductive lawsuits.”

The commission also reminded us of a fundamental American principle that has been too often forgotten during the hysteria over this issue: “Maintaining the principle of an open society,” the commission said, “requires all of us, at times, to put up with much we do not like, but the bargain has proved in the long run a good one.”

I believe the commission is exactly right. True, a small number of grants have been made which some have found offensive or inappropriate. And controversies may arise again in the future. Yet, in the long run, I strongly review system, with its commitment to controversies may arise again in the than any alternative. This Senator, for example, polls conducted since this opposed placing funded projects. Clearly, the American freedom of expression and the value of content restrictions on one of its most significant resources. It could not have been said better. We would do well to heed the words of Vaclav Havel.

I urge my colleagues to support the amendment.

The PRESIDING OFFICER. Who yields time?

Mr. MOYNIHAN. Mr. President, I believe the distinguished manager yielded 2 minutes to me.

The PRESIDING OFFICER. The Senator from New York is recognized for 2 minutes.

Mr. MOYNIHAN. Mr. President, I will use no more than 2 minutes to rise as a cosponsor to thank those who crafted this very thoughtful and balanced position and to note that it does, indeed, follow the recommendations of the Independent Commission which worked so ably under the direction of Judge John Sirica, of the District Court for the District of Columbia.

From the time these concerns began, for what it has to do with it, it involved a musicians’ strike at the Metropolitan Opera in New York which Arthur Goldberg, as President Kennedy’s Secretary of Labor, was asked to arbitrate.

Finding that there was no money in the company to give the musicians, he decided instead to offer them hope and said the Federal Government really must do something to help with the costs of performance in the arts and music, and in 1965 this was done in these two extraordinary undertakings. They have been successful beyond expectation—or, no not beyond expectation. They have succeeded as was hoped they would do. And this sudden flurry of difficulty we have had here on this floor this last year is passing. We saw it from the last vote.

We received good recommendations from the Independent Commission. This amendment follows those recommendations. Peace returns to the legislative process and the artists are once again on their own to be as perplexing and important as they have ever been in our lives.

I thank the Chair.

Mr. MCCLURE. Mr. President, I yield the Senator from North Carolina 5 minutes.

The PRESIDING OFFICER. The Senator from North Carolina is recognized for 5 minutes.

Mr. HELMS. Mr. President, I thank my friend from Idaho.

I am not much of a forecaster, but I will make one prediction without any fear of being contradicted: We will be in the same fix 1 year from now with respect to the National Endowment for the Arts that we are in right now. This amendment, as everyone knows, is a fig leaf. It is political cover for those who will not want to face up to the voters on the issue of whether the National Endowment for the Arts shall be required to be responsible.

We have heard all the arguments—we heard them last year—about the difference between the proposed legislation and a fig leaf and did not restrict the NEA at all. We are hearing the same false arguments today in connection with the amendment from my friend from Utah, and he is my friend.

It is going to take a little more than me. It is going to take a little more than the situation; it is a step in the right direction, and all that good stuff. But I predict that such predictions are without merit.

Mr. President, the pending amendment basically provides that the NEA can and must recover its subsidies from any artist or organization that uses NEA funding to produce materials that are subsequently found to be obscene by a court.

Do you want to know the flaws in that proposal? First off, the amount of money the Government would recover in most cases would be miniscule compared to the cost of bringing an offensive trial to trial. So the right prediction that the Government will not initiate one lawsuit. I may be wrong. There may be one somewhere. But I expect there will be none.

Now, the second problem with the pendalteration is that the amendment is demonstrated by the outcome of the recent obscenity trial in Cincinnati. Just bear in mind that in that case one of the jurors acknowledged that the entire jury, everybody, felt that the homosexual Mapplethorpe photographs were, as the juror put it, “gross,” and that the photographs appealed to a prurient interest in sex and thus the first two prongs of the definition of obscenity were violated.

Now, Mr. President, this is a juror telling how all of his fellow jurors felt. But, he said, since some experts had testified in the trial that the materials had “artistic merit,” the jurors felt obliged to find that the materials did not meet the legal definition of obscene because the law requires that materials lack artistic merit to be obscene.

Now, if that is not newspeak and doublespeak, I do not know what is. In fact, it was even argued at trial that the photographs had artistic merit—now get this—because the photos had been funded by the National Endowment for the Arts. Since the NEA is prohibited by law from funding anything that their experts do not consider artistic, and because those experts recommended funding for the Mapplethorpe show, the photos had to have artistic merit.
it was argued. And, therefore, by definition they could not be legally obscene; even those photographs I have described two or three times on the floor this afternoon.

So let's get this amendment of my friend from Utah creates a classic catch-22 situation. On the one hand, the amendment would require the NEA to recover its funding if a work is found to be obscene by a court. On the other hand, the works cannot be considered obscene if the NEA funds them. That, Mr. President, does not even make good nonsense.

So with all due respect to my friend from Utah, the pending amendment is nothing more than another attempt by supporters of the National Endowment for the Arts, and specifically Mapplethorpe, Serrano, and all the rest, to perpetuate a snow job on the American people by hiding behind the technicalities of the Supreme Court's test for banning obscenity.

But, read my lips. We are not talking about requiring the American taxpayers to pay, to subsidize and reward self-proclaimed artists, who produce sleaze, filth, and perversion.

Under the Hatch language Mr. President, the NEA will be able to continue funding patently offensive depictions of sexual or excretory activities and thus its support for attacks on the moral fiber of America. And that is the bottom line.

Nobody, nobody, not even Chairman Frohnmayer—a very pleasant man I met with two or three times—nobody, including him, has been able to give me even one example of what the modern arts community would be willing to concede is obscene.

In fact, it is one of the primary premises of the art world, Mr. President, that there is no such thing as obscenity. The theory behind that belief that any "art" can be obscene is "a kind of cramp in the consciousness of the unenlightened [read that middleclass American] minds."

Mr. President, Senator Robert C. Byrd, and I met with Mr. Frohnmayer, I guess, an hour and a half, and I was never more impressed with anybody than I was with the way Senator Bryan spelled out his feelings about the public funding of the filth that is being passed off as "art." He made it very clear in one-syllable words.

"As a practical matter—and this is a forecast that I am making and I do not make it lightly, but I do make it unhesitatingly—the Hatch amendment, which will be approved. It will be approved because it is a cover job for Senators who want to say "I did something about 'taxpayer-funded pornography'" even though they did not and have not.

Mr. President, the Hatch amendment will leave things exactly as they have been since the NEA was created. This is true of the coverup job perpetrated on the taxpayers a year ago. It is true of this coverup this year.

In 1969, for example, the NEA gave an award of $1,000 for her poem, "Light." Mrs. Byrd's supporters in response to the outrage told us to trust the NEA's experts.

In 1971, a group called the Living Stage had public school children ob-scenities as part of a performance. The NEA's supporters response: trust the experts.

In 1973, the NEA helped Erica Jong write her book "Fear of Flying" which, among other things, recounts her having sex with a German Shepard. The NEA's response, trust us, we'll take care of the problem.

In 1977, William Frohmire gave the NEA the Golden Fleece Award for paying an artist to throw crepe paper out of an airplane. Again, we were told to trust the NEA, don't restrict it.

In 1983, Representative Mario Biaggi opened a photo album with "disparraging ethnic images" and once again, the cry went out to trust the NEA.

In 1985, Congress finally lost its patience with the NEA in response to the NEA's support for homosexual poetry with descriptions and illustrations of men having sex with one another and with animals. Congress finally put a restriction into law which stated that the NEA's art experts shall recommend for funding only applications which in the expert's view, have serious literary, scholarly, cultural, or artistic merit. (20 U.S.C. 996(a)).

Well, what did we get from the NEA's experts as serious artistic merit after 1985? They gave us Andres Serrano's blasphemous work and Robert Mapplethorpe's repulsive photos as examples of artistic merit worthy of Federal funding.

When Congress disagreed with those offensive NEA judgments of artistic merit, we passed last year's watered down restriction, which once again made the mistake of leaving in a giant loophole.

As a result, the NEA's art experts have funded a number of patently offensive materials and works. In fact, the NEA's Visual Art's director says, "art is always on the cutting edge, and anything that is on the cutting edge is going to offend someone."

So, Mr. President, the Hatch amendment will continue the mistakes of the past and will not prevent the NEA from outraging the American public once again. It is time to put a real restriction on the NEA may and may not fund in the way of sexually explicit materials.

The Hatch language does not do that, my amendment would have.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. McClURE. Mr. President, I yield to the Senator from South Carolina 3½ minutes.

Mr. THURMOND. Mr. President, I rise in opposition to this amendment.

It is my view that the primary focus of the issue of funding of controversial art work and exhibits would be shifted to the courts. I believe the amendment falls short of ensuring that no Federal taxpayer dollars go toward funding explicit and pornographic art work. Accordingly, I cannot support the amendment.

This amendment is similar to S. 2724, the National Endowment for the Arts (NEA) reauthorization bill recently reported out of the Senate. The amendment, persons or entities which receive NEA funds, and use them in creating or producing work found by a court to be obscene or in violation of child pornography laws, must repay the funds used to create the work. Additionally, the individual or organization could be debarred from receiving further NEA funds until it does repay the funds in question.

As a member of the Labor and Human Resources Committee, I did not oppose reporting S. 2734, the bill on which the present amendment is based. The amendment, which represented a positive step to strengthen NEA accountability. However, I made clear, in the committee report, my concerns with respect to guidelines for NEA grant recipients.

In short, Mr. President, I believe the proposed NEA guidelines for receipt of Federal grants—as contained in H.R. 5769, the Interior appropriations bill—represent the better approach to this matter. These guidelines are similar to Federal child pornography laws and appropriations bill last year which I was pleased to support. Very simply, the guidelines would ensure that no Federal funds are used to promote, disseminate, or produce materials which may be considered obscene, and which, when taken as a whole, do not have serious literary, artistic, political, or scientific value.

I believe the establishment of guidelines for the voluntary acceptance of public funds, by duly elected representatives of the people of our country, is neither censorship nor a violation of constitutionally guaranteed freedoms. In my opinion, it is part of our responsibility, as elected officials, to ensure that limited Federal funds are used appropriately. The Interior appropriations guidelines would do just that.

The guideline mentioned above could serve as a reasonable check on the actions of the NEA, while also allowing funding for appropriate projects to continue. Accordingly, I support the Interior appropriations
guidelines and oppose this amendment.

Mr. McCCLURE. Mr. President, I yield myself such time as I may consume.

I might say parenthetically I have discussed this with the distinguished author of the amendment. He knows of no other speakers on his side of the issue. We may wish to have a little more discussion on this position.

I know of no other speakers on our side who desire recognition. I will just advise Members that, if that continues, we ought to be prepared to vote before too much longer.

I do not want to do labor the point, but I want to reiterate that I think this amendment moves in the right direction in terms of reforming a process of adding to the process, but it fails in the central requirement of establishing responsibility in the NEA.

The NEA resolutely says: Do not bother us; we will take care of it. If they had been taking care of it, that is where the matter would rest. I think that is the point of being a better job. I think they will, so long as they are under scrutiny, do a better job.

I give Mr. Froehmeyer very much credit for having attempted to meet the obligation I believe that they have. What concerns me, however, is not the attitude of the NEA as much as it is of the arts community, with whom they must live and interact daily, we continually say that it is none of the rest of society's business if they spend our money.

I agree that they have the right, within the limits of the law, to do whatever they wish as individual artists. They have the right to draw, to produce, to exhibit, to perform, within the limits of the law. But they do not have the right to expect us to subsidize whatever it is they wish to do without regard to the desires of the American taxpayer to fund it.

I do not suppose any member of the arts community will give the Senator from Idaho any credit for having fought off some of the efforts that have been made to slash the funding for the National Endowment for the Arts, because there are such efforts. There are people who wish to see that result, for whatever reason. They use these examples as justification for substantially reducing or eliminating public support for the arts.

Mr. President, we have a congressional race in my State of Idaho in which this has become an issue. The incumbent Congressman has taken the position that the majority in the House of Representatives have taken, that we should put no prior restraints on the National Endowment; what the artists do is their thing and the taxpayers might take a retrospective look at it, but we have no right to take a prospective look at it, whether or not we fund it.

His opponent in that race is very critical of that posture. I leave to the candidates in that congressional race to defend their respective positions.

It was never said better than in an article for the Boston Globe newspaper company by Ellen Goodman, which was reprinted in the Washington Post on Tuesday, October 9. Mr. President, I will not read the entire article, but I think there are two or three things that will make the point superbly well, and I will emphasize that point in turn.

I quote from the article:

There were times when the Mapplethorpe trial in Cincinnati produced testimony worthy of the title attached to the museum exhibit: "The Perfect Moment."

Perfect Moment No. 1: Prosecutor Frank Prouty holds up two photographs, one of a man with a bullwhip in his rectum. He asks the art director who chose these images for the show: "Would you call these sexual acts?"

She answers: "I would call them figure studies."

Perfect Moment No. 2: Prouty questions museum director Dennis Barrie: "This photograph of a man with his finger inserted in his penis, what is the artistic content of that?"

He responds: "It's a striking photograph in terms of light and composition."

She goes on in the same article to say:

The seven photographs at issue in this trial contain some grotesque subjects. In one of them a man urinates into another man's mouth. Show me somebody who can look at that photograph and think about the composition, the symmetry, the classical arc of the liquid, and I'll show you someone with an advanced degree in fine arts.

Further in the same article she says:

But even in the moment of victory, there is still a warning here. This trial, and the funding woes of the NEA, are not just the fault of Jesse Helms on the rampage. They are the fault as well of an art community whose members prefer to live in a rarefied climate, talking to each other, subject only to "peer review" and scornful of those who translate the word "art" into "smut."

Mr. President, I ask unanimous consent that the entire article be printed in the Record at this point.

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

[From the Washington Post, Oct. 9, 1990]

A WARNING FROM THE MAPPLETHORPE TRIAL

[By Ellen Goodman]

BOSTON—There were times when the Mapplethorpe trial in Cincinnati produced testimony worthy of the title attached to the museum exhibit: "The Perfect Moment."

Perfect Moment No. 1: Prosecutor Frank Prouty holds up two photographs, one of a man with a bullwhip in his rectum. He asks the art director who chose these images for the show: "Would you call these sexual acts?"

She answers: "I would call them figure studies.

Perfect Moment No. 2: Prouty questions museum director Dennis Barrie: "This photograph of a man with his finger inserted in his penis, what is the artistic content of that?"

He responds: "It's a striking photograph in terms of light and composition."

Perfect Moment No. 3: This one occurs when even the most devoted defender of free expression lifts her eyes from the page to offer her own art criticism to the great curator in the sky.

There was never any doubt in my mind that the trial over Robert Mapplethorpe's photographs would bring a "cultural clash" not only to the courtroom, but to the country in general.

But at the trial, the testimony often sounded like a linguistic battle, a tale of two sides of the divide—one side speaking upper-class English, the other side speaking English. It sounded less like a case about obscenity than about class, elitism, artistic sensibilities and common sense.

I quote from the article again:

There were times when the Mapplethorpe trial in Cincinnati produced testimony worthy of the title attached to the museum exhibit: "The Perfect Moment."

Perfect Moment No. 1: Prosecutor Frank Prouty holds up two photographs, one of a man with a bullwhip in his rectum. He asks the art director who chose these images for the show: "Would you call these sexual acts?"

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Mr. President, I ask unanimous consent that the entire article be printed in the Record at this point.

There being no objection, the article was ordered to be printed in the Record, as follows:
October 24, 1990

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legitimate to pick and choose the sunny side of the work—the Calla lilies and celebrities—and show it as the whole.

Indeed, as the director also said. Mapp

But even in the moment of victory, there

Mr. McClure. Mr. President, that, to me, is the issue. Public support for the arts, which I wholeheartedly support, must be based upon an understandability of what the public is, and public acceptance of the result. When you destroy public acceptance of the result, when you erode the confidence of the process, you must inevitably reduce public support for what most of us believe is overwhelmingly in the national interest but cannot support if the taxpayers rebel.

Mr. President, this amendment will help push this away from public attention. And I believe, if there is a forum for the abuse, which will inevitably reduce public confidence, and therefore public support, for the funding of the arts, I say again to my friend, it moves in the right direction, though it does not move far enough. The myth contained in the amendment that somehow any action which is not criminal is worthy of support, simply is not supportable as a matter of public policy. And beyond public support for what most of us believe is overwhelmingly in the national interest but cannot support if the taxpayers rebel.

I reserve the reminder of my time.

Mr. Hatch. Mr. President, this amendment is a classic compromise. There are those who do not believe that it goes far enough, and there are those right here in this body who do not want anything at all. The fact of the matter is that this amendment, has some teeth in it that will get the National Endowment for the Arts to consider what it is doing in every way, shape, and form.

It is important that we focus on 85,000 grants. Of the 85,000, only 20 are criticized. Probably, if you get it down to grants that are really offensive, you probably have 10 out of 85,000. Any agency in Government with a record that good is well on its way to becoming a superagency of Government. Whenever you have freedom of expression, you are going to have some things funded that shouldn’t be funded. We can handle those problems when they arise. Let us not ruin the whole agency. I think it is important, before we finish, that I review what this amendment does. I have done it obliquely up to this point, but I will go into it little more in depth. The amendment addresses the question of Federal funding of obscenity or child pornography. It debars from NEA funding for at least 3 years—anyone convicted of creating or producing such work, and recouping all Federal funds used to support such work.

That is not in the Byrd amendment. That is not anywhere in the statute today. That is a tough sanction. Specifically, No. 1, a determination of whether or not an art work is obscene or is child pornography will be made by the courts.

No. 2, after a final court ruling that a federally funded work is obscene or is in violation of crime pornography laws, they will have to repay. Any person or group which has received or used NEA funds for the work must repay the grant to the Government. If for any reason they do not repay those funds, the grantor which gave NEA funds to a grantor in violation of the obscenity or child pornography laws will be debarred for not less than 3 years or until the grant money is repaid, whichever is longer.

Mr. McClure. Mr. President, may I address one question to the Senator from Utah, and then I will be prepared to yield back the remainder of my time as well.

The Senator has, in describing the amendment, am I not correct?

Mr. Hatch. That is correct.

Mr. McClure. And there is no other restraint expressed in the amendment, am I not correct?

Mr. Hatch. The other restraints are procedural restraints which make it very clear that offensive art should not be funded. Everybody in the NEA and everybody that serves on any of these panels knows their decision on grants will be scrutinized in every way. Again, I think the distinguished Senator from North Carolina has done the country a favor. The distinguished Senator from Idaho is doing a favor in pointing out that sanctions are limited to convictions under criminal law. However, I think NEA will be very careful about what they fund in the future.
Mr. MCCULLEN. I say that I agree that they know. They better know. The concern I have is that they will feel more secure after the passage of the amendment than they do under the present circumstances. And there is no other standard expressed in the amendment.

Mr. HATCH. Will the Senator yield on that point?

Mr. MCCULLEN. I yield to the Senator an additional 1 minute.

Mr. HATCH. The fact that the grantor is responsible for the recoupment of funds is going to be a strong incentive to ensure that the grantees who get the funds use them appropriately. I think this amendment does have teeth—I know it does. The procedures we have in here are going to make everybody aware of what has to be done. I personally believe that this is the appropriate way to go, I hope our colleagues will vote for it.

Mr. MCCULLEN. I yield back the remainder of my time.

Mr. ADAMS. Mr. President, I am alarmed that this bill once again contains restrictions on what is art. How can we support a bill that in reality censors artists by defining what may be considered obscene so broadly? That, I submit, is not our job.

Members of Congress are in no position to sit as censors over the works of our Nation's artists. I am sure that each of our colleagues has a different eye for what is pornography.

Mr. KOHL. Mr. President, I rise today in support of the amendment offered by our colleague from Utah, Senator Hatc...
Arts, which is a recipient of NEA grants, did not fund the theater's full yearlong performance series because it did not believe that the Annie Sprinkle presentation was worthy of the council's support. More recently, independent Commission and NEA officials have mused at the cost of dismantling the NEA have made allegations that the NEA funded a pornographic puppet show at the Arts Festival of Atlanta. In fact, not only did the NEA not fund that puppet show, but the Arts Festival of Atlanta has not received Endowment funds in over 4 years.

And on and on it goes.

During fiscal year 1989, it was possible to closely analyze the NEA grants and conclude that less than one-half of 1 percent of them might be found offensive to some Americans, and those grants were mostly made as a result of mistakes. On the basis of $74,780 of questionable expenditures out of a $170 million budget, Congress embarked on this overly trod and ill-fated path of attempting to define obscenity.

Senator HELMS from North Carolina, my distinguished colleague from North Carolina, reminds me that the Constitution is the result of months of consultations and compromises to develop new standards and regulations it establishes regarding the awarding of grants. It opens the peer review system to ordinary people, not just those in the arts community, and in doing so, I believe the NEA and the American public will be better served. Moreover, unlike the proposal offered by the Senator from North Carolina, this amendment establishes accountability. It allows the government to recover the money used by an NEA grantee if a court finds the art work in violation of obscenity and child pornography laws are not eligible for Endowment support. It goes further to impose sanctions, including repayment of NEA funds that supported such work, and in the event that those Federal funds are not returned, the recipient is permanently barred from eligibility.

This is a strong and fair proposal, Mr. President. It protects the use of taxpayer dollars without sacrificing the first amendment to political whim. It sets into motion a process that will effectively prevent funding for art found to be obscene. And it does so while protecting the 99 percent of all projects which deserve the grants they receive.

The amendment also allows us to leave the definition of obscenity where it belongs, in the courts and local communities. The last thing the people in this country should want is Congress imposing its definition of obscenity and offensiveness on the American people.

I believe Supreme Court Chief Justice Burger was correct when he wrote, in the Miller versus California case, "The people in different States vary in their tastes and in their attitudes, and this diversity is not to be strangled by the absolutism of imposed uniformity."

The amendment before us preserves for Americans, in all communities, their right to determine their own standards of decency. It prevents any American from having his or her tax dollars used to fund obscenity.

It took a year of hearings and consideration to develop the amendment now before us. It is the best that we can hope for under these circumstances, Mr. President and I urge my colleagues to support it.

Mr. KERRY, Mr. President, I rise today in support of the Hatch amendment offered by Senator Harkin. I believe it deals best with the issue of obscene and offensive art which receives Federal grants from the National Endowment for the Arts. Therefore, I will oppose the amendments offered by Senator HELMS which, while perhaps well-intended, are too broad in scope and would have unintended consequences.

I would like to commend again the distinguished Senator from Utah for his active role in finding a balanced solution to this problem. The amendment is the result of months of compromise, Senate hearings, and recommendations by the bipartisan Independent Commission. I urge my colleagues to adopt the amendment.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment. The ayes do have it. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.
Mr. MITCHELL. I announce that the Senator from California [Mr. CRANSTON] is necessarily absent.

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. BOSCHWITZ] and the Senator from Oregon [Mr. HATFIELD] are necessarily absent.

The result was announced—yeas 73, nays 24, as follows:

[Rollcall Vote No. 308 Leg.]

YEAS—73

Adams  Durenberger  Mikulski
Alaska  Exxon  Mitchell
Baucus  Fowler  Moynihan
Bentsen  Garn  Murkowski
Biden  Glenn  Packwood
Bingaman  Gore  Pell
Bond  Graham  Preston
Boren  Harkin  Pryor
Bradley  Hatch  Reid
Bresee  Hinz  Riegel
Bumpers  Hollings  Robb
Burdick  Jeffords  Rockefeller
Bums  Johnston  Roth
Chafee  Kassebaum  Sanford
Cochran  Kasten  Sarbanes
Cohen  Kennedy  Sasser
Conrad  Kerrey  Shelby
D'Amato  Kyrie  Simon
Dannforth  Kohl  Simpson
Daschle  Lautenberg  Specter
Domenici  Lomenzo  Stevens
Dixon  Levin  Warner
Dodd  Lieberman  Wirth
Dole  Lugar  Wyden

Domenici  Metzenbaum

NAYS—24

Armstrong  Bentsen  Mitchell
Bryant  Bickel  Nickles
Boschwitz  Bumpers  Nunn
Bradley  Byrd  Byrd
Coats  Inouye  Chambliss
Ford  Lott  Symms
Gorton  Mack  Thurmond
Gramm  McCain  Wallop
Gramley  McClure  Wilson

NOT VOTING—3

Boschwitz  Cranston  Hatfield

So the amendment (No. 3130) was agreed to.

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

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

The motion to lay on the table was agreed to.

ORDERS OF PROCEDURE

Mr. MITCHELL. Mr. President, we are going to have a series of votes this evening. We have already had several today. All Senators are aware there are going to be votes. There are time limitations on these amendments and yet we have had to hold these votes for very long times because Senators are late getting here. I have tried very hard, and I believe without exception have accommodated every Senator who has been anywhere near the Capitol, and held votes for a long period of time.

We are right down to the end now. When Senators know votes are going to occur, it is not too much to ask Senators to be here within 15 minutes so that we can expedite the business of the Senate.

One of the things we are going to have to consider next year is whether to revert to the strict 15-minute rule that was in existence in the previous Congress. But for now it seems to me that it is not unreasonable, not an imposition on any Senator, to ask Senators to come to the Senate floor as soon as a vote begins so that we do not have to hold these votes for a long period of time and thereby guarantee that we will be here even later than we have to be, which is already much too late.

I would just like to ask Senators out of courtesy to their colleagues to, over these next several hours and next few days, be thoughtful and considerate of others and to get here in prompt time for these votes.

I thank my colleague.

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, FISCAL YEAR 1991

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER (Mr. LIEBERMAN). The Senator from North Carolina [Mr. HELMS].

AMENDMENT NO. 3131

(Purpose: To forbid the use of appropriations to provide financial assistance to individuals above a certain income level)

Mr. HELMS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS] proposes an amendment numbered 3131.

At the end of the amendment, add the following: "Provided further. That none of the funds appropriated under this Act may be used by the National Endowment for the Arts to provide financial assistance to an individual whose family income exceeds 1500 percent of the income official poverty line, as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2))."

The PRESIDING OFFICER. The Senator from West Virginia.

TONGASS TIMBER REFORM ACT—CONFERENCE REPORT

Mr. BYRD. Mr. President, I ask unanimous consent that the Chair lay before the Senate the conference report on H.R. 987, the Tongass timber reform bill; that there be a 15-minute time limitation thereon; and that the 15 minutes come out of my time on the pending amendment.

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

Mr. BYRD. Mr. President, I ask unanimous consent that 15 minutes be under the control of Senator Stevens and Senator MUNKOWSKI, equally divided.

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

The clerk will report.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 987) to amend the Alaska National Interest Lands Conservation Act, to designate certain lands in the Tongass National Forest as wilderness, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferences.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the Record on October 23, 1990.)

Mr. JOHNSTON. Mr. President, I rise in strong support of the conference agreement on H.R. 987, the Tongass Timber Reform Act. The conference agreement is a fair and reasonable compromise, which carefully balances the many resources of the Tongass National Forest.

It protects the centuries-old trees in an ecosystem replicated nowhere in North America. It protects key fisheries and wildlife habitat. And, importantly, the conference agreement represents a viable, healthy timber industry.

I know that this compromise goes far for some, and not far enough for others. But, I sincerely believe that the conference agreement represents a reasonable balance between many conflicting interests. I further believe that this agreement will allow Alaskans the certainty they need and deserve by resolving this issue once and for all.

I would like to address one issue that was raised in the conference on this measure. The Senate-passed Tongass bill contained an amendment, which was offered on the floor by Senator GARN, encouraging the Forest Service to negotiate, on an expedited basis, a land exchange with Sealaska Corp. involving the Greens Creek area of Admiralty Island. During conference on the Tongass bill, the conferences, for several reasons, agreed to delete that language at the request of Senator GARN.

I want to make clear that deleting the amendment is not an indication that the Senate Energy Committee opposes the negotiations between the Forest Service and Sealaska Corp. To the contrary, I understand the negotiations are ongoing and near completion. I encourage the Forest Service to continue negotiations with Sealaska to
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reach an agreement that is in the public interest. I look forward to considering this issue in the committee when the land exchange agreement has been completed and made available to us.

I would like to conclude by thanking Senator Murkowski and Senator Stevens for their willingness to work with us on this very delicate issue. While we have landed on an acceptable compromise on every aspect of this legislation, the two Alaska Senators have been very gracious and demonstrated a sincere desire to resolve this important matter.

Mr. President, I would also like to acknowledge the contributions of Senator Wirth in this compromise. As the sponsor in the Senate of legislation which went much further than the bill before us today, he offered a number of constructive suggestions during our negotiations which eventually resulted in bringing the parties together. Finally, I would like to recognize Congressman Johnston for his new efforts to bring about reform in the Tongass National Forest. While he has been a strong and determined advocate of his point of view, in the end, he, like the rest of us, was willing to find a middle ground which embodied in the conference report in H.R. 987. I commend him on his willingness to meet us half way and to get this issue behind us.

Mr. President, I urge my colleagues to join with me in adopting this conference report.

Mr. President, I believe that the land allocations made in this act, in conjunction with the other laws relating to the management of the Tongass National Forest, provide significant protection for the national interest in the wilderness, scenic, natural, cultural, subsistence, and environmental values on the Tongass National Forest. These values remain inalienable to timber harvesting, mining, hydropower development, developed recreation, and other uses will provide the opportunity for economic growth and for protecting the rights of the dependent communities of southeast Alaska. I believe that the designation and disposition of the public lands in the Tongass National Forest pursuant to this act represent a responsible balance between the statutory preservation of wildland areas and the availability of lands for more intensive use as determined appropriate by administrative planning and management.

Mr. Murkowski, Mr. President, I concur with the views of the chairman of the Committee on Energy and Natural Resources on this matter. This legislation should lay to rest the long and divisive debate over land use and management on the Tongass. Therefore, additional study by the Secretary, in conjunction with the current revision of the Tongass land management plan, for the purpose of proposing additions to conservation system units in the Tongass National Forest should not be necessary unless required by further act of Congress.

Does the chairman share my views in this regard? [Mr. Murkowski: Yes, I agree with the Senator from Alaska.] Mr. Johnston. Mr. President, yes, I agree with the Senator from Alaska [Mr. Murkowski].

Mr. Murkowski. Mr. President, I thank the Chair and I thank the floor managers. I want to particularly thank the chairman of the Energy Committee, Senator Johnston, for his cooperation.

Mr. President, as the Senate prepares to take action on the conference report on the Tongass National Forest reform bill it is appropriate that I make a few brief remarks.

Let their be no doubt, Mr. President, that this legislation is extremely important to the people of southeast Alaska and to me personally. There are those who have waged a public relations campaign based on mischaracterizations of our forest management practices to cause serious damage to the economic and social fiber of southeast Alaska.

Nonetheless, Mr. President, Alaskans have risen to the challenge presented by those who would destroy their livelihood. Field hearings which I held in Alaska revealed that while there were many disparate opinions about Tongass management, a great effort was being made to develop a consensus Alaskan position. The southeast conference, a group of community leaders from throughout southeast Alaska had worked long and hard to build a detailed position that a majority of the communities could support. The position was advanced by the Governor at the hearing in Sitka and later became the foundation for the compromise bill advanced by Senator Johnston in committee. This bill was reported unanimously by the committee and passed unanimously, 99 to 0, by the full Senate.

The development of Tongass legislation in the Senate is in stark contrast to what has occurred in the House. The House-passed measure took away the consideration given for 5.4 million acres of wilderness designations by the Congress in 1980, canceled existing timber contracts exposing the United States to potentially huge liability, and designated nearly 3.5 million acres of additional wilderness in the Tongass Forest. This measure would have devastated the timber industry in my State—an industry which is the economic underpinning of a region larger than West Virginia. This measure passed the House over the objections of the entire Alaska congressional delegation and Alaska’s Governor. To make matters worse, the House measure was advanced without a single hearing in Alaska.

Mr. President, the compromise crafted by the House and Senate conferences is less damaging than the House bill but still demands much too far. I supported the Senate position because it was based on the input of Alaskans. The changes made to the Senate bill in conference were made in order to compromise with the House, but they went beyond the consensus concerns of the people of southeast Alaska. I am concerned about the impact this compromise package might have on jobs in southeast Alaska.

The conference bill would withdraw from the timber base more than 1 million acres. This 345,000 acres more than the Senate bill and 781,000 acres less than the House bill. The House bill designated 1.8 million acres of new wilderness, while the Senate bill had none. The compromise creates 296,000 acres of new wilderness, within the total 1 million acre withdrawal.

The remaining withdrawal in the compromise bill, 722,482 acres, would be classified using the Forest Service’s land use designation 2 (LUD 2). On LUD 2 lands, not only harvesting is permitted, but roads, hydroelectric projects, mining operations, fish hatcheries, and other uses are permitted.

The compromise legislation repeals both the annual $40 million appropriation for the U.S. Forest Service to enhance timber sales and a requirement for a specific amount of timber to be sold each year. It adds instead a requirement for the USFS to seek to meet the market demand of the industry and to make economically marginal timber available to the industry.

Additionally, the USFS is directed to work with the Small Business Administration to identify the needs of small timber operators in the Tongass and determine if they can meet the needs through timber sales. The legislation also includes Alaska in a program which allows small business purchasers to request the forest service to construct roads on small business timber sales.

The conference bill adopted the Senate approach to buffer requirements alongside streams by requiring buffers only on anadromous fish streams and on tributaries to those streams that have resident fish. This approach contracts with the House proposal that would have required buffers on all streams and tributaries regardless of fish content.

Under the conference bill existing timber contracts with the major pulp mills would not be canceled but they would be modified. The modifications will ensure the USFS decides where mills harvest timber, will prohibit the mills from cutting only the best
timber, and will ensure the mills pay a fair market value for their timber.

The important thing is that the mill operations will remain viable. The timber remnant on the lands where these contracts are protected, which means the jobs related to the mill operations are preserved.

Mr. President, the conference bill also designated 44,562 acres of additional land designations to the Senate bill. To meet the needs of the small communities in Southeast Alaska, I had proposed during pre-conference discussions with the House six of the seven additional areas included in the conference bill. However the total acreage and specific boundaries differed in many instances.

The problem is that key areas of commercial forest land are taken away—timber desperately needed for the industry. These areas with very little community support and reflect little more than a timber grab by the national preservationists. The total impact of the conference bill may be to delete somewhere between 40 million and 60 million board feet of timber annually from the available base.

Mr. President, I want to point out that while this legislation errr too far on the side of preservation, it does go very far toward meeting the concerns expressed during field hearings by the people of southeast Alaska. Important land additions to the Senate bill are Port Althorp, Idaho Inlet, Mud Bay, Point Adolphus, Pleasant Island, Elfin Cove, Hoonah, Petersburg, Wrangell, and Ketchikan and were not included as LUD 2 areas in the Senate bill. In fact, protection of the important sockeye salmon habitat at Salmon Bay Lake, an area very important to fishermen in Petersburg, was addressed even though this area was not included in either the Senate or House bills.

Where the House bill simply prohibited the completion of a road between the communities of Tenakee Springs and Hoonah, at my urging the conference bill provides a veto to these communities over the completion of this road, following the premise that the best resolution of this issue is to leave it up to the people themselves.

In an effort to finally resolve as many land allocation questions in the Tongass as possible, the conference bill also includes a provision accelerating the land selection rights of the Haida Native Corp. The lands Haida will receive are traditional lands, but are located in a very important transportation corridor. Therefore, the conveyance of these lands will be subject to an easement in the United States to allow a public transportation corridor through the area, leaving the rights to the timber with Haida Corp. It is my understanding that Haida Corp. is to retain full control over the timber and the enforcement of the easement, except to the extent the Government needs to exercise control for road building activities. This will best serve the interests of Haida and the State of Alaska in the use of this area.

However, Mr. President, I must point out that all communities and interested groups were not served well by this legislation. A proposed land trade involving the Goldbelt Native Corp. was deleted form the final Tongass compromise. Goldbelt deserved better treatment than they were given by this conference. This is the second time Congress has dealt them a bad deal. The first time was in 1980 when they were forced off Admiralty Island and moved their land to Hobart Bay with the expectation of servicing future timber harvests in that area. The conference bill surrounds the Goldbelt holdings with wilderness.

Finally, the conference bill requires the Forest Service to study the reacquisition of lands which were removed from the Tongass forest to fulfill State or Native land entitlements. Only lands where timber harvest has occurred would be eligible. The lands reacquired will be added to the timber base and the allowable sale quantity. Since these are some of the best timber growing lands, they will have an important impact on the availability of timber to the dependent industry in the future. This concept has support from environmental groups and the timber industry because it will provide proper timber management on highly productive lands, it will increase the supply of timber in the future, and it will reduce the pressure to provide timber from the presently unroaded portions of the forest.

Mr. President, prior to final action on this conference report I have engaged in a colloquy with the distinguished Senator Energy and Natural Resources Committee to explore the degree of peace and certainty this legislation can bring to the competing interest groups in southeast Alaska. Similarly, I engaged in a discussion with the distinguished House conference chairman and received an assurance that this legislation should bring some finality to the Tongass reform issues addressed and supported by Alaskans.

It is fair to say that while all Members of Congress and all special interest groups have not obtained 100 percent of their objectives in this legislation, this compromise represents the final solution for those who have worked diligently over the subject of Tongass reform.

Mr. President, for the record, I oppose this bill because it goes farther in reducing the multiple use land base than southeast Alaskans would like. I attempted to improve this bill in conference. In fact, I circulated 19 proposed changes or additions to the chairman's all but one were rejected. The majority would simply not accept amendments at the meeting of the conferences to the compromise they constructed outside the conference meetings. For these reasons I have refused to sign the conference report.

However, with its passage will come an end to the many divisive issues involved in the debate over Tongass reform. Many of my constituents look forward to this dark cloud passing. I call on all Alaskans to put their differences aside with the passage of this legislation and to work in harmony to produce a diversified and healthy economy in southeast Alaska. While the proponents give their lawyers a much of the timber available for harvest has been tied up in litigation. Seventy-five percent of the timber the Sitka mill has available is currently tied up in litigation. For the Ketchikan, 33 percent of their available timber is tied up in litigation. This is causing hardship and the loss of jobs. I urge the conservation groups to drop these lawsuits once this legislation has passed.

This legislation working in concert with the revised forest plan will hopefully provide a stable land base and certainty of resource allocation necessary for sound business and community planning. It should provide a secure basis for southeast Alaskans to work together toward common goals and objectives. It is my sincere hope that we can have at least a decade of peace in the Tongass. It is time that opponents and proponents give their lawyers a rest. It is my desire and hope that fishermen, loggers, mill workers, and those in the tourism industry can come together and direct their energies to stabilize the economic vitality of southeast Alaska and those who choose to live there.

I remind my colleagues of the able negotiations of Senator Johnston, the chairman of the committee; my senior colleague, Senator Stevens, Representative Young; and the tremendous staff, both the professional staff and our own staffers, who have worked very hard on this. I have been at it 10 years. I think my colleagues should understand they have not had to take a hard vote on this.

Mr. GARN. Mr. President, may I engage my distinguished colleague from Alaska in a colloquy regarding land exchange discussions on Admiralty Island in Alaska which affects the Greens Creek Mine. As the Senator knows, that mine is operated by the Kennecott Corp. of Salt Lake City. At its request, I sponsored an amendment during floor consideration of H.R. 987, the Tongass Timber bill, to encourage
ongoing land exchange discussions between the Forest Service and Sealaska Corp., an Alaska Native Corp. Since the floor consideration of H.R. 987, events concerning the land exchange have changed. For reasons which need not be detailed here, I am informed by Klutina, a representative of the Joint Negotiations for a wilderness area in the Tongass, that no negotiations are to be concluded unless the Forest Service shall seek to provide timber to these small companies, it does not go far enough.

There being no objection, the reservations were ordered to be printed in the RECORD. Such a report would have made up for this second blow to Goldbelt's expectations. That provision was dropped when the House insisted on shaving back the offer made to Goldbelt.

The blocking of that bill killed the legislation for that Congress, obviously, and we started again in 1979. The demand as we opened in January 1979 was for 100 percent more wilderness, because one of Alaska's Senators had had the temerity to block a bill. We fought that through time, and in 1980, in fact, the bill did withdraw 5.4 million acres of the Tongass as wilderness.

We came back in 1981, and one of the first things we faced was another demand, a demand for more wilderness in the Tongass. At that time, through, the year of 1981, somewhere around 2 million acres in additional withdrawals were sought.

Now, 10 years later, after having faced this subject in each Congress since that time, we have another conference report to withdraw this time 1,018,000 acres in one of the greatest national forests of our country; a forest, incidentally, that was created in order to assure the production of timber so that the Federal Government in the days of Gifford Pinchot could be assured that the monopolies that controlled the private timber base would always have a yardstick to measure against them.

The yardstick of the Tongass has been broken in half, Mr. President, because half of the timbered area will now be wilderness.

There are at least three items in this bill that I think are bad. In the first place, the section on small business says that the Forest Service shall seek to provide timber to small companies. That does not go far enough, as far as I am concerned. We asked for a reservation of timber for small operators.

Goldbelt, one of southeastern Alaska's native village corporations, Goldbelt, moved its land selection that will be severely impacted by this bill. To make a long story short, a provision dropped which would have counteracted that impact, and I think that is a very unfortunate decision.

Third, this bill prohibits harvesting timber on slightly more than a million acres. As I have said, the impact of that on this forest will be that the impact is final in his hands.

Mr. President, I ask unanimous consent that my reservations on the bill be printed in the RECORD.

TONGASS—RESERVATIONS ABOUT BILL

One section of this bill is intended to make sure the supply of timber for the small operators in the Tongass is adequate.

However, because the bill says only that the Forest Service shall seek to provide timber to these small companies, it does not go far enough.

If there is a shortfall in timber supply because of this bill, this language is not enough to assure an adequate supply for the small operators.

GOLDBELT

One of Southeast Alaska's Native village corporations, Goldbelt, moved its land selections to a place called Hobart Bay several years ago in response to pressure from environmental groups. They expected to be able to bid for timber sales on the neighboring Forest Service lands.

This bill makes the neighboring forest land adjacent to wilderness. This bill should have included an exchange which would have made up for this second blow to Goldbelt's expectations.

LAND

This bill prohibits timber harvesting on slightly more than 1 million acres. The withdrawals are spread throughout the forest, but will have a disproportionate impact on the north end.

It would have been easy to reduce the impact of this bill—particularly in Hoonah Sound. This withdrawal is intended to protect the Liskank River drainage—which is on the other side of a saddle at the top edge of the sound.

The upper three quarters of Hoonah Sound are closed to timber harvesting by the bill. It is an area rich in timber, with fewer competing uses than any of the other areas closed to timber harvesting by the bill. At least one unit should have been removed from the Liskank withdrawal—VCU 382. This unit was one of the last added to the bill in conference. It is 16,641 acres, with 23 million board feet of commercial quality timber.

MR. STEVENS. The only reason we are not continuing the battle—it is not that we are tired of battling after 19 years. This Senator is perfectly willing to lose another battle. But in this instance we have a situation where the Governor of Alaska has announced that he is willing to accept this compromise. We have had a series of spokesmen for southeastern Alaska indicate that they would like to have some peace.

I am sure that the Senate would realize that after 19 years of battle, there have been some casualties. The ability to borrow money to expand the facilities in the timber industry in southeastern Alaska has been hurt.
The stability of that industry is not what it should be, and it is affecting the lives and the futures of a great many people. I had a feeling that we were at the point where we ought to go back and take a look at what we said in 1980. I asked, Mr. President, that two excerpts from the 1980 act be printed in the Record. There being no objection, the excerpts were ordered to be printed in the Record as follows:

**ANALCA, section 101(d):**

(d) This Act provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, and at the same time provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people according to the designation and disposition of the public lands in Alaska pursuant to this Act are found to represent a proper balance between the reservation of national conservation system units and the public lands in Alaska pursuant to this Act are found to represent a proper balance between the reservation of national conservation system units and national recreation areas, or new national recreation areas, has been obviated. The second one is this provision:

No further studies of Federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit, national recreation area, national conservation area, or national recreation area, or for related or similar purposes shall be conducted unless authorized by this Act or further Act of Congress.

Mr. STEVENS. Let me emphasize the first one ends with this clause: Thus Congress believes the need for future legislation designating new conservation system units, new national recreation areas, or new national recreation areas, has been obviated.

The second one is this provision:

No further studies of Federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit, national recreation area, national conservation area, or national recreation area, or for related or similar purposes shall be conducted unless authorized by this act or further act of the Congress.

We called it in 1980, Mr. President, a "no more" clause, that there would be no more withdrawals. This action now obviously shows that even an act of Congress did not protect Alaska from future withdrawals. So this time we have asked for some assurances from the individuals who would be involved. I want to place in the Record a fax that I have received from the South-Alaska Conservation Council. It asks me to support this bill and requested the President sign it.

It says:

Ted, it surely sounds like Alaskans are ready and willing to put this issue to rest. I have been assured on all sides that this is the end of this issue in Washington, and this Congress; that there will be no more requests for wilderness in the Tongass. After 19 years, we deserve a little peace. And after 19 years, I guess it is time to seek peace. We tried to do things with the support of the bill that passed the Senate unanimously, but the House wanted to go further.

Mr. President, I ask unanimous consent that the letter from the Southeast Alaska Conservation Council be printed in the Record.

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

**SOUTHEAST ALASKA CONSERVATION COUNCIL, Juneau, AK.**

To: the Honorable Ted Stevens.

Please review Alaska's positions to the Johnston Compromise—I can send the actual clippings if need be. Ted, it surely sounds like Alaskans are ready and willing to put this issue to rest. I hope you can support H.R. 987 on the floor and request that President Bush sign it into law. Let's finally resolve this.

Thank you,

Bart Koehler.

Alaskans React to Johnston Compromise Version of the Tongass Timber Reform Act

Governor Steve Cowper.

"Southeast Alaskans who are directly affected can finally breathe a sigh of relief that this issue is behind us after so many years. (The bill is) a compromise. But overall I think Alaska's timber industry can remain healthy while the environment and other uses of the forest can be protected."

Senator Frank Murkowski.

"The important thing (about the Johnston compromise) is the mill operations remain viable. The timber sales contracts are protected, which means the jobs related to mill operations are preserved."

Alaska Pulp Corporation (SItka and Wrangell timber mill owners): "We certainly will not be donning our party hats and cheering. But we will have to find ways to live with it. Spokesman Rollo Pool also said his mill will continue to operate.

Ketchikan Pulp Corporation (Ketchikan timber mill owners): "I hope this means that we now have the power to change these laws and we have assured us that they now recognize that this is the end."

As this note to me says, let us finally resolve this. And I am willing to allow this conference report to pass on the basis that we are finally resolving it, that there will be no more demands for wilderness in the Tongass National Forest.

Thank you, Mr. President.

Mr. BYRD. Mr. President, does the Senate need additional time?

Mr. STEVENS. I took 2 minutes of the Senator's time. I am grateful. I thank him very much.

Mr. BYRD. Mr. President, I yield 1 minute to the Senator from Louisiana.

Mr. JOHNSTON. Mr. President, we have enjoyed this exercise so much that I look forward to bringing back Tongass legislation again next year. I thought that would get a smile from the Senator from Alaska.

Seriously, Mr. President, this has been a tremendously long, detailed,-exasperating, difficult exercise, but it has ended successfully. It has taken the cooperation of the Senators from Alaska; it has taken the leadership of Senator Wirth and others in our committee; it has taken especially good staff work; Beth Norcross, who is the staffer who worked this for the major­

ity on the Senate Energy Committee. It is her last bill, but I must say I do not believe we could have passed it without her. She did an extraordinary job on this bill.

Mr. President, I want to thank all Senators who were involved in this. This is one of those rare bills where no one loses; it constitutes a tremendous victory for all.

With that, Mr. President, I ask that we adopt the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, FISCAL YEAR 1991

AMENDMENT NO. 3131

The Senate continued with the consideration of the bill.

Mr. BYRD. How much time do I have remaining?
The PRESIDING OFFICER. The Senator from West Virginia has 7 minutes, 16 seconds remaining.

Mr. HELMS. Mr. President, I say to the distinguished Senator from West Virginia if he needs time he can get it from me because I want to expedite the procedures.

Mr. BYRD. Mr. President, I thank the distinguished Senator. I have time. Whatever time he does not use, if he wishes to yield it back, I will yield back.

Mr. HELMS. As the Prince of Denmark said, "tis a consumption Deoutly to be wish'd." Let us see how it goes.

Mr. President, have the yea and nays been requested?

The PRESIDING OFFICER. No. Mr. HELMS. I request the yea and nays.

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

The yea and nays were ordered taken.

Mr. HELMS. Mr. President, this amendment would prohibit the National Endowment for the Arts from providing grants or fellowships to individuals whose family income exceeds 1500 percent of the official poverty line as defined by the Office of Management and Budget every year.

The current poverty threshold income for a single individual is $6,311. So an individual's income would have to exceed $94,665 before the pending amendment would prohibit the NEA from giving him or her an NEA fellowship or grant. An artist with a family of four would have to have a family income of more than $190,125 before the NEA would be prohibited from giving him or her a grant.

Mr. President, I was prompted to offer my amendment by the many news accounts indicating that not only are the NEA's art experts recommending their friends, relatives, and professional partners for NEA grants, but they are also taking the taxes of middle-income Americans to provide fellowships and grants to professionally accomplished and economically successful artists. I see no reason whatsoever to tax middle-income Americans in order to give money to artists who are enjoying successful and lucrative careers.

Let me cite just a few examples. Mr. President, of some grants to artists who are much wealthier than the average American worker, to say the least, but who were nevertheless able to get handouts from the National Endowment for the Arts. I am going to leave out the names, but if Senators want to know who these recipients are, I will be glad to identify them.

There was a New York painter who recently sold eight of his paintings for amounts ranging from $8,000 to $25,000 at the Kasmin Gallery in Soho, NY. Before that, he had had 27 solo exhibitions from Japan to Brazil to Paris. This painter could not be more financially secure, yet the NEA gave him $15,500 in what is called a Visual Artists Fellowship—that is $15,500 of taxpayers' money to give this guy could take off and go do some painting. This painter admits that he used his NEA grant to pay the taxes he owed the IRS on his other income.

Then there is the actor who had been sought by casting directors literally begging him to take more than a dozen roles over a period of 7 years prior to 1987, the year the NEA decided to give him a $20,000 playwriting fellowship so he could take time off from his acting job to write instead of act.

This actor had already been able to write a number of well-regarded plays during his career as an actor. Why on Earth, and how on Earth, did the NEA decide that this guy ought to get $20,000 of the taxpayers' money?

Then there is the Philadelphia-based artist, whose work sells so well in Philadelphia that he has been able to build a second home in the Dominican Republic, where he spends half of his time.

His paintings sell for $8,000 to $25,000 a pop, and he has had 53 one-man shows and 127 group shows over the past 25 years and his work is found in 21 public collections. Yet, the NEA in 1989 decided that this man needed $15,000 of the taxpayers' money to take time off to paint. The 1989 Visual Artists Fellowship was the third grant the NEA has given this artist during his career.

Then there is yet another painter whose show this past March, at the Barbara Fendrick Gallery, was sold out. The asking prices for the artist's work range from $25,000 to $45,000 each. He has won 12 solo exhibitions in the Museum of Modern Art and the Metropolitan Museum of Art in New York City, at the Corcoran Gallery and the Smithsonian in Washington, and the Tate Gallery in London and so on. Nevertheless, what do you know, the NEA gave him a $15,000 visual artists fellowship in 1989 so he could take time off to create. This painter had previously received individual fellowships from the NEA in 1967, 1973, and in 1974.

Another painter who received a $15,000 Visual Artists Fellowship in 1989 has a waiting list of buyers at the Phyllis Kind Gallery in Soho, NY, who are willing to ante up $80,000 for one of his paintings.

It does not stop there Mr. President. A painter who lives in the Berkshire Hills in western Massachusetts—who sells his paintings-ranging from $12,000 to $18,000 an apiece—was not as impressed by the $15,000 NEA fellowship he got in 1989 as he was by the NEA fellowship he got in 1979. He stated that, "Now things cost so much—if of the NEA, I will not do-[censored]." I wish he would tell that to the American families whose taxes were used to pay his grant.

Mr. President, the bottom line is this: Not only has the NEA been very, very liberal in giving away the hard-earned tax dollars of middle-class Americans—giving it to artists who are far more financially secure than the average Americans—but the process for selecting who receives the NEA grants is absolutely rife with conflicts of interest between the experts who dole out the money and the people who get the money.

For example, one person served on the panel of literary experts that awarded his brother—do you believe that, his brother—a $20,000 NEA grant in 1985. The first himself received a $20,000 NEA Creative Writing Fellowship in 1987. If that is not keeping the money in the family, I do not know what is. The trouble is that it is the American taxpayers' money they are keeping in the family.

Mr. President, one woman received a $5,000 NEA artistic grant based on the recommendation of a panel of experts that included her stepmother. The stepmother was also able to give fellowships to two more artists who sell their work at the same gallery the stepmother does.

Then there is the musician who frequently collaborates—I choose my words carefully—with Karen Finley. Remember her, the chocolate smeared young lady? Well this musician actually sat on the peer panel that recommended both Karen Finley and Holly Hughes for the NEA grants that Chairman Frohnmayer denied this year because of the intense public scrutiny of the mind. I will not describe the vulgar acts they intended to perform with the taxpayers' money had they gotten their grants.

Mr. President, I should also mention that the musician himself got a grant from the panel he sat on. The Los Angeles Times also recently revealed that the Kitchen Theater in New York will receive a $25,000 NEA grant to support a work to be developed by this musician in conjunction with you guessed it, Karen Finley. Of course, the Kitchen was recommended for the grant by the panel of course the panel the musician was serving on.

Come on, Mr. President, surely anybody with any administrative ability whatsoever, or certainly with any dedication whatsoever, is bound to catch that sort of thing.

One or two more examples and I will conclude.

There was an artistic director of the Ohio Chamber Ballet who sat on an
Mr. McCLURE. Mr. President, I yield myself such time as I may consume.

Mr. President, I think the Senator from North Carolina has at least exposed to view something which perhaps needs some consideration. I do not oppose the Hatch amendment, but I do so for a couple of reasons: Because I think when we are talking about the other issues that have been raised here, we are talking about something quite different than the question of who receives the grants, in terms of their own financial security or financial position.

I think since it is an entirely different kind of a subject matter it is something I am not willing to entertain here at this time personally. I believe he has also pointed out potential conflicts of interest.

I might just observe, although I opposed the amendment offered by the Senator from Utah, the Senate did overwhelmingly accept the amendment and while it does not go as far as it should perhaps in dealing with the question of conflicts of interest, it does at least begin to address that question. I hope that the amendment will go farther than they have done before and farther than the Hatch amendment will require with respect to looking at the actual and potential conflicts of interest between grantor and grantee and the review panelists and the proposed grantees.

Mr. President, the amendment is defeated. Mr. President, I think the amendment I am in opposition to the amendment. I hope the amendment is defeated.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. GORTON. Mr. President, who controls time in opposition to the amendment?

Mr. McCLURE. I do.

Mr. GORTON. Will the Senator yield me 5 minutes?

Mr. McCLURE. I yield 5 minutes to the distinguished Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, the National Endowment for the Arts was designed to bring the benefits of the various arts to communities and to individuals across the United States who otherwise might have been deprived of...
those benefits. It was also designed to encourage creativity in the arts with a wide range of grants across the broadest possible spectrum.

Senator McClure's amendment, which has a National Endowment for the Arts, is not, of course, a constitutional requirement. It lies fully within the discretion of the Members of both Houses of Congress. Because it is not a constitutional requirement, no individual or group is entitled to a grant from the National Endowment for the Arts which has broadened discretion in determining how its purposes can best be carried out and through which organizations its goals can best be reached.

As a consequence, the National Endowment for the Arts has full authority to deny any grants to applicants whose message is primarily political in nature, and the message of many artists at the present time is primarily political in nature, or to art which offends the moral or reasonable views of a large majority of Americans. It is, of course, the way in which the National Endowment for the Arts has made these decisions which has become a significant issue in our society during the last couple of years.

The question with which we are all faced is one with which I am not particularly happy, and one in which I have found no home in any of the suggestions which have been before the Senate during the course of this debate.

The question is whether or not either the restrictions which were included in the bill as it was reported to the floor and which have now been stricken, or any of the restrictions contained in the amendments proposed by the distinguished Senator from North Carolina, or the restrictions contained in the Hatch amendment proposed by the Senator from Utah [Mr. HATCH], encouraged the National Endowment for the Arts to pursue these worthy goals and to turn down grant requests which denigrated from them and which do insult the views of large numbers of Americans.

It seems to me that the kernel of the problem lies in the confusion on the part of the proponents of all of these amendments which base their objections on some kind of legal definition of obscenity for criminal law purposes or language which is taken from decisions related to criminal law proposes with good taste. There simply is no relevant between for that kind of definition of what is obscene and what ought in fact to be supported by the National Endowment for the Arts.

As a consequence, I voted against the Hatch amendment not because I thought that it was particularly better or worse than the requirement that has been in the law during the course of the last year but because it seemed to me that all of them missed the fundamental point. The bill on which the Hatch amendment was based, the House authorization bill, did include language of an affirmative nature stating that the National Endowment for the Arts would reflect in some measure at least the views of a majority of Americans as to what was good taste.

Inexplicably that was left out of the Hatch amendment. Had that language been included in the Hatch amendment I would have supported it.

It seems to this Senator that the difficulty is in attempting to anticipate or to pass by anticipatory language restrictions on what the National Endowment for the Arts ought to do. It seems to me that the proper function that this Senate and that this Congress is to judge afterwards whether or not the National Endowment for the Arts has lost its way and to use the power of the purse to provide that kind of discipline.

If I understand correctly, this bill reduces by $5 million the amount recommended by the President of the United States. In my view that is appropriate in the light of the type of controversy which NEA has caused.

If in fact the National Endowment for the Arts establishes procedures by which we have some concern for good or for better tastes, I would be among the first to note that next year we ought to increase its appropriation. But with all respect to the Senator from North Carolina I do not believe that any of his amendments will be effective in changing that course of action, and I hold those views as well with respect to the amendment by the Senator from Utah, and even the committee language itself.

We should not be seeking simply to prohibit obscenity. We should be seeking to promote good taste. In my view we will promote that reasonable good taste, a decent respect for the people of the United States who are asked to pay for this art, by exercising more appropriate over the purse.

The PRESIDING OFFICER [Mr. LUTENBERGER]. The Senator from North Carolina.

Mr. HELMS. Mr. President, I do not want the Senate to stay in here until 11 o'clock.

I ask unanimous consent that the yeas and nays on this amendment be vitiated.

The PRESIDING OFFICER. Without objection, it is ordered.

Mr. HELMS. Mr. President, I thank the distinguished chairman and manager of the bill and also my good and close personal friend, Senator McClure, for his consideration. We will go on a voice vote on this and then I will have one more amendment and maybe we can expedite that as well.

Mr. BYRD. Mr. President, I thank the distinguished Senator and I thank him for vitiating the yeas and nays. That will save us at least 15 minutes as well.

I yield back the remainder of the time on this side.

Mr. HELMS. I yield back the remainder of my time, if any.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment of the Senator from North Carolina.

The amendment (No. 3131) was rejected.

Mr. HELMS. Mr. President, let the record show I was defeated 2 to 1.

I thank the Senator and I thank the Chair.

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

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, time will have to come out of the time on the amendment or on the bill.

Mr. HELMS. Mr. President, I thank the Chair.

AMENDMENT NO. 3132

(Purpose: To prohibit the use of appropriated funds for the dissemination, promotion, or production of obscene or indecent materials or materials denigrating a particular religion)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS] proposes an amendment numbered 3132.

At the end of the amendment, add the following:

"None of the funds authorized to be appropriated pursuant to this Act may be used to promote, disseminate, or produce materials which denigrates the objects or beliefs of the adherents of a particular religion."

Mr. HELMS. Mr. President, the pending amendment arose out of an issue that originally came to the attention of the Senate when the able Senator from New York [Mr. D'AMATO], and I came to this Senate floor—and I will never forget the occasion—to express our outrage that the National Endowment for the Arts had subsidized an artist who had put a crucifix in a vat of his own urine, taken a picture of it, and gave it a mocking, degrading title.

He went out of his way to insult the Christian community. It was an insult, compounded by the fact that taxpayers were forced to help honor, if that is the word, this so-called art denigrating our Lord, Jesus Christ.

Now I recall well that more than 25 Senators—Democrats and Republicans—expressed their outrage that day by co-signing a letter to Hugh Southern, the then acting chairman of the NEA, asking him to review the NEA's procedures and to determine what

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steps are necessary to prevent such abuses from recurring in the future.

Well, Mr. Southern replied that he too was personally offended by Mr. Serrano's so-called art, but that—and I have heard this time and time again—the endowment is prevented by its authorizing language from "promoting or suppressing" particular points of view.

Mr. Southern's letter went on to endorse the endowment's panel review system, as he put it, "as a means of ensuring competence and integrity in grant decisions," and he stated that the endowment would review their processes to be sure that they are effective and maintain the highest artistic integrity and quality.

Mr. President, as we have pointed out, under the current procedures of the NEA, taxpayers can end up funding another disgusting assault on religion—Catholics, Jews, Moslem's, anybody. The pending amendment will simply seek to ensure that the National Endowment for the Arts will not provide the funds for another work that "denigrates the objects or beliefs of the adherents of a particular religion."

Last year, when I offered my original amendment, there was quite a bit of criticism about the issue of prohibiting funding for materials that denigrate religion. I thought that most of it was cockeyed; I still do. But in any case, that is why I decided to narrow the scope of the restriction and to offer it as a separate amendment.

Mr. President, the language of the amendment, as read by the able clerk, is straightforward and clearly understandable. Although there is no statute or case law that defines the limits of Federal support for materials that denigrate religious beliefs, tenets, or the objects of a particular religion or that are offensive to widely held religious beliefs, it is clear, at least to this Senator, that the Federal Government should ensure that the NEA does not fund art that would cause the American people—should not be forced to fund an activity that deliberately attacks religion.

We cannot ignore the fact that the NEA has funded a number of controversial projects that have offended people of diverse religious convictions and that have deliberately attacked historically religious traditions, tenets, symbols, or figures. That is the basis of its pending amendment.

Mr. President, let me just dwell for 2 or 3 minutes, no more than that, on the word "denigrate" and what it means. The word "denigrate" is defined in Webster's Third International Unabridged Dictionary as follows:

... to cast aspersion on the character or reputation of: belittle maliciously: defame, sully.

Mr. President, it is that sense of the word that is employed in the pending amendment. It is that sense of the word that would preclude the amendment from being interpreted to cover some of the outrageous things the amendment's critics said it covered last year. The amendment last fall was said to prohibit everything from quoting the Bible to talking about war. But none of that was true then and it is certainly not true now. But I have taken steps to safeguard against any legitimate criticism of this amendment in that regard.

Mr. President, the NEA's general counsel, in a letter to me, stated that "the NEA does not fund art with a purposely religious theme, nor will work intended to advance a particular religion is proselytism, which is clearly not appropriate for the Government to fund under the Constitution.

Well, when I read that, the question obvious and immediately occurred that: if the NEA can determine which art is intended to "advance a particular religion" in violation of the Constitution, should the NEA also not be able to determine which art is intended to "denigrate a particular religion?" If they do one, surely they can do the other. Does the Government not violate the Constitution every bit as much when it pays to denigrate religion as it does when it pays to advance religion? Or is there a double standard here? You cannot have it both ways.

Mr. President, there may be examples where some question will exist as to the overall message conveyed by a purposely religious theme. The NEA will have to exercise some discretion in those cases just as it does when determining which works are too overtly religious to exercise some discretion in those cases just as it does when determining which works are too overtly religious to fund. But a crucifix, or a menorah, or a Torah, or other deeply revered religious symbol immersed in urine is not a close call at all. Neither is a photo of an amply endowed large breast woman breast-feeding an infant carrying the title, "Jesus S. ..." and I shall not finish that word. That art, Mr. President, the pending amendment will ensure that the NEA treats all religions equally and will not fund deliberate attacks on any of them. Artists would still be free to create such hate-filled works, but they would have to do it on their own time and with their own money, not with the taxes furnished by the American people.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BYRD. Mr. President, I suggest the absence of a quorum charged against my time.

The PRESIDING OFFICER. The clerk will call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.
approach to problems. We wish him well in the future.

Mr. BYRD. Mr. President, I yield myself 1 minute.

Mr. LEAHY. Mr. President, before anyone in this Senate acquires the knowledge of this particular bill that the distinguished senior Senator from Idaho possesses, I say that without any mental reservation whatsoever.

I have already stated how much I will miss him, so I will not enlarge upon that here. But I will have something further to say before the session ends on this subject matter.

Mr. McCLEUR. Will the Senator yield?

Mr. BYRD. Yes.

Mr. McCLEUR. I thank the Senator for yielding. I thank my friend from West Virginia for the friendship he has exhibited and thank them both very much for their remarks here this evening.

Mr. BYRD. Mr. President, the amendment by Mr. Pell and Mr. Hatch earlier today substituted language for the language beginning on page 101, line 22. The Senate still needs to adopt the committee amendment preceding the word "provided" on line 2 of page 102. The language begins, "provided further," on line 19. I ask the Senate now vote on that language.

COMMITTEE AMENDMENT, PAGE 101, LINE 19
The PRESIDING OFFICER. The question is on the remaining committee amendment, as amended.

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

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

THE MOTION TO LAY THE MOTION ON THE TABLE AGreed TO.

Mr. LEAHY. Mr. President, I would like to confirm the purposes of the Northern Forest Lands Study which the Appropriations Committee funded in the fiscal year 1991 Interior and related agencies appropriations bill. My understanding is that the $1.275 million in funding will be used for the following purposes:

First, $175,000 should be allocated for a 1-year phase out of the Northern Forest Lands Study. This will allow for the permanent Forest Service coordinator and a Northern Forest Lands Council to be established.

Second, $400,000 should be allocated to each of the four States to hire a resource planning specialist. The planning specialist should initiate resource conservation planning on the State level, coordinate among State and Federal agencies, and assist in developing criteria and guidelines for the establishment of the council.

Third, $200,000 should be allocated for the regional Northern Forest Lands Council. The council should be comprised of representatives appointed by each Governor and a designee(s) of the Forest Service. The council should solicit public involvement and develop a work plan for implementing the Northern Forest Land Study and task force recommendations. The council's role should be outreach and coordination among Federal and State implementation programs.

Fourth, $500,000 should be made available through matching grants under guidelines set up by the Forest Service in cooperation with the States. These grants should be matched equally by each State.

Finally, the Forest Service should hold all State funding until State planning specialists are named and the council is formulated.

Mr. BYRD. The Senator from Vermont is correct in clarifying the manner for which northern forest lands acquisitions will be used in fiscal year 1991.

FUNDING FOR INDEPENDENCE NATIONAL HISTORIC PARK
Mr. LAUTENBERG. Mr. President, I rise to voice my concern about the condition of Independence National Historic Park. Mr. President, I am worried that instead of being a lasting reminder of our Nation's founding and development, this historic site is becoming, in the words of the Philadelphia Inquirer, "a memorial to the sad decline of America's cities."

Specifically, I am alarmed over the deterioration of Independence Mall. The presence of numerous broken fountains, dangerously uneven walking surfaces, and other signs of decay leads me to believe that the mall and other portions of the park have been neglected. I have shared these concerns with the distinguished chairman of the Interior Subcommittee some time ago on this matter, and I know he shares my concern.

Mr. BYRD. I too, am deeply concerned about the condition of Independence NHP and all of the parks in the National Park System.

Mr. LAUTENBERG. Mr. President, I understand that the bill provides increases for park maintenance and management, to address the kind of problems we are seeing at Independence Mall. The increase would include an additional $293,000 above the previous priority for Independence Mall. Is it the committee's intent that these additional funds be used to address some of the repair and maintenance problems at Independence Mall?

Mr. BYRD. These funds have been made available by the committee for that purpose and other pressing needs at our national parks.

Mr. LAUTENBERG. I thank the chairman for his efforts on behalf of the National Park System, and especially Independence NHP, which is of particular concern to me and the people of New Jersey and the Delaware Valley.

MARAI DES CYGNES
Mr. DOLE. Mr. President, I would like to thank the managers, Senators Byrd and McClure, for accepting my amendment to add funds to the Interior appropriations bill for the purchase of 4,000 acres along the Marais Des Cygnes River in Linn County, KS.

If accepted by the House, this amendment will have benefits far beyond the boundaries of my State. Marais des Cygnes has been identified by both the Nature Conservancy and the Fish and Wildlife Service as a top acquisition priority for fiscal year 1991. It offers prime wetland habitat, including forested wetlands and one of Kansas' most pristine and scenic wild rivers. This unique wetland is home to 11 species listed as threatened and endangered by the State of Kansas and 2 species—the bald eagle and peregrine falcon—listed by the U.S. Fish and Wildlife Service.

Clearly, the opportunity to buy this land at a reasonable price is one the Federal Government should not let pass by. But, Mr. President, I want to emphasize two words here: reasonable price. Why am I bringing this point to the Senate's attention? Because there has been some concern raised that developers may try to profit unfairly from the sale of the land to the Fish and Wildlife Service.

Over the last year, Allen Pollen of the Nature Conservancy has worked quietly to purchase these 4,000 acres. Unfortunately, Nature Conservancy has been unsuccessful because the owner of the land, P&M Mining Company, is interested in selling their entire 26,000 acre holding to a single developer. Currently, Mr. Pollen informed my office that a group of Kansas City developers have made an offer on the 26,000 acres, including the 4,000 acres...
of refuge land. There is nothing wrong with that. The land is for sale and, from what I have been told, there is no knowledge of the Fish and Wildlife Service's interest in this land.

But, these developers should not turn around and try to sell this land at a huge profit to the Government. If the Fish and Wildlife Service cannot get a fair market price for it, then they should not buy it.

FOREST SERVICE ROAD CONSTRUCTION BUDGET

Mr. MCCAIN. Mr. President, the amendment of my friend from Georgia, Senator Fowler, to cut the Forest Service road construction budget has posed a very difficult dilemma.

First, I would like to make clear my opposition to the construction of roads which are unnecessary and do not meet public muster. Those who share that concern should take some comfort in knowing that whether, there is one dollar or one billion dollars in the Forest Service's road building budget, the construction of new roads must be planned and implemented within the context of the forest plan and subject to the public processes and ecological considerations established by the National Environmental Policy Act. These safeguards should ensure that the arbitrary and excessive construction of roads does not occur.

Nevertheless, I know that many concerns have been expressed about the road construction program, particularly when roads are constructed for timber cutting purposes in areas where the Forest Service may not be adhering to environmentally sound and sustainable harvesting practices. Again, Mr. President, I want to be clear, I share my colleague's concerns about the construction of unwanted or unnecessary roads, particularly those which have serious impacts on wildlife and important habitat, or those which may be built where they will result in problems which have been identified. My main concern about this amendment, however, is the impact it would have on road programs targeted for multiple purposes including recreation, public access, and administration. I am particularly concerned about the impact I am informed this amendment will have on the implementation of the Arizona recreation initiative.

The Arizona congressional delegation has worked diligently to advance the initiative in order to provide our citizens with expanded recreational opportunities, including the construction of camp sites and other facilities. I contacted the Forest Service throughout. I requested information on the impact of the Fowler amendment on recreation spending. In response, I was informed that if this amendment passes we will lose a significant amount of funding for recreation. In my opinion, the proposed budget cut would affect a number of timber contracts which have already been executed as well as sales called for in the existing forest plan. The Forest Service estimated that the reduction will cost nearly 9,000 jobs, and cost our rural counties nearly $11 million. The counties depend on these moneys for schools and county road construction and the related social and economic benefits.

I said, I oppose those timber sales and the construction of associated service roads which violate the forest plans or the tenets of sustainable yield. To advocate such activity would do the forest, our environment, and the future of our economy and the forest products industry a grave injustice. Overharvesting and the construction of ill-advised roads, however, should be addressed by utilizing the proper administrative and legal means rather than using the budget process, particularly when doing so adversely affects recreation and public access initiatives which are so crucial to my State.

Mr. LEVIN. Mr. President, I would like to thank the chairman of the full Appropriations Committee and the Interior Subcommittee for including funds in the Energy Information Administration's budget for 1991 to establish a propane price and inventory system. In addition, I hope that in conference the Senate will retain language encouraging the Secretary of Energy to recommend adequate inventory levels of home heating fuels, including propane. Senator Lieberman and I introduced legislation earlier this year, S. 2177, to require EIA to collect better data and publish it more frequently, on the home heating fuels market so that crises like the shortages and price rises that occurred last winter will not be recreated. Our bill also required the Secretary of Energy to recommend adequate inventory levels of home heating fuels.

At a July 26 hearing of the Senate Subcommittee on Energy Conservation and Regulation, and in a recent letter, the Department of Energy has indicated its willingness to strive to achieve many of the goals intended in S. 2177. Publishing a winter fuels report, expediting propane data collection, and conducting an interruptibility analysis that will open the market with more information and policymakers with a better chance to spot and ward off dangerous price spires. Though the Department is unwilling to recommend adequate inventory levels, EIA will publish current inventory levels with a comparison to historical levels. I consider the increased resources devoted by EIA to
these efforts very important given the rising price situation many of my constituents now face.

Mr. President, the related appropriations item which has not been included in the Senate version of H.R. 5769, is $550,000 found in the House bill, for the State Heating Oil and Propane Program. SHOPP. SHOPP has provided information on heating oil prices in Michigan for over 10 years and is, currently, the only timely and accurate source of State level residential fuel oil price information, despite the lapse in Federal funding.

Over 400,000 households in Michigan depend on fuel oil for their heating needs. These people need to have some assurance that regulators and policy makers are carefully collecting accurate data and watching the market for signs of supply and demand imbalances. Currently, there is no cost for this program and no Federal grants to support what information that is being collected more effectively. I hope that the conferees will accept the House provisions to revitalize the SHOPP Program in time for the heating season which is now upon us.

Mr. President, last but not least, I am pleased that the committee has included increased funding for a number of initiatives dealing with electric and hybrid vehicles. I have long supported research and development in this area because I believe that in the long run we will need these leap-ahead technologies to achieve clean air and a healthy environment.

I am particularly pleased that H.R. 5769 provides funding for a joint venture to research electric vehicle battery technologies. By adding the weight of public funding to a consortium of automobile manufacturers and electric utilities, the joint venture approach could provide the resources and expertise necessary to produce a long-awaited breakthrough in battery technology.

This approach should serve as a model for more extensive private-public cooperation in the development of ultraclean vehicles.

Mr. President, the committee report also notes that the funds provided for batteries may be used by the Department to pursue research and development on additional battery technologies, such as sodium-metal chloride, among others. SHOPP.

A recent report by the Argonne National Laboratory found that the nickel-metal hydride batteries developed by a small business in Michigan are potentially suitable for use in electric vehicles. The report concludes that "Recent progress in the development of nickel-metal hydride rechargeable batteries have made them potential candidates for further development and production potential," I hope that the Department of Energy will seriously consider using some of the funds made available to it for further development of this promising technology.

Mr. President, I am hopeful that joint private-public research and development of ultraclean vehicles will keep our country at the forefront of automotive technology and will yield real significant improvements in air quality in the next century. I commend the committee for its approach and I hope that it will insist on this provision in conference with the House.

Mr. DOLE. Mr. President, I want to express my support for the amendment offered by the Labor Committee leadership for the reauthorization of the National Endowment for the Arts. As we all know, the furor over Federal funds for the NEA continues to occupy a prominent position in the public's view.

This amendment is designed to achieve two important goals. First, it would punish those individuals, organizations, and institutions which try to spend taxpayers' money on works that, under existing legal standards, would be considered obscenity or child pornography. In addition to retrieving the grant funds for such works, the Government also restricts convicted parties from receiving further NEA funding for a period of at least 3 years.

The amendment would also address problems in the grant-making process. We no longer want to see gallery directors use their position on the NEA panels to funnel thousands of dollars to their own organizations. We no longer want to see panelists make funding decisions behind closed doors with money that does not belong to them. This amendment makes changes in the grantmaking process which would hold panelists more accountable, changes like rotating panel membership and opening to the public meetings of the National Council on the Arts.

I do want to point out that, while I supported the Labor Committee amendment, I did not oppose the more restrictive amendments offered by my colleague, Senator Enzian. In my view, we need to send a strong message to the arts community—that it must act responsibly if it is to expect continued financial aid from the taxpayers. If the arts community feels this position is unfair, it certainly has the right to make its views known. But this is a two-way street and it should also be clear that the American taxpayers have just as much right to discontinue their support.

In my view, however, this compromise is a reasonable one, achieved through bipartisan cooperation. It allows the NEA to continue its worthwhile endeavors, yet addresses the feelings of many of my colleagues, and the majority of the American people—preventing the use of Federal funds to support obscenity. I commend the members of the Senate Labor Committee and their hard work in crafting this agreement.

Mr. LAUTENBERG. Mr. President, I rise to support H.R. 5769, the fiscal year 1991 Interior Appropriations bill, and to commend the distinguished chairman, Senator Byrd, for his efforts on this bill. This legislation makes important investments in the preservation of our Nation's natural heritage, through its support of the National Park Service, the U.S. Fish and Wildlife Service, and the Forest Service. It also provides essential support for the National Foundation on the Arts and Humanities and the Smithsonian Institute. It also contains money for health and education programs that are vital to native Americans.

I would like to discuss a number of items involving the parks and open space in my State that are addressed in the bill and the report.

ELLIS ISLAND

Mr. President, the report on the bill addresses the problem of the cost of access to the new Immigration Museum at Ellis Island.

A basic premise of Ellis Island was that America was open and available to just about everyone. Flanked by the Statue of Liberty, it was a gateway for people of all backgrounds and classes. We didn't ask that immigrants be of significant means.

Unfortunately, the same can't be said of the restored Ellis Island. The cost and inconvenience of reaching the island threaten to keep out many American families who would like to visit the facility, to reestablish a link with their past.

Today, it costs a family of four $18 to visit the island. On top of that, they may have to wait in line for several hours before boarding the ferry. When our parents and grandparents came to Ellis Island, they expected certain hardships. Visitors today shouldn't have to endure the same.

These fares were adopted in spite of a National Park Service staff recommendation. In May of this year, even the Park Service recommended that the fare for an adult be no more than $5. But, the concessionaire was eventu­

ally allowed to boost that to $6, a 20 percent increase. And, under the exist­ing system, the current concessionaire, which runs the ferries to and from Ellis Island, has exclusive rights to provide that transportation. There can be no competition.

There may be cases where such a policy makes sense. But in this case, the policy is disserving the public. Others have expressed interest in providing ferry service at lower cost. But they aren't allowed.
There's one way to make it more available: Use the bridge that currently connects Liberty State Park in New Jersey. That's why I asked the distinguished chairman of the committee to include a two-part directive to the National Park Service. First, the committee directs the Park Service to work with the Statue of Liberty-Ellis Island Foundation, which controls the bridge, to keep the bridge open. Second, it directs the Park Service to conduct a review of issues that have to be resolved as we consider making the bridge permanent, and open to the public.

It's important that we move ahead with this. Few places hold as important a place in our culture and history as Ellis Island. Through those immigration facilities came millions of people, all looking to become part of the American dream. No doubt, many in this room can trace their families' beginnings in the United States to the gates of Ellis Island. My roots race back through Ellis Island. Because of that, it will always be a special place to me.

The ability of American citizens to visit a national treasure like Ellis Island should not be unreasonably restricted. The option of making the bridge available to the public should be considered, and I again thank the chairman for addressing this matter in the committee report.

LIBERTY SCIENCE CENTER

At my request, the committee has also provided $12 million in Park Service construction funds for the Liberty Science Center and Hall of Technology at Liberty State Park, NJ.

Liberty Science Center is the largest science center currently under construction in the United States. It will be located in the most densely populated and ethnically diverse region in the United States, with a population of some 20 million. It is estimated that 1.5 million people will visit the center annually. Many of them will come from around the country. They will also visit the National Park facilities at Ellis Island and Liberty Island.

The center's exhibits and programs will represent the state of the art in science education. Inservice training of teachers, as well as a broad range of interactive programs ranging from aerospace to superconductors for elementary schoolchildren, their parents and the general public will be available at the facility. The center will also operate special outreach programs for minorities and other groups that do not participate fully in science.

Liberty Science Center is unique in the depth and breadth of the public/private partnership that has given its strong support. The idea for the center originated in the New Jersey corporate community out of a concern about the quality of science education in the schools and the implications for the availability of scientific and technical manpower as well as for national competitiveness and prosperity.

This innovative museum and science center, young Americans will receive hands-on experience with science and technology.

The estimated cost of construction and equipment is $55 million for the project. So far, $28 million has been raised from private sources and $10 million has been contributed by the State of New Jersey, which also donated the site. The $12 million that the Federal Government will contribute through this bill will go a long way toward bringing this important project to fruition.

STERLING FOREST STUDY

Mr. President, I would point out that this bill also contains an amendment I offered in committee to fund a study of the Sterling Forest in New York and New Jersey. This is an initiative which I believe my colleague in the House, Representative ROBERT TORRICELLI, and I am pleased to support it in the Senate.

Sterling Forest is a beautiful, environmentally sensitive and significant area which lies along the New Jersey-New York border. The study, funded in this bill, will provide us with information on how best to preserve and manage this area. And let me say Mr. President, that this study is all the more important because inadequate management of Sterling Forest could have grave consequences for the quality of drinking water in my State. Two reservoirs, Monksville and Wanaque, are fed by streams with headwaters located within the Forest. Also, ill-considered development could aggravate flooding in the Passaic River Basin in New Jersey.

I would like to thank the committee for accepting this amendment. I'm hopeful that the study will help preserve a pristine area and ensure the safety of New Jersey's drinking water.

NEW JERSEY WILDLIFE REFUGES

Mr. President, this legislation also contains funding for refuge and park land acquisition that is of special significance to my State. New Jersey is the most densely populated and urbanized State in the Nation, but New Jersey also has some beautiful areas that are home to diverse plant and animal life. The fact that New Jersey is so urbanized makes the preservation of our remaining pristine areas that much more important.

The bill includes $6,000,000 at my request for land acquisition within the Wallkill National Wildlife Refuge. The Wallkill Refuge is New Jersey's newest wildlife refuge and was created in response to legislation I introduced last year with Senator Bradley. The Wallkill River corridor is one of the last high-quality wetland refugia in northwestern New Jersey, and is home to a diversity of wildlife, including 16 State-listed endangered species. No land has been acquired yet, and the requested funding would provide for an initial purchase of 3,000 acres of land.

At my request, the bill also contains $2.3 million for land acquisition at the Great Swamp National Wildlife Refuge. This is an area just south of the Wallkill in the southwestern part of the state, which is one of the few large remaining wetlands of New Jersey. It is a critically important habitat for the manatees, which are endangered species. The Great Swamp is also under heavy development pressure. The acquisition of land provided for in the bill will prevent encroachment from residential development that is rapidly destroying valuable habitat, degrading water quality and threatening the ecological integrity of the swamp.

Additionally, the bill contains $585,000 to purchase land adjacent to the Morrisville National Historic Park, which is not only historically significant due to its use as a wintering place for the Continental Army, but also because it contains the headwater streams leading to the Great Swamp.

For the Forsythe National Wildlife Refuge the bill provides $4.5 million for the acquisition of the Herring Point/Reedy Creek area. The E.B. Forsythe Refuge includes critical wintering habitat for black ducks and Atlantic brant, as well as habitat for the federally listed piping plover. The area also includes the Swan Point Relay, where clams are cleansed by the Reedy Creeks clean waters before being made available to the public, and which is crucial to New Jersey's clamming industry.

The bill provides $4 million for land acquisition at the Cape May National Wildlife Refuge. The two divisions of this refuge include land considered among the Atlantic flyway's most important staging and wintering areas during spring and fall migration, as well as being habitat important for at least five plant species being considered for Federal threatened or endangered listing.

GATEWAY AND DELAWARE WATER GAP RECREATION AREAS

Mr. President, I also want to point out that the bill contains funds for Sandy Hook, part of the Gateway National Recreation Area. Gateway remains a popular vacation spot for over 9 million people. The Sandy Hook Unit is in need of construction funding for a number of important projects, and, at the request of myself and Senator BRADLEY, the fiscal year 1991 Department of Interior and related agencies bill provides money for these projects. This money would go toward construction of much needed new restrooms, lifeguard facilities and concessions. In addition, the funds would help improve and expand parking for Sandy Hook.

The Delaware Water Gap National Recreation Area is another heavily used recreation area in my State. How-
ever, the area is in need of a number of essential improvements. Last year, funding was provided for initiation of some of these projects. This bill appropriates money to continue last year's work on the new Weygadt Visitor's Center. Also, funding is provided for added visitor protection, the stabilization of historic structures in the park, and land acquisition.

**HISTORIC PRESERVATION**

Mr. President there are also significant funds here for a number of historic preservation projects in my State. In particular, the bill would provide $1.5 million I requested to aid in the renovation of Newark Symphony Hall. Listed in the National Historic Register, Newark Symphony Hall is currently being refurbished in coordination with development of the New Jersey Performing Arts Center, a $200 million public-private partnership for a multitheatre cultural and arts center to be located downtown. The completion of this project is essential to the revitalization of New Jersey's largest city because it will bring jobs, new businesses and new life to the central city.

Symphony Hall is an integral part of the revitalization project and this money is needed to complete the renovation of this historic structure which is home to the New Jersey Symphony, the Garden State Ballet, and the Newark Boys' Chorus. By providing this money the Senate is helping scores of urban families and children to have access to cultural events and education that they might not otherwise have. As well, we aid in the rebuilding of one of New Jersey's most important cities.

The bill also contains funding for surveys of historic structures in both Millville and Commercial Townships. These funds will go toward a comprehensive study of structures in these towns so that we can preserve those that are historically important for our children.

The relatively small amount of funds provided for the operation of the Edison National Historic Site in West Orange, NJ, will go a long way toward allowing an increased number of people from all over the country to view this historic structure. The labs and home of the great inventor Thomas Edison are currently open on weekends. The $180,000 operating subsidy included in the bill will allow for expanded operation of the labs and Edison's home, Glenmont.

**ABANDONED MINES**

Last, Mr. President, North Arlington and Mine Hill are two communities in my State that face a grave situation, one which may be familiar to the distinguished chairman. Both these New Jersey towns have abandoned mine shafts running underneath. New Jersey has hundreds of abandoned mining shafts running underneath it. In both North Arlington and Mine Hill, many of these shafts have begun to collapse, or in some cases already collapsed. Area property owners are facing the daunting task of seeking insurance for some and posing a potential danger to others. Also, residents have had difficulty in securing bank loans and insurance since the incident.

Both towns have been working with the Bureau of Mines and Office of Surface Mining Reclamation and Enforcement, and North Arlington has already sealed the mine that first collapsed. However, these towns need the financial and technical help of the Federal Government. That's why I requested funding to aid these communities. I appreciate that the committee has included $1.4 million to aid North Arlington and $450,000 for Mine Hill.

Mr. President, I would again like to commend the distinguished chairman for his outstanding work on this bill and to thank him for his help in addressing my requests. I urge my colleagues to support the bill.

**OUTER CONTINENTAL LEASING**

Mr. LAUTENBERG. Mr. President, I rise to address the matter of outer continental leasing, the leasing of the Outer Continental Shelf of the Department of the Interior. I believe that there should continue to be a moratorium on activities leading up to leasing for energy development in the Outer Continental Shelf areas in the mid-Atlantic. The risks to New Jersey's precious coastal environment, and to its coastal industries are too great to proceed recklessly to wholesale leasing in the waters off my State. I raised this matter with Secretary of the Interior Lujan when he appeared before the Interior Subcommittee earlier this year. Recently, the Secretary sent to me a letter assuring me that the Department would not conduct lease sale 121 under its current 5-year program which extends to July 1992. Consequently, it is my expectation, and the expectation of the comments I've expressed in this report, that the Department shall not conduct preleasing activities including area identification and activities requiring public participation in the area until July 1992.

Earlier this year, the President announced his decision to establish moratoria off a number of coastal areas. Included were areas off the coasts of California, Oregon, New England, and Florida. Many of these moratoria bar energy development up to 10 years. Excluded from these moratoria was lease sale 121, covering the area from Rhode Island to Maryland, despite significant environmental concerns, and the fact that it is far less attractive to the oil industry than the areas to be protected. New Jersey's beaches are just as precious as those of States covered by the administration's ban. And our beaches are in the same development.

The recent events in the Middle East have led some to renew calls for offshore drilling. But the answer to our energy problems is not to drill for oil in our sensitive coastal regions for a future that may never come. New Jersey has oil, but we need additional energy, and an alternative fuel policy that enhances the role of energy conservation, renewable energy, and alternative fuels.

The National Academy of Science took it upon themselves and the President's CRS task force took another year just to conclude that the areas under consideration needed further study. Then the President's decision called for another 6 or 10 years to answer all the environmental impacts in those other states. If more study is needed for these other areas— and it is— then how can anyone assure us that the administration has all the answers for New Jersey? It does not. The administration claimed that it used the analytical guidelines of "environmental sensitivity" and "resource potential" in its June OCS decision to protect areas where the environmental risks outweigh the potential energy benefits. The CRS analysis noted that using those analytical guidelines "an area which had high environmental sensitivity and low resource potential would be a likely candidate for inclusion in a moratorium." Lease sale 121 clearly fits that description. Yet, lease sale 121, was not considered for a moratorium by the President.

Mr. President, I welcome the Secretary of the Interior's commitment to postpone action of lease sale 121 until July 1992. I am pleased that the committee as well has recognized the need to postpone preleasing and leasing activities in the mid-Atlantic.

I ask unanimous consent that the letter from the Secretary Lujan be inserted in the Record at the conclusion of my remarks.

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

**THE SECRETARY OF THE INTERIOR**


Mr. LAUTENBERG, U.S. Senate, Washington, D.C.

DEAR SENATOR LAUTENBERG: You have requested additional information concerning the Department of the Interior's plans to schedule lease sale 121 offshore New Jersey. The Department of the Interior will not conduct any lease sales in the Mid-Atlantic Planning Area in the current Five-Year Program, which concludes in July, 1992.

We hope this additional information on future leasing activities offshore New Jersey will assist you in your contemplations regarding the Department's FY 1991 appropriations bill.

Sincerely,

MANUEL LUIJAN, Jr.

Mr. LEAHY. Mr. President, I wish every Federal agency were as account-
able as the NEA has been, over its 25-year history, with the money we give them to spend.

Before an NEA check is written, each grant application goes through meticulous review—three peer panels, and final review by the NEA chairman.

Yes, the NEA has made a few mistakes in recent years. These mistakes have offended and disturbed me. But only a tiny percentage of the grants made by the NEA, over 25 years, has sparked controversy or violated accepted community standards.

Specifically, the NEA has approved over 85,000 grants to arts organizations and to individuals—of which less than 20 have been charged with violating public interest because of frivolity, obscenity, indecency or ethnic disparagement.

In other words, less than one-fourth of one-tenth of 1 percent—that is, less than 0.03 percent—of the number of NEA grants has been called into serious question.

COMMUNITY OUTREACH

The NEA has brought great works of art to millions of Americans in their own communities. As such, it is one of the most effective of our Federal agencies at the grass roots level. Its reach extends to inner city and rural town—to Harlem, and St. Johnsbury, VT—on a regular basis.

NEA brought us the Vietnam Memorial, Pulitzer-prize winning plays—including Academy Award winner "Driving Miss Daisy"—and a host of traditional clogging.

The number of choreous, dance companies, museums, orchestras, theaters, and opera companies across the country has tripled since the NEA began in 1965.

In Vermont, these grants have supported the Mozat festival, the New England Bach Festival, the Flynn Theater for the Performing Arts, and the Vermont Symphony—which enrich and uplift thousands annually.

WE HAVE MORE IMPORTANT THINGS TO DO

For a year and a half—since May 1989—this Congress has spent thousands of hours of staff and Member time—and more public funds than I want to calculate—on going round and round, in committees and on the floors, on the issue of the NEA, and whether to kill, cut, or alter it.

Remember, this seemingly endless debate was not set off by impending war in the Middle East. Or the S&L debacle. Or multibillion dollar procurement problems at the Pentagon. Or the increasingly ignored problem of the homeless.

No. We are on this tangent because a tiny fraction—a small handful—of NEA grants offended some people and got turned into a big political issue.

We tried to find out what the NEA, and ourselves as individual Members, when we carry on like this. I believe that the great majority of the American people see through this exercise. That great mistakes are made, and great catastrophes are considered.

They know we should not be keepers of the public morality.

Most of all, they want us to take better care of the Federal treasury, and their tax dollars that flow into it. And if we talk on and on about the NEA, they know that we are not really taking care of those tax dollars, because the NEA is wasting very, very few of those dollars.

Instead the great majority of the American people know, when we remain stuck on an issue like this for more than a year, that Congress—not the NEA—is wasting those tax dollars.

It is a waste to spend more of those dollars trying to gain the moral high ground on this issue—reaping campaign contributions in the process—than we spend debating child nutrition or education or the Midwest situation.

Let us bring some reason to this controversy. Let's stop being afraid of the 30-second sound bite. You know, the one that says—"Senator X is soft on pornography; Senator Y voted to accelerate the moral ruin of the Nation." On both sides of this issue, we do the American people, ourselves and the Senate a disservice by prolonging the debate on this important but quickly solvable issue.

Let us get on with the most important business of the Nation. Let's show the American people that we stand for more than moral posturing, campaign fund-raising, and dodging the 30-second sound bite bullet. Let's show them some leadership.

Let us go with the recommendations of the Senate and House authorizing committees, and of the Special Independent Commission—after all, the majority of us voted to create it, just last year.

Let us make the well-considered, judicious policy changes in the NEA recommended by those two committees, and that Commission. Most of all, let us leave the matter of making decisions on obscenity and pornography to the courts, where it belongs, and poise majority to act against only those NEA grant recipients found guilty in courts of law.

The Pell-Hatch amendment is the only reasonable, rational, way to resolve this matter. I plan to vote for it, and I urge my colleagues to join me.

Mr. DOMENICI. Mr. President, today I would like to share with you some of the reasons why I support the reauthorization of the National Endowment for the Arts without restrictions. As seen in communities around the Nation, since the establishment of the Endowment 25 years ago, artistic expression in the United States has flourished. Over the past 25 years, the number of professional dance companies has increased from 37 in 1965 to over 250, professional orchestras from 60 to over 212, and nonprofit theaters from 56 to over 400. The NEA has provided the opportunity for allowing young writers the opportunity to create, funded museum expansion and collection, and reached out to over 3.5 million children with their Arts in Education Program in the 1986-87 academic year.

In my home State of New Mexico, I am proud of the fact that we have achieved this level of success. Yet, when we look at the controversy surrounding less than 0.03 percent of 25 years work, there are amendments suggested that will restrict the future of the endowment. Let us take a few minutes now to discuss the impact of the endowment on an area, I know well, the arts in New Mexico.

As of October of this year, 57 separate artists and institutions in New Mexico received over $2.5 million in funding from the NEA. Many of the grants were awarded to applicants in the Albuquerque and Santa Fe areas, and are intended to support concert series or educational restrictions that would benefit large numbers of people in those areas. For example, 10 of the 14 grants to the Albuquerque area were in support of performances. Some of these grants were supporting programs that are vital with: $7,500 to the New Mexico Repertory Theatre to defer expenses associated with the 1990-91 production season, or $5,000 to the New Mexico Jazz Workshop to support the 13th annual Guest Artist Series of jazz performances. Yet although I have inferred that these plays and performances are ordinary, it is important to remember that the average citizen's familiarity with this type of art and culture is due in part to exposure allowed by generous funding from the NEA.

Other programs in the area are vital to bringing forth types of art that are not so well known, and I urge you to consider the culture of the Southwest. Artists of Indian America, the AIA, have received a $15,000 grant to support a professionally directed, multidisciplinary arts program for various Indian communities throughout the Southwest. The group will provide workshops in traditional dance, music,
song, and storytelling to the Indians in their own communities, helping to keep the ancient culture alive. AIA is the only national program of its kind, and is committed to working with Indian artists and through their work.

Several other artists have contributed to the preservation of the Spanish culture in New Mexico, and to encouraging community pride in their rich heritage. They have established themselves as a catalytic force behind New Mexico artists. Working both on a one-on-one basis with individual artists and through workshops, the foundation helps Hispanic artists publicize and market their work. As part of this effort, the Hispanic Culture Foundation has just completed a 5-year project on a New Mexico art directory. This directory is the only national program of its kind, and is committed to increasing understanding of Hispanic culture in New Mexico, through selection and promotion of quality work. As the NEA incorporates the improvements suggested by the Independent Commission, this process should continue to improve. Therefore, I truly urge that the NEA be allowed to promote art as it was designed to do, not through restrictions but through selection and promotion of work with artistic value. This goal can only be accomplished through funding without restrictions. As the old saying goes, "if it ain't broke, don't fix it;" let the NEA continue as the lifeblood of the arts in this Nation.

The amendment which Mr. Byrd and I have proposed and offered by the Appropriations Committee on October 16, the NEA appropriations bill rejects the compromise achieved in the House and again attempts to impose content restrictions on NEA funding. The restrictions forbid the funding of works that may be considered obscene, but the NEA does not have any desire to support obscenity, nor have they ever intended to. In a mere 25 of the 85,000 grants that have been made, the NEA may have made a mistake. However, forcing artists to sign a statement forbidding obscenity will not change this. Artistic works are free to let their creativity flow, not restricted by promising to limit their art to gain much needed funding. The system of peer review that is undertaken in the grant award process is designed to select quality art. As the NEA incorporates the improvements suggested by the Independent Commission, this process should continue to improve. Therefore, I truly urge that the NEA be allowed to promote art as it was designed to do, not through restrictions but through selection and promotion of work with artistic value. This goal can only be accomplished through funding without restrictions. As the old saying goes, "if it ain't broke, don't fix it;" let the NEA continue as the lifeblood of the arts in this Nation.

Mr. BYRD. Mr. President, I suggest the absence of a quorum to come out of my time.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BYRD. Mr. President, I send an amendment to the desk. I ask unanimous consent that it be considered, agreed to, and that the motion to reconsider be laid on the table.

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

The amendment (No. 3133) was adopted, as follows:

On page 35, line 10, before the period insert the following: "Provided further, that if the funds otherwise be allocated to the State of Pennsylvania from the funds made available in this Act under this head, up to $1,000,000 shall be made available to the Office of Surface Mining, in cooperation with the Bureau of Mines, for the purpose of extinguishing the Thomas Portal fire.

Effort to Extinguish the Mathies Mine Fire

Mr. SPECTER. Mr. President, on October 17, 1990, the Mathies Coal Co.'s Thomas Portal in Venetia, Washington County, PA, erupted into fire. The amendment which Senator Henze and I have proposed and offered by Senator Byrd to the Interior appropriations bill for fiscal year 1991 provides an emergency fund to assist in the efforts to extinguish the mine fire at the Mathies Coal Mine. Approximately 320 miners were at work in the mine at the time. Fortunately, to date, there have been no fatalities as a result of the fire, and few injuries.

Shortly after the fire started, the Labor Department's Mine Safety and Health Administration toured the mine, and gave orders for the evacuation of all employees. After unsuccessful attempts to extinguish the fire, company officials have taken steps to seal the mine in an effort to cut its oxygen supply.

Mr. President, it is my understanding that sealing a mine is typically done as a last resort, when the underground environment is too hazardous to personnel to fight the fire directly. The concern, Mr. President, is that this procedure of cutting off the oxygen can take an undetermined amount of time to have an impact on the fire and could ultimately result in the permanent closure of the mine which produces approximately 4,300 tons of coal daily.

Following the eruption of the fire, approximately 250 residents living in a 4-mile radius of the mine portal were evacuated due to the high level of poisonous carbon monoxide that spewed from the underground fire.

Mr. President, as we have seen in the past, if a mine fire is not properly handled and all attempts to extinguish the fire are not exhausted the fire may burn for years. These fires endanger the residents and renders the region virtually inhabitable.

This amendment provides a much needed $1 million for the Bureau of Mines to proceed with extinguishing the fire. It is my hope that these funds will help to ensure that the families living in the region are safe from the fire and the workers in the mine can return to work as soon as possible. These workers constitute the economic backbone of the region.
Mr. BYRD. Mr. President, I move that the Senate request a conference with the House, that the Senate insist on its amendments, that the Chair be authorized to appoint the conferences on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. BYRD, Mr. Johnston, Mr. Leahy, Mr. DeConcini, Mr. Bloomberg, Mr. Hollings, Mr. Reid, Mr. McClure, Mr. Stevens, Mr. Garn, Mr. Cochran, Mr. Rudman, Mr. Nickles, and Mr. Domenici conferrees on the part of the Senate.

Mr. BYRD. Mr. President, I thank the distinguished majority leader and the distinguished minority leader for their assistance in helping us to move this bill, so that we have been able to take it up, debate it, and the Senate has acted on it, and we are ready to go to conference now.

I also thank my ranking friend here, Senator McClure, for the fine cooperation, and I believe without saying anything, and consideration that he has given to me as chairman; and there was a time when he was chairman, and I was ranking member of the subcommittee. I already thanked the members of the staff, and I hope that we can take up the legislative appropriations bill tonight. That will be the last appropriations bill. It will be the 13th appropriations bill, and we can go to conference on these bills and, hopefully, we will get the conference reports back and adopted by the day after tomorrow.

I yield the floor.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, I want also, to thank all of those who were so helpful and persevering in getting this important bill passed, the distinguished chairman of the Appropriations Committee and the distinguished Senator from Oregon (Mr. Hatfield) are necessarily absent.

The PRESIDING OFFICER (Mr. Wirth). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 92, nays 6, as follows:

[Rollcall Vote No. 309 Leg.]

YEAS—92

Adams
Akkas
Armstrong
Baucus
Bentsen
Biden
Bingaman
Boren
Bradley
Bray
Bryan
Bumpers
Burdick
Chafee
Coats
Cocon
Cooper
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dodd
Dole
Domenici
Durenberger
Edwards
Ford
Bond
Dixon
Boschwitz

NAYS—6

Gowey
Gore
Gorton
Graham
Mukowski
Nickles
Nunn
Packwood
Pellet
Presler
Robb
Reid
Rogers
Rodman
Rudman
Saxer
Shelby
Simons
Speer
Sterns
Symms
Thurmond
Wallace
Warner
Wilson
Wirch

NOT VOTING—2

Humphrey
Helm

So the bill (H.R. 5769), as amended, was passed.

Mr. BYRD. Mr. President, I am proud of the Senate, that we have been able to demonstrate that kind of discipline. I hope we can continue to do that in the future. I thank the majority leader.

LEGISLATIVE BRANCH APPROPRIATIONS ACT, 1991

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate now proceed to H.R. 5399, the legislative branch appropriations bill.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5399) making appropriations for the Legislative Branch for the fiscal year ending September 30, 1991 and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the Senate bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, S. 2307, which was reported on Tuesday, September 16, incorporates the recommendations of the Committee on Appropriations for the legislative branch in fiscal 1991, exclusive of House items. Delays in House floor action on H.R. 5399 made it necessary to proceed in committee with an original Senate bill if we were to get a legislative branch appropriations bill to the President before adjournment.

The House has now completed action on H.R. 5399 which passed the House this last Sunday, and has been placed on the Senate Calendar. This presents us with a minor procedural problem. We need to move from the Senate bill to the regular House-passed bill, modified to reflect the action of the Senate Appropriations Committee, as reported in S. 3207. We will then be in position to proceed in the usual manner.

The most straightforward solution is to commit H.R. 5399 to the Appropriations Committee, with instructions to report the bill back forthwith, incorporating the substance of S. 3207 as Senate amendments thereto, with the usual proviso that the committee amendments would be considered original text for the purposes of further amendment, and that no points of order would be waived. The effect would be to put back in the normal process at the point where committee amendments have been adopted, and the bill is open to further debate and amendment.

Adopting such an approach, will simplify the procedural situation and facilitate orderly consideration of the bill.

The committee bill, assuming inclusion of House items would provide a
total of $3,197,001,500 in discretionary budget authority for the agencies of the legislative branch. This is a reduction of from the budget request of $224,79,500 and an increase of $245,088,500 over the current level. This increase is the subcommittee’s 302(b) allocation for budget authority and outlays.

**IMPACT OF FUNDING CONSTRAINTS**

Mr. President, I wish to talk about the impact of the funding constraints in the bill.

Some may object to providing any increases for the legislative branch in the present budget climate. I would just make a couple of observations as we begin this discussion. First, $245 million, the amount of the increase, is not a large sum in the context of a $1 trillion budget. We are obviously not going to eliminate the deficit in this bill, although we feel we have done our share.

Moreover, about $123 million of the increase is for House items over which we in the Senate have no control under the rule of comity. But, it should be understood that this number includes $58 million for franking costs which were not part of the House accounts in fiscal year 1990.

The increases for the balance of the bill approved by the committee in S. 3207 comes to $122 million. Now, Mr. President, of this amount—and I want to emphasize this point so I hope that my colleagues will pay close attention—of this amount, $95 million is necessary just to fund current agency program levels. In other words, 77.8 percent of the increases in this bill simply support a current services budget. The balance is accounted for by a combination of growing workload costs and a few major capital improvements.

Funding constraints imposed over the last several years on the domestic services of the committee in S. 3207 were primarily injurious on legislative branch agencies. Most legislative branch agencies are labor intensive. They typically lack the flexibility that many other Federal agencies have in adjusting funding shortfalls. They do not administer grant programs and their external contracts, procurement activities, and capital projects comprise a minor part of their budgets. So they have little maneuvering room when the budget ax falls.

Moreover, several agencies have major infrastructure or equipment requirements which have been permitted for many years and will have to be dealt with in the near term. We have tried to include only the most pressing projects in this bill. But we cannot continue to postpone some needed investments in our infrastructure.

Mr. President, the facilities and institutions funded in the bill have a unique role and value in our national history and political life. The Capitol complex and Library of Congress, for example, are much more than just a collection of buildings. They are irre- replaceable assets and, more than any other Government entity, symbolize the primacy of informed public will in our constitutional branches of the republic. But of the three separate but equal branches, the legislative has always been the central and defining element, the institution where the people most directly express their will. The Capitol Building is the primary focus not only of this city but of our public life as a nation.

The Senate Chamber and the Old Senate Chamber across the hall—the beautiful hearing rooms and offices—the ornate moldings, the magnificent paintings and tapestries, the frescoes and friezes and the Minton tile on the walls which we Promontorius Brunaldi and William Rysbrack have designed the murals that grace the corridors through which we pass—none of this belongs to us as individuals or as Senators. It all belongs to the people of this country. We are merely their trustees.

We should also remember the role that this great building has played in the history of this country. The Capitol has in a very real sense risen and fallen with the fortunes of this republic. In the heady days following independence, the States of the new Republic agreed to relocate the Capitol to a more neutral site on the banks of the Potomac. It was then that the first Capitol Building was constructed on this small rise called Jenkins Hill, which overlooked a swampy lowland and the rude beginnings of this city. This was the building that was burned in the British invasion of 1812. But the country recovered and we began to rebuild the Capitol. In 1857 the House wing was completed; and the Senate wing was completed 2 years later before the civil war began.

In the meantime, construction of the great dome began. During its construction, civil war rent the Nation and temporarily halted the dome’s completion. President Lincoln, though, ordered the work continued as “a sign we intend the Union shall go on.” Beginning in 1858, the east front was replicated, extending it 33 feet and adding 90 rooms. In 1963 the restoration of the last original facade of the building, the west central front, began and was completed 4 years later.

And historical importance is not confined to the Capitol Building itself. The Russell Office Buildings contain rooms in which historic events have occurred and continue to occur to this day. The Caucus Room in the Russell Office Building has been the site of major instances in which Congress has exercised its investigative responsibility. The hearings held on the Teapot Dome scandal during the Harding administration, the hearings conducted by Senator Estes Kefauver in 1951 exposing organized crime in the United States, and the Watergate investigation were all held in the Caucus Room. In this room President Woodrow Wilson drew the first draft number of World War I.

Now Mr. President, the Library of Congress is also a little recognized but priceless asset. The Library of Congress Thomas Jefferson Building, completed in 1897, is one of the greatest architectural monuments of 19th century America. Its sculpture and murals reflect our cultural ancestry. It is one of the finest examples of neoclassical architecture in the country. The building, which was built for $6,300,000, contains a magnificent series of murals, mosaics, and sculptural decorations that contribute to its notable composition among American buildings.

The U.S. Government called upon a representative number of American painters and sculptors to help decorate this great public monument. In all, nearly 50 American painters and sculptors are represented in the building.

After World War II the building suffered from increasing crowding by the collections and staff. In 1984, Congress appropriated $245 million to provide the Library of Congress $81.5 million for the renovation and restoration of the Jefferson Building and the John Adams Building. Our distinguished ranking minority member of the Appropriations Committee who is also a member of the Joint Committee on the Library was in the forefront of this effort. In addition to removing fire hazards and bringing the building up to present day safety codes and installing appropriate wiring for sophisticated technology, the funds were to restore and renew the Library of Congress Thomas Jefferson Building. I am happy to report that this project has reached the conclusion of the phase I work. I would ask that Members who have not seen the great work restoration work done should do that. They should look at it. It is unbelievably fine.

I believe we have an obligation to make the investments necessary to preserve and care for these treasures with which we have been intrusted.

Now let me touch briefly on the highlights of the bill.

**SENATE**

Mr. President, the amount provided for the Senate for fiscal year 1990 is $442,582,500. This includes, however, $35.5 million in a new Senate mail account. So exclusive of the mail item, the increase over fiscal 1990 is $38 million.
lion and a reduction of $7 million from the request.

**AGENCY HIGHLIGHTS**

Now, Mr. President, a lot of people apparently have the notion that the legislation that is supported by the branch appropriations bills just funds the Congress, its purported perks, and its satellite institutions. That is a serious misconception. Through this bill, we serve the interest of all Americans, here in the preservation and protection of the irreplaceable national treasures embodied in the Capitol complex. And the organizations, like GAO and CBO, that directly support the Congress help to offset the executive branch advantage in the development and control of information. Thus they help to strengthen the representative function in our system.

It helps maintain the checks and balances the Founding Fathers wrote into the great Constitution of this country.

**LIBRARY OF CONGRESS**

We are recommending a total of $284,107,000 along with authority to spend $19,885,000 in receipts for the Library. The aggregate increase for the Library of Congress is $31 million, which is less than the amount requested by $21.2 million. Fifty-seven percent of this increase—$17.7 million—is for mandatory pay and inflationary costs which are necessary to keep the Library from losing more ground. The remainder of the increase—$13 million—is to address the most urgent needs in the Library's mission.

The single most pressing problem for the Library is the explosion of uncataloged items in the Library's collections. This bill provides $7.6 million to fill 170 vacant positions to reverse this trend. This arrearage now totals more than 38,000,000 items out of the Library's collection of 90 million items.

The Library of Congress is the intellectual heritage of our Nation. For instance, the Library of Congress' music manuscript collection has no peer. I have been through it. You can walk into the Library and physically handle manuscripts of Gershwin, Rogers and Hammerstein, Bernstein, Victor Herbert, and Aaron Copland—to say nothing of those of the European masters, Beethoven, Brahms, Liszt, and so on.

I was in the library and actually had in my hand an original Mozart composition on original paper that he wrote, signed by Mozart. So we have valuable pieces of music there.

The Manuscript Division in the Library of Congress is a virtual who's who in America, including the papers of 23 Presidents, most of the Justices of the Supreme Court, major literary figures, American scientists, and the rough draft of the Declaration of Independence in Jefferson's own hand with changes made by Ben Franklin and John Adams.

Those of us who watched the recent PBS Civil War series were probably unaware that most of the remarkable photographs and prints were from the collections of the Library of Congress. How much would the PBS Civil War series cost if it had not been for the Library of Congress? It would be millions more than it actually was, because the Library of Congress has the uncataloged photographs and other graphic materials awaiting processing and not available for use.

And the real problem that we have, Mr. President, is to stop them from being wasted and destroyed. They are in warehouses all over this area. Some are not properly cared for in the way of temperature control. We are trying to save these documents. What we have done here will allow us to save almost half of them.

I would say, Mr. President—as I have indicated with just two of the areas that the library protects, that is the manuscript division and music division—there are many others. What we are talking about here are things just as valuable and as important as those things in those two divisions.

Many of my colleagues may be not aware, and if they are, they should be reminded, that the library catalogs books for the Nation. Every library in this Nation is economically dependent upon getting the Library of Congress cataloging information. By cutting the Library of Congress budget, it will affect libraries in the Presiding Officer's State, in the State of every Senator that is in this Chamber; libraries in their States will be directly affected.

When sequestration hit the Library of Congress, complaints came to each one of us because it basically shut down the library at home. They cannot make books available to our schoolchildren, our college students, and to the general public in our States without the Library's having first cataloged them. A conservative estimate on savings to our Nation's libraries is $35 million—more than the entire appropriation of the Library of Congress, including the Congressional Research Service.

Congress has built and nurtured this Library for nearly two centuries as a monument to the people's Representatives' dedication to knowledge and freedom. To continue to ignore the need to process priceless collections, preserve them, and add to the knowledge base of this country because of a lack of resources is not only shortsighted, but I believe reflects tragically on the values we have in this country.

**GENERAL ACCOUNTING OFFICE**

Mr. President, another extremely important organization funded in this bill is the General Accounting Office. The increase for the General Accounting Office is $43.8 million in direct appropriation and another $5.9 million is authorized to be credited from a special fund for renovation and operation of the headquarters building.

This is a reduction from the request of $19.7 million.

Of this increase over $33 million covers mandatory salary and price level costs needed just to maintain a current services budget.

So, Mr. President, out of the $43.8 million, $33 million covers mandatory salary and price level costs.

Mr. President, the General Accounting Office continues to be one of the most important assets to the Congress that we have. Their work is noted for its objectivity and reliability and is relied upon heavily by both Houses.

Mr. President, the General Accounting Office continues to be one of the most important assets to the Congress that we have. Their work is noted for its objectivity and reliability and is relied upon heavily by both Houses.
budget, and Federal programs. The committee bill includes $21,183,000 for CBO.

The current budget turmoil serves to underscore how important CBO's analytical capabilities are to the Congress vis-a-vis the executive branch. Without CBO, we would be at the mercy of OMB and the executive branch insofar as systematic budget and policy data are concerned. When I speak of this, Mr. President, I speak of the Democrats and the Republicans. And we all know how impartial those sources are. Remember that David Stockman was Director of CBO and according to his book, he and his minions had no scruples when it came to lying to the Congress. Just remember Rosey Scenario and her magic asterisks.

ARCHITECT OF THE CAPITOL

The Architect is responsible for the supervision of all structural and mechanical improvements, additions, alterations, and repairs to:

The Capitol Building and surrounding grounds;
Senate Office Buildings;
House Office Buildings;
Library of Congress Buildings and grounds;
U.S. Supreme Court Building and grounds;
Senate garage;
Robert A. Taft Memorial; and
The U.S. Botanic Garden.

These facilities aside from their intrinsic historical and architectural significance are also vital to the operation of our government. The investments that have a conservatively estimated replacement value of $3.6 billion. Their care, maintenance, and enhancement is a public trust of the highest order.

The bill, exclusive of House Office Buildings, reduces the Architect's request by $63.6 million. Fifty-four percent of the remaining increase—$13.2 million—is necessary for the Architect just to maintain current operations. The remainder includes a variety of projects or new requirements that ought not be deferred.

CAPITOL POLICE

Too often, we take the services provided by the Capitol Police for granted. They are here long before and long after our working days are over—24 hours a day, 7 days a week. The Capitol Police Force now patrols a 40-block 200-acre area which includes 20 buildings. Policing an area of this size and character poses distinctive problems. A delicate balance has to be struck between maintaining adequate security and public order and preserving the constitutional rights of all citizens to peaceful assembly and free political expression.

The bill before the Senate contains a total of $60,499,000 to finance the Capitol Police in fiscal 1991. This will support a total of 1,285 sworn officers and 81 civilians.

MAIL PROVISIONS

Last year, we sought to improve our control over official mail costs. Congressional mail is an issue that always kicks up a lot of dust. But despite the controversy, we made some real progress, especially in the Senate where an allocation scheme was reinstituted to keep franking costs within the amount appropriated. The Rules Committee—and especially Chairman Ford and the ranking member, Senator Ted Stevens—deserve a lot of credit for their leadership on this regard.

This year we are extending and refining some of those reforms. Let me briefly summarize the principal changes.

The House bill establishes a separate House appropriation for its mail costs should at $85.9 million along with an allocation scheme similar to the one now in force in the Senate. There is also provision for disclosure of the mail expenses of individual Members. In addition, the House bill would prohibit the transfer of franking funds from one Member of Congress to another or their carryover from one session to another.

We recommend that the Senate follow suit with a separate Senate mail account. With it, we are at the level of the estimate, $35.5 million.

This leaves $33.2 million in the old joint account to cover projected House overruns for the current fiscal year. We really have no choice but to provide this money, even though it is the House that incurred these excess costs. Otherwise, the Postal Service will pass them on to postal patrons. The reform the House has adopted that no overruns occur in the future.

Thus after this year, each House of the Congress will have its own account for official mail costs together with a system of allocation and disclosure of franking funds among individual Members. Each House, that is the Senate and the House will then be fully, and solely, responsible for the amount it spends to pay for franked mail.

Now, Mr. President, before closing I want to record my gratitude-first to Senator Nickles—and to the other members of the subcommittee—Senators Mikulski, Adams, and Hatfield. I want to say about Senator Hatfield—Senator Hatfield has been involved in a reelection campaign. He has been very busy as the ranking member of the Appropriations Committee. But he has spent untold hours of time on this Appropriations Subcommittee, a subcommittee that he does not have to be involved in. He has done it. He has had special meetings with the Library of Congress and I would like to publicly extend my appreciation to him for having done that.

Each has contributed specifically to development of this legislation. As ranking member, the distinguished Senator from Oklahoma (Mr. Nickles) plays a special role. He is always cooperative. I was trying to express to a Member of my staff how it is to deal with Senator Nickles. All I can say is he is very frugal. I think that is enough said. He is cooperative but very frugal. And when we disagree, and that is not often, he is cooperative then.

I think there has never been, at least the word that I have gotten, two people who have worked as closely together as Mr. Nickles and me. It is a pleasure to work with him. We have worked...
together on this bill. We made a lot of progress, as well.

Mr. President, I will certainly not repeat everything Senator R
d said. He went through and gave a good summarization of the bill before us, the legislative branch appropriations bill. The House-passed bill before the Senate of $2.187 billion. That is an increase of 12.62 percent over last year. I think that is too large an increase. I will offer amendments in the near future to reduce that amount significantly. It is an increase of $124 million.

I would note, Senator R mentioned it was this increase that we have in the Senate bill before us today, an increase of $245 million. We had requests from the various agencies in excess of almost twice that amount, about a $440-some million increase request.

Under the bill before us, we funded half that increase, or a 12.5-percent increase over last year. If we had funded all the increase from the agencies—we are talking about the Architect of the Capitol; we are talking about GAO and other agencies—we would have been looking at an increase of 24 percent. The Library of Congress requested a 24-percent increase, for example, I could go on and on.

I will be offering a couple of amendments to reduce the total amount of this bill. One will be to have the total mail expense equal to last year's appropriated amount. This bill provides for about a $12 million increase in Senate mail. I understand the justification for it, but still I think we should hold the lid on Senate mail, and hopefully this will prevail.

I also want to make a comment concerning the House of Representatives. They voted in the last couple of days to enact some reforms on House mail. I compliment those House Members for making those changes. They included in the reforms, disclosure. We have disclosure in the Senate on mail costs. We have disclosures on how much mail costs per individual Member.

I think that is a big reform, an important reform, one that we have had in the Senate for the last couple of years that I worked for, Senator R has worked for, Senator Wilson, Senator Humphrey, Senator Ford, and others. I think that is a positive reform. I think disclosure is primarily responsible for the fact that we have been able to reduce our mail expense. As a matter of fact, total mail expenses in the Senate has been dropping the last couple of years, I think primarily because of disclosure.

Now, for the first time, the House has passed legislation that has stated that they will have disclosure. That is good reform. It is partly as a result of the efforts of Senator R, Senator Ford, and myself last year in enacting reforms passed by the House, the Senate to segregate mail accounts, again, a very positive reform one that we are able to tell exactly how much the House mail is costing as compared to the Senate.

I might mention the estimated cost for the Senate this year is $17 million, which is well below estimates, well below what we had appropriated the previous year. The House last year appropriated $44 million, and they under appropriated that amount by $33 million. They actually overspent their appropriated account by $35 million. I think the reforms that they have enacted in the legislative branch bill, if we maintain those and possibly even strengthen those in conference, will save a lot of money, save millions of dollars. So I compliment the House for their leadership in making some positive changes in mail.

I do not plan on offering a couple of amendments. I think one may require a roll call vote. That remains to be seen. The House mail is the transfer of mail from one Member to another Member. I think that speaks for itself. Also, we would limit the rollover ability of Members to be able to roll over unused mail for the next year. That is another amendment that I expect and hope will be agreed to.

Then, finally, on the cost of mail, last year we appropriated $23 million for mail. This bill has $35 million appropriations. I will have an amendment to keep the mail appropriation at last year's level, which would save $12 million.

Mr. President, I also have one additional amendment. That would be a 5-percent cut. This is somewhat patterned after the House. The House passed a 2-percent cut. It does give us the discretion to make those changes. My request, Senator Ford, is frank, it is frank. I still think this bill has too much of an increase. As I stated before, it has an increase of $245 million over last year. If we are successful with both my mail reduction of $12 million and my reduction of 5 percent. This bill will still be growing by $124 million over last year. That would equal a 6.41-percent increase over last year, which I personally think is enough to meet the legislative needs and demands on the legislative branch.

Mr. President, I yield the floor.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The President from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that H.R. 5399 be referred to the Committee on Appropriations with instructions that it be reported back forthwith incorporating the substance of Calendar Order 980, S. 3207, and Senate committee amendments thereto; and that the committee amendments be agreed to en bloc, providing that no points of order be waived thereon and that the measure, as amended, be considered as original text for the purpose of further amendment.

The PRESIDING OFFICER. Is there objection?

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

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

Mr. NICKLES. There is an unanimous consent from my friend and colleague, Senator R. There is no objection from this side.

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


Mr. REID. Mr. President, we have a number of noncontroversial amendments which the distinguished minority manager and I have reviewed. It is our understanding that they have been cleared on both sides of the aisle. I believe it would expedite the business of the Senate if we could dispose of these en bloc. They include the following items:

An amendment by Senators Ford and Stevens to limit the carryover of unused franking allowances for any year to the next year only; an amendment by Senators Ford, Stevens, and Nickles to limit the amount that Members can transfer unused mail allocations to their office accounts to the lesser of $100,000 or 50 percent of the mass mail allocation for the year; an amendment by Senators Ford, Stevens, and Nickles to clarify the definition of the House-passed bill of unofficial office accounts applies only to the House; an amendment by Senator Ford to make the provision in the House-passed bill preventing the use of nonofficial funds to defray official expenses effective with respect to the Senate upon the beginning of the second session of the 102d Congress; a technical amendment with respect to the availability of funds appropriated for art conservation on the Senate side of the Capitol; an amendment by Senator Inouye with respect to a commemorative medal in honor of our departed colleague, Senator Spark Matsunaga, an amendment by Senator Humphrey to require that copies of mass mailings be registered with the Office of Public Records quarterly and
Mr. REID. Mr. President, I ask the unanimous consent that the reading of the amendments be dispensed with.

The amendment are as follows:

**AMENDMENT No. 3134**

(Purpose: To modify the rules for the use of the congressional frank for Members of the Senate.)

Subsection (a)(2) of section 310 of the bill is amended to read as follows:

(2) with respect to the House of Representatives, allocation of funds for official mail to be made to each such person with respect to each session of Congress (with no transfer to any other session or to any other such person); and

(b) with respect to the Senate, allocation of funds for official mail to be made to each such person with respect to each session of Congress, except that a Member may carry forward an allocation to the next fiscal year;

and

**AMENDMENT No. 3135**

(Purpose: To permit a Member of the Senate to exceed pursuant to section 3210(a)(6)(E) of title 39, United States Code, the lesser of $100,000 or 50 percent of amounts allocated to such Member for mass mail.)

On page 15, line 18, by striking "not more than" and inserting "not to exceed the lesser of $100,000 or 50 percent of".

**AMENDMENT No. 3136**

(Purpose: To modify the definition in the bill for an unofficial office account with respect to Members of the Senate.)

Subsection (g)(3) of section 310 is amended by inserting ": with respect to the House of Representatives of, " before "means".

**AMENDMENT No. 3137**

(Purpose: To provide an effective date with respect to the Senate for implementation of provisions with respect to office accounts.)

Subsection (i) of section 310 is amended by inserting before the period the following:

"with respect to the Senate subsection (d) shall apply with respect to sessions of Congress beginning with the second session of the One Hundred Second Congress."

**AMENDMENT No. 3138**

Section 302 of title III is amended by striking "No" and inserting in lieu thereof "Except as otherwise provided by law, no."

**AMENDMENT No. 3139**

At the appropriate place, add the following new section:


In General.—Section 1705 of the United States Institute of Peace Act (22 U.S.C. 4604) is amended—

(1) in subsection (b),

(A) by adding "and" after the semicolon at the end of paragraph (8);

(B) by redesignating paragraph (9) and (10) as paragraphs (8) and (9); and

(C) by redesigning paragraphs (9) and (10) as paragraphs (9) and (10), respectively; and

(2) by redesigning subsections (c) through (n) as subsections (d) through (o), respectively; and

(3) by inserting after subsection (b) the following:

"(o) The Secretary, acting through the Board, may each year make an award to such person or persons who it determines to have contributed in extraordinary ways to peace among the nations and peoples of the world, giving special attention to contributions that advance society's knowledge and skill peacemaking and conflict management. The award shall include the public presentation to such person or persons of the Spark M. Matsunaga Medal of Peace and a cash award in an amount of not to exceed $25,000 for any recipient."

**AMENDMENT No. 3140**

(Purpose: To provide an effective date with respect to each session of the legislative branch.)

Mr. President, I ask unanimous consent that the amendments I have enumerated be agreed to, en bloc.

The PRESIDENT proclaims the Chair first asks the distinguished chairman of the subcommittee if he would send the amendments to the desk.

Mr. REID. Mr. President, I send the amendments to the desk and I ask for their immediate consideration.

The PRESIDENT. The clerk will report the amendments.

The assistant legislative clerk read and filed the amendments.

The Senator from Nevada [Mr. Reid] proposes amendments numbered 3134 through 3141, en bloc.

Mr. REID. Mr. President, I ask unanimous consent that the reading of the amendments be dispensed with.

The PRESIDENT. Without objection, it is so ordered.

The amendment are as follows:

**AMENDMENT No. 3141**

At the end of the bill, add the following:

SEC. . . . In fiscal year 1991 and thereafter, whenever the Secretary disseminates information under the frank by a mass mailing (as defined in section 5332(a)(6)(A) of title 39, United States Code), the Senator shall register quarterly with the Secretary of the Senate such mass mailings. Such registration shall be made by filing with the Secretary a copy of the matter mailed and providing a form supplied by the Secretary, a description of the group or groups of persons to whom the mass mailing was mailed and the number of pieces mailed.

Mr. NUNN. Mr. President, the conference report on the Treasury-Postal appropriations bill includes a major reform of the Federal pay system for the executive branch. Within that legislation, there is a provision which authorizes waiver of the dual compensation penalty on further Government service for executive branch employees in critical positions. This is an excellent provision. As the Deputy Inspector General of the Department of Defense testified, the Armed Services Committee: "It makes little sense to encourage a brain drain from the Government by forcing retired military personnel with badly needed skills to become contractors/consultants instead of civil servants."

It is essential that similar authority should be provided for the legislative branch. Committees, such as the Armed Services Committee, have a critical need for highly qualified employees with scientific, technical, and professional expertise in areas involving military affairs.

Some of the best candidates are persons with extensive military experience. In recent years, we have lost some of our best staffers, and have lost out on the opportunity to recruit excellent candidates, because of the dual compensation penalty.

The granting of waiver authority to the executive branch, which I strongly support, will further exacerbate this situation, by placing the Congress at a further competitive disadvantage. As a result, we are likely to lose some of our best candidates, and some of our
best employees, to the executive branch.

The amendment which I have proposed with Senator WARNER will provide the legislative branch with the same waiver authority for critical employees as the Treasury-Postal appropriations bill will provide to the executive branch. I urge the adoption of the amendment.

Mr. WARNER. Mr. President, I wish to commend the Appropriations Committee for including a provision in the conference report on the Treasury-Postal appropriations bill that would authorize waiver of the dual compensation penalty on further Government service for executive branch employees in critical positions. This is a very important provision, because it will enhance the ability of Government to attract and retain skilled personnel to critical positions. We have a similar need in Congress.

From my perspective on the Armed Service Committee, I know that persons with extensive Government experience, both in the civil service and in the military, can help us meet our critical needs for highly qualified personnel. The pending amendment will provide the Congress with the same waiver authority that the Treasury-Postal bill provides for the executive branch. This is a much needed provision, and I urge approval of the amendment.

Mr. NICKLES. Mr. President, we have no objection on this side.

The PRESIDING OFFICER. The amendments (Nos. 3134 through 3141) were agreed to.

Mr. REID. Mr. President, I move to reconsider the vote by which the amendments were agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3142

Mr. REID. 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 Nevada (Mr. REID) proposes an amendment numbered 3142.

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

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

The amendment is as follows:

Strike section 311. At the appropriate place insert the following section:

"Sec. 311. Two percent of the total amount appropriated or otherwise made available by this Act, that is not required to be appropriated or otherwise made available by this Act, upon the recommendation of the Committee on Appropriations and the Appropriations Committee of the House of Representatives shall be withheld among the various appropriations made by this Act.".

Mr. REID. Mr. President, the purpose of this amendment is essentially technical. It modifies a provision adopted on the House floor that reduces discretionary amounts in the bill by 2 percent to conform to the language of this amendment, so that the President may withhold among the various appropriations made by this Act.

In addition, some confusion has arisen concerning the exact language adopted by the House and this amendment makes it clear that 2 percent of the amounts in the bill are to be withheld from obligation and the Committee on Appropriations of the House and Senate are to decide how this is to be accomplished.

I know of no objection to this amendment. I urge it be adopted.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3142) was agreed to.

Mr. REID. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

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

The assistant legislative clerk read the following amendment:

AMENDMENT NO. 3143

(Purpose: To reduce the total funds appropriated in the act by five percent)

Mr. NICKLES. 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 Oklahoma (Mr. NICKLES) proposes an amendment numbered 3143.

Mr. NICKLES. 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:

Amendment No. 3142 is modified by striking "2 percent" and inserting in lieu thereof "5 percent".

Mr. NICKLES. I ask unanimous consent that the amendment be adopted.

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

Mr. NICKLES. Yes.
The PRESIDING OFFICER. The Chair would first ask the Senator from Oklahoma to repeat his unanimous-consent request.

Mr. NICKLES. I ask unanimous consent that the amendment at the desk be in order. This is an amendment that modifies an amendment that we just adopted by UC in our list.

Mr. FORD. I thank the Chair.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, can the Chair state the unanimous-consent request?

The PRESIDING OFFICER. The Chair asked the Senator from Oklahoma to restate his unanimous-consent request. It was simply that the amendment be in order to be considered at this time.

Mr. NICKLES. Mr. President, I thank my friend and colleague.

The total cost of this amendment that would reduce the total amount appropriated by 5 percent. I might mention that the House had an amendment that reduced it by 12 percent. I also considered an amendment that was barely defeated that reduced the amount by 8 percent.

But before my friends and colleagues in the Senate start thinking this is the end of the world, that we are cutting so much, I will say we are reducing the rate of growth. I think that is one of the big problems we have in the growth of Federal spending, because we always work off what I am going to say are inflated figures.

I see friend and colleague, chairman of the committee is still here. I told him when we first took up this bill that I thought it was growing too much. As a matter of fact, this bill was growing at 14 point-somewhere. I do not know how we can justify that when we are asking Americans to pay more taxes supposedly for deficit reduction, particularly for ourselves.

Some of our amendments do not reduce. Actually, in this bill, even after this 5 percent cut is enacted and even if my mail reduction amendment is enacted, we are going to have a mail amendment. I hope and expect it will be adopted. That will save $12 million. And I do not know how we can justify that when we are asking Americans to pay more taxes supposedly for deficit reduction, particularly for ourselves.

Some of our amendments do not reduce. Actually, in this bill, even after this 5 percent cut is enacted and even if my mail reduction amendment is enacted, we are going to have a mail amendment. I hope and expect it will be adopted. That will save $12 million. And I do not know how we can justify that when we are asking Americans to pay more taxes supposedly for deficit reduction, particularly for ourselves.

Mr. NICKLES. Mr. President, I thank the Senator from West Virginia, maybe in 20, 30 minutes, whatever?

Mr. BYRD. Could be; I do not know how long. I do not intend to keep the floor very long myself.

Mr. NICKLES. I thank the Senator. Then it is our expectation that we will try to handle all other amendments tonight, and have those amendments that require rollcall votes to be stacked for tomorrow.

Mr. NICKLES. Mr. President, I speak in opposition to this amendment. It probably is not a very popular thing to do, but one cannot necessarily pick and choose the popular things always and defer to take a stand on those things that may not be perceived to be popular at the moment.

The amendment that is before the Senate, as I understand it, would provide for a 5-percent reduction. We expect that that vote will occur in the not-too-distant future. I might ask my colleague from West Virginia, maybe in 20, 30 minutes, whatever?

Mr. BYRD. Could be; I do not know how long. I do not intend to keep the floor very long myself.

Mr. NICKLES. I thank the Senator.

Mr. President, I congratulate the Senate from Oklahoma on his desire to reduce the legislative branch appropriations for the legislative branch. I think this is the wrong way to go about it. I suggest that the distinguished Senator approach this matter in a way that uses the rifle rather than the shotgun. He is in a position to know what particular elements of the legislative appropriations bill could stand some reduction. I suggest that that would be a better way to approach the matter.

Mr. BYRD. The Senator from Oklahoma indicates that that is correct.

Mr. President, I congratulate the Senator from Oklahoma on his desire to reduce the appropriations for the legislative branch. I think this is the wrong way to go about it. I suggest that the distinguished Senator approach this matter in a way that uses the rifle rather than the shotgun. He is in a position to know what particular elements of the legislative appropriations bill could stand some reduction. I suggest that that would be a better way to approach the matter.

I am a little tired, Mr. President, of all this self-flagellation that we engage in. We who are the Members of the legislative branch are the only ones to get a good headline by talking about the legislative branch, seeking to cut the funds for the legislative branch. There is a great feeling of animosity out there in the country toward the legislative branch because they are always talking about how much they are spending, whereas they are spending comparatively little. Yet the Constitution itself provides that the legislative branch is the people's branch. There is nothing like the U.S. Senate anywhere in the world today.

Romulus, the legendary founder of Rome, perhaps 1,000 years before Christ, somewhere between 1,000 years and 800 years before Christ, founded the city of Rome. He appointed the members of the first Roman Senate, 100 nobles. Lycurgus, the lawmaker, created the Senate of Sparta, made up of 28 Senators. Out of all the different nations that the world knows, that was established by Lycurgus, the Senate was the outstanding institution, the purpose of it being to keep a rein, a check on the Kings.

There have been other senates. The U.S. Senate, created by our Founding Fathers in 1789, was perhaps the greatest spark of brilliance that flowed from those marvelous intellects that gathered in that illustrious band in Philadelphia in that hot summer. The Senate is unique in many ways; unique because it is an investigative body. It has executive powers, legislative powers, judicial powers. Here in the Senate one may speak as long as his feet and his backbone will sustain him—unlike the other body. It is one of the few upper houses in which amendments may be offered. And the Constitution itself provides that the Senate, while it cannot originate revenue-raising measures, it may amend them. This is a remarkable body, as Gladstone said, the most remarkable invention of modern politics.

Mr. President, there have been 1,793 individuals who have served in this body; 20 centuries. And I am sure that the 1,579th one. I think it is time that we start taking some pride in this institution and stop posturing and pretending to the galleries, when really they are nothing like the U.S. galleries out there in the hills and valleys and the prairies and the plains of
this country. We ought to stop fueling our own pests. It is little wonder that the people hold the legislative branch in low esteem when we ourselves seem to reflect a very low opinion of the body in which we are honored to be Members.

I have been in the Senate now 32 years. When I came here, the Senate was made up of men, not boys. They believed in this institution; they revered it. We can all get a laugh if we go out there and crack a joke about the legislative branch, and there is nothing particularly wrong with that. But I think we ought to go home and reflect a little on this matter tonight and remember the Members of this institution are a chosen group of people. There are 250 million people in this country today and only 100 of them are U.S. Senators. I venure to say most any Member of this body would have given his right arm to be elected to the U.S. Senate. If we are going to go around and engage in self-flagellation, the people will not only enjoy it, but they will think there is something wrong with that.

"He that makes himself an ass must not take it ill if men ride him," said Thomas Fuller 250 years ago. I did not originate that quotation, but it is a good one. So, if we want people to deride this institution, let us join them in running it down.

The total budget this year is $1,434 trillion, and here is an amendment before the Senate that would cut 5 percent out of the legislative branch appropriation, one-third of the three branches of Government, with a budget of something like $2.25 billion—I am told that is right. So, in other words, we are talking about a branch of Government the total appropriations for which would be one seven-hundredths of the total budget; a little over $2 billion out of $1,434 trillion.

When I came to this body, I first came to the House of Representatives. I believe we adjourned on August 2 of that year, and I believe the next year, or the year following, we adjourned on July 29 or 30, sine die. Anyhow, it is a year round. This is the people's branch. I have seen the workload here grow. There was a time in this century when a Senator, perhaps, received 100 pieces of mail in a month's time, and a few visitors would come to call on him. But today a Senator does not have the time to deal with his constituents' mail, to deal with his constituents, reflect, attend committee meetings, be on the floor: acquire for himself the knowledge to debate important matters in this great forum of liberty. Nobody works harder than some of the men and women in this institution, and the work and the decisions of Senators impact on every minute of every hour of every day in the life of every American. You name it.

Decisions are made in committees here and in this body that deal with the highways of this country, bridges, water quality, air quality, recreation, health services, education, job training, postal services, Social Security, Medicare, veterans compensation, parks, U.S. forests, rivers and harbors, immigration, drugs, crime, law enforcement, and on and on and on.

Franklin D. Roosevelt said if we were to eliminate the Congress, we would immediately cease to be a republic. We all get frustrated. I do. I am not one to say that money is not wasted in this branch or any other branch of Government. This is the most important board of directors on the planet called Earth, the elected representatives of the American people, 535 of them. I have seen the staffs grow around here, but I have also seen them mushroom in the executive branch.

Let us talk about the Committee on Appropriations. We have a total staff of 82 persons on the Appropriations Committee in the Senate; 82 staff people. I have one sitting right here by me, Jim English, unexcelled by any staff person on this Hill or any staff person in Washington, or any staff person across this land. I believe that. I ought to know. I do not have to ask him to be here at 10 o'clock on Sunday morning or midnight on Saturday night. He has been here at 7 o'clock on Sunday morning, calling me out of bed; 7 o'clock on Sunday morning. I call him at home if I need to call him at home. He is a professional, able, meticulous, highly dedicated staff person. That is the only kind I will have. I have fired a few staff people around here myself. If we want to cut the legislative branch, if there is someone on the staff we think is not pulling his weight—take a look at the scriber who had a vineyard, and he went to a fig tree in that vineyard. He called the dresser of the vineyard and said, "Behold here is this fig tree, and I have come to it these 3 years and I find no fruit thereon. Cut it down." But it was not cut down.

So if we want to start cutting and start making savings around here, every Senator knows his staff and if there is a laggard there, do like the owner of the vineyard; behold these 3 years I come and find no fruit on this tree; cut it down. Do not take a meat ax and say cut 5 percent across the budget, 5 percent out of this appropriation.

So we have 82 persons on the appropriations staff. Let us take a look at what they have to compete with. When I say "they," that should include us. We seek to serve the people. I want to serve the people of West Virginia. Across this land, Senator Thurmond seeks to serve the people of South Carolina; Senator Packwood, Oregon; Senator GARN, Utah; Senator RIEGLE, New Jersey; Senator RIEGLE, Michigan, they serve them well, but we have to have able staff persons here.

Take a look at what these people are up against. NASA has 1,011 budget personnel; the Department of Interior and related agencies, 145 budget personnel. I happen to be the chairman of the Appropriations Subcommittee on the Department of Interior and related agencies. On the whole committee staff on appropriations, we have 82 persons, and yet down at one department, the Department of the Interior and related agencies, they have 145 budget personnel.

By sheer weight of numbers, we cannot downplay our role with the Interior Department. And yet these same 82 persons have to deal not only with the 145 budget personnel in the Department of Interior and related agencies, these 82 persons in the Senate who are on the Appropriations Committee, I believe that, have to deal with all of the departments of this Government, all of the agencies in this Government, and we are just greatly outnumbered.

The Lacedaemonians did not ask how many the enemy were, but where; where they are. We know where the enemy are. And I use that word just for the moment to square with the quotations that I used. But knowing where they are is not good enough.

Take a look at the Office of Management and Budget. There are 570 budget personnel in the Office of Management and Budget alone; 570. In the Environmental Protection Agency, 84 budget personnel. There is one agency that just has 2 more budget personnel than we have on the Appropriations Committee, HUD, 50 budget personnel; Veterans' Administration, 127 budget personnel; the Department of Education, 169 budget personnel; Coast Guard, 60 budget personnel; Federal Aviation Administration, 70 budget personnel; the Office of the Secretary of Transportation, 36 budget personnel.

This is just a sample—just a sample—and here we are with 82 persons, standing up against a vast array of people down in the executive branch who have all of the equipment, all of the accoutrements. They come up here, year after year, and they want to increase the appropriations. They want to add an additional 50 persons. They want to add an additional 500 persons. We may cut it in half, but the next year they will be back and
YES, there are all kinds of editorials and columns, commentators. They like to make fun of the Congress. And who can blame them, when we ourselves, run against the Congress, we ourselves help make it unpopular. I do not want to criticize the Senator from Oklahoma. He has offered an amendment in good faith, and he has several times sought to amend legislation. I am not against making savings here, but let us find the flaws and go after those flaws. Let us not take a meat ax and cut this bill 5 percent across the board. Bring in your targets and use the rifle sight on them. Let us hear your case and let us vote. I will support the Senator if he can make a case against a particular activity or account. Make a case. I will support him. But I am not going to support this 5 percent cut across the board because I do not think it is justified.

I want to see how many men and women believe in this Senate tonight. I think that they do. I can be alone tonight, but we are going to see. We are going to find out how many believe. Then I would say to those who would like to see how many people on their staff they take off the payroll. It may be none. They may feel that their staff people are as meritorious as I believe mine are, and I would think they do.

But let us just step up to the bar now, and let us see where we stand. If this carries, I will go home, and say to my wife and my little dog, Billy Byrd, “I took my stand. I got runner, but I will be back tomorrow.”

If this amendment does not carry, I would express the hope that the bill will lay over until tomorrow, and the Senators would bring in their case-by-case basis and let us cut where cutting is due.

Mr. President, I will not keep the Senator longer. I thank all Senators for their patience. I hope that the amendment is rejected.

Mr. Reid. Mr. President, I am reminded of the statement of Yogi Berra. He said “when you come to a fork in the road, take it.” I think that is what we do too often in this body. We come to a fork in the road, and we take it. We do not have proper direction. I would hope that the President pro tempore of this body is wrong, that the Senate has not lost its soul. Again, I refer to Washington, DC, as a young law student. During that period of time, I worked in the Nation’s Capitol as a policeman most of the time. As the chairman of the Appropriations Committee just stated, things were different then, in the early 1960’s. As a police officer in those days, the most dangerous thing that I was called upon to do was to direct traffic. That is not why it is anymore. Each day that we are in session, in those days that we are not in session, police officers that we are now being asked to cut their budget are called upon to do bomb patrol, to guard the entries and exits to this building, to keep terrorists out coming on the facility. So things really have changed. Our life has become more complicated.

As the chairman of the Appropriations Committee talked about his staff, I recall an amendment. After working on one of these bills, a member of this Senate, in the course of days, like the President pro tempore said, you lose track of— but I had a young woman who worked with me that night 5 hours on this Senate floor with me on that amendment with a few others. I have lost count of how many senators. She had worked on this amendment. It meant a lot to her. I told her to go home. She would not go home. This is a talented young woman, a graduate of the Columbia University.

Mr. President, she could work lots of different places but she is here because she feels that this is her way of rendering public service to this country.

This is the type of person who worked that day approximately 20 hours, sick, that we would be asked to cut.

Also this body should recognize that we are not here cutting the ever-worning congressional mall frank. That will come later. Everyone can at that time flex their muscles and vote against congressional mall. That is not this amendment.

Why do we have in this bill the things that we have included? Again, as the chairman of the Appropriations Committee said, it has taken a long time to get this bill before the Senate. The other 12 bills have been handled. This is the last. The reason it is last is it is kind of the stepchild. No one wants to be on the subcommittee. No one wants to have this bill come before the body because there can be some tough votes. But what have we done?

Since 1981, we have cut $1,220,500,000 from what has been requested, almost $1.2 billion. We have done our job. Why do we have the fun in this bill that we have?

Well, for example, Mr. President, we are being asked in this bill to pay for some things that the people outside this Hill are paying for all the time. In the city of Las Vegas, NV, because of a bill we passed here two high schools closed down for a year. They had to remove asbestos—as a result, these two schools in the most rapidly growing State in the Union, the most rapidly growing part of our country— Las
Vegas area were forced to double sessions. They were initially overcrowded when they were separate schools. But when the Legislature came to the decision of asbestos they were really crowded. They started in the dark, and completed their school day in the dark-two different classes.

Just as is being done in this bill is removing asbestos from our office buildings. We are asking others to do it. Should we allow our people to work in asbestos-poisoned buildings? That is part of what we are asking this money to be spent on.

I serve on the Environmental and Public Works Committee. PCB's is one of the most dangerous substances we have. We are asking that some of the transformers in this facility that have PCB's be removed.

Before the Senate acts on the amendment, I want to make sure that all Senators understand fully what the implications of this amendment really are. The effect of this amendment is to increase the amount which would be cut from this bill, 2 percent—which is my amendment, and which is consistent with the amendment adopted in the House—to 5 percent. This amounts to a reduction of another $66 million.

As it now stands, Mr. President, the committee has already cut $225 million for the request of the legislative branch. The 2-percent reduction adopted on the House floor reduced funding in the bill by $44 million.

So the total reduction from the request before the Nickles amendment is $269 million. Cuts of this magnitude are going to make a big difference in funding in the bill by $45 million.

As Senator Byrd indicated, this is not an attractive bill. This amendment is, maybe some would think, difficult to vote against, especially in the current atmosphere of getting money from any bill is politically appealing. And if it is on a legislative branch bill, it is great, man, hack away at it. It is only when you look below the surface that such amendments may seem less beautiful.

I am not any more concerned than any Senator should be about this, but I am concerned. I want to make it clear that the money in the bill, and the money that would be cut by this amendment, is not just to run my own personal office or to run the subcommittee of which I happen to be chairman. This amendment is not going to affect this Senator any more than it is going to affect any other Members of this body.

I would like to find out how they feel about it. Let me pose some questions to my colleagues who are in this Chamber and watching this on television. Do you know how many times a day your staff calls the Congressional Reference Service to get an answer to a question? I really do not know. But it is at least 10 times. If so, do you care whether they get an answer or how long it takes to get an answer, or if the information you get is useful?

Do you think that the information you demand from your staff just falls from the sky? Do you think that the information that our constituents demand from us when you pull open a drawer and it is there? I represent the small State of Nevada, but there are days when we get 1,000 pieces of mail in our office. We, I have to get 1,000 pieces of mail, which we try to do. They are very complicated, difficult questions a lot of times. Where do we get answers to those questions? We get them from the auxiliary agencies that support this body.

Do you think that if you have asked the General Accounting Office to respond to a request? Does it matter to you whether or not the General Accounting Office is effective in exercising the responsibility with which you have placed in one Senator of course. These issues are issues that I think should be resolved by the whole Senate.

So I certainly welcome my colleagues to come here and talk about why they are for or against this amendment. If no one else is interested in the possible problems that I see with this amendment—maybe I disagree with the chairman of the committee—perhaps we should just accept this amendment. If the Members of this body do not care, why should Senator Byrd of West Virginia or Senator Reid of Nevada care?

As Senator Byrd indicated, this is an unattractive bill. This amendment is, maybe some would think, difficult to vote against, especially in the current atmosphere of getting money from any bill is politically appealing. And if it is on a legislative branch bill, it is great, man, hack away at it. It is only when you look below the surface that such amendments may seem less beautiful.

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having said that, I would like to hear from my colleagues. If in no other manner, they should vote to defeat this amendment.

I would like to find out how they feel about it. Let me pose some questions to my colleagues who are in this Chamber and watching this on television. Do you know how many times a day your staff calls the Congressional Reference Service to get an answer to a question? I really do not know. But it is at least 10 times. If so, do you care whether they get an answer or how long it takes to get an answer, or if the information you get is useful?

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Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I will be brief. I thought we would be voting some time ago, and it was my hope that we would. This is a simple amendment which reduces the legislative branch appropriation bill by 5 percent. Even after this amendment is enacted, if it is, the legislative branch spending will grow by 6.4 percent.

I might make mention, I heard some eloquent remarks by my friend and colleague, the chairman of the Appropriations Committee, Senator Byrd, about the Senate and our duties and our functions. I tell my colleagues that the Senate portion of this legislative branch bill is 20 percent; 80 percent of this bill is non-Senate; 51 percent is to this day.

So, in other words, for House and Senate functions together, it is 51 percent of the bill.

Other functions include other agencies. Title I includes Capitol Police. I tell my colleagues that we have 1,346 people. It cost $21 million. We cut the OMB—how much did we cut OMB—$1 million. We went to conference, and they want to cut the OMB $2 million more.

Mr. Darman said, "Do not cut us $2 million more." You know, I should ask you, do you know who went to Mr. Darman's aid? Robert C. Byrd. So we have cut them $1 million. So I say let us cut where cutting is due. A lot of people would like to see OMB cut if we were talking about cutting CBO. It has less than half the people the Office of Management and Budget has. And cut the Government Printing Office. That is what we do when we come in with a broad ax, a meat-ax cut across the board. I say let us cut out the warts and the carbuncles and boils and bunions; he cut them out. Do not take a broad ax.

I have said enough. I hope the Senate will reject this amendment.

The PRESIDING OFFICER. The Senator from Maine.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I am about to propose a unanimous-consent request which has been cleared by the Republican leader, dealing with the continuing resolution, which we expect to receive shortly from the House.

I ask unanimous consent that when the Senate receives House Joint Resolution 681, the continuing resolution, from the House, the Senate proceed to its immediate consideration; that the resolution be considered read a third time and passed, that the motion to reconsider be laid upon the table, and the above action take place without intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. ARMSTRONG. The President, retaining the right to object, I have no intention of objecting. Could the leader tell us what the terms of the continuing resolution are?

Mr. MITCHELL. They will go to Saturday midnight.

Mr. ARMSTRONG. I thank the leader.

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

Mr. MITCHELL. Mr. President, I thank my colleagues, and I regret the interruption in the debate.

I now yield the floor.

Mr. BYRD. Mr. President, House Joint Resolution 681 extends the current continuing resolution from October 24 to October 27, 1990. It continues to provide temporary, restrictive financing for fiscal year 1991, which began on October 1, 1990. In addition, House Joint Resolution 681 continues to provide that implementation of any sequestration order is suspended for the term of the continuing resolution.
It is critical that the Senate complete action on this continuing resolution today. It simply allows for the continuation of the operations of the Federal Government for the period from October 24 through October 27, under the terms and conditions of the current continuing resolution for fiscal year 1991.

This resolution follows the same basic form and concept as have other continuing resolutions in previous years. In summary, the resolution provides restrictive funding for 13 appropriation measures depending on their legislative status as of October 1, 1990, under a formula that specifies that:

First, when the particular appropriations bill has passed both Houses, and the amount as passed by the House is different from that as passed by the Senate, the project or activity is continued under the lesser amount or more restrictive authority, provided however that in no case does the rate exceed the current rate.

Second, when provision is made for a program in only one version of a bill as passed by both the House and the Senate, the rate of operations shall not exceed the current rate or the rate provided by the one House, whichever is lower.

Third, when the particular appropriations bill has passed only the House, the rate of operation for a particular program shall not exceed the current rate or the rate provided by the House, whichever is lower.

Fourth, when provision is not made for a particular program in a bill that has passed only the House, and that program was funded in fiscal year 1990, the program shall be continued at the current rate.

Fifth, finally, when a bill had not passed either the House or the Senate by October 1, programs under these bills shall be continued at the current rate, except for defense, which is continuing at the rate set by the House-passed budget resolution but below the amount allocated under the budget agreement.

Under the provisions of the resolution, it is expected that the Essential Air Services Program will continue with no service reduction and that the Office of Commercial Space Transportation will continue at the current rate, in view of its important safety responsibilities associated with licensing the commercial space industry.

Mr. President, the continuing resolution also extends a provision which suspends any sequester orders for the term of the continuing resolution.

Mr. President, I fully support the passage of House Joint Resolution 681.
to vote for a big tax increase. It is no secret to my colleagues that I am not going to vote for that. But there is a likelihood, I think a probability, that most Members, a majority, are going to vote for a big tax increase, maybe the largest tax increase in the history of this country.

Here we are, teetering on the brink of a recession, and we are getting ready to increase taxes. I cannot help wondering if there would not be some symmetry, some sense of proportion and justice, and just common sense, to the idea that in a moment when we are asking our constituents to take a huge whack, an average family to pay hundreds of dollars a year more in gasoline tax and income tax, in taxes on luxury commodities, on automobiles, on their health insurance and other tax payments, if maybe we could not also show an example of restraint in how we spend their money.

We are asking them to make a big sacrifice. We are talking about families who did not have a pay raise last year, many cases, they actually took a pay cut after adjusting for inflation. We are saying in addition to this that we are going to whack you with a big tax increase.

Could we not at least go back to them when we go home, if we ever get to go home, and say, “At least, folks, we were willing to scale back on our own expenditures,” maybe not permanently, maybe not 2 years in a row or 3 years in a row. We are not talking about a freeze, but just once there was a little dip in the graph of increase in spending for the legislative branch.

This is not a big issue as a percentage of the total Federal budget. We are talking about, I guess, less than 2 percent of the total Federal budget will be spent on the legislative branch. But, it is a big issue in terms of leadership. I think any leader will say that, whether you are leading troops or a sales force in business or a Boy Scout troop or whatever it is, that leader is a person who shares the hardships of those he seeks to lead. Indeed, particularly when they were asking sacrifices of those that they were providing leadership for, many leaders have thought it important for them to set the pace, to be an example, in fact, to show more willingness to bear the burden than they were asking others to bear.

That is the real question that is involved in this amendment, more than the money. Mr. NICKLES is right on the money. But more than anything else, it seems to me it is a question of leadership, it is a question of setting the example.

I listened with great interest as our distinguished colleague from West Virginia talked about the men and women who are the staff of the Senate. Honorable and hard-working, no question in my heart. In fact, sometime in the next day or two before we adjourn I am going to make a little speech on the floor about that myself. I agree with practically everything he said.

In the 12 years that I have been in the Senate, I have encountered men and women of talent and ability and creativity and dedication. I have learned a lot from them. In many, many cases they have been better informed and more intelligent and men and women of greater stamina than I am able to bring to this process. I am indebted to them. The people I serve are indebted to them. They take great responsibility. They perform their tasks superbly well.

I have had the privilege of working with some outstanding people in the private sector, and I will match up the men and women of the Senate and of the Appropriations Committee, and of the Finance Committee and of the other Committees and those who work on the floor and elsewhere with the best that anybody can find in the private sector or in universities or voluntary agencies. They are great. That is not the issue in this amendment.

To try to say that because Senator NICKLES wants to restrict to no more than, say, 6 percent the rate of increase, that somehow that is a slur on the reputation or on the character or contribution or the ability of these talented and dedicated men and women just does not add up, in my book, and I did not want to let that pass without noting it. I think they are great, and I am going to speak about it in greater length and in more specific terms sometime before the week is over.

That is not the issue. I think the issue is leadership, and the quality of leadership that is called for in this particular case, I believe, on a lot of these appropriation bills is the scale back. I think it is important to scale back HUD. I think it is important to scale back the Defense Department and HHS and Justice and Commerce. Practically every function of Government needs to grow a little less rapidly.

But particularly the legislative branch, the policymakers, ought to be able to control their appetites to a standard of at least moderate increases. I personally would be much more comfortable if the Senator from Oklahoma had proposed an amendment that limited the rate of increase to last year's level, no more than last year. I would have even been a little more comfortable if he had said maybe for next year 99 percent of last year. Now that would have been a gesture that I would have appreciated and would have approved of. I think he did not do that because he realized it is going to be tough enough to get this amendment adopted.

I do congratulate him for bringing it to us. I think he is right. I hope 90 percent will approve the amendment.

In closing, I would just like to ask if he would be kind enough to add me as a cosponsor to his amendment.

Mr. NICKLES. Mr. President, I ask unanimous consent that the Senator from Colorado [Mr. Armstrong] be added as a cosponsor, as well as Senator SYMMS.

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

Mr. SYMMS. Mr. President, I am pleased to be a cosponsor of this important amendment. The legislative appropriations bill provides over $2.1 billion to fund the operations of Congress in fiscal 1991, more than $900 million above the appropriation for 1990. Adoption of this amendment would cut the proposed increase in congressional spending by about half and leave Congress with an increase of $90 million over last year.

I don’t believe it is too much to ask—indeed it may well be too little to ask—for Congress to limit the increase in its own funding to $100 million over last year’s level. With the Nation facing a staggering budget deficit caused by profligate Federal spending and with Congress threatening to impose hefty new taxes on the American people, I believe this 5-percent reduction in the bill to fund Congress’ own operations is entirely appropriate and would be strongly supported by our constituents.

I recently returned to the Treasury more than $102,000 of my office expense account and have made a habit of returning at least that much money every year since coming to the Senate in 1981. I know Congress could get by with less money for its annual operations. As I have pointed out, this amendment would still leave us with an increase over last year, but it is a real step in the right direction, and most importantly it indicates we are serious about getting the deficit under control.

The buck has to stop here. I urge my colleagues to vote for the amendment.

Mr. NICKLES. Mr. President, I ask unanimous consent that three tables that I have been printed in the Record at this point.

There being no objection, the material was ordered to be printed in the Record, as follows:
Senator REID. Mr. President, I want to make sure that the Senate understands that, in addition to this cut, there is going to be another one of approximately $12 million sought by the Senator from Oklahoma to Senate mail. Remember, 80 percent, approximately, of the increases in this budget, simply provides a current services budget. That is all it does.

I think Senator LEARY's statement is right on the mark. If someone feels their staff is getting too much, services too much, they can turn that back.

I also suggest that we have a lot of things that have been in disrepair, some of which we have talked about. I hope that the Senate does have a soul, as the President pro tempore mentioned.

Mr. BYRD. Mr. President, I will speak less than 2 minutes, and then I will move to table.

Mr. President, the Senator from Colorado [Mr. ARMSTRONG] I believe, stated that the appropriations for the legislative branch, something like $225 billion, would be something like 2 percent of the total budget. In fact, I think it would be less than two-tenths of 1 percent; a little over $2 billion out of $1.434 trillion. That is one seven-hundredths of the total budget. So that is not 2 percent of the total budget. That is less than two-tenths of 1 percent.

Finally, let me say for myself and for all those who voted to support this bill, I am not saying we should not show some restraint. I have not said that at all. I am simply saying let us cut out the waste. Let the Senator from Oklahoma and the other Senators on the subcommittee, bring in the specific cuts, make their cases, and let the Senate vote.

That could have been done in the subcommittee before the bill was brought to the full committee. We did not have to wait until we got on the Senate floor and make broad cuts. So let us make the cuts, bring them up in the subcommittee, bring them up to the full committee and, as chairman of the full committee, I will be glad to entertain those cuts. If they are individual cuts, I will probably support most of them if the case can be made.

So we are not saying that the legislative branch should not show self-restraint. I am not saying that at all. I have not said that, and the record will so show.

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

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The yeas and nays were ordered.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from New Mexico [Mr. BINGHAM], the Senator from Oklahoma [Mr. Boren], the Senator from Arizona [Mr. DeConcini], and the Senator from Georgia [Mr. Nunn] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. Bentsen], the Senator from Oregon [Mr. Hatfield], the Senator from Mississippi [Mr. Lott], and the Senator from New Hampshire [Mr. Rudman] are necessarily absent.

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

The PRESIDING OFFICER (Mr. Simon). Are there any other Senators in the Chamber who desire to vote?
The result was announced—yeas 32, nays 60, as follows:

[Rollcall Vote No. 310 Leg.]

YEAS—32

Boschwitz Lott Dixon Kerry Wallop
Danforth Kasten Thurmond
Burns Hatch Pressler
Bryan Grassley Packwood
Baucus Garn McCain

NAYS—60

Akaka Durenberger Lugar
Armstrong Exon Mack
Baucus Gann McClain
Biden Glenn McConnell
Bond Gorton Melzerbaurn
Bradley Graham Murkowski
Breaux Gramm Nickles
Bryan Grasley Packwood
Bumpers Hartman Pell
Burns Hatch Pressler
Chafee Heinz Robb
Coats Helms Robb
Cochran Humphrey Simpson
Conrad Jeffords Specter
D'Amato Kassebaum Symms
D'Avanzo Kasten Thurmond
Dixon Kerry Wallpoff
Dole Kohl Warner
Donnelly Levin Wilson

So the motion to lay on the table the amendment No. 3143 was rejected.

The motion to lay on the table the amendment (No. 3143) was agreed to.

Mr. NICKLES. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table the amendment No. 3143 was rejected.

The amendment (No. 3143) was agreed to.

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

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

The motion to lay on the table the amendment No. 3143 was agreed to.

AMENDMENT NO. 3144

(Purpose: To reduce the appropriation for fiscal year 1991 official mail costs to fiscal year 1990 levels)

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

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, I yield to the chairman of the Rules Committee.

Mr. FORD. Mr. President, I think it is my responsibility as chairman of the Rules Committee to explain what this really will do.

This amendment would reduce the appropriation for official mail for Members to the 1990 level. The reduction means that no Member from a state with three or more congressional districts will be able to send out one statewide mailing. That is what it says. Let me make another point very clear, Mr. President. The appropriations for the House is based upon three districtwide mailings at first class postal rates. The appropriations bill as reported for the Senate was based upon one statewide mailing at third class postal rates. That is what the original House legislation provided.

The Committee on Rules and Administration recommended sufficient funds for each Member to have one statewide mailing because it felt that one mailing was fair and it was reasonable, and it is at third class rate.

Under the amendment, the equivalent statewide mailing will be 0.67—that is 0.67—for States with three or more congressional districts, one for States with two congressional districts, and 1.33 pieces of mail for States with one congressional district.

These allocations include postage costs for responses to the constituents and mass mail.

My statement is made in the effort to explain what this amendment will do.

We have had an increase in mail costs. Postage has gone up.

There have been some additional residents since last time. There has been some shift in population since last year. What we are saying, out of this amendment, Senators cannot mail one statewide mailing. I say to the Chair, he would get 0.67 pieces of mail for his constituency, and then have to take out of that his response mail.

So when you start cutting around here, it sounds like it is good. Then you say, well, all the others have gone up, and we are not even close to where we were last year in the ability to mail.

So, Mr. President, I have worked hard to reduce the mailing costs of this Senate. I have worked extremely hard. We do a lot of things that my colleagues do not like. But the House is now coming around to some of those things. When they get three mailings per district, and first-class mailings, and the Senate cannot get one piece of mail to its constituents, I think it is absolutely wrong as it relates to what we are doing to ourselves.

This is trying to be fair, and is only a third of what the House does. If we support the Rules Committee, each Congressman has to think what that would do. It would be $180 million, Mr. President. But we are only asking for a little over $30 million in this piece of legislation. I think it would be a detriment to all of our colleagues if they could not have at least one mailing per constituent.

I yield the floor.

Mr. REID. Mr. President, at third-class rates, the House allowance provides the equivalent of roughly six districtwide mailings. If the Senate did the same thing, it would cost $190 million, instead of the amount that we have in the bill.

I want to notify all the Members of this body, after the vote that we just went through, personally, that I am not going to ask for a rollcall vote on this. I think it would be an exercise in futility. We cannot get Members to agree to a bill that will not only save Members from their colleagues, but it has worked hours trying to assure a reasonable but cost-conscious approach to the mail. It has been done on a bipartisan basis. But I do not know of what benefit it would be for us to vote on this amendment.

Remember, a year ago, there was a rule that you could have six statewide mailings. Of course, there was no money for it, but that is what the law said. We cut that back to three. We eliminated that in this year's law.

Why have anything in it relating to the number of mailings, because there is not even enough money to do one. We took it all out of the law. So everyone should understand when they are crying about their mail, right here is where it is funded. We do not have anyone here defending the committee recommendation, except the chairman of the Rules Committee and the ranking member; they are the ones trying to protect everybody's needs for the mail. But the money for mail is right here.

Unless there is a request from someone for a vote, I am going to accept
the amendment of the Senator from Oklahoma.

Mr. MOYNIHAN. Will the distinguished chairman yield for a comment?

Mr. REID. I would be happy to yield.

Mr. MOYNIHAN. I say, sir, that the momentary advantage of a measure such as this will obviously prevail. But we are tampering with a tradition of communication between the Congress and the American people that goes back in our records to 1791. That was when the first franked printed newsletter was produced. Now all of a sudden we find this a burden that the Nation cannot sustain. If we are sacrificing our fortune for television and other modes of communication, we tamper with an entity or organization I know is asking our constituents to write to us. We would not disclose it to anyone unless the person who wrote to us permitted us to do so. I think that is a constitutionally protected right.

I, for one, wonder about the future of this institution, if we do not have the intestinal fortitude to stand up to the people in their groups who are sending their publications, that are sending their publications by public radio station.

I think we should start denying the ability of a Senator to meet his or her responsibilities to communicate with constituents, and to tell them how our actions have affected them.

If anyone thinks that the people in the press gallery tell the people of Holickchuck or Unalakleet or Shishmaref what happened to them, they are crazy; they are not that smart.

I would like to thank the chairman for defending it, even though there are those who know little of what long consequence we deal.

Mr. STEEVES. Mr. President, the great difficulty with this amendment is that it really is just a continuance of a concept of whistling down our ability to communicate with our constituents.

I remember the day that I walked into my office after the invasion of Cambodia, and I found a room full of telegrams. We could hardly get through the door. We thought then it was a big mailing that we had to face, but we did answer all of those telegrams.

Our mail now runs greater, on a daily basis, than it did after the invasion of Cambodia. Almost every single entity or organization I know is asking our constituents to write to us. We used to have just one woman in my office who opened the mail. Now we have two. I think that we have reduced the cost of mailing for the Senate by almost two-thirds, and now we are faced with the question of reducing it down again.

I represent a State that is one-fifth the size of the United States, and many of the little towns and villages of my State have no daily papers. They get news over a public radio station, but they do not tell them what the Government has done that might affect them.

From time to time, we may mail what I call rifle shots; 100 letters to this village and 75 of that one. There is no way to get information to those people; we have to find out what is going on. It has happened here in Washington that affects their lives without a newsletter.

This bill will allow me to send one of those to each resident in my State annually—one. I think that some people are losing sight of what this is savings and what is responsibility. We face the cost of appropriating for the executive branch and the judicial branch without much question. But somehow I feel in the interest of demonstrating to our electorate that we are fiscally conservative, we have to continue to whittle away at our ability to communicate.

I am going to abide by the wishes of the chairman. For myself, I am prepared to vote on it. I would have no problem at all in voting on this and, defending the vote. We have demonstrated our fiscal conservatism in this body in the last year, but I do not think we should start denying the ability of a Senator to meet his or her responsibility to communicate with constituents, and to tell them how our actions have affected them.

If anyone thinks that the people in the press gallery tell the people of Holickchuck or Unalakleet or Shishmaref what happened to them, they are crazy; they are not that smart.

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Mr. MOYNIHAN. I say, sir, that the momentary advantage of a measure such as this will obviously prevail. But we are tampering with a tradition of communication between the Congress and the American people that goes back in our records to 1791. That was when the first franked printed newsletter was produced. Now all of a sudden we find this a burden that the Nation cannot sustain. If we are sacrificing our fortune for television and other modes of communication, we tamper with an entity or organization I know is asking our constituents to write to us. We would not disclose it to anyone unless the person who wrote to us permitted us to do so. I think that is a constitutionally protected right.

I, for one, wonder about the future of this institution, if we do not have the intestinal fortitude to stand up to the people in their groups who are sending their publications, that are sending their publications by public radio station.

I think we should start denying the ability of a Senator to meet his or her responsibilities to communicate with constituents, and to tell them how our actions have affected them.

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cause that is the effect of this amendment.

Mr. STEVENS. I realize that the amendment will take it down. I am talking about what was in the bill. I understood it allowed one mass mailing.

Mr. REID. Will the Senator yield for another question?

Mr. STEVENS. Yes.

Mr. REID. If a Senator does not want to use his mail allowance, he does not have to, right?

Mr. STEVENS. That is right.

Mr. REID. They can, in effect, turn it back to the Treasury, if they do not use it; is that not right?

Mr. STEVENS. I have seen Members who did that and literally had a check drawn by the disbursing office to go back to the Treasury for that purpose. There is nothing wrong with that. However, some people who come from States like mine, to which there is a necessity to mail newsletters. I tell the Senator on two occasions this year I supplemented my fund with political funds to send out mail to people I felt was necessary. I did not do it for the black out period, but I have done it in this year because of the developments in my State?

Mr. REID. Will the Senator yield for a further question?

Mr. STEVENS. Yes.

Mr. REID. If the Senator will respond to this, when I served in the House of Representatives he was in this body at the time that the withholding on savings accounts controversy arose. He can probably remember as well all the thousands and thousands of pieces of mail that came in on that issue. Does the Senator remember that?

Mr. STEVENS. Yes.

Mr. REID. In the House there was a Member who received all that mail just like the rest of us. He took all that mail and threw it in the garbage, did not answer a single letter that the people wrote to him about that very matter. Is that a privilege he had, is that right?

Mr. STEVENS. Yes.

Mr. REID. He was the only one out of 435 Members in the House who did not respond to their constituent's questions. I believe the Senator from Alaska has been here a lot longer than I have, but I believe that is a responsibility we have when someone writes to us that we should respond to them. Would the Senator agree?

Mr. STEVENS. It is my policy, I say to my friend, to answer every letter I get from an Alaskan.

Mr. REID. Under the present situation if we had a controversy such as the withholding of interest on savings accounts, the Senator understands that he may not be able to answer all those under the budget he now has?

Mr. STEVENS. That is correct.
The Senate continued with the consideration of the bill.

Mr. NICKLES. Mr. President, I appreciate my friend's question. I am sure that totally misunderstood it. There may or may not have been a carryover. I am not aware of that, but the facts are that in 1990, at least according to the record that I have, we actually mailed less than $17 million in the Senate.

Mr. FORD. Would the Senator from Oklahoma yield?

Mr. NICKLES. I am happy to yield in just a second.

We appropriated last year $23.7 million, so we did not mail as much as we appropriated last year. I want to congratulate and compliment my friend, Senator Forn from Kentucky and also Senator STEVENS from Alaska because they worked with us, and Senator Renn, and we pushed and we had a big battle last year on the floor of the Senate on all reforms. Some of those mail reforms have taken effect. Some of them have some real bite to them last year, that is what was in this bill.

Senator STEVENS. Mr. President, if my friend will yield again, the comparison of the practice in the House and the practice in the Senate is day and night. But in terms of the amount that was made available per Senator last year, that is what was in this bill. Now there are a lot of Senators who do not mail and therefore that savings is there, and I encourage Senators not to mail. But as long as we are going to have uniform accounts, every Senator has to have available the same amount of money on a per capita basis.

In order to make savings that the Senator wants to make, instead of taking away from the people who are not going to mail, the Senator is going to take away from this Senator who does mail. This amendment is inflexible.

It will put us back in the situation we were in when I was a freshman Senator at one time and we used to get stamps. Did the Senator know that? In order that we do not have some of the reports about how much people mailed, we had stamps. We had to go to the leadership and get stamps.

If the Senator wants to go back to the idea of having in line at the majority leader's office to get rolls of stamps to get for people to put on envelopes because we do not want to frank them and go through that disguise, maybe we could go back there. I do not prefer that.

We reformed the Senate and the Senate now has full disclosure of all accounts and all that we spend. Anyone can find out how many of these I mail and what it costs the Government, and I am pleased to defend that. But the Senator's amendment has no flexibility. It will not allow the Senator who does not want to mail to make that decision for himself or herself and instead makes the decision for me that I cannot mail at least one piece of news per year to each of my constituents.

Mr. FORD. Mr. President, did the Senator from Oklahoma yield the floor?

Mr. NICKLES. Yes.

Mr. FORD. Mr. President, the point that my colleague from Alaska just made is that the Senate has made available per capita the funds that the Senator from Oklahoma is doing is saying to those who want to mail, you cannot mail. To those who do not mail, it does not make any difference.

So when you cut across the board, then you say that you are forcing upon the Senators from a State like Alaska that has long distance, small communities, little mail, no newspapers, that he cannot mail to those people.

So what you are doing here is saying to those who do not mail—I do not mail mass mail. I do not mail newsletters, so your cut does not bother me one iota, but it does bother and reduces that individual that wants to mail. Then you are going to turn around and ask us, with an amendment, and say, I cannot help that colleague of mine who needs some money to send out one piece to his constituent that wants the mail. His next amendment would say I cannot do that.

Mr. STEVENS. Would the Senator yield?

Mr. FORD. I am delighted to yield, Mr. President.

Mr. STEVENS. Mr. President, would the Senator accept just a request? We do have newspapers, but they are not a Washington Post in each village.

Mr. FORD. I apologize. I was just quoting what the Senator was referring to. Referring to the Washington Post getting to Alaska, you may be lucky.

Mr. President, what is happening here is that the Senator from Oklahoma is imposing upon all Senators a reduction. Forty-four of those Senators do not mail; that is where the savings are. They turn that money back. It seems to me that this is an unfair amendment.

Now those who do not mail, cut them, but at least those Senators that would like to mail, let them have at least one mailing to their constituents. That is all, and that is fair.

The reduction is because Senators are not using the funds for mass mailings, and that, I think, is a compliment. But others have real reasons to do it. I think the Senator is being unfair to all of the Senators. I yield the floor.

Mr. NICKLES. I am happy to yield to Mr. President.

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Mr. NICKLES. Mr. President, again I do not want to be too repetitious, but I think the amendment I have did not take us back to the level we actually mailed last year, about $17 million. The amendment that I have introduced, takes us back to the amount we appropriated, $23.7 million. And, so, I think that amount appropriated. The Rules Committee allocated that amongst Members last year. They would allocate it amongst Members this year.

Mr. FORD. How much did the postal rates go up?

Mr. NICKLES. I do not recall.

Mr. FORD. They went up considerably. And we add that on and you take that away.

You continue to nibble away, and you are more devastating than I think you realize, as it relates to the cut in the ability of a Senator to communicate with his constituency.

As I said, Mr. President, the Senator does not bother me any because I do not send out mass mailings, but he certainly is cutting other Senators who would like to, roughly 55 of them. I think you find when this is all over and Senators start coming around to me and ask me to help, I am going to say, "I voted right. You voted to cut your own mail, not me."

Mr. STEVENS. Will the Senator yield for one last question? I am not sure I am going to agree this is going to be voted tonight, by the way.

I would like to ask one last question tonight, and that is this.

If the Senator says this is to be made available to people who did not mail last year, what are we going to do with the new people who come in? Are we going to make the decision for them, they cannot mail? Because there is just enough money in here now for the people who mailed this last year to mail with the increased cost of mail. Does the Senator intend to say, only those people who mailed in the past are grandfathered-in and there are no allowances?

The two of us who sit there on the Rules Committee have allocated this money fairly. The only way it has been allocated fairly in the past is by population on a formula, and that means that there is not enough money here to say everyone has the same access because we have to presume those who did not mail last year, in fact, may want to mail next year. Further, we have to understand that some of the people who made the decision not to mail last year, may not be here.
next year. Their successors may understand communications a little bit better, and decide to send at least one mailing per year.

Does the Senator intend for us to establish a new system of allocation? Mr. NICKLES. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, to answer my friend from Alaska, last year we spent $17 million. There is ample room. There is a $6 million increase. Granted, not everybody mailed last year. I did not mail. I do not think I used—maybe half the mail I was allotted. My colleague mailed almost zero. There are a lot people who do not use mail.

There may be some new colleagues who come in who want to use the mail, but again we have a significant increase, if we go from $17 to $23 million. I happen to think that is enough. Maybe I am wrong. We can have a change to vote on it but my amendment says, well, let us appropriate the same amount we did last year. We did not spend it last year. As a matter of fact we probably used only about 70 percent of it, if that is right. We used $17 million out of $23 million.

I say why go from $17 million to $35 million? I think we should not appropriate any more than we appropriated last year. Last year was enough. Maybe it did not satisfy everybody’s needs. There were constraints. People were not allowed to mail lots of mass unsolicited mail as we did in the past. It was a change. I will grant that. But I do not think it was a bad change. I think it was a good change. I think it will save lots of money. I will be happy to vote on a voice vote tonight, or if the Senator requests a rollcall vote, we will be happy to do it tomorrow morning.

Mr. STEVENS. Let us have the Senate approve it. I do not think we shall have a rollcall vote. Mr. President, to determine what is fair. We can probably establish some sort of drawing account, and say every Senator is entitled to a percentage of this per month. If he or she does not use it, the money goes back to the pot the next month and the people who want to use it. Finally in the 12th month, I would have enough to mail one letter to every person in the State that way, provided no one else decided to change their mind.

I think we have to have a new system here in that the Senate has to decide what system, if it is going to make this cut. If the Senate is going to make this cut, it is going to tell us what kind of formula to use in allocating the money because I can tell my colleagues now, there is not enough money in your amendment to allow every Senator to make one mailing.

Are we to tell a new Senator, say from California or Michigan or one of the larger States, what the most they can get is? They have to decide. Who will you mail to? Pull the names out of a hat? You can only mail to one out of every four of their constituents? That is what this amendment is going to do to the large States.

It is not right, in my opinion, to make that judgment. We can guarantee the Senator that we will have savings. We will not spend the full amount. We never do. That is why this amendment is a little smoke and mirrors. We did not spend it last year. We did not spend it the year before.

He is cutting it down to about where we ended up spending last year after the collective decisions of 100 separate Senators on how much they would use. But the Senator is making the decision this year. The decision will be made by the amendment Senator from Oklahoma, and I think the Senate ought to realize that.

If he is going to do that I may want to offer some amendments tomorrow presenting, separate formulas, and let us see which one they will take.

Maybe there are 55 Senators here that will admit that they are not mailing. If they are not, the Senator’s amendment will be defeated. There are 55 Senators who use more money than this on an individual basis.

Mr. NICKLES. Will the Senator yield, though? I think he is almost confusing two amendments. Right now we have not prohibited the transfer of mail. If one Senator did not use his or her mail, it could be transferred unless a separate amendment, which I intend to offer, is agreed to. But right now, there is no prohibition as to whether a Senator has this year, to allow transfers from one Senator who does not use his or her mail to another Senator. I personally object to that too. But right now, that is available.

Again, say there is ample money for the Senators who have shown a tendency to mail, to mail to every constituent once, an unsolicited letter. So I wanted to make that point clear.

The real question is, Does the Senator want a rollcall vote?

Mr. STEVENS. If the Senator does not want to vote tonight, it is not going to be voted on tonight, and I think I have the staying power to assure that is not going to happen. But I want to tell the Senator, Mr. President, his problem is he wants to make a beggar out of every new Senator, because new Senators will be the first ones that will have to come in and ask for money to be transferred so they can make a report to their constituents.

When a Member first comes here, he or she does not even have a good mailing list. Mr. President, until you send out one mailing. They have no way of even establishing a correct file under our computer system until you make a mailing.

So the answer is, all of the new Senators would have to come hat in hand, and see one of the older Senators. I had to do that when I first got to the Senate, and I do not intend to do it again. I did not come here to have a beggar out of every one of my constituents. If I have to pay for the mailing, we will find other ways to pay for it. I am not going to go to another Senator and ask for his allowance to communicate with my constituents. But I can also not go to accept this amendment the way it is now.

Mr. REID. Will the Senator yield?

Mr. STEVENS. Yes.

Mr. REID. The problem, as I see it, is that we have just been through a 2-hour debate led by a Member of this body, and it was futile. And tomorrow we can have a vote, but the result is foregone. My colleague knows what it is going to be, and I know it is going to be. We are going to read off through this amendment. This amendment will be adopted, unless the Senator from Alaska comes up with some amendments that may change the way people think about this.

I ask the Senator, during the night resolve whether we should vote on this issue. As I indicated in my opening statement, the Senators have to decide what they want. It is obvious, as we have determined in an earlier vote when we got 32 votes, that most of the Senate wants to beat around the legislative branch.

Mr. STEVENS. I can conceive an amendment, Mr. President, which would simply say each Senator who wished to do so shall be able to send, in an account from his or her State, and that money will be available from the general funds to operate the Senate. And you can put this total amount together. You do it however you want. But I can tell my colleagues how much they will spend. They will spend more money than they would otherwise spend, because there are more people mailing than the Senator realizes are mailing.

I do not think you realize that some people are not mailing in the same way. They do not blanket their States. They mail on specific issues to specific areas. I am one who believes, Mr. President, that it actually saves money if you anticipate a mass mailing coming in from these driven-type of direct mail activities; it saves money to produce what I call a rifle shot. Send mail to that city or area and give the answer that you know you are going to give if you would send out individual responses. Individual response letters, I hope the Senate knows, costs 2½ times as much as first class mail and it goes as first class. That is a response mail that is not going to be touched by this. That is a different approach.

Mr. REID. Will the Senator yield?
Mr. STEVENS. The money is needed.

Mr. REID. It is charged off against this account.

Mr. STEVENS. It saves money because the amount is less if you send out a letter. Maybe we should provide the information you know you will need to provide by answering individual letters plus you save in opening it, preparing a response, and sending it out on an individual-first-class basis. It actually saves money to send out an information-type mail to the people you know have to have an answer to a question.

The farmers learned that a long time ago. I am surprised people from farm country do not understand how much we spend to send the out farmers by the Department of Agriculture. Maybe we should, each of us, take a portion of the money that is allocated to the farmers in our State to send out our letters to inform them what has happened to change the law.

Mr. REID. That might be an amendment the Senator would consider tomorrow. We do not have a lot of farmers in Alaska and Nevada.

Mr. STEVENS. I think my farmers would be pleased to let me use their notices anyway.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. GLENN. Was the Senator moving to a vote?

Mr. President, I send an amendment to the desk and ask for its consideration. Mr. President, I ask unanimous consent to set this amendment by the Senator from Oklahoma be temporarily laid aside.

Mr. NICKLES. I object.

The PRESIDING OFFICER. Is there objection?

Mr. NICKLES. I Object.

The PRESIDING OFFICER. Objection is heard.

Mr. GLENN. Mr. President, is the Senator from Oklahoma then going to hold the floor all evening so we cannot put in any other amendments? Is that permissible?

Mr. STEVENS. Mr. President, I will solve the parliamentary situation. I move to table this amendment.

Mr. GLENN. Mr. President, this was not my understanding earlier this evening. I thought we were supposed to stay here, and I was told if I remained here, I could offer an amendment. Now I am stymied from doing that. I think that is a good breach of faith here. I am sorry to see that. This was done in good faith earlier this evening. I was told I would be able to bring this up. I stayed around here late tonight and now I am told that the floor will not be yielded for other amendments.

I withdraw the amendment with sincere regret.

Mr. STEVENS. If the Senator will wait just a moment, I will be pleased to make a motion to table the amendment.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Alaska wish the floor?

Mr. STEVENS. Not unless the Senator from Ohio wishes to offer his amendment. If he does not want to offer his amendment, I just as soon wait until tomorrow morning.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, what is the parliamentary procedure now to set this amendment aside so we might consider it tomorrow? Do we move it be set aside tomorrow? There will be other amendments.

The PRESIDING OFFICER. It would require unanimous consent to set it aside.

Mr. FORD. Mr. President, I ask unanimous consent this amendment be set aside.

Mr. NICKLES. Reserving the right to object, I have another mailing amendment that the Senator is well aware of.

Mr. FORD. I understand that. He has 10 percent and 5 percent and 2 percent. Pretty soon you are going to nibble away at us. What I want to do is set this aside so we can have some amendments tomorrow; that we can move to table this amendment if we want to. I do not want my rights or the rights of the distinguished Senator from Alaska jeopardized in any way.

The PRESIDING OFFICER. Is there objection?

Mr. NICKLES. I object.

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Mr. STEVENS. I have discussed it with the chairman, and we will work out ways we can account for the savings, and report that to the Senate.

Mr. REID. Mr. President, what this amendment will do is to increase the amount that is in the amendment of the Senator from Oklahoma to take into account the increased cost of postage that will take affect in February, and to make available to the Rules Committee, the same amount of money to allocate that was available in fiscal year 1990.

We know that amount will not be spent, but it will be allocated according to the uniform formula.

I have discussed it with the chairman, and we will work out ways we can account for the savings, and report that to the Senate.

Mr. NICKLES. Mr. President, I express the appreciation of the committee to Senator Nickles and Senator Stevens. I am confident that the Rules Committee will save us money, as they did last year.

Mr. NICKLES. Mr. President, this amendment would appropriate $30 million for next year. It is $5.5 million less than originally called for under the bill, and about $6 million more than appropriated last year. In the spirit of compromise, I have no objection.

Mr. REID. Mr. President, I ask unanimous consent that the amendment be dispensed with.

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

The amendment is as follows:

In lieu of the language proposed to be inserted, insert "$30,000,000".

Mr. REID. Mr. President, what this amendment will do is to increase the amount that is in the amendment of the Senator from Oklahoma to take into account the increased cost of postage that will take affect in February, and to make available to the Rules Committee, the same amount of money to allocate that was available in fiscal year 1990.

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I have discussed it with the chairman, and we will work out ways we can account for the savings, and report that to the Senate.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment. The amendment (No. 3145) was agreed to.

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

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment. The amendment (No. 3145) was agreed to.

The PRESIDING OFFICER. The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3144, as amended.

The amendment (No. 3144), as amended, was agreed to.
CONGRESSIONAL RECORD—SENATE
October 24, 1990

AMENDMENT NO. 3146

(Purpose: To prohibit the transfer of Senate official mail allocations)

Mr. NICKLES. 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 Oklahoma (Mr. NICKLES) (for himself and Mr. HUMPHREY), proposes an amendment numbered 3146.

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

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

The amendment is as follows:

At the appropriate place in the bill, insert the following:

SEC. PROHIBITION ON TRANSFERS OF OFFICIAL MAIL FUNDS.

During any fiscal year in which appropriations for official mail costs of the Senate are allocated to a Senator under subsection (a) of section 310, no such office may transfer any of its allocation to any other such office.

AMENDMENT NO. 3147 TO AMENDMENT NO. 3146

(Purpose: To modify the rules for the use of the Congressional frank for Members of the Senate)

Mr. FORD. 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 Kentucky (Mr. FORBES) proposes an amendment numbered 3147 to Amendment No. 3146.

Mr. FORD. 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:

Strike the matter proposed to be inserted and insert the following:

Subsection (a)(2)(B) of section 310, as amended is further amended by adding at the end thereof "a transfer may be made to another Member, provided no transfer may be made to another Member who is a candidate for public office during the period beginning on January 1st of the calendar year in which the Member is a candidate and ending on the date of election for the public office; and"

Mr. FORD. Mr. President, my amendment to the amendment is very simple. The original amendment said that there would be no transfer of mail accounts from one Senator to another. My amendment in the second degree limits that to no transfers in the year of election.

I think under the circumstances now, when we have reduced our amount of money to mail, there may be some influx of mail from a State we would like to send to other Senators, and come up short, and we would like to help that colleague, so he might answer his mail. I think it is only appropriate to do that.

And I hope that the distinguished Senator from Oklahoma will accept this, and that we will not have this bill linger around tomorrow.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. NICKLES. Mr. President, reserving my objection, and I expect that I will object, as the Senator is aware—

Mr. FORD. There is no objection; it is just for or against the amendment.

Mr. NICKLES. Mr. President, on the amendment, the amendment that I offered, which I did not explain, but as the Senator from Kentucky explained, it would prohibit transfers from Senators to other Senators of unused mail.

As many of us are aware, several Senators mail quite a lot, a little over half. There is also about 40 some who do not mail very much, do not use all of their mail.

Right now, under the present situation, they can transfer their unused mail accounts to other Senators. My amendment is designed to prohibit that. Sometimes this has been abused.

Maybe it has, maybe it has not. I do not know. But at least it is open for abuse.

You can have a person who is running for reelection, say, need more mail. The Senator from Kentucky would prohibit transfer in an election year, but in the other 5 years, transfers would be allowed.

Therefore, if you appropriate, as we just did, $30 million, that is an average of $300,000 per Senator; $300,000. If a Senator does not use it—I know it varies from State to State. Small States would get less, maybe less than $100,000; big States get as much as $1 million or more. But the average is $300,000 per Senator.

So if one Senator does not use it, right now under our present rules, they can transfer their unused mail to other Senators who mail over and above their direct allocation. My amendment would stop that. The amendment of the Senator from Kentucky would prohibit that transfer only in election years.

I personally am not quite willing to go that far. I might consider a restriction that would say one could not transfer mail in their election cycle, those 2 years. I offered that, and that was not quite agreed to. So anyway, my amendment would ban transfers altogether.

I think we are at a disagreement on this. My guess is we will be voting on this tomorrow morning, in all likelihood, at about 10:30, would be my guess.

Mr. REID. Mr. President, I rise in support of the amendment offered by the distinguished chairman of the Rules Committee.

I rise to urge adoption of the amendment offered by the distinguished chairman of the Rules Committee.

I agree that transfers of mail money should not be available for electioneering. But I believe there are legitimate purposes that can be served by such transfers.

The $24 million that was appropriated for Senate mail costs for the current year, for example, is far short of what would be necessary for each Senator to make one statewide mass mailing. That would take at least $35.5 million, the total proposed for fiscal 1991. And this would not cover any other mail costs.

Some Senators have a lower volume of mail than others—even from the same State. Others do not find it useful or necessary to have large volume mailings to their constituents on particular topics.

Other Senators, though, are in quite a different situation. Their committees may be heavily involved in issues that are of great importance to their State. Sending such constituents information on the status of such issues is a perfectly legitimate and necessary use of congressional mail.

But a Senator's annual allocation of franking funds may be inadequate to support this kind of communication with his constituents. In such cases, I see nothing wrong at all with borrowing mail funds from a colleague who happens to have a surplus.

Senator Ford's amendment makes transfers of this sort possible while curtailing possible political abuses of the practice. I urge my colleagues to support it.

Mr. STEVENS. Mr. President, I will make my comments tomorrow.

I hope my friend will reconsider. He just stated at length that his prior reduction in the amount of money that was available was valid was that transfers were available. We now have reduced that amount.

But now his next amendment says transfers are not available. Most people do not understand this process.

Other committees come to the Rules Committee to get an allocation of the money available. The Rules Committee comes to the Senate to get approval for the allocation which is a fair way to do things.

But if we handled committee allocation of the committees that came to us for allocation of funds the way this is being handled, it would be chaos. I hope the Senators who are listening if there are any, will look at this and realize the last amendment does not really make sense unless the transfer is available.

This will cut off the transfers.

The PRESIDING OFFICER. The question before the Senate is the amendment of the Senator from—
Mr. REID. Mr. President, I ask unanimous consent that the vote on the order occur at 10:30 a.m. in the morning.

Mr. FORD. Reserving the right to object.

Mr. REID. It is this morning now.

Mr. FORD. What time are we coming in? 10:15. I would like to have 5 minutes on each side; that we vote 10 minutes after we take this piece of legislation up in the morning; that we have 10 minutes equally divided, and then we have the vote.

Mr. STEVENS. Parliamentary inquiry: Is there a time for convening tomorrow established?

Mr. REID. 10:15.

Mr. STEVENS. Without having been involved in the leadership for 8 years, I think it would be a matter for the leadership to determine what time the first vote will occur tomorrow. Has that been cleared? All right. I have no objection.

Mr. FORD. Mr. President, before I ask for the consent, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

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

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

Mr. KOHL. Mr. President, this bill contains an amendment offered by my colleague from Wisconsin, Congressman KLECKZA, that would require that motorcycles purchased by the Capitol Police be domestically manufactured. I believe this is a small but important amendment. Although the Capitol Police have some 78 American-made vehicles in their fleet, they have no domestic-made motorcycles out of the 50 they are now using. The police must buy only Japanese motorcycles, such as Honda, Kawasaki, and Suzuki.

The Capitol Police contend that there is not an American-made motorcycle made in the size range that meets the requirements of the Capitol Police. But I contend, as my friend and colleague from Wisconsin, Congressman KLECKZA, indicated during the House debate on this amendment, that there is a domestic manufacturer of motorcycles who could easily meet the needs and requirements of the Capitol Police.

The Harley-Davidson Co., located in Milwaukee, WI, serves some 750 U.S. and Canadian law enforcement agencies. Harley motorcycles are also used by the District of Columbia Police Department and the U.S. Park Police. Many of the models used by these 750 agencies have been custom made to meet the specific requirements of the agency. I cannot believe that the requirements of the Capitol Police are so different from these other law enforcement agencies as to make the purchase of Harleys—or any other domestic motorcycle—a burden.

Mr. REID. I believe this amendment does have merit, and it is included in the bill. I thank the Senator from Wisconsin for calling this matter to our attention. We left the language in the bill at your request.

Mr. KOHL. I thank the manager of the bill for his support. I believe it is only right that the Capitol Police, who buy only domestic cars and trucks, should be asked to buy domestic motorcycles as well.

THE REVIEW AND RELEASE OF GAO REPORTS

Mr. JOHNSTON. Mr. President, I want to thank the subcommittee chairman, Senator RENN, for his help in securing adoption of a "good government" provision of this legislation that will help Congress and the public to make better use of reports prepared by the General Accounting Office. The provision to which I refer is section 316 of the bill. This section provides for a needed tightening of GAO procedures to ensure that Congress and the public have timely access to information generated by GAO. It also ensures that GAO will obtain comment in a timely fashion from the federal department or agency that is the subject of a GAO report.

In addition to its traditional role of reviewing Federal programs, GAO is increasingly also engaged in investigations, studies, and analyses that contain information and recommendations relevant to controversial public policy issues. Under present GAO rules, a report based on these efforts can languish long after it has been completed before the public or Congress generally is made aware of the report's findings. This serves no useful purpose and often casts doubt on GAO's competence and credibility.

In addition, many GAO reports are released without opportunity for agency comments on GAO's findings. This practice excuses the agency from answering what may be serious charges about its conduct and often leads to misleading and unbalanced reports.

The bill before us requires the Comptroller General to release completed reports promptly and establishes firm limits on the time during which an agency has an opportunity to comment.

Under the amendment, GAO reports must be released within 7 days after review has been completed or within 7 days after the Comptroller General approves a report whose content has changed as a result of the review.

The limits on review guarantee an agency the opportunity to comment, but at the same time do not permit an agency to unreasonably delay release of a report by delaying comment. Thus, each agency whose activities have been reviewed by a report would have a minimum of 15 days, but would not be offered more than 30 days, to assemble its comments. Any comments provided would be included in the GAO report.

These limits are intended to establish order in the GAO's report review and release process. Enactment of this amendment will also ensure that Congress and the public will see the report promptly after the review process has been completed.

Mr. SASSER. Mr. President, the Senate Budget Committee has examined, H.R. 5399, the legislative branch appropriations bill and has found that the bill is under its 302(b) budget authority allocation by $47.7 million and under its 302(b) outlay allocation by $94.8 billion.

I compliment the distinguished manager of the bill, Senator REID, and the distinguished ranking member of the Legislative Branch Subcommittee, Senator NICKLES on all of their hard work.

Mr. President, I have a table from the Budget Committee showing the official scoring of the legislative branch appropriations bill and I ask unanimous consent that it be printed in the Record at this point.

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

SENATE BUDGET COMMITTEE SCORING OF H.R. 5399—LEGISLATIVE BRANCH SUBCOMMITTEE—SPENDING TOTALS (SENATE REPORTED)

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MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein.

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

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,048th day that
Today in Orchard Park, NW, friends and family of the hostages yet in Lebanon will participate in a vigil of hope. Mr. President, we all know it is easy to dwell on the immediate and the long lost. The suffering endured. But to focus on the hope—of possible release, of family reunification, of new life—commands courage. Courage that ought be commended.

Indeed, the rumblings from within Beirut of an impending hostage release summon renewed hope in all hearts. As those gathered in Orchard Park remember each of their loved ones in Lebanon, I urge my colleagues keep them in their thoughts and prayers.

THE ROLE OF THE UNITED NATIONS IN THE PERSIAN GULF CRISIS

Mr. SANTORO. Mr. President, I rise today to make my colleagues aware of a fine piece of research and analysis recently prepared by the United Nations Association of the United States of America by David J. Scheffer, an international lawyer and senior associate at the Carnegie Endowment of International Peace.

Punted by a grant to the UNA-US by the Ploughshares Fund, this thorough paper of which I will insert only a few excerpts, discusses the critical role of the United Nations in the Persian Gulf crisis and explores the finer points of many of the points of the United Nations charter which will go beyond this immediate crisis into the long-term restructuring of the post-cold war era. I appreciate the opportunity to share this scholarship with my colleagues, and encourage them and the American people to read the entire piece.

My purpose here today is to bring these issues to the fore and to facilitate discussion about the new potential for the United Nations.

There being no objection, the excerpts are ordered to be printed in the RECORD, as follows:

UNITED NATIONS ASSOCIATION OF THE UNITED STATES OF AMERICA, OCTOBER 1990

The Iraq-Kuwait crisis has engaged the United Nations with unprecedented speed and effectiveness. The major powers, especially the United States, are resorting to the U.N. Security Council for authority under Chapter VII of the U.N. Charter to isolate and compel the attackers to reverse the violations of international law. The crisis dominates the 45th session of the General Assembly. Specialized agencies of the United Nations are coping with the flood of refugees out of Iraq and occupied Kuwait. The U.N. Secretary-General held direct talks with Iraq officials.

The role of the United Nations in the Iraq-Kuwait crisis, particularly those issues which are of concern to the United States Government. It presents a number of options for the United Nations and the United States which may be considered in the immediate and long-term future as steps toward the restoration of Kuwait’s sovereignty.

II. COLLECTIVE SELF-DEFENSE

Article 51: Individual and collective self-defense. Article 51 of Chapter VII of the U.N. Charter—Article 51—states in part that nothing in the Charter “shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.”

The “inherent” right of collective self-defense is considered a principle of customary international law. The principle permits one nation to come to the aid of another nation that has been the object of an armed attack. The International Court of Justice (World Court) has further defined the right of collective self-defense as one that permits a state to use armed force against the attacker to protect itself if the state of another member of the United Nations believed that an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.

The principle of collective self-defense is a vital right needed when individual国s are under attack. The principle is not limited to a country’s own territory and is not limited to the immediate threat of attack. For example, the United States has used the principle of collective self-defense as a justification for the use of force in foreign military interventions, such as the Persian Gulf War.

This right of collective self-defense is a crucial element in maintaining international peace and security. If states are able to use force in self-defense, it can help prevent the escalation of conflict and ultimately lead to the resolution of disputes through peaceful means.

The United States has used the principle of collective self-defense on several occasions, including the Gulf War and the invasion of Afghanistan. The United States has also been instrumental in promoting international cooperation and the use of peaceful means to resolve conflicts.

In conclusion, the principle of collective self-defense is a vital element in maintaining international peace and security. It allows states to use force in self-defense, which can help prevent conflicts from escalating and ultimately lead to the resolution of disputes through peaceful means.

III. COLLECTIVE SECURITY

Chapter VII of the Charter, encompassing Articles 39 through 51, establishes the procedure and organization for collective security measures authorized by the Security Council. During the Iraq-Kuwait crisis, the Security Council has acted repeatedly pursuant to Chapter VII.

Article 36: Security Council determinations, Article 39 authorizes the Security Council to determine the existence of any threat to the peace, breach of the peace, or act of aggression.

The Security Council has acted repeatedly pursuant to Article 40 of the United Nations Charter.

The Security Council explicitly invoked Articles 39 and 40 of the Charter in Resolution 660, which condemned the Iraqi invasion (thereby determining a breach of the peace and an act of aggression), demanded immediate and unconditional withdrawal of all Iraqi forces, and called upon the United States to take all necessary measures to maintain international peace and security.

The Security Council also made recommendations or decided what non-military and military measures shall be taken to maintain or restore international peace and security.

In conclusion, the principle of collective self-defense and the principle of collective security are both vital elements in maintaining international peace and security. These principles allow states to use force in self-defense and to cooperate internationally to prevent conflicts from escalating and ultimately lead to the resolution of disputes through peaceful means.
the summer of 1950 when North Korean forces invaded South Korea. With the Soviet delegate absent, the Security Council recommended to the United Nations furnishing assistance to repel the armed attack. The Security Council further recommended that those Members providing military assistance be made available to a unified command under the United Nations, requested the United States to furnish the United Nations a full report of such assistance, and authorized the unified command at its discretion to use the U.N. flag in operations concurrently with the flags of the various parties furnishing assistance and to be operated in accordance with the rules of engagement adopted by the United Nations.

In 1960 the United Nations employed its Article 41 power against Rhodesia with a series of decisions which constitute a good example of the use of economic sanctions. Article 41’s provisions contemplate the use of minimal force as well as a naval and air embargo that has taken on many of the characteristics of a comprehensive blockade. The reluctance to invoke explicitly the provisions of Article 42 may reflect the judgment of United Nations officials that sanctions could be inadequate to deter the illegal acts and would be inadequate to bring the command of forces placed at the disposal of the United Nations to bear on the situation.

Resolution 670 requires all states to take such measures as are necessary to carry out the terms of the Security Council resolutions.

Unlike the maritime operation to enforce the trade sanctions, the air embargo approved under Resolution 670 does not authorize the use of military force against aircraft. The Council has previously authorized enforcement measures “consistent with international law, including the Chicago Convention on International Civil Aviation.” The Chicago Convention on International Civil Aviation, as ratified in 1944, does not contain an express prohibition on the use of armed force against civil aircraft. But following the destruction of Iran Air Flight 655 over the Strait of Hormuz in 1988, the Council of the International Civil Aviation Organization (ICAO), a specialized agency of the United Nations, reaffirmed what it regards as “the fundamental principle of general international law that States must refrain from resorting to the use of weapons against civil aircraft.” This reaffirmation also was made by the ICAO Council “without prejudice to the provisions of the Charter of the United Nations.”

In May 1984, following the destruction of KC-107 over Sakhalin Island on September 1, 1983, the ICAO Assembly approved an amendment to the Chicago Convention that was considered at its 25th Session (Extraordinary). The new Article 3 bis would state in part: “(a) The Contracting States recognize that every State must refrain from resorting to the use of weapons against civil aircraft in flight...” The ICAO Council has apparently not yet decided whether to approve the amendment. The United States, Iran, Iraq, Turkey, and the Soviet Union have not ratified the amendment. But Kuwait, Saudi Arabia, and Jordan are among those States which have ratified the amendment.

Humanitarian assistance. Resolution 661 exempts from the trade sanctions “medical supplies intended strictly for medical purposes or solely for humanitarian circumstances” and “foodstuffs intended strictly for medical purposes or solely for humanitarian circumstances.”

Security Council resolutions have further determined that passenger flights will be permitted provided they are inspected to insure that they are not carrying any cargo prohibited by the trade sanctions. The Sanctions Committee established by Resolution 661 has determined that passenger flights will be permitted only under terms of the Security Council resolutions.

Resolution 670 includes the decision of the Security Council to deal directly with violators of the trade sanctions. In the event the provisions of Resolution 670 are evaded “by a state or its nationals or through its territory,” the Security Council will decide “measures directed at the state in question to prevent such evasion.” Therefore, Resolution 670 does not authorize automatic punitive measures against a viola
tor state. Rather it requires the Security Council to consider punitive measures if and when violations occur. But the further decision by the Security Council will be required to determine and implement such punitive measures. As of October 3, no case of violation had been considered by the Security Council.

Military enforcement action under the authority of the United Nations could take one of several forms:

Option 1: Article 39 recommendation. The Security Council could make recommendations “to maintain or restore international peace and security” pursuant to Article 39. This method was employed during the summer of 1950 in connection with the Korean conflict. The Security Council action in the current crisis probably would consist of a recommendation that Members provide military forces and other assistance to a unified command under the United States and that such forces be used to defend against further Iraqi aggression and/or to re-take Kuwait. Compliance with the recommendations would be voluntary, but participation would be authorized by the Security Council.

Option 2: Article 42 decision. The Security Council could reach a decision pursuant to Article 42 that the Security Council “would be inadequate or have proved to be inadequate” to compel Iraqi complian
c with prior Security Council resolutions. The decision then would specify what military action will be taken under United Nations authority to “restore international peace and security.” The Security Council has never invoked Article 42 in any of its decisions.

Special Agreements. The immediate ques
tion will be whether military action can be authorized pursuant to Article 42 in the absence of the special agreements called for under Article 43. The text of Article 42 does not specifically require any special agreements. However, the Security Council probably could not compel any Member to participate in any portion of its armed forces for a U.N. military enforcement action without the obligatory commitments that were to have been established under the special agreements. Nonetheless, the Security Council might invoke Article 42 and acknowledge that a large multinational army, air force, and navy have been deployed to...
the Middle East for the purpose of defending against further Iraqi aggression. In one respect, the purpose of the special agreement is to give the Security Council contingents of the armed forces of Members for the purpose of enforcing Security Council decisions—has been achieved in fact as an outcome of the Iraq-Kuwait crisis. The Security Council could decide that, contingent upon the approval of the participating Members of the multinational force, it is authorized and directed to take military enforcement action against the Iraqi army under the United Nations flag.

Congressional approval of U.S. special agreement. If it were determined that special agreements would be required before the Security Council could take any action pursuant to Article 42, then the ratification of a special agreement between the United States and the United Nations would have to be accomplished in accordance with procedures set forth in the United Nations Participation Act of 1945. Section 6 of the Act grants the president the authority to negotiate a special agreement with the Security Council, but requires that such agreement be approved by a two-thirds vote of both houses of Congress. Once the special agreement is duly ratified, then the president is empowered to make available to the forces, facilities, or assistance provided for command group consisting in part of military officers from other nations reporting to the Military Staff Committee and require a unified military action authorized pursuant to Article 42 will be accomplished in accordance with procedures set forth in the United Nations Participation Act of 1945. Section 6 of the Act grants the president the authority to negotiate a special agreement with the Security Council, but requires that such agreement be approved by a two-thirds vote of both houses of Congress. Once the special agreement is duly ratified, then the president is empowered to make available to the forces, facilities, or assistance provided for the United Nations presence in the region.

This raises the special agreement. American forces, facilities or assistance in "shall be construed as an authorization to the President by the Congress to make available to the Security Council, in order to take action under Article 42" the armed forces, facilities, or assistance provided for the purpose of taking an Article 42 action, any American forces, facilities or assistance in addition to that previously committed under the special agreement.

Military Staff Committee. Another immediate question will be whether military action authorized pursuant to Article 42 will activate all of the provisions under Articles 45, 46, and 47 regarding the Military Staff Committee and require a unified U.N. command of the multinational force. This raises many concerns, especially within the U.S. Government, by assigning any national military command responsibilities to a U.N. command in part of military officers from other nations reporting to the Military Staff Committee and, in turn, to the Secretary-General.

Chapter VII of the Charter can be read as providing considerable flexibility on the issue of the military command of an authorized U.N. operation. The Security Council or the Military Staff Committee necessarily becomes more engaged in the military operation approved by the Security Council, the Military Staff Committee's powers can be broadly or narrowly defined within the parameters of Articles 45, 46, and 47 at the pleasure of the Security Council. Articles 45 and 46 refer only to the Military Staff Committee assisting the Security Council. Article 47 refers to the Military Staff Committee's function "to advise and assist" the Security Council and to be responsible to the Security Council for the "strategic direction of any armed forces placed at the disposal of the Council." The latter requirement has never been tested and could be narrowly tailored for the military operation approved.

For example, the Military Staff Committee could be tasked to mediate disputes among various national contingents of the multinational force, to coordinate (without necessarily having full access to) the flow of intelligence and military information within the multinational force, and to participate in long-range planning exercises. If all of this could be done with express limitations on the scope of the Military Staff Committee's duties and how it might relate to a unified decision or action, then the U.N. need not be approved, or acknowledged by the Security Council.

Option 3: Chapter VII decision. Rather than open up a debate about whether an Article 42 decision requires the prior implementation of Article 43 special agreements and the approval of the Military Staff Committee, the Security Council could be more general in its expression of authority and simply reach a decision to use military force "under Chapter VII," employing some of the same language and proposals discussed above under Option 2. Resolution 685 comes close to embracing this approach with its preambular reference to: "Having Decided to Impose Sanctions in Aegean unarm. Typically, U.N. peacekeeping of the United Nations." Resolution 685 then proceeds to authorize the "military forces in the area" and to authorize the use of necessary measures to enforce the trade sanctions. The Military Staff Committee is explicitly mentioned and its duties expressly integrated with the enforcement of the trade sanctions.

Reference to Chapter VII in general might not forestall the invocation of Article 46 or Article 47. This might serve to clarify the functions of the Military Staff Committee, but it could be a reasonable method by which either to avoid specific reference to these provisions of chapter VII in the actual text of the Security Council resolution and in its implementation or to refer to them and to implement them in a manner uniquely tailored for the Iraq-Kuwait crisis.

Part 2. Longer Term Issues

I. United Nations Peacekeeping

Normally, U.N. peacekeeping forces are armed with light defensive weapons which the U.N. troops are authorized to use only in self-defense. U.N. observers always have the right to observe and report on the conduct of U.N. observations in the United Nations role in the Persian Gulf. This concept was much explored during 1987 and 1988 when Kuwait-owned oil tankers were reflagged under United States registration and protected by U.S. warships from attack by Iranian forces. Depending upon the outcome of any negotiated settlement or military confrontation, a U.N. naval peacekeeping force may prove useful.

II. United Nations Administrative Role in Restoring Kuwait's Sovereign Government

The prospects for a United Nations role in coordinating and implementing a new sovereign government may arise in terms of an expanded peacekeeping role there. Recent experience indicates the possibilities.

The United Nations recently completed an unprecedented and highly successful operation in Namibia where a United Nations observer group known as ONUVEN oversaw plans for elections in Nicaragua that eventually were held, again under United Nations observation. Following the success of those elections ONUVEN's mandate was expanded by the Security Council to including monitoring the cease-fire in the region, the separation of Kuwait and along the Iraqi-Kuwait border.
forces, and the demobilization of the Nicaraguan contras.

The most ambitious plans for United Nation intervention now involve Cambodia, where the United Nations would take on an enormous administrative responsibility.

In Kuwait, where it is reported that the administrative character of the government has been obliterated by the occupying Iraqi army, there will be a daunting challenge of stabilizing organizations in the country. Should the Iraqi army be withdrawn or defeated and Kuwait's sovereignty restored. The Security Council will play a critical role in undertaking a massive restoration of governmental agencies, public services, and other administrative functions. A special United Nations peacekeeping operation could be launched, on a scale that might invite comparison with the UN operation in Namibia, to restore Kuwait's government. The United Nations may prove to be the only feasible organization for the job in light of Arab sensitivities over any foreign efforts to "run" Kuwait.

III. REMOVING THREATS TO MIDDLE EAST STABILITY

The United Nations could play an important role over the long term in removing the prospects for instability in the Middle East. There will be a need to monitor more directly and comprehensively the development and proliferation of chemical, biological, and nuclear weapons as well as missiles, especially in Iraq. A special U.N. agency might be created to undertake inspections of facilities in Iraq and other Middle East countries. Another possibility would be for the International Atomic Energy Agency to broaden its inspections under United Nations auspices to include the non-proliferation Treaty. In the absence of a Chemical Weapons Convention (especially one signed and ratified by Iraq), the United Nations might play a role in developing a regional treaty regime to control proliferation of such weapons in the Middle East.

Aside from weapons of mass destruction, the United Nations could explore ways to limit arms transfers to Iraq after the trade sanctions imposed under recent Security Council resolutions are lifted. The Security Council may decide to continue the arms embargo on Iraq after other economic sanctions are lifted. A new mechanism for such an arms embargo may require further Security Council action.

Soviet Foreign Minister Eduard Shevardnadze alluded to an International Criminal Court during his September 25 address to the U.N. General Assembly. He emphasized the need to create the necessary legal environment in which to bring individuals responsible for criminal actions to "face the kind" to justice. The Iraq-Kuwait crisis already has generated more serious interest in the proposal, but it is doubtful any such body could be created soon enough to deal swiftly with the culpability of Iraqi officials.

BI-STATE COMPACT BETWEEN THE STATES OF NEW JERSEY AND DELAWARE

Mr. LAUTENBERG. Mr. President, last night, the Senate approved House Joint Resolution 857 by voice vote. I rise today to express my support for that legislation, which approves a modification in the compact between New Jersey and Delaware which governs the Delaware River and Bay Authority or DRBA.

This is the companion measure to Senate Joint Resolution 373, which Senators BIDEN, ROTH, BRADLEY, and I introduced on October 2, 1990. The purpose of this legislation is simple: To promote economic development in southern New Jersey and Delaware.

The legislation would approve a change in the existing compact, to allow the DRBA, which runs the Delaware Memorial Bridge and the Cape May, NJ to Lewes, DE, ferry, to allocate some of its financial resources for needed economic development efforts. The types of projects that would be eligible for funding would include: recreational and commercial fishery development; beach restoration; recreational and park development; foreign trade zone site development; and manufacturing and industrial facilities.

In New Jersey, this assistance will be targeted to areas that have not shared as fully as some other parts of our State in the economic growth of recent years. Specifically, it will be the counties of Salem, Gloucester, Cumberland, and Cape May that will benefit from this change.

By its nature, a toll-collecting facility like the Delaware Memorial Bridge is relatively cash-rich. In recent years, the DRBA has been able to meet its operation and maintenance costs within the revenues it has collected through tolls. This has left the authority with excess revenues. Mr. President, I believe that some of those revenues can be put to good use to help those areas of our State that could use a helping hand.

Under the terms of the agreement negotiated between New Jersey and Delaware, which this legislation approves, each State would designate eligible economic development projects, which would have been the subject of a public hearing and approved by the respective State legislature. Four of the...
six commissioners from each State would then have to approve the project for funding.

Out, Mr. President, that this legislation does not call for any increase in toolls paid on the Delaware Memorial Bridge. It retains the existing Federal requirement that toolls be just and reasonable.

Mr. President, this legislation has the strong support of New Jersey Governor Florio. I urge my colleagues to approve this measure.

CLEAN AIR ACT AMENDMENTS CONFERENCE SUMMARY

Mr. BAUCUS, Mr. President, later this week the Senate will consider the conference report concerning S. 1630, the Clean Air Act Amendments of 1990. In an effort to assist my colleagues as they prepare for the debate of this comprehensive legislation, I have requested the staff of the Committee on Environmnet and Public Works to prepare a detailed summary of the Clean Air Conference agreement. The unanimous consent of the committee summary be printed in the RECORD.

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

SUMMARY OF HOUSE-SENATE CONFERENCE AGREEMENT ON CLEAN AIR

Since July 13, House-Senate Conferences have been working to reconcile differences in their respective bills to amend the Clean Air Act. On Monday, October 22, the Conferences reached final agreement on provisions which address mobile sources of air pollution, toxic act pollution, acid rain, enforcement, clean air research and miscellaneous provisions. The Conference agreement also includes provisions regarding areas in nonattainment, stratospheric ozone protection, and permits which were agreed to previously between the House-Senate Conference agreement follows:

TITLE I: NONATTAINMENT PROVISIONS

Currently over 100 areas in the United States do not meet health standards under the Clean Air Act for oxides of nitrogen, over 40 areas are failing to attain the carbon monoxide standards; and an estimated 58 areas exceed the health standard for carbon monoxide pollution in urban areas in the United States. They are also responsible for significant emissions of toxic pollutants. It is not only the vehicles but the fuel they use that causes pollution.

The agreement contains the following measures to reduce these pollutants:

Reformulated Gasoline

Cleaner, reformulated gasoline would be required in the nine cities with the severest ozone pollution beginning in 1995. States could elect to have the requirements apply in other cities with ozone pollution problems.

In comparison with conventional gasoline, reformulated gasoline would be required to have 15 percent lower emissions of volatile organic compounds and toxic chemicals by 1995, and 20 to 25 percent lower by 2000.

The agreement also contains additional standards for oxygen, benzene and aromatics.

The agreement establishes an oxygen content level of 2.7% in 44 cities with carbon monoxide pollution, starting in 1992. These provisions will encourage the use of oxygen-containing additives like ethanol and MTBE, a gasoline additive.

Tailpipe Standards for Cars and Trucks

Auto manufacturers are required to reduce tailpipe emissions of hydrocarbons and oxides of nitrogen, which form smog, by 35% and 20% respectively, beginning with 40% of the vehicles sold in 1994 and increasing to 100% of vehicles sold in 1998. Compar-

able reductions are required for light trucks such as vans and pickups.

The motor vehicle standards would be subject to recall for failure to meet emissions standards would be doubled to ten years or 100,000 miles whichever occurs first.

An additional reduction in auto emissions-a 50% cut below the standards required in the mid-1990s-would be required after 2003 if EPA finds that this new standard is both necessary and technologically feasible.

Other Requirements

Vehicle manufacturers must install systems to alert drivers when an emission control system is malfunctioning.

Auto manufacturers are required to install canisters on vehicles to capture hydrocarbons that would otherwise be emitted into the atmosphere during refueling beginning in 1998 and phased-in over a three year period, if these devices are determined to be safe by the EPA and the Department of Transportation.

The agreement requires new transmitting equipment to indicate in real-time whether fuel such as natural gas or methanol to meet particulate standards. The agreement encourages clean diesels and new procedures for testing diesel vehicles.

The Conference Agreement retains the present Senate language that provides for conversion and enforcement of California auto standards by other States.

The agreement requires enhanced vehicle inspections in the most highly polluted areas. The conference adopted House language that requires annual, centralized programs or programs which achieve equivalent reductions in the serious non-attainment areas.

Fleet Vehicles

A program for fleet vehicles is included in the agreement. Fleet vehicles covered by the program would be substantially cleaner than conventional vehicles.

The fleet program applies in serious, severe and extreme nonattainment areas to fleets of ten or more vehicles that are capable of being centrally fueled (but not including vehicles garaged at personal residences each night under normal circumstances).

The fleet program agreed upon will mandate California's low emission vehicle (LEV) standards by 1998 for light duty vehicles and light duty trucks below 6,000 lbs., respectively. These vehicles are sold for sale in California. By 2001, these vehicles will be required without regard to availability in California. The tailpipe standard for these vehicles includes a limit at 0.675 gram per mile NMHC (non-methane hydrocarbon) compared to the 0.25 gpm NMHC standard applying to conventional cars.

EPA is mandated to establish an equivalent "wrap around" standard (exhaust, evaporative and refueling emissions combined) for LEV's using reformulated gasoline. It will be left to the manufacturers to decide which standard to use (the LEV tailpipe standards or the wrap around standards).

Heavy duty fleet vehicles from 8,500 lbs. to 26,000 lbs. will be required to meet a combined NOx and hydrocarbon emission standards of 15 grams per brake horsepower hour, which is a 50% reduction below emissions from a 1984 heavy duty diesel engine.

The EPA decides this standard. It is possible for a clean diesel fueled engine, it can be waived to only a 30% reduction.
The Agreement requires EPA to study off-highway engines and emissions from off-highway vehicles (other than locomotives). If the study concludes that there are significant contributors to ozone or carbon monoxide problems in more than one area, EPA must regulate the emissions. California would be precluded from adopting its own standards for engines smaller than 175 HP used in construction equipment or farm equipment. MACT is applicable to locomotives and other locomotives. Within five years EPA must regulate emissions from new locomotives.

California Pilot Program

The Agreement contains a pilot program for California, a modification of the House and Senate bills. California must produce 300,000 clean vehicles per year must be produced for sale in California; by 1999, this number must rise to 2,300,000 clean vehicles. California's TLEV (transitional low emissions vehicle) standards for California, a modification of the House and Senate bills, will be published by the sources in the category.

Municipal Incinerators

The Conference agreement includes provisions to control the air emissions from municipal and other commercial and industrial incinerators.

Recycling and ash management provisions from the Senate bill were deleted.

Title IV: Air Quality Provisions

Routine Emissions from Major Sources

List of Pollutants and Source Categories:

The Conference agreement establishes a list of 189 chemicals taken from the Administration's bill, except that ammonia and hydrogen sulfide were deleted from the list. EPA is to establish a list of major source categories (chemical plants, oil refineries, steel plants, etc.) for the purpose of issuing permits. Approximately 250 source categories will be subject to regulation. Different standards may apply for different categories.

MACT Standard

For each category of sources, EPA will promulgate a standard which requires the installation of maximum achievable control technology (MACT) by the sources in the category. MACT is generally the best available control technology, taking cost into account.

All standards are to be promulgated within 10 years, with standards for 41 source categories required within 2 years. Existing sources must comply with MACT standards within 3 years after they are issued (with a possible 1 year extension).

When listing pollutants and setting standards, EPA would be required to consider impacts on the environment as well as effects on human health.

Voluntary Reduction

Any source making a voluntary reduction of 10% below 1987 emissions levels receives a 1 year extension on the MACT compliance date.

Residual Risk

Under some circumstances, MACT may not provide enough public health protection.

If, after installation of MACT, a significant risk remains, EPA must tighten the standards 8 years after initial promulgation of the MACT standard.

Standard for protection is "an ample margin of safety to protect public health" unless it is necessary to protect the environment.

EPA is required to set such "residual risk" standards for pollutants which may cause water quality of the risk is greater than 1-in-10,000,000 to the person in the general population most exposed to emissions from a source in the category.

Permits

Each subject source to these standards will be required to apply for a permit under title IV of the bill. The permit program will be managed by the sources in the category.

Special Provisions for Coke Ovens and Utilities

Coke ovens which achieve a stringent level of performance for an extension of the compliance date for residual risk standards to 2020.

Utility emissions of air toxics would only be regulated after a study by EPA and only if EPA found that regulation is warranted.

Great Lakes Pollution

The Conference agreement requires EPA to study the pollution from the Great Lakes and the Chesapeake Bay.

Routine Emissions from "Area" Sources

Based on the list of pollutants mentioned above, EPA can also list an area source category (dry cleaners, gas stations, woodstoves and small combustion units, etc.) just as the agency would list a major source category. EPA must list sufficient source categories to assure that 90% of the emissions from the top 30 most serious area source pollutants are regulated.

There is an alternative area source control program for those sources that present a substantial risk to health, but for which best available technology is too costly.

EPA is to monitor a broad range of urban toxics in cities with populations over 250,000 to determine which area source pollutants present the greatest risk.

Five years after enactment, EPA is to propose a national urban air toxics strategy to reduce cancer risks associated with urban air toxics by 75%. EPA is to report on reductions achieved in 8 and 10 year intervals.

Accidental Releases

The agreement contains provisions that are designed to prevent chemical accidents.

These provisions impose a general duty on the owner or operator of each facility handling extremely hazardous substances to operate safely.

EPA is to publish a list of at least 100 extremely hazardous air pollutants, of which approximately 20 are listed in the agreement.

Each owner of a facility handling extremely hazardous substances must complete an engineering analysis of the facility to determine its potential to public health. The assessments would be publicly available.

The Conference agreement establishes a Chemical Safety Board, similar to Transportation Safety Board, to investigate chemical accidents:

EPA is authorized to promulgate accident prevention regulations.

Acid rain continues to pose a threat to public health and the environment. The agreement reduces sulfur dioxide (SO_2) emissions by ten million tons per year and provides a national cap on sulfur dioxide emissions. This title, based on the Senate bill, also reduces emissions of oxides of nitrogen by approximately two million tons per year.

Reduction Requirements for Sulfur Dioxide

The agreement reduces SO_2 by 10 million tons per year below 1980 levels.

If a source reduces its pollution more than required, it will have over-allowances which may sell to another source--which would permit the second source to emit more than allowed while remaining in compliance. This ensures that total reductions will be achieved in the most cost-effective way and that reduction costs will be allocated fairly.

Phase I

In Phase I, which begins January I, 1995, utility powerplants emitting at a rate about 2.5 pounds of sulfur dioxide per million Btu of fuel burned must have reduced emissions to a level equal to 2.5 lbs./mmBtu multiplied by their average 1985-87 fuel consumption.

If a source reduces its pollution more than required, it will have over-allowances which it can sell to another source--which would permit the second source to emit more than allowed while remaining in compliance. This ensures that total reductions will be achieved in the most cost-effective way and that reduction costs will be allocated fairly.

Phase II

In Phase II, which begins January 1, 2000, all utility powerplants emitting at a rate above 1.2 lbs./mmBtu will have to reduce emissions to a level equal to 1.2 lbs./mmBtu multiplied by their average 1985-87 fuel consumption.

Nationwide, plants that emit SO_2 at a rate below 1.2 will be eligible to increase their emissions between now and the year 2000 by...
roughly 20% and will then be limited to that level. This requirement is necessary to maintain the nationwide cap on SO₂ emissions.

Bonus allowances are distributed to accommodate growth by units in States with standards that include emissions below 0.8 lbs./mmBtu. Plants that have experienced increases in their utilization in the last five years also receive bonus allowances. Emission allowances per year are allocated to plants in 10 Midwestern States that make reductions in Phase 1. Unallocated conservation or renewable energy will receive special incentive allowances for making early reductions in SO₂ emissions.

Plants now under construction will either receive allowances to offset their emissions or will be exempted from the emissions limitation program altogether.

EPA will auction allowances to ensure their availability to utilities that may not be able to acquire them in the allowance "market." The 1977 "percentage reduction" requirement for coal is repealed once the emissions cap goes into effect.

**Utility NOₓ Emissions**

Not later than 1993, EPA is required to establish performance standards under which utilities required to reduce sulfur dioxide emissions in Phase I are also required to control their NOₓ emissions based on performance standards for certain boiler types. The emissions standards will be based on low NOₓ burner technology.

Not later than 1997, EPA is required to establish performance standards for all remaining types of utility boilers.

Remaining detected sources under the acid rain title must meet these standards by the Phase II deadline. This standard will also be set based on low-NOₓ burners, and will be updated as new technologies are developed.

EPA is required to promulgate a revised NOₓ New Source Performance Standard for utility boilers.

Provisions permitting emissions averaging and granting extensions to plants that suffer substandard performance from pollution control equipment or that face shortages in the supply of needed technology ensure that the program will be flexible.

**Clean Coal Technology Projects**

Temporary demonstration technology demonstration projects (those operating for 5 years or less) are exempt from the requirements of Title I of the Clean Air Act. Permanent demonstration projects that are retrofits are presumed not to be major modifications.

Permanent demonstration projects that employ repowering are exempt from Part C and section 111 requirements if their potential emissions for any criteria pollutant do not increase over the potential emissions before the project.

Clean coal technologies that employ repowering are exempt from New Source Review. Emissions for any criteria pollutant do not increase over previous emissions. If there is an increase in emissions, States are encouraged to give such projects expedited review.

### TITLE V: PERMIT PROVISIONS

The conference agreement includes provisions that require various sources of air pollution to obtain operating permits which would require compliance with all applicable requirements of the Clean Air Act. The permit program is modeled after the existing Clean Water Act permit program.

**Permit Programs**

EPA is required to issue permit program regulations within one year. States are required to develop programs consistent with those regulations. The programs would be in effect within five years, and the requirement to have a permit would be phased-in over the ensuring three years.

**EPA Oversight of Permit Programs**

The conference agreement provides EPA with the authority to review permits proposed to be issued by a State and to object to permits that violate the Clean Air Act. EPA also has the opportunity to waive review permits for small sources.

**Citizen Review of EPA Permit Actions**

If EPA fails to object to a permit that violates the Act, anyone can petition EPA to issue such an objection. The petition must be based upon objections that were raised during the public comment period unless the petitioner demonstrates that the issues raised in the petition could not have been raised during that period (or that it was impracticable to raise them). The petition will not delay the effectiveness of a permit that had already been issued. EPA is required to act upon the petition within 60 days and is required to object to the permit if the petitioner demonstrates that the permit is not in compliance with the Act.

**State Response to EPA Objections**

Under the conference agreement, States would be granted 60 days to revise permits to meet any EPA objection. If the State fails to revise the permit, EPA will issue or deny the permit.

**Permit Shield**

The agreement provides that compliance with a permit is deemed compliance with the requirements of the permit program. Permit compliance also will be deemed compliance with other applicable provisions of the Clean Air Act if the permit includes those provisions, or if the permitting authority includes in the permit a specific determination that such provisions are not applicable.

**Operational Flexibility**

Facilities will be authorized to make changes in the permit or the need for a permit revision so long as: (i) the changes are not "modifications" under title I of the Act; (ii) the changes will not result in emissions that are not allowable under the permit; and (iii) the facility provides EPA and the permitting authority with seven days written notice in advance of the changes.

**Processing Permit Applications**

Except for applications submitted within the first year of the permit program (for which a 3-year phased review is allowed), States are required to act upon permit applications within 18 months.

**Small Business Stationary Sources**

The agreement provides that small business sources are eligible for technical and compliance assistance in satisfying the permitting requirements.

### TITLE VI: STRATOSPHERIC OZONE PROTECTION

The conference agreement includes provisions that require various sources of air pollution to obtain operating permits which would require compliance with all applicable requirements of the Clean Air Act. The conference agreement revises and strengthens EPA enforcement authority regarding violations of State Implementation Plans and permits, including authority to bring civil actions for injunctive relief and penalties, as well as new authority to issue administrative penalty orders in response to violations. These authorities can also be used by EPA when States fail to enforce SIPs or permit requirements.

**SUMMARY OF TITLE VI: FEDERAL ENFORCEMENT**

The conference agreement includes a number of provisions that enhance the enforcement authority of the federal government under the Clean Air Act. In general, the agreement increases the range of civil and criminal penalties for violations of the Clean Air Act. These provisions grant the Environmental Protection Agency new enforcement authorities that are comparable to those found in other environmental statutes.

**SIP and Permit Violations**

The conference agreement revises and strengthens EPA enforcement authority regarding violations of State Implementation Plans and permits, including authority to bring civil actions for injunctive relief and penalties, as well as new authority to issue administrative penalty orders in response to violations. These authorities can also be used by EPA when States fail to enforce SIPs or permit requirements.
Violations of other requirements

EPA is authorized to initiate a range of enforcement actions for a number of violations of the Act, including section 303 (emergency orders), the permits title, the acid rain title, and the stratospheric ozone protection title. In addition, the conference agreement authorizes the administration of the Act to have the power to enforce its provisions relating to endangerment and certain other violations of the Act.

Penalities

Criminal fines and penalties are included for a range of violations of the Act, including negligent or knowing violations that result in the endangerment of others, knowing violations of SIPs that occur after the violator is on notice of the violation, knowing violations of certain sections in the permits title, and knowing violations of the Clean Air Act. In addition, the agreement provides for criminal fines and penalties for the knowing violations of certain sections in the permits title and the stratospheric ozone protection title. In addition, the agreement provides for criminal fines and penalties for the knowing violations of certain sections in the permits title and the stratospheric ozone protection title. In addition, the agreement provides for criminal fines and penalties for the knowing violations of certain sections in the permits title and the stratospheric ozone protection title.

Field Citations

The conference agreement provides that the EPA is to implement a field citation program for minor violations of the Act.

Definitions of "operator" and "person"

Except in the case of knowing and willful violations, the term "operator" does not include persons responsible for the operation of equipment unless they are senior management or a corporate officer. In addition, except in the case of knowing and willful violations, persons carrying out their normal activities shall not be subject to the criminal provisions relating to recordkeeping, monitoring, and reporting. Finally, except in the case of knowing and willful violations, persons carrying out their normal activities who are acting under orders from their employer shall not be subject to the criminal provisions relating to endangerment and certain other violations of the Act.

Citizen suits

As under current law, citizen suits are authorized to enforce nondiscretionary actions of the EPA. In addition, the conference agreement authorizes courts to apply civil penalty orders, file civil actions, and initiate criminal proceedings via the Attorney General.

Environmental Audits

The conference agreement includes a statement of managers that encourage owners and operators to conduct environmental audits and to correct any compliance problems discovered in such audits. The statement of managers suggests that criminal penalties should not ordinarily be applied where owners and operators engage in such audits and act promptly to correct any problems that are discovered as a result of such audits.

TITLE IX: CLEAN AIR RESEARCH

The House and Senate provisions in this area are very similar. The conference agreement adopts the Senate title with several changes drawn from the Senate bill.

The conference agreement provides for the continuation of the Senate's proposal to conduct research on the acid rain research program begun under NAPAP with a Task Force composed of several federal agencies and the EPA. In addition, the President would appoint the chairman of the Task Force. The Task Force would be responsible for distributing the benefits of acid rain research conducted to date, coordinating acid rain research activities with other Federal agencies, publishing and maintaining a National Acid Lakes Registry, making budgetary recommendations to the President for the Federal government's acid rain research activities, and reporting to Congress on a variety of data. With certain modifications, the conference agreement also adopts the Senate's Westen Lakes and Waters research provision.

Finally, the conference agreement includes a study to identify and evaluate the effectiveness of certain hazard mitigation and emergency response technologies. EPA is further directed to conduct an environmental health research program on the short-term and long-term effects of air pollution.

EPA is also directed to conduct an education and training program on the short-term and long-term effects of air pollution.

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The conference agreement includes a study to identify and evaluate the effectiveness of certain hazard mitigation and emergency response technologies. EPA is further directed to conduct an environmental health research program on the short-term and long-term effects of air pollution.

EPA is also directed to conduct a basic engineering research and technology program to develop, and demonstrate non-regulatory strategies for air pollution prevention. In addition, EPA will conduct a research program to identify, characterize, and predict air emissions related to the production, distribution, storage, and use of clean alternative fuels. The conference agreement also directs the EPA to convene a conference of States to develop and implement a plan for coordinating research with other Federal ecological research programs to identify, characterize, and predict air emissions related to the production, distribution, storage, and use of clean alternative fuels.

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among the very special group of Americans whose service to our Nation was "above and beyond the call of duty."

On June 15, 1969, then-Lt. Tom Kelley was awarded the Medal of Honor. On that day, while in command of River Assault Division 125, Tom Kelley led his division of eight assault craft into the Ong Muong Canal in Vietnam to extract a company of Army infantry.

During the operation, one of his boats had a mechanical failure that required the crew to raise the loading ramp with block and tackle. At that moment, his column came under rocket attack and 75mm recoilless rifle fire from a heavily fortified Vietcong force.

With enemy shells striking all around, Lieutenant Kelley quickly, and calmly, ordered the remaining boats to form a protective cordon around the disabled craft and maneuvered his boat to the exposed side of the cordon in direct line of enemy fire. Sighting the enemy bunkers, he directed his battery to return fire.

Suddenly, an enemy rocket scored a direct hit on the coxswain flat. Absorbing the full blast, Lieutenant Kelley was blown to the deck with an almost mortal head wound. His face broken, bleeding profusely and with jagged shrapnel piercing his right eye, he struggled to retain consciousness and to reach for the radio in order to continue to direct the attack.

Disregarding his wounds and refusing assistance, he relayed commands through one of his men until the enemy attack was silenced and the extraction mission completed.

His leadership, bold initiative and resolute determination served to inspire his men. His extraordinary courage and selflessness to duty, on June 15, 1969, and throughout his Navy career, have enhanced the finest traditions of the naval service.

Despite losing his right eye as a result of the enemy fire, Tom Kelley fought to stay on active duty, and was able to continue a long and distinguished career. As we debate the course of our Nation's defense policy over the next decade, we should keep in mind that the success our Nation has had in preserving peace, and in protecting our freedom, was achievable because of people like Tom Kelley, who were willing to answer the call to serve.

We here and our fellow citizens owe a deep debt to Capt. Tom Kelley and I salute him and wish him, in the tradition of the Navy, "Fair winds and following seas."

Thank you, Mr. President.

THE BOYS & GIRLS CLUBS OF AMERICA'S ANNUAL YOUTH OF THE YEAR CONGRESSIONAL BREAKFAST

Mr. THURMOND. Mr. President, I recently had the privilege of serving as cohost with Representative Strom Hoeyer of Maryland for the Boys & Girls Clubs of America's annual "Youth of the Year" congressional breakfast. Five young people were honored as "Youth of the Year" finalists.

The finalists were: David Capps of Knoxville, TN; Beverly Fernandez of Greeley, CO; James Splude of Portland, ME; Ross Cross of southeastern Michigan, and Adam Cornell-Stubb of Kirkland, WA. We are proud of the outstanding achievements of these five young Americans.

In addition to honoring the "Youth of the Year" finalists, Mr. Arnold Burns, vice chairman of the Boys & Girls Clubs, paid tribute to the CBS/Fox Video North America, Mr. Robert Deileits. We thank him for his dedication to the children of our Nation.

Other notable speakers included: FBI Director William Sessions; Frank Ronnenberg of Reader's Digest, Inc.; and John Walsh, host of "America's Most Wanted."

Mr. Bud O'Shea, president of MGM/United Artists Home Video, added to the excitement by announcing the donation of $100,000 from the home video release of "All Dogs Go To Heaven." This Don Bluth production will greatly benefit the Boys & Girls Clubs of America, thanks to the generosity of these fine members of the motion picture industry.

The breakfast ended with the announcement of the 1990-91 National Youth of the Year. The crowd sat silently as Jeremiah Milbank, chairman of the Boys & Girls Clubs of America board, announced the winner—Adam Cornell-Stubb of Kirkland, WA.

Seventeen-year-old Adam was abandoned at the age of 5 and for 2 weeks he took care of his younger siblings, changing their diapers and cooking for them. He bounced from foster home to foster home until he was finally adopted. Adam is now an honor roll student at his high school. As he graciously accepted the award for "Youth of the Year," Adam thanked the Boys & Girls Clubs who were officially recognized included: FBI Director William Sessions; Frank Ronnenberg of Reader's Digest, Inc.; and John Walsh, host of "America's Most Wanted."

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Eastern Europe—the so-called SEED Program.

Wise, we have chosen to focus our assistance efforts where there is real need, and we have a special capacity to help people in the areas of building democratic institutions, and the development of free market economies.

A number of private organizations have particular expertise in these areas, and are already working with various Eastern European countries. For good reason, this legislation does not seek to identify any specific organizations for support. That is properly the work of the administration, as it implements these programs. But I know that many organizations will be seeking funding out of this bill. Undoubtedly, there will be many worthy proposals.

I simply wanted to note at this point one organization, the International Institute of Strategic Studies (IISS), which has been working effectively with the governments of the emerging democracies in Eastern Europe. I would hope that the expertise and experience of IISS might be tapped for some of the programs contemplated in this legislation for scholarships, technical advice, and exchanges.

ELIZABETH HANFORD DOLE

Mr. SIMON. Mr. President, I heard today along with many of you—some of you probably heard yesterday—that Secretary Elizabeth Dole is going to become the president of the American Red Cross.

I have had the chance in my 16 years in Congress to deal with a great many Cabinet members, some of whom do an excellent job, some of whom frankly never should get appointed. That happens under both Democrats and Republicans. Elizabeth Dole has been one of the finest.

I worked with her a little when she was Secretary of Transportation, was favorably impressed but frankly I did not work with her that much.

But as Secretary of Labor, I have had the chance to work with her a great deal. She is a hands-on person who works, very, very diligently, who gets the job done, works well with people of both political parties.

I think significant for her new role as head of the American Red Cross she has a heart. She has compassion. A very significant thing was when President Bush announced her appointment. She stood in front of the Vice President’s home, as I recall, and she mentioned as Secretary of Labor she helped to get jobs for people. She said, “You know my husband and I just visited a soup kitchen, and this man came up to me and said ‘If I could just get a job I would not be homeless.”’

I think first of all the fact that Bob Dole and Elizabeth Dole were visiting a soup kitchen here in Washington, DC, says something about her, says something about our colleague, Senator Dole. It says something also about her compassion. I think she will do an absolutely superb job. I think she will bring credit to the American Red Cross, and to this Nation in the leadership that she will provide.

I am certain that there will be people around the face of the Earth, in countries most of us know only as names on a map, people in those countries, who will be helped because of her leadership.

I think we are all very very proud of the job she has done as Secretary of Labor, and I know we all join in wishing her the very best.

THE LIBRARY OF CONGRESS

Mr. PELL. Mr. President, as vice chairman of the Joint Committee on the Library, I simply want to express my support for the provisions of this bill which fund the important work and activities of the Library of Congress.

The Library has not only the intellectual and informational reservoir which nurtures the Congress of the United States, but it is a national resource which influences and helps sustain the cultural life of the Nation. It is the largest library in the world and, as has tried, it embraces the accumulated wisdom of all the ages.

For all these reasons, I believe we have a responsibility to sustain the Library, especially in this time of fiscal duress. The bill before us tonight makes adequate provision for continuity of the Library’s programs and I urge its adoption.

Mr. President, I ask unanimous consent that a memorandum describing the Library's work be printed in the Record at this point.

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

THE LIBRARY’S CONTRIBUTIONS TO THE NATION

Members of Congress and their staffs are made aware daily of the Library of Congress’ contribution to their work, through the efforts of the Congressional Research Service in providing research and reference assistance to Members, committees, and their staffs. But the work of CRS is only part of the mandate of the Library of Congress.

The resources of the Library of Congress form the intellectual and national life and memory. With book collections exceeding 14 million volumes, a photography collection in excess of 11 million items, near 77 million maps, more than a million sheet music and microfilm collections, 3 million musical scores, and 7 million rare items preserved on microforms, the Library collection comprises an unparalleled intellectual resource for various academic disciplines.

Not only is the Library’s collection a national resource, in this era of growing international cooperation and un­matched international resource. The Library’s Hispanic Division has the largest and most comprehensive collection outside of the Iberian Peninsula and Latin America; the Library’s Arabic language collection is the largest such repository outside the Middle East. The LC dual role as both a legislative library and the national library has attracted the attention of large numbers of foreign visitors eager to draw upon the experience of the Library of Congress in developing similar resources in their own nations.

The Library plays a key role in the intellectual life of the United States through its role as the American copyright depository. The Library’s recent exhibit “To Secure to Authors”* * * commemorated the vital role of copyright law in protecting intellectual property rights. Its legal staff is currently providing key advice to the Congress in legislative proposals designed to protect copyright of new technological processes, including computer software. The Copyright Office also seeks to enforce international copyright laws against a function which protects not only American copyrights, but also international copyright conventions.

The Library is not just a home for established scholars. It is the training ground for future scholars just beginning their professional careers, and it is also a center for research libraries and public libraries throughout the country. Library book cataloging efforts, made available to local public and private libraries, save countless of dollars annually in eliminating the need for local libraries to catalog their own new acquisitions. The Library is also a national cooperative effort to combat the blatant aggression of Iraq.

The Library’s Music and Motion Picture Divisions have done invaluable work in preserving key works in recorded sound and visual media. Its public concert series, broadcast nationally, and film showings bring these works to a large and growing audience. Plus, through the Library’s Reading Program for the Blind and Physically Handicapped over 22 million talking books are loaned to 700,000 readers annually. The Library’s work serves a diverse international clientele, ranging from world renowned scholars to average citizens who find in the Library services vital to their needs.

UNITED NATIONS DAY

Mr. KENNEDY. Mr. President, today, as we observe United Nations Day, it is fitting that we recognize that organization’s many recent achievements. Over the past year, the United Nations has actively advanced the cause of peace and human rights around the world. Most recently it has been at the forefront of the international cooperative effort to combat the blatant aggression of Iraq.
Last month, the leaders of the world gathered in New York for the World Summit for Children sponsored by the United Nations. This important gathering is aimed at focusing the world’s attention on the need to protect and nurture our most important global resource—our children.

The United Nations was instrumental in bringing independence to Namibia earlier this year. It oversaw the elections in Nicaragua and continues to play an important role in the effort to bring peace to the region. It is also working to bring about peaceful and just resolutions to the conflict on Cyprus, and the civil wars in Cambodia, Afghanistan, and El Salvador.

I am pleased that the Congress—for the first time in 5 years—has provided full funding for our assessed contributions to the United Nations as well as the first payment toward offsetting our arrears. Over the last decade, our unconscionable disregard for our U.N. treaty obligations was a national disgrace which damaged our credibility and called into question our commitment to the organization. I hope that this restored commitment to funding the United Nations signals an end to the arrears once and for all—to our hostile approach to an organization which is, and can continue to be, indispensable to the goal of world peace.

Much of the United Nations success can be attributed to the leadership and dedication of Secretary-General Javier Perez de Cuellar and I ask unanimous consent that his United Nations Day message be printed in the Record.

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

**MESSAGE OF SECRETARY-GENERAL JAVIER PEREZ DE CUELLAR—UNITED NATIONS DAY, 24 October 1990**

United Nations Day comes this year after possibly the most historic 12-month period in the history of the Organization. It has been a period of solid accomplishment.

The success of the complex operations in Namibia and Central America have shown the ability of the United Nations to manage transitions from conditions of conflict and upheaval to those of peace. At the same time, the notable advances made in the settlement of several of the major international disputes have brought home sterling lessons about the crucial role of the United Nations.

It can, and does deliver on its promises.

This series of positive developments has had as its backdrop the termination of the cold war and the end of the paralysis that had seized peace-making over four decades. With the lucidity thus regained, the value of multilateral effort can no longer be in question. We are entitled to a measure of pride that, through the difficult and daunting years of the recent past, we did not let our conviction be weakened that the procedures of our Organization are eminently practical and there is no substitute for them.

It is, however, the very nature of our voca­tion that it be permitted rest on our laurels. A restless, rapidly changing world situation permits no complacent simplifications. Then, again, the persistence of some old conflicts that gravely threaten peace and the eruption of the crisis resulting from the Iraqi invasion of Kuwait, with its ineluctable consequences, subject the Organization to a severe test. What is being tested is nothing less than the Organization’s capacity to establish the rule of law in international relations and its consistency in applying its principles.

Moreover, we cannot forget that while the iron curtain has been brought down, the poverty curtain still separates two parts of the world community. A new global dispensation will remain more a hope than a reality as long as the anxieties and strains caused by the disparity between the rich and the poor societies remains unremedied. Nor is such an order compatible with frequent and often massive violations of human rights.

What we have to bear in mind is that the more the United Nations is moved to the center of the stage in the conduct of world affairs, the higher is the level of our responsibility and the more exacting will be the tasks laid on us. Given the dedication of all who work for the United Nations, I have no doubt that this though will act as a spur rather than a bridle on our efforts.

**MESSAGES FROM THE PRESIDENT**

**Messages from the President of the United States were communicated to the Senate by Mr. McCotthan, one of his secretaries.**

**EXECUTIVE MESSAGES received**

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 1:35 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S. 2516. An act to augment and improve the quality of international data compiled by the Bureau of Economic Analysis under the International Investment and Trade in Services Survey Act by allowing that agency to share statistical establishment list information compiled by the Bureau of the Census.

The message also announced that the House has passed the following bill and joint resolution, each with an amendment, in which it requests the concurrence of the Senate:

S. 3628. An act to amend the Public Health Service Act to reauthorize certain National Institute of Mental Health grants and to improve provisions concerning the State comprehensive mental health services plan, and for other purposes; and

S.J. Res. 206. Joint resolution calling for the United States to encourage immediate negotiations among Antarctic Treaty Consultative Parties, for the full protection of Antarctica as a global ecological commons.

The message further announced that the House has passed the following bills, in which it requests the concurrence of the Senate:


H.R. 5767. An act to limit the jurisdiction of the Federal Energy Regulatory Commission over local distribution company wholesalers of natural gas for ultimate consumption as a fuel in motor vehicles; and

H.R. 5520. An act to amend the Petroleum Marketing Practices Act to require certification and posting for all liquid automotive fuel advertising to provide the States more authority to enforce automotive fuel post and require posting for all liquid automotive fuel advertising to provide the States more authority to enforce automotive fuel post requirements, and for other purposes.

At 3:58 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 3333. An act to amend the Earthquake Hazards Reduction Act of 1977 to improve the Federal effort to reduce earthquake hazards, and for other purposes.

**ENROLLED BILLS SIGNED**

At 6:05 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills.

H.R. 2331. An act to amend title 39, United States Code, to designate as nonmailable matter solicitations for the purchase of goods or services, or solicitation for donations which could reasonably be construed as implying any Federal Government connection or endorsement, which matter contains an appropriate conspicuous disclaimer, and for other purposes; and

H.R. 5019. An act making appropriations for energy and water development for the fiscal year ending September 30, 1991, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore [Mr. Grass].

At 7:05 p.m. a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the bill (H.R. 1430) to en-
hance national and community ser-
vice, and for other purposes.

The message also announced that
the House concurs in the amendment
of the Senate to the amendment of
the House to the bill (H.R. 5241) making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies for the fiscal
year ending September 30, 1991, and for other purposes.

The message further announced that the House has passed the follow-
ing bill, in which it requests the con-
currence of the Senate:

H.R. 3960. An act to increase the amounts authorized to be appropriated for the Colorado River Storage Project, and for other purposes.

At 11:17 p.m., a message from the
House of Representatives, delivered by Mr. Hays, announced that the House
adopted the report of the Committee
of conference on the disagreeing votes of the two Houses on the amend-
ment of the Senate to the bill (H.R. 4739) to authorize appropriations for fiscal year 1991 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to pre-
scribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

The message also announced that
the House has passed the bill (S. 2924) to expand the meat inspection pro-
grams of the United States by estab-
lishing a comprehensive inspection program to ensure the quality and wholesomeness of all fish products in-
tended for human consumption in the United States, and for other purposes; with an amendment, in which it requests the con-
currence of the Senate.

The message further announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2834) to authorize appropri-
ations for fiscal year 1991 for the intel-
gen activities of the U.S. Government,
the intelligence community staff, and the Central Intelligence Agency retirement and disability system, and for other purposes.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 5732) to promote and strengthen aviation secu-

The message further announced that the House disagrees to the amend-
ments of the Senate to the bill (H.R. 5114) making appropriations for foreign operations, export finance,
and related programs for the fiscal
year ended September 30, 1991, and for other purposes; it agrees to the conference asked by the Senate on the

disagreeing votes of the two Houses thereon, and appoints Mr. Obey, Mr.
Yates, Mr. McGuff, Mr. Lehman of Florida, Mr. Wilson, Mr. Gray, Mr.
Mrazek, Mr. Coleman of Texas, Mr.
Whitten, Mr. Edwards of Oklahoma, Mr. Porter, Mr. Gallo, and Mr. Conte as manag-
ers of the conference on the part of the House.

The message also announced that the House agrees to the amendment of the Senate to the amendment of the House to the amendment of the Senate numbered 139 to the bill (H.R. 5021) making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1991, and for other pur-
pouses.

The message further announced that the House has passed the follow-
ing joint resolutions, in which it re-
quests the concurrence of the Senate:

H.J. Res. 681. Joint resolution making fur-
ther continuing appropriations for the fiscal
year 1991, and for other purposes;

H.R. Res. 682. Joint resolution waiving certain enrollment requirements with re-
spect to any reconciliation bill, appropria-
tion bill, or continuing resolution for the re-
mainder of the One Hundred First Con-
gress.

ENROLLED JOINT RESOLUTION SIGNED
At 12:12 a.m. (October 25, 1990), a message from the House of Representa-
tives announced that the Speaker has signed the following enrolled joint res-
olution:

H.J. Res. 681. Joint resolution making fur-
ther continuing appropriations for the fiscal
year 1991, and for other purposes.

The enrolled joint resolution was subsequently signed by Mr. Ford.

MEASURES REFERRED
The following bill, received from the House of Representatives for concur-
rence on October 11, 1990, was read the first and second times by una-
imous consent, and referred as indicate-
ed:

H.R. 3617. An act to transfer jurisdiction of certain public lands in the State of Utah to the Forest Service, and for other pur-
poses; to the Committee on Energy and Natu-
ral Resources.

The following bills were read the first and second times by unanimous
consent, and referred as indicated:

H.R. 3960. An act to increase the amounts authorized to be appropriated for the Colorado River Storage Project, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 4520. An act to amend the Petroleum Marketing Practices Act to require certification and posting for all liquid automotive fuels, to provide the States more authority to enforce automotive fuel posting require-
mements, and for other purposes; to the Com-
mittee on Commerce, Science, and Trans-
portation.

MEASURES PLACED ON THE CALENDAR
The following bills were read the first and second times by unanimous
consent, and placed on the calendar:

H.R. 3533. An act to amend the Earth-
quake Hazard Reduction Act of 1977 to im-
prove the Federal effort to reduce earth-
quake hazards, and for other purposes, and
H.R. 4407. An act to require Federal, State, and local law enforcement agencies to report all cases of missing persons under age 18 to the National Crime Information Center of the Department of Justice.

ENROLLED BILLS AND JOINT RESOLU-
TIONS SIGNED
The President pro tempore (Mr.
Byrd) reported that on today, October
24, 1990, he had signed the following
enrolled bills and joint resolutions, which had been previously signed by
the Speaker of the House:

S. 3737. An act to require the Secretary of the Treasury to mint a silver dollar coin in recognition of the 50th anniversary of the ending of the Korean war and in honor of those who served,

S. 3548. An act to authorize and direct the Secretary of the Interior to conduct a study of the feasibility of establishing a unit of the National Park System to interpret and commemorate the contributions of the development, and for other purposes;

S. 3018. An act for the relief of Janice and Leslie Shepperd and Ruth Hillman;

S. 3032. An act to designate the planned Department of Veterans Affairs Medical Center in Honolulu, HI, as the "Spark M. Matsunaga Department of Veterans Affairs Medical Center";

S. 3043. An act for the relief of Nebraska Aluminum Castings, Inc.;

S. 3216. An act to designate the Depart-
ment of Veterans Affairs Medical Center in Charleston, S.C., as the "Ralph H. Johnson Department of Veterans Affairs Medical Center";

H.R. 3586. An act to prohibit certain food transportation practices and to provide for enforcement by the Secretary of Transpor-
tation that will safeguard food and certain other products from contamination during motor or rail transportation, and for other purposes.

H.R. 3888. An act to allow a certain parcel of land in Rockingham County, VA, to be used for a child care center;

H.R. 4151. An act to authorize appropri-
a tions for fiscal years 1991 through 1994 to carry out the Head Start Act, the Follow-
Through Act, and the Community Services Block Grant Act; and for other purposes;

H.R. 5209. An act to amend title 39, United States Code, to make nonmailable any unsolicited sample of a drug or other hazardous household substance which does not meet child-resistance packaging require-
mements, and for other purposes;

H.R. 5072. An act to amend the Public Health Services Act to improve the health of individuals who are members of minority groups and who are from disadvantaged backgrounds, and for other purposes;

H.R. 5749. An act to amend the act enti-
titled "The American University," approved February 24, 1893, to clarify the relationship between the Board of Trustees of the American University and
the General Board of Higher Education and Ministry of the United Methodist Church; Mr. Packwood, from the Committee on Aging, to report a bill to amend the Federal Discrimination Claims Assistance Act to 1988 to extend the statute of limitations applicable to civil rights claim under the Federal Discrimination in Employment Act of 1967; Mr. Reed, from the Committee on Appropriations, with amendments: S. 1140. A bill to provide that Federal facilities meet Federal and State environmental laws and requirements to clarify that such facilities must comply with such environmental laws and requirements (by request); and Mr. Reid, from the Committee on Appropriations, with amendments: H.R. 5399. A bill making appropriations for the Legislative Branch for the fiscal year ending September 30, 1991; and for other purposes.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. BIDEN, from the Committee on the Judiciary:

An act to establish the Weir Farm National Historic Site in the State of Connecticut; S. 1747. An act to provide for the restoration of Federal recognition to the Ponca Tribe of Nebraska, and for other purposes; S. 2099. An act to establish the Weir Farm National Historic Site in the State of Connecticut; S. 2263. An act to authorize appropriation of funds to the Zuni Indian Tribe for reservation land conservation, and for other purposes; S. 2737. An act to require the Secretary of the Treasury to mint a silver dollar coin in commemoration of the thirty-eighth anniversary of the ending of the Korean War and in honor of those who served; S. 2846. An act to authorize and direct the Secretary of the Interior to conduct a study of the feasibility of establishing a unit of the National Park System to interpret and commemorate the origins, development, and progression of jazz in the United States, and for other purposes; S. 3016. An act for the relief of Janice and Leslie Sedore and Ruth Hillman; S. Res. 348. Joint resolution designating October 21 through October 27, as "National American Indian Heritage Week"; and S. Res. 324. Joint resolution designating June 2 through 8, 1991, as a "Week for the National Observance of the 50th Anniversary of World War II."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BURDICK, from the Committee on Environment and Public Works, with amendments: S. 1140. A bill to provide that Federal facilities meet Federal and State environmental laws and requirements to clarify that such facilities must comply with such environmental laws and requirements (by request); and Mr. REID, from the Committee on Appropriations, with amendments: H.R. 5399. A bill making appropriations for the Legislative Branch for the fiscal year ending September 30, 1991; and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CHAFFEE (for himself, Mr. PACKWOOD, Mr. JEFFORDS, Mr. SIMPSON, Mr. WILSON, Mr. AKARA, Mr. WINTH, Mr. PELL, Mr. BINGHAMAN, Mr. METZENBAUM, Mr. HOLLINGS, Mr. ADAMS, Ms. MUKULSKI, Mr. GORE, Mr. BURDICK, Mr. CRANSTON, Mr. BRADLEY, Mr. SIMON, Mr. INOUYE, Mr. KENNEDY, Mr. RIDDELL, Mr. RUSHL, Mr. ROBS, and Mr. LEAHY):

S. 3238. A bill to require the Secretary of Health and Human Services to ensure that pregnant women receiving assistance under Title X of the Public Health Service Act are provided with information and counseling regarding their pregnancies, and for other purposes; to the Committee on Labor and Human Resources.

TITUL X PREGNANCY COUNSELING ACT

Mr. CHAFFEE, Mr. President, I am pleased today to introduce the Title X Pregnancy Counseling Act of 1990. This is an important piece of legislation and addresses an issue which is crucial for the health of women and children.

When Title X of the Public Health Service Act was enacted in 1970, its stated goal was to provide quality family planning and health care services to low-income women who would otherwise have little or no access to such services. Title X has been very effective in fulfilling this mandate, and thus Congress has continued to fund this program for 20 years. It is imperative that we keep in mind the original goal of the legislation: namely to combat the problem of lack of access to health care services for poor women so that all women, regardless of their financial situation, are given complete information, are given complete information, are given complete information. This is a basic ideal, and one which I do not believe there is any disagreement on.

Let me point out from the start that since its enactment in 1970, Title X has included a prohibition on the use of federal funds for abortion. Section 1008 of Title X states:

None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.

Mr. President, I point this out because I want to assure my colleagues that we are not talking about federally funded abortions. Such activity is prohibited, and Title X clinics have abided by that prohibition. So, I emphasize, Mr. President, that my legislation does not concern itself with abortion.

So, while Title X clinics are prohibited from providing abortions, a distinction was drawn from the beginning between providing abortions and providing counseling and referrals for abortion as a legal and medical option. Title X clinics were always allowed to provide counseling and referrals for abortion when an indigent pregnant woman requested such information. Under guidelines issued in 1961 by HHS, clin-
ics were encouraged to provide abortion counseling and referral. These 1981 guidelines stated the following:

The 1981 guidelines go on to say:

Pregnant women should be offered information and counseling regarding their pregnancies. Those requesting information on options for the management of an unintended pregnancy are to be given non-directive counseling on the following alternative courses of action, and referral upon request:
- Prenatal care and delivery
- Parental physician, receive complete information about abortion
- Obtain abortion
- Receipt of care from a family planning provider to provide such information.

By Mr. DOLE (for himself, Mr. GORTON, Mr. MccAIN, and Mr. D’AMATO):
S. 3239. A bill to amend the Civil Rights Act of 1964 to strengthen civil rights laws that ban discrimination in employment, and for other purposes; to the Committee on Labor and Human Resources.

The legislation I am introducing today along with 24 of my colleagues will reverse these guidelines and remove the so-called `1981 guidelines' issued by HHS in 1981. Several weeks ago, I offered this legislation in the form of an amendment to the Family Planning Amendments of 1989, and it was approved by a vote of 62 to 36. In closing, Mr. President, I would like to say that I know that some of my friends and colleagues in this body oppose a woman's right to have an abortion. While I disagree with them, I certainly respect their views. The fact remains, however, that abortion is a safe medical procedure and is legal in every State and the District of Columbia. It is wrong for federally sponsored programs to censor vital information about a legal medical health care option simply because some people disagree with the availability of the option.

I urge my colleagues to view this legislation, not from the abortion rights perspective, but from the health care perspective. I urge them to take into consideration the right of every woman to complete information about her health care, and the obligation of a family planning provider to provide such information.

By Mr. DOLE (for himself, Mr. GORTON, Mr. MccAIN, and Mr. D’AMATO):

S. 3239. A bill to amend the Civil Rights Act of 1964 to strengthen civil rights laws that ban discrimination in employment, and for other purposes; to the Committee on Labor and Human Resources.
bear a significant relationship to a signifi-
cant factor in the employment decisions of the employer, or any complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment prac-
tice, or any other factors also motivated
such practice.

(b) ENFORCEMENT PROVISIONS.—Section
706(g) of this title (as amended by section 4 ) is
amended by inserting before the period in the
last sentence the following: "or, in a case where
a violation is established under section 703(d)
and 703(f), the respondent demonstrates that it
would have taken the same action in the absence of any discrimination.

SEC. 4. FACILITATING PROMPT AND ORDERLY RES-
CHILDENG OF CHALLENGES TO EM-
PLOYMENT PRACTICES IMPLEMENT-
ING LITIGATED OR CONSENT JUDG-
MENTS OR ORDERS.—

Section 706(k) of the Civil Rights Act of 1964
(42 U.S.C. 2000e-2) is amended by adding at the
end thereof the following new subsection:

"(m) ENFORCEMENT OF LITIGATED OR CONSENT
JUDGMENTS OR ORDERS.—

"(1) Notwithstanding any other provision
of law, and except as provided in paragraph
(2), an employment practice that is alleged
required by a litigated or consent judgment or
order resolving a claim of employment dis-
crimination under this title may not be
challenged by a person who during the
period of notice was an employee, former
employee, or applicant who, prior to the
entry of such judgment or order had actual
notice of the proposed judgment or order in
sufficient detail to apprise such person—

(A) that such judgment or order would
likely adversely affect the interests and
legal rights of such person; or

(B) of any relief in the proposed judg-
ment.

"(2) Nothing in this subsection shall be
construed to—

(A) alter the standards for intervention
under rule 24 of the Federal Rules of Civil
Procedure;

(B) apply to the rights of parties to the
action in which the litigated or consent
judgment or other was entered, or of mem-
bers of a class represented or sought to be
represented in such action, or of members
of a group on whose behalf relief was
sought in such action by the Federal
Government;

(C) prevent challenges to a litigated or
consent judgment or order on the ground
that such judgment or order was obtained
through collusion or fraud, or is transpar-
ently invalid or was entered by a court lack-
ing subject matter jurisdiction; or

(D) authorize or permit the denial to any
person of the due process of law required
by the United States Constitution.

SEC. 5. CLARIFYING PROHIBITION AGAINST IMPER-
MISSIBLE CONSIDERATION OF RACE,
COLOR, RELIGION, SEX, OR NATIONAL
ORIGIN IN EMPLOYMENT PRACTICES.—

(a) IN GENERAL.—Section 703 of the
Civil Rights Act of 1964 (42 U.S.C. 2000e-2) (as
amended by section 4 ) is further amended
by adding at the end thereof the following
new subsection:

"(q) PROOF OF UNLAWFUL EMPLOYMENT
PRACTICES IN DISPARATE IMPACT CASES.

Section 703 of the Civil Rights Act of 1964
(42 U.S.C. 2000e-2) is amended by adding at the
end thereof the following new subsection:

"(k) PROOF OF UNLAWFUL EMPLOY-
MENT PRACTICES IN DISCRIMINATORY SENIORITY SYSTEMS.

Section 706(e) of the Civil Rights Act of 1964
(42 U.S.C. 2000e-5(e)) is amended by adding at
the end thereof the following sentence: "For purposes of this section, an
alleged unlawful employment practice in a seniority system, is adopted,
when an individual becomes subject to a sen-
iority system, or when a person aggrieved
is injured by the application of a seniority sys-
tem, or provision thereof, that is alleged
have been adopted for an intentionally
discriminatory purpose, in violation of this
title, whether or not that discriminatory
practice bears a significant relationship
on the face of the seniority provision."
by adding to the same thereof the following new subsections:

(c) For purposes of this section, the right to make and enforce contracts shall include the right to enter into and enforce contracts for the sale of instruments, for the payment of money, and for the enjoyment of all benefits, privileges, terms and conditions of the contract.

SEC. 12. LIMITATION OF ACTIONS.
Section 7(e) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(e)) is amended—

(1) by striking out paragraph (2); and

(2) by striking the paragraph designation in paragraph (1); and

(3) by adding the following new subsection:

"(4) by adding at the end thereof the following: "If a charge filed with the Commission is dismissed or the Commission's proceedings are otherwise terminated by the Commission, the Commission shall so notify the complainant pursuant to subsection (d) and such individual may bring an action against the respondent named in the charge at any time after 90 days from the time the charge is timely filed until the expiration of 90 days after the receipt of the notice provided under this subsection.".

SEC. 13. COVERAGE OF CONGRESS AND THE AGENCIES OF THE LEGISLATIVE BRANCH.

(a) COVERAGE OF THE SENATE.—

"(1) COMMITMENT TO RULE XLII.—The Senate reaffirms its commitment to Rule XLII of the Standing Rules of the Senate which provides as follows: "No Member, officer, or employee of the Senate shall, with respect to employment by the Senate or any office thereof:"

"(a) fail or refuse to hire an individual;

"(b) discharge an individual; or

"(c) otherwise discriminate against an individual with respect to promotion, compensation, or terms, conditions, or privileges of employment;

on the basis of such individual's race, color, religion, sex, national origin, age, or State or physical handicap."

"(2) APPLICATION TO SENATE EMPLOYMENT.—The provisions of subsection (a) shall apply to this Act, the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Age Discriminations in Employment Act of 1967, and the Rehabilitation Act of 1973 shall apply with respect to employment by the United States Senate.

(3) INVESTIGATION AND ADJUDICATION OF CLAIMS.—All claims raised by any individual with respect to Senate employment, pursuant to the Acts referred to in paragraph (2), shall be investigated and adjudicated by the Select Committee on Ethics pursuant to S. Res. 338, 88th Congress, as amended, or such other entity as the Senate may designate.

(4) RIGHTS OF EMPLOYEES.—The Committee on Rules and Administration shall ensure that Senate employees are informed of their rights under the Acts referred to in paragraph (2).

(b) APPLICABLE REMEDIES.—When assigning remedies to individuals found to have a valid claim, the Committee referred to in subsection (d) shall designate the remedies to be utilized with respect to the rights and protections provided pursuant to such Act (1), such remedies and procedures shall apply exclusively.

(c) PROPOSED REMEDIES AND PROCEDURES.—For purposes of subparagraph (A), the Archivist of the Capitol shall submit proposed remedies and procedures to the Senate Committee on Rules and Administration. The remedies and procedures shall be effective upon the approval of the Committee on Rules and Administration.

The legislation may be cited as the "Civil Rights Act of 1990."
eral, or a person who may bring an action or proceeding under this title.

The definition of "demonstrates" requires that there be burdens of production and persuasion when the statute requires that he or she "demonstrate" a fact.

The term "required by business necessity" is defined to codify the meaning of business necessity as used in Griggs v. Duke Power Co., 401 U.S. 424 (1971), and other opinions of the Supreme Court.

The term "respondent" is clarified to include those entities listed in the bill.

SECTION 4. DISPARATE IMPACT CLAIMS

Under this Act, a complaining party makes out a prima facie case of disparate impact when he or she identifies a particular employment practice and demonstrates that the practice has caused disparate impact because of race, color, religion, sex, or national origin. The burden of proof then shifts to the respondent to demonstrate that the practice is necessary.

It is then open to the complaining party to rebut that defense by demonstrating the availability of an alternative employment practice, comparable in cost and equally effective in measuring job performance or achieving the respondent's legitimate business purpose, that will reduce the disparate impact, and the respondent refuses to adopt such alternative.

In identifying the particular employment practice that is causally disparately impacted, the plaintiff is not required to do the impossible in breaking down an employer's practices to the greatest conceivable degree. Courts will be permitted to hold, for example, that vesting complete hiring discretion in an individual guided only by unknown subjective factors in the making of a particular employment practice susceptible to challenge.

It is therefore the specific intention of the proponents of this Act to reaffirm the sort of analysis employed on this issue in Sledge v. J.P. Stevens & Co., 52 EPD para. 39,597 (E.D.N.C. Nov. 30, 1989). The court alluded to the difficulty of "delving into the workings of an employment decisionmaker's mind" and noted that the defendant's personnel officers reported having no idea of the basis on which they made their decisions. Courts will be permitted to hold, for example, that vesting complete hiring discretion in an individual guided only by unknown subjective factors in the making of a particular employment practice susceptible to challenge.

Finally, this section provides that it is not a violation of this title for an employer to use a rule barring illegal drug use unless the employer is unable to demonstrate with an intent to discriminate on the basis of race, color, religion, sex, or national origin.

SECTION 5. CLARIFYING PROHIBITION AGAINST DISCRIMINATION ON THE BASIS OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN IN EMPLOYMENT PRACTICES

Section 5 of the bill addresses the holding in Price Waterhouse v. Hopkins, 109 S. Ct. 1775 (1989), that non-statutory "like or similar" rules do not require an employer to adopt or apply with an intent to discriminate because of race, color, religion, sex, or national origin.

The Court held that the claimant is not required to do the seemingly impossible in breaking down an employer's practices to the greatest conceivable degree. Courts will be permitted to hold, for example, that vesting complete hiring discretion in an individual guided only by unknown subjective factors in the making of a particular employment practice susceptible to challenge.

The provision allows the employer to be held liable if invidious discrimination was a motivating factor in the harm suffered by the complainant. Thus, such discrimination need not have been the sole cause of the harm.

The provision also makes it clear that if an employer establishes that it would have taken the same employment action absent consideration of color, race, religion, or national origin, the complaint is not entitled to reinstatement, backpay, or additional monetary award. Courts may award other relief, including attorney's fees, consistently with the principles enunciated in other civil rights cases.

SECTION 6. FACILITATING PROMPT AND ORDELY RESOLUTION OF CHALLENGES TO EMPLOYMENT PRACTICES IMPLEMENTING LITIGATED OR CONSENSUAL JUDGMENTS OR ORDERS

Under specified conditions, Section 6 of the bill would preclude certain challenges to employment practices specifically required by court orders or judgments entered in Title VII cases. This section would bar such challenges by any person who was an employee, former employee, or applicant for employment during the notice period and who, prior to the entry of the judgment or order, had an opportunity to be heard and to take sufficient detail to appraise that person that the judgment or order would likely affect that person's interests and legal rights. It would be barred by Title VII's requirement that the judgment or order be obtained through collusion, and the provision would be sustained by judicial action. The threat of an award of damages or a declaratory judgment was sufficient to satisfy the causation requirement.

The department of the bill addresses the holding in Lorance v. AT&T Technologies, Inc., 109 S. Ct. 1820 (1989), that a challenge to a final judgment or order by a future date certain, and that the person would likely be barred from challenging the proposed judgment after that date. The intent of this section is to prevent double decrees from subsequent attack by individuals who were fully apprised of their interest in litigation and given an opportunity to participate, but declined that opportunity.

This section, therefore, addresses the Supreme Court's decision in Martin v. Wilks, 106 S. Ct. 2180 (1989). That case arose in the context of facial challenges to employment practices on principles of fairness and access to court that apply in every area. The Court held that a person who had not been afforded an opportunity to be heard by a court or administrative body was not barred by a consent decree that mandated racial preferences could have their day in court to contest that the decree violated their rights. The Court found that the term "collaborative attack" doctrine, pursuant to which some lower courts had held that once a decree was entered, it could not be challenged, even by individuals who had not been parties to the original lawsuit.

This rule strikes a balance between Martin v. Wilks to the extent that it would preclude challenges by individuals who were not parties to the litigation that produced a decree if they were not afforded an opportunity to be heard and had adequate notice and an adequate opportunity to assert their interests in the litigation prior to adoption of the decree. The rule strikes a balance between Martin v. Wilks and cases in which individuals have their day in court before they are bound by judicial action.

This section will work in conjunction with a variety of doctrines that already exist to head off nonmeritorious challenges to decrees. The doctrines of law of the case, res judicata, and stare decisis will allow courts to deal with them summarily at little expense in time or money to the parties. In addition, the rules of joinder and the use of consent decrees make it relatively easy for parties to ensure that affected people have their day in court in the original action. The threat of an award of attorney's fees or a declaratory judgment was sufficient to satisfy the causation requirement.

The section would not preclude challenges to judgments based on allegations that the judgment was obtained through collusion, fraud, or lack of subject matter jurisdiction. These are grounds upon which judgments traditionally may be attacked.

SECTION 7. EXPANSION OF RIGHT TO CHALLENGE DISCRIMINATORY SENIORITY SYSTEMS

Section 7 would overrule the holding in Lorance v. AT&T Technologies, Inc., 109 S. Ct. 1820 (1989), in which it rejected the contention that challenged a seniority system pursuant to Title VII, claiming that it was adopted with an intent to discriminate against women. Although the system was discriminatory and treated all similarly situated employees alike, it produced demotions for the plaintiffs, who claimed that the employer adopted the system intentionally to alter their contract rights. The Supreme Court held that the claim was barred by Title VII's requirement that a charge must be filed within 180 days (or 300 days if the matter can be referred to a state agency) after the alleged discrimination occurred.

The Court held that the time for plaintiffs to file their complaint began to run when the employer adopted the allegedly discriminatory seniority system, since it was the adoption of the system with a discriminatory purpose that allegedly violated their rights. According to the Court, that was the point at which plaintiffs suffered the diminution in employment status about which they complained. The Court viewed this result as dictated by its prior cases holding that the 180-day period begins to run when the act of discrimination occurs, and not when its effects are felt.
The Lorance rule is contrary to the position taken by the Department of Justice and the EEOC. It would shield existing seniority systems from legitimate discrimination in the workplace. The long-term adoption of a seniority system may become apparent only when the system is finally applied to affect the employment status of the employee a theoretical opportunity to challenge a discriminatory seniority system, it would do so, in most instances, before the challenge was sufficiently mature. Moreover, such an application surely focuses the controversy between an employer and an employee more sharply and permits more precise litigation. Employes will be forced to challenge the system before it has produced any concrete impact or forever remain silent. Given such a choice, employees who might never suffer harm from the seniority system may be forced to choose to file a charge—an especially difficult choice since they may be understandably reluctant to initiate a lawsuit against an employer if they do not have to. And, finally, the Lorance rule will prevent employees who are hired more than 180 (or 300) days after adoption of a seniority system from being able to present the adverse consequences of that system, regardless of how severe they may be. Such a rule fails to protect sufficiently the important interest in employment practices that Title VII and any employment discrimination that is embodied in Title VII.

Likewise, a rule that an employee may sue only one day after the seniority system is adopted subject to a seniority system is unfair to both employers and employees. The rule fails to protect seniority systems from delayed challenge, since so long as employees are being hired someone will be able to sue. And, while this rule would give every employee a theoretical opportunity to challenge a discriminatory seniority system, it would do so, in most instances, before the employee's status had been adversely affected by the seniority system and, therefore, before the challenge was sufficiently focused and before it was clear that a challenge was necessary. Finally, most employees of a court to make a mon­etary award "not to exceed a total of $150,000." This language is intended to make clear that where there are several re­cipients of a remedy based on intentional discrimination the damages may be subdivided into distinct unlawful employment practices, or where different claims under Title VII are brought in the same lawsuit, the total award made under this section for all of them combined is limited to $150,000. Otherwise, plaintiffs and their counsel could expend resources on hair-splitting litigation over how many unlawful employment practices have occurred. $150,000 is a large enough amount to be an adequate and effective deterrent to the type of conduct sought to be prevented by this section. No good purpose would be served by encouraging lawyers to use their inventiveness to circumvent the limitation it imposes.

The additional remedy this section creates is available only for "intentional discrimination." Nobody has argued that Title VII's existing remedial scheme for disparate impact claims is inadequate. The availability of this remedy (and its limitation to claims based on intentional discrimination) would of course also apply to claims brought under the Age Discrimination in Employment Act, and thus any departure from the Act's section 1982. Section 11 is limited by its terms to prohibiting discrimination in "mak[ing] and enforce[ing] contracts," and does not extend to "problems that may arise later from the conditions of continuing employment." Patterson, 109 S. Ct. 2372. Thus, the Court has interpreted Patterson as prohibiting a court to make a jury trial on liability. Because of the equitable nature of the relief to be awarded, the courts should find this consistent with the Seventh Amendment. See Local No. 391 v. Terry, 110 S. Ct. 1339 (1990); Tull v. United States, 107 S. Ct. 1831 (1987). The primary purpose of Title VII is to provide a forum for litigating a charge of discrimination. It is not primarily remedial. See EEOC v. Avis Rent-A-Car Sys, Inc., 947 F.2d 1132 (11th Cir. 1991). This principle is clearly applicable to the provision at issue here.

This provision is designed to redress an anomaly in current law. Title VII currently prohibits intentional discrimination in the terms and conditions of employment of employment, but provides inadequate remedies for certain unlawful employment practices, including sexual harassment in the workplace, which the Supreme Court has recognized as actionable under Title VII. See Mer­itor Savings Bank, 477 U.S. 50 (1986). Sexual harassment will not be so intolerable that an employee subject­ed to it immediately leaves. In such cir­cumstances, the employee may have difficulty in maintaining to the greatest extent possible the current structure of Title VII's remedies and preventing it from being re­placed with a tort-like approach. Because the question of constitutionality is not en­tirely free from doubt, however, subsection (b) limits the remedy to the extent that a jury trial with respect to issues of li­ability is constitutionally required, it may em­ploy the jury to be used in employment practices, or where different claims under Title VII are brought in the same lawsuit, the total award made under this section for all of them combined is limited to $150,000. Otherwise, plaintiffs and their counsel could expend resources on hair-splitting litigation over how many unlawful employment practices have occurred. $150,000 is a large enough amount to be an adequate and effective deterrent to the type of conduct sought to be prevented by this section. No good purpose would be served by encouraging lawyers to use their inventiveness to circumvent the limitation it imposes.

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has completed its action on an individual's charge.

SECTION 12. COVERAGE OF CONGRESS AND THE AGENCIES OF THE LEGISLATIVE BRANCH

This section would extend the anti-discrimination prohibitions of Title VII to all employees of Congress, while establishing a special remedial scheme that does not include a private right of action.

SECTION 14. CONSTRUCTION

This section states that neither this Act nor the laws it amends shall be construed to affect the remainder of the Act.

SECTION 15. SEVERABILITY

This section states that if a portion of this Act is found invalid, that finding will not affect the remainder of the Act.

SECTION 16. ALTERNATIVE MEANS OF DISPUTE RESOLUTION

This section would encourage the use of alternative means of dispute resolution in resolving individual complaints.

SECTION 17. EFFECTIVE DATE

This section specifies that the Act takes effect upon enactment.

(From the White House, Office of the Secretary, Oct. 22, 1990)

PRESS RELEASE

to the Senate of the United States:

I am today returning without my approval S. 2104, the "Civil Rights Act of 1990." I have deeply regretted having to take this action with respect to a bill bearing such a title, especially since it contains certain provisions that I strongly endorse.

Discrimination, whether on the basis of race, national origin, sex, religion, or disability, is worse than wrong. It is a fundamental evil that tears at the fabric of our society, and one that all Americans should and must oppose. That requires rigorous enforcement of existing antidiscrimination laws. It also requires vigorously promoting new measures such as this year's Americans with Disabilities Act, which for the first time adequately protects persons with disabilities against invidious discrimination.

One step that the Congress can take to fight this evil is to act promptly on the civil rights bill that I transmitted on October 20, 1990. This accomplishes the stated purpose of S. 2104 in strengthening our Nation's laws against employment discrimination. Indeed, this bill contains several important provisions that are similar to provisions in S. 2104:

- **Provision of S. 2104:** It is needed to overturn the Supreme Court's decision and restore the law as it had existed prior to the Griggs case of 1971. S. 2104, however, does not in fact codify Griggs or the Court's subsequent decisions prior to Griggs. Instead, S. 2104 engages in a sweeping rewrite of two decades of Supreme Court jurisprudence, using language that appears in no decision of the Court and that is contrary to principles acknowledged even by Justice Stevens' dissent in *Wards Cove*.

- **Provision of S. 2104:** The opinion in *Griggs* made it clear that a neutral practice that operates to exclude minorities is nevertheless lawful if it serves a valid business purpose.

I am aware of the dispute among lawyers about the proper interpretation of certain critical language used in this portion of S. 2104. The very fact of this dispute suggests that the bill is not codifying the law developed by the Court in the Griggs and subsequent cases. This debate, moreover, is a sure sign that S. 2104 will lead to years—perhaps decades—of expensive and expensive litigation. It is neither fair nor sensible to give the employers of our country a difficult choice between using quotas and seeking a clarification of the law through costly and very risky litigation.

S. 2104 contains several other unacceptable provisions as well. One section unfairly closes the courts, in many instances, to individuals victimized by agreements, to which they were not a party, involving the use of quotas. Another section radically alters the remedial provisions of Title VII of the Civil Rights Act of 1964, replacing measures designed to foster conciliation and settlement with a new scheme modeled on a tort system with a complex and expensive system of crisis. The bill also contains a number of provisions that will create unnecessary and inappropriate incentives for litigation.

I urge the Congress to act in several related areas. The elimination of employment discrimination is a vital element in achieving the American dream, but it is not enough. The absence of discrimination will have little concrete meaning unless jobs are available and the members of all groups have the skills and education needed to take advantage of those opportunities. In order to address these problems, attention must be given to measures that promote accountability and parental choice in the schools; that strengthen the fight against violent criminals and drug dealers in our inner cities; and that help to combat poverty and inadequate housing. We need initiatives that will empower individual Americans and enable them to reclaim control of their lives, thus helping to make our country's promise of opportunity for all.

Second, I urge the Congress to amend the Higher Education Act of 1965 in order to promote equal access to opportunities for study abroad; to the Committee on Labor and Human Resources.
ACCESS TO INTERNATIONAL EDUCATION OPPORTUNITIES ABOROAD AMENDMENTS

Mr. DODD. Mr. President, today I am pleased to introduce the access to international education opportunities abroad amendments. This legislation addresses a crucial but little understood knowledge gap which increasingly affects our national competitiveness. This region, which includes several of the fastest growing economies in the world, is of paramount importance to the United States. In contrast, Japan alone sent more than 24,000 students to the United States that year. Overall, less than 1 percent of our undergraduate students study abroad each year. And over 75 percent of such students elect to study at the traditional Western European universities.

The fact is, we are sending too few of our students abroad to gain international skills essential to our future economy and ability to exert global leadership.

In the increasingly competitive international environment, we can no longer afford to be ignorant of other cultures and their languages. As distinguished last chairman of the National Governor’s Association, Gerald L. Baliles, put it in the 1989 Report of the NGA Task Force on International Education, “America in Transition: The Last Frontier.”

How are we to sell our products in the global marketplace if we neglect to learn the language of the customer? How are we to open overseas markets when other cultures are only dimly understood? How are our firms to provide international leadership when our schools are producing insular students?

As the figures I discussed above show, these points are well understood by decisionmakers in Japan. The lesson has also not been lost on the nations of the European Community. A key element of their economic integration plan is an ambitious scheme known as “Erasmus” through which an additional 150,000 European Community university students will have studied abroad in another EC country by 1992. The aim of Erasmus is to create a large cadre of young professionals in every field who will be fluent in the language of at least one other EC country. It is understandable about how to conduct business there. Most recently, the EC has announced a new initiative called Tempus to extend this important international student mobility initiative to the nations of Central and Eastern Europe.

It is no longer the case that study abroad can be viewed as a nice option—add-on to the education of language and humanities majors who can afford it, but is not needed for the business student, the engineer, the banker, the economist, the scientist, and others essential to the operation of the American economy. The international business skills through study abroad is now essential to those we are preparing for work in virtually every field.

There is another important dimension to this problem. American students do not currently enjoy equal access to these increasingly important educational opportunities abroad. These inequalities do not exist simply because some students have the personal and family funds to afford study abroad while others do not. They also exist because of ambiguities and defects in Federal financial assistance programs through which some students can apply their financial aid funds to study abroad while others cannot. As a result, students from one campus may be able to use their financial aid for approved study abroad while students at another campus will be denied use of their aid to participate in the very same program. Under current law, applying Federal aid to study abroad is complicated, confusing, and difficult. Generally, only those institutions which purport particular emphasis on the importance of overseas education go to the trouble of allowing financial aid for study abroad.

The access to international education opportunities abroad amendments addresses these crucial problems through a series of technical changes to major Federal financial assistance programs designed to both simplify the way aid is applied to study abroad and to ensure that institutions do not deny use of aid for approved study abroad. Complementing these technical provisions, the legislation also proposes a modest expansion of the authority of the Department of Education to support the development of study abroad programs in countries and subjects not currently available.

In sponsoring this legislation in the Senate, I am pleased to join with a distinguished education leader in the House of Representatives, William D. Ford of Michigan, who recently introduced the bill in the House. It is not our intention that the legislation be enacted during the closing days of this session of Congress. Rather, we hope that introducing the legislation now will both call attention to the problems the bill addresses and provide an opportunity for all interested organizations and institutions to review the legislation and make suggestions regarding it. Representative Ford and I would then reintroduce a perfected version of this measure early in the next Congress.

This measure embodies the recommendations of the national task force on study abroad which was established by three respected U.S. international education organizations: The Council on International Educational Exchange (CIEE), the Institute of International Education (IIE), and NAFAA—the Association of International Educators. The details of the bill has been developed in conjunction with a national team of campus study abroad experts working with financial aid officers. It has the endorsement of the organizations. I look forward to the comments of my colleagues and all other interested parties on this important legislation.

By Mr. BAUCUS (for himself, Mr. BOREN, Mr. EXON, Mr. CONRAD, Mr. DASCHLE, and Mr. KERRY):

S. 3241. A bill entitled the “Iraqi Assets Control Act”; to the Committee on Banking, Housing, and Urban Affairs.

IRAQI ASSETS CONTROL ACT

Mr. BAUCUS. Mr. President, I rise to introduce legislation to identify Iraqi assets in the United States and authorize the President to seize them in order to repay Iraq’s debts to United States creditors.

Since Iraq’s invasion of Kuwait the United States has imposed a number of economic sanctions against Iraq. On August 3, 1990, the President imposed an embargo on Iraq and froze substantial Iraqi assets in the United States. Precise estimates of the value of the Iraqi assets frozen are not available, but they appear to be worth several hundred million dollars.

In retaliation, Iraq took a number of steps, including suspending payments on debts to creditors in the United States.

On September 19, Iraq took the additional step of seizing all assets of nationals supporting the U.N. embargo of Iraq.

This included an as yet unspecified amount of U.S. assets.

Iraq now owes creditors in the United States about $2.6 billion. This includes about $1.9 billion in loans to Iraq guaranteed by the United States Department of Agriculture for loans to purchase United States agricultural exports.

If Iraq defaults on these debts, USDA’s Commodity Credit Corporation would be forced to pay off the loans.

These debts would cost the CCC approximately $900 million in fiscal year 1991 alone.

That would be a tremendous drain on CCC assets that are already drawn thin in support of the farm program.

My legislation would direct the President to liquidate a portion of Iraqi assets sufficient to repay these debts to United States creditors—particularly the Department of Agriculture.
The point of this amendment is simple. American farmers are already suffering because of the Middle East crisis in many ways. Farmers are paying drastically higher fuel prices because of the threat to oil. Farmers also stand to lose hundreds of millions in sales to Iraq because of the embargo.

But if we do not take action, farmers will also be effectively forced to pay off Iraqi debts out of the farm program. This is simply unacceptable. Iraq has seized United States assets. It is now time for us to follow suit.

I have introduced similar legislation earlier this session. The new legislation reflects some of the comments made by the administration and my House colleagues.

This legislation is co-sponsored by Senators Boren, Daschle, Conrad, Kerry, and Exon.

The legislation is endorsed by the National Association of Wheat Growers, the American Farm Bureau, and the National Farmers' Union.

We must move to pass this critical legislation quickly.

I ask unanimous consent that the text of this legislation appear in the Record directly following my statement.

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

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

SECTION 1. AUTHORITY TO REVIEW IRAQI CONTROLLED U.S. ASSETS.

(a) IDENTIFICATION OF IRAQI-CONTROLLED U.S. ASSETS.—The President shall identify—

(1) within 120 days of the date of enactment of this Act, those persons engaged in interstate commerce in the U.S. that are controlled by Iraqi persons, and

dlivery of any interest made to or for the account of the United States, or as otherwise directed, pursuant to this paragraph shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same.

(b) PAYMENT OF CLAIMS BY U.S. NATIONALS AGAINST IRAQ.—The President is authorized to pay U.S. nationals who hold obligations (including loans, contracts, and all other obligations) for which Iraq has suspended payment or repayment, and the President may direct that any interest earned or as other­wise directed, pursuant to paragraph (b) shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same.

(c) DETERMINATION TO FORGIVE LENDING TO IRAQI-CONTROLLED U.S. ASSETS.—The President may determine that the President determines that there would be no reasonable basis for making the determination that in that paragraph with respect to that person.

SEC. 2. SEIZURE AUTHORITY AND PAYMENT OF CLAIMS BY U.S. NATIONALS AGAINST IRAQ.

(a) If the President makes the determination specified in section (b)(1)(b) with respect to the control by Iraqi persons of a person engaged in interstate commerce in the United States, and if the President determines that it is in the national interest to take action with respect to property identified pursuant to section (1)(b)(2), the President may take the following actions:

(1) SEIZURE BY THE UNITED STATES.—The President may direct that any interest identified pursuant to a determination made under this section (1)(b)(2) that is held directly or indirectly by any Iraqi person shall vest (when, as, and upon such terms as the President may direct) any such agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes. Any entity, organization, association, or delivery of any interest made to or for the account of the United States, or as otherwise directed, pursuant to this paragraph shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same.

(2) PAYMENT OF CLAIMS BY U.S. NATIONALS AGAINST IRAQ.—The President is authorized to pay U.S. nationals who hold obligations (including loans, contracts, and all other obligations) for which Iraq has suspended payment or repayment, and the President may direct that any interest earned or otherwise directed, pursuant to this paragraph shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same.

(b) PAYMENT OF CLAIMS BY U.S. NATIONALS AGAINST IRAQ.—The President is authorized to pay U.S. nationals who hold obligations (including loans, contracts, and all other obligations) for which Iraq has suspended payment or repayment, and the President may direct that any interest earned or otherwise directed, pursuant to this paragraph shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same.

(c) DETERMINATION TO FORGIVE LENDING TO IRAQI-CONTROLLED U.S. ASSETS.—The President may determine that the President determines that there would be no reasonable basis for making the determination that in that paragraph with respect to that person.

SEC. 3. DEFINITION OF IRAQI PERSON.

As used in this Act, the term "Iraqi person" means the Government of Iraq, any organization engaged in the cultivation, production, or sale of oil, any citizen of Iraq, or any citizen of Iraq (excluding any such citizen who is lawfully admitted to the U.S. for permanent residence).

By Mr. METZENBAUM (for himself and Mr. BRADLEY)

SEC. 4. SEIZURE AUTHORITY AND PAYMENT OF CLAIMS BY U.S. NATIONALS AGAINST IRAQ.

(a) If the President makes the determination specified in section (b)(1)(b) with respect to the control by Iraqi persons of a person engaged in interstate commerce in the United States, and if the President determines that it is in the national interest to take action with respect to property identified pursuant to section (1)(b)(2), the President may take the following actions:

(1) SEIZURE BY THE UNITED STATES.—The President may direct that any interest identified pursuant to a determination made under this section (1)(b)(2) that is held directly or indirectly by any Iraqi person shall vest (when, as, and upon such terms as the President may direct) any such agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes. Any entity, organization, association, or delivery of any interest made to or for the account of the United States, or as otherwise directed, pursuant to this paragraph shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same.

(2) PAYMENT OF CLAIMS BY U.S. NATIONALS AGAINST IRAQ.—The President is authorized to pay U.S. nationals who hold obligations (including loans, contracts, and all other obligations) for which Iraq has suspended payment or repayment, and the President may direct that any interest earned or otherwise directed, pursuant to this paragraph shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same.

(c) DETERMINATION TO FORGIVE LENDING TO IRAQI-CONTROLLED U.S. ASSETS.—The President may determine that the President determines that there would be no reasonable basis for making the determination that in that paragraph with respect to that person.

SEC. 2. SEIZURE AUTHORITY AND PAYMENT OF CLAIMS BY U.S. NATIONALS AGAINST IRAQ.

(a) If the President makes the determination specified in section (b)(1)(b) with respect to the control by Iraqi persons of a person engaged in interstate commerce in the United States, and if the President determines that it is in the national interest to take action with respect to property identified pursuant to section (1)(b)(2), the President may take the following actions:

(1) SEIZURE BY THE UNITED STATES.—The President may direct that any interest identified pursuant to a determination made under this section (1)(b)(2) that is held directly or indirectly by any Iraqi person shall vest (when, as, and upon such terms as the President may direct) any such agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes. Any entity, organization, association, or delivery of any interest made to or for the account of the United States, or as otherwise directed, pursuant to this paragraph shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same.

(2) PAYMENT OF CLAIMS BY U.S. NATIONALS AGAINST IRAQ.—The President is authorized to pay U.S. nationals who hold obligations (including loans, contracts, and all other obligations) for which Iraq has suspended payment or repayment, and the President may direct that any interest earned or otherwise directed, pursuant to this paragraph shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same.

(c) DETERMINATION TO FORGIVE LENDING TO IRAQI-CONTROLLED U.S. ASSETS.—The President may determine that the President determines that there would be no reasonable basis for making the determination that in that paragraph with respect to that person.

SEC. 3. DEFINITION OF IRAQI PERSON.

As used in this Act, the term "Iraqi person" means the Government of Iraq, any organization engaged in the cultivation, production, or sale of oil, any citizen of Iraq, or any citizen of Iraq (excluding any such citizen who is lawfully admitted to the U.S. for permanent residence).

By Mr. METZENBAUM (for himself and Mr. BRADLEY)

S. 3241. Mr. President, I am pleased to introduce today an important new bill, the Community Relations Act. This bill will foster the development of a new approach to reduce community based tension at the local level; to the Committee on the Judiciary.

COMMUNITY RELATIONS ACT

Mr. METZENBAUM. Mr. President, the success of the program depends on the combination of two equally important components: local coalitions and federal administration and technical support.

2. Local coalitions:

a. Federal funds are targeted on communities which have recently experienced cross-group conflict. Federal monies would cover local administrative costs, coalitions would provide an inkling or monetary match, and community residents, government and private institutions would work together to develop ongoing, participatory projects. The annual authorization is $5 million.

Symbolic gestures alone will not solve cross-group tensions in American communities. This legislation will help develop the concrete approaches that are required to address this problem.

At this point, Mr. President, I ask unanimous consent to put in the Record a summary of the bill as introduced and the list of organizations and individuals who have endorsed the bill.

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

SUMMARY: COMMUNITY RELATIONS ACT

A. PURPOSE AND GOAL

To authorize a demonstration program in the Community Relations Service of the Department of Justice which will address "community based tension" in specific communities by fostering the development of multi-cultural coalitions to work on specific projects of concern to those local communities. "Community based tension" means ongoing, day-to-day conflict between people from socially defined groups which regularly come in contact with each other within a locally defined geographic area and which develops from differences in race, national­ity, religion, sexual orientation or ethnicity. (Events where individuals from various localities go to randomly selected geographic communities to address a common issue differ­ent are not included in "community based tension".)

The goal is to foster, on a long-term basis, the presence of such a coalition in order to improve communication, and ease tension, between different groups as they learn to live and work together. coalitions would provide community based tensions. The bill would develop the concrete approaches that are required to address this problem.

B. PROGRAM OUTLINE

1. The success of the program depends on the combination of two equally important components: local coalitions and federal administration and technical support.

2. Local coalitions:

a. Federal funds are targeted on communities which have recently experienced community based tension.

b. In such communities, a coalition would be developed which would:

(1) include individuals from the different groups (based on race, nationality, religion, sexual orientation or ethnicity) which are experiencing tension;

(2) include representatives from a wide range of community organizations;
mounting racial tensions in American residential and school districts. The Community Relations Service (CRS) is proud to support such a measure and believe that the potential gains of the program far outweigh the program's small price tag.

The Under Secretary of Defense: "I am writing on behalf of the nation's mayors to congratulate you for writing the Community Relations Act, and to indicate the support of the U.S. Conference of Mayors for its passage."

The National Urban League: "We view the Community Relations Act as a pro-active and positive approach to bringing people from different groups together to work on specific projects of mutual concern within their local communities. We endorse your efforts at getting this legislation enacted."

ACORN: "We must frankly identify our problems before we can solve them. Through this bill, the Federal government will help America's neighborhoods face up to, and begin to heal, the devision that hobbles them."

National Puerto Rican Coalition: "I would like to restate how critical NPRC believes this legislation is for the Puerto Rican community. Please let us know if there is anything else we can do to quickly move this legislation along and ensure its enactment."

Mr. BRADLEY. Mr. President, if the United States is to retain its leadership of a changing world, it will be because of the power of our example. The world looks to us as a place where people care for one another. That caring begins in our families and our neighborhoods. Our children should be able to walk safely and freely through the communities that make up a city, and our neighborhoods should be as safe as our living rooms, while bringing people of different backgrounds together in harmony.

I cannot deny that in many American communities, this description is a vision of a long-lost ideal. When the bonds of neighborhood and community are frayed, it comes as no surprise that our nation finds it difficult to agree on purpose, a direction for the future in which we all have a stake. Where kids shoot kids in our streets, where people of different races are building new walls of hostility and suspicion, and where drugs and gangs rule life, it is where we must look to rebuild the bonds of American community.

That is why, Mr. President, I rise to cosponsor the Community Relations Act. In 20 communities, this legislation would establish model, multicultural coalitions to resolve the tensions that have divided and imperiled these communities. Perhaps every one of these programs would take a completely different approach. Certainly every one would be developed by the residents and institutions based in that community, drawing upon their insights and their hands-on expertise. From these programs we would learn what works and what doesn't in the effort to help our communities heal themselves.

Mr. President, I believe our Nation has the will and the means to restore the harmony and pride that once united our communities together. America's strength lies in our diversity, but if we allow diversity to divide us on the streets, it will threaten our purpose as a nation. We do need more knowledge about how to repair neighborhoods that are already divided, and this legislation would help us find that knowledge. It would be a shame not to pursue these solutions."

By Mr. KASTEN:

S. 3243. A bill to improve disclosure of the tax policy revenue estimating process; pursuant to the order of August 4, 1977, referred jointly to the Committee on Governmental Affairs and the Committee on the Budget.

TAX POLICY FREEDOM OF INFORMATION AND SUNSHINE ACT

Mr. KASTEN. Mr. President, today I am introducing a bill to open up the tax policy revenue estimating process to public scrutiny. This legislation is called the Tax Policy Freedom of Information and Sunshine Act. It is a bill to require the Joint Committee on Taxation to disclose the assumptions, data, and methodology used to arrive at revenue estimates of proposed changes in the tax law.

The congressional tax-writing process remains shrouded in secrecy. The fate of proposed tax changes—like cutting the capital gains tax or expanding savings incentives—are often decided behind closed doors by the accountants and economists who make revenue estimates.

In one of the most important tax policy debates of the last decade, the official estimates were often misleading, incomplete and incorrect—leading Congress to enact misguided tax increases and reject much-needed tax cuts.

Under current practices, Congress must accept these revenue estimates without the opportunity to question the methods by which they were developed.

Full disclosure would improve the process, by making it responsive to the needs of the real economy. It would facilitate the exchange between the Joint Committee on Taxation and outside analysts, which would result in improved techniques, data collection and revenue modeling—all of which would lead to more accurate estimates.

The Committee on the Budget offers an excellent example of what happens when you open up the process to the light of day. Their models and methods are well-documented and open to constructive criticism, and the result is integrity and realism in the estimating process.

Now that Congress has reformed the budget process to require that tax cuts be offset with spending cuts or tax in-
creases, the role of the Joint Committee on Taxation will become even more critical. That's why it's essential that we build tax policy on the solid ground of realistic estimates.

The Congress declares that it is essential that—

(1) the Congress be fully informed and presented with all relevant information while making vital tax policy decisions; and

(2) the methods, assumptions, and procedures used by the congressional staff conducting revenue gain and loss estimates be analyzed by non-governmental analysts and improved while making vital tax policy decisions; and

LUTION.—Section 301(e) of title XIX of the Social Security Act, as added by section 1402(b) of the Tax Reform Act of 1986, is amended—

SEC. 2. DECLARATION OF PURPOSE.

(a) REPORT ON CONCURRENT BUDGET RESOLUTION.—(1) In general.—In the report on the concurrent budget resolution of the Congress for fiscal year 1991 as the “Year of the Lifetime Reader.”

〈b〉 ADDITIONAL COSPONSORS

S. 1795

At the request of Mr. HOLLINGS, the name of the Senator from Oregon [Mr. HATFIELD] was added as a co-sponsor of S. 1795, a bill to exclude the Social Security trust funds from the deficit calculation and to extend the target date for Gramm-Rudman-Hollings until fiscal year 1995.

S. 2258

At the request of Mr. BRYAN, the name of the Senator from North Carolina [Mr. SANFORD] was added as a co-sponsor of S. 2258, a bill to amend the Nuclear Waste Policy Act of 1982 to allow commercial nuclear utilities that have contracts with the Secretary of Energy under section 302 of that act to receive credits to offset the cost of storing spent fuel that the Secretary is unable to accept for storage on and after January 31, 1998.

S. 2619

At the request of Mr. GLENN, the name of the Senator from New York [Mr. MOYNIHAN] was added as a co-sponsor of S. 2619, a bill to amend title XVIII of the Social Security Act to provide for coverage of bone mass measurements for certain individuals under part B of the Medicare Program.

S. 2999

At the request of Mr. HEINZ, the name of the Senator from West Virginia [Mr. ROCKEFELLER] was added as a co-sponsor of S. 2999, a bill to amend title XIX of the Social Security Act to provide for an expansion of Medicaid benefits to low income pregnant women and children and to raise the tax on cigarettes to fund such Medicaid expansion.

S. 3072

At the request of Mr. GRAHAM, the name of the Senator from New York [Mr. MOYNIHAN] was added as a co-sponsor of S. 3072, a bill to amend the Public Health Service Act to establish a permanent secretariat for the International Health Service corps demonstration projects and for other purposes.

S. 3075

At the request of Mr. HUMPHREY, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a co-sponsor of Senate Joint Resolution 325, a joint resolution proposing a constitutional amendment to limit congressional terms.

S. 3243

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

TITLE.

ADDITIONAL COSPONSORS

S. 1795

At the request of Mr. HOLLINGS, the name of the Senator from South Carolina [Mr. THURMOND] was added as a co-sponsor of Senate Joint Resolution 325, a joint resolution to designate the fiscal year 1991 as the “Year of the Lifetime Reader.”

S. 3115

At the request of Mr. SIMPSON, his name was added as a co-sponsor of amendment No. 3115 proposed to H.R. 5969, a bill making appropriations for the Departments of Interior and related agencies for the fiscal year ending September 30, 1991, and for other purposes.

AMENDMENTS SUBMITTED

COMMERCE, JUSTICE, STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATION ACT, FISCAL YEAR 1991

HOLLINGS AMENDMENT NO. 3123

Mr. HOLLINGS made a motion that the Senate concur in the amendment of the House to amendment No. 123 with an amendment as follows:

Beginning with the sum "$160,185,000" in the pending amendment, strike all through the end of the paragraph and insert "$157,485,000," of which not to exceed $10,000 may be used toward funding a permanent secretariat for the International Organizations of Securities Commissions and, for 1991 only, not to exceed $100,000 shall be available to host a conference of the International Organizations of Securities Commissions, such sum to cover related translation, printing, facility and other necessary logistic and administrative expenses: Provided, That immediately upon enactment of this Act, the rate of fees under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77(f)(b)) shall increase from one-fiftieth of 1 per centum to one-fourth of 1 per centum and such increase shall be deposited as an offsetting collection to this appropriation to recover costs of services of the securities registration process: Provided further,
That such fees shall remain available until expended.

HEINZ AMENDMENT NO. 3124

Mr. HEINZ made a motion to concur in the amendment of the House to the amendment of the Senate numbered 15 to the bill H.R. 5021, supra, as follows:

I move that the Senate concur in the House amendment with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert the following "and engaging in trade promotional activities abroad without regard to the provisions of law set forth in 44 U.S.C. 3702 and 3703; full medical coverage for dependent

...}

C] (C) if the Secretary is diligently prosecuting a proceeding in court pertaining to such food, has settled such proceeding, or has settled the informal or formal enforcement action pertaining to such food.

In any court proceeding described in subparagraph (C), a State may intervene as a matter of right.

Page 24, line 23, strike "foods" and insert "food", page 25, line 1, strike "foods" and insert "food", and page 25, line 6 strike "foods" and insert "food".

Page 25, line 7, insert before the comma the following "except a requirement for nutrition labeling of food which is exempt under subclause (i) or (ii) of section 201 of the Code of Federal Regulations.

Page 25, line 10, insert before the period the following "except a requirement respecting a claim made in the label or labeling of food which is exempt under clause (B) of such section.

Page 26, line 6, insert after "claim" the following: "of the type described in section 403(r)(1).

Page 25, line 17, strike "and insert in lieu thereof the following: "The Secretary may by regulation require any such term would be misleading."

Page 25, line 21, strike the quotation marks in parenthesis and insert the following: "as defined in subparagraph (a).


The amendment made by subsection (a) and the provisions of subsection (b) shall not be construed to apply to any requirement respecting a statement in the labeling of food that provides for a warning concerning the safety of the food or component of the food.

(2) The amendment made by subsection (a) and paragraphs (1) and (2) of this subsection shall not be construed to affect preemption, express or implied, of any such requirement of a State or political subdivision, which may arise under the Constitution, any provision of the Federal Food, Drug, and Cosmetic Act not amended by subsection (a), any other Federal law, or any State law, regulation, order, or other final agency action reviewable under chapter 7 of title 5, United States Code.

Page 26, line 5, strike "The" and insert "For the purpose of implementing section 403A(a)(3), the Secretary may..."

Page 26, line 10, strike "and" and insert "and within 60 days of the date of submission of a report to such Senator, shall have the authority to..."

Page 26, line 12, strike "18" and insert "24".

Page 27, line 6 and 17, strike "18" and insert "24".

Page 27, line 20, strike "24" and insert "26".

Page 31, line 2, strike "18" and insert "24".

Page 33, line 15, strike "9" and insert "18".

Page 33, line 19, strike "18" and insert "24".

Page 33, line 9, strike "listed in" and insert "required by" and strike "or (1)(D) and insert "(1), (D), or (1)(E) and begin..."

Page 33, line 17 strike "or (1)(D) and insert "(1)(D), or (1)(E)

Page 33, line 5, insert after "in" the following: "the following:

Page 25, line 17 strike "paragraph (3) and insert "paragraph (3) or 5(D), and beginning in line 23 strike "4(A)(X)(II), (4(A)(X)(II), and
(5)" and insert "(4)(A)(ii) and (4)(A)(iii) and clauses (A) through (C) of subparagraph (5)".

19. Page 20, line 11, strike "(vi)" and insert "(vii)".

20. Page 22, line 5, strike "and", line 8, strike the semicolon and insert in lieu thereof, "and"; and after line 8 insert the following:

"(ix) shall establish, as required by section 403(r)(5)(D), the procedure and standard respecting the validity of claims made with respect to a dietary supplement of vitamins, minerals, herbs, or other similar nutritional substances and shall determine whether claims respecting the following nutrients and diseases meet the requirements of section 403(r)(5)(D) of such Act: foie gras and neural tube defects, antioxidant vitamins and cancer, zinc and immune function in the elderly, and omega-3 fatty acids and heart disease."

21. Page 24, line 21, strike "which" and insert "that" and in line 22, strike "which" and insert "that".

22. Page 28, line 17, and page 33, line 13, strike "(b)(2)" and insert "(b)".

JEFFERS (AND KOHL) AMENDMENT NO. 3128

Mr. BYRD (for Mr. JEFFERS, for himself and Mr. KOHL) proposed an amendment to the bill H.R. 3562, supra, as follows:

On page 29, strike lines 11 and 12 and insert in lieu thereof, the following:

"401, 404(j), 404(a), 406, 501(b), or 502(d) or (h) of this Act; and inserting in lieu thereof the following: "Any action for the issuance, amendment, or repeal of any regulation under section 403(r)(5)(D), the procedure and standard respecting the validity of claims made with respect to a dietary supplement of vitamins, minerals, herbs, or other similar nutritional substances and shall determine whether claims respecting the following nutrients and diseases meet the requirements of section 403(r)(5)(D) of such Act: foie gras and neural tube defects, antioxidant vitamins and cancer, zinc and immune function in the elderly, and omega-3 fatty acids and heart disease."

20. Page 30, strike lines 11 and 12 and insert in lieu thereof, the following:

Section 901(e)(21 U.S.C. 371(e)) is amended by striking out "Any action for the issuance, amendment, or repeal of any regulation under section 403(r)(5)(D), the procedure and standard respecting the validity of claims made with respect to a dietary supplement of vitamins, minerals, herbs, or other similar nutritional substances and shall determine whether claims respecting the following nutrients and diseases meet the requirements of section 403(r)(5)(D) of such Act: foie gras and neural tube defects, antioxidant vitamins and cancer, zinc and immune function in the elderly, and omega-3 fatty acids and heart disease." and inserting in lieu thereof the following: "Any action for the issuance, amendment, or repeal of any regulation under section 403(r)(5)(D), the procedure and standard respecting the validity of claims made with respect to a dietary supplement of vitamins, minerals, herbs, or other similar nutritional substances and shall determine whether claims respecting the following nutrients and diseases meet the requirements of section 403(r)(5)(D) of such Act: foie gras and neural tube defects, antioxidant vitamins and cancer, zinc and immune function in the elderly, and omega-3 fatty acids and heart disease."

20. Page 30, strike lines 11 and 12 and insert in lieu thereof, the following:

Section 901(e)(21 U.S.C. 371(e)) is amended by striking out "Any action for the issuance, amendment, or repeal of any regulation under section 403(r)(5)(D), the procedure and standard respecting the validity of claims made with respect to a dietary supplement of vitamins, minerals, herbs, or other similar nutritional substances and shall determine whether claims respecting the following nutrients and diseases meet the requirements of section 403(r)(5)(D) of such Act: foie gras and neural tube defects, antioxidant vitamins and cancer, zinc and immune function in the elderly, and omega-3 fatty acids and heart disease." and inserting in lieu thereof the following: "Any action for the issuance, amendment, or repeal of any regulation under section 403(r)(5)(D), the procedure and standard respecting the validity of claims made with respect to a dietary supplement of vitamins, minerals, herbs, or other similar nutritional substances and shall determine whether claims respecting the following nutrients and diseases meet the requirements of section 403(r)(5)(D) of such Act: foie gras and neural tube defects, antioxidant vitamins and cancer, zinc and immune function in the elderly, and omega-3 fatty acids and heart disease."

KENNEDY AMENDMENT NO. 3128

Mr. BYRD (for Mr. KENNEDY) proposed an amendment to the bill H.R. 5113 to amend the Public Health Service Act to revise and extend the program for the prevention and control of injuries, as follows:

"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 "Injury Control Act of 1990".

SECTION 2. REVISION AND EXTENSION OF PROGRAM FOR PREVENTION AND CONTROL OF INJURIES

(a) RESEARCH.—Section 391(a) of the Public Health Service Act (42 U.S.C. 300b(a)) is amended—

(1) in paragraph (2), by inserting after "grants to" the following: "enter into cooperative agreements or contracts with; and"

(2)(A) in paragraph (1), by striking "and" after the semicolon at the end;

(B) in paragraph (2), by striking the period at the end and inserting "; and";

(C) by adding at the end the following new paragraph:

"(3) make grants to, or enter into cooperative agreements or contracts with, academic institutions for the purpose of providing training on the causes, mechanisms, prevention, diagnosis, treatment of injuries, and rehabilitation from injuries.".

(b) CONTROL ACTIVITIES.—Section 392(B)(2) of Public Health Service Act (42 U.S.C. 260b-1(b)(2)) is amended to read as follows:

"(2) work in cooperation with other Federal agencies, and with public and nonprofit private entities, to promote injury prevention and control.".

(c) REQUIREMENT OF REPORT ON ACTIVITIES OF AGENCY.—Section 393 of the Public Health Service Act (42 U.S.C. 260b-2) is amended to read as follows:

"SEC. 393. REPORT.

"By not later than September 30, 1992, the Secretary, through the Director of the Centers for Disease Control, shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the activities conducted or supported under this part. The report shall include—

"(1) information regarding the practical applications of research conducted pursuant to subsection (a) of this section, including information that has not been disseminated under subsection (b) of such section; and

"(2) information on such activities regarding the prevention and control of injuries in rural areas, including information regarding injuries that are particular to rural areas.

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 394 of the Public Health Service Act (42 U.S.C. 260b-3) is amended—

(1) in the first sentence, by inserting before the period the following: "$30,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993;"

(2) by striking the subsection designation; and

(3) by striking the second sentence.

FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, FISCAL YEAR 1991

KENNEDY (AND STEVENS) AMENDMENT NO. 3129

Mr. LEAHY (for Mr. KENNEDY, for himself and Mr. STEVENS) proposed an amendment to the bill (H.R. 5114) making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1991, and for other purposes, as follows:

On page 183, between lines 17 and 18, insert the following:

"SEC. 599. F. BENEFITS FOR UNITED STATES HOSTAGES CAPTURED IN LEBANON.—

Eligibility.—Sections 1 to 7 of the Foreign Service Act of 1949 (22 U.S.C. 2651 to 2657) shall be entitled to the same health benefits accorded under this Act to U.S. hostages in Iraq and Kuwait.

(b) Definition.—For purposes of this section the term "hostage" means forcibly detained, held hostage, or interned by an enemy government or its agents, or a hostile force.

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, FISCAL YEAR 1991

HATCH AMENDMENT NO. 3130

Mr. HATCH (for himself, Mr. KENNY, Mr. PELL, Mrs. KASSEBAUM, Mr. METZENBAUM, Mr. DURENBERGER, Mr. SIMON, Mr. JEFFORDS, Mr. DODD, Mr. CHAFFEE, Mr. SIMPSON, Mr. ADAMS, Ms. MUKULSKI, Mr. BINGHAM, Mr. MOWYRN, Mr. WIRTH, and Mr. LEAHY) proposed an amendment to the bill (H.R. 5769) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1991, and for other purposes, as follows:

On page 101, line 22 of the bill, strike all after the colon and all that follows through page 102, line 7 and insert the following:

"Provided further, That section 10 of the National Foundation on the Arts and the Humanities Act of 1965 (20 U.S.C. 959) is amended—

"(1) in subsection (a)(6), by striking "529" and inserting "3324";

"(2) by striking subsections (e) and (f);

"(3) by redesignating subsections (b), (c), and (d) as subsections (e), (f), and (g), respectively;

"(4) by designating the second through the fifth sentences of the existing subsection (a) as subsection (b);

"(5) by designating the sixth through the eighth sentences of the existing subsection (a) as subsection (c);

"(6) by designating the ninth through the eleventh sentences of the existing subsection (a) as subsection (d);

"(7) in subsection (b) (as redesignated in paragraph (4)) by inserting 'including local arts representatives after represent cultural diversity;'

STEREID TRAFFICKING ACT

HUMPHREY AMENDMENT NO. 3127

Mr. BYRD (for Mr. HUMPHREY) proposed an amendment to the bill (S. 1829) to amend the Controlled Substances Act to further restrict the use of steroids and human growth hormones; as follows:

At the appropriate place in the bill, insert the following:

"SEC. FREE SPEECH PROTECTION.

Section 101(1)(1) of Title 18, United States Code, is amended by adding at the end "but such term does not include participation in, or the organization or support of, any nonviolent demonstration, assembly, protest, rally, or similar form of public speech."
The Chairperson of the National Endowment for the Arts shall develop procedures to ensure compliance with the sanctions described in paragraph (1).

"(6) The general information and guidance form provided to recipients of funds under section 5 shall include on such form the following:

"REPAYMENT OF FUNDS AND DEBARMENT.—In accordance with a Congressional directive, recipients of funds under section 5 of the National Foundation on the Arts and the Humanities Act of 1965 are requested to note the provisions of section 101(c) of such Act regarding repayment of funds and debarment.

"(7) The Chairperson shall develop regulations to implement the sanctions described in this subsection.”

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**HELMS AMENDMENT NO. 3131**

Mr. HELMS proposed an amendment to the bill H.R. 5769, supra, as follows:

At the end of the amendment, add the following: "Provided further, That none of the funds appropriated under this Act may be used by the National Endowment for the Arts to provide financial assistance to an individual whose family income exceeds 1,800 percent of the income official poverty line, as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2))."

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**HELMS AMENDMENT NO. 3132**

Mr. HELMS proposed an amendment to the bill H.R. 5769, supra, as follows:

At the end of the amendment, add the following: "None of the funds authorized to be appropriated pursuant to this Act may be used to promote, disseminate, or produce material which denigrates the objects or beliefs of the adherents of a particular religion.

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**BYRD AMENDMENT NO. 3133**

Mr. BYRD proposed an amendment to the bill H.R. 5769, supra, as follows:

On page 35, line 10, before the period insert the following: "Provided further, That within the funds that would otherwise be allocated to the State of Pennsylvania from the funds made available in this Act under their head, up to $1,000,000 shall be made available to the Office of Surface Mining, in cooperation with the Bureau of Mine, for the purpose of extinguishing the Thomas Portal fire.”

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**LEGISLATIVE BRANCH APPROPRIATIONS, FISCAL YEAR 1991**

**FORD (AND STEVENS) AMENDMENT NO. 3134**

Mr. REID (for Mr. Ford, for himself and Mr. Stevens) proposed an amendment to the bill (H.R. 5399) making appropriations for the legislative branch for the fiscal year ended September 30, 1991, and for other purposes, as follows:
Subsection (a)(2) of section 310 of the bill is amended to read as follows: "(2)(A) with respect to the House of Representatives, allocation of funds for official mail to be made to each such person with respect to each session of Congress (with no transfer to any other session or to any other such person); and (B) with respect to the Senate, allocation of funds for official mail to be made to each such person with respect to each session of Congress, except that a Member may carry forward allocation to the next fiscal year.”

FORD (AND OTHERS) AMENDMENT NO. 3135
Mr. REID (for Mr. Forn, for himself, Mr. STEVENS, and Mr. NICKLES) proposed an amendment to the bill H.R. 5399, supra, as follows:

On page 15, line 18, by striking “not more than” and inserting “not to exceed the lesser of $100,000 or 50 percent of”.

FORD AMENDMENTS NOS. 3136 AND 3137
Mr. REID (for Mr. Forn) proposed two amendments to the bill H.R. 5399, supra, as follows:

AMENDMENT NO. 3136
Subsection (g)(3) of section 310 is amended by inserting “, with respect to the House of Representatives,” before “means”.

AMENDMENT NO. 3137
Subsection (l) of section 310 is amended by inserting “, except that with respect to the Senate subsection (d) shall apply with respect to sessions of Congress beginning with the second session of the One Hundred Second Congress.”.

REID AMENDMENT NO. 3138
Mr. REID proposed an amendment to the bill H.R. 5399, supra, as follows:

Section 302 of Title III is amended by striking “No” and inserting in lieu thereof “Except as otherwise provided by law, no”.

INOUYE (AND OTHERS) AMENDMENT NO. 3139
Mr. REID (for Mr. INOUYE), (for himself, Mr. KENNEDY, and Mr. AKAKA) proposed an amendment to the bill H.R. 5399, supra, as follows:

At the appropriate place, add the following new section:

SEC. SPARK M. MATSUNAGA MEDAL OF PEACE.
(a) In general.—Section 1704 of the United States Institute of Peace Act (22 U.S.C. 4604) is amended—
(1) in subsection (b),
(A) by striking “2 percent” after the semicolon at the end of paragraph (b); and
(B) by striking paragraph (9); and
(C) by redesignating paragraph (10) as paragraph (9); and
(2) by redesigning subsections (c) through (n) as subsections (d) through (o), respectively; and
(3) by inserting after subsection (b) the following:

"(c)(1) The Institute, acting through the Board, may each year make an award to such person or persons who it determines to have contributed in extraordinary ways to peace among the nations and peoples of the world, whether or not attributable to contributions that advance society’s knowledge and skill in peacemaking and conflict management. The Board shall include the public presentation to such person or persons of the Spark M. Matsunaga Medal of Peace and a cash award in an amount of not to exceed one million dollars."

"(d) The Secretary of the Treasury shall strike the Spark M. Matsunaga Medal of Peace with suitable emblems, devices, and inscriptions which capture the goals for which the Medal is presented. The design of the medal shall be determined by the Secretary of the Treasury in consultation with the Board.

"(e) The appropriate account of the Treasury of the United States shall be reimbursed for costs incurred in carrying out this subparagraph out of funds appropriated pursuant to section 1710(a)(1).

"(f) The Board shall maintain a national advisory panel composed of persons eminent in peacemaking, diplomacy, public affairs, and scholarship, and such advisory panel shall advise the Board during its consideration of the selection of the recipient of the award.

"(g) The Institute shall inform the Committee on Foreign Relations and the Committee on Labor and Human Resources of the Senate and the Committee on Foreign Affairs and the Committee on Education and Labor of the House of Representatives about the selection procedures it intends to follow, together with any other matters relevant to making the award and emphasizing its prominence and relevance.

"(h) USE OF MEDAL NAME.—Section 1704(e)(1) of the United States Institute of Peace Act (22 U.S.C. 4604(e)(1)) is amended by inserting "Spark M. Matsunaga Medal of Peace,” after “International Peace”.

"(i) CONFORMING AMENDMENT.—Section 1707(b) of the United States Institute of Peace Act (22 U.S.C. 4606(b)) is amended by striking out “section 1705(g)(3)” and inserting in lieu thereof “section 1705(h)(3)’.

NUNN (AND WARNER) AMENDMENT NO. 3140
Mr. REID (for Mr. Nunn himself and Mr. WARNER) proposed an amendment to the bill H.R. 5399, supra, as follows:

SEC. WAIVER OF PENALTY FOR CONTINUING GOVERNMENT SERVICE IN THE LEGISLATIVE BRANCH.
(a) WAIVER AUTHORITY.—The applicability of sections 5532, 8344, and 8468 of title 5, United States Code, may be waived in accordance with this subsection (b) for employment or service in positions in the legislative branch for which there is exceptional difficulty in recruiting and retaining qualified employees. A waiver under subsection (a) may be exercised—
(1) in the case of a position in the House of Representatives that is otherwise required to be filled by a House employee, if the award is made by the Committee on House Administration;
(2) in the case of a position in the Senate, under procedures established by the Committee on Rules and Administration;

HUMPHREY AMENDMENT NO. 3141
Mr. REID (for Mr. Humphrey) proposed an amendment to the bill H.R. 5399, supra, as follows:

At the end of the bill, add the following:

SEC. . In fiscal year 2001 and thereafter, when a Senator disseminates information under the frank privilege as defined in section 3210(a)(1)(E) of title 39, United States Code, the Senator shall register quarterly with the Secretary of the Senate such mass mailings. Such registration shall be made by filing with the Secretary a copy of the matter mailed and providing, on a form supplied by the Secretary, a description of the group or groups of persons to whom the matter was mailed and the number of pieces mailed.

REID AMENDMENT NO. 3142
Mr. REID proposed an amendment to the bill H.R. 5399, supra, as follows:

Strike section 311.

At the appropriate place insert the following new section:

SEC. . Two percent of the total amount appropriated or otherwise made available by this Act, that is not required to be appropriated or otherwise made available by a provision of law, shall be withheld from obligation. The Committees on Appropriations of the Senate and the House of Representatives shall set forth recommendations in the conference report on this Act with respect to the apportionment of the total amount to be withheld among the various appropriations made by this Act.

NICKLES (AND OTHERS) AMENDMENT NO. 3143
Mr. NICKLES (for himself, Mr. SYMMES, Mr. ARMSTRONG, and Mr. THURMOND) proposed an amendment to amendment No. 3142 proposed by Mr. REID to the bill H.R. 5399, supra, as follows:

Amendment No. 3142 is modified by striking “5 percent” and inserting in lieu thereof “5 percent”.

NICKLES (AND OTHERS) AMENDMENT NO. 3144
Mr. NICKLES (for himself, Mr. HELMS, Mr. PRESSLER, and Mr. WILSON) proposed an amendment to the bill H.R. 5399, supra, as follows:

On page 6, line 22, strike “$35,500,000” and insert in lieu thereof “$23,688,000”.

STEVENS AMENDMENT NO. 3145
Mr. STEVENS proposed an amendment to amendment No. 3144 proposed by Mr. NICKLES to the bill H.R. 5399, supra, as follows:

In lieu of the language proposed to be inserted, insert “$30,000,000”.

NICKLES (AND HUMPHREY) AMENDMENT NO. 3146
Mr. NICKLES (for himself and Mr. HUMPHREY) proposed an amendment to the bill H.R. 5399, supra, as follows:
At the appropriate place in the bill, insert the following:

SEC. 711. PROVISION ON TRANSFERS OF OFFICIAL MAIL FUNDS.—During any fiscal year in which appropriations for official mail costs of the Senate are allocated among offices of the Senate, no such transfer of any of its allocation to any other such office.

FORD AMENDMENT NO. 3147
Mr. FORD proposed an amendment, which was subsequently modified, to amendment No. 3146 proposed by Mr. NICKLES (for himself, Mr. WILSON and Mr. HUMPHREY) to the bill H.R. 5389, supra; as follows:

In the amendment strike all after the ";", in line 4 and insert the following: no Member may transfer any of his/her mail allocation to any Member who is a candidate for public office during the period beginning January 1st of the calendar year in which the Member is a candidate for public office and ending on the date of election for such public office.

ATTENDANT ALLOWANCE ADJUSTMENT ACT

KENNEDY AMENDMENT NO. 3148
Mr. REID (for Mr. KENNEDY) proposed an amendment to the bill (H.R. 3911) to amend title 5 of the United States Code to increase the allowance for services of attendants; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.
This act may be cited as the "Attendant Allowance Adjustment Act".

SEC. 2. EFFECTIVE DATE.
The amendment made by section 2 shall take effect October 1, 1990.

SCHOOL DROPOUT PREVENTION AND BASIC SKILLS IMPROVEMENT ACT

PELL AMENDMENT NO. 3149
Mr. REID (for Mr. PELL) proposed an amendment to the bill (H.R. 3140) to amend the Elementary and Secondary Education Act of 1965 to improve secondary school programs for basic skills improvement and dropout prevention and reentry, and for other purposes; as follows:

At the end of the bill, insert the following:

SEC. 1. CENTER FOR COMMERCE AND INDUSTRIAL EXPANSION.
(a) GRANT AUTHORIZED.—(1) The Secretary of Commerce (hereafter in this section referred to as the "Secretary") is authorized to award a grant to Loyola University of Chicago located in Chicago, Illinois, to pay the Federal share of the cost of construction and related costs for the establishment of a Center for Commerce and Industrial Expansion at Loyola University of Chicago.

(2) The Federal share shall not be less than 33 percent.

(b) APPLICATION.—No grant may be awarded under this section unless an application is made at such time, in such manner and containing or accompanied by such information, as the Secretary may reasonably require.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums, not to exceed $100,000,000, as may be necessary to carry out the provisions of this section. Funds appropriated pursuant to this section shall remain available until expended.

SEC. 2. STATEMENT OF PURPOSE.
Section 6103 of the Secondary Schools Basic Skills Demonstration Assistance Act of 1988 (20 U.S.C. 3263) is amended by striking "fiscal year 1989" and inserting "each of the fiscal years 1991 and 1992".

SEC. 3. ASSISTANCE TO PROVIDE BASIC SKILLS IMPROVEMENT.
Section 6102(b) of the Training Technology Transfer Act of 1988 (20 U.S.C. 5092) is amended by striking "education training, and" and inserting "education and training of students and teachers and the".

SEC. 4. CENTERS FOR INTERNATIONAL BUSINESS EDUCATION.
Section 614(a) of the Higher Education Amendments of 1990 (20 U.S.C. 1103(b)(a)) is amended—

(1) by striking "$5,000,000" and inserting "$7,500,000";

(2) by striking "3 succeeding" and inserting "4 succeeding".

SEC. 5. DAKOTA WESLEYAN UNIVERSITY.
Notwithstanding the provisos of section 487(c)(2)(B) of the Higher Education Amendments of 1990, the Secretary of Education shall reassess the amount owed by the Dakota Wesleyan University, located in Mitchell, South Dakota, in the amount of $159,260, plus any accrued interest thereon to $161,113.

FDA REVITALIZATION ACT

HATCH AND KENNEDY AMENDMENT NO. 3150
Mr. STEVENS (for Mr. HATCH, for himself, and Mr. KENNEDY) proposed an amendment to the bill (S. 845) to amend the Federal Food, Drug, and Cosmetic Act to revitalize the Food and Drug Administration, and for other purposes; as follows:

Strike the Committee amendment and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.
(a) SHORT TITLE.—This Act may be cited as the "Food and Drug Administration Revitalization Act".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References to the Federal Food, Drug, and Cosmetic Act.

TITLE I.—CONSOLIDATED ADMINISTRATIVE AND LABORATORY FACILITY

Sec. 101. Consolidated administrative and laboratory facility.

TITLE II.—RECOVERY AND RETENTION OF FEES FOR FOIA REQUESTS

Sec. 201. Recovery and retention of fees for FOIA requests.
for records obtained or created under this Act or any other Federal law for which responsibility for administration has been delegated to the Commissioner by the Secretary.

(2) retain all fees charged or such requests; and

(3) establish an accounting system and procedures to control receipts and expenditure of fees received under this section.

(b) Use of Fees.—The Secretary and the Commissioner of Food and Drugs shall not use any fees received under this section for any purpose other than funding the processing of requests described in subsection (a)(1). Such fees shall not be used to reduce the amount of funds made to carry out other provisions of this Act.

(c) Waiver of Fees.—Nothing in this section shall supersede the right of a requester to obtain a waiver of fees pursuant to section 552(a)(4)(A) of title 5, United States Code.

TITLE III—SCIENTIFIC REVIEW GROUPS

SEC. 301. SCIENTIFIC REVIEW GROUPS.

Chapter IX (sections 391 and 392 et seq.) is hereby added by amending at the end thereof the following section:

"SEC. 301. SCIENTIFIC REVIEW GROUPS.

Without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, the Commissioner of Food and Drugs may—

(1) establish such technical and scientific review groups as are needed to carry out the functions of the Food and Drug Administration (including functions prescribed under this title) with such sums as may be necessary;

(2) appoint and pay the members of such groups, except that officers and employees of the United States shall be additionally compensated for service as members of such groups.

TITLE IV—AUTOMATION OF FDA

SEC. 401. AUTOMATION OF FDA.

Chapter VII (21 U.S.C. 371 et seq.) (as amended) is hereby added by amending at the end thereof the following section:

"SEC. 401. AUTOMATION OF FOOD AND DRUG ADMINISTRATION.

(a) In General.—The Secretary, acting through the Commissioner of Food and Drugs, shall automate appropriate activities of the Food and Drug Administration to ensure timely review of activities regulated under this Act.

(b) Authorization of Appropriations.—There are authorized to be appropriated each fiscal year such sums as may be necessary to carry out this section.

ADMINISTRATIVE DISPUTE RESOLUTION ACT

PRYOR AMENDMENT NO. 3151

Mr. REID (for Mr. Pryor) proposed an amendment to the bill (S. 971) to authorize and encourage Federal agencies to use mediation, conciliation, arbitration, and other techniques for the prompt and informal resolution of disputes, and for other purposes; as follows:

On page 38, line 24, insert "but shall not extend for a delay caused by the provisions of sections 2302 and 7121(c) of title 3 after 'decision'."

KOHL AMENDMENT NO. 3152

Mr. REID (for Mr. Kohl) proposed an amendment to the bill S. 971, supra, as follows:

On page 37, strike out lines 10 through 24 and insert in lieu thereof:

"(5) dispute resolution communication, means any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the neutral, parties or nonparty participants; except that a written agreement to enter into a dispute resolution proceeding, or final written agreement or arbitral award reached as a result of a dispute resolution proceeding, is not a dispute resolution communication;"

On page 38, line 6, strike out "(7)" and insert in lieu thereof "(6)".

On page 38, line 11, strike out "(8)" and insert in lieu thereof "(7)".

On page 38, line 19, strike out "(9)" and insert in lieu thereof "(8)".

On page 38, line 1, strike out "(10)" and insert in lieu thereof "(9)".

On page 39, line 4, strike out "(11)" and insert in lieu thereof "(10)".

On page 39, line 13, strike out "(12)" and insert in lieu thereof "(11)".

On page 39, line 13, strike out "(13)" and insert in lieu thereof "(12)".

On page 42, line 25, insert "discharge" before "or through".

On page 43, lines 1 and 2, strike out "dispute resolution document or any".

On page 43, line 3, insert before the comma "or any communication provided in confidence to the neutral"

On page 43, line 7, strike out "or dispute resolution document".

On page 43, lines 9 and 10, strike out "or document".

On page 43, lines 11 and 12, strike out "or dispute resolution document".

On page 43, line 14, strike out "or document".

On page 43, lines 15 and 16, strike out "provide the document or".

On page 44, line 3, strike out "Except as provided in subsection (d), and insert in lieu thereof "A"."

On page 44, line 4, insert "discharge" after "voluntarily".

On page 44, lines 6 and 7, strike out "any dispute resolution document or".

On page 44, insert between lines 8 and 9: "(1) the communication was prepared by the party seeking disclosure".

On page 44, line 9, strike out "(1)" and insert in lieu thereof "(2)"

On page 44, line 11, strike out "(2)" and insert in lieu thereof "(3)"

On page 44, lines 11 and 12, strike out "or document".

On page 44, line 13, strike out "(3)" and insert in lieu thereof "(4)"

On page 44, lines 13 and 14, strike out "or dispute resolution document or".

On page 44, line 16, strike out "(4)" and insert in lieu thereof "(5)"

On page 45, line 3, strike out "(5) the dispute resolution document or" and insert in lieu thereof "(6) the".

On page 45, lines 9 and 10, strike out "or dispute resolution document".

On page 45, line 13, strike out "or document".

On page 45, line 15, insert before the word "discharge" "or neutral".

On page 45, line 23, strike out "document or".

On page 46, line 21, strike out "document" and insert in lieu thereof "communication"

On page 46, line 24, strike out "document" and insert in lieu thereof "communication".

LEAHY AMENDMENT NO. 3153

Mr. REID (for Mr. Leahy) proposed an amendment to the bill S. 971, supra, as follows:

On page 44, line 2, strike out "confidential," and insert "confidential or".

On page 44, insert between lines 2 and 3: "(6) the dispute resolution communication was provided to or was available to all parties to the dispute resolution proceeding.

On page 46, after line 25 insert:

"(j) This section shall not be considered a state specifically excepted by section 552(b)(3) of this title."

GRASSLEY AMENDMENT NO. 3154

Mr. STEEVENS (for Mr. Grassley) proposed an amendment to the bill S. 971, supra, as follows:

On page 53, strike out lines 1 through 6 and insert in lieu thereof:

"(g) If an agency head vacates an award under subsection (c), a party to the arbitration (other than the United States) may within 30 days of such action petition the agency head for an award of attorney fees and expenses (as defined in section 504(b)(1)(A) of this title) incurred in connection with the arbitration proceeding. The agency head shall award the petitioning party those fees and expenses which would not have been incurred in the absence of such arbitration proceeding, unless the agency head or his designee finds that special circumstances make such an award unjust. The procedures for reviewing applications for awards shall, where appropriate, be consistent with those set forth in subsection (a)(2) and (3) of section 504 of this title. Such fees and expenses shall be paid from the funds of the agency that awarded the decision.

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION AUTHORIZATION

INUOEY AMENDMENT NO. 3155

Mr. REID. (for Mr. Inouye) proposed an amendment to the bill (S. 1839) to provide authorization for appropriations for activities of the National Telecommunications and Information Administration, and for other purposes; as follows:

Strike all after the enacting clause and insert in lieu thereof:

That there is authorized to be appropriated for activities of the National Telecommunications and Information Administration $4,584,000 for fiscal year 1990 and $18,000,000 for fiscal year 1991, together with such sums as may be necessary for increases resulting from adjustments in salary, pay, retirement, other employee benefits.
CONGRESSIONAL RECORD—SENATE

October 24, 1990

Section 226 of the Communications Act of 1934 (47 U.S.C. 226) is amended by striking "30" each place it appears in subsection (b) (1) and (2), subsection (c)(1), and subsection (h)(1)(A) and inserting in lieu thereof "90." 

(a) Section 226(b)(1) of the Communications Act of 1934 (47 U.S.C. 226(b)(1)) is amended—

(1) in subparagraph (H) by adding "and" at the end;

(2) in subparagraph (J) by striking ";" and inserting in lieu thereof a period; and

(3) by striking subparagraph (J).

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION ACT

Mr. REID (for Mr. Gore, Mr. Hollings, Mr. Danforth, and Mr. Pressler) proposed an amendment to the bill (S. 2287) to authorize appropriations to the National Aeronautics and Space Administration for research and development, space flight, control and data communications, construction of facilities, and research and program management, and for other purposes, as follows:

(a) Section 226 of the Communications Act of 1934 (47 U.S.C. 226) is amended by striking "30" each place it appears in subsection (b) (1) and (2), subsection (c)(1), and subsection (h)(1)(A) and inserting in lieu thereof "90." 

(b) Section 226(b)(1) of the Communications Act of 1934 (47 U.S.C. 226(b)(1)) is amended—

(1) in subparagraph (H) by adding "and" at the end;

(2) in subparagraph (J) by striking ";" and inserting in lieu thereof a period; and

(3) by striking subparagraph (J).

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION ACT

Mr. REID (for Mr. Gore, Mr. Hollings, Mr. Danforth, and Mr. Pressler) proposed an amendment to the bill (S. 2287) to authorize appropriations to the National Aeronautics and Space Administration for research and development, space flight, control and data communications, construction of facilities, and research and program management, and for other purposes, as follows:

(a) Section 226 of the Communications Act of 1934 (47 U.S.C. 226) is amended by striking "30" each place it appears in subsection (b) (1) and (2), subsection (c)(1), and subsection (h)(1)(A) and inserting in lieu thereof "90." 

(b) Section 226(b)(1) of the Communications Act of 1934 (47 U.S.C. 226(b)(1)) is amended—

(1) in subparagraph (H) by adding "and" at the end;

(2) in subparagraph (J) by striking ";" and inserting in lieu thereof a period; and

(3) by striking subparagraph (J).

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION ACT

Mr. REID (for Mr. Gore, Mr. Hollings, Mr. Danforth, and Mr. Pressler) proposed an amendment to the bill (S. 2287) to authorize appropriations to the National Aeronautics and Space Administration for research and development, space flight, control and data communications, construction of facilities, and research and program management, and for other purposes, as follows:

(a) Section 226 of the Communications Act of 1934 (47 U.S.C. 226) is amended by striking "30" each place it appears in subsection (b) (1) and (2), subsection (c)(1), and subsection (h)(1)(A) and inserting in lieu thereof "90." 

(b) Section 226(b)(1) of the Communications Act of 1934 (47 U.S.C. 226(b)(1)) is amended—

(1) in subparagraph (H) by adding "and" at the end;

(2) in subparagraph (J) by striking ";" and inserting in lieu thereof a period; and

(3) by striking subparagraph (J).

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION ACT

Mr. REID (for Mr. Gore, Mr. Hollings, Mr. Danforth, and Mr. Pressler) proposed an amendment to the bill (S. 2287) to authorize appropriations to the National Aeronautics and Space Administration for research and development, space flight, control and data communications, construction of facilities, and research and program management, and for other purposes, as follows:

(a) Section 226 of the Communications Act of 1934 (47 U.S.C. 226) is amended by striking "30" each place it appears in subsection (b) (1) and (2), subsection (c)(1), and subsection (h)(1)(A) and inserting in lieu thereof "90." 

(b) Section 226(b)(1) of the Communications Act of 1934 (47 U.S.C. 226(b)(1)) is amended—

(1) in subparagraph (H) by adding "and" at the end;

(2) in subparagraph (J) by striking ";" and inserting in lieu thereof a period; and

(3) by striking subparagraph (J).
(11) the United States aeronautics program has been a key factor in maintaining prosperity and the preservation of survival over many decades; (12) the United States needs to maintain a strong program with respect to transatmospheric research and technology by developing and maturing the National Aeronautics and Space Plane technology by a mid-decade date certain; (13) that the National Aeronautics and Space Administration is primarily responsible for formulating and implementing policy that supports and encourages civil aeronautics and space activities in the United States; and (14) commercial activities of the private sector that maintain a healthy balance between manned and unmanned space activities and recognizes the mutually reinforcing benefits of both; (5) forge a robust national space program that maintains a healthy balance between manned and unmanned space activities and recognizes the mutually reinforcing benefits of both; (6) maintain an active fleet of space shuttle orbiters, including an adequate provision of structural spare parts, and evolve the orbiter design to improve safety and performance and reduce operational costs; (7) sustain a mixed fleet by utilizing commercially expendable launch vehicle services to the fullest extent practicable; (8) support an aggressive program of research and development designed to enhance the United States preeminence in launch vehicle activities; (9) continue and complete on schedule the development and deployment of a permanently manned, fully capable, space station; (10) develop an advanced, high pressure space suit to support extravehicular activity that will be required for Space Station Freedom when Assembly Complete is reached; (11) establish a dual capability for logistics and resupply of the space station utilizing the space shuttle and expendable launch vehicles, including commercial services if available; (12) continue to seek opportunities for international cooperative in space and fully support international cooperative agreements; (13) maintain an aggressive program of aeronautical research and technology development designed to enhance the United States preeminence in civil and military aviation and improve the safety and efficiency of the United States air transportation system; (14) conduct a program of technology maturation, including flight demonstration in 1987, to prove the feasibility of an air-breathing, hypersonic aerospace vehicle capable of single-stage-to-orbit operation and hypersonic cruise in the atmosphere; (15) seek innovative technologies that will make possible advanced human exploration initiatives, such as the establishment of a long-duration manned mission to the Moon or Mars, and provide high yield technology advancements for the national economy; and (16) support the educational missions of the Nation and the quality of education.

SEC. 182. AUTHORIZATION OF APPROPRIATIONS. (a) AUTHORIZATIONS.—There are authorized to be appropriated to the National Aeronautics and Space Administration the following amounts: (1) For "research and development", for the following programs: (A) United States International Space Station Freedom: (i) Construction of the Advanced Communications Technology Academic Program, $21,000,000 for fiscal year 1991; (ii) $985,000,000 for fiscal year 1991. (B) Physics and astronomy, $985,000,000 for fiscal year 1991. (C) Life sciences, $18,400,000 for fiscal year 1991. Of the amounts authorized for this Act or any other Act, for fiscal year 1991— (i) $5,000,000 shall be used for the development of payloads for the Lifestat program; and (ii) not less than $400,000 shall be used for space food processing studies and bioregenerative life support research. (D) Planetary exploration, $337,200,000 for fiscal year 1991. (E) Earth science, $640,000,000 for fiscal year 1991. (i) $543,000,000 for fiscal year 1991, of which $5,000,000 shall be made available for the conduct of an advanced sensor technology demonstration program, $35,000,000 shall be made available for Earth Probes, including the development of the Total Ozone Mapping Spectrometer, and $44,300,000 shall be made available for Modeling and Data Analysis, including the development of Earth Science Data Directories and remote sensing data conversion. (ii) Notwithstanding section 201(k)(1)(A) of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989, not more than $123,000,000 may be made available for the Earth Observing System Platform for fiscal year 1991. (F) Materials processing in space, $97,300,000 for fiscal year 1991. (G) Communications, $52,800,000 for fiscal year 1991, including not more than $2,000,000 for experimenter ground stations for the Advanced Communications Technology Satellite, but only if the experiment receiving funds obtains at least an equal amount of funds from sources other than the National Aeronautics and Space Administration. (H) Information systems, $3,000,000 for fiscal year 1991. (J) Technology utilization, $24,400,000 for fiscal year 1991. (K) Commercial use of space, $76,800,000 for fiscal year 1991. (L) Aeronautical research and technology, $537,000,000 for fiscal year 1991. (M) Transatmospheric research and technology, $119,000,000 for fiscal year 1991. (N) Space research and technology, $412,900,000 for fiscal year 1991. Of the amounts authorized for the Exploration Technology program, by this or any other Act, for fiscal year 1991, at least 10 percent shall be for university contracts and grants. (O) For Explorations and Rescue, $2,190,000 for fiscal year 1991, which is authorized for studies conducted by the National Aeronautics and Space Administration, $100,000,000 for fiscal year 1991. (R) University Space Science and Technology Academic Program, $50,100,000 for fiscal year 1991. (S) Comet Rendezvous Asteroid Flyby/Cassini mission, not to exceed $1,600,000,000 for development, launch, and 30 days of operations thereof, to remain available until expended, of which— (i) $490,000,000 shall be available for obligation after October 1, 1990; and (ii) an additional $370,000,000 shall be available for obligation 30 days after the submission of a report summarizing the results of a preliminary design review to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. (T) Tracking and data advanced systems, $20,900,000 for fiscal year 1991. (U) University Space Science and Technology Academic Program, $50,100,000 for fiscal year 1991. (V) Space Station Freedom, $337,200,000 for fiscal year 1991. (W) Earth science, $640,000,000 for fiscal year 1991. (x) $543,000,000 for fiscal year 1991, of which $5,000,000 shall be made available for the conduct of an advanced sensor technology demonstration program, $35,000,000 shall be made available for Earth Probes, including the development of the Total Ozone Mapping Spectrometer, and $44,300,000 shall be made available for Modeling and Data Analysis, including the development of Earth Science Data Directories and remote sensing data conversion. (y) Notwithstanding section 201(k)(1)(A) of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989, not more than $123,000,000 may be made available for the Earth Observing System Platform for fiscal year 1991. (z) Materials processing in space, $97,300,000 for fiscal year 1991. (aa) Communications, $52,800,000 for fiscal year 1991, including not more than $2,000,000 for experimenter ground stations for the Advanced Communications Technology

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(A) Shuttle production and operational capability, $1,364,000,000 for fiscal year 1991. Of such funds, $45,000,000 shall be used for carrying out the safety modifications recommended by the Aerospace Safety Advisory Panel and for such other safety modifications as the Administrator considers necessary. By September 30, 1991, the Administrator shall submit to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a full report on the completion of planned safety enhancements.

(B) Shuttle transportation operations, $2,831,400,000 for fiscal year 1991, of which $4,000,000 shall be made available for the provision of launch services for eligible satellites in accordance with section 6 of the Commercial Space Launch Act Amendments of 1988.

(C) Expandable launch vehicle services, $229,200,000 for fiscal year 1991.

(D) Space and ground network, communications, and data systems, $868,800,000 for fiscal year 1991.

(E) Tracking and data relay satellite system, $1,209,732,000 for fiscal year 1991, which shall be used only for the purpose of reducing all outstanding debt to the Federal Government.

(F) Construction of Rocket Motor Program Facilities, including collateral equipment, $3,300,000.

(G) Replacement of the Operations and Checkout Building, West Cooling Tower, and Long-Life Propellant Facility, Kennedy Space Center, $1,500,000.

(H) Construction of Astro Flight Simulator, Jet Propulsion Laboratory, $13,200,000.

(I) Construction of 34-Meter Diameter Antenna at Goldstone, CA, Jet Propulsion Laboratory, $9,400,000.

(J) Replacement of Chillers, Central Heating/Refrigeration Plant, Goddard Space Flight Center, $4,000,000.

(K) Replacement/Modernization of Electrical Power Feeders, Goddard Space Flight Center, $1,500,000.

(L) Construction of Observational Instrument Meters Laboratory, Jet Propulsion Laboratory, $14,000,000.

(M) Construction of Additional Research Facilities, Goddard Space Flight Center, $3,800,000.

(N) Construction of Neutral Buoyancy Facility, Marshall Space Flight Center, $3,000,000.

(O) Rehabilitation of Mission Control Center, Kennedy Space Center, $15,000,000.

(P) Construction of Space Station Processing Facility, Kennedy Space Center, $25,000,000.

(Q) Construction of Additions for Flight Training and Operations, Johnson Space Center, $12,000,000.

(R) Rehabilitation of Mission Control Center Power and Control Systems, Johnson Space Center, $8,500,000.

(S) Construction of Transporter/Canister Facility, Kennedy Space Center, $5,500,000.

(T) Construction of Processing Control Center, Kennedy Space Center, $9,400,000.

(U) Replacement of Heating, Ventilating, and Air Conditioning System, Hypergolic Maintenance Facility, Kennedy Space Center, $2,100,000.

(V) Replacement of Operations and Control Equipment, West Cooling Tower, Kennedy Space Center, $1,000,000.

(W) Restoration of Heavy Equipment Area, Kennedy Space Center, $800,000.

(X) Upgrade of Orbiter Processing Facility High Bay Heating, Ventilating, and Air Conditioning System, Kennedy Space Center, $3,800,000.

(Y) Upgrade of Yundum International Airport to Full Frasacoonce Abort Landing Site, Banjul, The Gambia, $3,400,000.

(Z) Repair of Condensate System, Main Manufacturing Building, Michoud Assembly Facility, $800,000.

(A) Modernization of Project Engineering Facility, Marshall Space Flight Center, $17,000,000.

(B) Construction of Information and Electronic Systems Laboratory, Marshall Space Flight Center $4,000,000.

(C) Rehabilitation of Hydrogen Transfer Facility, Marshall Space Flight Center, $2,700,000.

(D) Restoration of Space Shuttle Main Engine Test Complex "A" Stennis Space Center, $2,700,000.

(E) Construction of Advanced Solid Rocket Motor Program Facilities, including land acquisition, various locations, $82,000,000.

(R) Construction of Additon to Site Electric Substation, Johnson Space Center, $11,000,000.

(S) Addition to Administration and Engineering Building, Stennis Space Center, $3,800,000.

(T) Construction of Earth Observing System Data Information System Facility, Goddard Space Flight Center, $8,000,000.

(U) Construction of Detector Development Laboratory, Goddard Space Flight Center, $3,100,000.

(V) Replacement of Chillers, Central Heating/Refrigeration Plant, Goddard Space Flight Center, $4,000,000.

(W) Replacement/Modernization of Electrical Power Feeders, Goddard Space Flight Center, $1,500,000.

(X) Construction of Observational Instruments Laboratory, Jet Propulsion Laboratory, $14,000,000.

(Y) Refurbishment of 25-Foot Space Simulator, Jet Propulsion Laboratory, $13,200,000.

(Z) Rehabilitation of Utilities, Wallops Flight Facility, $5,200,000.

(A) Modifications to the High Pressure Air System, Langley Research Center, $12,000,000.

(B) Modifications Up to Upgrade the 30-foot Wind Tunnel, Langley Research Center, $4,000,000.

(C) Repairs to the Tunnel Shell, Unitary Plan Wind Tunnel, Langley Research Center, $2,100,000.

(D) Rehabilitation of Central Air System, Lewis Research Center, $7,900,000.

(E) Rehabilitation of Propulsion Systems Laboratory, Lewis Research Center, $6,000,000.

(F) Construction of Liquid Hydrogen Storage Tank and Hydrogen Delivery System, Dryden Flight Research Facility, $18,800,000.

(G) Rehabilitation and Modification of the Electrical Distribution System, Dryden Flight Research Facility, $4,000,000.

(H) Construction of Additions for Light-Alloy Research Laboratory, Langley Research Center, $4,600,000.

(I) Construction of Space Experiments Laboratory, Lewis Research Center, $7,100,000.

(J) Refurbishment of Electric Power Laboratory, Lewis Research Center, $8,500,000.

(K) Construction of 24-Meter Multifrequency Antenna at Goldstone, CA, Jet Propulsion Laboratory, $13,200,000.

(L) Rehabilitation of 70-meter Antenna Drive Gear Boxes in Australia, Spain, and Goldstone, CA, Jet Propulsion Laboratory, $4,400,000.

(M) Repair of facilities at various locations, not to exceed $1,000,000 per project, $30,000,000.

(N) Rehabilitation and modification of facilities at various locations, not to exceed $1,000,000 per project, $34,000,000.

(O) Minor construction of new facilities and additions to existing facilities at various locations, not to exceed $750,000 per project, $11,000,000.

(P) Environmental compliance and restoration, $32,000,000.

(Q) Facility planning and design not otherwise provided for, $28,000,000.

(R) For "research and program management" for maintenance and operation of facilities, and for other services, shall remain available through the next fiscal year after the fiscal year for which such amount is appropriated.

(S) Appropriations made pursuant to subsection (a) (1), (2), and (4) may be used for the construction of new facilities and additions to, or repair, rehabilitation, or modification of existing facilities, but only if the total cost of each such project, including collateral equipment, does not exceed $200,000.

(T) Funds appropriated pursuant to subsection (a)(4) may be used for unforeseen programmatic facility project needs, but only if the cost of such project, including collateral equipment, does not exceed $750,000.

(U) Funds appropriated pursuant to subsection (a)(4) may be used for repair, rehabilitation, or modification of facilities controlled by the General Services Administration, but only if the cost of each project, including collateral equipment, does not exceed $500,000.

SEC. 194. CONSTRUCTION OF FACILITIES REPROGRAMMING.

Authorization is hereby granted whereby any of the amounts prescribed in section 106(a)(3) A) through (Q)
(1) may be varied upward 10 percent, in the discretion of the Administrator or the Administrator's designee, or his or her representative appointed by the Administrator or the Administrator's designee to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, on the circumstances of such, may be varied upward 25 percent, at the cost and risk of the Government. The total cost of all work authorized under paragraphs (1) and (2) shall not exceed the total amount specified in section 103(a) (through 2).

SEC. 105. SPECIAL REPROGRAMMING AUTHORITY FOR CONSTRUCTION OF FACILITIES.

Where the Administrator determines that new developments or scientific or engineering changes in the national program of aeronautical and space activities have occurred, and that such changes require the use of additional funds for the purposes of construction, expansion, or modification of facilities at any location; and that deferral of such action until the enactment of the next authorization Act would be inconsistent with the interest of the Nation in aeronautical and space activities; the Administrator may transfer not to exceed one-half of one percent of the amount appropriated pursuant to section 103(a) (1) or (2) to the Committee on Commerce, Science, and Transportation of the Senate a written report describing the nature of the construction, its cost, and the reasons therefor.

SEC. 106. CONSIDERATION BY COMMITTEES.

Notwithstanding any other provision of this Act, (1) no amount appropriated pursuant to this title may be used for any program described in paragraphs (a) through (c) for which an appropriation is made to either the Committee on Science, Space, and Technology of the House of Representatives or the Committee on Commerce, Science, and Transportation of the Senate unless the Administrator or the Administrator's designee has transmitted to each of those committees, a written report containing a full and complete statement of the action to be taken and the facts and circumstances relied upon in support of such proposed action. The National Aeronautics and Space Administration shall furnish any information requested by either committee relating to any such activity or responsibility.

The Administrator shall distribute research and development funds geographicaliy in order to provide the broadest practicable participation in the programs of the National Aeronautics and Space Administration.

SEC. 108. NATIONAL SPACE COUNCIL AUTHORIZATION.

(a) There are authorized to be appropriated to carry out the activities of the National Space Council established by section 501 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2471), $1,363,000 for fiscal year 1991, of which not more than $1,000 shall be available for official reception and representation expenses. The National Space Council shall reimburse other agencies for not less than one-half of the personal compensation costs of individuals detailed to it.

(b) It is the sense of Congress that the National Space Council should, by October 1, 1991, establish guidelines and policy recommendations, including the need for licensing, for the conduct of expendable launch vehicle operations in which a Federal agency assumes substantial responsibility for public safety, indemnification, and administrative oversight.

SEC. 109. BUY AMERICAN.

(a) GENERAL RULE.—The Administrator shall award, when practicable, any contract that, under the use of competitive procedures, would be awarded to a foreign firm, if—

(1) the final product of the domestic firm will be completely assembled in the United States;

(2) when completely assembled, not less than 51 percent of the final product of the domestic firm will be domestically produced; and

(3) the difference between the bids submitted by the foreign and domestic firms is not more than 6 percent.

(b) EXCEPTIONS.—This section shall not apply to the extent to which—

(1) such applicability would not be in the public interest;

(2) compelling national security considerations or the unique capabilities of the foreign firm determine; or

(3) the United States Trade Representative determines that such an award would be in violation of the General Agreement on Tariffs and Trade or an international agreement to which the United States is a party.

(c) DEFINITIONS.—For purposes of this section—

(1) the term "domestic firm" means a business entity that is incorporated in the United States and that conducts business operations in the United States;

(2) the term "foreign firm" means a business entity not described in paragraph (1).

(4) the United States Trade Representative shall only contract for which—

(1) amounts are made available pursuant to this title; and

(2) solicitations for bids are issued after the date of enactment of this Act.

SEC. 110. ADVANCED SOLID ROCKET MOTOR.

The Administrator shall submit to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate the following:

(1) A report on the project cost to complete the design, development, and qualification of the Advanced Solid Rocket Motor. The first report shall be submitted by March 1, 1991, and thereafter with the National Aeronautics and Space Administration's annual budget request.

(2) An annual report on the projected unit costs of the flight motor.

(3) An annual report on the increase in space shuttle payload capability provided by the Advanced Solid Rocket Motor. The report shall include the original baseline payload capability, adjustments to the baseline capability, and the projected payload capability.

(4) An assessment by the National Research Council by July 1, 1991, of the quality assurance and testing program that will ensure the achievement of safety and reliability for the Advanced Solid Rocket Motor.

SEC. 112. SPACE SHUTTLE USE POLICY.

(a)(1) It shall be the policy of the United States to use the Space Shuttle for purposes that (i) require the presence of man, (ii) require the unique capabilities of the Space Shuttle, or (iii) when other compelling circumstances exist.

(2) The term "compelling circumstances" includes, but is not limited to, occasions when the United States' participation in the International Space Station, or any other large space station, is a party.

(b) The Administrator shall, within six months after the date of enactment of this Act, submit a report to the Congress setting forth a plan for the implementation of the policy described in subsection (a)(1). Such plan shall include—

(1) details of the implementation plan;

(2) a list of purposes that meet such policy;

(3) a proposed schedule for the implementation of such policy;

(4) an estimate of the costs to the United States of implementing such policy; and...
shall-space flight missions in order to- specifications are being fixed before fully establishing the objectives and require­
ations of microgravity laboratories or manned missions to Mars, that a realistic Aeronautics
specific components of information, tech­
ances is not compatible with the National
nologies, processes, or procedures identified
etworking according to mission requirements, including identifying which life sciences pa-
(6) containing an inventory of space explo­
ence of giving an adequate strategic plan to acquire a
ications to the United States and the Soviet
and intentions of all national space agencies
nents involved tens of billions of dollars over
the study is-

(b) STRATEGIC PLAN.-The Administration
shall be giving to the potential contributions
States and the Soviet
in anticipation of later international manned missions to the Moon and to other bod-
ents are available from other nations in equal or
in this section referred to as the
oceasations to be the development and demonstra­
that the Congress finds that—
(4) international manned missions beyond
Earth orbit could save the individual na­
ntions to the list of certified pay­
entitions to launch loads intended to be launched from the
which have begun the phase C/D of its de-
oped; and
ments to be launched from the space shuttle for the next four years are consistent with the policy set for
for each effort to be scheduled to be launched from the space
which do not require the presence of the Administrator shall, in the
ified representations the specific circumstances which justified the use of the
Space Shuttle. If, during the period between
ated to the Congress, any addi-
tions are made to the list of certified pay-
loads intended to be launched from the Shuttle, the Administrator shall inform the Congress of the additions and the reasons therefor within 45 days of the change.
(d) The report described in subsection (c) shall also include those National Aeronautics and Space Administration payloads designed solely to fly on the space shuttle which have begun the phase C/D of its de-
velop cycle.
SEC. 114. STUDY ON INTERNATIONAL COOPERATIVE IN PLANETARY EXPLORATION.
(a) FINDINGS.—The Congress finds that—
(1) the President on July 20, 1989, established
the long-range goal of establishing a
base, followed by manned exploration of
Mars in the early twenty-first century;
(2) the United States and the Soviet
Union, in cooperation with other countries,
are available from other nations in equal or
and to be appropriated to the Secretary of Com­
number of the House of Representatives a
report of the activities of the
Office of Space Commerce, including planned pro-
and expenditures.
SEC. 115. OFFICE OF SPACE COMMERCE.
(a) AUTHORIZATION.—There are authorized
to be appropriated to the Secretary of Com-
c for the Office of Space Commerce,
4467000 for fiscal year 1993.
(b) REPORT TO CONGRESS.—Commencing
fiscal year 1992, and every fiscal year there-
they shall be the development and demonstra­
and a breakdown of responsibilities by
(2) are available in the United States but are
available from other nations in equal or
ents are authorized to be appropriated to
is referred to as the “study”).
the purpose of the study is—
(1) to develop an inventory of technologies
and intentions of all national space agencies
with regard to lunar and planetary explora-
both manned and unmanned;
(b) MANAGEMENT PLAN.—The National
Space Council shall conduct a study on International
Cooperative in Planetary Exploration (hereafter
in this section referred to as the “study”).
(c) PURPOSE OF STUDY.—The purpose of
the study is—
(1) to develop an inventory of technologies
and intentions of all national space agencies
with regard to lunar and planetary explora-
both manned and unmanned;
(2) to seek ways, through direct communica-
it with appropriate officials of other
nations or otherwise, to enhance the plan-
ning and exchange of information and data
among the United States, the Soviet
Union, European countries, Canada, Japan, and
other interested countries with respect to
unmanned projects beyond Earth orbit, in
anticipation of later international manned
missions to the Moon and to other bod-
ies, including the possible goal of an
international manned mission to Mars;
(b)如果您使用的是autocad或其他二维CAD软件，以下是一些基本的提示：
(1) The Secretary and the Administrator shall jointly develop a management plan for the
program established under subsection
(a), which shall include goals, major tasks, anticipated schedules, organizational struc-
tture, funding profiles, details of the respective responsibilities of the Secretary and the Administrator, and resource procurement strategies.

The management plan developed pursuant to paragraph (1) shall be submitted to the Congress within 120 days after the date of enactment of this Act.

SEC. 117. COMMERCIAL SPACE LAUNCH ACT AMENDMENTS.

(a) Authorization.—Section 24 of the Commercial Space Launch Act (49 U.S.C. App. 2623) is amended by adding at the end thereof the following: "There are authorized to be appropriated $250,000 for the initial period of organization of the Commercial Space Launch Act Amendments of 1988.

(b) Acquisition by State Governments.—Section 5(a) of the Commercial Space Launch Act (49 U.S.C. App. 2614(a)) is amended by inserting "and State governments" after "by the private sector.

(c) Congressional Findings.—Section 2 of the Commercial Space Launch Act (49 U.S.C. App. 2601) is amended—

(1) by striking "and" at the end of paragraph (1);

(2) by striking the period at the end of paragraph (2) and inserting in lieu thereof a semicolon;

and

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

"(3) work to facilitate private sector involvement in commercial space transportation activity, to promote public-private partnerships involving the Federal Government, State governments, and the private sector to build, expand, modernize, or operate space launch infrastructure.".

SEC. 118. SPACE DEBRIS.

(a) Findings.—The Congress finds that—

(1) if space users fail to act soon to reduce their contribution to debris in space, orbital debris will continue to grow and will deplete the use of some orbits within a decade;

(2) the lack of adequate data on the orbital debris problem has been due to hampered efforts to reduce the threat that debris poses to spacecraft; and

(3) existing international treaties and agreements are inadequate for minimizing the generation of orbital debris or controlling its effects.

(b) Sense or Congress.—It is the sense of Congress that the goal of United States policy should be that—

(1) the space related activities of the United States should be conducted in a manner that does not increase the amount of orbital space debris; and

(2) the United States should engage other space-faring nations to develop an agreement on the conduct of space activities that ensures that the amount of orbital space debris is minimized.

SEC. 119. SUPPORT FOR SPACE SHUTTLE ORBITER PRODUCTION LINE.

The Administration is authorized to expend excess funds appropriated for orbiter production lines of orbiter subcontractors in the joint resolution entitled "Joint Resolution making continuing appropriations for the fiscal year 1987, and for other purposes" to improve and to increase the amount of funding available for the space and shuttle orbiter production line and related production lines of orbiter subcontractors.

SEC. 120. INDUSTRIAL APPLICATION CENTERS.

In any agreement entered into by the National Aeronautics and Space Administration for an Industrial Application Center, the center shall be allowed to retain all client income without any deductions from appropriated funds received or to be received by that center.

SEC. 121. USERS' ADVISORY GROUP.

(a) Establishment.—The National Space Council shall establish a Users' Advisory Group composed of Federal, non-Federal entities, and other persons involved in aeronautical and space activities.

(b) Vice President shall name a chairman of the Users' Advisory Group.

(c) The National Space Council shall from time to time, but not less than once a year, meet with the Users' Advisory Group.

(d) The function of the Users' Advisory Group shall be to ensure that the interests of United States commercial launch operators and other non-Federal entities involved in space activities, including in particular commercial entities, are adequately represented in the National Space Council.

(e) The Users' Advisory Group may be assisted by personnel detailed to the National Space Council.

(f) The Users' Advisory Group shall not be subject to section 14(a)(2) of the Federal Advisory Committee Act.

SEC. 122. SCIENTIFIC BALLOON LAUNCH SITE.

The Administrator may purchase approximately 8 acres within section 16, Township 3 North, Range 29 East, N.M.P.M., De Baca County, New Mexico, to use as a balloon launching facility.

SEC. 123. PEACEFUL USES OF SPACE STATION.

No civil space station authorized under section 103(a)(1) of this Act may be used to carry or place in orbit any nuclear weapon or any other weapon that may be deemed to install any such weapon on any celestial body, or to station any such weapon in space in any other manner. This civil space station may be used only for peaceful purposes.

SEC. 124. SMALL BUSINESS INNOVATION RESEARCH PROGRAM.

The Administrator may utilize up to 5 percent of the funds provided for the Small Business Innovation Research Program for program management and promotional activities.

SEC. 125. PROPULSION STRATEGIC ASSESSMENT.

By July 1, 1991, the Administrator shall submit to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate an assessment by the National Research Council of the requirements, benefits, technological feasibility, and roles of Earth-to-orbit propulsion system options that could be developed in support of the national space program including the assembly and operation of the Space Station and potential space activities beyond the year 2000.

SEC. 126. NATIONAL CIVIL REMOTE-SENSING ADVISORY GROUP.

Not later than 90 days after the date of enactment of this Act, the Director of the Office of Science and Technology Policy and the Director of the Office of Management and Budget of the Executive Office of the President shall establish a National Civil Remote-Sensing Advisory Group.

The group shall provide advice and policy recommendations to the President, the President's Science Advisor, the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, and relevant committees of the Congress on the development of a national civil remote-sensing policy that would be responsive to both user and global developments, in terms of—

(A) coordinating land, oceanic, and atmospheric remote-sensing systems, including data gathering and dissemination; and

(B) coordinating research and development, applications, and commercial remote-sensing activities.

The group shall—

(1) provide advice and policy recommendations to the President, the President's Science Advisor, the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, and relevant committees of the Congress on the development of a national civil remote-sensing policy; and

(2) provide recommendations on the coordination, cooperation, and interagency support of national demonstration projects designed to manage environmental pollution and the use of natural resources; and

(3) coordinate with the United States Global Change Research Program on issues of mutual concern.
For purposes of this title, the term “Administrator” means the Administrator of the National Aeronautics and Space Administration.

**SECTION 202. FINDINGS.**

The Congress finds that—

1. The United States commercial launch industry is technically capable of providing reliable and cost-effective access to space for Government and commercial users.
2. The Federal Government should encourage, facilitate, and promote the United States commercial launch industry, including the development and enhancement of commercial launch facilities, in order to ensure United States economic preeminence in space.
3. The interests of the United States will be served if the commercial launch industry is competitive in the international marketplace.
4. Commercial vehicles are effective means to challenge foreign competition.
5. The use by the Federal Government of commercial launch vehicles in lieu of Government-owned space systems is competitive in the international marketplace.
6. The procurement of commercial launch services in a commercially reasonable manner permits a reduced level of Federal Government involvement and can result in significant cost savings to the commercial launch industry and to the Federal Government.
7. The use of commercial launch services in the international marketplace promotes the economic preeminence of the United States.
8. The predictable access to National Aeronautics and Space Administration launch facilities, in order to place in outer space United States national security or foreign policy purposes.

**SECTION 203. DEFINITIONS.**

(1) The term "space" means the area of the Earth’s atmosphere outside the normal operational altitudes of commercial space transportation systems.
(2) The term "launch vehicle" means a system of one or more objects in space.
(3) The term "payload" means the portion of a launch vehicle that is used to transport objects in space.
(4) The term "commercial provider" means any person (including a profit-making or nonprofit organization) which a person undertakes to place in outer space a payload for space activities involved in the preparation of a launch vehicle and its payload for space activities.
(5) The term "commercial launch vehicle" means a launch vehicle specifically designed or adapted for that payload.
(6) The term "commercial launch services" means the launch services, including launch services, from the private sector to the fullest extent feasible; and does not include the Federal Government; and includes subcomponents of the launch vehicle specifically designed or adapted for that payload.
(7) The term "launch vehicle" includes subcomponents of the launch vehicle specifically designed or adapted for that payload.
(8) The term "payload" includes subcomponents of the launch vehicle specifically designed or adapted for that payload.
(9) The term "payload" specifically means the launch vehicle and its payload for space activities involved in the preparation of a launch vehicle and its payload for space activities.
(10) The term "payload" means the portion of a launch vehicle that is used to transport objects in space.
(11) The term "commercial provider" means any person (including a profit-making or nonprofit organization) which a person undertakes to place in outer space a payload for space activities involved in the preparation of a launch vehicle and its payload for space activities.
(12) The term "commercial launch vehicle" means a launch vehicle specifically designed or adapted for that payload.
(13) The term "commercial launch services" means the launch services, including launch services, from the private sector to the fullest extent feasible; and does not include the Federal Government; and includes subcomponents of the launch vehicle specifically designed or adapted for that payload.
(14) The term "payload" includes subcomponents of the launch vehicle specifically designed or adapted for that payload.
(15) The term "payload" specifically means the launch vehicle and its payload for space activities involved in the preparation of a launch vehicle and its payload for space activities.
(16) The term "payload" means the portion of a launch vehicle that is used to transport objects in space.

**SECTION 204. REQUIREMENT TO PRODUCE COMMERCIAL LAUNCH SERVICES.**

(a) In general.—Except as otherwise provided in this section, the National Aeronautics and Space Administration shall purchase launch services for its primary payloads from commercial providers. Federal Government purchase of such services are required in the course of its activities.

(b) Exceptions.—The National Aeronautics and Space Administration shall not be required to purchase launch services as provided in subsection (a) if, on a case by case basis the Administrator of the National Aeronautics and Space Administration determines that—

(1) the payload requires the unique capabilities of the space shuttle; or

(2) the need for data to integrate a payload with a launch vehicle; or

(3) the need for data to carry out mission-specific modifications to the launch vehicle; or

(4) the need for notification to the National Aeronautics and Space Administration of changes, delays, or difficulties in the construction or preparation of a launch vehicle that may affect the delivery of its payload to its destination at the time and under the conditions provided for under the contract between the United States and its contractor; or

(5) the need for cost or pricing data for the fulfillment of a contract.

**SECTION 205. PURCHASE OF LAUNCH SERVICES.**

(a) Open competition.—The Administrator shall limit its requirements for launch services purchased by the National Aeronautics and Space Administration before the date of enactment of this Act.

(b) Full and open competition.—(1) Contracts to provide launch services to the National Aeronautics and Space Administration shall be awarded on the basis of full, fair, and open competition, consistent with section 2304 of title 10, United States Code, and section 311 of the Act of 1958.

(2) The National Aeronautics and Space Administration shall limit its requirements for launch services purchased by the National Aeronautics and Space Administration before the date of enactment of this Act.

(3) The use of commercial launch services poses an unacceptable risk of loss of a unique scientific opportunity; or

(4) The launch of a payload solely for historical display purposes.

(5) The need for data to protect public health and safety; and

(6) The need for data to carry out mission-specific modifications to the launch vehicle.

(c) Launch vehicles for United States national security or foreign policy purposes.

(d) Phase-in period.—Subsections (a) and (b) shall not apply to launch services and launch vehicles purchased by the National Aeronautics and Space Administration before the date of enactment of this Act.

(e) Historical purposes.—This title shall not be interpreted to prohibit the National Aeronautics and Space Administration from acquiring, owning, or maintaining launch vehicles solely for historical display purposes.

**SECTIONS 206 AND 207. OTHER ACTIVITIES OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.**

(a) Commercial payloads on the space shuttle.—Commercial payloads may not be launched on the space shuttle unless the Administrator of the National Aeronautics and Space Administration determines that—

(1) the payload requires the unique capabilities of the space shuttle; or

(2) launching of the payload on the space shuttle is important for either national security or foreign policy purposes.

(b) Report.—By March 15, 1991, the Administrator, in consultation with the Office of Presidential Personnel, shall submit to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report outlining the minimal requirements for documentation and other administrative data necessary for procurement launch services in a commercially reasonable manner, including—

(1) the need for data to integrate a payload with a launch vehicle; or

(2) the need for data to carry out mission-specific modifications to the launch vehicle; or

(3) the need for notification to the National Aeronautics and Space Administration of changes, delays, or difficulties in the construction or preparation of a launch vehicle that may affect the delivery of its payload to its destination at the time and under the conditions provided for under the contract between the United States and its contractor; or

(4) the need for cost or pricing data for the fulfillment of a contract.

**ANTARCTIC PROTECTION AND CONSERVATION ACT.**

KERRY AMENDMENT NO 3157

Mr. REID (for Mr. KERRY) proposed an amendment to the bill (H.R. 3977) pursuant to resolution S. Res. 30, to require the president of the United States to establish a United States base on the continent of Antarctica, and for other purposes, as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Antarctic Protection Act of 1990.”

SEC. 2. FINDINGS AND PURPOSE.

(a) Findings.—Congress finds that—

(1) the Antarctic continent with its associated and dependent ecosystems is a distinctive and irreplaceable habitat for many unique species and offering a natural laboratory from which to monitor critical aspects of stratospheric ozone depletion and climate change.

(2) Antarctica is protected by a series of international agreements, including the Antarctic Treaty and associated recommendations, the Convention on the Conservation of Antarctic Marine Living Resources, which are intended to conserve the renewable natural resources of Antarctica and to recognize the importance of Antarctica for the conduct of scientific research;

(3) recurring and recent developments in Antarctica, including increased siting of scientific stations, poor waste disposal practices, oil spills, increased tourism, and the over-exploitation of marine living resources, have raised serious questions about the adequacy and implementation of existing agreements and domestic law to protect the Antarctic environment and its living marine resources;

(4) the parties to the Antarctic Treaty have negotiated a Convention on the Regulation of Antarctic Mineral Resources Activities which the United States has signed but not yet ratified;

(5) the Convention on the Regulation of Antarctic Mineral Resources Activities does not provide for the preservation of the frag-
ile environment of Antarctica and could ac­
tually lead to additional degra­
dation of the Antarctic environment, includ­
ing increased risk of oil spills; (7) the Antarctic Treaty Consultative Par­
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resources, including any fossil fuels, min­
erals, water, ice, snow, or any other surface or sub­
surface excavation required to determine the na­
ture and size of mineral resource deposits and the fea­
ibility of their development; (11) the term “mineral re­
source” means any nonliving natural nonrenewable re­
ources, including fossil fuels, minerals, water, ice, or snow, but does not include ice, water, or snow; (12) the term “person” means any individ­
ual, corporation, partnership, trust, associa­
tion, or any other entity existing under the laws of the United States, or any officer, employee, agent, department, or other instrumentality of the Federal Government or of any State or political sub­
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division thereof.
rarely, if ever, receive the recognition they deserve. So I would like to extend my thanks and appreciation to each and every one of you for their loyal and dedicated service.

AMERICAN RESORT AND RESIDENTIAL DEVELOPMENT ASSOCIATION

Mr. MACK. Mr. President, when I came to Congress in 1983, and since I have been a Member of this body, I have been acutely aware of the need to enlist the private sector in solving the myriad of problems facing our Nation.

Many workable, cost-effective solutions evade our grasp in Congress, yet these solutions can be found among those individuals and groups which must face day-to-day problems directly.

In my own State of Florida, our largest industry is tourism. We are home— and second home—to millions of Americans who enjoy our sunshine, beaches, family attractions, and so many other gifts which God has given our great country.

It has taken hard work from hundreds of thousands of people, from digging the first shovel full of dirt to maintaining a resort reservations system.

It has taken the support of Florida's communities along with the contribution of organizations throughout the State to ensure that both our visitors and our residents can enjoy quality services.

Mr. President, one such organization is the American Resort and Residential Development Association (ARRDA). ARRDA is a national trade association serving the resort, recreational land, timeshare, and recreational property management industry.

ARRDA's Seal of Achievement, which is available only to those resorts which commit to having every employee trained and tested according to ARRDA Education Institute standards, has become the distinction between a qualified resort industry employee and one who has not yet taken the steps to ensure the high standards we all want and need as consumers.

That is why I want to take this opportunity to commend ARRDA and the 650 companies who are members of ARRDA for their effort to better serve the public.

I think it is important we have responsible national trade organizations which understand that commitment to excellence and quality is beneficial to a free economy.

FEDERAL RECYCLING BILL

Mr. McCONNELL. Mr. President, yesterday I introduced a bill which I believe takes an important step in our efforts to address the growing environmental problems facing our Nation.

No issue symbolizes these problems more than the landfills crisis. As landfills around the country near capacity, I believe there is an area where the Federal Government can and must do more— that area is recycling.

The economic benefits of recycling are clear. Recycled aluminum cans save 95 percent of the energy needed to extract aluminum from ore. Manufacturing paper from recycled fiber creates 74 percent less air pollution, and 35 percent less water pollution than using virgin fiber. Recycling waste conserves increasingly scarce landfill space at a time when tipping fees have risen nationally 73.5 percent between 1982 and 1988.

Well, Mr. President, I say that this issue needs more than lip-service. It needs more than public relations. It needs action. However, before Congress acts to impose ridiculous costs and regulations on industry, why do we not first get our own house in order?

The Federal Government uses 2.2 percent of all the paper consumed in the United States. Two percent doesn't sound like much, but it amounted to more than 1.7 million tons of paper in 1987. Eighty-five percent of this paper is recyclable.

According to a GAO analysis late last year, if the Federal Government recycled all of the paper it uses, it would save over 5 million cubic yards of landfill space annually. It would save over 3 million barrels of crude oil used in the manufacture of paper. And, in terms we can all identify with, it would save 26 million trees each year.

Mr. President, the good news is that parts of the Federal Government are already doing their fair share to help our national recycling effort. The bad news is that far too many Federal facilities are not complying.

According to the Washington Times, only 120 of the 6,000 Federal facilities nationwide had documented recycling programs in 1988. This is less than a stellar performance from a Federal bureaucracy that is supposed to be setting an example for the rest of the country.

The reason that Federal facilities do not comply with the current law is that they simply do not have an economic incentive to do so. They obtain no benefit from recycling, and no punishment for wasting.

The problem is that these facilities must spend money separating garbage to be recycled, but when this separated material is sold, the money goes back into the bottomless pit of the General Federal Government. Managers of Federal facilities see no direct link between their efforts to recycle and the financial returns that recycling produces. So the bureaucracy continues to throw away recyclable materials, despite the economic benefits of recycling.

Mr. President, this bill is not an elaborate scheme creating task forces and bureaucracies that we will never hear from again—it is just plain common sense.

Approaches like this one address our environmental concerns without causing economic dislocations that, in the end, hurt the working families of America. By providing market-oriented economic incentives to promote Federal Government recycling, I believe we can start a trend in this country toward reasonable solutions to serious environmental problems.

In the process, our children will have more forests to wander in, fresh air to breathe, and an America as beautiful and as vast as their great-grandparents had.

BUSH'S BLUNDERS IN DESERT

Mr. DODD. Mr. President, although some time has passed since the observations of my constituent, former Assistant Secretary of State Roger Hilsman, were published in Newsday, I think you will agree that his insights remain quite pertinent to the ongoing crisis in the Persian Gulf. For the benefit of my colleagues, I request that his article be printed in the Record.

The article follows:

[From Newsday, Aug. 16, 1990]

BUSH'S BLUNDERS IN THE DESERT WON'T TOPPLE HUSSEIN

(By Roger Hilsman)

President George Bush's decision to send troops to Saudi Arabia and to launch an air attack on Iraq is both naive and wildly optimistic.

Bush demands that Saddam Hussein withdraw from Kuwait. For Hussein to turn back on the 'eternal' treaty proclaimed by Saddam, he must purify himself, which he is not like Bush going back on a
First, Bush should have said that any superpower’s intervention in the Middle East was just as unacceptable as Hussein’s threat to Saudi Arabia.

The military problem, and the Arab problem and will have to be dealt with by Arabs. The United States could give both military and economic aid to Kuwait. The problem, however, is that it would not send troops.

Second, the United States should not be the architect of a boycott of Iraq, but it could, if it were so inclined, go along with such a boycott if the Arab states chose to organize one.

Third, and most important, Bush should have warned the Arab states of the necessity of a far-reaching program to make the United States less dependent on Middle Eastern oil. Much could be done to replace oil with other fossil fuels. Solar energy would help. A Manhattan Project could be launched to perfect fusion power, which is infinitely safer than fission. The technology already exists to run automobiles on a form of hydrogen fuel that is safer than gasoline, and with the additional bonus that the by-product is not the pollution that plagues the cities of America, but simple H2.

The rise of nationalism in the Third World convinced most leaders in the West that the best way to prevent involvement in Asia, Africa, Latin America, and the Middle East were gone. It took a defeat by Vietnamese peasants clad in black pajamas to make Lyndon Baines Johnson understand this elemental fact. What will it take to convince George Herbert Walker Bush?

AMERICA’S CHOICE: HIGH SKILLS OR LOW WAGES

Mr. CHAFEE. Mr. President, the Commission on the Skills of the American Workforce recently released a valuable report entitled “America’s Choice: High Skills or Low Wages.” This study, supported by the National Center on Education and the Economy, highlights the tremendous challenges and opportunities confronting America’s work force.

The Commission is comprised of a bipartisan panel of leaders from business, labor, education, and government. Two Rhode Islanders made significant contributions to the report. Ira Magaziner—educator, author, businessman, and founder of the SJS Consulting firm—chaired the Commission. Paul Choquette, Jr., president of the Gilbane Building Co., offered his many talents as a Commission member.

“America’s Choice” provides a thought-provoking plan to develop a high-quality American educational and training system. The proposals are bold, even daring. I would like to mention three of the Commission’s especially noteworthy recommendations:

Recommendation No. 1: Create a new educational performance standard to be met by all students at age 16.

The message in this recommendation is straightforward. If American workers have trouble in the educational arena, they will be unable to compete in the economic arena.

Today’s young people are expected to become productive workers; they must have certain essential skills. Unfortunately, standardized tests do not accurately reflect what students know.
or should know. High school degrees have become devalued. How can students achieve competency without their own expertise? How can businesses evaluate a potential worker’s employment qualifications?

The Commission suggests that by age 16, all American students should achieve competency in a number of subject areas to be measured by a cumulative assessment system. Students who have mastered courses in science, history, math, and other subjects would be awarded a certificate of initial mastery. This system would set objective standards for students, and provide objective means for employers to measure the capabilities of job applicants.

Recommendation No. 2: Develop alternative learning environments for those in or out of school who need special help attaining the new performance standard.

The study recommends the establishment of new local employment and training board youth centers to help young people age 14 to 21 achieve minimal performance standards. These centers could help young people master subjects year-round in an alternative setting. Moreover, youth centers could provide an essential link between displaced students and employers. To help young people understand the importance of proficiency standards, the report suggests that individuals without a certificate or not enrolled in a program leading to a certificate be prevented from entering the job market before age 18. Proposed changes in child labor laws would penalize employers in violation of this provision.

This is an interesting recommendation that merits closer examination. The traditional classroom remains the preferred educational setting, but with dropout rates soaring about 50 percent in many urban areas, youth centers could provide additional role modeling and a supportive setting for preparing individuals for the workforce.

Recommendation No. 3: Encourage employers to invest in further worker training programs.

Only a dedicated investment on the part of American employers will enable American productivity to improve in the next decade. “America’s Choice” suggests that all employers should spend 1 percent of their payroll on education and training.

Employers must invest in human capital. Investments in training and retraining will reap long-term dividends for business. Factory workers, service providers, and upper level management all benefit from further training. Unfortunately, just 10 percent of American training dollars go toward front-line or blue-collar training. If the United States is to remain an economic superpower, across-the-board training is essential.

The Commission has done an excellent job of framing the educational and work force problems confronting the Nation. Equally important, the report suggests a reform to improve American competitiveness. In order to implement many of these proposals, however, schools will need additional resources. The call to improve workforce quality will require a significant human and financial commitment. To ensure a more prosperous future, we must be prepared to make investments today.

For too long politicians, educators, and employers have made excuses for the decline in American productivity. We need to demand quality in the classroom, on the assembly line, and in the boardroom. The publication of “America’s Choice” is an important step toward correcting the problems that are hindering America’s growth in a fiercely competitive world economy.

I encourage my colleagues to read the Commission’s report. It is a valuable document that deserves to be considered seriously.

CABLE LEGISLATION

Mr. DANFORTH. Mr. President, as this session draws to a close, it has become apparent that we will be unable to consider cable television reform legislation on the floor of the Senate in the 101st Congress. It is not for lack of effort; it is not for lack of support by most of our colleagues; it is not for lack of concern by our constituents. No, we are unable to bring cable reform legislation to the floor because of the delaying tactics of the cable industry and a very small number of Senators.

The support for cable reform is both deep and wide. Our constituents are fed up with the high prices and “who cares” attitude of the cable companies. In a poll recently conducted by Cable News Network, 50 percent of television viewers were asked “Should cable TV be regulated?” Mr. President, 92 percent of those responding said “Yes, cable TV should be regulated.”

Why are consumers so unhappy with cable? Consumers are not well served by unregulated cable monopolies. In 99 percent of all communities, cable operators face no competition from another cable system or other multi-channel provider. And yet the 1984 Cable Act forbids regulation of cable rates. Facing neither competition nor regulation, cable rates have skyrocketed. According to the National Cable Television Association’s own statistics, rates for basic cable service in Missouri increased an average of 53 percent between 1986 and 1989. In St. Louis the increase was 61 percent; in Cape Girardeau the increase was 100 percent.

We have tried to respond to the outrage of cable customers. Over a dozen cable reform bills were introduced in this Congress. Because of the leadership of Chairman HOLLINS and Senator JORDAN, the Senate Commerce Committee held 11 days of hearings on cable and related issues in the 101st Congress. The committee heard testimony from scores of witnesses.

Last November, in response to the deluge of complaints I had received about cable from consumers, cities, broadcasters, and potential cable competitors, I introduced a cable reform bill, S. 1880, the Cable Television Consumer Protection Act. The bill enjoyed bipartisan support and was cosponsored by Senators MCCAIN, HATCH, GORE, FORD, LIEBERMAN, LOTT, WARNER, BURDICK, PERRY, Gorton, BURNS, Metzenbaum, Bumpers, and Finkelstein. The Consumer Federation of America called the bill the best piece of consumer legislation pending in Congress, and a companion measure was introduced by Representatives Jim Cooper and Chris Shays.

The theory of S. 1880 is simple and straightforward. First, the bill seeks to encourage competition by ensuring that cable cannot unfairly lock up all the programming. Second, the bill allows local rate regulation—within Federal guidelines—until competition develops. Third, to ensure that cable subscribers will continue to have access to local programming, S. 1880 requires cable operators to carry local broadcast stations.

Despite our best efforts, the delaying tactics of the industry have given cable a short-term victory. Mr. President, from the beginning, the cable industry’s strategy has been to delay consideration of this bill. Months before I introduced S. 1880, the cable industry asked for an opportunity to meet with my staff prior to the actual drafting of the bill. For weeks, the industry representatives delayed and canceled meetings. After the bill was introduced, the Commerce Committee staff held hours of meetings with the cable industry. For a number of weeks, meetings were held every morning. But the cable industry representatives were not forthcoming with proposals. They did not like the bill, but refused to say what would satisfy their concerns.

When the chairman of the Commerce Committee and Communications Subcommittee scheduled S. 1880 for consideration by the committee, the cable industry representatives asked the committee to delay so that they would not be inconvenienced—their annual convention was about to take place. To accommodate their unusual request, the chairman graciously agreed to postpone the markup. Throughout this process, the chairman has been both patient and gracious.
When the markup was rescheduled, the industry representatives told the committee leadership that they did not want to work together on a bill. They said that they wanted to end the regular order process with the Commerce Committee’s June committee markup and try to pass the bill in the wake of a dozen pending cable reform bills. Shortly before the Commerce Committee was to debate its cable bill, the committee leadership reached a compromise and the industry representatives told us that they would not oppose the legislation. However, hours before the markup, the industry representatives made new demands. They insisted on new provisions—provisions that would give cable programmers the explicit legislative authority to refuse to deal with certain potential distributors of video programming. The committee balked at the industry’s tactics and new demands and propelled the bill out of committee on June 7, by a vote of 18 to 1.

On July 26, the House Energy and Commerce Committee reported its cable reform bill by voice vote. The bill passed the House without amendment on the Suspension Calendar on September 10.

Mr. President, even after the Senate Commerce Committee’s June committee’s markup, the committee leadership made it clear that we were willing to sit down with the industry to address their concerns. The door was open, but for months no one came. Then, the night before the full Senate was to consider S. 1880, a cable-friendly amendment was slipped under the door of the Commerce Committee offices. That was the first we had seen of the proposal.

On September 28, the majority leader attempted to bring S. 1880 to the floor. But the opportunity to debate the bill was foreclosed by a tiny maneuver by a company who objected to its consideration. At the end of a Congress, with the crush of budget and appropriations bills to be passed, such delaying tactics spell doom for legislation that is not introduced before the end of session as the chairman of the Communications Subcommittee put it, was “killed and buried” on September 28.

Mr. President, this brief chronology of our dealings with the cable industry illustrates its refusal to negotiate and its delaying tactics. If this cable reform measure had come to a vote in the Senate, it would have passed by an overwhelming majority. I am confident it would have been a veto-proof majority. But for now, the cable industry, not the consumers, have won.

I am confident, however, that consumers will win in the next Congress. I intend to offer a new cable reform bill early in the next Congress. And, Mr. President, let me point out that it will be a tougher measure. Next year’s bill will ensure the role of local franchising authorities in regulating cable.

And, it will address the problem potential competitors face when they want to buy cable programming.

Mr. President, next year’s bill will not be tougher to punish the industry. No, it will be tougher because the committee leadership has learned that there is nothing to be gained by negotiating with the cable industry. This year, we compromised. A number of Senators made compromises in an attempt to move legislation quickly at the end of this Congress. But next year, we will have the luxury of time. And in my view, next year we will have time to do it right.

**NATIONAL FOUNDATION FOR EXCELLENCE**

Mr. BOREN. Mr. President, I would like to thank the members of the Education Subcommittee of the Labor and Human Resources Committee for their support of the proposal for a National Foundation for Excellence. I would like to thank Senators KASSERBAUM, PELL, SIMON, and KENNEBY for their commitment to this scholarship program. I first began work on this legislation in 1985 and am now gratified by its inclusion as a committee amendment to S. 1675 in 1990.

Many of the problems we faced in education in 1985 remain the same, and, in several areas, our problems have worsened. It is crucial in this coming decade that we recognize and begin to address our urgent need to support our best teachers and to replenish the talent pool available for the classroom.

We must work to attract our best and brightest students to the classroom, and we must restore the honor this profession so greatly deserves. We must take positive steps to ensure that outstanding students from disadvantaged backgrounds who are underrepresented in the teaching profession are given the incentive to go into the classroom. We must ensure that our inner city and our rural schools are staffed by teachers who graduated in the top portions of their class or excelled in a particular subject or discipline. And we, as a government, must begin to include American educators and business leaders in coalitions to meet these goals. Mr. President, we must make a commitment to our Nation’s students by making a commitment to our Nation’s teachers. The National Foundation for Excellence and the National Teachers Act makes this commitment.

The National Foundation for Excellence establishes a national foundation funded by a public and private partnership to fund educational costs for outstanding students who wish to enter the teaching profession. It provides for governance by a board of distinguished citizens and is patterned somewhat after the Harry S. Truman Scholarship Foundation which awards scholarships to students interested in careers in public service.

One of the roles of the National Foundation for Excellence will be to fund scholarships for the Paul Douglas Teacher Scholarship Program. Named in honor of the Senator from Illinois who contributed so much to the cause of education during his years in the Senate, the Paul Douglas program will renew our Nation’s commitment to our most needy schools. Scholarship recipients will be chosen based on their strong academic promise, as well as their interest, skill, or experience in fields in which a State has determined that there is a shortage of teachers.

By providing supplemental funds for the Paul Douglas and Teacher Corps Scholarships, the National Foundation for Excellence will encourage more students to apply for these important grants. With the potential to receive up to the full cost of attendance to any university in the United States, we can convince very best students to consider teaching as a career. Since some of our Nation’s finest universities now cost almost $20,000 per year for the cost of attendance, many students can simply not afford to attend such expensive institutions. And those who take out student loans to finance their degrees are faced with enormous debt when they graduate, thus forcing our best and brightest to make career decisions based on salary rather than personal fulfillment.

The National Foundation for Excellence will not only supplement other scholarships but will also provide additional scholarships to other outstanding students.
ing students who have excelled in high school. The goal of the National Foundation for Excellence is to encourage as many of our best and brightest students as possible to pursue a career in teaching.

The National Foundation for Excellence also encourages State and local participation in the program. State or local governments can partially fund a scholarship to a particular student who would then agree to return to that state or local area to teach. Businesses will also be allowed and encouraged to participate at a state or local level by partially funding the scholarships and specifying the State or locality where they want the student to return to teach. In doing so, State and local governments and businesses become an integral participant in our national effort to provide scholarships to our best and brightest students.

This past year has been witness to an avalanche of studies, conferences and panel discussions of the crisis we know face in education. But studies, conferences and discussions will not change SAT scores and academic performance. We must stop talking about the problems in education and start making real changes.

While it is important to understand and evaluate the statistics generated regarding our classrooms, it is even more important to take active steps in trying to change all that we know is wrong with our schools. Again I quote Senator William Fulbright who stated, "creative leadership and liberal education, which in fact go together, are the first requirement for a hopeful future for humankind."

Six years ago, I was so frustrated by the lack of real change that I started a private foundation in my State called the Oklahoma Foundation for Excellence. The foundation is proof positive that action leads to results. The foundation is proof positive that action leads to results.

In a report just released by the Department of Education, our students are falling to make the grade. The study shows that despite the attention given to education this past year, our students are still lacking in many critical areas. Our Nation's students do not have the analytical skills nor the mathematical ability necessary to compete in today's global environment. The report, compiled by the Educational Testing Service of the U.S. Department of Education, also chronicles our students' failure to make the grade in many other important areas of education.

As I have said before on the floor of the U.S. Senate, as one to make this sys, an Ex- chairman of the Intelligence Committee I consider our single greatest threat to our national security to be our failure to fully develop our Nation's human resources. We are moving into a new world environment. Our influence can no longer be based solely upon our military strength. We must equip ourselves for the 21st century by building our economic strength. Our future well being as a Nation will only be able to compete in a world where the world trade is dependent upon the development of our human resources.

In order to develop our human resources, we must start with effective educators. The talents of our best students coming out of colleges and universities in our country must be utilized in the classroom.

Despite the grim news about the current abilities of our Nation's students, it is encouraging to note that we are making progress in the area of teaching. In time, the quality of new teachers, our Nation would be taking an important step toward a brighter future for our Nation's students and teachers.

In creating the National Foundation for Excellence, we at least begin to address the financial concerns facing our Nation's future teachers. And in passing the National Teachers Act we go even farther to help enhance and improve the skills of classroom teachers by creating new opportunities for learning and thus educating.
Act makes a new and vital commitment to family planning. I am proud to see the proposal for a National Foundation for Excellence included in this important legislation.

POPULATION PRESSURES AND ENVIRONMENTAL DEGRADATION IN LATIN AMERICA

Mr. BOSCHWITZ. Mr. President, I spoke here several times earlier this summer about the clear link between world population pressures and the degradation of our global environment. Previously, I described this linkage in the Near East and in sub-Saharan Africa. Today, I would like to touch briefly on the situation in Latin America and the Caribbean.

The populations of North America and of Latin America were roughly equal—165 million inhabitants each. Let us look at what's happened since then, over the past four decades.

Today, the combined population of the United States and Canada totals 278 million. South of the Rio Grande, however, the corresponding figure is 447 million, more than double its size growth due to high fertility. Four of the world's 10 largest cities are in Latin America: Mexico City, Sao Paulo, Buenos Aires, and Rio de Janeiro. Lima, which now ranks 25, will overtake Chicago and London in size during the next decade.

If we think New York City is crowded, consider this: Sao Paulo is smaller in area than Philadelphia, but it has as many people as New York City and Philadelphia combined. Mexico City, with almost twice as many people as New York City crammed into less than half the space.

This growth brings in its wake very negative consequences for the ecology of the region. This spring, the well-regarded World Resources Institute characterized Latin America's environmental situation this way: "Increasingly, pollution and environmental degradation are blighting the natural resources of the region, decreasing its productive potential for current and future generations, and threatening human health and the very existence of countless plant and animal species."

I think most of you know of my grave concerns about the world's diminishing forests. As I have previously described, both here and at last spring's Interparliamentary Conference on Environment and Development, half of the world's tropical forests have been lost since the turn of the century.

More and more people have led to increasing acceleration of land clearing. The situation continues today, with precious little in the way of planned reforestation. This destruction's going on, most unfortunately, in Brazil, which has the world's largest remaining tropical forest, and by far the largest area of annual deforestation. It is also going on in Costa Rica, which has much smaller forest areas, but probably the highest annual rate of forest loss, an estimated 7.6 percent, in the world.

My concerns, and those of most Latin American leaders, however, go beyond forests, important as those resources are. Increasing population pressures have been directly responsible for the region's intensification of agriculture, for opening of marginal land, for the diversion of river and ground water, and for continuing soil erosion.

These burgeoning numbers of people have created life-threatening air, water, and other forms of pollution in growing urban areas, pollution from untreated sewage and from mining and other industrial operations, and damage to coastal estuaries and other marine resources through pollution, clearing of mangrove swamps, and overfishing.

In addition, Latin America is a significant contributor to global environmental problems through emissions of carbon dioxide and other greenhouse gases. Population pressure is not the only cause of this rape of the land. Other culprits include land tenure inequities, lack of emission controls, and very serious fiscal indebtedness.

Ultimately, most of these problems are closely interrelated, and, in my view, can be traced to excessive population growth—by which I mean, growth at levels that threaten sustainable development, growth that outpaces resources available in both land and living space, growth that substantially exceeds the opportunities for productive employment.

Notable achievements in slowing population growth have taken place in a number of countries. Brazil, Colombia, and Mexico, together accounting for almost 61 percent of the region's total population, have all achieved impressive declines in population growth and fertility. Families in those countries have about half of the number of children that families had 30 years ago—primarily due to the increased use of contraceptives by women.

But progress is mixed. The average Haitian woman, for example, has approximately 8 children, and only 7 percent of married in that country use any form of contraception. Most countries in the region fall somewhere between these two extremes, with moderate progress in increasing access to family planning services.

Mr. President, family planning will not solve all of Latin America's problems by any means. But it can help to buy time needed to cope with other development challenges. Precious United States investments of money and expertise have paid off in Brazil, Colombia, and Mexico. We need now, and over the coming years, to provide modest increases in the family planning budget of the Agency for International Development, increases that will allow for continuation and expansion of this work for the whole of the region.

Last month, Senator Wirth and I coordinated a letter to our esteemed colleague, Senator PAT LEAHY, urging his appropriations subcommittee to raise to the House level the amounts designated for AIDS' population programs. I am happy that many of my colleagues were able to go even more pleased that this year's foreign aid appropriations bill now incorporates the increases we sought.

But this is not just one-time need. We need to look forward to your support in the months ahead, to plan for an extremely serious threat that rapid population growth poses to our planet's quality of life.

I ask to place into the Record at this point the September 24, 1990, letter to Senator LEAHY on this vital subject.

The letter follows.

U.S. SENATE
Hon. PATRICK LEAHY,
Chairman, Appropriations Subcommittee on Foreign Operations, Dirksen Senate Office Building, Washington, DC.

Dear Pat: We are writing to express our support to aggressive funding levels for international family planning programs.

As you know, rapid population growth is a vital determinant of environmental quality and economic opportunity around the world. In our lifetimes, the global population has more than doubled from 2 billion to 5 billion people. By the year 2020, demographic data suggests that more than 6 billion people will inhabit the globe. The implications of rapid population growth for the health of our environmental and the economic aspirations of all nations—particularly in the developing nations where growth rates are extremely high—are significant.

Population growth further strains our planet's natural resources and exacerbates threats such as global warming, acid rain and local air pollution. In addition, the population explosion has compounded the challenge of assisting developing nations in the development of growing and vibrant economies. Ultimately, population growth increases the responsibilities of the United States—both in terms of the foreign assistance requested of us and the efforts and resources required to protect the environment.

The issue of the funding level for population assistance should not be confused with the separate debate over the abortion-related criteria which govern the program—such as the Mexico City policy—about which many senators disagree. We all agree, however, that the funding level for population assistance must be increased.
Unfortunately, the U.S. contribution to international family planning programs has declined over the last five years. We are encouraged that the House has approved significant increases for population programs in its foreign assistance appropriations bill. The House bill would provide $250 million through the Development Assistance Act of 1990 and $125 million through the Development Fund for Africa.

Demographic experts have testified that domestic and international support for family planning programs could have a significant impact on the future size of the population if funding increases dramatically in the early 1990’s. These same experts estimate that a comprehensive international program would require a $500 million U.S. commitment in Fiscal Year 1991. Looking ahead, we believe that further increases in U.S. family planning assistance programs will be necessary in the future. At a minimum, we would support the House level of funding as a first step towards realizing the goals set forth by the population experts. We hope that you will build on the efforts begun in the House to provide the fullest possible support for Fiscal Year 1991.

Sincerely,
Tim Wirth, Jeff Bingaman, Daniel K. Akaka, Dave Durenberger, Bob Packwood, Chris Dodd, Alan Cranston, Claiborne Pell, Rudy Boschwitz, Bill Bradley, Bill Cohen, Jim Jeffords, Al Gore, Ted Kennedy, Joe Lieberman, Don Riegel, Herb Kohl, John H. Chafee, John F. Kerry, Brock Adams

REAUTHORIZING THE HIGHER EDUCATION ACT

Mr. LIEBERMAN. Mr. President, I recently visited the Diesel Technology Institute in Enfield, CT, in conjunction with a field hearing I held on educational funding, business, and the U.S. economy. One of the issues that was very much on their minds—as a proprietary school with a very low student loan default rate of less than 9 percent and a consistently high placement rate of 87 percent—we reviewed the upcoming reauthorization of the Higher Education Act of 1965. Their students, who are learning a skill for which there is much demand, often rely on student loans to receive their education. They are concerned that, as the act is reconsidered, students who do repay their loans will lose access to future student loans.

We are about to mark the 25th anniversary of this historic piece of legislation. This reauthorization will define the parameters of higher education for the 21st century. I believe we must continue to ensure that all students, regardless of their socioeconomic status, have access to the kind of education that best meets their needs, interests, and abilities. If we close the door of educational opportunity, not only will individuals suffer, but our Nation’s economic future will be at risk. The United States is to remain economically competitive in the 1990’s and the 21st century, we must train increasing numbers of skilled workers.

Unfortunately, we are not meeting this challenge. Secondary schools are oriented toward the students who go on to college. Our education system is failing to keep many of the non-collegebound students in school or to teach them the skills they need. We also have an inadequate system of retraining displaced workers and upgrading the skills of our current work force to keep up with changes in technology.

When we reauthorize student financial aid programs, we must recognize the diversity of needs for postsecondary training and education, and the importance of student aid to individuals attending various types of schools. We should be certain that financial aid does not favor one type of education over another, arbitrarily disrupting goals for our economy.

There is no doubt that loan default rates are too high and have become a serious and costly problem. We must take tough steps to fight fraud in student aid programs and ensure that students pay back their loans. As a member of the Permanent Subcommittee on Investigations of the Governmental Affairs Committee, I have participated in a series of hearings on this problem chaired by the distinguished Senator from Georgia [Mr. Nunn] this year. We also must not jeopardize good education programs while we pursue bad ones. Part of the answer could be to ensure that students receive better information before making educational decisions and incurring debt. One possible reform, suggested to me by the Diesel Technology Institute, that could help students make informed decisions about which school to attend, would be to require all postsecondary institutions to provide information on the costs of education, success rates, and employment or continuing education possibilities experienced by their graduates.

As we consider action to reduce student loan default rates, we must make sure that we do not deny access to education to our young people, especially low-income people who otherwise may not get the education and training they need for meaningful employment. To deny those at the bottom of the economic ladder the opportunity to go to school would only diminish the intent of the Higher Education Act of 1965.

FOR THE RELIEF OF LEROY W. SHEBAL

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 936, S. 620, a bill for the relief of Leroy W. Shebal of North Pole, AK.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:
A bill (S. 620) for the relief of Leroy W. Shebal of North Pole, AK.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources. The amendment and strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. Notwithstanding any other provision of law, including, but not limited to section 8 of the Wild and Scenic Rivers Act (16 U.S.C. 1279) or any provision of the public land laws of the United States, the Secretary shall survey and convey all right, title, and interest of the United States in the approximately five acres located at township 8 north, range 1 west, section 38, west half of southwest quarter, Fairbanks Meridian Interest, and describe in Small Tract Application Numbered F-021161 and which is currently under permit to Leroy W. Shebal, to Leroy W. Shebal in exchange for the sum of $190 dollars or $3,000 whichever is less, and subject to the following conditions:
(a) no property improvements on such property may not be substantially expanded and use of the property is limited to prior or current levels;
(b) no retention of a right of first refusal to reacquire such property at fair market value (as set forth in the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 [Public Law 91-646, 84 Stat. 1950] upon a decision by Leroy W. Shebal to sell such property or his death: Provided, That, such right shall be extinguished if not exercised by the Secretary by payment of such value within one year from the date on which Leroy W. Shebal notifies the Secretary in writing of his decision to sell the property or the date on which Leroy W. Shebal dies, whichever occurs first.
Sec. 2. Section 1110(b) of the Alaska National Interest Lands Conservation Act of 1979 (Public Law 96-487, 94 Stat. 2371), shall not apply to the property described in section 1 of this Act.

The provisions of this Act shall be effective only if Leroy W. Shebal notifies the Secretary, in writing, within one year from the date of enactment of his intention to purchase the property.

The PRESIDING OFFICER. The bill is open to amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

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

S. 620

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

Section 1. Notwithstanding any other provision of law, including, but not limited to section 8 of the Wild and Scenic Rivers Act (16 U.S.C. 1279) or any provision of the public land laws of the United States, the
Secretary shall survey and convey all right, title, and interest of the United States in the approximately five acres located at township 8 north, range 1 west, section 36, west half of southwest quarter, Fairbanks Meridian and described in Small Tract Application Numbered F-021611 and which is currently under permit to Leroy W. Shebal to Leroy W. Shebal in exchange for the sum of $650 in 1965 dollars adjusted for inflation to 1990 dollars or $3,000, whichever is less, and subject to the following conditions:
(a) existing improvements on such property may not be substantially expanded and use of the property is limited to prior or current levels;
(b) retention of a right of first refusal to reacquire such property at fair market value (as set forth in the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (Public Law 91-646, 84 Stat. 1965)) upon a decision by Leroy W. Shebal to sell such property or his death; Provided, That, such right shall be extinguished if not exercised by the Secretary by payment of such value within one year from the date on which Leroy W. Shebal notifies the Secretary in writing of his decision to sell the property or the date on which Leroy W. Shebal dies, whichever occurs first.

Sec. 2. Section 1110(b) of the Alaska National Interest Lands Conservation Act (Public Law 96-487, 94 Stat. 2371), shall not apply to the property described in section 1 of this Act.

Sec. 3. The provisions of this Act shall be effective only if Leroy W. Shebal notifies the Secretary, in writing, within one year from the date of enactment of his intention to purchase the property.

Mr. REID. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was adopted.

Mr. REID. 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:

Amendment Number 3148

Mr. REID. 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 bill, insert the following:

SEC. EFFECTIVE DATE.

The amendment made by section 2 shall take effect October 1, 1990.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3148) was agreed to.

Mr. REID. I move to reconsider the vote.

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

The motion to lay on the table was adopted.

Mr. REID. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was adopted.

Mr. REID. 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:

Amendment Number 3149

Mr. REID. Mr. President, I send an amendment to the desk on behalf of Senator KENNEDY.

The PRESIDING OFFICER. The amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. Reid], for Mr. KENNEDY, proposes an amendment numbered 3149.

Mr. REID. 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 bill, insert the following:

SEc. 2. There are authorized to be appropriated $7,500,000 for fiscal year 1992. The Secretary is authorized to carry out this section under appropriations made for the fiscal year 1992.
economic competitiveness by ensuring that each child is educated to his or her full potential and to encourage them to finish secondary school. I voted to applaud Senator Pell for moving this bill, and for working with me on my amendment to authorize an important project at Loyola University of Chicago.

Loyola University of Chicago is in a unique position to facilitate the goals of this legislation through its Center for Commerce and Industrial Expansion. Loyola University has a long-standing reputation of commitment to the Chicago community—and particularly to educationally disadvantaged students—through its outreach programs.

For 20 years, the Upward Bound Program has reached out to low-income students, providing them with skills to finish high school and pursue college education. For almost 50 years, the Daley Center has provided counseling to disturbed urban children and teenagers along with their families, enabling them to cope with the problems that frequently result in school failure.

In the Hispanic Alliance, Loyola provides peer tutoring at the Robert Clemente High School in Chicago—a program which reduced the dropout rate of participants by 40 percent. The new Midwest Comprehensive Regional Center for Minorities, directed by Loyola Professor Eric Hamilton, will increase the presentation of minorities in specific and technological careers. The program targets minority students, beginning at kindergarten level; it provides special support for promising students from the junior high school level to the college level.

The Center for Commerce and Industrial Expansion is designed to strengthen the university's downtown campus, and provide support for both campus-based and outreach programs. One highlight of the new center will be the most advanced library in Chicago—a library with training with library skills, this library of the future will support advancement in the second stage of literacy—the ability to access public information available only as electronic data.

H.R. 5140 provides grant authority and priorities for community-based organizations to meet the basic educational needs of inner city, low-income youths. Among the priorities established are a need for successful transition from vocational and academic programs to a broad range of post-secondary institutions, employment, and integration into America's economic mainstream. Through the programs I have already detailed as well as Loyola University's outreach service to the Chicago business community, I believe the Center for Commerce and Industrial Expansion can have a significant impact on the youth of the city of Chicago and can serve as a national model.

Mr. President, I ask that my colleagues accept this amendment to H.R. 5140.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3149) was agreed to.

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. STEVENS. I move to 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. 5140), as amended, was passed.

Mr. STEVENS. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

MENTAL HEALTH AMENDMENTS OF 1990

Mr. REID. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2628.

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

Resolved, That the bill from the Senate (S. 2628) entitled "An Act to amend the Public Health Service Act to reauthorize certain Institute of Mental Health grants and to improve provisions concerning the State comprehensive mental health services plan, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.
This Act may be cited as the "Mental Health Amendments of 1990".

SEC. 2. REAUTHORIZATION OF DEMONSTRATION GRANTS FOR HEALTH SERVICES.
(a) In General.—Section 529(a) of the Public Health Service Act (42 U.S.C. 290c-13(a)) is amended to read as follows:

"(a) SERIOUSLY MENTALLY ILL INDIVIDUALS, AND CHILDREN AND ADOLESCENTS WITH SERIOUS EMOTIONAL AND MENTAL DISTURBANCES. —" (1) In general.—The Secretary, acting through the Director of the National Institute of Mental Health, may make grants to States, political subdivisions of States, and nonprofit private agencies for—

(A) mental health demonstration projects for the planning, coordination and improvement of community services (including outreach and consumer-run self-help services) for seriously mentally ill individu-
(A) in paragraph (1), by inserting before the period the following: "and children with serious emotional and mental disorders";
(B) in paragraph (3), by striking "describe services to be provided and inserting the following: "describe services, available treatment options, and available resources (including Federal, State and local public services, services to be provided to individuals and children with serious emotional and mental disorders with Federal, State and local public and private resources, and to the extent practicable, private services and resources) to be provided";
(C) by redesignating paragraphs (5) through (8) as paragraphs (6) through (9), respectively;
(D) by striking paragraph (4) and inserting the following new paragraphs:
(4) The State plan shall describe health and mental health services, rehabilitation services, employment services, housing services, educational services, medical and dental care, and other support services to be provided to individuals and children with serious emotional and mental disorders with Federal, State and local public and private resources, and to the extent practicable, private services and resources, and to the extent practicable, available treatment options, and available resources (including Federal, State and local public services, services to be provided to individuals and children with serious emotional and mental disorders with Federal, State and local public and private resources, and to the extent practicable, private services and resources) to be provided; and
(E) by adding at the end the following new subsections:
(10) The State plan shall describe a system of integrated social services, educational services, juvenile services, substance abuse treatment services, health and mental health services, should be provided in order for children and adolescents with serious emotional and mental disorders to receive care appropriate for their multiple needs, including services to be provided by local school systems under the Education of the Handicapped Act.
(11) The State plan shall describe the financing and staffing necessary to implement the requirements of such plan.

(c) Enforcement.—Section 1926 of the Public Health Service Act (42 U.S.C. 300x–12) is amended—
(1) in subsection (b)—
(A) by striking "1991" and inserting "1992"; and
(B) by striking "1990" and inserting "1991";
(2) in subsection (c), in the first sentence—
(A) by striking "1992" and inserting "1993"; and
(B) by striking "1991" and inserting "1992";
(3) subsection (d), in the second sentence, by striking "the State is permitted to expend for administrative expenses" and inserting "that the State received under such part, as such part subsisted on October 1, 1985";
(4) in subsection (e)—
(A) by striking "for any fiscal year" and inserting "during the period covered by the plan";
(B) by striking "for such fiscal year" and inserting "during such period"; and
(C) by inserting before the period the following: "that the State is permitted to expend for administrative expenses" and inserting "that the State received under such part, as such part subsisted on October 1, 1985";

Mr. REID. Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion. The motion is agreed to.

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

The motion to lay on the table was agreed to.

F.D.A. REVITALIZATION ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 440, S. 845, a bill to revitalize the Food and Drug Administration.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:
A bill (S. 845) to amend the Federal Food, Drug, and Cosmetic Act to revitalize the Food and Drug Administration, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Labor and Human Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the "F.D.A. Revitalization Act".

(b) Table of Contents.—The table of contents is as follows:
Sec. 1. Short title; table of contents.
Sec. 2. References to the Federal Food, Drug, and Cosmetic Act.

Mr. REID. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

CONGRESSIONAL RECORD—SENATE October 24, 1990
TITIE I—CONSOLIDATED ADMINISTRATIVE AND LABORATORY FACILITY
Sec. 101. Consolidated administrative and laboratory facility.

TITIE II—SENIOR SCIENTIFIC SERVICE
Sec. 201. Senior Scientific Service.

TITIE III—RECOVERY AND RETENTION OF FEDERAL AID REQUESTS
Sec. 301. Recovery and retention of fees for FOIA requests.

TITIE IV—SMALL BUSINESS TRAINING AND TECHNICAL ASSISTANCE
Sec. 401. Small business training and technical assistance.

TITIE V—BIOTECHNOLOGY DEMONSTRATION PROJECT
Sec. 501. Biotechnology demonstration project.

TITIE VI—TRAINING AND LOAN REPAYMENT PROGRAMS
Sec. 601. Training and loan repayment programs.

TITIE VII—SCIENTIFIC REVIEW GROUPS
Sec. 701. Scientific review groups.

TITIE VIII—HEALTH, SAFETY, TECHNOLOGY, AND NUTRITION ADVISORY COMMITTEE
Sec. 801. Human Food Safety, Technology, and Nutrition Advisory Committee.

TITIE IX—AUTOMATION OF FDA
Sec. 901. Automation of FDA.

TITIE X—COMPENSATION AND EMPLOYMENT REQUIREMENTS FOR FDA AND EPA SCIENTISTS
Sec. 1001. Compensation and employment requirements for FDA and EPA scientists.

TITIE XI—FUNDING FLOOR FOR FDA
Sec. 1101. Funding floor for FDA.

TITIE XII—PLAN OF MANAGEMENT INITIATIVES
Sec. 1201. Plan of management initiatives.

SEC. 1. REFERENCES TO THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.

Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section other provison, the reference shall be considered to be to a section of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

TITIE I—CONSOLIDATED ADMINISTRATIVE AND LABORATORY FACILITY
Sec. 101. Consolidated administrative and laboratory facility.

Chapter VIII (21 U.S.C. 731 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 101. CONSOLIDATED ADMINISTRATIVE AND LABORATORY FACILITY.
"(a) Authority.—The Secretary, in consultation with the Administrator of the General Services Administration, shall enter into contracts for the design, construction, and operation of a consolidated Food and Drug Administration administrative and laboratory facility.

(b) Awarding of Contract.—The Secretary will solicit contract proposals under subsection (a) from interested parties. In awarding contracts under such subsection, the Secretary shall review such proposals and give priority to alternatives that are the most cost effective for the Federal
Government and that allow for the use of donated land, property, or lease-purchase arrangements. A contract under this subsection shall not be entered into unless such contract results in a net cost savings to the Federal Government over the duration of the contract, as compared to the Government purchase price including borrowing costs.

**TITLE II—SENIOR SCIENTIFIC HEALTH SERVICE**

SEC. 201. SENIOR SCIENTIFIC HEALTH SERVICE. Part A of title III of the Public Health Service Act is amended by inserting after section 301 (42 U.S.C. 241) the following new section:

> "SEC. 301A. SENIOR SCIENTIFIC HEALTH SERVICE.
> 
> "(a) Establishment.—The Secretary may establish a Senior Scientific Health Service (hereinafter in this section referred to as the Service).
> 
> "(b) Membership.—
> 
> "(1) Civil Service.—An individual chosen to serve in the Service shall not be a part of the competitive service established under chapter 33 of subpart B of part I of title 5, United States Code.
> 
> "(2) Factors.—A person may be appointed to the Service by the Secretary based solely on distinction and achievement of the person in the field of biomedical research or clinical research evaluation, and may be appointed as a member of the Service in carrying out the activities described in this subsection.
> 
> "(c) Duties.—A member of the Service shall be assigned to duties that require expertise in biomedical research, behavioral research, or clinical research evaluation, and may also be assigned to supervise other scientists in carrying out the activities described in this subsection.
> 
> "(d) Compensation.—An individual selected to serve on the Service by the Secretary under subsection (b) shall be compensated at a rate not in excess of 110 percent of the annual rate of pay in effect for level I of the Executive Salary Schedule established in section 211, the continuous service in the Service shall not be a part of the competitive service established under chapter 33 of subpart B of part I of title 5, United States Code.
> 
> "(e) Retirement.—For purposes of section 211, the continuous service in the Service of any person who commences such service on termination of such person's service as a commissioned officer in the Public Health Service Corps may be treated as service as a commissioned officer in the Public Health Service Corps and shall be counted as service as a commissioned officer subject to any other retirement system for officers and employees of the Federal Government.
> 
> "(f) Enrollment.—Chapter 120 of title 5 shall be amended by inserting after section 5948(g)(1) of title 5, United States Code, an additional new section 5948(g)(1A) to read:
> 
> "(1A) Section 301A of the Public Health Service Act, relating to the Senior Scientific Health Service; and".
> 
> **TITLE III—RECOVERY AND RETENTION OF FEES FOR FOIA REQUESTS**

SEC. 301. RECOVERY AND RETENTION OF FEES FOR FOIA REQUESTS. Chapter VII (21 U.S.C. 371 et seq.) is further amended by adding at the end thereof the following new section:

> "SEC. 701. RECOVERY AND RETENTION OF FEES FOR FOIA REQUESTS.
> 
> "(a) In General.—The Secretary, acting through the Commissioner of Food and Drugs, may—
> 
> "(1) require an applicant to pay the fees described in paragraph (1) in subsection (b) and paragraph (2) in subsection (d); and
> 
> "(2) act and charge fees to recover all reasonable costs incurred in processing requests made under section 552 of title 5, United States Code, to control obtained or created under this Act or any other Federal law for which responsibility for administration has been delegated to the Commissioner by the Secretary.
> 
> "(2) retain all fees charged for such requests; and
> 
> "(3) establish an accounting system and procedures for control receipts and expenditures of fees received under this section.
> 
> "(b) Use of Fees.—The Secretary and the Commissioner of Food and Drugs shall not use fees received under this section for any purpose other than funding the processing of requests described in subsection (a)(1). Such fees shall not be used to reduce the amount of funds made to carry out other provisions of this Act.
> 
> "(c) Waiver of Fees.—Nothing in this section shall supersede the right of a requester to obtain a waiver of fees pursuant to section 552(g)(4)(A) of title 5, United States Code.
> 
> **TITLE IV—SMALL BUSINESS TRAINING AND TECHNICAL ASSISTANCE**

SEC. 401. SMALL BUSINESS TRAINING AND TECHNICAL ASSISTANCE. Chapter VII (21 U.S.C. 371 et seq.) as amended by sections 1001(a)(1) to (a)(4) of title 5, United States Code, is further amended by adding at the end thereof the following new section:

> "SEC. 712. SMALL BUSINESS TRAINING AND TECHNICAL ASSISTANCE.
> 
> "(a) In General.—The Secretary, acting through the Commissioner of Food and Drugs, shall establish within the Food and Drug Administration an identifiable office to provide technical and other nonfinancial assistance to small manufacturers of medical devices, drugs, cosmetics, and foods to assist the manufacturers in complying with this Act.
> 
> "(b) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section $12,000,000 for each of the fiscal years 1991 through 1992.
> 
> **TITLE V—BIOTECHNOLOGY DEMONSTRATION PROJECT**

SEC. 501. BIOTECHNOLOGY DEMONSTRATION PROJECT. Chapter VII (21 U.S.C. 711 et seq.) as amended by sections 1001 and 1001, is further amended by adding after section 401 the following new section:

> "SEC. 711. BIOTECHNOLOGY DEMONSTRATION PROJECT.
> 
> "(a) In General.—The Secretary shall establish and carry out a demonstration project under which the Secretary shall use the facilities of a public or private institution that receives a grant provided under this subchapter to train health professionals and scientists in regulatory review.
> 
> "(b) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section $15,000,000 for each of the fiscal years 1991 through 1992.
> 
> **TITLE VI—TRAINING AND LOAN REPAYMENT PROGRAMS**

SEC. 601. TRAINING AND LOAN REPAYMENT PROGRAMS. The Act (21 U.S.C. 301 et seq.) is amended by adding after section 10 the following new chapter:
"Subchapter B—Loan Repayment Program"

"SEC. 1011. LOAN REPAYMENT PROGRAM."

"The Secretary shall establish a loan repayment program under which the Secretary shall offer loans made available to carry out this subchapter, to the extent practicable, for the purpose of obtaining in regulatory review in exchange for the individuals serving a period of time as employees of the Food and Drug Administration."

"SEC. 1012. AUTORIZATION OF APPROPRIATIONS."

"(a) REGULATIONS.—Not later than 1 year after funds are first made available to carry out this subchapter, the Secretary shall issue such regulations that are necessary to carry out this subchapter, including regulations prescribing eligibility for the loan repayment program, the method of disseminating applications to participate in the program, the content of a contract entered into to participate in the program, costs that are eligible for payment through the contract, and such other information as is necessary to carry out the program."

"(b) RELATIONSHIP TO NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENT PROGRAM.—The Secretary shall carry out the loan repayment program established under this subchapter, to the extent practicable, in a manner that is consistent with the National Health Service Corps Loan Repayment Program established under section 338B of the Public Health Service Act (42 U.S.C. 254l-1).

"(c) EMPLOYMENT CEILING.—Notwithstanding any other provision of law, an individual who has entered into a written contract with the Secretary under this subchapter, while undergoing academic or other training, shall not be counted against any employment ceiling affecting the Department."

"SEC. 1013. AUTORIZATION OF APPROPRIATIONS."

"There are authorized to be appropriated to carry out this subchapter $2,000,000 for each of the fiscal years 1990 through 1992."
TITLE I—CONSOLIDATED ADMINISTRATIVE AND LABORATORY FACILITY
SEC. 101. CONSOLIDATED ADMINISTRATIVE AND LABORATORY FACILITY.

Chapter VII (21 U.S.C. 371 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 71A. CONSOLIDATED ADMINISTRATIVE AND LABORATORY FACILITY.

"(a) AUTHORITY.—The Secretary, in consultation with the Administrator of the Food and Drug Administration, shall cause such proposals to be solicited, be reviewed by the Secretary and the Administrator, and, if approved by both the Secretary and the Administrator and the Secretary shall have the power, in the discretion of the Secretary, to enter into contracts for the design, construction, operation and supervision of the consolidated Food and Drug Administration administrative and laboratory facility.

"(b) AWARDS OF CONTRACT.—The Secretary shall solicit contract proposals under subsection (a), and may enter into contracts, with or without formal advertising under such subsection, the Secretary shall review such proposals and give priority to those that are the most cost effective for the Federal Government and that allow for the use of donated land, federally owned property, lease-purchase arrangements. A contract under this subsection shall not be entered into unless such contract results in a net cost savings to the Federal Government over the duration of the contract, as compared to the Government purchase price including borrowing by the Secretary of Treasury.

"(c) DONATIONS.—In carrying out this section, the Secretary shall have the power, in connection with real property, buildings, and facilities, to accept on behalf of the Food and Drug Administration, gifts or donations of services or property, real or personal, as the Secretary determines to be necessary.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $100,000,000 for each fiscal year beginning in the year 1991, and such sums as may be necessary for each of the subsequent fiscal years, to remain available until expended.

TITLE II—RECOVERY AND RETENTION OF FEES FOR FOIA REQUESTS
SEC. 281. RECOVERY AND RETENTION OF FEES FOR FOIA REQUESTS.

Chapter VII (21 U.S.C. 371 et seq.) as amended by sections 101 and 201 of this Act is further amended by adding at the end thereof the following new section:

"SEC. 71B. RECOVERY AND RETENTION OF FEES FOR FOIA REQUESTS.

"(a) IN GENERAL.—The Secretary, acting through the Commissioner of Food and Drugs may—

"(1) establish an accounting system and procedures to control receipts and expenditures of fees received under this section.

"(b) USE OF FEES.—The Secretary and the Commissioner of Food and Drugs shall not use fees received under this section for any purpose other than funding the processing of requests described in subsection (a)(1). All monies so received shall be deposited in the Treasury of the United States to reduce the amount of funds made to carry out other provisions of this Act.

"(c) WAIVER OF FEES.—Nothing in this section shall supersede the right of a requester to obtain a waiver of fees pursuant to section 552(a)(4)(A) of title 5, United States Code.

TITLE III—SCIENTIFIC REVIEW GROUPS
SEC. 301. SCIENTIFIC REVIEW GROUPS.

Chapter IX (21 U.S.C. 391 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 903. SCIENTIFIC REVIEW GROUPS.

Without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule Positions Schedule Title 5, United States Code, the Commissioner of Food and Drugs may—

"(1) establish such technical and scientific review groups as are needed to carry out the functions of the Food and Drug Administration (including functions prescribed under this Act); and

"(2) appoint and pay the members of such groups, except that officers and employees of the United States shall not receive additional compensation for service as members of such groups.

TITLE IV—AUTOMATION OF FDA
SEC. 401. AUTOMATION OF FDA.

Chapter VII (21 U.S.C. 371 et seq.) as amended by sections 101 and 201 of this Act is further amended by adding at the end thereof the following new section:

"SEC. 71C. AUTOMATION OF FOOD AND DRUG ADMINISTRATION.

"(a) IN GENERAL.—The Secretary, acting through the Commissioner of Food and Drugs, shall automate appropriate activities of the Food and Drug Administration to ensure timely review of new foods, drugs, devices, and other products.

"(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated each fiscal year such sums as may be necessary to carry out this section.

Mr. LEAHY. Mr. President, will the distinguished Senator from Vermont yield for a question?

Mr. HATCH. I am pleased to yield to my colleague from Vermont.

Mr. LEAHY. I understand that a reference to section 552(a)(4)(A) of title 5, United States Code, the Freedom of Information Act, was inadvertently dropped from title II of S. 845, the FDA Revitalization Act.

The change in section 201 of this amendment which we jointly support clarifies that the fees set and charged by the Secretary, acting through the Commissioner of Food and Drugs, will conform to the 1986 Freedom of Information Reform Act. Is that correct?

Mr. HATCH. Yes, my colleague from Vermont.

Mr. LEAHY. Thank you for your clarification and his cooperation.

Mr. HATCH. Mr. President, I am pleased to join Senator KENNEDY today in support of S. 845, the FDA Revitalization Act. This bipartisan legislation was reported out of the Committee on Labor and Human Resources by a 16-to-0 vote.

The FDA is a preeminent force in consumer protection and for advancing the technological development of new foods, drugs, devices, and cosmetics. This act is intended to ensure that the FDA can function in today's climate with sufficient resources.

The role of today's FDA covers a greater portion of our lives than ever envisioned by authors of the original act in 1938. Today, the FDA is responsible for regulating more than 700 billion dollars' worth of foods sold annually to Americans—constituting about 25 percent of the total food dollar spent for personal consumption in the United States each year. The average American pays about $2 a year to have the agency assure the soundness of goods worth an average of $3,000 to each consumer.

In the years ahead, the FDA will be asked to respond to the many innovations in medical, medical devices, and food products that American technology will inevitably develop. Developments in biotechnology alone are changing the face of science and adding to the demands on FDA. In order to meet these challenges, and continue to successfully react to unanticipated crises, the agency will need new resources. Whether it be protecting the consumer from cyanide in Tylenol or Chilean grapes, ensuring the safety of the Nation's blood supply, or swiftly bring new products to desperately ill patients in the face of a national epidemic, the FDA must have the resources to do their job effectively.

FDA needs resources, and I don't mean merely money. They need some important tools. The FDA Revitalization Act will strengthen the infrastructure of FDA.

The FDA is currently scattered among 23 different buildings at seven different sites in the Washington, DC, area. One laboratory is in a converted chicken coop built over 50 years ago; other offices are remodeled bathrooms and freezers. One FDA field office in particular is so run down that it has a net suspended above its entrances to catch falling debris and protect the employees from serious injury. The FDA laboratories have serious problems—including inadequate electrical, air, water, and waste disposal systems. These can result in damaging scientific equipment and result in inaccurate test results.
The FDA revitalization bill will require that FDA be consolidated into one office space or campus. The FDA needs to enter the computer age by automating the application process, reducing the mountainous paper flow under which the agency is now laboring. In a recent visit to the FDA, I saw the piles of paper that FDA staff must handle, over 100,000 pages of paper for a new drug application. I was told that because of the limited space that the frequent complaint of the FDA is setting on my application, was actually true because there frequently is no room for a chair in the reviewer's office. S. 845, calls for updating FDA's existing automated systems and introducing automation throughout the Agency.

With a revitalized FDA, the result should be newer and safer food products, drugs, cosmetics and medical devices. Also products will be approved in a scientifically sound and more timely manner. S. 845 will provide FDA with the resources to fulfill its basic mission and to strengthen its readiness to meet the challenges ahead of it. Mr. President, I urge my colleagues to join me in moving this legislation forward for the President's signature.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The amendment (No. 3150) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended. The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on engrossment and the third reading of the bill.

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

Section 1. Short title, table of contents.
(a) Short title. This Act may be cited as the "Food and Drug Administration Revitalization Act."
(b) Table of contents. The table of contents is as follows:
Sec. 1. Short title; table of contents.
Sec. 2. References to the Federal Food, Drug, and Cosmetic Act.

Title I—Consolidated Administrative and Laboratory Facility
Sec. 101. Consolidated administrative and laboratory facility.

Title II—Recovery and Retention of Fees for FOIA Requests
Sec. 201. Recovery and retention of fees for FOIA requests.

Title III—Scientific Review Groups
Sec. 301. Scientific review groups.

Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision of this Act, such amendment or repeal shall apply to such Act, or section or other provision, as the case may be, including any amendment made by such amendment or repeal.

As used in this Act, the terms "Secretary", "FDA", "Food and Drug Administration", "FDA office", "office", "agency", "Federal Government", "Federal Government in the United States", "United States", and "agency or Federal Government" shall be given the same meanings as in title 5, United States Code.

(3) establish an accounting system and procedures to control receipts and expenditures of fees received under this section.

(c) Use of Fees.—The Secretary and the Commissioner of Food and Drugs shall not use fees received under this section for any purpose other than funding the processing of requests described in subsection (a)(1).

(2) In General.—The Secretary, acting through the Commissioner of Food and Drugs, shall maintain an accounting system and procedures to control receipts and expenditures of fees received under this section.

(c) Waiver of Fees.—Nothing in this section shall supersede the right of a requester to obtain a waiver of fees pursuant to section 552a(a)(4)(A) of title 5, United States Code.

Title III—Scientific Review Groups
Sec. 301. Scientific review groups.

Chapter IX (21 U.S.C. 391 et seq.) is amended by adding at the end thereof the following new section:

Section 710. Consolidated Administrative and Laboratory Facility.

Chapter VII (21 U.S.C. 371 et seq.) is amended by adding at the end thereof the following new section:

Section 711. Recovery and Retention of Fees for FOIA Requests.

Title IV—Automated FDA
Sec. 401. Automation of FDA.

Chapter VII (21 U.S.C. 371 et seq.) as amended by sections 101 and 201 of this Act is further amended by adding at the end thereof the following new section:

Section 712. Automation of Food and Drug Administration.

(3) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section $100,000,000 for fiscal year 1991, and such sums as may be necessary for each of the subsequent fiscal years, to remain available until expended.

Title II—Recovery and Retention of Fees for FOIA Requests
Sec. 201. Recovery and retention of fees for FOIA requests.

Chapter VII (21 U.S.C. 371 et seq.) as added by section 101 of this Act is further amended by adding at the end thereof the following new section:


(a) In General.—The Secretary, acting through the Commissioner of Food and Drugs, may—

(1) Net and change fees, in accordance with section 552a(a)(4)(A) of title 5, United States Code, therefrom incurred in processing requests made under section 552 of title 5, United States Code, for records obtained or created under this Act or any other Federal law for which responsibility for administration has been delegated to the Commissioner by the Secretary.

(b) Authorization of Appropriations.—There are authorized to be appropriated each fiscal year such sums necessary to carry out this section.
desk, that the bill be deemed read the third time and passed, and the motion to reconsider be laid upon the table.

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

So the bill (H.R. 5433) was passed.

MEASURE PLACED ON THE CALENDAR—H.R. 4407

Mr. REID. Mr. President, I ask unanimous consent that the following bill received from the House be placed on the calendar: H.R. 4407, to require all law enforcement agencies to report all cases of missing persons under age 18 to the National Crime Information Center of the Department of Justice.

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

ADMINISTRATIVE DISPUTE RESOLUTION ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 1012, S. 971, the Administrative Dispute Resolution Act.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 971) to authorize and encourage Federal agencies to use mediation, conciliation and other techniques for prompt and informal resolution of disputes, 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 which had been reported from the Committee on Governmental Affairs, with an amendment to strike all after the enacting clause, and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE. This Act may be cited as the "Administrative Dispute Resolution Act".

SEC. 2. FINDINGS.

The Congress finds that—

(1) administrative procedure, as embodied in chapter 5 of title 5, United States Code, and other statutes, is intended to offer a prompt, expert, and inexpensive means of resolving disputes as an alternative to litigation in the Federal courts;

(2) administrative proceedings have been found to be administratively formal, costly, time-consuming, and lengthy resulting in unacceptable expenditure of time and in a decreased likelihood of achieving consensual resolution of disputes;

(3) alternative means of dispute resolution have been used in the private sector for many years and, in appropriate circumstances, have yielded decisions that are faster, less expensive, and less contentious;

(4) such alternative means can lead to more creative, efficient, and sensible outcomes;

(5) such alternative means may be used administratively, in a wide variety of administrative programs;

(6) explicit authorization of the use of tested dispute resolution techniques will eliminate ambiguity of agency authority under existing law;

(7) Federal agencies may not receive the benefits and advantages that were developed in the private sector, but may also take the lead in the further development and refinement of such techniques;

(8) the availability of a wide range of dispute resolution procedures, and an increased understanding of the most effective means of conflict resolution will enhance the operation of the Government and better serve the public.

SEC. 3. PROMOTION OF ALTERNATIVE MEANS OF DISPUTE RESOLUTION.

(a) PROMOTION OF AGENCY POLICY. Each agency shall adopt a policy that addresses the use of alternative means of dispute resolution and case management. In developing such a policy, each agency shall—

(1) consult with the Administrative Conference of the United States and the Federal Mediation and Conciliation Service; and

(2) examine alternative means of resolving disputes in connection with—

(A) formal and informal adjudications;

(B) rulemakings;

(C) enforcement actions;

(D) issuing and revoking licenses or permits;

(E) contract administration;

(F) litigation brought by or against the agency; and

(G) other agency actions.

(b) DISPUTE RESOLUTION SPECIALISTS. The head of each agency shall designate a senior official to be the dispute resolution specialist of the agency. Such official shall be responsible for implementing the policy of the agency developed under subsection (a). The head of each agency shall designate a senior official to be the dispute resolution specialist of the agency. Such official shall be responsible for implementing the policy of the agency developed under subsection (a). Such training should encompass the theory and practice of negotiation, mediation, arbitration, or related techniques. The dispute resolution specialist shall periodically recommend to the agency alternative means of dispute resolution that would benefit from similar training.

(c) TRAINING. Each agency shall provide for training on a regular basis for the dispute resolution specialist of the agency and other employees involved in implementing the policy of the agency developed under subsection (a). Such training should encompass the theory and practice of negotiation, mediation, arbitration, or related techniques. The dispute resolution specialist shall periodically recommend to the agency alternative means of dispute resolution that would benefit from similar training.

(d) PROCEDURES FOR GRANTS AND CONTRACTS.

(1) Each agency shall review each of its standard agreements for contracts, grants, and other assistance and shall determine whether it can and should agree to incorporate alternative means to authorize and encourage the use of alternative means of dispute resolution.

(2) (A) Within 1 year after the date of the enactment of this Act, the Federal Acquisition Regulation shall be amended, as necessary, to carry out this Act and the amendments made by this Act.

(B) For purposes of this section, the term "Federal Acquisition Regulation" means the single system of Government-wide procurement regulation referred to in section 6(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(a)).

SEC. 4. ADMINISTRATIVE PROCEDURES.

(a) ADMINISTRATIVE HEARINGS. Section 556(c) of title 5, United States Code, is amended—

(1) in paragraph (6) by inserting before the semicolon at the end thereof the following: "or by the use of alternative means of dispute resolution as provided in subchapter IV of this chapter;" and

(2) by redesignating paragraphs (7) through (9) as paragraphs (8) through (11), respectively, and inserting after paragraph (11) the following new paragraph:

"(12) inform the parties as to the availability of one or more alternative means of dispute resolution, and encourage use of such means;"

(3) "(11) request the attendance at any conference held pursuant to paragraph (6) of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy;"

(b) ALTERNATIVE MEANS OF DISPUTE RESOLUTION. Chapter 5 of title 5, United States Code, is amended by adding at the end the following new subchapter:

"SUBCHAPTER IV—ALTERNATIVE MEANS OF DISPUTE RESOLUTION IN THE ADMINISTRATIVE PROCESS"

"S 581. Definitions"

"For the purposes of this subchapter, the term—"

"(1) 'agency' has the same meaning as in section 5511(1) of this title;

"(2) 'administrative program' includes a Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rule making, adjudication, licensing, or investigation, as those terms are used in subchapter II of this chapter;

"(3) 'alternative means of dispute resolution' means any procedure that is used, in lieu of an adjudication as defined in section 5517 of this title, to resolve issues in controversy, including but not limited to, settlement negotiations, conciliation, facilitation, mediation, factfinding, minit trials, and arbitration, or any combination thereof;

"(4) 'award' means any decision by an arbitrator resolving the issues in controversy;

"(5) 'dispute resolution communication' means any oral communication made in confidence in connection with a dispute resolution proceeding by any party, neutral, or nonparty participant;" and

(6) "dispute resolution document' means any written material that is—"

(A) prepared in confidence for the purpose of, in the course of, or pursuant to a dispute resolution proceeding, including any record, note, draft, work product of the neutral or the parties; or

(B) provided in confidence to the neutral or other parties in a dispute resolution proceeding for purposes of that dispute resolution proceeding;

except that an agreement or award reached as a result of a dispute resolution proceeding is not a dispute resolution document unless the parties so agree in writing and the law otherwise allows that it shall be regarded as such a document;

"(7) 'dispute resolution proceeding' means any process in which an alternative means of dispute resolution is used to resolve an issue in controversy, which is appointed and specified parties participate;" and

(8) 'in confidence' means, with respect to information, that the information is provided—"

(A) with the expressed intent of the source that it not be disclosed; or

(B) under circumstances that would create the reasonable expectation on behalf of the source that the information will not be disclosed;

"(9) 'issue in controversy' means an issue which is material to a decision concerning an administrative program of an agency, and with which there is disagreement be-
between the agency and persons who would be substantially affected by the decision;

(10) 'neutral' means an individual who, with respect to an issue in controversy, functions specifically to aid the parties in reaching a resolution;

(11) 'party' means—

(A) for a proceeding with named parties, the same as in section 551(1) of this title; and

(B) for a proceeding without named parties, a person who will be significantly affected by the proceeding and who participates in the proceeding;

(12) 'person' has the same meaning as in section 551(2) of this title; and

(13) 'roster' means a list of individuals qualified to provide services as neutrals.

§ 582. General authority

(a) An agency may use a dispute resolution proceeding for the resolution of an administrative or other controversy, and a dispute resolution proceeding cannot provide such a record; and

(b) a neutral in a dispute resolution proceeding shall not necessarily be accepted generally as an authoritative precedent.

(2) The matter involves or may be upon the subject matter or matters of a proceeding that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a uniform policy for the agency;

(3) Maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

(4) The matter significantly affects persons or organizations who are not parties to the proceeding;

(5) A full public record of the proceeding is not likely to be compiled in the proceeding;

(6) The agency must maintain continuing jurisdiction to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the agency's fulfilling that requirement.

(c) Alternative means of dispute resolution authorized under this subchapter are not to be used which supplement rather than limit other available agency dispute resolution techniques.

§ 583. Neutrals

(a) A neutral may be a permanent or temporary office or employee of the Federal Government or any other individual who is acceptable to the parties to a dispute resolution proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree to the neutral's appointment.

(b) A neutral who serves as a conciliator, facilitator, or mediator serves at the will of the parties.

(c) In consultation with the Federal Mediation and Conciliation Service, other appropriate Federal agencies, and professional organizations, the agency shall develop procedures that permit the appointment of neutrals experienced in matters affecting the particular issue involved in the proceeding, the Administrative Conference of the United States shall—

(1) establish standards for neutrals (including experience, training, affiliations, diligence, actual or potential conflicts of interest, qualifications) to which agencies may refer;

(2) maintain a roster of individuals who meet such standards and are otherwise qualified to serve as neutrals on an elective basis in dispute resolution proceedings; and

(3) enter into contracts for the services of neutrals by which a neutral shall be made available upon request;

(4) enter into contracts for the services of neutrals on an expedited basis.

(d) An agency may use the services of one or more employees of other agencies to serve as neutrals in dispute resolution proceedings. The agencies may enter into an interagency agreement that provides for the reimbursement by the user agency or the parties of the full or partial cost of the services of such an employee.

(e) Any agency may enter into a contract with a neutral, maintained under subsection (c)(1) or (2) or a roster maintained by other public or private organizations, or individual for services as a neutral, or for training in connection with alternative means of dispute resolution. The parties in a dispute resolution proceeding shall agree on the neutral that is fair and reasonable to the Government.

§ 584. Confidentiality

(a) Except as provided in subsections (d) and (e), a neutral in a dispute resolution proceeding shall not voluntarily or through discovery or compulsory process be required to disclose any information concerning any dispute resolution document or any dispute resolved to act as neutrals, unless:

(1) all parties to the dispute resolution proceeding and the neutral consent in writing to the disclosure of the dispute resolution document or dispute resolution document that is provided by a nonparty participant, that participant also consents in writing;

(2) the dispute resolution communication or document has already been made public;

(3) the dispute resolution communication or document was made public by statute to be made public, but a neutral should make such communication or document public only if no other person is reasonably available to provide the document or disclose the communication; or

(4) a court determines that such testimony or disclosure is necessary to—

(A) prevent a manifest injustice;

(B) help establish a violation of law; or

(C) prevent harm to the public health or safety;

of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential;

(5) Except as provided in subsection (d), a party to a dispute resolution proceeding shall not voluntarily or through discovery or compulsory process be required to disclose any information concerning any dispute resolution document or dispute resolution communication, unless—

(1) all parties to the dispute resolution proceeding and the neutral consent in writing to the disclosure of the dispute resolution document or dispute resolution document that is provided by a nonparty participant, that participant also consents in writing;

(2) the dispute resolution communication or document has already been made public;

(3) the dispute resolution communication or document was made public by statute to be made public;

(4) a court determines that such testimony or disclosure is necessary to—

(A) prevent a manifest injustice;

(5) (b) prevent a violation of law; or

(6) prevent harm to the public health or safety;

of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential;

(b) The agency may use a dispute resolution proceeding for the resolution of an administrative or other controversy, and a dispute resolution proceeding cannot provide such a record; and

(c) The parties may agree to alternative confidential procedures. Upon such agreement the parties shall inform the neutral before the commencement of the dispute resolution proceeding of any modifications to the provisions of subsection (a) that will substantially affect the dispute resolution proceeding. If the parties do not so inform the neutral, subsection (a) shall apply.

(d) If a demand for disclosure, by way of discovery request or other legal process, is made upon a neutral regarding a dispute resolution document or communication, the neutral shall make reasonable efforts to notify the parties and any affected nonparty participants of the demand. Any party or affected nonparty participant who receives such notice and within 15 calendar days does not offer to defend the neutral to disclose the requested information or evidence waived any objection to such disclosure.

(e) Nothing in this section shall prevent the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a dispute resolution proceeding.

(f) Subsections (a) and (b) shall not have any effect on the information and data that are necessary to document an agreement reached or order issued pursuant to a dispute resolution proceeding;

(g) Subsections (c) and (d) shall not prevent the gathering of information for research or educational purposes, in cooperation with other agencies, governmental entities, or dispute resolution programs, to the extent as the parties and the specific issues in controversy are not identifiable.

(h) Subsections (b) and (c) shall not prevent use of a dispute resolution document to resolve a dispute between the neutral in a dispute resolution proceeding and a party to the proceeding or any participant in such proceeding, so long as such dispute resolution document is disclosed only to the extent necessary to resolve such dispute.

§ 585. Authorization of arbitration

(a) Arbitration may be used as an alternative means of dispute resolution whenever all parties consent. Consent may be obtained either before or after an issue in controversy has arisen. A party may agree to—

(1) refer an issue in controversy to arbitration; or

(2) arbitration on the condition that the award must be within a range of possible outcomes.
("12) Any arbitration agreement that sets forth the subject matter submitted to the arbitrator shall be in writing.

(13) No arbitration agreement shall require any person to consent to arbitration as a condition of entering into a contract or obtaining a license.

(14) An officer or employee of an agency may offer to use arbitration for the resolution of issues in controversies, if such officer or employee:

(1) has authority to enter into a settlement concerning the matter; or

(2) is otherwise specifically authorized by the agency to consent to the use of arbitration.

§ 586. Enforcement of arbitration agreements

"An agreement to arbitrate a matter to which this subchapter applies is enforceable pursuant to section 4 of title 9, and no action brought to enforce such an agreement shall be dismissed nor shall relief therein be denied on the grounds that it is against the United States or that the United States is an indispensable party.

§ 587. Arbitrators

(1) The parties to an arbitration proceeding shall be entitled to participate in the selection of the arbitrator.

(2) The arbitrator shall be a neutral who meets the criteria of section 583 of this title.

§ 588. Authority of the arbitrator

(1) An arbitrator to whom a dispute is referred under this subchapter may—

(1) regulate the course of and conduct arbitral hearings;

(2) administer oaths and affirmations;

(3) compel the attendance of witnesses and production of evidence at the hearing under the provisions of section 5 of title 9.

(2) The arbitrator determines that the costs should be apportioned.

§ 589. Arbitration proceedings

(1) The arbitrator shall set a time and place for the hearing on the dispute and shall notify the parties not less than 5 days before the hearing.

(b) Any party wishing a record of the hearing shall—

(1) be responsible for the preparation of such record;

(2) notify the other parties and the arbitrator of the preparation of such record;

(3) furnish copies to all identified parties and the arbitrator; and

(4) pay all costs for such record, unless the parties agree otherwise or the arbitrator determines that the costs should be apportioned.

(c) The parties to the arbitration are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(2) The arbitrator may, with the consent of the parties, conduct all or part of the hearing by telephone, television, computer, or other electronic means, if each party has an opportunity to participate.

(3) The hearing shall be conducted expeditiously and in an informal manner.

(4) The arbitrator may receive any oral or documentary evidence, except that irrelevant, immaterial, unduly repetitious, or prejudicial evidence may be excluded by the arbitrator.

(5) The arbitrator shall interpret and apply relevant statutory and regulatory requirements, legal precedents, and policy directives.

(6) No interested person shall make or knowingly cause to be made to the arbitrator an unauthorized ex parte communication relevant to the merits of the proceeding, unless the parties agree otherwise. If a communication submitted to the arbitrator pursuant to section 5 of title 9 is not in violation of this subsection, the arbitrator shall determine whether the communication is pertinent and relevant to the case, and that an opportunity for rebuval is allowed. Upon receipt of a communication made in violation of this subsection, the arbitrator may, in the context consistent with the interests of justice and the policies underlying this subchapter, require the offending party to show cause why the claim of such party should not be resolved against such party as a result of the improper conduct.

(6) The arbitrator shall make the award within 30 days after the close of the hearing, or the date of the filing of any brief authorized by the arbitrator, whichever date is later.

(7) The parties agree to some other time limit;

(2) The agency provides by rule for some other time limit.

§ 590. Arbitration awards

(1) Unless the agency provides otherwise by rule, the award in an arbitration proceeding conducted under this subchapter shall include a brief, informal discussion of the factual and legal basis for the award, but formal findings of fact or conclusions of law shall not be required.

(2) The prevailing parties shall file the award with all relevant agencies, along with proof of service on all parties.

(3) The award in an arbitration proceeding shall become final 30 days after it is served on all parties. Any agency that is a party to the proceeding may extend this 30-day period for an additional 30-day period by serving a notice of such extension on all other parties before the end of the first 30-day period.

(4) The head of any agency that is a party to an arbitration proceeding conducted under this subchapter is authorized to terminate the arbitration proceeding or vacate any award issued pursuant to the proceeding before the award becomes final by serving on all other parties a written notice to that effect, in which case the award shall be null and void.

(5) Notice shall be provided to all parties in the form of a communication made in violation of any request by a party, nonparty participant or other person that the agency head terminate the arbitration proceeding or vacate the award.

(6) An employee or agent engaged in the performance of investigative or prosecuting functions for an agency may not, in that or any other capacity advise a party under this subsection to terminate an arbitration proceeding or to vacate an arbitral award, except as witness or counsel in public proceedings.

(7) A final award is binding on the parties to the arbitration proceeding, and may be enforced pursuant to sections 9 through 13 of title 9.

(8) No action brought to enforce such an award shall be dismissed nor shall relief therein be denied on the grounds that it is against the United States or that the United States is an indispensable party.

(9) An award entered under this subchapter, an award in an arbitration proceeding may not serve as an estoppel in any other proceeding for any issue that was resolved in the proceeding. Such an award also may not be considered in any factually unrelated proceeding, whether conducted under this subchapter, by an agency, in a court, or in any other arbitration proceeding.

(10) An arbitral award that is vacated under subsection (c) shall not be admissible in any proceeding relating to the issues in controversy with respect to which the award was made.

(11) If an agency vacates an award under subsection (c), a party to the arbitration other than the United States may petition for an award of attorney fees and expenses pursuant to the Equal Access to Justice Act. Such fees and expenses shall be paid from the funds of the agency that vacated the award.

§ 591. Judicial review

(1) Notwithstanding any other provision of law, any person adversely affected or aggrieved by an award made in an arbitration proceeding conducted under this subchapter may bring an action for review of such award only pursuant to the provisions of sections 9 through 13 of title 9.

(2) A decision by an agency to use or not to use a dispute resolution proceeding under this subchapter shall be committed to the discretion of the agency and shall not be subject to judicial review, except that arbitration shall be subject to judicial review under section 106 of title 9.

§ 592. Compilation of information

"The Chairman of the Administrative Conference of the United States shall compile and maintain data on the use of alternative means of dispute resolution in conducting agency proceedings. Agencies shall, upon the request of the Chairman of the Administrative Conference of the United States, supply such information as is required to enable the Chairman to comply with this section.

§ 593. Support services

"For the purposes of this subchapter, an agency may use (with or without reimbursement) the services and facilities of other Federal agencies, public and private organizations and agencies, and individuals, with the consent of such agencies, organizations, and individuals. An agency may accept voluntary and uncompensated services for purposes of this subchapter without regard to the provisions of section 3324 of title 44.

(c) TECHNICAL AMENDMENT—The table of sections at the beginning of chapter 5 of title 5, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER IV—ALTERNATIVE MEANS OF DISPUTE RESOLUTION IN THE ADMINISTRATIVE PROCESS

§ 581. Definitions.

§ 582. General authority.

§ 583. Neutrals.

§ 584. Confidentiality.


§ 586. Enforcement of arbitration agreements.

§ 587. Arbitrators.

§ 588. Authority of the arbitrator.

§ 589. Arbitration proceedings.

§ 590. Arbitration awards.

§ 591. Support services.

SEC. 5. JUDICIAL REVIEW OF ARBITRATION AWARDS.

Section 10 of title 9, United States Code, is amended—
(1) by redesignating subsections (a) through (e) as paragraphs (1) through (5), respectively; and
(2) by striking out "in either" and inserting in lieu thereof "(a) In any;"); and
adding at the end thereof the following:

"(b) The United States district court for the district wherein an award was made that was issued pursuant to section 590 of title 5, United States Code, shall be reviewed pursuant to sections 9 through 13 of title 28 United States Code of the Act, as amended by adding at the end of the first paragraph the following: "Notwithstanding provisions given such terms in section 581 of title 5, United States Code, as added by section 4(b) of this Act.

8. SENATE PROVISION.

The authority of agencies to use dispute resolution proceedings under this Act and the amendments made by this Act shall terminate on October 1, 1995, except that such authority shall be effective on the date of enactment of the amendments to this Act, with respect to then pending proceedings which, in the judgment of the agencies that are parties to the dispute resolution proceedings, require such continuation, until such proceedings terminate.

Mr. GLENN. Mr. President, I rise to make several points concerning the jurisdiction of the Governmental Affairs Committee over S. 971, the Administrative Procedure Act, which Senator GRASSLEY introduced on May 11, 1989. Among other things, S. 971 would amend the Administrative Procedure Act (APA) to authorize alternative means of dispute resolution. By the committee's proposed amendment to the APA, the Senate today, is the product of thoughtful consideration of the APA issues raised in the bill.

Although I am fully supportive of Senate passage of S. 971, as amended by the committee's proposed amendments being offered by Senator LEVIN, I must point out a problem which occurred on Friday, October 19.

Specifically, very late Friday, October 19, 1990, a letter from the chairman of the Senate Governmental Affairs Committee, and the chairman of the Subcommittee on Courts and Administrative Practice, apparently was hand delivered to the Governmental Affairs Committee offices. That letter was addressed to me as chairman of the Governmental Affairs Committee and Senator ROSENTHAL, the committee's ranking minority member. It concerned the jurisdiction of S. 971, and sought to make it clear that "for this and future Congresses, [the authors of the letter] feel it is important to reaffirm the Judiciary Committee's jurisdiction over amendments to the Administrative Procedure Act." The letter sought a sequential referral of S. 971 to the Judiciary Committee with an automatic discharge in order not to hold up full Senate consideration of S. 971.
Neither I nor my staff became aware of the letter until Monday, October 22. Neither Senator Roth nor his staff knew of the letter until Monday, October 22. However, on October 19, S. 971 was sequentially referred to the Judiciary Committee for 24 hours by unanimous consent. That sequential referral to the Judiciary Committee was an error.

Moreover, I take issue with the assertion by the Judiciary Committee that it has jurisdiction over all amendments to the APA, or any implication that it has exclusive jurisdiction over APA legislation. The Governmental Affairs Committee has a longstanding history of involvement in and jurisdiction over legislation amending the APA, which is set forth in subchapter II of chapter 5 of title 5, United States Code. Title 5 forms the basis for much of the committee’s legislative jurisdiction.

Specifically, the Governmental Affairs Committee has—under its rightful title 5 legislative authority—pursued many matters involving the Administrative Procedure Act, including a long series of hearings and reports on the regulatory process as well as legislation such as S. 971, the previously passed Regulatory Negotiation Act (S. 305), and prior regulatory reform bills. In light of this history, I trust that such an assertion or implication was not the intent of the authors of the letter from the Judiciary Committee to the Governmental Affairs Committee.

I recognize the Judiciary Committee’s interest in and involvement in APA matters and particular pieces of legislation. However, the Governmental Affairs Committee does not agree that Judiciary shares jurisdiction over APA legislation. The Governmental Affairs Committee has a longstanding history of involvement in and jurisdiction over legislation amending the APA, which is set forth in subchapter II of chapter 5 of title 5, United States Code. Title 5 forms the basis for much of the committee’s legislative jurisdiction.

As the former president of the Detroit City Council and a lawyer, I am all too familiar with the enormous burden litigation can place on the parties involved. While there are many instances in which litigation is the appropriate method to reach an effective and fair resolution of a particular dispute, there are also many instances in which a more flexible consensual method can result in an effective and fair resolution at less cost, in a shorter amount of time, and even with less animosity.

We live in an increasingly complex world, and, as a result, the laws and regulations have become increasingly complex. Oftentimes, complicated situations require innovative approaches. Due to my belief in the promise of consensus and the desire to avoid protracted litigation, I introduced S. 303, the Negotiated Rulemaking Act which both the Senate and the House passed earlier this year and which is now awaiting final House consideration. The purpose of that bill is to improve the Federal regulatory process by encouraging agencies to use negotiated rulemaking where appropriate. Negotiated rulemaking is a process that attempts to avoid protracted litigation over agency rules by involving the affected parties early in the rulemaking process and having them help craft the draft rule. We have learned through experience in negotiated rulemaking that it works.

Given the positive experience with negotiated rulemaking and the sobering fact that, according to the Administrative Office of the U.S. Courts, in 1989 the total number of civil cases commenced in the United States was over 220,000, it makes sense to promote other innovative methods such as ADR procedures.

Moreover, the use and success of ADR methods as an alternative to litigation in the private sector is growing. More and more lawyers are being trained in ADR methods and over half the law schools in the Nation, now offer courses in dispute resolution. Also, there are over 360 nonprofit community resolution programs in operation.

States, including my own State of Minnesota, have also recognized ADR methods as valuable tools. Over 20 State legislatures have enacted laws establishing statewide mediation centers or other dispute resolution procedures, and there are as many as 275 operating court-referred ADR programs of various types in over 40 States.

Federal agencies can currently engage in many ADR techniques such as mediation, and minimal without express authorization by statute or regulation. For example, agencies such as EPA, the Army Corps of Engineers, the Merit System Protection Board, and the Department of Justice have individual programs which utilize ADR methods. And, if I might add, it is not intended that this bill in any way interfere with ongoing ADR programs.

However, up to now, there has been no real government-wide emphasis on the use of ADR techniques, and, therefore, there is little guidance or authority on the part of many agencies as to what ADR methods exist and what the accepted procedures are for their use. S. 971 would provide needed guidance and support to individual agencies to promote the appropriate use of ADR techniques in the Federal Government.

S. 971 amends the Administrative Procedure Act to authorize parties involved in dispute arising under Federal law to agree to ADR procedures. It establishes in each agency an ADR expert and an ADR program, including training for key personnel. It requires agencies to review their standard contract, grant, and other program documents to include, where appropriate, inducements for the use of ADR.

At the same time, the bill specifically discourages the use of ADR in cases which may be inappropriate for resolution through ADR methods. The cases are listed in section 552(b) and stem from the recognition that not all disputes which arise involving the Federal Government are appropriate for submission to ADR methods. For example, agencies should not use ADR if the dispute involves significant policy questions or the dispute is important to establish authoritative precedent. Again, ADR is not aimed at endrun­ning established Government practice, but is aimed at enhancing, where appropriate, the Government’s ability to effectively resolve a dispute.

S. 971 specifically authorizes the use of voluntary, binding arbitration when all parties consent to such an ADR method. It also provides safeguards of judicial review and agency review of the appropriateness of arbitral awards. This is an important provision, since there has been real confusion as to the authority of an agency to enter into arbitration. In fact the
General Accounting Office has interpreted existing law to preclude the use of ADR by Federal agencies unless such use is specifically authorized by Congress. This provision will make it clear that arbitration is not only available to agencies, but where appropriate, encouraged.

During the subcommittee’s consideration of the bill, concern was expressed over the possibility that binding arbitration involving a Federal employee would result in a prima facie de­nial of the constitutional authority of the executive branch. The bill eliminates that problem by allowing an agency head to terminate an arbitration proceeding or to overturn an arbitrator’s decision. If the agency head takes such action, however, the agency will be liable to pay the expenses and fees of the party to the arbitration unless the agency head determines that special circumstances make such an award unjust. This process ensures that an officer of the United States is ultimately responsible for the decision reached as the result of an arbitration proceeding that is not an outside party. The arbitration proceeding is, in effect, “non-binding” for a period of 30 days.

The bill also establishes standards of confidentiality in ADR proceedings and lays out judicial review procedures. Certain necessary modifications are made to the Federal Acquisition Regulation, Contract Disputes Act, and Federal Tort Claims Act to facilitate the use of ADR in these areas. Section 971 draws on the experience and expertise of the Administrative Conference (ACUS) and the Federal Mediation and Conciliation Service (FMCS) to further aid agency use of ADR. Agencies are instructed to seek guidance from these two entities. ACUS is required to support, assist, and monitor agency use of ADR. ACUS is also charged with reporting to Congress periodically on agency implementation of an arbitration proceeding and with establishing a roster—with the assistance of ACUS—of qualified neutrals for optional use by parties in a dispute. The bill increases the scope of duties for the FMCS and includes training, and other ADR assistance.

Although the provisions of Section 971 are sunsetted on October 1, 1996, as to any new dispute resolution proceedings, that sunset would not affect an agency’s ability to use ADR under its own existing authority.

As a matter of clarification, Mr. President, I want to point out that the provision in section 589(c) of the bill pertaining to ex parte proceedings in an arbitration is the same language in section 557 of the Administrative Procedure Act and is intended to be interpreted the same. Thus, when we use the term “interested person” in section 589(c) we mean to include any party as well.

Mr. President, CBO estimated that the bill could cost up to $1 million for the first several years as a result of increased staffing needs of the Administrative Conference and the Federal Mediation and Conciliation Service. I believe this is an inaccurate estimate, because it does not take into account the amount of savings that will result from using ADR methods as an alternative to litigation, nor does it take into account that ACUS already has an arbitration program. Thus, we might expect this bill will result in real savings to the agencies that aggressively take advantage of its provisions.

Finally, let me add that there has been concern and some confusion about the extent to which documents used in and prepared for ADR proceedings are to be kept confidential—that is, they are not to be voluntarily disclosed or released “through discovery or compulsory process.” Under the terms of Senator Kohl’s amendment, the bill would treat only those documents prepared for purposes of an ADR proceeding as dispute resolution documents subject to confidentiality provisions. Thus, a preexisting document would not be covered. Senator Leahy’s amendment would exclude from that confidentiality restriction, moreover, any such documents which are made available to all parties—as in an arbitration proceeding.

Moreover, with Senator Leahy’s amendment, the bill explicitly provides that nothing in this bill is intended to create a (b)(3) exemption under the Freedom of Information Act (FOIA). That means that any documents involved in a dispute resolution proceeding would be available to the public from a Federal agency to the extent it is permitted under FOIA.

Mr. Grassley. Will the Senator yield?

Mr. Levin. I will be happy to yield to the Senator from Iowa and the sponsor of this legislation, Senator Grassley. Although we have agreed to incorporate these amendments in the bill at this time, I am concerned that this is not the best approach when it comes to mediation, which we may have to revisit the issue early next year. One of the keys to making ADR proceedings—particularly mediation—attractive and effective is the ability of the parties to be candid with the neutral in an effort to achieve settlement. That candor requires in proceedings like mediation the expectation of confidentiality with respect to communications prepared for the purpose of the ADR proceeding and given to the neutral in confidence. The provisions in the bill as amended do not, in my opinion, sufficiently address that need for confidentiality.

Mr. Leahy. Will the Senator yield?

Mr. Grassley. I would be happy to yield to the Senator from Vermont.
Mr. KYOR. Mr. President, the amendment that I am offering to S. 971 is short and sweet. I am concerned that alternative dispute resolution (ADR) might further confuse an already complex area of Federal employment. Federal employees, retirees, and applicants for Federal employment have a number of appeal routes open to them depending on their particular circumstances. If S. 971 is read to overlay these current rights with additional appeal mechanisms, the maze may become inpermeable.

My amendment simply says that S. 971 does not apply to appeals involving Federal life insurance, retirement, or certain personnel practices. However, collective bargaining agreements that allow for the use of ADR in areas not covered by my amendment, will not be affected. I believe this clarification is necessary to ensure that an already difficult process is not made impossible. I urge my colleagues to support the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3151) was agreed to.

AMENDMENT NO. 3152
(Purpose: To provide clarification of dispute resolution communications, and for other purposes)

Mr. REID. Mr. President, I send an amendment to the desk on behalf of Senator KONI, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada (Mr. Reid), for Mr. Konit, proposes an amendment numbered

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

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

The amendment is as follows:

On page 37, strike out line 10 through 24 and insert in lieu thereof:

"(5) 'dispute resolution communication' means any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the neutral, agencies to seek out alternative means of resolving disputes—for example, negotiation, mediation, arbitration, without going to court for a full-blown trial. Alternative procedures benefit both the parties who are seeking redress and the Federal Government. The private parties can expect to have their grievances heard and addressed more quickly and inexpensively than would be the case in a trial. At the same time, the Government agency saves time and money in alternative dispute resolution instead of a lengthy lawsuit.

These desirable ends, however, should not be bought at the price of a free and open process. Public access to court proceedings and to court records is a long-established tradition in our country. The Constitution's framers considered a number of measures designed to ensure that the terms of final awards and settlements also cannot be shielded from disclosure. By redefining the term 'dispute resolution communication' the amendment creates a presumption of openness, but it keeps a narrowly crafted exception for items that must be kept secret for the process to work. Equally important, S. 971 retains language allowing a court to release communications that may help prevent harm to public health or safety, even if they would otherwise be confidential.

Some people have suggested that this bill could remove some communications from the reach of the Freedom of Information Act. But with the amendment by Senator LEAHY, this clearly will not be the case. And I understand that we will revisit the relationship between today's alternative dispute resolution measure and FOIA in the next Congress.

Mr. President, the intent of S. 971 is clearly beneficial. The measure will save time and money while promoting equitable results. My amendment will not dilute the effectiveness of alternative dispute resolution; rather, it will simply make a good bill better by ensuring public access to the dispute resolution process.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3152) was agreed to.

AMENDMENT NO. 3153
(Purpose: To clarify the confidentiality of dispute resolution communications, and for other purposes)

Mr. REID. Mr. President, I send an amendment to the desk on behalf of
Senator Leahy and ask for its immediate consideration.

Mr. REID. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. Reid], for Mr. Leahy, proposes an amendment numbered 3153.

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

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

The amendment is as follows:

On page 44, line 2, strike out "confidential," and insert "confidential or confidential; or " (6)

On page 46, line 24 insert after "(6)" the following: "(6) The dispute resolution communication was provided to or was available to all parties to the dispute resolution proceeding."

On page 53, strike out lines 1 through 6 and insert the following:

"(g) If an agency head vacates an award under subsection (c), a party to the arbitration proceeding other than the United States may within 30 days of such action petition the agency head for an award of attorney fees and expenses incurred in connection with the arbitration. An award shall be made unless the agency head finds that special circumstances make an award unjust under the circumstances.

The purpose of the amendment, which was developed in consultation with our colleagues in the other body and which restores almost all of the House language, is to restore the private party to the status quo before the commencement of the arbitration. The mechanics of the award process will generally follow that of the Equal Access to Justice Act, though not literally, since in this case the private party has not "prevailed" under the terms of EAJA—at least not at this point. However, we believe it is important to not create a financial disincentive for parties to seek arbitration; such a disincentive may result if agencies have variable arbitration awards, after private parties have incurred substantial attorney costs and expenses.

Mr. President, I candidly hope and expect that particular provisions will not often come into play. If appropriate, I will be pleased to revisit the matter after Congress has an opportunity to assess the use of arbitration by Government agencies.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3153) was agreed to.

AMENDMENT NO. 3154

(Purpose: To provide for the award of attorney fees and expenses in arbitration awards under certain circumstances, and for other purposes)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. Stevens], for Mr. Grassley, proposes an amendment numbered 3154.

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

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

The amendment is as follows:

On page 53, strike out lines 1 through 6 and insert in lieu thereof:

"(g) If an agency head vacates an award under subsection (c), a party to the arbitration proceeding other than the United States may within 30 days of such action petition the agency head for an award of attorney fees and expenses (as defined in section 504(b)(1)(A) of this title) incurred in connection with the arbitration proceeding. The agency head shall award the petitioning party those fees and expenses that would not have been incurred in the absence of such arbitration proceeding, unless the agency head or his or her designee finds that special circumstances make such an award unjust. The procedures for reviewing applications for awards shall, where appropriate, be consistent with those set forth in subsection (a)(2) and (3) of section 504 of this title. Such fees and expenses shall be paid from the funds of the agency that vacated the award.

Mr. GRASSLEY. Mr. President, this amendment provides that in those rare cases where the agency head vacates an arbitral award, a private party may within 30 days of the award petition the agency for an award of attorney fees and expenses incurred in connection with the arbitration. An award may be made unless the agency head finds that special circumstances make an award unjust under the circumstances. The purpose of the amendment, which was developed in consultation with our colleagues in the other body and which restores almost all of the House language, is to restore the private party to the status quo before the commencement of the arbitration. The mechanics of the award process will generally follow that of the Equal Access to Justice Act, though not literally, since in this case the private party has not "prevailed" under the terms of EAJA—at least not at this point. However, we believe it is important to not create a financial disincentive for parties to seek arbitration; such a disincentive may result if agencies have variable arbitration awards, after private parties have incurred substantial attorney costs and expenses.

Mr. President, I candidly hope and expect that particular provisions will not often come into play. If appropriate, I will be pleased to revisit the matter after Congress has an opportunity to assess the use of arbitration by Government agencies.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3154) was agreed to.

Mr. GRASSLEY. Mr. President, as one who as long been committed to the use of alternative dispute resolution techniques, I am very pleased that this day has come in the U.S. Senate. I am grateful to my colleagues on the Committee on Governmental Affairs, especially the chairman of the Subcommittee on Oversight, Senator Levin from Michigan, for his stewardship of my legislation through the committee. Thanks are also due to Representative Emanuel C. Gersen of Kansas, the sponsor of the companion bill to mine in the other body.

Several years ago, with the able assistance of the Administrative Conference of the United States, chaired by Marshall Breger, I introduced the first comprehensive Federal agency ADR bill, to apply some of the techniques that are revolutionizing the civil justice system in the States. The version we approve today is one that has been refined and honored through committee hearings and hours of discussion with those knowledgeable in and out of Government. I am confident that S. 971 will mark the beginning of an era of more consensual resolution of agency disputes with the public.

Mr. President, this development comes not a minute too soon, because resort to traditional litigation is threatening to overload our civil justice system, in both the courts and the agencies.

It is a fact of life in our sprawling government that Federal agencies are going to litigate with the public than ever before: Contract and benefits disputes, formal rulemakings and adversary adjudications, enforcement actions and license revocations. Administrative proceedings, once the least contentious of all litigation, with traditional litigation, have come to mimic the worst aspects of the courts, complete with delays, costs and uncertainties. Our Federal scheme allows for review of agency actions in the courts, permitting in some cases both trial and appellate lawyer of review. But Judicial review cannot be meaningful when it takes so long or is too costly. Justice delayed really is justice denied. We must find and encourage alternatives; that is what ADR is all about.

This legislation—the Administrative Dispute Resolution Act of 1990—will encourage agencies and private parties to use ADR methods, including arbitration, mediation, minitrials and negotiations, where these methods are consistent with the public interest and when the parties agree.

The bill adds a new subchapter to the Administrative Procedure Act (APA), titled "alternative means of dispute resolution in the administrative process", which addresses comprehensively the issues that arise in ADR procedures. Except in cases of arbitrations, the bill's approach is based on the methods—S. 971 leaves it to the parties to frame the issues and the procedures. The bill is premised on voluntariness; no one can be forced to submit to an ADR proceeding against his or her wishes. For those agencies that have already experimented successfully with ADR—and our hearing record demonstrated these successes—nothing in S. 971 will cut back on their existing authority. Each agency will promulgate its own rules, after taking public comment, to fit ADR into the array of current procedures. Thus the firm statutory foundation provided by S. 971 will be shaped to fit the details of agency programs and disputes.

Even in the case of arbitration, the procedures spelled out are carefully made flexible. Again, ADR is made noncompulsory; all parties consent is essential. Another important element, confidentiality, is also provided for communications made to the neutral during the course of ADR proceedings. Thus the bill prevents the ADR procedure from being unfairly used as a "dry run" for a subsequent litigation. Of course, even a neutral could raise public policy questions that are inappropriate for ADR. The bill carefully recognizes this, and exempts entire categories of cases from cover-
age, such as cases in which precedent is important, or where a significant government policy is at stake, or when others not a party would be substantially affected, among other cases. Nor does the current law with respect to the traditional presumption of openness of agency practices. The bill is intended to be applied in a way consistent with the Freedom of Information Act, as the bill makes explicitly clear, at the request of Senator LEAMY. Since an arbitration proceeding, for example, resembles an ADR or judicial hearing in some respects, the evidence presented during the hearing which forms the basis for the arbitrator's decision will be available to the public. Second, documents that are exchanged among all the parties to a dispute resolution should be treated the same way, in terms of public availability, as they would in cases without a neutral.

Thus S. 971 is not heavy handed, nor does it auger forth an era of "private justice" in Federal law and practice. Rather, it explicitly adds another arrow in the dispute resolution quiver of agencies and the public, giving them an opportunity to experiment with ADR when its use in the public interest. And while no agency is required to use ADR, I am quite confident that once they try it, both agency and the public will wonder how they lived without it for so long.

Mr. President, during the development of the legislation concerns were expressed by the Department of Justice about the use of arbitration where a private party acts as a neutral. The bill reported by the committee addresses any remaining fears about the constitutionality of such an approach by giving an agency head involved in an arbitration a 30-day window during which an arbitral award can be vacated, altered, or modified, if the agency head believes the award is substantially nonbinding. Should 30 days elapse without a move to vacate, the arbitral award against the agency is final and enforceable in the courts pursuant to Title 9 of the United States Code. In those rare cases where the agency head vacates an award, the agency must pay to the private party all expenses incurred in the proceeding, unless special circumstances warranted against such an award. Thus the private party is "made whole" in terms of the costs associated with the arbitration and is no worse off financially than before agreeing to arbitrate. This compromise provision, developed in consultation with the other body, accommodates the concerns of the Justice Department while providing a disincentive for the routine vacating of an arbitral award.

The bill also establishes the administrative conference (ACUS) as a clearinghouse for data on ADR proceedings handled by agencies will share than information. The bill also authorizes the Federal Mediation and Conciliation Service to make its services available to Federal agencies. These services include training, furnishing of neutrals and maintenance of rosters of neutral experts, and other purposes.

The bill amends other statutes such as the Contracts Dispute Act and Federal Tort Claims Act to authorize and encourage resolution of relatively small dollar claims. The bill also authorizes each agency to adopt policies permitting the use of nonattorneys in ADR proceedings.

Finally, though the bill sunsets agency authority to use ADR on October 1, 1989, I feel certain that informed congressional oversight will prove the worth of ADR well beyond the sunset date. Indeed, I expect these procedures, including arbitration, to become a staple of the administrative process.

Mr. ROTH. Mr. President, as a co-sponsor of S. 971, the Administrative Dispute Resolution Act, I am pleased to support this worthwhile legislation and urge its adoption. S. 971 would encourage Federal agencies to use the types of alternative dispute resolution procedures that have proven so cost-effective in the private sector. By providing a framework for the use of such alternatives as mediation and arbitration, more widespread acceptance and use will be fostered within the Federal Government. I hope that Congress will be able to enact this legislation before we adjourn, and in that regard, I am surprised that its progress was slowed by an unnecessary detour to the Judiciary Committee. Last Friday night, without my clearance and without the clearance of the chairman of the Committee on Governmental Affairs, the bill was sequentially referred. The Governmental Affairs Committee, which has jurisdiction—has worked long and hard to address all legitimate concerns and this bill is ready for our approval.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

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

Mr. REID. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be discharged from further consideration of H.R. 2497, and that the Senate then proceed to its immediate consideration, that all after the enacting clause be stricken, and the text of S. 971, as amended, be inserted in lieu thereof; that the bill be advanced to third reading and passed and the motion to reconsider be laid upon the table, and that S. 971 then be indefinitely postponed.

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

So the bill (H.R. 2497), as amended, was passed.

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION AUTHORIZATION ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 565, S. 1839, the NTIA authorization bill.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1839) to provide authorization of appropriations for activities of the National Telecommunications and Information Administration, 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. 3155

(Purpose: To make an amendment in the nature of a substitute.)

Mr. REID. Mr. President, I send an amendment to the desk on behalf of Senator INOUYE.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. Reid], for Mr. Inouye, proposes an amendment numbered 3155.

Mr. REID. 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:

Strike all after the enacting clause and insert in lieu thereof the following:

That there is authorized to be appropriated for activities of the National Telecommunications and Information Administration $14,554,000 for fiscal years 1990 and 1991, together with such sums as may be necessary for increases resulting from adjustments in salary, pay, retirement, other employee benefits required by law, and other nondiscretionary costs, for fiscal year 1991.

Sections (a) The following:

(1) the Pacific Ocean region is of strategic and economic importance to the United States;

(2) other nations, especially the Soviet Union and Japan, are seeking to increase their influence in this region.

(3) because the Pacific Basin communities are geographically isolated and because many are relatively poor, they are in great need of quality, low-cost communications
services to maintain contact among themselves and with other countries; (4) from 1971 until 1985, such communications were provided by the National Aeronautics and Space Administration; (5) the ATS-1 satellite ran out of station-keeping propellant and has provided only intermittent service since then; (6) the Act entitled “An Act to provide authorization of appropriations for activities of the Federal Government, the National Aeronautics and Space Administration,” approved November 3, 1988 (Public Law 100-584; 102 Stat. 2670), authorized $3,400,000 in funding during fiscal year 1988 and 1989 for re-establishing the communication network of the PEACESAT Program; (7) Congress appropriated $1,700,000 for fiscal year 1988 and $200,000 for fiscal year 1989 for the purposes of re-establishing the communications network of the PEACESAT Program; (8) since 1988, significant progress has been made to ensure resumption of this vital communications service by constructing earth terminals in the Pacific communities, by identifying the short-term and long-term needs of the users of these earth terminals, and by negotiating to acquire the use of the GOES-3 satellite owned by the National Oceanic and Atmospheric Administration, which is expected to provide service from 1990 to 1994; (9) the National Telecommunications and Information Administration will issue a contract for the design and construction of earth terminals to work with the GOES-3 satellite by early 1990 that will exhaust the funds previously appropriated; (10) additional funding will be necessary for fiscal year 1990 and 1991 to pay for the costs of operating the GOES-3 satellite, for installing the earth stations and training engineers to operate them, and for administering the program; and (11) additional but undetermined funding may also be necessary in fiscal year 1991 to begin acquiring replacement satellite capacity for the GOES-3 satellite after it goes out of service.

(b) It is the purpose of this section to assist in the acquisition of satellite communications services by viable communities and to provide interim funding in order that the PEACESAT Program may again serve the educational, medical, and cultural needs of the Pacific Basin communities.

(c)(1) The Secretary of Commerce shall expedite acquisition of satellite communications services for former users of the ATS-1 satellite of the National Aeronautics and Space Administration.

(2)(A) The Secretary of Commerce shall provide to the manager of the PEACESAT Program such funds, from appropriations authorized under subsection (d) of this section, as the Secretary considers necessary to manage and operate the PEACESAT Program. The Secretary may also use such funds to provide communications services provided with the capacity and equipment acquired under this subsection.

(b) The recipient of funds under subparagraph (A) of this paragraph shall keep such records as may reasonably be necessary to ensure that the Secretary of Commerce conduct an effective audit of such funds.

(C) The Secretary of Commerce and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination into all books, documents, reports, and accounts of such recipient, and into all receipts and accounts of such funds that are pertinent to the funds received under subparagraph (A) of this paragraph.

(d) There are authorized to be appropriated such sums as may be necessary for fiscal year 1991 for the Secretary of Commerce in the management and acquisition of capacity and equipment under subsection (c)(1) of this section and the management of the operation of satellite communications services provided with such funds under this section. Sums appropriated pursuant to this subsection may be used by the Secretary of Commerce to cover administrative costs associated with the provisions of this section.

(e) The Secretary of Commerce shall consult with appropriate departments and agencies of the Federal Government, representatives of the PEACESAT Program, and other affected parties regarding the development of a long-term solution to the communications needs of the Pacific Ocean region. Within one year after the date of enactment of this Act, the Secretary of Commerce shall report to the Congress regarding such consultation.

Sect. 3. (a) It is the purpose of this section to improve the ability of rural health providers to access information, health information and to consult with others concerning the delivery of patient care. Such enhanced communications ability may assist the Secretary of Commerce in:

(1) Improving and extending the training of rural health professionals;

(2) Improving the continuity of patient care in understaffed rural areas; and

(b) The Secretary of Commerce, in conjunction with the Secretary of Health and Human Services, shall establish an advisory panel (hereafter in this section referred to as the “Panel”) to develop recommendations for the improvements of rural health care through such partnerships needed by providers and the improvement in the use of communications to disseminate such information.

(c) The Panel shall be composed of individuals from organizations with rural constituencies and practitioners from health care disciplines of the National Library of Medicine, and representatives of different health professions schools, including nurse practitioners.

(d) The Panel may select consultants to provide advice to the Panel regarding the types of information that rural health care practitioners need, the procedures to gather and disseminate such information, and the types of communications equipment and training needed by rural health care practitioners to obtain access to such information.

(e) Not later than 1 year after the Panel is established under subsection (b), the Secretary of Commerce shall prepare and submit, to the Committee on Commerce, Science, and Transportation and the Committee on Labor and Human Resources of the Senate and to the Committee on Energy and Commerce of the House of Representatives a report summarizing the recommendations made by the Panel under subsection (b).

(f) There is authorized to be appropriated to the Secretary of Commerce to carry out this section $1,000,000 to remain available until expended.

Sec. 4. Section 226 of the Communications Act of 1934 (47 U.S.C. 226) is amended—

(1) in subparagraph (H) by adding “and” at the end of subparagraph (I) by striking “and” and inserting in lieu thereof a period; and

(3) by striking subparagraph (J).

Mr. INOUYE. Mr. President, I rise today to offer an amendment in the nature of a substitute to S. 1393, the NTIA authorization bill for fiscal years 1990 and 1991. NTIA fulfills a valuable role as an independent, unbiased adviser to the President on communications policy. I expect NTIA to continue to maintain that independence and to consider all points of view in making its recommendations.

The substitute retains the authorization figure for fiscal year 1990 of $14,584,000, the same amount proposed in the President's budget for that year. The substitute increases NTIA’s authorization amount for fiscal year 1991 by $3 million to a total of $18 million. The purpose of this additional authorization is to permit NTIA to expand its international activities, especially regarding Eastern Europe. These funds are needed to support field assessments of the telecommunications needs and priorities of Eastern European countries; to evaluate the spectrum management systems of those countries and develop recommendations for improvements in such systems, to support education and training programs for Eastern European telecommunications professionals, to support pilot projects to assist the development and operation of private telecommunications or broadcasting facilities in Eastern Europe, and to provide grants for market research projects by small and medium-sized United States telecommunications companies seeking to do business in Eastern European countries.

By carrying out this initiative, NTIA should cooperate with and draw upon the expertise of the Federal Communications Commission, the Corporation for Public Broadcasting, and other private sector telecommunications and broadcasting entities.

No later than April 1, 1991, NTIA should submit a report to the Senate Committee on Commerce, Science, and Transportation and the House Com-
committee on Energy and Commerce on the status of the Eastern European telecommunications initiative. This report shall describe the results to date of the field assessments of telecommunications needs and priorities of Eastern European countries, the status of projects begun under the initiative and NTIA's plans for continuing these projects, and assess the competitive position of the United States telecommunications industry in the Eastern European market relative to foreign telecommunications entities.

The bill also authorizes the Peacesat Program, which was first authorized in the NTIA authorization bill for fiscal years 1988 and 1989. NTIA has made substantial progress in establishing the Peacesat Program. It has secured the agreement of the National Oceanic and Atmospheric Administration to move and use a GOES satellite for the Peacesat Program. It has also contracted for the construction and installation of several Earth terminals in the Pacific region and for monitoring the Peacesat service. Because of these successful efforts, the Peacesat Program will once again provide the only means by which many island communities can maintain contact with the developed world. We expect NTIA to continue to monitor the Peacesat Program, to ensure that additional Earth terminals are installed in the Pacific region and that the Peacesat Program continues to expand. We also expect NTIA to continue its efforts to locate and contract for additional satellite capacity necessary to replace the GOES satellite beyond the end of 1984.

This substitute also includes an additional authorization of $1 million in funding to the Secretary of Commerce so that he may convene, along with the Secretary of Health and Human Services, a group to consider ways of satisfying the needs of rural health care providers for enhanced telecommunications facilities and services. This amendment is supported by the National Rural Health Association and Senator BURDICK.

Last month, the Office of Technology Assessment (OTA) released a significant report detailing the severe difficulties faced by rural health care providers, especially nurse practitioners, in keeping up with the latest advances in medical science. The report makes clear that the lack of adequate telecommunications facilities makes it very difficult for rural health practitioners to provide health care using the same advanced and essential information that is available to those serving the urban areas.

Often the rural health care provider is a solo practitioner and does not share the advantages held by his urban counterpart. In being able to consult with a number of specialists. Rural providers are unable to attend conferences unless they leave the community without health care coverage. Additionally, rural practitioners do not have access to continuing education offerings and considerable library holdings available to urban practitioners in large teaching hospitals. Consequently, rural providers often practice in professional isolation, with numerous barriers to practicing state of the art health care delivery. The quality of health care delivery in rural areas can be directly affected.

Enhanced telecommunications can be designed to provide the capacity to move information from sources such as the National Institutes of Health and the divisions of the Public Health Service to rural health care delivery systems more rapidly and broadly. Such telecommunications abilities can improve decisionmaking and health care delivery systems. Telecommunications systems can make remote services available locally and provide much needed administrative information, including patient and provider education and administration, as well as patient care.

The study authorized by this bill is intended to be the first step toward a wide-ranging plan to address the needs of rural health care providers. The OTA report identified the problems suffered by rural health care providers; the study authorized by this bill will begin to set forth a plan for solving these problems. It is my intention to seek additional funding to implement the recommendations of this study once it is completed. I strongly urge my colleagues to join me in supporting this effort to address the needs of rural health care providers for enhanced telecommunications facilities and services.

Finally, Mr. President, in response to several requests from the telephone companies, the bill contains two small amendments to the recently enacted operator services legislation. This bill cleared the Congress by unanimous consent just 3 weeks ago. The particular wording of these amendments in the Communications Act for noncompliance. The changes included in this bill will thus extend the time period for compliance without causing any substantial consumer inconvenience. All the interested parties have also agreed to this change.

In sum, I believe that the substitute bill I offer today addresses a number of needs that have long gone unmet. It is time that Congress step forward to take responsibility to ensure that the benefits of modern engineering and technology can be brought to all citizens of this world, whether they be residents of rural areas or Eastern European countries. I strongly urge my colleagues to join me in supporting the substitute amendment and the passage of S. 1839, as amended.
Mr. HOLLINGS. Mr. President, the National Telecommunications and Information Administration [NTIA] plays a key role in setting and coordinating the Nation's telecommunications policy. This role is becoming more and more difficult, as the advances in telecommunications technology raise new policy issues before the old issues have been resolved. The precedents and traditions of the past will no longer serve as in the future. Each issue requires an independent review, each problem a fresh look.

NTIA has taken these responsibilities and for the most part has fulfilled them. Although it has taken some positions with which I disagree, such as on our cable legislation, I believe that NTIA has demonstrated a sincere desire to maintain its integrity while struggling with several contentious issues.

Senator Inouye has worked hard to craft this consensus, noncontroversial substitute amendment to reauthorize NTIA. I am pleased to join him in supporting this amendment and urge my colleagues to vote for S. 1839, as amended.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3155) was agreed to.

The PRESIDING OFFICER. Without objection, the bill is deemed read a third time.

Mr. REID. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of H.R. 3310, the House companion bill, that all after the enacting clause and the text of S. 1839, as amended, be inserted in lieu thereof; that the bill be advanced to third reading, passed, and the motion to reconsider be laid upon the table.

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

So the bill (H.R. 3310), as amended, was passed.

Mr. REID. Mr. President, I ask unanimous consent that S. 1839 be returned to the calendar.

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

THE EMPLOYER RETIREMENT SECURITY ACT AMENDMENTS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5872, a bill to amend title I of the Employee Retirement Income Security Act of 1974, now at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5872) to amend title I of the Employee Retirement Income Security Act of 1974 to require qualifying employer securities to include interest in publicly traded partnerships.

Mr. REID. Mr. President, I send an amendment to the desk on behalf of Senators Gore, Hollings, Danforth, and Pressler as a substitute and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The Assistant Legislative Clerk read as follows:

The Senate from Nevada [Mr. Reid], for Mr. Gore (for himself, Mr. Hollings, Mr. Danforth, and Mr. Pressler) proposes an amendment numbered 3156.

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

The PRESIDING OFFICER. Without objection it is so ordered.

The text of the amendment is printed in that S. Con. Res. under "Amendments Submitted."

Mr. GORE. Mr. President, I am pleased to bring the NASA authorization bill, which is vital to the future of the U.S. space program, to the Senate for its consideration. It is the result of many weeks of hearings and countless hours of deliberations by members of the Subcommittee on Science, Technology, and Space. The bill is an essential element in our effort to continue preeminence of the United States in the areas of aeronautics and space.

I am also happy to report to my colleagues that this amendment, which I offer today on behalf of myself, Senator Hollings, Senator Danforth, and Senator Pressler, has been worked out with our colleagues in the House of Representatives. Passage of this legislation today by the Senate, followed by its adoption by the House, will ensure that the legislation acts as a stepping stone to continue preeminence of the United States in the areas of aeronautics and space.

This is particularly critical in light of our failure last year to reach an agreement on such a bill for fiscal year 1990.

S. 2287, as amended, authorizes more than $15.023 billion for NASA in fiscal year 1991, an increase of 22 percent over fiscal year 1990 program levels. This increase is needed to continue work on a wide variety of ongoing programs, as well as to begin work on NASA's new start in fiscal year 1991: the Earth observing system (EOS). The bill also authorizes funds in fiscal year 1991 for continued operation of the Department of Transportation's Office of Commercial Space Transportation, the National Space Council, and the Office of Space Commerce in the Department of Commerce.

Mr. President, I will be the first to admit that the last several months have been difficult ones for the space program in this country. The temporary loss of many of the scientific capabilities of the Hubble space telescope, persistent fuel leaks that grounded the space shuttle fleet for much of the year, and design shortcomings of the space station freedom are the most visible problems affecting public confidence in NASA and its...
ability to manage the resources committed to the U.S. space program.

There are many theories why NASA has faced these latest challenges, as well as a great deal of debate as to whether they reflect problems within the agency or with the space programs. I await completion of the Augustine Commission's work later this year, for its conclusions on NASA's ability to manage the planned expansion of the space program. I can assure my colleagues that the subcommittee will continue its oversight of NASA and the U.S. space program, working to return both to their position of worldwide preeminence.

Mr. President, I would like now to summarize briefly the major provisions of the bill before us. Funding is authorized in this bill for the continued development of the space station Freedom, the production and operation of a safe and reliable space shuttle, and significant growth in the space sciences. The bill provides full funding of the National Aerospace plane, and enhanced funding for the solar Sciences and technology development programs that are critical to this Nation's continued leadership in civil and military aviation.

The bill also provides enhanced funding and new start status for the Earth observing system and the Earth probes, major components of NASA's mission to planet Earth and the agency's contribution to the U.S. global change research program. It also fully authorizes Admiral Truly's stated priorities for fiscal year 1991—research and program management, which funds all civil service staff, maintenance of facilities, and R&D contract support—and provides the President's request for the construction of facilities account.

There are a number of provisions that were adopted by our colleagues in the House and have been included in this compromise legislation. For example, language has been included that directs NASA to undertake a flight test of the solar dynamic program on the space station Freedom. In the spirit of compromise, this language was included in this legislation, and, if the space station program is fully funded, this flight test may be justified. However, at a significantly reduced appropriation level for the space station program, NASA cannot be expected to undertake work on a full flight test in fiscal year 1991.

A second area on which I feel compelled to comment is title II, which requires the procurement of commercial launch services. Title II of the legislation is intended to foster space commercialization and to support our current space launch and satellite industry. However, the bill as provision, there is no intent on our part to adversely affect contracts in existence at time of enactment of this legislation or, for that matter, the unexercised options of those existing contracts. I strongly support a robust and commercial space industry that benefits both the Federal Government and the industry and contributes to our Nation's competitiveness. Any clarification will benefit all involved parties.

In total, Mr. President, this bill will provide the guidance and resources needed for growth of the U.S. space program in the 1990's. It thus will ensure continued leadership in aeronautics and space by the United States. It does this by emphasizing current program requirements: the space station, space shuttle, aeronautics, and a wide range of important space sciences.

Mr. President, the bill before us does not provide the authority for the administration to begin its mission for manned exploration of the Moon and Mars, referred to as the space exploration initiative. This is consistent with action taken by the Commerce Committee earlier this year when it reported S. 2287.

Funds have been included in this bill for several specific on-going programs that the President packaged under the Moon/Mars heading. However, let me caution that we have authorized funds only for those programs that have applications to initiatives other than the human exploration of the Moon and Mars. Specifically, this includes funds for the advanced launch system program, heavy-lift launch vehicle studies, the Lunar and Mars observers, and the advanced program funds for space suits and solar dynamic programs associated with the space station program. But let me make clear, we do not endorse the undertaking of the space exploration initiative in fiscal year 1991, and the bill does not fund those program increases requested to support the Moon/Mars mission.

I support the mission of manned exploration of Mars, having joined the late Democratic Senator Spark Matsunaga in advocating such a mission years ago. It is consistent with my belief that NASA must have a long-term focus.

However, this administration must have a long-term focus on how it plans to pay for the Moon/Mars mission. While estimates vary, some experts project the total cost of such a mission to be upwards of $500 billion over the next several decades.

To get the Moon/Mars mission underway in fiscal year 1991, NASA has requested $188 million in new funds. That amount ramps up very quickly, however, increasing to $444 million in fiscal year 1992, and up to almost $1.1 billion by fiscal year 1995.

In the current fiscal environment, it will be particularly important to ensure that no constraints on future non-defense discretionary expenditures, the growth in NASA's budget needed to support the funding increases for a possible Moon/Mars mission, as well as the space shuttle program, development, and launch of the space station Freedom, and initiation of NASA's mission to Planet Earth, is, at best, unlikely.

Mr. President, we need to give careful consideration to a possible mission for human exploration of the Moon and Mars before committing hundreds of billions of dollars to it. Very simply, it must be better defined: we currently have no idea of how such a mission would be structured, the total cost of such an effort, its scientific objects, or the level of international partnership. I strongly believe the American people will benefit from such a review.

I agree with President Bush that funding for the U.S. space program must increase significantly. NASA is an essential part of our effort to make America more competitive. It plays a critical role in developing new technologies that apply to industries throughout our economy. And it helps to attract this Nation's youth to the technical fields of science, engineering and math.

For these reasons, we must take into account the prevailing fiscal realities. Given the fact that the annual funding requirements of virtually every NASA project; increase as they mature, we simply cannot undertake every program. To do so without a long-term plan in which revenues are dedicated to support growth in NASA's budget could do damage to those other ongoing programs that have such strong support. That has been the committee's approach on this bill: fund on-going programs first, and when appropriate, such as the clearly defined EOS and the Earth probes programs, initiate a new start.

Before concluding, Mr. President, I ask unanimous consent to include in the CONGRESSIONAL RECORD, at the end of my statement, a brief summary of the major provisions of S. 2287, as amended, as well as a table highlighting NASA program funding levels included in this bill.

Mr. President, I believe this is a bill that provides strong support for the U.S. aeronautics and space program. It is also a realistic bill. I hope it will be supported by the Senate today, and I urge its adoption.

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


1. NASA Funding Levels

Bill authorizes $15.023 billion in FY 1991 for NASA's National Aeronautics and Space Administration (NASA). This represents a $2.726 billion increase over FY 1990 funding levels (22 percent).
RESEARCH AND DEVELOPMENT

Space Station—Limits previous spending authority to $2.451 billion in FY 1991 for continued development of the Space Station Freedom. Within this amount, the bill directs NASA to conduct a flight test on the Space Station Freedom of the solar dynamic power program.

Space Transportation Capability—Authorizes $723.4 million, with a $50 million reduction to the Orbital Maneuvering Vehicle, consistent with the President’s request. The bill funds the Advanced Launch System program and heavy-lift launch vehicle studies.

Space Science—Authorizes the President’s request of $985 million for Physics and Astronomy programs. For Life Sciences, the bill authorizes $168.4 million, with $5 million added for LifeSat payload development and $400,000 added for space food processing and bioregenerative life support modeling. For Earth Sciences, the bill authorizes $337.2 million, which does not include funding for the CRAP/Cassini mission, with periodic reporting requirements.

Earth Sciences—Authorizes $542.5 million for Earth Science programs in FY 1991, which is in addition to the $132 million previously authorized for the Earth Observing System (EOS). Of the authorized amount, $5 million is provided for an advanced sensor technology demonstration program. The President’s request is augmented with funds for the Terrestrial Ozone Mapping Spectrometer Earth Probe ($10 million), development of an earth science data director ($2 million), and conversion of defense and intelligence remote sensing data for civilian research use ($1 million).

Space Applications—Authorizes the President’s request of $973.3 million for Materials Processing in Space and $36.8 million for Information Systems. Of the $52.8 million authorized for Communications programs, not more than $2 million is provided for experimenting ground stations for the Advanced Communication Technology Satellite.

Commercial—Authorizes $1.6 billion for the full program cost of the CRAP/Cassini mission, with periodic reporting requirements.

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Commercial—Authorizes $1.6 billion for the full program cost of the CRAP/Cassini mission, with periodic reporting requirements.

Space Science—Authorizes the President’s request of $985 million for Physics and Astronomy programs. For Life Sciences, the bill authorizes $168.4 million, with $5 million added for LifeSat payload development and $400,000 added for space food processing and bioregenerative life support modeling. For Earth Sciences, the bill authorizes $337.2 million, which does not include funding for the CRAP/Cassini mission, with periodic reporting requirements.

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Commercial—Authorizes $1.6 billion for the full program cost of the CRAP/Cassini mission, with periodic reporting requirements.
This bill, which is considerably above the mark agreed to earlier this week by the appropriations conferees, reflects the level of support that I think we have already others believe NASA should receive. Fiscal constraints, however, have forced those of us on the Appropriations Committee to re-examine a number of difficult choices with respect to certain programs under NASA’s domain.

Moreover, we must not lose sight of the fact that the space shuttle or use of the shuttle is important for either national security or foreign policy purposes.

III. OTHER AGENCY FUNDING LEVELS

Office of Commercial Space Transportation

Authorizes the President’s request of $4.517 billion for the Office of Commercial Space Transportation in the Department of Transportation. This bill also identifies $250,000 for the provision of launch services for eligible satellites in accordance with section 6 of the Commercial Space Launch Act of 1989. National Space Council

Authorizes the President’s request of $1.383 billion for the activities of the National Space Council.

Office of Space Commerce

Authorizes the President’s request of $487,000 for the Office of Space Commerce in the Department of Commerce in FY 1991.

Mr. HOLLINGS. Mr. President, I take this opportunity to express my support for the substitute amendment to S. 2287, the NASA Authorization Act for Fiscal Year 1991. This amendment is the result of discussions with the House of Representatives and the administration and reflects our collective commitment to the future of the U.S. aeronautics and space program.

S. 2287 is a strong endorsement of the vast majority of the President’s request for fiscal year 1991, as it authorizes much more than the $15.02 billion in fiscal year 1991 to support a balanced program of aeronautical research, development of new launch vehicles, and space station and exploration of space. In total, the bill is $102 million below the amount requested for NASA, which represents a 22-percent increase over last year’s appropriated level.

The bill before us will continue the current direction of the U.S. aeronautics and space program by focusing funds on NASA’s ongoing programs, including the Space Shuttle Program, the Space Station Freedom, space science and applications programs, including the Mission to Planet Earth, aeronautical research, commercial space programs, transatmospheric research, and related academic programs. It also gives a strong endorsement to the initiative in fiscal year 1991 of the Earth Observing System, part of NASA’s Mission to Planet Earth, in which space-based technologies will be utilized to enable mankind to understand better and respond to our Earth processes and global changes.

October 24, 1990

CONGRESSIONAL RECORD—SENATE

33553

Mr. President, I believe this legislation will help to maintain NASA’s preeminence in space and aeronautics. I urge my colleagues to join me in supporting this substitute amendment.

Mr. DANNY. Mr. President, as the ranking Republican member on the Commerce Committee, I ask my colleagues to join me in supporting this substitute amendment to S. 2287, the fiscal year 1991 NASA authorization bill. This substitute bill is the product of weeks of negotiations between the House and the Senate, and I think we have drafted a compromise that accommodates each Chamber’s vision of our U.S. civil space programs and policies.

The substitute authorizes $15 billion for the U.S. space program, an increase of 22 percent over NASA’s fiscal year 1990 budget. This high authorization is not a result of either a sense of the need to maintain the leadership of the United States in space science and exploration or a response to increasing competition from the U.S.S.R., West-
ern Europe, and other spacefaring nations. A robust space program is critical to our national economy. At a time when other high-tech industries have lost out to foreign competition, the aerospace industry has consistently posted a positive trade balance. In addition, the space program has generated numerous technological spinoffs such as pacemakers and microminiature computers which have spawned new businesses and enhanced the quality of our lives.

I am pleased that the substitute funds virtually all of the NASA programs at the levels recommended in the President's fiscal year 1991 budget. Among these programs is the Space Station Freedom, which is funded at the $2.5 billion budget request. The space station will be the foundation for our space program through the 1990's, both as an international space laboratory and a way station for manned spaceflight beyond Earth orbit. More important, the space station is an example of how nations can join forces to accomplish ambitious space missions. The bill also fully funds the National Aerospace Plane (NASP) Program. NASP represents the future of American aerospace. NASP is aimed at developing the propulsion and airframe technologies necessary to create a plane that can take off from a conventional runway and vault into orbit at mach 25 speed.

The concerns about ozone depletion and global warming in recent years have made the quest for NASA's preeminence in space an international priority. To that end, the bill authorizes a new start for NASA's Mission to Planet Earth. This satellite program will give us critical data over a 15-year period to help us understand and predict the major climate processes and changes that affect our lives.

The bill also supports the space exploration initiative (SEI), the President's bold commitment to manned missions to the Moon and Mars by the year 2019. The bill authorizes $100 million of the $188 million that was requested by President Bush for the Moon-Mars effort. SEI represents the very best in the NASA tradition. It promises to recapture the pioneering spirit of the Apollo program and its historic first lunar landing 20-years ago.

As with Apollo, the Moon-Mars effort again will drive NASA's talent, imagination, and creativity to the limit as we further expand man's presence in the universe. SEI will spawn new scientific breakthroughs and technological spinoffs. The technical challenge of planning and implementing such a mammoth mission are certain to rekindle interest in math and science as careers and help alleviate the current scientific manpower shortage which threatens to undermine U.S. competitiveness.

I fully appreciate the fiscal constraints affecting our ability to initiate SEI. The cost estimates for SEI are as much a function of the current economic climate as they are of the long-term mission timeframe. I am also mindful of recent setbacks in several of NASA's ongoing programs. Nevertheless, the United States must not let these problems cause it to be timid in its core mission of space exploration. NASA has always attempted the seemingly impossible in outer space. SEI is consistent with that goal and heritage.

Mr. President, I would also like to make special note of a program that affects little more than the long-term, in the long run, determine the fate of our future capability. I am referring to the Advanced Launch Systems (ALS) program. The bill continues authorization for this joint NASA-DOD program, which is designed to develop a new generation of low-cost unmanned launch systems. ALS is critical to the future space transportation needs of our civil and military space programs and to the emerging commercial industry. Our current family of unmanned launch vehicles, while reliable, reflects 1950's rocket technology. Those rockets do not incorporate any of the recent advances in propulsion, airframes, or assembly techniques.

To remain competitive with the other spacefaring nations, we will have to make dramatic improvements in our space transportation system. The United States faces a serious competitive dilemma. We must either push the low-cost, heavy-lift rockets of the U.S.S.R. and Western Europe. By paving the way for a new generation of low-cost, high-reliability launch vehicles, ALS will enable us to accept that challenge and, at the same time, satisfy the long-term needs of NASA and the Department of Defense.

Finally, Mr. President, I want to express my full support for the space commercialization provisions that we have accepted from the House version of this legislation. Space is the next international marketplace. Japan, the U.S.S.R., and other countries are poised to deliver launch services, satellite systems, and other space-related goods and services.

The United States must not be left behind in this competition. The bill assists the commercial launch industry by requiring NASA to purchase launch services from commercial launch companies, except where payloads require the shuttle, or national security and foreign policy issues are involved. This should provide a stable demand base for our commercial launcher industry on which they can rely as they seek other launch contracts around the world.

Mr. President, I believe that this bill provides the basis for an existing U.S. space program throughout this decade and beyond. Mr. President, I urge unanimous approval of S. 2287.

Mr. PRESSLER. Mr. President, as the ranking Republican member of the Senate Commerce Committee's Subcommittee on Space, I join my distinguished colleague from Minnesota in supporting the committee's substitute amendment to S. 2287, the fiscal year 1991 NASA authorization bill. The committee substitute authorizes $15 billion for NASA in 1991. This is the largest space agency authorization in our Nation's history and speaks to the committee's strong support of the President's commitment to maintaining the U.S. preeminence in space.

The committee authorizes a new start status for Mission to Planet Earth—NASA's contribution to the Global Change Research Program, aimed at providing researchers much-needed long-term data on how the oceans, atmosphere, land, and other Earth systems affect global climate trends. This is precisely the kind of information the world's scientists need to assess and respond to such alarming phenomena as global warming and ozone depletion. This bill contains authorization to support NASA's two proposed initiatives: Earth observing system (EOS) and Earth probes. The world's scientific community will use that data to develop sophisticated mathematical models for predicting global temperature change and other climatic trends. These models will guide us in making policy decisions critical to global change issues.

Sioux Falls and South Dakota are proud of the excellent job done by the people of the EROS Data Center over the past two decades in providing space-based, remotely sensed data from NASA and other agencies' satellite systems to researchers worldwide. I was particularly proud to share the podium at EROS with NASA Associate Administrator Dr. Lennard Fisk and U.S. Geological Survey (USGS) Director Dr. Dallas Peck on August 28, 1990, for a flag raising ceremony between those two Integral Federal agencies. The Senate passed the EROS Data Center Act as a part of a new initiative and a new relationship between NASA and the USGS. I look forward to this committee's full support of this initiative during its lifetime.

I believe that the funding levels in our committee substitute provide a firm fiscal foundation for a robust space science program that will maintain the U.S. preeminence in space for
MISSION TO PLANET EARTH OBSERVING SYSTEM

Mr. HEFLIN. Mr. President, one of the greatest benefits of America's space program is the opportunity it affords us to learn not only outward to the stars, but inward at our own planet Earth.

Who among us was not thrilled—and humbled—when we first saw our planet in the images transmitted from Apollo spacecraft? The Earth hung motionless, a beautiful blue sphere laced with white clouds, suspended against the star-speckled black curtain of space.

We really saw our planet for the first time. In that instant, we realized the importance we must give to understanding, protecting, and preserving this world upon which we live. To understand the increasing stresses imposed upon Earth's ecosystem by human activity, we must learn how our planet works as a system. The International scientific community is organizing research efforts which will advance our knowledge of both natural and manmade global change.

The United States will play a major role in studying the changes to our global environment through an interagency effort called the U.S. Global Change Research Program in order to better understand and predict man's impact on our planet.

Our National Aeronautics and Space Administration is leading the primary U.S. contribution through a proposed initiative for fiscal year 1991, called Mission to Planet Earth. The major NASA component in this effort is the Earth observing system, or EOS.

EOS will consist of a space-based observing system, a data and information system, the EOS science research program. The space-based portion involves scientific payloads attached to Space Station Freedom, polar-orbiting platforms, and Earth probes.

Once it is activated by the middle of the decade, the space station will serve as a permanent observation post in space from which we can begin to study the Earth as we never before.

The Freedom Space Station will have a low inclination orbit to the Earth, 28½ degrees above and below the Equator. Astronaut scientists on the space station, will be able to measure many of the most ecologically stressful areas of the globe every 90 minutes, and then compare their human observations and result of space-station-based experiment readings with data collected by the polar platforms and Earth probes.

The Marshall Flight Center, in my own State of Alabama, is developing several environmental experiments to be attached to the space station, as well as three of the scientific payloads for the popular platforms.

One of the most important is the high resolution microwave spectrometer sounder, which will measure the Earth's circulation and distribution of water. With this device, we will gain knowledge of the ever-changing locations and amounts of ice, water vapor, clouds, precipitation, and soil moisture which are so important to agriculture over the globe. A lightning mapper sensor is being developed to provide information which may help us understand one of the Earth's deadliest and most violent naturally occurring phenomena. A small, state-of-the-art optical sensor is being developed to detect and locate lightning flashes over large areas of the Earth's surface.

The lightning sensor will enable scientists to study, for the first time, electrical discharge behavior simultaneously over the full viewable disk of the Earth. This sensor will provide information that can only be obtained on a global scale from a space-based instrument over areas where little information is available, such as the tropics and oceanic regions.

The need for a better understanding of lightning phenomenon was heavily underscored during 1987. Statistics show that 86 persons were killed by lightning strikes and a further 365 persons were injured.

In addition to its toll of dead and injured, lightning accounted for billions of dollars worth of property damage. Some 900 lightning-caused forest fires charred thousands of acres of America's prime timberland and damaged homes, factories, and other structures. The potential power of a thunderstorm has been estimated as five times that of the atomic bomb which destroyed Hiroshima. The temperature of a single lightning bolt is up to five million degrees greater than the surface temperature of the Sun.

A third instrument, the laser atmospheric wind sounder, will provide real-time, global-scale wind profiles for the lowest weather-producing layer of the Earth's atmosphere.

Whether the wind profile data is obtained globally, using the polar-orbiting Earth observing system platform, or just over the tropics and subtropics, using Space Station Freedom, the information will provide essential data to improve understanding of the global interrelationship of biology, geology, and chemistry.

With the laser atmospheric wind sounder, we will learn about the action of water on the planet's land forms and come to understand large-scale atmospheric circulation and climate dynamics.

This information can also be used by weather forecasters worldwide to improve predictions. The sounder would enable meteorologists at the National Oceanic and Atmospheric Administration to develop more accurate 5- to 10-day weather forecasts.

At present, severe weather warnings can only be issued for broad areas of the United States. The laser atmospheric wind sounder would enable forecasters to track severe wind flows; therefore, better pinpointing areas where severe weather warnings should be issued.

The sounder would also allow us to obtain global wind velocity measurements. Most atmospheric wind speed data is obtained using sounding balloons which are, of necessity, launched from land. However, more than two-thirds of the Earth's surface is water; thus, there exist large areas of the globe—particularly in the southern hemisphere—which receive only minimal wind measurement coverage.

The atmospheric wind sounder will allow world wide coverage with special emphasis given to tropical and subtropical areas where, previously, measurements have been sparse to nonexistent.

In addition to weather projections, researchers anticipate that the data will assist in analyzing the global environmental impact of natural occurrences, such as volcanic eruptions; and human activity, such as the slash-and-burn land clearing, now under way in many developing countries.

The third portion of the space-based observatories in the EOS initiative involves Earth probes—sensors which are destined for early flights of opportunity aboard the space shuttle—and sounding rockets which will observe specific Earth processes, where small platforms or unique orbits are required. Because of their reduced complexity, some Earth probes may be launched sooner than the somewhat larger polar-orbiting platforms.

These probes include the total ozone mapping sensor to provide interim ozone observations until the Earth observing system can be flown, the scanning wide-field sensor to provide improved observations of oceanic chlorophyll, and the scatterometer to study marine surface winds.

Finally, the tropical rainfall measuring mission will provide the first space-borne measurements of low-latitude rainfall.

There are also a number of Earth probe experiments which have been selected to go on low-Earth-orbiting satellites other than those I've already mentioned.

The EOS's data and information system development will support research and analysis of existing data and of data from future missions. This space-based system will permit rapid and easy user access to all Earth science data bases, including ground-based measurements.
The EOS system will be able to monitor, in real-time, the effects of drought in the United States and around the globe; deforestation of the Amazon and elsewhere; the growth of the desert in Central Asia; the formation of storm systems in the oceans; and other events, which contribute to the world’s changing climate. We will also be able to monitor depletion of the fragile ozone layer, which protects this planet.

Scientists on the ground will be able to monitor the information from space at the same time, and interact with the astronauts on the space station, to study events immediately, as they happen.

The polar-orbiting platforms and space station attached payloads will provide coordinated, simultaneous data on the interactions of land masses, the atmosphere, oceans and hydrologic and biogeochemical cycles. United States platforms will be supplemented by platforms operated by Japan and the European Space Agency.

As an adjunct to the EOS initiative, NASA’s space shuttle activity is contributing to the mission to planet Earth efforts with its Atlas space lab program. In this case, the low-Earth-orbiting satellite is the space shuttle.

The Atlas missions will provide critically important calibration once each year for the next decade which will assure high-precision monitoring of important global change parameters now under investigation.

The need for the EOS program is increasingly obvious. We are constantly made aware of the fact that we live on a planet of extraordinary complexity—a complexity that we have not begun to fathom. It is a planet upon which the human population is approaching 6 billion and growing exponentially.

The atmosphere has supported an abundant diversity of life. Now, for the first time, one of those forms of life—man—is changing our global environment in ways we do not begin to understand.

Some researchers suggest that the Earth should be warning in response to increasing levels of carbon dioxide and other gases in the atmosphere. Other observations seem to confirm that our environment is undergoing rapid global fluctuations, possibly, induced by human activities. Still, other observations are ambiguous.

Is what we’re seeing simply normal climate variations, or are there other processes involved? Until we can more completely understand our planet, we cannot hope to answer these crucial questions.

It is essential that we continue to expand our knowledge—that we continue to understand how the components of this system interact.

We need to understand everything from short-term effects, such as weather systems, to events, such as ice ages and continental drift which transpire over thousands or millions of years.

The demonstrated human role in global change requires that we develop a comprehensive interior program for Earth studies. We must obtain a scientific understanding of the Earth as a system—an understanding from which we can develop an ability to predict future trends.

The key to understanding is accurate observation coupled with enhanced analysis. To make the necessary observations, we must put appropriate instruments on the Earth’s surface and in space. Surface-based observations can validate space-based observations, and vice-versa. Satellites and the space station will allow us to observe the entire globe. Earth-based instruments will complement this flow of data by providing needed information which cannot be addressed from space.

The objective of NASA’s Mission to Planet Earth Program, of which EOS is a major component, is to establish the instruments in space necessary to understand the Earth as a total global system, and to understand and predict global change.

NASA’s efforts, coupled with work to be done by other Federal agencies and in the international community, will result in the creation of a mutually supporting operation which will benefit all mankind.

Throughout the first half of this decade, EOS and related missions are planned to provide remotely sensed data for the global change research program. These missions will be complemented by operational missions currently consisting of geosynchronous satellites, and in the international community, will result in the creation of a mutually supporting operation which will benefit all mankind.

All of this will pave the way for the comprehensive Earth observing system in the latter half of this decade.

It is no exaggeration to say that the mandate to explore space—our own home planet—is, at the very least, as important as our mandate to explore outer space. We have begun searching the heavens for life. We have only found it here, on Earth.

If we are to avoid the fate of Venus, where the greenhouse-effect temperatures are hot enough to melt lead—if we are to keep Earth from becoming a dry sterile world such as Mars—we must begin now to understand how to preserve and protect those aspects of our world which sustain life. No nation has ever undertaken a greater or more important task.
order to complete definition of long term on-orbit storage capability.

(5) PROPULSION PRESSURIZATION ELECTRONICS

Complete Propulsion Pressurization Electronics through detail and product design.

(6) ON-ORBIT OPERATIONS

Complete the definition of on-orbit operations, incorporating use of a GPS-based navigation subsystem. Define guidance and navigation operating modes and algorithms for changes in orbit altitude, approach to targets, approach to the shuttle and space station, and long term on-orbit storage.

(7) TARGET IDENTIFICATION, APPROACH & DOCKING

Complete definition of target identification, approach and docking, to include generation of equipment specifications for the rendezvous radar and the pan/tilt/zoom camera, definition of a sensor providing range and range-rate, design specifications for the three-point docking mechanism latch, and selection of a docking algorithm.

It is recognized that several months have passed since NASA directed the contractor team to terminate the OMV program. Despite the fact that an effort begun now, might not be as efficient or effective as one begun at the outset of termination, there is great validity to the view expressed in the House report, that NASA should proceed immediately to capture and document those key technologies, where it reasonably can do so. The seven key items listed above provide a starting point for NASA, and the OMV contractor team to effectively begin this work. Because of the time that has passed since termination, it appears most logical that this work now be begun on the basis of the concept and the phase A study of the CTV. This effort should enable NASA to maximize the value for dollars spent on OMV and protect for future use the key technologies for any spacecraft with OMV-like capabilities.

NASA/FT. SUMNER WEATHER BALLOON LAUNCH SITE

Mr. DOMENICI, Mr. President, I am pleased to be here today to lend my support for the National Aeronautics and Space Administration authorizations and for the Fort Sumner Weather Balloon Site.

NASA has been launching weather balloons at Ft. Sumner since 1987. The purchase of eight acres of land near the Municipal Airport in Fort Sumner, New Mexico, will enable NASA to continue its data collection on such critical issues as global warming and ozone depletion. With the addition of land in the contest of the Phases A and CTV study, NASA's research would be home to the best of the world.

NASA's project was originally housed in a hanger at the Municipal Airport in Fort Sumner, NM. The Village of Fort Sumner, however, has developed plans to utilize this facility for industrial development. As a consequence, NASA must move their operation to a new site.

Weather Balloons provide a relatively inexpensive means of collecting atmospheric data. They carry loads of approximately 6,000 pounds. NASA currently averages 50 launches per year from Fort Sumner, NM.

It is believed by some that it is increasingly more important to study the atmosphere and to determine the critical parameters associated with global warming. The United States is exemplifying our commitment to the environment by studying this complex scientific problem. The weather balloon launches from Fort Sumner provide important data for the study of climate change.

Ownership of this land will give NASA a permanent site upon which to construct buildings and expand their operations. In addition, there are plans to construct a downrange tracking station for similar operations conducted from the National Scientific Balloon Facility at Palestine, TX.

The purchase of land by NASA will perpetuate a cooperative effort between NASA and academia. New Mexico State University manages and operates the Palestine, TX facility. As a result, graduate students are intimately involved in day-to-day experimental work.

The funding for the purchase of the land will not increase this years Federal expenses. The funds for this transaction, including the initial phase of buildings and construction, were appropriated in fiscal year 1990.

The PRESIDING OFFICER. The question is on agreeing to the substitute amendment.

The amendment (No. 3159) was agreed to.

The PRESIDING OFFICER. Without objection the bill, as amended, is deemed the third time and passed.

So the bill (S. 2387), as amended, was passed as follows:

S. 2387

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Aeronautics and Space Administration Authorization Act, Fiscal Year 1991."
recognizes the mutually reinforcing benefits of both;

- maintain a fleet of space shuttle orbiters, including an adequate provision of structural spare parts, and evolve the orbiter design to improve safety and performance, including structures and materials advancements, and
- sustain a mixed fleet by utilizing commercial expendable launch vehicles to the extent practicable,
- support an aggressive program of research and development designed to enhance the United States preeminence in launch vehicles;
- continue and complete on schedule the development and deployment of a permanently manned, fully capable, space station;
- develop an advanced, high pressure space suit to support extravehicular activity that will be required for Space Station Freedom and the space shuttle;
- establish a dual capability for logistics and resupply of the space station utilizing the space shuttle and expendable launchers including commercial services if available;
- continue to seek opportunities for international cooperation in space and fully support international cooperative agreements;
- maintain an aggressive program of adventurous and technological development designed to enhance the United States preeminence in civil and military aviation and improve the safety and efficiency of the United States air transportation system;
- conduct a program of technology maturation, including flight demonstration in 1997, to prove the feasibility of an air-breathing, hypersonic aerospace plane capable of single-stage-to-orbit operation and hypersonic cruise in the atmosphere;
- seek innovative technologies that will make possible advanced human exploration initiatives, such as the establishment of a lunar base, and the successor mission to Mars, and provide high yield technology advancements for the national economy; and
- enhance the human resources of the Nation and the quality of education.

SEC. 103. AUTHORIZATION OF APPROPRIATIONS.

(a) Authorizations.—There are authorized to be appropriated to the National Aeronautics and Space Administration the following amounts:

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<th>Description</th>
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<td>For &quot;research and development&quot;, for the following programs:</td>
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<td>(A) Constellation Systems National Space Station Freedom:</td>
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<td>(i) Withholding section 201(a)(1)(A) of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989, not more than $2,451,000,000 shall be made available for fiscal year 1991.</td>
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<td>(ii) Such sums as are necessary from funds available for the United States International Space Station Freedom:</td>
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<td>(i) Constellation Systems National Space Station Freedom:</td>
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(D) Rehabilitation of Mission Control Center Power and Control Systems, Johnson Space Center, $8,500,000.

(E) Reconstruction of Transfer/Canister Facility, Kennedy Space Center, $5,500,000.

(F) Construction of Processing Control Center, Kennedy Space Center, $9,400,000.

(G) Refurbishment of High Bay Heating, Ventilating, and Air Conditioning System, Hypergolic Maintenance Facility, Kennedy Space Center, $2,100,000.

(H) Construction of Operations and Checkout Building, West Cooling Tower, Kennedy Space Center, $1,000,000.

(I) Rehabilitation of 30-Foot Heavy Equipment Area, Kennedy Space Center, $900,000.

(J) Upgrade of Orbiter Processing Facility High Bay Heating, Ventilating, and Air Conditioning System, Kennedy Space Center, $3,300,000.

(K) Upgrade of Yundum International Airport to Full Transoceanic Abort Landing Site, Banjul, The Gambia, $3,400,000.

(2) Replacement of Condensate System, Main Manufacturing Building, Michoud Assembly Facility, $4,000,000.

(M) Construction of Project Engineering Facility, Marshall Space Flight Center, $17,000,000.

(N) Construction of Information and Electronic Systems Laboratory, Marshall Space Flight Center, $4,000,000.

(O) Rehabilitation of Hydrogen Transfer Facility, Marshall Space Flight Center, $2,700,000.

(P) Restoration of Space Shuttle Main Engine Test Complex "A", Stennis Space Center, $1,000,000.

(Q) Construction of Advanced Solid Rocket Motor Program Facilities, including land acquisition, various locations, $5,000,000.

(R) Construction of Additon to Site Electrical Substation, Johnson Space Center, $11,000,000.

(S) Addition to Administration and Engineering Building, Stennis Space Center, $3,500,000.

(T) Construction of Earth Observing System Data Information System Facility, Goddard Space Flight Center, $8,000,000.

(U) Construction of Detector Development Center, Goddard Space Flight Center, $3,100,000.

(V) Replacement of Chillers, Central Heating/Refrigeration Plant, Goddard Space Flight Center, $4,000,000.

(W) Replacement/Modernization of Electrical Power Feeders, Goddard Space Flight Center, $1,500,000.

(X) Construction of Observational Instruments Laboratory, Jet Propulsion Laboratory, $14,000,000.

(Y) Refurbishment of 25-Foot Space Simulator, Jet Propulsion Laboratory, $13,200,000.

(Z) Restoration of Utilities, Wallops Flight Facility, $5,200,000.

(AA) Modifications to the High Pressure Air System, Langley Research Center, $13,000,000.

(BB) Modifications to Upgrade the 30 x 60-Foot Wind Tunnel, Langley Research Center, $4,000,000.

(CC) Repairs to the Tunnel Shell, Unitary Plan Wind Tunnel, Langley Research Center, $2,700,000.

-DD) Rehabilitation of Central Air Systems at the Facility Center, $7,900,000.

(EE) Rehabilitation of Propulsion Systems Laboratory, Lewis Research Center, $6,000,000.

(FF) Construction of Liquid Hydrogen Structural Test Facility, Dryden Flight Research Facility, $18,800,000.

(GG) Rehabilitation and Modification of the Electrical Distribution System, Dryden Flight Research Facility, $4,000,000.

(HH) Construction of High Vacuum Light-Alloy Research Laboratory, Langley Research Center, $4,600,000.

(II) Construction of Space Experiments Laboratory, Lewis Research Center, $7,100,000.

(JJ) Refurbishment of Electric Power Laboratory, Lewis Research Center, $5,900,000.

(KK) Construction of 34-Meter Multifrequency Antenna at Goldstone, CA, Jet Propulsion Laboratory, $2,300,000.

(LL) Rehabilitation of 70-Meter Antenna Drive Gear Boxes in Australia, Spain, and Goldstone, CA, Jet Propulsion Laboratory, $4,400,000.

(MM) Repair of facilities at various locations, not to exceed $1,000,000 per project, $500,000.

(NN) Rehabilitation and modification of facilities at various locations, not to exceed $1,000,000 per project, $34,000,000.

(00) Minor construction of new facilities and additions to existing facilities at various locations, not to exceed $750,000 per project, $1,500,000.

(PP) Environmental compliance and restoration, $32,000,000.

QQ) Facility planning and design not otherwise provided for, $4,000,000.

(QQ) For "research and program management", for fiscal year 1991, $2,562,000,000.

(QQ) For "Inspector General", $11,000,000 for fiscal year 1990.

(b) LIMITATIONS.—(1) Notwithstanding paragraph (4), appropriations authorized under this section for "research and development" and "space flight, control, and data communications" may be used—

(i) for any items of a capital nature (other than acquisition of land) which may be required at locations other than installations of the National Aeronautics and Space Administration for the performance of research and development contracts; and

(ii) for grants to nonprofit institutions of higher education, or to nonprofit organizations whose primary purpose is the conduct of scientific research, for purchase or construction of additional research facilities.

Title to facilities described in clause (ii) shall be vested in the United States unless the Administrator determines that the national program of aeronautical and space activities will best be served by vesting title in any such grantee institution or organization. Each such grant shall be made under such conditions as the Administrator shall determine to be required to ensure that the United States will receive therefrom benefit adequate to justify the making of that grant.

(B) None of the funds appropriated for "research and development" and "space flight, control, and data communications" pursuant to this title may be used in accordance with this paragraph for the construction of any facility, the estimated cost of which, including collateral equipment, exceeds $750,000, unless the Administrator has notified the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, on the circumstances of such, may be varied upward 25 percent to meet unusual cost variations. The total cost of all work authorized under paragraphs (1) and (2) shall not exceed the total amounts authorized in section 103(a)(3)(A) through (QQ).

SEC. 165. SPECIAL REPROGRAMMING AUTHORITY FOR CONSTRUCTION OF FACILITIES.

Where the Administrator determines that new developments or scientific or engineering changes in the national program of aeronautical and space activities have occurred; and that such changes require the use of additional funds for the purposes of construction, expansion, or modification of facilities at any location; and that deferral of such action until the enactment of the next authorization Act would be inconsistent with the interest of the Nation in aero­

neal and space activities; the Adminis­

trator may transfer not to exceed one-half of 1 percent of the funds appropriated pursuant to section 103(a)(1) or (2) to the "construction, expansion, or modification of facilities" appropriation for such purposes. The Administrator may also use up to $10,000,000 of the amounts authorized under section 103(a)(3) for such purposes. The funds so made available pursuant to this section may be expended to acquire, construct, convert, rehabilitate, or modify an existing facility, including land acquisition, site preparation, appurtenances, utilities, and equipment. No such funds may be obligated until a period
of 30 days has passed after the Administr­
or the Administrator's designee has trans­mitted to the Committee on Science, Space, and Transportation of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a written report describing the nature of the construction, its cost, and the reasons therefor.

SEC. 100. CONSIDERATION BY COMMIT­EES.

Notwithstanding any other provision of this title-

(1) no amount appropriated pursuant to this title may be used for any program de­leted by the Congress from requests as origi­nally made to the Office of the Secretary of Commerce, Science, and Technology of the House of Representatives or the Committee on Commerce, Science, and Transportation of the Senate;

(2) no amount appropriated pursuant to this title may be used for any program in excess of the amount actually authorized for that particular program by section 103(a)(1), (2), and (4); and

(3) no amount appropriated pursuant to this title may be used for any program which has not been presented to either such committee, unless a period of 30 days has passed after the date the request for each such committee of notice given by the Administrator containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action. The National Aeronautics and Space Administration shall keep the Committee on Science, Space, and Tech­nology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate fully and cur­rently informed of the facts and circumstances and responsibilities within the jurisdiction of those committees. Any Federal depart­ment, agency, or independent establishment shall submit any information requested by either committee relating to any such activ­ity or responsibility.

SEC. 105. AMENDMENTS TO THE Na­tIONAL AERONAUTICS AND SPACE ACT OF 1958.

Section 203(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(a)) is amended by-

(1) striking "and" at the end of paragraph (2);

(2) striking the period at the end of para­graphs (a), (b), or (c), and inserting in lieu thereof a semicolon;

(3) adding at the end the following new paragraphs:

"(d) seek and encourage, to the maximum extent possible, the fullest commercial use of space; and"

(4) "encourage and provide for Federal Government use of commercially provided space services and hardware, consistent with the requirements of the Federal Govern­ment."

SEC. 106. NATIONAL SPACE COUNCIL AUTHO­RIZATION.

(a) There are authorized to be appropri­ated to carry out the activities of the Na­tional Space Council established by section 501 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989 (42 U.S.C. 2471), $1,365,000 for fiscal year 1991, of which not more than $1,000 shall be available for official recep­tion and representation expenses. The Na­tional Space Council shall reimburse other agencies for not less than one-half of the personnel compensation costs of individuals detailed to it.

(b) It is the sense of Congress that the Na­tional Space Council should, by October 1, 1991, establish guidelines and policy recom­mendations for the need for and limiting, for the conduct of expendable launch vehicle operations in which a Federal agency assumes substantial responsibility for public safety, re­liability, and administrative oversight.

SEC. 107. GEOGRAPHICAL DISTRIBUTION.

The Administrator shall distribute re­search and development funds geograph­i­cally in order to provide the broadest practica­ble participation in the programs of the Na­tional Aeronautics and Space Administra­tion.

SEC. 110. BUY AMERICAN.

(a) GENERAL RULE.—The Administrator shall award to a domestic firm a contract that, under the use of competitive proce­dures, would be awarded to a foreign firm, if—

(1) the final product of the domestic firm will be completely assembled in the United States;

(2) when completely assembled, not less than 51 percent of the final product of the domestic firm will be domestically produced; and

(3) the difference between the bids sub­mitted to the Administrator by foreign and domestic firms is not more than 6 percent.

(b) EXCEPTIONS.—This section shall not apply to the extent to which—

(1) such applicability would not be in the public interest;

(2) compelling national security consider­ations require otherwise; or

(3) the United States Trade Representa­tive determines that such an award would be in violation of the General Agreement on Tariffs and Trade or an international agree­ment to which the United States is a party.

(c) DEFINITIONS.—For purposes of this sec­tion—

(1) the term "domestic firm" means a business entity that is incorporated in the United States and that conducts business operations in the United States;

(2) the term "foreign firm" means a busi­ness entity not described in paragraph (1).

SEC. 111. ADVANCED SOLID ROCKET MOTOR.

The Administrator shall submit to the Committee on Science, Space, and Technol­ogy of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate the following:

(1) A report on the projected cost to com­plete the design, development, and qualifi­cation of the Advanced Solid Rocket Motor. The first report shall be submitted by March 1, 1991, and thereafter with the Na­tional Aeronautics and Space Administra­tion's annual budget request.

(2) An annual report on the projected unit cost of the flight motors.

(3) An annual report on the increase in space shuttle payload capability provided by the Advanced Solid Rocket Motor. The report shall include the original baseline payload capability, adjustments to that baseline capability, and the projected pay­load capability.

(4) An assessment by the National Re­search Council by July 1, 1991, of the quality assurance and testing program that will ensure the achievement of safety and reli­ability for the Advanced Solid Rocket Motor.

SEC. 112. SPACE SHUTTLE USE POLICY.

(a)(1) It shall be the policy of the United States to ensure that the Space Shuttle or (ii) when other compelling circumstances exist.

(2) The term "compelling circumstances" includes, but is not limited to, occasions when the Administrator determines, in con­sultation with the Secretary of Defense and the Secretary of State, that important national security or foreign policy interests would be served by a Shuttle launch.

(3) The policy stated in subsection (a)(1) shall not preclude the use of available cargo space, on a Space Shuttle mission otherwise consistent with the purposes of this Act, for the purpose of carrying secondary payloads (as defined by the Administrator) that do not require the pres­ence of man if such payloads are consistent with the requirements of research, develop­ment, demonstration, scientific, commercial, or international programs authorized by the Administrator.

(b) The Administrator shall, within six months after the date of enactment of this Act, submit a report to Congress forth a plan for the implementation of the policy described in subsection (a)(1). Such plan shall include—

(1) details of the implementation plan;

(2) a list of purposes that meet such policy;

(3) the proposed schedule for the imple­mentation of such policy;

(4) an estimate of the costs to the United States of implementing such policy; and

(5) a schedule for informing the Congress in a timely and regular manner of how the plan is being implemented.

(c) At least annually, the Administrator shall submit to the Congress a report certify­ing that the payloads scheduled to be launched on the space shuttle for the next four years are consistent with the policy set forth in subsection (a)(1). For each payload scheduled to be launched from the space shuttle, which do not require the presence of man if such payloads are consistent with the requirements of this Act, the Administrator shall, in the certi­fied report to Congress, state the specific circumstances which justified the use of the space shuttle. If, during the period between scheduled reports described in this para­graph, any changes are made to the list of certified pay­loads intended to be launched from the Shuttle, the Administrator shall inform the Congress of the additions and the reasons therefor within 45 days of the change.

(d) The report described in subsection (c) shall also include those National Aeronautics and Space Administration payloads des­igned solely to fly on the space shuttle which have begun the phase C/D of its develop­ment cycle.

SEC. 113. LIFE SCIENCES STRATEGIC PLAN.

(a) FINDINGS.—The Congress finds that—

(1) the current knowledge base in life sci­ences is not compatible with the National Aeronautics and Space Administration's cur­rent objectives in space, and the National Aeronautics and Space Administration lacks an adequate strategic plan to acquire a knowledge-based space program;

(2) it is critical to the success of manned missions in space, be they commercial oper­ations or manned missions to Mars, that a realistic appraisal of the influences of the space environment on biological systems is comple­
ed and appropriate protective countermeasures developed; (3) the space station is rapidly approaching design maturity without a corresponding development of the physiological and other human factors knowledge base necessary for long-term manned operations in space; and (4) the design and development of the space station are proceeding at a pace that has the goal of establishing human presence beyond Earth's orbit and possibly landing a man on the moon. These developments will enable greater understanding of our universe and greater sensitivity to our own planet.

(b) Study.—The National Space Council shall conduct a study on International Co-operation in Planetary Exploration (hereafter in this section referred to as the "study").

(c) PURPOSE OF STUDY.—The purpose of the study is— (1) to develop an inventory of technological and national space agencies with regard to lunar and planetary exploration, both manned and unmanned; (2) to seek ways, through direct communication with appropriate officials of other nations or otherwise, to enhance the planning and exchange of information and data among the United States, the Soviet Union, European countries, Canada, Japan, and other interested countries with respect to unmanned projects beyond Earth orbit, in order to recommend to the President and other appropriate committees and subcommittees of Congress, the possible goal of an international manned mission to Mars; (3) to prepare a detailed proposal that most efficiently uses the resources of the national space agencies in cooperative endeavors to establish human presence beyond Earth orbit; (4) to develop priority goals that accomplish unmet needs that could not be achieved by any individual country; (5) to explore the possibilities of international unmanned probes to the Moon and Mars, and the possibilities for international manned missions to the Moon and to other bodies, including the possible goal of an international manned mission to Mars; (6) to devise strategies for such cooperation that would prevent the unwanted transfer of technology.

In developing the inventory under paragraph (1), and in preparing the detailed proposal under paragraph (3), consideration shall be given to the potential contributions of the national space agencies to the provision of space goods and services.

(d) REPORT.—The National Space Council shall, within 120 days after the date of enactment of this Act, prepare and submit to Congress a report— (1) outlining a preliminary strategy for cooperation among the United States, the Soviet Union, European countries, Canada, Japan, and other interested countries, based on their respective national strengths, with respect to unmanned projects beyond Earth orbit, in anticipation of later international manned missions to the Moon and to other bodies, including the possible goal of an international manned mission to Mars; (2) including a conceptual design of a possible international manned mission, in coordination with the preliminary strategy referred to in paragraph (1), with target dates and a breakdown of responsibilities by nation; (3) containing an inventory of planned and anticipated missions, manned and unmanned, that are being considered by national space agencies and commercial providers of space goods and services; and (4) containing an inventory of space exploration technologies that either (A) are currently available in the United States but are available from other nations; or (B) are available in the United States but are available from other nations in equal or superior form.

SEC. 115. OFFICE OF SPACE COMMERCER.

(a) AUTHORIZATION.—There are authorized to be appropriated to the Secretary of Commerce for the Office of Space Commerce, $487,000 for fiscal year 1991.

(b) REPORT TO CONGRESS.—The President shall submit to Congress a report on the activities of the Office of Space Commerce, including planned programs and expenditures.

SEC. 116. NATIONAL AEROSPACE PLANE PROGRAM.

(a) NATIONAL AEROSPACE PLANE PROGRAM.—The Secretary of Defense (hereafter in this section referred to as the "Secretary") and the Administrator shall jointly pursue a high priority basis a National Aerospace Plane program whose objective shall be the development and demonstration, by 1997, of a primarily air breathing single-stage-to-orbit and long range hypersonic vehicle. The program shall be a research program, and to the extent practicable technological information developed shall be transferred to the military and to the domestic civil aviation and other private industries.

(b) MANAGEMENT PLAN.—The Secretary and the Administrator shall jointly develop a management plan for the program established under subsection (a), which shall include goals, major tasks, milestones, schedules, organizational structure, funding profiles, details of the respective responsibilities of the Secretary and the Administrator, and resource procurement strategies.

(2) The management plan developed pursuant to paragraph (1) shall be submitted to the Congress within 120 days after the date of enactment of this Act.

SEC. 117. COMMERCIAL SPACE LAUNCH ACT AMENDMENTS.

(a) AUTHORIZATION.—Section 24 of the Commercial Space Launch Act (49 U.S.C. App. 2823) is amended by adding at the end thereof the following: "There are authorized to be appropriated— (1) for the development of a commercial launch vehicle, $45,000,000 for fiscal year 1991, of which $250,000 shall be available for fiscal year 1992, and every fiscal year thereafter, for the provision of launch services for scientific, research, and other mission payloads in accordance with section 6 of the Commercial Space Launch Act Amendments of 1988."); (b) ACQUISITION BY STATE GOVERNMENTS.—Section 18(a) of the Commercial Space Launch Act (49 U.S.C. App. 2614(a)) is amended by inserting "and State governments" after "by the private sector" in section 116.

(c) CONGRESSIONAL FINDINGS.—Section 2 of the Commercial Space Launch Act (49 U.S.C. App. 2601) is amended— (1) by striking "and" at the end of paragraph (6); (2) by striking the period at the end of paragraph (7) and inserting in lieu thereof a semicolon; and (3) by adding at the end the following new paragraphs: (d) space transportation, including the establishment and operation of launch sites and complementary facilities, the provision of launch services, the establishment of supporting industries, and the provision of support services, is an important element of the Nation's transportation system, and in connec-
tion with the commerce of the United States there is a need to develop a strong space transportation infrastructure with signif-
ificant private sector involvement, and in space-related ac-
tivity, particularly through the establish-
ment of space transportation-related infra-
structure, including launch sites, comple-
ments, and launch site support facilities, in the national interest and is of significant public benefit.’.

(f) GENERAL STATEMENT OF PUR-
POSE.—Section 3 of the Commercial Space
Launch Act (49 U.S.C. App. 2602(a)) is amend-
ed by striking-  
(1) by striking “and” at the end of para-
graph (2);  
(2) by striking the period at the end of paragraph (3) and inserting in lieu thereof “; and”; and  
(3) by inserting at the end the following new paragraph:  
“(3) the interests of the United States governments, and the private sector to build, expand, modernize, or operate
space launch infrastructure.”.

SEC. 119. SPACE DEBRIS.  
(a) FINDINGS.—The Congress finds that—  
(1) if space users fail to act soon to reduce their contribution to debris in space, orbital debris will continue to restrict the use of some orbits within a decade;  
(2) the lack of adequate data on the orbital distribution and size of debris will contin-
ue to hamper efforts to reduce the threat that debris poses to spacecraft; and  
(3) existing international treaties and agreements are inadequate for minimising the generation of orbital debris or controlling its effects.  

(b) SENSE OF CONGRESS.—It is the sense of Congress that the goal of United States policy should be that—  
(1) the space related activities of the United States should be conducted in a manner that does not increase the amount of orbital space debris; and  
(2) the United States should engage other spacefaring Nations to develop an agree-
ment to avoid the conduct of space activities that ensures that the amount of orbital space debris is not increased.

SEC. 120. SPACE SHUTTLE ORBITER PRODUCTION LINE.  
The Administrator is authorized to expend funds appropriated for orbital
vehicle production under section 103(a)(2) of this Act to maintain the space
shuttle orbiter production line and related production lines of orbiter subcontractors.

In any agreement entered into by the Na-
tional Aeronautics and Space Administra-
tion for an Industrial Application Center, the contractor shall be allowed to retain in
revenue without any deductions from appropriated funds received or to be re-
ceived a specified amount of revenue.

SEC. 121. USERS’ ADVISORY GROUP.  
(a) ESTABLISHMENT.—(1) The National
Space Council shall establish a Users’ Advi-
sory Group composed of non-Federal repre-
sentatives of industries and other persons
involved in aeronautical and space activities.
(2) The Vice President shall name a chair-
man of the Users’ Advisory Group.
(3) The National Space Council shall form
a time to time, but not less than once a year, meet with the Users’ Advisory Group.
(4) The function of the Users’ Advisory Group shall be to ensure that the interests
of industries and other non-Federal entities involved in space activities, including in par-
icular commercial entities, are adequately
represented in the National Space Council.
(5) The Users’ Advisory Group may be as-
sisted by personnel detailed to the National
Space Council.
(b) EXEMPTION.—The Users’ Advisory
Group shall not be subject to section 12(a)(2) of the Federal Advisory Committee
Act.

SEC. 122. SCIENTIFIC BALLOON LAUNCH SITE.  
The Administrator may purchase approxi-
mately 8 acres within section 16, Township
3 North, Range 26 East, N.M.P.M., De Baca
County, New Mexico, to use as a balloon
launching facility.

SEC. 123. PEACEFUL USES OF SPACE STATION.  
No civil space station authorized under
section 103(a)(1) of this Act may be used to
carry or place in orbit any nuclear weapon
or any other weapon of mass destruction, to
install any such weapon on any celestial
body, or to station any such weapon in
space in any other manner. This civil space
station may be used only for peaceful pur-
poses.

SEC. 124. SMALL BUSINESS INNOVATION RESEARCH PROGRAM.  
The Administrator may utilize up to 5 per-
cent of the funds provided for the Small
Business Innovation Research Program for
program management and promotional ac-
tivities.

SEC. 125. PROPULSION STRATEGIC ASSESSMENT.  
By July 1, 1991, the Administrator shall
submit to the Congress, the Office of Science,
and Technology of the National Aeronautics
and Space Administration an assessment by
the National Research Council of the require-
ments, benefits, technological feasibility, and roles of Earth-to-orbit propulsion system options that could
be developed in support of the national
space program including the assembly and
operation of the Space Station and poten-
tial space activities beyond the year 2000.

SEC. 126. NATIONAL CIVIL REMOTE-SENSING ADVI-
SORY COMMITTEE.  
Not later than 90 days after the date of
enactment of this Act, the Director of the
Office of Science and Technology Policy shall
report to Congress on the advis-
ability of establishing a permanent National
Civil Remote-Sensing Advisory Committee.
The report should address concerns related
to national security, conflict of interest, and
duplication of existing authorities. In pre-
paring the report, the Director shall assess
the effectiveness of a National Civil
Remote-Sensing Advisory Committee
comparison of involving private-sector persons
(including remote-sensing data users, data
vendors, technology developers, system op-
erators, information management and tele-
communications specialists, and social scien-
tists) which would—  
(1) provide advice and policy recommenda-
tions to the President, the President’s Sci-
cence Advisor, the National Aeronautics
and Space Administration, the National Oceanic
and Atmospheric Administration, and rele-
vant committees of the Congress;  
(2) foster the development of a national civil remote-sensing policy that would be responsive to both user needs and global developments, in terms of—

(A) coordinating land, oceanic, and atmos-
pheric remote-sensing systems, including
ground stations;  

(B) coordinating research and develop-
ment, applications, and commercial remote-
sensing activities;  

(C) fostering effective integration of satel-
line, aerial, and in situ data; and  

(D) assessing current institutional ar-
rangements for the management, exploita-
tion, and sharing of both real-time and ar-
dived data;  

(2) provide recommendations on the con-
tracting, cooperative test and applications demonstration projects designed to manage
environmental pollution and the use of nat-
roral resources; and

(3) coordinate with the United States
Global Change Research Program on issues of
mutual concern.

SEC. 127. DEFINITION.  
For purposes of this title, the term “Ad-
ministrator” means the Administrator of
the National Aeronautics and Space Admin-
istration.

TITLE II—LAUNCH SERVICES PURCHASE
SEC. 128. SHORT TITLE.  
This title may be cited as the “Launch
Services Purchase Act of 1990”.

SEC. 129. FINDINGS.  
The Congress finds that—  
(1) the United States commercial launch
industry is technically capable of providing reliable and cost efficient access to space and
is an essential component of national efforts to assure access to space for Govern-
ment and commercial users;  

(2) Federal Government should encour-
strate, and facilitate, and promote the United States commercial launch industry, includ-
ing the development and enhancement of commercial launch facilities, in order to en-
sure United States economic preeminence in space;

(3) the interests of the United States will be served if the commercial launch industry is competitive in the international market-
place;  

(4) commercial vehicles are effective
means to challenge foreign competition;  

(5) the use by the Federal Government of performance specifically in lieu of detailed specifications relating to vehicle design, con-
struction, and operation will facilitate the
efficient operation of the United States
commercial launch industry;  

(6) the procurement of commercial launch
services in a commercially reasonable manner permits a reduced level of Federal budgetary support of this launch industry;  

(7) the Congress finds that the United States
and European Union countries are not commen-
surate with the current level of support received
from other countries.

SEC. 130. LICENSING REQUIREMENTS.

SEC. 131. ACCESS TO TELECOMMUNICATIONS.

SEC. 132. AIRCRAFT LAUNCHES.

SEC. 133. PROFESSIONAL SPACECRAFT.

SEC. 134. PROTOCзна EU.

SEC. 135. AGREEMENTS.

SEC. 136. REMOTE-SENSING ACTIVITIES.

SEC. 137. LICENSING REQUIREMENTS.

SEC. 138. ACCESS TO TELECOMMUNICATIONS.

SEC. 139. AIRCRAFT LAUNCHES.

SEC. 140. PROFESSIONAL SPACECRAFT.

SEC. 141. PROTOC зна EU.

SEC. 142. AGREEMENTS.

SEC. 143. REMOTE-SENSING ACTIVITIES.

SEC. 144. LICENSING REQUIREMENTS.

SEC. 145. ACCESS TO TELECOMMUNICATIONS.

SEC. 146. AIRCRAFT LAUNCHES.

SEC. 147. PROFESSIONAL SPACECRAFT.

SEC. 148. PROTOC зна EU.

SEC. 149. AGREEMENTS.

SEC. 150. REMOTE-SENSING ACTIVITIES.
(7) it is the general policy of the Federal Government to purchase needed goods and services, including launch services, from the private sector to the fullest extent feasible; and
(8) predictable access to National Aeronautics and Space Administration launch markets would encourage continuing United States private sector investment in space and related activities.

SEC. 204. PURCHASE OF LAUNCH SERVICES.

For the purposes of this title—
(1) the term "commercial provider" means any person providing launch services, but does not include the government; and
(2) the term "launch services" means activities involved in the preparation of a launch vehicle and its payload for space transport and the conduct of transporting a payload;

(3) the term "launch vehicle" means any vehicle constructed for the purpose of operating in, or placing a payload in, outer space; and

(4) the term "payload" means an object which can be transported to place in outer space by means of a launch vehicle, and includes subcomponents of the launch vehicle specifically designed or adapted for that object.

SEC. 204A. REQUIREMENT TO PROCURE COMMERCIAL LAUNCH SERVICES.

(a) IN GENERAL.—Except as otherwise provided in this section, the National Aeronautics and Space Administration shall purchase launch services for its primary payloads from commercial providers whenever such services are required in the course of its activities.

(b) EXCEPTIONS.—The National Aeronautics and Space Administration shall not be required to purchase launch services as provided in subsection (a) if, on a case by case basis the Administrator of the National Aeronautics and Space Administration determines that—

(1) the payload requires the unique capabilities of the space shuttle;

(2) cost-effective commercial launch services to meet specific mission requirements are not reasonably available and would not be commercially reasonable;

(3) the use of commercial launch services poses an unacceptable risk of loss of a unique capability;

(4) the payload serves national security or foreign policy purposes.

Upon any such determination, the Administrator shall, within 30 days, notify in writing the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate of the determination and its rationale.

(c) NATIONAL AERONAUTICS AND SPACE ADMINISTRATION LAUNCH VEHICLES.—Launch vehicles shall be acquired or owned by the National Aeronautics and Space Administration only—

(1) as required under circumstances described in subsection (b); or

(2) by the National Aeronautics and Space Administration for conducting research and development on, and testing of, launch technology.

(d) PHASE-IN PERIOD.—Subsections (a) and (c) shall not apply to launch services and launch vehicles purchased by the National Aeronautics and Space Administration before the date of enactment of this Act.

(e) HISTORICAL PURPOSES.—This title shall not be interpreted to prohibit the National Aeronautics and Space Administration from acquiring, owning, or maintaining launch vehicles solely for historical display purposes.

SEC. 205. PURCHASE OF LAUNCH SERVICES.

(a) FULL AND OPEN COMPETITION.—(1) Contracts to provide launch services to the National Aeronautics and Space Administration under section 204 shall be awarded on the basis of full, fair, and open competition, consistent with section 2504 of title 10, United States Code, and section 311 of the National Aeronautics and Space Act of 1958.

(2) The National Aeronautics and Space Administration shall limit its requirements for submission of cost or pricing data in support of a bid or proposal to that data which is reasonably required to protect the interests of the United States.

(b) SPECIFIC PAYLOAD SYSTEMS.—Reasonable performance specifications, not detailed Government design or construction specifications, shall be used to the maximum extent feasible to define requirements for a commercial provider bidding to provide launch services. This subsection shall not preclude the National Aeronautics and Space Administration from requiring complements of applicable safety standards.

SEC. 206. OTHER ACTIVITIES OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.

(a) COMMERCIAL PAYLOADS ON THE SPACE SHUTTLE.—Commercial payloads may not be accepted for launch as primary payloads on the space shuttle unless the Administrator of the National Aeronautics and Space Administration determines that—

(1) the payload requires the unique capabilities of the space shuttle;

(2) the payload shall be launched at a time and under the conditions provided for under the contract between the United States and its contractors; and

(3) the need for data to protect public health and safety.

(b) REPORT.—By March 15, 1991, the Administrator, in consultation with the Office of Federal Procurement Policy, shall submit to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report outlining the minimal requirements for documentation and other administrative data needed to procure launch services in a commercially reasonable manner, including—

(1) the need for data to integrate a payload with a launch vehicle;

(2) the need for data to carry out mission-specific modifications to the launch vehicle;

(3) the need for notification to the National Aeronautics and Space Administration of changes, delays, or difficulties in the construction or preparation of a launch vehicle that may affect the delivery of its payload to its destination at the time and under the conditions provided for under the contract between the United States and its contractors;

(4) the need for data to protect public health and safety; and

(5) the need for cost or pricing data for the fulfillment of a contract.

Mr. REID. Mr. President, I moved to reconsider the vote by which the bill was amended.

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

The motion to lay on the table was agreed to.

REAPPOINTMENT OF IRA MICHAEL HEYMAN TO BOARD OF REGENTS OF THE SMITHSONIAN INSTITUTION

Mr. REID. Mr. President, I ask that the Chair lay before the Senate a message from the House on Senate Joint Resolution 318, a joint resolution to appoint Ira Heyman to the Smithsonian Institution's Board of Regents.

Resolved, That the resolution from the Senate (S.J. Res. 318) entitled "Joint resolution providing for the reappointment of Michael Heyman of California as a citizen regent of the Board of Regents of the Smithsonian Institution," do pass with the following amendments:

Amend the title so as to read: "Joint resolution providing for reappointment of Michael Heyman as a citizen regent of the Smithsonian Institution."

Resolved, That the resolution from the Senate (S.J. Res. 318) entitled "Joint resolution providing for the reappointment of Michael Heyman of California as a citizen regent of the Board of Regents of the Smithsonian Institution," do pass with the following amendments:

Resolved, That the resolution from the Senate (S.J. Res. 318) entitled "Joint resolution providing for the reappointment of Michael Heyman of California as a citizen regent of the Board of Regents of the Smithsonian Institution," do pass with the following amendments:
Strike out all after the resolvin clause, and insert:

That, in accordance with section 5561 of the Revised Statutes of the United States (20 U.S.C. 43), the vacancy on the Board of Regents of the Smithsonian Institution, in the class of associate members of Congress, occurring by reason of the expiration of the term of Anne Legendre Armstrong of Texas, is filled by reappointment of the incumbent for a term of six years, effective May 10, 1990.

Amend the title so as to read: "Joint resolution providing for reappointment of Anne Legendre Armstrong as a citizen regent of the Smithsonian Institution."

Mr. REID. Mr. President, I move that the Senate concur in the amendments of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion. The motion was agreed to.

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

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

The motion to lay on the table was agreed to.

PROTECTION OF ANTARCTICA AS A GLOBAL ECOCLOGICAL COMMONS

Mr. REID. Mr. President, I ask the Chair to lay before the Senate a message from the House on Senate Joint Resolution 206, a Resolution calling for the United States to encourage a new agreement among Antarctic Treaty consultative parties, for the full protection of Antarctica as a global ecological commons.

The PRESIDING OFFICER. The question is on agreeing to the motion. The motion was agreed to.

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

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

The motion to lay on the table was agreed to.

ANTARCTIC PROTECTION ACT

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Calendar No. 397, H.R. 3977, an act to protect and conserve the continent of Antarctica.

The PRESIDING OFFICER. The question is on agreeing to the motion.

Mr. REID. Mr. President, I move that the Senate concur in the amendment of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

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

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

The motion to lay on the table was agreed to.

At this time, I want to thank personally Senator PELL for his cooperation and work with the Commerce Committee in addressing jurisdictional concerns this committee had with S. 2575. As reported by the Foreign Relations Committee, the bill contained two provisions that were of particular concern to the Commerce Committee. The bill would have applied the National Environmental Policy Act of 1969 (NEPAA) to all U.S. Government or Government-funded activities in Antarctica, and would have allowed private citizens to file lawsuits against any person, including the Federal Government, alleged to be in violation of the bill's provisions.

The primary impact of these provisions would be on the U.S. Antarctic Program, which is overseen by NSF. It is the belief of the Commerce Committee, which has joint jurisdiction over NSF and the Antarctic Program with the Senate Committee on Labor and Human Resources, that the potential impacts of these provisions need to be explored further. I am therefore very pleased that they were removed from the bill.

The amendment before us also includes a new provision that would extend the Antarctic Marine Living Resources Convention Act, and would require the National Oceanic and Atmospheric Administration (NOAA) to enforce the provisions of the bill. Because the NOAA has extensive experience in Antarctica, I believe they are well qualified to take on these duties. Naturally, the Commerce Committee will closely monitor the implementation of this provision since the NOAA falls under our jurisdiction.

Mr. PELL. I am very pleased that we were able to reach an agreement on the bill. The Foreign Relations Committee, which has jurisdiction over international issues and over Antarctica, will also be exercising oversight over the implementation of this legislation as well as ongoing efforts to protect the Antarctic environment and to enforce measures to keep that incomparable resource pristine.

This legislation is the culmination of efforts in both the House and the Senate. It urges the President to negotiate a ban on mineral resource activities in the Antarctic and prohibits U.S. citizens from engaging in mineral resource activities in the Antarctic until such time as a prohibition is negotiated. It sends a clear and strong message to the administration that Congress is committed to protecting Antarctica's pristine and delicate environment from degradation caused by mineral resource activities. I am pleased to be a part of this collaborative effort, and I urge the administration to support this legislation.
AMENDMENT NO. 3157
(Purpose: To strengthen environmental protection of Antarctica)
Mr. REID, Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the amendment as follows:

The Senate from Nevada [Mr. Reid], for Mr. Knauss, proposes an amendment numbered 3157, which consists of a section, viz.:

Mr. REID. 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:

SECTION 1. SHORT TITLE. This Act may be cited as the "Antarctic Protection Act of 1990.

SEC. 2. FINDINGS AND PURPOSE. (a) Findings. The Congress finds that—
1. the Antarctic continent with its associated and dependent ecosystems is a distinctive environment providing a habitat for many known and offering a natural laboratory from which to monitor critical aspects of stratospheric ozone depletion and global climate change;
2. Antarctica is protected by a series of international agreements, including the Antarctic Treaty and associated recommendations, and the Convention on the Conservation of Antarctic Marine Living Resources, which are intended to conserve the renewable natural resources of Antarctica and to recognize the importance of Antarctica for the conduct of scientific research;
3. recurring and recent developments in Antarctica, including increased slidding of scientific stations, poor waste disposal practices, oil spills, increased tourism, and the over-exploitation of marine living resources, have raised serious questions about the adequacy and implementation of existing agreements and domestic law to protect the Antarctic environment and its living marine resources;
4. the parties to the Antarctic Treaty have negotiated a Convention on the Regulation of Antarctic Mineral Resources Activities, and the United States has signed but not yet ratified;
5. the Convention on the Regulation of Antarctic Mineral Resources Activities does not guarantee the preservation of the fragile environment of Antarctica and could actually stimulate movement toward Antarctic mineral resource activity;
6. the exploitation of mineral resources in Antarctica could lead to additional degradation of the Antarctic environment, including increased risk of oil spills, including necessary support facilities, has increased to the point that some scientific programs may be degrading the Antarctic environment; and
7. the planned special consultative meetings to the Antarctic Treaty and the imminence of the thirtieth anniversary of the Antarctic Treaty provide opportunities for the United States to exercise leadership in the protection and sound management of Antarctica.

(b) Purpose.—The purpose of this Act is to—
1. strengthen substantially overall environmental protection of Antarctica;
2. prohibit, prospecting, exploration, and development of mineral resources by United States citizens and other persons subject to the jurisdiction of the United States;
3. urge other nations to join the United States in immediately negotiating one or more new agreements to provide an indefinite ban on Antarctic mineral resource activities and comprehensive protection for Antarctica and its associated and dependent ecosystems; and
4. urge all nations to consider a permanent ban on Antarctic mineral resource activities.

SEC. 3. DEFINITIONS. For the purposes of this Act:
1. the term "Antarctica" means the area so defined in section 303(1) of the Antarctic Marine Living Resources Convention Act of 1984 (18 U.S.C. 2431-2444) and shall be enforced under that Act by the Secretary under the Secretary or any other Federal official to whom the Under Secretary has delegated this responsibility.
2. the term "mineral resources" means all nonliving natural nontire resources, including fossil fuels, minerals, whether metallic or nonmetallic, but does not include living marine resources.
3. the term "person" means any individual, corporation, partnership, trust, association, or any other entity existing or organized under the laws of the United States, or any officer, employee, agent, department, or other instrumentality of the Federal Government or of any State or political subdivision thereof.
4. the term "protecting" means any activity, including logistic support, the purpose of which is the identification or evaluation of specific mineral resource deposits, including processing, storage, and transport activities.
5. the term "exploration" means any activity, including logistic support, the purpose of which is the exploitation of specific mineral resource deposits, including processing, storage, and transport activities.
6. the term "under Secretary" means the Under Secretary of Commerce for Oceans and Atmosphere.

SEC. 4. PROHIBITION ON ANTARCTIC MINERAL RESOURCE ACTIVITIES. Pending a new agreement among the Antarctic Treaty Consultative Parties in force for the United States, to which the Senate has given advice and consent or which is authorized by further legislation by the Congress, the term "under Secretary" includes an indefinite ban on Antarctic mineral resource activities, it is unlawful for any person to engage in, finance, or otherwise knowingly provide assistance to any Antarctic mineral resource activity.

SEC. 5. INTERNATIONAL AGREEMENT. (a) It is the sense of Congress that the Secretary of State should enter into negotiations with the Antarctic Treaty Consultative Parties to conclude one or more new agreements to—
1. conserve and protect permanently the natural environment of Antarctica and its associated and dependent ecosystems;
2. prohibit or ban indefinitely Antarctic mineral resource activities by all parties to the Antarctic Treaty; and
3. grant Antarctica special protective status as a land of science dedicated to wilderness protection, international cooperation, and scientific research.
(b) It is the sense of Congress that any treaty or other international agreement submitted by the President to the Senate for advice and consent to ratification relating to Antarctic mineral resources or activities in Antarctica should be consistent with the purpose and provisions of this Act.
(c) It is the sense of Congress that any treaty or other international agreement submitted by the President to the Senate for advice and consent to ratification relating to Antarctic marine living resources or activities in Antarctica should be consistent with the purpose and provisions of this Act.

SEC. 6. ENFORCEMENT. (a) A violation of this Act may be punished by a fine of not more than $1,000,000 or imprisonment for not more than 5 years, or both.
(b) A violation of this Act may be punished by removal from office of any person who fails to abide by any part of this Act.
(c) A violation of this Act may be punished by a fine of not more than $500,000 or imprisonment for not more than 2 years, or both.
(d) A violation of this Act may be punished by removal from office of any person who fails to abide by any part of this Act.
(e) A violation of this Act may be punished by removal from office of any person who fails to abide by any part of this Act.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS. There are authorized to be appropriated—
1. $1,000,000 for each of fiscal years 1991 and 1992 to carry out the purposes of this Act; and
2. $1,000,000 for each of fiscal years 1991 and 1992 to carry out the purposes of this Act.

The PRESIDING OFFICER. If there be no further debate, the question is on the agreement of the amendment of the Senator from Massachusetts.

The amendment (No. 3157) was agreed to.

The PRESIDING OFFICER. The question is on 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?
AMENDING THE WILD AND SCENIC RIVERS ACT

Mr. REID. Mr. President, I ask unanimous consent that the Energy Committee be discharged from further consideration of H.R. 5004, a bill to designate certain segments of the Mills River in North Carolina for addition to the Wild and Scenic Rivers System, and that the Senate proceed to its immediate consideration; that it be read a third time and passed and the motion to reconsider be laid on the table. I further ask unanimous consent that any statements thereon appear at the appropriate place in the Record as though read.

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

So the bill (H.R. 5004) was passed.

AUTHORIZING THE ESTABLISHMENT OF GLORIETA NATIONAL BATTLEFIELD

Mr. REID. Mr. President, I ask unanimous consent that the Energy Committee be discharged from further consideration of H.R. 4090, a bill to authorize the establishment of the Glorieta National Battlefield in New Mexico, and that the Senate proceed to its immediate consideration; that it be read a third time and passed and the motion to reconsider be laid on the table. I further ask unanimous consent that any statements thereon appear at the appropriate place in the Record as though read.

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

So the bill (H.R. 4090) was passed.

INTELLIGENCE AUTHORIZATION ACT—CONFERENCE REPORT

Mr. REID. Mr. President, I submit a report of the committee of conference on S. 2834 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The conference report is printed in the House proceedings of the 101st Congress, 2nd Session, Roll Call 800, October 24, 1990.
and research facilities which is available for use through such a national network; (D) stimulate research on software technology; (E) promote the more rapid development and under distribution of computer software tools and applications software; (F) accelerate the development of computer systems and programs for high-performance computing; (G) promote the application of high-performance computing to Grand Challenges; and
(H) invest in basic research and education; and
(I) improve planning and coordination of Federal research and development on high-performance computing.

Sec. 3. As used in this Act, the term—
(1) "North American company" means a company or other business entity in which majority ownership or control is held by individuals who are citizens of the United States, or citizens of Canada, or a combination of United States and Canadian citizens, except that such term includes a company or other business entity in which majority ownership or control is held by Canadian citizens only if, in the judgment of the Secretary of Commerce, the company is not acting, with respect to the joint venture concerned, as an agent or intermediary for a third country company or foreign government; and
(2) "Grand Challenge" means a fundamental problem in science and engineering, with broad economic and scientific impact, whose solution will require the application of high-performance computing resources.

TITLE I—NATIONAL HIGH-PERFORMANCE COMPUTING PROGRAM

Sec. 101. The National Science and Technology Policy, Organization, and Priorities Act of 1980 (42 U.S.C. 6661 et seq.) is amended by adding at the end the following new title:

"TITLE VI—NATIONAL HIGH-PERFORMANCE COMPUTER TECHNOLOGY PROGRAM"

"FINDINGS"

"Sec. 601. (a) The Congress finds and declares the following:

(1) In order to strengthen America's computer industry and to assist the entire manufacturing sector, the Federal Government must make investments in the development and application of high-performance computing. In particular, the Federal Government should support the development of a high-performance computing and education network: make information services available over the network; facilitate the development of software for research, education, and industrial applications; continue to fund basic and applied research; and provide for the training of computer scientists and computational scientists.

(2) Several Federal agencies have ongoing high-performance computing programs. Improved interagency coordination, cooperation, and planning could enhance the effectiveness of these programs.

(3) A 1988 report by the Office of Science and Technology Policy outlining a research and development strategy for high-performance computing provides a framework for a multiagency high-performance computing program.

"NATIONAL HIGH-PERFORMANCE COMPUTING PLAN"

"Sec. 602. (a)(1) The President, through the Federal Coordinating Council for Science, Engineering, and Technology in this title referred to as the "Council"), shall develop and implement a National High-Performance Computing Plan thereaf

ter in this title referred to as the 'Plan') in accordance with the provisions, findings, and purpose of this Act. Consistent with the responsibilities set forth under subsection (b) of this section, the Council shall develop and issue a report to the Congress, containing recommendations for a five-year national effort, to be submitted to the Congress within one year after the date of enactment of this title and every four years thereafter.

(2) The Plan shall:

(A) establish goals and priorities for a Federal high-performance computing program for the fiscal year in which the Plan (or revised Plan) is submitted and the succeeding four fiscal years;

(B) set forth the role of each Federal agency and department in implementing the Plan;

(C) describe the levels of Federal funding for each agency and specific activities, including education, research activities, hardware and software development, and acquisition and operating expenses for computers and computer networks, required to achieve such goals and priorities; and

(D) establish, as appropriate, reports and studies conducted by Federal agencies and departments, the National Research Council, or other entities.

(3) The Plan shall address, where appropriate, the relevant programs and activities of the following Federal agencies and departments:

(A) the National Science Foundation;

(B) the Department of Commerce, particularly the National Oceanic and Atmospheric Administration, and the National Telecommunications and Information Administration;

(C) the National Aeronautics and Space Administration;

(D) the Department of Defense, particularly the Defense Advanced Research Projects Agency and, as appropriate, the National Security Agency;

(E) the Department of Energy;

(F) the Department of Health and Human Services, particularly the National Institutes of Health;

(G) the Department of Education;

(H) the Library of Congress, the National Library of Medicine, and the National Agricultural Library; and

(I) such other agencies and departments as the President or the Chairman of the Council considers appropriate.

(1) serve as lead entity responsible for development and implementation of the Plan;

(2) coordinate the high-performance computing research and development activities of Federal agencies and departments and report at least annually to the President, through the Chairman of the Council, on any recommended changes in agency or departmental roles that are needed to better implement the Plan;

(3) prior to the President's submission to the Congress of the annual budget estimate, review each agency and departmental budget estimate in the context of the Plan and make the results of that review available to the appropriate elements of the Executive Office of the President, particularly the Office of Management and Budget;

(4) work with high-performance computing research advisees, with the National Research Council, and with academic, State, industry, and other groups conducting research on high-performance computing.

(5) The Office of Science and Technology Policy shall establish a High-Performance Computing Advisory Panel consisting of representatives from industry and academia to provide the Council with an independent assessment of (1) progress made in implementing the Plan, (2) the balance between the components of the Plan, (3) the feasibility and cost-effectiveness of maintaining the Plan, and (5) other issues identified by the Director of the Office of Science and Technology Policy.

(6) The Plan shall take into consideration, but not be limited to, the following missions and responsibilities of agencies and departments:

(A) The National Science Foundation shall continue to be responsible for basic research in computer science and engineering, computer technology, and computational science. The Foundation shall continue to solicit grant proposals and award grants by merit review for research in universities, nonprofit research institutions, and industries. The National Science Foundation shall also provide researchers with access to supercomputers and high-performance computer technology for the establishment, by 1996, of a multi-gigabit-per-second national computer network. The National Science Foundation shall maintain, expand, and upgrade its existing computer networks. Additional responsibilities include promoting the development of high-performance supercomputer technology and services; facilitating the dissemination of software and data bases available over such computer networks; and encouraging the development of innovative software by industry, and promotion of science and engineering education.

(B) The National Institute of Standards and Technology shall be responsible for developing and implementing the open standards setting process and in conjunction with industry, for high-performance computing and communication and networking services; providing input to the Computer Security Act of 1987 (Public Law 100-235; 100 Stat. 1724), the National Institute of Standards and Technology and the National Aeronautics and Space Administration, shall take into consideration, but not be limited to, the following missions and responsibilities of agencies and departments:

(1) establish the goals and priorities for a national computer technology plan; (2) the balance between the components of the Plan; (3) whether the research and development funded under the Plan is helping to maintain the Plan; (4) whether the research and development under the Plan is helping to maintain the Plan; (5) other issues identified by the Director of the Office of Science and Technology Policy.

(C) The National Oceanic and Atmospheric Administration shall continue to conduct basic and applied research in high-performance computing, particularly in the field of
computational science, with emphasis on aeronautics and the processing of remote sensing data.

"(B) The Department of Defense, through the Defense Advanced Research Projects Agency and other agencies, shall continue to conduct basic and applied research in high-performance computing, particularly in software development, supercomputers, computer networking, semiconductor technology, and large-scale parallel processors. Pursuant to the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.) and other appropriate Acts, the Department shall ensure that unclassified computing research is readily available to United States industry. The National Security Agency, pursuant to the Computer Security Act of 1987 (Public Law 100-235, 100 Stat. 1724), shall continue to provide, where appropriate, technical advice and assistance to the National Institute of Standards and Technology for the adoption of standards and guidelines needed to assure the cost-effective security and privacy of sensitive information in Federal computer systems.

"(2) The Office of Management and Budget shall review each such report in light of the goals, priorities, and agency and departmental responsibilities set forth in the Plan, and, in the President's annual budget estimate, a statement of the portion of each agency or department's annual budget estimate that is allocated to each element of such agency or department's high-performance computing activities. The Office of Management and Budget shall ensure that a copy of the President's annual budget estimate is transmitted to the Chair man of the Council at the same time as such budget estimate is submitted to Congress."

"ANNUAL REPORT"

"Sec. 603. The Chairman of the Council shall prepare and submit to the President and the Congress, not later than March 1 of each year, an annual report on the activities conducted pursuant to this title during the preceding fiscal year, including:

(1) a summary of the achievements of Federal agencies in support of the Plan and any changes in priorities or agency and departmental responsibilities which most effectively advance scientific understanding and provide a basis for policy decisions;

(2) an analysis of the progress made toward achieving the goals and objectives of the Plan;

(3) a copy or summary of the Plan and any changes therein;

(4) a summary of agency budgets for high-performance computing activities for the preceding fiscal year; and

(5) any recommendations regarding additional action or legislation which may be required to assist in achieving the purposes of this title."

"Sec. 102. (a) Section 102(a)(6) of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (15 U.S.C. 6621a(a)(6)) is amended to read as follows:

"(6) The development and implementation of long-range, interagency research plans to support policy decisions regarding identified national and international concerns, and for which a sustained and coordinated commitment to improving scientific understanding and technology is required.

(b)(1) Section 401 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6651 et seq.) is amended to read as follows:

"FUNCTIONS OF COUNCIL"

"Sec. 401. (a) The Federal Coordinating Council for Science, Engineering, and Technology (hereinafter referred to as the 'Council') shall consider problems and developments in the fields of science, engineering, and technology and related activities affecting more than one Federal agency, and shall recommend policies and other measures designated to:

(1) provide more effective planning and administration of Federal scientific, engineering, and technological programs;

(2) identify research needs, including areas requiring additional emphasis;

(3) achieve more effective utilization of the scientific, engineering, and technological resources and facilities of Federal agencies, including the elimination of unwar ranted duplication; and

(4) further international cooperation in science, engineering, and technology.

(b) The Council may be assigned responsibility for developing long-range and co-ordinated plans for scientific and technical research which involve the participation of more than two Federal agencies. Such plans shall:

(1) identify research approaches and priorities which most effectively advance scientific understanding and provide a basis for policy decisions;

(2) provide for effective cooperation and coordination of research among Federal agencies; and

(3) encourage domestic and, as appropriate, international cooperation among government, industry, and university scientists.

The Council shall perform such other related duties as shall be assigned by the President or by the Chairman of the Council.

"(d) For the purpose of carrying out the provisions of this section, each Federal agency represented on the Council shall furnish necessary assistance to the Council. Such assistance may include—

"(1) detailing employees to the Council to perform such functions, consistent with the purposes of this section, as the Chairman of the Council may assign to them; and

"(2) undertaking, upon request of the Chairman, such special studies for the Council as come within the scope of authority of the Council.

"(e) For the purpose of developing inter-agency plans, conducting studies, and making reports as directed by the Chairman, standing committees and working groups of the Council may be established.""

"Sec. 207a(a)(1) of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (15 U.S.C. 6616(a)(1)) is amended by striking "established under Title IV".
Sec. 362. In addition to other agency activities associated with the establishment of the National Research and Education Network, the following actions shall be taken:

(1) directories of users of networks;
(2) directories of data bases available over the Network.

(1) establish a Federal Networking Advisory Committee to provide technical advice to the Department, from the interests involved in existing Federal research networks and the National Research and Education Network;

(2) submit to the Congress, within one year after the date of enactment of this Act, a report describing and evaluating effective mechanisms for providing operating funds for the maintenance and use of the Network, including user fees, industry support, and continued Federal investment, and containing a plan for the eventual commercialization of the Network.

(3) The National Science Foundation, the National Aeronautics and Space Administration, the Department of Energy, the Department of Defense, the Department of Commerce, the Department of the Interior, the Department of Agriculture, the Environmental Protection Agency, and the Department of Health and Human Services, and the Environmental Protection Agency shall allocate funds for national research and development, and the Department of State and the National Science Foundation shall provide support to help the National Research and Education Network to use grant monies to pay for computer networking expenses.

(4) The National Institute of Standards and Technology, the National Institute of Standards, the National Security Agency, the National Security Foundation, and the National Science Foundation, the National Aeronautics, other relevant agencies, and industry, adopt a common set of standards and guidelines, developed through an open standards setting process, to provide interoperability, common user interfaces to systems, and enhanced security for the Network.

(5) The National Telecommunications and Information Administration shall determine to what extent current State and Federal telecommunication laws and regulations hinder or facilitate private industry participation in the data transmission field. Within one year after the date of enactment of this Act, the Administration shall report such determination to the Congress.

Sec. 361. The National Science Foundation, the Department of Commerce, the Department of the Interior, the Department of Agriculture, the Department of Energy, the National Institutes of Health, the Library of Congress, the United States Geologic Survey, and other agencies identified by the Director of the Office of Science and Technology Policy, shall promote development of information services over the National Research and Education Network established under section 201 of this Act. These services shall include libraries and catalogs, and providing for access to unclassified Federal scientific data bases, including weather data, census data, economic data, and remote sensing satellite data, and providing data bases and knowledge banks for use by artificial intelligence software.

Sec. 360. (a) The Office of Science and Technology Policy, as indicated in the National High-Performance Computing Plan hereinafter referred to as the "Plan") developed and implemented under title VI of the National Science and Technology Policy, Organization, and Priorities Act of 1976, as added by section 101 of this Act, shall oversee the cooperative efforts of Federal departments and agencies in the research and development of high-performance computer software, including projects focused on atmospheric, geophysical, engineering, materials science, biomedical, physics, and weather and climate forecasting.

(b)(1) The National Science Foundation and the National Aeronautics and Space Administration shall support the Grand Challenges and provide for the research and development of the high-performance computer software and hardware needed to address the Grand Challenges to be addressed by the National Science Foundation under this paragraph (A) prediction of global change, with the goal to understand the coupled atmosphere, ocean, biosphere system in enough detail to be able to make long-range predictions about its behavior and determine its response to human-caused releases of carbon dioxide, methane, chlorofluorocarbons, and other gases; and

(2) The Grand Challenges to be addressed by the National Science Foundation under this paragraph (B) materials science, with the goal to use high-performance computing to improve our understanding of the atomic nature of materials, leading to the design and production of improved semiconductors, superconductors, ceramics, and other materials;

(3) computer science, with the goal to develop vision systems for computers and robots;

(4) ocean sciences, with the goal to develop a global ocean model incorporating temperature, chemical composition, circulation, and coupling of the ocean and atmosphere; and

(5) astronomy, with the goal to develop the computer systems and algorithms needed to process and analyze the very large volumes of data generated by radio telescopes such as the Very Large Array and other astronomical facilities.

(3) The Grand Challenges to be addressed under paragraph (1) by the National Aeronautics and Space Administration could include-

(A) turbulence, with the goal to better understand turbulence to allow engineers to more accurately model the aerodynamic behavior of airplanes, spacecraft, ships, submarines, trucks, automobiles, and other vehicles;

(B) transportation, with the goal to use computer models in the design of air and land vehicles in order to improve their stability, performance, and life-cycle;

(C) prediction of global change, with the goal to understand the coupled atmosphere, ocean, biosphere system in enough detail to be able to make long-range predictions about its behavior and determine its response to human-caused releases of carbon dioxide, methane, chlorofluorocarbons, and other gases; and

(D) speech, with the goal to develop computer systems that can understand normal human speech.

(4) The National Science Foundation and the National Aeronautics and Space Administration shall support collaborative research programs consisting of scientists and engineers concerned with a particular Grand Challenge, software and systems engineers, and algorithm designers, and provide them with-

(A) computational and experimental facilities, including supercomputers for numerical modeling;

(B) access to the National Research and Educational Network and other computer networks; and

(C) access to and technology for effectively utilizing scientific data bases.

(C) The National Science Foundation shall support the development of software tools that will permit researchers to develop and utilize new algorithms for computer programs, especially supercomputer programs. Support shall be provided for research on fundamental algorithms, models of parallel program execution, and other new programming languages. Particular emphasis shall be given to development of programming languages, compilers, operating systems, and software tools for parallel computer systems.

Sec. 402. The National Science Foundation shall establish clearinghouses to improve, document, evaluate, and distribute unclassified public-domain software developed by federally-funded researchers and other software, including federally-funded educational and training software. Such clearinghouses shall-

(1) maintain libraries of programs;

(2) provide funding to researchers to improve and maintain software they have developed;

(3) help researchers locate the software they need;

(4) make software available through the National Research and Education Network; and

(5) promote commercialization of software where possible.
This bill will have a major, long-term impact on American science, technology, and education. It will help the U.S. remain at the leading edge of computing technology critical to America's competitiveness. This bill will accelerate the development of new generations of supercomputers and new uses for these powerful machines. It will provide funding for a National Research and Education Network to give researchers around the country access to supercomputers, data bases, and other research facilities. It will help ensure that America's scientists and engineers in our universities, our national laboratories, and our industrial laboratories have access to the same areas of research, including a global climate modeling, aeronautics, and geophysics, researchers are facing computational problems that overcomes the capacity of today's most powerful supercomputer. This bill will fund the development of supercomputers that will provide benefits to all branches of science and engineering.

High-performance computing will help American industry design and manufacture better products. Already, in firm after firm, million dollar computers are paying for themselves in terms of productivity gains. High-technology firms are in the vanguard, using supercomputers to design faster computer chips and quieter, more efficient airplanes. In the world of finance, companies are using ever-larger computers to store and sort out mounds of economic data, such as stock and commodity prices, in order to catch market trends. In smokestack industries, advanced computers, and networks are being used to streamline manufacturing. Computers are replacing blueprints on the factory floor.

Supercomputers are allowing engineers to design better products without having to build and test dozens of prototypes. In some cases, advanced computers are cutting the time it takes to design a new product by 50 to 75 percent. That means beating the foreign competition to the market, and that means more jobs for Americans.

The bill before us lays out an ambitious, 5-year program to roughly double Federal funding for advanced computing and networking. The multiagency program established by the bill would roughly double Federal funding for research and development on supercomputing and high-speed computer networks. The bill authorizes an additional $413 million over the next 3 years for research and development programs at NASA and the National Science Foundation.

The multiagency program established by S. 1067 is similar to that proposed in September 1989, by the
Office of Science and Technology Policy in a report entitled "The Federal High Performance Computing Program. This report represents the combined efforts of researchers from more than a hundred federal agencies, including NSF, NASA, the Department of Energy, the Department of Defense—particularly the Defense Advanced Research Projects Agency—the Department of Commerce, and the National Security Agency, and others.

It is clear that both the agencies and the Congress recognize the need for more investment in computing technology. And both the agencies and the Congress recognize the need for a broad, multiagency approach. A National High-Performance Computing Program is too large to be implemented by one agency; we need to use the scientific and technical expertise available throughout our research agencies.

I am glad that the Commerce Committee and the Energy Committee to produce this bill. S. 1067 as introduced established a multiagency High-Performance Computing (HPC) Program to be coordinated by the Federal Coordinating Council on Science, Engineering, and Technology (FCCSET) convened by the White House Science Office of Science and Technology Policy. In addition, it authorized funding for the program—funding to be distributed to NASA, the National Science Foundation (NSF), the Department of Energy (DOE), and the Department of Defense (DOD). The version of S. 1067 reported by the Commerce Committee contained authorizations for NSF and NASA, over which the committee has jurisdiction.

To authorize DOE's part of the HPC plan, I worked with Senator Nunn and the other members of the Armed Services Committee to establish and provide funding for a HPC Program at DARPA in the fiscal year 1991 Department of Defense authorization bill. To authorize DOE's part of the HPC Program, Senators Johnston and McCaskill introduced S. 1067, particularly the Department of Energy High-Performance Computing Act, which was introduced authorized $675 million over 5 years for DOE's part of the HPC Program.

The Energy Committee considered S. 1976 and reported it in July. Since then, the Commerce Committee and the Energy Committee have worked together to combine the two bills. The compromise bill before us contains two titles, title I establishes the HPC Program, authorizes funding for NSF and NASA and is under the Commerce Committee's jurisdiction. Title II deals with the Energy Department and falls under the Energy Committee's jurisdiction.

The compromise bill lays out an effective way to coordinate the HPC Program and the deployment of the NREN. The Commerce Committee oversees several interagency programs, including the National Earthquake Hazards Reduction Program and the National Climate Program. Over the years, we have often grappled with the problem of getting agencies with different missions to cooperate effectively for a common purpose. With the High-Performance Computing Program, cooperation is essential, especially if the NREN is to be a success. This bill endorses the FCCSET process which has so far provided for very effective cooperation between the agencies in the HPC Program, while providing FCCSET and the participating agencies with the flexibility they need to meet changing needs and new challenges.

FCCSET has developed a comprehensive plan for the HPC Program and has assigned roles to the participating agencies. NSF is lead agency for deploying an operating NREN. NASA is lead agency for developing the technology necessary to build the NREN. NASA has a very important role to play in applications of high-performance computing, especially in aerospace and remote-sensing. DOE will contribute in a number of these areas and others. Such a division of labor is rare among in the Federal bureaucracy. Too often turf fights result in two or three agencies duplicating each other's effort, wasting resources and talent. I suspect the excellent cooperation we are seeing in the High-Performance Computing Program results from everyone realizing that there is more than enough work for everyone to do. This bill is designed to ensure that such close cooperation continues.

I hope that this bill can serve as a model of how both Federal agencies and congressional committees can work together to improve our Federal science and technology programs.

In many ways, this bill is very unusual. I have been working on this bill for more than 2 years, and almost no one has ever heard of it. The word about it. Instead, I hear enthusiastic support in many, many different quarters—within the administration, in the telecommunications industry, in universities, in the computer industry—among researchers, teachers, librarians, and many others.

I hope that my colleagues will join in supporting this very important legislation. It has been endorsed by both the Commerce Committee and the Energy Committee, and it has many cosponsors, from both sides of the aisle and from both ends of the political spectrum.

I thank all my cosponsors and my other colleagues for their support of this important bill.

Mr. HOLLINGS. Mr. President, I rise in support of this amendment for S. 1067. This is a bill focused on the future, a bill which will help keep America competitive into the 21st century.

We all know how computers have transformed the way Americans live, work, and shop—on the network, at the bank, at the supermarket—dozens of times each day.

However, as powerful and useful as today's computers are, they are electronic half-wits compared to the computers that will be available in a few years. Today's personal computers are as powerful as the most powerful supercomputers available just 15 years ago. In the future, we will have even greater machines, and we only can imagine in a matter of seconds.

Similar advances are happening in computer communications. For more than 20 years, computers have been able to communicate with each other through computer networks. These networks are very slow, able to transmit only a few words a second. However, today the technology exists to transfer dozens of pages of information across the country in ten to a hundred times faster than a fax machine. Think how fax machines have changed the way American business works, and imagine having technology 10 or 100 times better.

With this regard, the bill before us would set up a National Research and Education Network (NREN) and allow more than a million computer users nationwide to share their data, digital images, and all manner of electronic documents in an instant from coast to coast. The result would set up a National Research and Education Network. The Commerce Committee has joined with the Energy Committee to produce this bill, and the House has already passed House Resolution 1067, particularly the NREN. Unlike many proposed science projects, this initiative will benefit all aspects of science. This is not just for the biologist or just for the astronauts. This is for everyone.

Furthermore, it is not just for researchers. This is the National Research and Education Network. The NREN could become the most powerful teaching tool ever built. Imagine giving students throughout the country access to libraries of electronic information on everything for the moons of...
Mars to the DNA sequence of the human genome. Imagine giving students at a small rural school the ability instantly to send and receive electronic letters from other students throughout the country and eventually throughout the world.

The network is for industry as well. Too often, research done in the laboratory when it is not possible to help American industry improves its competitiveness and its profits. Connecting our research labs to our high-technology firms (and low-technology firms) with a high-speed computer network would allow instant two-way technology transfer. What better way to harness the talent in our universities and laboratories.

Over the last 2 years, the University of South Carolina and South Carolina's 16 technical colleges have established a regional center for the transfer of manufacturing technology to assist small- and medium-sized businesses in the state. Accurate, effective manufacturing technology to improve their products and their profits. Paul Huray, the vice president for research at USC, recently visited with me to demonstrate how the center established a wide computer network to connect the schools involved in the center and the businesses that can benefit from it. This network will allow companies to exchange documents and improve communication in dozens of ways. Companies will be able to exchange electronic blueprints for parts, speeding up manufacturing, and reducing costs.

The NREN established by S. 1067 will lead the way to development of a commercial high-speed computer network. The NREN will prove that there is a market for billion-bit-per-second networks and will lead to all sorts of new applications for computer networks. Other countries have realized the competitive advantage such networks could provide. The Japanese and the Germans are spending billions of dollars on this technology. We cannot afford to rely on 1980's technology if we are going to stay ahead of our foreign competitors in the 1990's.

I am particularly pleased that the Commerce Committee could join with the Energy Committee to produce this bill. S. 1067 as introduced established a multi-agency High-Performance Computing (HPC) Program to be coordinated by the Federal Coordinating Council on Science, Engineering, and Technology (FCCSET) convened by the White House Office of Science and Technology Policy. In addition, it authorized funding for the program—funding to be distributed to NASA, the National Science Foundation (NSF), the Department of Energy (DOE), and the Department of Defense (DOD).

The version of S. 1067 reported by the Commerce Committee contained authorizations for NSF and NASA, over which the committee has jurisdiction. To authorize DOD's part of the HPC plan, Senator Gore worked with Senator Nunn and the other members of the Armed Services Committee to establish and provide funding for a HPC Program at DARPA in the fiscal year 1991 Department of Defense authorization bill. To authorize DOE's part of the HPC program, Senator Boren and Senators Johnston and McClure introduced S. 1976, the Department of Energy High-Performance Computing Act, which was introduced authorized $675 million over 5 years for DOE's part of the HPC Program.

The Energy Committee considered S. 1976 and reported it in July. Since then, the Commerce and Energy Committees have worked together to combine the two bills. The compromise bill before us contains two titles. Title I establishes the HPC Program, and authorizes funding for NSF, NASA, and the Department of Commerce. Title II deals with the Energy Department.

The resulting compromise bill lays out an effective way to coordinate the HPC Program and the deployment of the NREN. The Commerce Committee oversees several interagency programs, including the National Earthquake Hazards Reduction Program and the National Climate Program. Over the years, we often have grappled with the program of getting agencies with different missions to cooperate effectively for a common purpose. With the HPC Program it is clear that close cooperation is essential, especially if the NREN is to be a success. This bill endorses the FCCSET process which so far has provided for very effective cooperation between the agencies in the HPC Program, while providing FCCSET and the participating agencies with the flexibility they need to meet changing needs and new challenges.

FCCSET has developed a comprehensive plan for the HPC Program. It has assigned roles to the participating agencies. NSF is lead agency for deploying an operating NREN, DARPA is lead agency for developing the technology needed to build the NREN. NASA has a very important role to play in applications of high-performance computing, especially in aerospace and remote-sensing. DOE will contribute in a number of these areas and others. The DOE and especially its national labs have extensive expertise in the applications of supercomputing, development of new types of supercomputers, and networking of supercomputers. Such a division of labor is rare in the Federal bureaucracy. Too often turf fights result in two or three agencies duplicating each other's effort, wasting resources and talent. I expect that the excellent cooperation we are seeing in the HPC Program results from everyone realizing that there is more than enough work to do. This bill is designed to ensure that such close cooperation continues.

I hope that this bill can serve as a model of how Federal agencies can work together to advance U.S. supercomputing networking and technology, and thereby enhance America's international competitiveness.

This amendment is the merger of the Energy and Natural Resources Committee reported bill, S. 1976 (Calendar No. 700), and the Commerce Committee reported bill, S. 1067 (Calendar No. 710), reflecting the supercomputing policies embodied in both.

As the President's science adviser, Dr. Allan Bromley, noted in his 1989 report, high performance computing is a vital and strategic technology, exercising strong leverage on the rest of the computer industry and other cutting-edge areas, and that this Nation cannot afford to cede our historical leadership in this area. The report also stated that:

"High performance computing is a powerful tool to increase productivity in industrial design and manufacturing, scientific research, communications, and information management. It represents the leading edge of a multi-billion dollar world market, in which the United States is increasingly being challenged. A strong, fully competitive domestic high performance industry contributes to U.S. leadership in critical national security areas and in broad sectors of the civilian economy, including the technical base for many national economic and military security needs."

I agree with Dr. Bromley's observations.

There is no question that advances in high performance computer science and technology are vital to this Nation's prosperity, international competitiveness, national and economic security and scientific advancement; and this bill will make those advances possible.

Although the United States currently leads the world in the development and use of high-performance computing, that lead is being challenged. Unless we want to cede this technology and the commercially important spinoffs to foreign competitors, we must take action. That is why I strongly support the pending amendment.

Mr. President, this amendment would advance U.S. supercomputing technology in several different ways.

First, it would create the National High Performance Computing Program (NHPC Program). The NHPC Program would require the President to develop a Government-wide high
Mr. McCLURE. Mr. President, I rise to discuss certain aspects of the pending amendment which may not be clear on their face, and therefore warrant further explanation so that the Senate will fully understand the amendment before it votes.

First, if a Federal agency or other person, including a State or local government agency, an educational institution, a library, a business or research organization whether or not for profit, and an individual, wishes to connect to the National Research and Education Network (NREN) created by this act, it is the responsibility of that agency or person to establish the linkage. Such linkage might involve only a minor expenditure or, on the other hand, if the agency or person is very remote it could entail substantial expenditures.

Second, I want to make clear to the Senate the relationship between Federal agency computers, network facilities and other related equipment, including its operation and management, remain in the exclusive control of the agency. If, for example, after having connected to the NREN, an agency elects, for any reason whatsoever, to disconnect any or all of its computers, network facilities or other equipment, nothing in this act prevents the agency from so doing. The agency is free to connect or disconnect, based on its needs and requirements, including what best satisfies its mission and statutory requirements; that agency decision or action is not predicated on the needs or the requirements of any other person or agency who is connected, or wishes to connect, to the NREN at some short period of time. The agency's control over their own computers, networks and equipment, including the operations and management thereof, is unaffected by any decision to link or unlink to the NREN and remains entirely in the hands of the agency.

That is not to say, however, that if an agency wishes to link to NREN it would not have to meet the technical operation standards established for the NREN. Obviously, in order for such a linkage to be successful there would have to be a technical compatibility. But apart from the potential requirement that linking computers and networks may have to change technical operations in order to meet technical operating standards for connection to the NREN, the management of the NREN can not direct or control the use or operations of agency computers, networks and equipment.

Similarly, the requirement of section 105(b)(6) that the NREN "be phased into commercial operation as commercial networks can meet the networking needs of American researchers and educators" does not require the transfer or sale of computers, networks or equipment owned by any agency.

In the same vein, I would also note that the amendment does not require upon any agency or other person the right to control or access data bases owned or operated by another agency or person. It is entirely within that agency or person's discretion as to whether and how to make such data available.

Similarly, although section 102(g)(2) requires the National Institute of Standards and Technology to adopt standards and guidelines, such adoption would not necessarily require Federal agencies and departments to conform to those standards and guidelines, although there is a strong expectation that they would.

With these understandings I am willing to support the pending matter, and I will urge my colleagues to vote for it.

I ask the Senator from Tennessee, Mr. Gore, if that is also, his interpretation of the provisions of the pending matter.

Mr. GORE. The senior Senator from Idaho [Mr. McCLURE] is correct.

Mr. JOHNSTON. Mr. President, I rise in strong support of the High-Performance Computing Act of 1990. The amendment being presented to the Senate today represents the merger of two bills reported earlier this year.

The two bills are S. 1975, the Department of Energy High-Performance Computing Act of 1990, reported by the Committee on Energy and Natural Resources on July 19 and S. 1067, the High-Performance Computing Act of 1990, reported by the Committee on Science, Commerce and Transportation on July 23. The two committees have worked hard together to create this legislation. I particularly want to thank Senator Gore for his leadership in bringing this issue before the Senate. I also wish to thank Senators HOLLINS, DANFORTH, McCLURE, and DOMENICI who were actively involved throughout the process contributing much to the final product.

Five years ago the White House Science Council Committee on Research in very high-performance computing came to the following conclusion:

The bottom line is that any country which seeks to control its future must effectively exploit high performance computing. A country which aspires to military leadership must dominate, if not control, high performance computing. A country seeking economic strength in the information age must lead in the development and application of high performance computing in industry and education.

While the United States continues to lead the world in the development of high-performance computing, that lead is being challenged. Some estimate that the Japanese will dominate...
the supercomputer market in the early 1990s. Yet, the Japanese did not enter the field of high-performance computing until 1983. Today, outside of United States, Japan is the single biggest market for, and supplier of, supercomputers.

The United States needs an integrated, cooperative effort among industry, universities, government, and the private sector to meet the challenge of foreign competition. The purpose of the legislation before the Senate today is to establish an effort.

There are two titles to the act. The first title is based on S. 1076, and the second is based on S. 1976.

Under title I, the President, through the Federal Coordinating Council for Science, Engineering, and Technology (FCCSET), is required to develop a national high-performance computing plan for the Federal Government. The 5-year plan will establish the overall goals and priorities for high-performance computing. The President will establish and recommend roles, funding levels and ways to coordinate high-performance computing activities of Federal agencies and departments. The legislation authorizes the establishment of a multi-gigabit-per-second national research and education computer network. This network will link Government, industry, and the higher education community. Computer users at a network of 2,000 universities, Federal laboratories and industry research centers will have access to supercomputers, computer data bases and other research facilities. The network will be unequaled anywhere in the world.

We intend that the Federal network will act as a catalyst for a much larger effort by the Nation as a whole. As services over the network and the number of users increase, we expect that the private sector will begin to demand more and more from the network. Universities and private industry will come to rely more and more on the network and will eventually be willing to fund the network itself or at least a large portion of it.

Initially, Federal agencies and departments will work together to connect their individual networks. Existing user communities of Federal networks will be expanded. New user communities will be brought into these networks. Network speeds and capabilities will be upgraded as the results of research carried out under this legislation become fruitful. Eventually, a national network, operating at a rate of a billion bits per second will be in place. Even then, the network will continue to grow, becoming faster and faster, connecting more and broader user communities. It will become much like the telephone system we have in place today.

At the same time, each individual agency will be free to operate its own individual network to meet individual agency mission needs. To the extent an agency can contribute to the national network, it should do so. To the extent individual agency mission needs are best met by a separate network, the agency should be free to do so. To the extent this national network, that autonomy is preserved.

We know that this national network can only succeed as a cooperative effort of all the interested agencies. We believe that cooperation of the network will look like in the coming years. Technology to develop the network envisioned in this legislation is still being developed. The legislation governing the network therefore must be flexible. In stead of creating a rigid, unchangeable management structure, the legislation directs the President, through FCCSET, to establish an entity or entities to carry out management functions for the network.

We expect that the President will take a fresh look at the future of computer networks in the United States and make use of this legislation to move forward from where we are now. The plan required under title I provides an opportunity to indicate where we should be going. The authority to structure the network as he see fit provides the President with an opportunity to devise a national computer network that meets national needs, now and in the future.

The bill requires the Department of Defense, through the Defense Advanced Research Projects Agency (DARPA), to support research and development of advanced fiber optics technology, switches, and protocols needed to develop the network. This requirement does not mean the DARPA has a role in this kind of research and development that is any greater than any other agency qualified to perform such research.

Similarly, the granting of primary responsibility to any agency in this legislation is not a grant of exclusive responsibility.

The remainder of title I outlines some of the roles of the National Science Foundation, the National Aeronautics and Space Administration, and the Department of Commerce are expected to carry out. No doubt FCCSET will recommend other roles in the national high-performance computing plan. The final section in title I, miscellaneous provisions, makes clear that classified activities are not affected by the act. Federal agencies may procure prototype machines commonly referred to as paper machines, and that the act does not limit the authority or ability of any Federal agency or department to perform any activity it was previously or may be authorized to do.

Title II is based on S. 1976 as reported by the Committee on Energy and Natural Resources. However, a main feature of S. 1976 as reported is not included in today's amendment. The Department of Energy is not named to head the national computer network. Rather, title II establishes for the Department a strong role in the national high-performance computing initiative outlined in title I. The Department of Energy would be one of several equals within the program under title I. Nothing in title II changes that.

The Department of Energy has always had a key role in high-performance computing. The Department and its laboratories are in a position to help the United States maintain its leadership, strengthen the U.S. computing industry, and encourage deployment of high-performance computing in analysis, design, concurrent engineering, and manufacturing for U.S. industry. In the past, the Department accomplished this role with the assistance of financial support of fundamental science and the nuclear weapons program. Today, the Department is one of several equals in the national network.

The Department's laboratories have become the world's most demanding, sophisticated, and experienced users of supercomputers. Manufacturers of high-performance computers routinely send new prototype computers to the national laboratories for testing. The laboratories help the manufacturer identify problems, find solutions for them, and write the unique software packages supercomputers require.

Title II builds on that proven relationship. The Secretary is directed to establish a consortium between its national laboratories and other Federal laboratories or agencies, educational institutions and industry. The consortium will undertake basic research and development of high-performance computing hardware, software, and networks. The consortium will carry out its research directed at scientific and technical problems which require the application of high-performance computing resources.

One of the highlights of this session for the Energy and Natural Resources Committee was the passage of S. 1976, the Department of Energy High-Performance Computing Act of 1990. One of the highlights for the 101st Congress will be the enactment of the High-Performance Computing Act of 1990.

Mr. President, I urge my colleagues to accept this amendment.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment of the Senator from Tennessee.

The amendment (No. 3158) was agreed to.
Mr. RIEGLE. Mr. President, I wish to make a few comments about the national network initiative in S. 1067, the High Performance Computing Act of 1990.

I believe that NSFNet, a national network created and run by the National Science Foundation has demonstrated the feasibility and desirability of the National Research and Education Network called for in this bill. The NSFNet was organized under a cooperative agreement between the National Science Foundation and MERIT, a non-profit corporation in Michigan, has provided a foundation of experience and successful practice in national networking in support of research and education. It has also demonstrated the value of cooperative efforts including industry, government at all levels, and the higher education community.

Supporters of the effort have made clear through their statements and letters that they believe it is highly desirable for the Networking Initiative to continue to be a cooperative effort by all of these sectors. They believe the National Science Foundation has displayed effective leadership and is the appropriate agency to continue as the head agency for implementation of the network, and for the governance of this networking effort among the Federal Government, industry, and higher education.

In the past, each mission agency has run its own networks, which were often unconnected or incompatible with each other. I believe the future productivity of the United States demands a unified national network which all researchers and scholars can use jointly.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

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

S. 1067

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "High-Performance Computing Act of 1990".

SECTION 2. FINDINGS AND PURPOSE.

(a) The Congress finds the following:

(1) Advances in Computer science and technology are vital to the nation's prosperity, national and economic security, and scientific advancement.

(2) The United States currently leads the world in the development and use of high-performance computing for national security, industrial productivity, and science and engineering, but that lead is being challenged by foreign competitors.

(b) Further research, improved computer architecture, and improved software and algorithm design are necessary if the United States is to continue to reap the benefits of high-performance computing.

(c) Several Federal agencies have ongoing high-performance computing programs, but improved interagency coordination, cooperation, and planning could enhance the effectiveness of these programs.

(d) A 1989 report by the Office of Science and Technology Policy outlining a research and development strategy for high-performance computing provides a framework for a multi-agency high-performance computing program.

(e) It is the purpose of this Act to help ensure the continued leadership of the United States in high-performance computing and its applications. This requires that the United States Government:

(A) establish the National Research and Education Computer Network;

(B) expand the number of researchers, educators, and students with training in high-performance computing and access to high-performance computing resources;

(C) develop an information infrastructure of high-speed computer systems, access mechanisms, and research facilities which is available for use through such a national network;

(D) stimulate research on software architecture;

(E) promote the more rapid development and wider distribution of computer software and applications of software;

(F) accelerate the development of computer systems and subsystems;

(G) provide for the application of high-performance computing to Grand Challenges; and

(H) invest in basic research and education.

(2) The Plan shall set forth the recommended role of each Federal agency and department in implementing the Plan.

(c) The Plan shall:

(A) establish the National High-Performance Computing Plan (hereafter in this title referred to as the 'Plan') and the 'Council', shall be in accordance with the provisions of this title;

(B) provide for interagency coordination of the Federal high-performance computing program established by this title;

(C) describe the level of Federal funding for each agency and department and specific activities, including education, research activities, hardware and software development, and acquisition and operating expenses for computers and computer networks, required to achieve the goals and priorities established under subparagraph (A);

(D) set forth the recommended role of each Federal agency and department in implementing the Plan.

(3) The Plan shall:

(A) establish the National Science Foundation as the lead agency in high-performance computing for national security, industrial productivity, and science and engineering.

(B) provide for interagency coordination of the Federal high-performance computing program established by this title.

The Plan shall contain recommendations for a five-year national effort and shall be submitted to the Congress within one year after the date of enactment of this title. The Plan shall be resubmitted upon revision at least once every two years thereafter.

(2) The Plan shall:

(A) establish the National High-Performance Computing Plan (hereafter in this title referred to as the 'Plan') and the 'Council', shall be in accordance with the provisions of this title;

(B) provide for interagency coordination of the Federal high-performance computing program established by this title;

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(C) describe the level of Federal funding for each agency and department and specific activities, including education, research activities, hardware and software development, and acquisition and operating expenses for computers and computer networks, required to achieve the goals and priorities established under subparagraph (A);

(D) set forth the recommended role of each Federal agency and department in implementing the Plan.
“(G) the Department of Education;

(H) the Department of Agriculture, particularly the National Agricultural Library;

and

(I) such other agencies and departments as the President or the Chairman of the Council may designate.

“(4) In addition, the Plan shall take into consideration the present and planned activities of the Library of Congress, as deemed appropriate by the Librarian of Congress.

“(5) The Plan shall identify how agencies and departments can collaborate to:

(A) ensure interoperability among computer networks run by the agencies and departments;

(B) increase software productivity, capability, portability, and reliability;

(C) encourage, where appropriate, agency cooperation with industry in development and exchange of software;

(D) distribute software among the agencies and departments;

(E) distribute federally-funded software to State and local governments, industry, and universities;

(F) accelerate the development of high performance computer software, subsystems, and associated software;

(G) provide the technical support and research and development of high-performance computer software and hardware needed to address Grand Challenges in astrophysics, geophysics, engineering, materials, environmental geochemistry, plasma physics, weather and climate forecasting, and other fields; and

(H) identify agency rules, regulations, policies, and practices which can be changed to significantly improve utilization of Federal high-performance computing and network facilities, and make recommendations to such agencies for appropriate changes.

“(6) The Plan shall address the security requirements and policies necessary to protect Federal research computer networks and information resources accessible through Federal research computer networks. Agencies identified in the Plan shall define and implement a security plan consistent with the Plan.

“(b) The Council shall:

(1) serve as lead entity responsible for development of, and interagency coordination of the program under the Plan;

(2) recommend ways to coordinate the high performance computing research and development activities of federal agencies and departments and report at least annually to the President, through the Chairman of the Council, on any recommended changes in agency or departmental roles that are needed to better implement the Plan;

(3) review, prior to the President's submission to the Congress of the annual budget estimate, each agency and departmental budget estimate in the context of the Plan and make the results of that review available to the appropriate elements of the Executive Office of the President, particularly the Office of Management and Budget; and

(4) consult and coordinate with Federal agencies, academic, State, industry, and other appropriate groups conducting research on high-performance computing.

(c) The Director of the Office of Science and Technology Policy shall establish a High-Performance Computing Advisory Panel consisting of prominent representatives from industry and academia who are specially qualified to provide the Council with advice and information on high-performance computing. The Panel shall provide the Council with an independent assessment of:

(1) progress made in implementing the Plan;

(2) the need to revise the Plan;

(3) the balance between the components of the Plan;

(4) whether the research and development funds under the Plan is helping to maintain United States leadership in computing technology; and

(5) other issues identified by the Director.

(d)(1) Each appropriate Federal agency and department involved in high-performance computing shall, as part of its annual request for appropriations to the Office of Management and Budget, submit a report to the Office identifying each element of its high-performance computing activities, which—

(A) specifies whether each such element (i) contributes primarily to the implementation of the Plan or (ii) contributes primarily to the achievement of other objectives but Plan implementation in important ways; and

(B) states the portion of its request for appropriations that is allocated to each such element.

(2) The Office of Management and Budget shall review each such report in light of the goals, priorities, and agency and departmental responsibilities set forth in the Plan, and shall include, in the President's annual budget estimate, a statement of the portion of each appropriate agency or department's annual budget estimate that is allocated to each element of such agency or department's high-performance computing activities.

(e) As used in this section, the term 'Grand Challenge' means a fundamental problem in science and engineering, with broad economic and scientific impact, whose solution will require the application of high-performance computing resources.

SEC. 702. The Chairman of the Council shall prepare and submit to the President and the Congress, not later than March 1 of each year, an annual report on the activities conducted pursuant to this title during the preceding fiscal year, including—

(1) a summary of the achievements of Federal high-performance computing research and development efforts during that preceding fiscal year;

(2) an analysis of the progress made towards achieving the goals and objectives of the Plan;

(3) a copy and summary of the Plan and any changes made in such Plan;

(4) a summary of appropriate agency budgets for high-performance computing activities for that preceding fiscal year; and

(5) any recommendations regarding additional action or legislation which may be required to assist in achieving the purposes of this title.

SEC. 102. NATIONAL RESEARCH AND EDUCATION NETWORK

(a) The National Science Foundation, the Department of Defense, the Department of Energy, the Department of Commerce, the National Aeronautics and Space Administration, and other appropriate agencies shall provide, by appropriate action, the basis for interagency cooperation toward the development of a national multi-gigabit-per-second research and education computer network by 1996, to be known as the National Research and Education Network (thereafter referred to as the "Network"), which shall link government, industry, and the education community.

(b) The Network shall provide computer access to supercomputers, computer data bases, and other research facilities; and

(c) The Network shall provide computer access to supercomputers, computer data bases, and other research facilities; and

(d) The Network shall provide computer access to supercomputers, computer data bases, and other research facilities; and

(e) The Network shall provide computer access to supercomputers, computer data bases, and other research facilities; and

(f) The Network shall provide computer access to supercomputers, computer data bases, and other research facilities; and

(g) In addition to other agency activities associated with the establishment of the Network, the following actions shall be taken:
(1) The Council shall submit to the Congress, within one year after the date of enactment of this Act, a report describing and evaluating effective mechanisms for providing operating funds for the maintenance and development of the Network, including user support, industry support, and continued Federal investment, and containing a plan for the expansion of the Network.

(2) The National Institute of Standards and Technology shall adopt a common set of standards and guidelines to provide interoperability across user interfaces to systems, and enhanced security for the Network.

(h) Within one year after the date of enactment of this Act, the Director, through the Council, shall report to the Congress on—

(1) how commercial information service providers could be charged for access to the Network;

(2) the technological feasibility of allowing the authorized duplication of libraries of programs and other software developed by Federally-funded researchers and other software, including federally-funded educational and training software. Such efforts shall—

(a) maintain libraries of programs and other software developed by Federally-funded researchers and other software, including Federally-funded educational and training software.

(b) provide funding to researchers to improve and maintain software they have developed.

(c) help researchers locate the software they need.

(d) make software available through the Network; and

(e) promote commercialization of software where possible.

(d)(1) There are authorized to be appropriated to the National Science Foundation for the research, development, and support of the Network, in accordance with the purposes of section 102, $15,000,000 for fiscal year 1991, $25,000,000 for fiscal year 1992, and $55,000,000 for fiscal year 1993.

(2) There are authorized to be appropriated to the National Aeronautics and Space Administration for computational science, with emphasis on aeronautics and the processing of remote-sensing and space science data, $31,000,000 for fiscal year 1991, $65,000,000 for fiscal year 1992, and $100,000,000 for fiscal year 1993.

(b) There are authorized to be appropriated to the National Aeronautics and Space Administration for the purposes of this Act, $22,000,000 for fiscal year 1991, $45,000,000 for fiscal year 1992, and $67,000,000 for fiscal year 1993.

(c) The amounts authorized to be appropriated under subsection (b) are in addition to any amounts that may be authorized to be appropriated under this Act for the purpose of section 102, $15,000,000 for fiscal year 1991, $25,000,000 for fiscal year 1992, and $55,000,000 for fiscal year 1993.

(d) There are authorized to be appropriated to the National Aeronautics and Space Administration for the purposes of this Act, $22,000,000 for fiscal year 1991, $45,000,000 for fiscal year 1992, and $67,000,000 for fiscal year 1993.

(e) The amounts authorized to be appropriated under this subsection are in addition to any amounts that may be authorized to be appropriated under other laws.

(f) There are authorized to be appropriated to the National Aeronautics and Space Administration for the purposes of section 102, $15,000,000 for fiscal year 1991, $25,000,000 for fiscal year 1992, and $55,000,000 for fiscal year 1993.

(g) There are authorized to be appropriated to the National Aeronautics and Space Administration for the purposes of this Act, $22,000,000 for fiscal year 1991, $45,000,000 for fiscal year 1992, and $67,000,000 for fiscal year 1993.

(h) The amounts authorized to be appropriated under this subsection are in addition to any amounts that may be authorized to be appropriated under this Act for the purpose of section 102, $15,000,000 for fiscal year 1991, $25,000,000 for fiscal year 1992, and $55,000,000 for fiscal year 1993.

(i) There are authorized to be appropriated under subsection (b) for the purpose of this title, $31,000,000 for fiscal year 1991, $65,000,000 for fiscal year 1992, and $100,000,000 for fiscal year 1993.

(j) There are authorized to be appropriated under subsection (b) for the purpose of this title, $31,000,000 for fiscal year 1991, $65,000,000 for fiscal year 1992, and $100,000,000 for fiscal year 1993.
(a) The Secretary, acting in accordance with the authority provided by the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5621 et seq.) and subject to available appropriations, shall establish a High-Performance Computing Program (hereinafter referred to as the "HPC Program").

(b) Within one year after the date of the enactment of this Act, the Secretary shall establish a management plan to carry out HPC Program activities. The plan shall—

1. be developed in conjunction with the Director's overall efforts to promote high-performance computing;

2. summarize all ongoing high-performance computing activities and resources at the Department that are not classified or otherwise restricted;

3. describe the levels of funding for each aspect of high-performance computing that are not classified or otherwise restricted;

4. establish long range goals and priorities for research, development, and applications of high-performance computing at the Department, and devise a strategy for achieving them; and

5. ensure that technology developed pursuant to the HPC Program is transferred to the private sector in accordance with applicable law.

SEC. 203. DEPARTMENT OF ENERGY HIGH-PERFORMANCE COMPUTING PROGRAM ACTIVITIES.

(a) The Secretary shall provide for a high-performance computer network that links the Department of Energy laboratories, Federal Government, universities, and other entities engaged in high-performance research and development and which will be an amendment in the statute that results from research and development activities conducted under this title and that would be a trade secret or commercial or financial information that is privileged or confidential, under the meaning of section 852(b)(4) of title 5, United States Code.

(c) The Secretary, for a period of up to 5 years after the development of information that results from research and development activities conducted under this title and that would be a trade secret or commercial or financial information that is privileged or confidential, under the meaning of section 852(b)(4) of title 5, United States Code, if the information had been obtained from a non-Federal party, may provide appropriate protection against the dissemination of such information, including exemption from subchapter II of chapter 5 of title 5, United States Code.

SEC. 204. AUTHORIZATION.

In addition to existing authorizations that may be used to carry out this title, there is authorized to be appropriated for the purposes of this title $105,000,000 for fiscal year 1991, $115,000,000 for fiscal year 1992, and $135,000,000 for fiscal year 1993.

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. STEVENS. I move to lay this motion on the table.

The motion to lay on the table was agreed to.

LEGISLATIVE BRANCH APPROPRIATIONS ACT, 1991

The Senate continued with the consideration of the bill.

CONCLUSION OF MORNING BUSINESS

Mr. FORD. Mr. President, I ask unanimous consent that morning business be closed and we return to regular business.


AMENDMENT NO. 2147, AS MODIFIED

Mr. FORD. Mr. President, I send a modified amendment to the desk, which will be an amendment in the second degree to the Nickles amendment.

The PRESIDING OFFICER. The amendment is so modified, as the Senator does have a right to modify his amendment.

The amendment, as modified, is as follows:

In the amendment strike all after the "s" in line 4 and insert the following: "no member may transfer any of his/her mail allocation to any member who is a candidate for public office during the period beginning January 1st of the calendar year in which the member is a candidate for public office and ending on the date of election for such public office."
ORDER OF PROCEDURE

Mr. FORD. Mr. President, I ask unanimous consent that when the Senate resumes consideration of the legislative appropriations bill that there be 10 minutes for debate on the pending Ford second-degree amendment to the Nickles amendment; that the time be equally divided and controlled in the usual form; that when the time is used, the Senate will proceed to vote on or in relation to the Ford amendment No. 3147.

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

ORDERS FOR TOMORROW

Mr. FORD. Mr. President, on behalf of the majority leader, I ask unanimous consent that when the Senate recesses today, it stands in recess until 10:15 a.m., Thursday, October 25; that following the prayer, the Journal of proceedings be deemed approved to date; that the time of the two leaders be reserved for their use later in the day; and that there be a period for morning business not to extend beyond 10:30 a.m., with Senators permitted to speak therein for up to 5 minutes.

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

RECESS UNTIL 10:15 A.M. THURSDAY

Mr. FORD. Mr. President, if there be no further business, I ask unanimous consent that the Senate stand in recess, under the previous order, until 10:15 a.m., Thursday, October 25.

There being no objection, the Senate, at 1:02 a.m., recessed until Thursday, October 25, 1990, at 10:15 a.m.

NOMINATIONS

Executive nominations received by the Senate October 24, 1990:

AFRICAN DEVELOPMENT FOUNDATION


U.S. ADVISORY COMMISSION ON PUBLIC DIPLOMACY

LEWIS W. DOUGLAS, JR., OF CALIFORNIA, TO BE A MEMBER OF THE U.S. ADVISORY COMMISSION ON PUBLIC DIPLOMACY FOR A TERM EXPIRING JULY 1, 1990, VICE HERSHHEY GOLD, TERM EXPIRED.

NATIONAL ADVISORY COUNCIL ON EDUCATIONAL RESEARCH AND IMPROVEMENT

A. PIERRE GUILLERMIN, OF VIRGINIA, TO BE A MEMBER OF THE NATIONAL ADVISORY COUNCIL ON EDUCATIONAL RESEARCH AND IMPROVEMENT FOR A TERM EXPIRING SEPTEMBER 16, 1993, VICE ROBERT LEE MCELRAITH, TERM EXPIRED.

NATIONAL COUNCIL ON DISABILITY

GEORGE H. OBERLE, JR., OF OKLAHOMA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 1992, (REAPPOINTMENT)

TENNESSEE VALLEY AUTHORITY

WILLIAM H. KENNOY, OF KENTUCKY, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE TENNESSEE VALLEY AUTHORITY FOR THE TERM EXPIRING MAY 18, 1999, VICE CHARLES H. DEAN, JR., TERM EXPIRED.