SENATE—*Wednesday, October 24, 1990*

(Legislative day of Tuesday, October 2, 1990)

The Senate met at 9:10 a.m., on the expiration of the recess, and was called to order by the Honorable HERBERT 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 Chaplain.

PRAYER

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

Let us pray:

Verily I say unto you, Whatsoever 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 K.J.V.

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 K.J.V.

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 to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, 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.

ROBERT C. BYRD,
President pro tempore.

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

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 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 tempore. 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 of our Government in order to reduce the costly compromises of technical and military programs of spies and foreign agents.

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

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 and regional 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 an 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 for the last 4 years as vice 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 tempore. 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 Maine, and observe that if the history of our intelligence operation of the United States of America were to be written today it unquestionably would identify 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 that 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 Oklahoma as well as 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 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 I believe we 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 stagflation will necessitate a new look at our future.

Mr. President, I rise 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 GI's.

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 failing, 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 and military blockade; strengthened by eight U.N. resolutions; strengthened by the successful assembly of troops that stopped Iraqi aggression at the Saudi border; strengthened by the determined certainty that atrocities by the Iraqi military and Mukhabarat against innocent Kuwaitis and foreign nationals will be indelibly recorded in the outrage of civilized humanity and the docket of International Courts of Law.

What weakens our hand is the administration's constant worrying about the appearance of rewarding aggression. The Secretary of State recently fretted: "It would be a terrible mistake in terms of establishing a new world order if we began by working deals that would permit unprovoked aggression to pay."

Never mind that scarcely 100 days ago his State Department was doing just that: Working deals, through diplomatic signals, that would permit Saddam Hussein to grab Kuwait's northern oil fields. The question is:

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 fragments from 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 much more 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, and other noble sounding disguises for their own political retreat, I grew to distrust anyone whose call to arms appeared phony and insincere. That distrust has not disappeared. I remain deeply skeptical whenever I hear we have no choice but to send our troops into battle. And while I know there are times we must use force, I do not apologize for my cynicism. I believe it can be constructive. It is usually warranted.

That experience stands in sharp contract to the verdict I have reached about the cold war, some four decades after my earliest memories of it. 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 to stand up for 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 exercise the same patient firmness in our embargo of Iraq that brought victory in the cold war. But we are wrong if the pull of money obscures the goal of freedom.

We are also wrong, if we weaken our hand by firing the first shot. We are wrong if we reject diplomacy in the name of honor. Peace with honor has almost always meant peace with the honor of elected politicians intact.

If war occurs, the outcome is predictable: A lot of people will die; a lot of people will have their bodies torn apart but will live; a lot of people will make a lot of money selling arms, building bases, repairing equipment; and a lot of people will look at the scene 10 years from now and wonder why we did it.

There is a better course, and it must be stated clearly before we leave town. First, the administration needs to confirm what Americans already sense: That we have achieved a victory here. The first objective of the deployment of troops to the gulf was to prevent an Iraqi invasion of Saudi Arabia.

The President should declare: We were the only nation with the capacity to deploy a force big enough and fast enough to deter further Iraqi aggression. We succeeded. American troops again deserve the world's gratitude. They accomplished their mission.

Second, the President should announce the start of phase 2: A transition into a genuinely international force under U.N. auspices to continue enforcement of the embargo and protection of Saudi Arabia and other Gulf States. The President should refute dangerous suggestions that we must launch an American offensive now because international unity cannot be sustained over time. That is not true for our economic response. Surely it takes less effort to manage the discipline of a blockade than to manage the fury of a war. No one has suggested we will suffer 20,000 casualties dispatching our diplomats to plug up leaks in the blockade. Nor is it true that an international force is inferior if fighting does occur. Indeed, a truly international force—not one where nearly two-thirds of the ground troops are American—will draw strength from the greater presence of nations with a more immediate stake in the conflict. In short, a genuinely international force will keep Saddam Hussein isolated and threatened. The effectiveness of our response will not deteriorate because the makeup of the force has been altered.

Third, the President, should signal a receptivity to the thoughtful proposals from the Senate Foreign Relations Committee and others on Capitol Hill to establish a consultative process, especially while Congress is adjourned. If they are not willing, then Congress should pass legislation establishing a consultative process.

Fourth, this administration should worry less about being perceived as weak if they find a peaceful solution. The American people will not perceive a negotiated settlement within the context of the U.N. resolutions as a failure of resolve. There are many diplomatic efforts yet to be tried. This is the challenge of the second phase of the gulf conflict. If the administration rises to this challenge—rather than yielding to the lethal gravity that tugs it now toward war—it will have performed honorably and acted wisely on the lessons of the past 45 years.

Finally, the President must find the leadership to return our Nation's attention from the martial distractions of 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:

Veto 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 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 discrimination right now 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:

—Both shift the burden of proof to the employer on the issue of "business necessity" in disparate impact cases.

—Both create expanded protections against on-the-job racial discrimination by extending 42 U.S.C. 1981 to the performance as well as the making of contracts.

—Both expand the right to challenge discriminatory seniority systems by providing that suit may be brought when they cause harm to plaintiffs.

—Both have provisions creating new monetary remedies for the victims of practices such as sexual harassment. (The Administration bill allows equitable awards up to $150,000.00 under this new monetary provision, in addition to existing remedies under Title VII.)

Both have provisions ensuring that employers can be held liable if invidious discrimination was a motivating factor in an employment decision.

—Both provide for plaintiffs in civil rights cases to receive expert witness fees under the same standards that apply to attorneys fees.

—Both provide that the Federal Government, when it is a defendant under Title VII, will have the same obligation to pay interest to compensate for delay in payment as a nonpublic party. The filing period in such actions is also lengthened.

—Both contain a provision encouraging the use of alternative dispute resolution mechanisms.

The congressional majority and I are on common ground regarding these important provisions. Disputes about other, controversial provisions in S. 2104 should not be allowed to impede the enactment of these proposals.

Along with the significant similarities between my Administration's bill and S. 2104, however, there are crucial 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 for employers to defend 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* case in 1971. S. 2104, however, 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, using language that appears in no decision 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 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 Supreme Court in *Griggs* and subsequent cases. This debate, moreover, is a sure sign that S. 2104 will lead to years—perhaps decades—of uncertainty 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 in 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 widely acknowledged to be in a state of crisis. The bill also contains a number of provisions that will create unnecessary and inappropriate incentives for litigation. These include unfair retroactivity rules; attorneys fee provisions that will discourage settlements; unreasonable new statutes of limitation; and a "rule of construction" that will make it extremely difficult to know how courts can be expected to apply the law. In order to assist the Congress regarding legislation in this area, I enclose herewith a memorandum from the Attorney General explaining in detail the defects that make S. 2104 unacceptable.

Our goal and our promise has been equal opportunity and equal protection under the law. That is a bedrock principle from which we cannot retreat. The temptation to support a bill—any bill—simply because its title includes the words "civil rights" is very strong. This impulse is not entirely bad. Presumptions have too often run the other way, and our Nation's history on racial questions cautions against complacency. But when our efforts, however well intentioned, result in quotas, equal opportunity is not advanced but thwarted. The very commitment to justice and equality that is offered as the reason why this bill should be signed requires me to veto it.

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 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 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) pass, the objections of the President of the United States to the contrary notwithstanding.

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—none 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 did not extend to the Bush 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 have 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 can throw sand in the gears and prevent a meeting of the minds on a complicated legal question.

But no 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 on hiring, promotion, or other aspects of employment often lead to flagrant discrimination against women and minorities.

In 1971, in a unanimous decision by Chief Justice Burger in the Griggs case, the Supreme Court laid down the landmark rule of law applicable to these antidiscrimination cases, requiring employers to justify such practices by demonstrating that they are required by business needs. Indeed, the Griggs standard is widely referred to as the "business necessity" test.

In 1989, however, the membership of the Supreme Court had changed, and a new decision changed the law. In a 5-to-4 decision in the Wards Cove case, the Supreme Court overrruled the Griggs decision.

The Court made it far easier for employers to justify discriminatory practices in disparate impact cases, and far more 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 devastating 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 anticivil 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 again to address 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 PRYOR, declaring that the mere existence of a statistical imbalance in an employer's work force on account of race, color, religion, sex or national origin does not create a violation of the law.

To remove any doubt about how courts would 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 HATCH, which further clarified the application of the business necessity test, and to make three other significant compromises proposed by Senator HATCH relating to other provisions of the bill.

Senator HATCH had been the leading opponent of the bill when it was originally considered 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 not 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. The administration's bill 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 the courts.

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 can.

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 the bill for promoting excessive litigation. Yet he is quick to invite excessive litigation when the issue is reopening long-settled consent decrees.

In addition, the administration's bill is prospective only. A vote to sustain this veto, therefore, would give 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. The President 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 the history of the Senate 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 them very important 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 overrule 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 well. I think the American people have observed him, and I think they look at George Bush and they say here is a truly moderate, decent, wonderful man. He has stood for civil rights during his whole political career.

I think what is happening in the minds of many people in this society today is they are saying if George Bush—this wonderful moderate, decent man who listens to everybody—feels that this is a quota bill, and a litigation bonanaza 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 saying if he feels that way, 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 sweeping civil rights 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 did.

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 denied access to court 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 will convert title VII from a statute fostering conciliation and settlement into a statute encouraging protracted, costly litigation. 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.

I will just summarize the specific 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 explanation in the joint statement of the conference committee takes away even this partial improvement in the bill's language. It seriously waters down the language in the bill by explaining that the significant part 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 whose touchstone is equal results—quotas—for groups.

No. 3, the definition of business necessity is much more burdensome than current law. It is not Griggs, and it will permit 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 helps America, I would like to know how. 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 and attorney's fees and costs, is to avoid being sued in the first place. And the ony way to do that is to hire and promote by quota.

No. 5, let me talk about the right of an individual citizen to have his or her day in court, Martin versus Wilks. 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 fundamentally 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.

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 the amount of compensatory damages and back pay, whichever is greater, in punitive damages. This so-called cap on punitive damages is not a real cap. These provisions will be a magnet for prolonged title VII litigation, a litigation bonanza for lawyers.

No. 8, it effectively adds jury trials for disparate impact claims where the plaintiff alleges both intentional discrimination and disparate impact discrimination. This is going to encourage plaintiffs to pursue cases all the way to trial before a jury rather than refer a settlement because they are going to be able to get more from the employer because it is stacked in their favor.

No. 9, it extends the statute of limitations from its current 6 months—meaning they must bring their claims in an expeditious fashion so everybody knows where they stand—to 2 years. Rather than require plaintiffs to bring allegations of discrimination in a timely way for resolution, the bill allows these allegations to fester in the workplace, exacerbating tension and uncertainty. In addition, the costs in attorneys' fees continue to amount and run up.

No. 10, the bill modifies the statute of limitations so that it runs, not just from the time of the alleged illegal occurrence, as under current law, but also from the time the alleged illegal occurrence "has been applied to affect adversely the person aggrieved, whichever is later."

That language overturns at least three Supreme Court decisions: *United Airlines* v. *Evans,* 431 U.S. 553 (1977); *Delaware State College* v. *Ricks,* 449 U.S. 250 (1980); *Chardon* v. *Fernandez,* 454 U.S. 6 (1981).

This opens the door to many stale 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.

If the person is later rehired in 1995 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 compensatory damages for lowered earnings, pain, suffering and other damages since 1990.

Oddly, here again, civil rights plaintiffs get two bites of the apple 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.

That alone is reason to veto this bill. 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 overturning a 1986 Supreme Court decision by Justice Stevens in Evans versus Jeff D., which allows a defendant, such as an employer, to condition a lump sum settlement offer on the plaintiff's waiver of attorney's fees leaving the plaintiff to work out the fee with 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 continue the case and get more attorneys' fees. It is just like falling off a log, the way this bill is written.

No. 12: It encourages lawyers to drag out cases by overturning a 1985 decision by Justice Stevens in Marek versus Chesny, 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, and the plaintiff later obtains a judgment for less than the amount of the employer's offer? The plaintiff is not 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 for it, every citizen in this country. The increased cost of goods and services is going to pay for this lawyers' relief bill.

It is not a civil rights bill. It is a relief bill for lawyers, and it is a quota bill.

No. 13: This bill seeks to preserve affirmative action preferences for minorities and women with no protection at all for white males. They are completely left out of the equation. Thus, an employer may seek to prefer, voluntarily, minorities and women at the expense of others. The bill provides no protection for those who might be adversely affected.

Moreover, if a consent or litigated judgment in favor of minorities or women is entered in a case, innocent nonparties adversely affected by the implementation of such a judgment, are denied their right to a day in court to assert their constitutional and civil rights.

No. 14: This bill permits uncapped expert witness fee costs—overturning a 1987 court decision, Crawford Fittings Co. versus J.T. Gibbons, Inc.

The current limit under law today is $30 per day. All of these are going to be passed on to the consumers of America.

Again, this is not a civil rights bill, but a bill that takes away rights that currently exist.

No. 15: It requires broad construction, and this is a sleeper, but it calls for broad construction—it requires it—of at least 70 other civil rights statutes. This provision in and of itself would give bureaucrats and Federal judges carte blanche to revise current interpretation of these laws that have, for a long time, been hallowed in the law, and do whatever they want to do.

Mr. President, I have to tell my colleagues that we have at least, according to those who have researched this matter, we have at least 26 different cases—in addition to the 4 they claim they filed this bill for—26 additional Supreme Court cases, which have been modified or overruled by this type of legislation, and countless other appellate court cases.

The law is going to be completely disrupted and overturned by this bill.

Mr. President, a vote to sustain the veto is a vote in favor of a fair America. I urge my colleagues to sustain the President's veto of S. 2104.

We do not need to eliminate the rights of some Americans to ensure equal opportunity. We do not need to resort to quotas, and proportionality, to protect against employment discrimination. We do not have to initiate a lawyers' litigation frenzy to guarantee equality.

We, as a nation, should not adopt the policy of parceling out legal rights on the basis of race, color, ethnicity, religion and gender.

So a vote to sustain the President's veto is a vote to preserve title VII of the Civil Rights Act of 1964 which has served our Nation well for over the last quarter century.

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, 1 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 come out here and be for it 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——

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 to nullify 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, because we would like to work out some time agreement.

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.

The PRESIDING OFFICER. 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 managers that have 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

in this conference report which undermines and contradicts the language of the bill itself.

He neglects one important detail. I voted against the revised conference report. I had no obligation to assist supporters of the bill to explain revisions that they sought to make at that point; it was not my language and it was not my proposal. Indeed, as I have repeatedly pointed out, the language was not 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, if 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 like to have done it. But we were unable to do it, and in good faith we tried and we failed.

That is all I have to say about it. I reserve the remainder of my time.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I yield 10 minutes to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania [Mr. SPECTER] is recognized.

Mr. SPECTER. Mr. President, I thank my friend from Massachusetts. I would ask my friend from Utah if he would yield me 10 minutes. I had sought in the unanimous-consent request 20 minutes and had been given assurances that I would have it. Otherwise, I would have been on the floor myself.

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

The PRESIDING OFFICER. The Senator from Utah has under his control 29 minutes.

Mr. HATCH. Mr. President, I have a problem, because I have a number of people who want to speak on our side. I would be willing to expand the time this bill by 10 minutes to give the distinguished Senator his 10 minutes, but I need that 20 minutes.

Mr. SPECTER. I ask then, Mr. President, unanimous consent that the time on the bill may be extended by 10 minutes, so that I may have 20 minutes.

Mr. KENNEDY. Mr. President, if the Senator will withhold so I can check with the leadership. Quite frankly, we were prepared, at least I was, to vote this veto in the last 3 days, and there has been the request—not from our side but as I understand it, from the other side—to accommodate various Senators who were necessarily absent.

So I would at this time have to object, although I will make that request to the majority leader to see if there is any reason why the Senator's request cannot be acceded to.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, so that it will be clear to those watching on C-SPAN II, the practice is when there is a unanimous-consent request, a Senator ordinarily need not come to the floor to protect his interests. I had specifically agreed to the unanimous-consent request on the condition that I have 20 minutes. I have put about 200 hours, if not more, in this bill, and I need at least 20 minutes to speak.

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 this bill or this issue. Willie Horton involved the matter of the furlough program in Massachusetts, which was a unique program, permitting the release of a person convicted without the possibility of parole. President Bush was preeminently correct on that. We can discuss that matter at great length here later.

I would similarly like to disagree with my friend from Utah. And I hope to have the attention of the distinguished Senator from Utah when I make these comments.

Mr. President, may I have the attention of the Senator from Utah [Mr. HATCH] while I make these comments, because the issue has arisen, and it was raised by the distinguished Senator from Utah before Senator KENNEDY got into it when Senator HATCH said that he had crafted language which was satisfactory, and it was taken away in the conference report.

I would submit, Mr. President, that the language which was crafted in the bill clearly takes precedence and controls what will happen, and the report language prepared by those not involved in our negotiations cannot detract or take away from what was crafted in the bill.

There were extensive negotiations in October involving the distinguished Senator from Utah [Mr. HATCH]; the former Secretary of Transportation, William Coleman; and myself, and we hammered out an agreement on the critical parts of this bill.

When the agreement was finished, Mr. President, Senator HATCH said that he found it acceptable, not perfect, and that he would recommend it to the President but he would reserve the right to vote against the bill if the President opposed it and disagreed with Senator HATCH's recommendation.

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 use my 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

problem. 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 had taken that language, as much as 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 this bill. I would not support it unless the President took this 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. It was found to be 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 it.

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 at this moment to try to bring about that agreement. I personally became deeply involved in the negotiations on this bill when President Bush called three Senators, Senator DANFORTH, Senator JEFFORDS and myself into the Oval Office.

The PRESIDING OFFICER. The Chair informs the Senator that the 10 minutes yielded to him has expired.

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 alloted, and mine basically is 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 our time 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 asked 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 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 a significant 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 others who have been involved here 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 closure.

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 was close. I experienced 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-to-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 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 HATCH talks about litigation and the bonanza for lawyers, the bitterness which will be spawned by that kind of a result will be overwhelming and will produce more litigation, bitterness and strife. I was district attorney of 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 half-dozen 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 America.

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 Klugheit, from my former law firm in Philadelphia. And this bill has detailed expanses 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 persuasion issue. The Senator from Pennsylvania 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 caused by a particular practice—is on the plaintiff. 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 his or her lawsuit on a particular practice causing the disparity; it switches 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, "Congress has 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" the manifest 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 1978. *Board of Trustees of Keene State College*, v. *Sweeney*, 439 U.S. 24 (1978).

Basically, in *Sweeney*, 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 that shifts 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 *Sweeney* misconstrued some words—"articulate," "show"—and imposed a heavier burden on the employer. The Supreme Court, in a two-paragraph per curiam decision, said:

"In *Furnco Construction Co.* v. *Waters*, 438 U.S. 567 (1978), we stated that "[t]o dispel the adverse inference from a prima facie showing under *McDonnell Douglas* [an intent case], the employer need only articulate some legitimate, nondiscriminatory reason for the employee's rejection.'" Id., at 578, quoting *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792, 802 (1973). We stated in *McDonnell Douglas* that the plaintiff 'must be afforded a fair opportunity to show that [the employer's] stated reason for [the plaintiff's] rejection was in fact pretext." Id., at 804. The Court of Appeals in the present case, however, referring to McDonnell Douglas, stated that "in requiring the defendant *to prove absence of discriminatory motive*, the Supreme Court placed the burden squarely 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 more or less similar meanings depending upon the context in which they are used, we think that there is a significant distinction between merely "articulat[ing] some legitimate, nondiscriminatory reason" and "prov[ing] absence of discriminatory motive." By reaffirming 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 *Supreme Court* precedent. *Sweeney* is the key, as well as *Beazer*, to the Supreme Court's guidance on the burden of persuasion.

In *Sweeney*, the Court said the context of the words used is important. In *Beazer*, the Court said, "At best, [plaintiffs'] statistical showing is weak; even if it is capable of establishing a prima facie case of discrimination, it is assuredly rebutted by (the employer's) demonstration that its narcotics rule * * * is 'job-related' * * *. Whether or not [plaintiffs'] weak showing was sufficient to establish a prima facie case, it clearly failed

to carry respondents' ultimate burden of proving a violation of Title VII." 440 U.S. at 587 and n. 31. In context, it is clear that the *Beazer* Court considered the plaintiff to have the ultimate burden of persuasion in a disparate impact case.

In her plurality opinion in *Watson* (1978), Justice O'Connor said: "A second constraint on the application of disparate impact theory lies in the nature of the "business necessity" or "job relatedness" 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, "*Griggs*, 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 "show that other tests or selection devices, without a similarly undesirable racial effect, would also serve the employer's legitimate interest in efficient and trustworthy workmanship." *Albermarle Paper Co.*, 422 U.S., at 425, 98 S.Ct., at 2375 (citation omitted.)

That 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 *Beazer*, 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. *Boeing Co.*, 662 F 2d 975, 991, (3rd Cir. 1981). This statement appears in Part IV of the opinion. Judge Higginbotham joined two dissents in this case on a Section 1981 issue. Both dissents specifically state that they join Part IV. I have not searched through all of Higginbotham's opinion, but in 1983, he did cite *Croker's* passages on this 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 devices *which are not manifestly related to the 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 made manageable because once a plaintiff establishes 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 concernable 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 absence of a quota in a job is illegal. This implicitly repeals Section 703(j) of Title VII.

As Professor Kingsley R. Browne, Associate Professor of Law at Wayne State University, said in his testimony before the Committee:

"Fundamentally, the question of whether the burden that shifts is one of persuasion or one of production depends upon what constitutes the "wrong" in a disparate-impact case. If the wrong is * * * that an employer has a work force that is 'out of balance,' then arguably it makes sense to say that an employer may attempt to prove the "affirmative defense" of 'business necessity.' The affirmative defense is simply an act of grace by Congress. However, if the wrong is the placement of arbitrary barriers (that is, barriers that are not job related) in the way of minority advancement, as *Griggs* held, then showing that the barrier is in fact arbitrary is part of the plaintiff's case. Of course, the plaintiff's presentation is facilitated by the employer's obligation to come forward with evidence of justification, so that the plaintiff need not preemptively rebut all conceivable justifications."

BURDEN OF PRODUCTION

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 the Court's comment in Aikens that discrimination [is] not to be 'treat[ed]; * * * differently from other ultimate questions of fact." 109 S.Ct. 1775, 1792. One such rule is Federal Rule of Evidence 301. The Rule says that unless otherwise provided, "a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast."

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

The PRESIDING OFFICER. The Senator from Vermont is recognized for 5 minutes.

Mr. JEFFORDS. Mr. President, last year the Supreme Court left our employment discrimination laws in tatters. In decision after decision, the fundamental right of Americans to equal opportunity was undermined.

On this point there is little disagreement. In fact, I want to begin my remarks by pointing out the substantial areas of agreement.

First, virtually everyone agrees that the employer should bear the burden of proof of an affirmative defense such as business necessity.

Second, there is a broad consensus that the Patterson case needs to be reversed.

Third, most of us agree that remedies for title VII violations need to be increased.

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 Wards 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.

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 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.

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 so-called Kennedy-Sununu language would have limited its application to selection and job performance situations. Only in rare circumstances would as lesser standard, tied to business objectives rather than job performance, be applied. 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 suppress the cost side of the equation 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, spelled out in black and white, was 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 Power 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" 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 policies on an ongoing basis and 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 supposed to be the great failing of the congressional bill.

The second concern here is that the defended by concept permits the employer to choose the actual standard against which the suspect employment policy is to be measured. The mere granting of this choice would not be so problematic to the supporters of civil rights if the standard in the second 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 objective other than getting 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 of 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 there.

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.

Calamity 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 real 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 Senators 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 operatives. He ignored the voices of reason and moderation in his own party. Unfortunately, by vetoing this bill, President Bush missed a golden opportunity to repudiate, in no uncertain terms, voices of division and intolerance in this country.

This veto should tell the American people a great deal about the real George Bush. He has had a split personality in the area of civil rights. In 1964, George Bush publicly opposed the landmark Civil Rights Act of 1964. But in 1988, he promised that civil rights would be at the top of his administration's agenda and guaranteed personal involvement on this issue. Little did we know that his idea of personal involvement was to veto the most important civil rights legislation since 1964.

In 1988, Mr. President, you called for a "kinder, gentler" America. By now we know better than to trust those empty campaign promises. With this veto, George Bush joins the ranks of Andrew Johnson and Ronald Reagan as the only Presidents in our history to veto civil rights legislation. So much for a "kinder, gentler" America.

The public should learn a great lesson from this veto. When push comes to shove, the real George Bush reverts to his roots and follows his instincts. He supports the interests of wealthy employers over the legitimate concerns of women and minority workers.

That is a shame. President Bush was elected to be the President of all 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 compete in our society.

That is what makes this veto all the more devastating. The issue goes beyond the mere technical terms of this legislation. The American people understand that we are talking 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.

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 jobs, who want to better 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 minorities. 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: we overrode President Reagan's veto of the Civil Rights Restoration Act.

Now we must do our job again, we must stand up for the civil rights of millions of American women and minorities. We must protect the victims of discrimination by rejecting this regrettable veto.

I urge my colleagues to do the right thing for America. I urge all Senators to join together to override the veto of the Civil Rights Act of 1990.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. HATFIELD. Mr. President, I have had the pleasure of serving in the U.S. Senate for 24 years. And during my tenure, I have cast over 10,600 votes; many of them controversial, all of them significant in one way or another.

But very few of these votes could be characterized as representing a watershed event in the history of our country. Our vote on the President's veto of the Civil Rights Act of 1990 will be one such vote.

Guaranteeing civil rights remains at the top of our Nation's unfinished agenda. No more important domestic goal faces Congress, or any State legislature today than ensuring equal opportunity for all Americans.

My State of Oregon has been a leader in enacting civil rights legislation. Oregon was the second State in the Nation to enact a fair employment practices act. My involvement in this issue spans many public offices over several decades. 37 years ago, as a young State representative in the Oregon Legislature, I helped introduce Oregon's first public accommodations law.

Yet if anyone should deny that racism remains a blind spot in our vision of America, or doubt the importance of maintaining our commitment to equal rights legislation, they need only look to my State. Let me direct my colleague's attention to a trial recently concluded in Portland, OR, resulting from the murder of a young Ethiopian man who was beaten to death with baseball bats by several so-called skin heads simply because he was standing on the street. The jury found the murder was directly attributable to the message of hate deliv-

ered by a white supremacist group. Mr. President, we have made so much progress in civil rights, yet remain so far away.

We have relied upon the Civil Rigths Act of 1964 for 26 years. That landmark law 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.

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 agreeable 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.

While 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 statements 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 accommodations 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 street corner 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 his life back. But not only did they cite 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 statements by 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 start 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 that two-word phrase "business necessity," 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, the central portion of this debate has not directed itself to the definition of 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 such cases.

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 what is called euphemistically unintentional discrimination 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 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, this is what the employer had to establish—and I am quoting from the Supreme Court:

> 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 touchstone of this inquiry is a reasoned review of the employer's justification for his use of the challenged practice. A mere insubstantial justification in this regard will not suffice, 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 for it to pass muster: this 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 according to the 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 only in the case of an 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 qualification 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 decision 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, interestingly enough, is almost the same percentage which litigation resulted in before the decision in the Wards Cove case.

Those of us on this side of this debate long ago offered to the proponents 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 employeee 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. ROBB). 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 employees and against employers. 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. President Bush and his advisers are convinced 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 strong indictment that, without 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 Kennedy-Hawkins bill have made advances. These, too, have been delineated earlier and I will not go into that any further now.

Winds of change are taking place in the labor force today and we are 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 when 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 1964. 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 1964, 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.

Mr. 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 we remain still divided. If ever an issue cried out for reason and calm deliberation, it is this 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 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.

UNANIMOUS-CONSENT AGREEMENT

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.

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

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, there are differing 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 other forms remains a serious 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 toward 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 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 hiring quotas. 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 have 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.

One of my concerns about this bill is 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's businesses to compete in our world markets.

Included in the bill is a provision, sought by myself and others, that caps punitive damages at $150,000, or the equivalent of compensatory damages. I can well understand why many possible 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 discriminatory actions but rather to protect employers from unfounded litigation spurred on by the possibility of unlimited financial awards.

In this regard, I have joined with Senator PRYOR in asking the GAO to conduct a study regarding the effects over the next 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. The administration has 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 were this truly a quota bill as the President wrongly asserts. I was very interested in the remarks made last week by the senior Senator from Missouri who I note supported the conference report on this bill. I fully suspect that the only stumbling block at this point for many of the opponents of this bill is the President's opposition.

It is time for our Nation's leaders to work to unite rather than divide our citizens, particularly when it comes to the volatile and potent issue of civil rights. 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.

I will vote to override the veto of our President on this bill and urge my colleagues to do so as well.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH 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 3 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 rejects the promise that opportunity will be based on ability and not frustrated by an employer's wrong-headed notion about limits based on race, on sex, or other irrelevant factors.

President Bush's action would return us to a day when discrimination in hiring and promotion was routinely accepted. Many Senators in both parties have urged the President not to take this unwise action. Members of Congress including Members of his own party have worked incredibly hard to craft language that would satisfy every one of his objections, and still, President Bush went ahead and vetoed it.

This civil rights bill is not a quota bill. It would simply restore the basic measures of fairness that the American people and American business took 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.

Many of us wonder 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 right of all 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 coalition 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. KENNEDY. 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 sorry that we are here now 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 reestablishes 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 about the most negative. This statement will not sit lightly with those in this country who depend upon us to try to defend their rights.

Countless of our citizens, not just those who are people of color, but women, handicapped—countless citizens—daily try to surmount barriers 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 this country to all people. As a result 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 of such importance 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 with this bill. 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 by enabling them to prove that they have been discriminated against. The President's veto was wrong on substance and wrong on politics. It is a mistake that the people of this country 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 massive hue or cry about quotas or about business decimation. Instead, what we had and what we effectively operated under was basic protection against job bias for minorities.

Yes, this bill allows women and religious minorities to be compensated for pain and suffering when the discrimination was committed with malice, reckless disregard 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 and the millions of minorities who stand to benefit from the protections we attempt to reestablish with this legislation. These are the people who live with job discrimination daily, confronted with blatant racial prejudice and flagrant sex harassment.

Our country is built on—in fact was founded on—the principle that all men are created equal, and that principle has guided the course of this Nation's development for decades.

The experiences we have shared and the lessons we have learned—while not always easy or pleasant—have ultimately made us a stronger America. Because after each lesson, after each bitter experience, the fundamental rights and liberties envisioned by our Founding Fathers because more clear, more firm and more a part of who we are as a nation and who we are as a people.

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 demanding 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 did not 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 readdress 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 in 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 in a lawsuit 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, I ask it also of 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 will be on you as an 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 effectively the discrimination. The statistical impact 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 correct. You will be in litigation which you would not be in today because of the way this bill was written. I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields 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 views. 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 reversal of traditional American jurisprudence, the employer can prove its innocence, which can only be done under a much stricter standard than the Supreme Court set forth in *Griggs* v. *Duke Power*.

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 amendment does it 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 a mere statistical 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 President Bush write to Congressman JOHN J. LAFALCE on August 2, 1990: The changes in the bill by House amendments, "in fact, do nothing to cure the bill's defects. * * * I want to make it clear that the adoption of these * * * amendments would not result in a bill I can sign."

Kingsley R. Browne, associate professor of law at Wayne State University, and a witness before the Labor Committee, wrote to me on September 28, 1990, and raised the same concerns:

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 an employer has 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 within a job category 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 must 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."

The third, and most fundamental flaw, in the disclaimer is that it cannot be reconciled with the other provisions of the section. It simply makes no sense to say in one paragraph that a statistical imbalance is sufficient to establish a prima facie case, where other paragraphs make clear that such an imbalance is indeed sufficient. The plaintiff who asserts that a group of employment practices had resulted in a statistical disparity has established a prima facie case even if he cannot identify what those practices were. That is the clear meaning of the prior sections. To add a seemingly contradictory provision later in the statute is hardly an improvement to the bill.

Mr. KENNEDY. Mr. President, at this time, I would like to place into the RECORD letters from two very distinguished individuals who have had extraordinary careers in the field of civil rights.

The first is from Father Theodore M. Hesburgh, who served for many years as the chairman of the U.S. Commission on Civil Rights and also as president of Notre Dame University.

The second is from Prof. Drew Days of the Yale University Law School, who served as assistant attorney general in charge of the Civil Rights Division from 1977 through 1981.

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

CITIZENS' COMMISSION ON
CIVIL RIGHTS,
Washington, DC, October 22, 1990.

Hon. EDWARD M. KENNEDY,
Russell Senate Office Building,
Washington, DC.

DEAR TED: I write to commend you on the extraordinary bipartisan campaign you have led to enact the Civil Rights Act of 1990 and to let you know that I support the efforts that you and your colleagues are making to override President Bush's veto.

The need for the legislation is very clear. For almost two decades, Title VII, as applied and interpreted in the *Griggs* case, had been a practical instrument for the economic advancement of minorities and women in who have suffered discrimination in the workplace. Title VII had worked very well and it came as a shock when a narrow majority of the Supreme Court issued rulings in 1989 which severely impaired the effectiveness of the law.

The bill that you and your colleagues drafted and that was passed by substantial bipartisan majorities in both Houses of Congress was carefully designed to undo the harm done by the Supreme Court's decisions.

By no stretch of the imagination is it a "quota" bill or even one that could lead to quotas. The civil rights policies that the bill would restore never have been quota policies but rather measures that call upon employers to take affirmative steps to provide opportunities for those who have been unfairly excluded. Many of my friends, in the Jewish community and elsewhere, would not be supporting the Civil Rights Act of 1990 if it were in any way a quota bill.

I am greatly saddened by President Bush's veto of the bill. It seems to me that he has been very badly served by advisors who have mischaracterized and distorted the contents of the legislation. If there ever was even a hint of quotas in the bill, the clarifications that were made in the legislative process should long ago have put that issue to rest.

For several decades now fair minded Republicans and Democrats put aside partisan differences and have worked together to bring about through law the progress that has occurred in civil rights. The Civil Rights Act of 1990 would continue that progress and enable the country to right the wrongs that still occur. I know that you and your

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 legislation wihout promoting "quotas." I have had an opportunity to review the Administration's proposal and its Section-By-Section Analysis. My firm conclusion, from that review, is that it exacerbates, 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 Section 3 of the Administration 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 to, 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 *Griggs* 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 leave 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 under Section 1981 and other plaintiffs (women and religious minorities) under Title VII with respect to the availability of damages, creates an inadequate, and arguably unconstitutional scheme. It has three major defects: it leaves the awarding of monetary relief, other than backpay, to the court's discretion; it places a cap on the exercise of that discretion; and it deprives a jury of any role in the awarding of such relief. In this last respect, there may be serious Seventh Amendment problems that would have to be sorted out through a series of lawsuits.

Fourth, the bill attempts to cut back on existing law that was unaffected by the 1989 decisions. In Section 14 the bill makes a frontal assault upon affirmative action jurisprudence that the Supreme Court has developed up to this point and generally adhered to. That section, although it speaks in terms of preventing "quotas," in practice would create substantial confusion with respect to numerical goals and timetables approved 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 employers and courts of valuable tools to ensure that systemically 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 conclusion that this bill is no 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 treatment of disparate impact cases.

The proponents of S. 2104 claimed it was necessary to restore the basic protections under title VII. However, the legislation, properly vetoed by the President, went far beyond Senator KENNEDY's stated goals of restoration and protection of employees from discriminatory practices. The conference report on S. 2104 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 language 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 is done based on legitimate business reasons which have long been established by prior Supreme Court decisions.

The "business necessity" defense in the S. 2104 conference which employers would use in employment discrimination suits would virtually mandate businesses to hire based on quotas to avoid costly litigation.

In a recent letter to Senator DOLE, Attorney General Thornburgh expressed the administration's opposition to the definition of "business necessity" in the conference report on S. 2104. He stated and I quote, "(It) 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.

To blunt criticism, new language was added to assert that nothing in the bill would "require or encourage an employer to adopt hiring or promotion quotas. * * *" The Attorney General responded to this new language in his letter, which I mentioned earlier, to Senator DOLE. He stated, and I quote, "As we have repeatedly pointed out, * * * the trouble with the bill is not that it explicitly encourages or requires quotas, but that it will inevitably result in quotas being adopted * * * to avoid the cost and trouble of disparate impact lawsuits under this bill * * *."

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 court imposed racial quotas that discriminate against them.

This bill is a quota bill. It would allow a plaintiff to win a civil rights case by simply showing that an employer is not 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 based to enforce the Federal mandate.

I wish this body would have had the opportunity to vote up or down on the Kassebaum-Gorton alternative but we didn't. Obviously, it is just a few days before an election, and politicking 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 overturns the Wards Cove Packing Co. versus Antonio, Patterson versus McClean Credit Union, Martin versus Wilkes, Lorance versus AT&T, and other Supreme Court decisions. This array of cases documents a shift in the Court decisions. This array of cases documents a shift the Court's interpretation of 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 natural equality. These guarantees have been enshrined in law through great struggles over many years, and no American should endorse their erosion.

Under the Wards Cove decision, the Court weakened the 18-year old standards 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 versus McClean Credit Union, which 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 harrassment 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 damages. The Civil Rights Act of 1990 ensures that individuals of any race, gender, or religious affiliation are protected equally under the law.

In Lorance versus AT&T Technologies, the Court found that the 30-day statute of limitations for reporting title VII violations prohibited women employees form even challenging allegedly discriminatory layoffs, because the seniority system on which the layoffs were based had been adopted 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 not 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 deadline by bringing suits 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 of equality. The 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 Atonio versus 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 cannery 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 Washington for final decision under the facts that have been developed by both the plaintiff, and the defendant. It is true that the Wards Cove Co. has spent many thousands of dollars defending this case. They also chose to take this case to the U.S. Supreme Court, 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 pursuasively 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 the necessity of establishing the timeliness of their applications and automatically elevate oral inquiries to the status of applications.

According to the Ninth circuit:

The defendant companies do not claim their practices have no impact, rather they assert business justifications for the practices.

Mr. President, maybe those practices were justified, and maybe they were not. But what is the proper forum for deciding those important issues? I suggest the proper venue for that determination is in a Federal courthouse in Seattle, WA, where I once served as U.S. Attorney, not on the floor of the U.S. Senate, where I now serve as a Senator from the State of Washington.

Wards Cove is an awkward and unusual case, when looked at in the context of our present respect for civil rights, and the employment rights and economic aspirations of racial minorities. The ninth circuit decisions, sending this matter back for further trial proceeding stated, "Race labeling is pervasive at the salmon canneries, where "Filipinos" work with the "Iron Chink" before retiring to their "Flip bunkhouse." The district court did not find the conduct laudatory but found that it was not persuasive evidence of discriminatory intent." Perhaps not, but the court must carry the analysis further and consider whether such a practice has any adverse impact upon minority people; that is whether it operates as a headwind to minority advancement."

The troubling questions raised in the many years of litigation in Atonio versus Wards Cove cry out for final resolution. Thousands of hours have been spent by excellent counsel for both parties, and I would point out 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 Wards Cove. There has been no "litigation bonanza" for the affected workers in this litigation. Speaking as one whose careeer 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 justify those practices that have been identified by the ninth circuit as needing further examination at the trial level. This body should not allow the President of the United States to block the door toward the restoration of our civil rights law. I urge my colleagues to vote in favor of an override of the President's veto.

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 mindsets broadened we, as a nation, 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 American 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.

As a Coloradan, I am particularly appalled by this retrograde attitude. My State was one of the first in the Nation to outlaw lynching—and one of the first to pass civil rights provisions to protect Americans from racism. This progressive tradition reached an apex in the midst of the Second World War when a Republican Governor, Ralph Carr, courageously opposed the internment of Japanese Americans even though he knew it would cost him his political career. This is the kind of lesson of courage and conviction from which the Bush administration should learn.

Mr. President, the civil rights bill represents a bipartisan effort to simply ensure that American workers are protected against racial, sexual or religious discrimination. This bill does not require hiring quotas, and it does not represent a new burden on employers or businesses; it merely confirms the original intent of the Federal law—to protect people from discrimination.

President Bush's so-called compromise bill would wash away years of progress in protecting civil rights. The Bush proposal would allow employers to hide discriminatory practices through a very loose interpretation of 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.

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, BUSH 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 racial, sexual or religious discrimination on the job.

The measure has been painstakingly written, and included 30 amendments designed to allay business fears that the new law might be overly restrictive.

Indeed, the bill specifically said it wasn't intended to encourage quotas and that a statistical imbalance in hiring wasn't proof of discrimination. That means, clearly, no quotas.

The proposal also would have given employers 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, has nixed this carefully worded proposal on the flagrantly 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, lest he alienate 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."

None of these Colorado Republicans is a racist; instead, the votes appeared to have been cast out of party loyalty.

But being loyal sometimes means having to tell a leader that he's wrong, 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. CHAFEE. Mr. President, I would like to make a few comments about the veto message that we are about to consider. As I said last week when the Senate voted on the conference report on this bill, I think that the measure before us is a good solid bill, and it deserves support.

The string of 1989 Supreme Court decisions that the bill addresses should not go unnoticed by Congress. These decisions had a significant impact on the body of civil rights law that exists today. At worst, the Court took a 180-degree turn away from what we in Congress have tried to do; at best, they took an unnecessarily strict and severe interpretation of our intent.

Many of the decisions handed down were of a complex and technical nature. In most cases, the questions turned upon a series of definitions: how to define business necessity in cases of disparate impact, how to define the standards regarding the establishment of a prima facie case, how to define the burden of proof and when or if it should shift, and so on. As one of my colleagues said earlier, 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 that we make—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 let 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 will 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 station in life they came, to have just 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.

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 one 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 many still struggle to get 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 to promote the fairness we seek. To do this our country must have effective civil rights laws; laws that will assure that all workers—regardless of their race, gender, or background—are given a fair chance to get a job and to move ahead in that job.

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 simply 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 challenge that discrimination. Whether involving a clearly discriminatory action by an employer or a seemingly innocuous and meaningless job screening practice, those job practices that prevent minorities, women, and others from getting a fair shot to move ahead in the work force, should be challengeable and must be eradicated.

Let me say, Mr. President, that I do not support the use of quotas in the workplace. Quotas function to discriminate against people based upon their race, gender, or some other factor that should be irrelevant in employment decisions—just the kind of thing we are trying to prevent with our civil rights laws. I would not have supported this bill if I felt it provided for quotas.

The President of the United States is very committed to civil rights, and

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 view 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, who has the best access and best understanding of the employment practice or practices being challenged, must demonstate 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 disparage 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 we intend this bill to be interpreted is this: employers faced with the burden of defending their practices must do more than just provide a reasonable rationable for the existence of a practice which is clearly impeding job opportunities 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 judge 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 opinion in Griggs, and we have expressly stating 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. The bill does provide for a 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 courts will have to decide 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 not lead to quotas, and 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 year 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.

For over a year, 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 then that the 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 does 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—and accept discrimination in the workplace—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 laws 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 protection under the laws. 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 potentially lucrative lottery.

Unlike the Civil Rights Act of 1964, this bill sets up a litigation bonanza with a strong incentive to fling open the court house doors. Instead of promoting peaceful settlement, this bill promotes disharmony and division.

It encourages lawyers to drag out cases in order to increase attorneys' fees. It permits unlimited jury trials, unlimited punitive damages, unlimited expert witness fees, and codifies the statute of limitations so that it runs not just from the time of the alleged illegal occurrence, but from the time the plaintiff decides he has been adversely impacted, whichever is later—that means the lawyer gets more than one bite at the gold apple.

Mr. President, this bill forces Senators to choose between two visions of America. One vision is of an America stratified by racial and ethnic quotas—an America whose laws codify a system where benefits and advantages are doled out according to group identity rather than on merit and the content of character. The other vision is one that enhances the progress of every citizen by removing obstacles to individual initiative and excellence.

The current civil rights leadership now engages in an open battle for social and economic benefits to be conferred on the basis of race and other invidious classifications rather than campaigning for equal justice under law for all Americans, regardless of race.

We should look to the clear meaning of the Constitution to determine just how we should view civil rights. The late Justice William O. Douglas—hardly a pillar of conservative legal thought—argued that the Constitution prohibited any legislatively mandated racial or ethnic quota system. After the 1964 Civil Rights Act passed, Justice Douglas observed:

> The Equal Protection Clause commands the elimination of racial barriers, not their creation in order to satisfy our theory as to how society ought to be organized. * * * So far as race is concerned, any state-sponsored preference to one race over another . . . is in my view "invidious" and violative of the Equal Protection Clause.

However, the authors of the Civil Rights Act of 1990 claim that disproportionate racial representation is in and of itself proof of discrimination. Under this bill an employer who dares hire people in such a way as to produce an employee pool that is not a racial reflection of his community risks being sued. In effect the employer is presumed guilty.

Do we want a nation where privilege and employment are handed out on the basis of group identity rather than on individual merit? Do we want quota justice? There already exists a model for this type of stratified and proportionalized society, it is called Lebanon.

Mr. President, we have had 25 years of social engineering masquerading in the guise of progress. In the meantime, millions and millions of Americans are more isolated from the economic mainstream than ever before. The race conscious policies of the last quarter century have done a great deal to benefit the most advantaged in minority groups, but the vase majority have been left further and further behind.

Mr. President, Robert Woodson, the president of the National Center for Neighborhood Enterprise—an organization promoting urban black progress through the free market—calls the Civil Rights Act of 1990 a fraud. Mr. Woodson told President Bush at a conference in May, that by focusing on so called white racism as the major problem facing black Americans, this legislation siphons off attention from the true crisis affecting the poor and disadvantaged. Mr. Woodson stated:

> The elimination of the last racist thought from the last mind would do nothing to change the plight of the inner cities one whit.

When asked to lay out an equal opportunity program to fall in line with the spirit of true civil rights, Woodson declared:

> We'd have economic empowerment for the poor, exemption of poor people from laws and regulations that discourage employment and enterprise formation, a streamlining of social service delivery systems, an amendment to the 1964 Civil Rights Act to enhance penalties for intentional discrimination and the expansion of the Dependent Care Tax Credit—for starters. But no progress is possible until we acknowledge that racism is no longer the central problem for blacks.

Bob Woodson is right on target. This bill creates a system of racial preferences that does little for the average person. Most people find quotas, preferences, and the assumptions of cultural inferiority hidden in this bill to be offensive—despite the civil rights establishment's adherence to them.

Mr. BINGAMAN. Mr. President, on Monday, the President of the United States said in a message to the Senate:

> 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.

Then he vetoed the Civil Rights Act of 1990.

I do not believe we will soon recover from the blow President Bush leveled against the women and minorities of this country with his veto, but I pledge to do everything I can to rectify this wrong and see this fundamental piece of legislation enacted into law, hopefully during this session of Congress. If that cannot be done, if we lack a sufficient number of votes to override the veto, then we will simply redouble our efforts in the 102d Congress.

With his veto, the President turned his back on the working women and men of this country and reversed much of our Nation's progress down

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 us 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 President and 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 1990, 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 realized 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, I believe, 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 one Member 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 act "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 slow 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 sought this bill to overturn six recent Supreme Court decisions that have greatly diminished the ability of women and minorities to win job discrimination suits. We saw our vote as restoring prohibitions against employment discrimination that have been in force for nearly 20 years.

The President, however, said he vetoed the bill because he thought it imposed quotas. This is untrue—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 kinder and gentler nation under the Bush administration. But the President's kinder and gentler policies do not apply when it comes to safeguarding the rights of women and minorities. We must overturn this veto so that working men and women are guaranteed redress from job discrimination.

Ms. MIKULSKI. Mr. President, I rise today to express my deep disappointment at George Bush's veto of the Civil Rights Act yesterday.

For more than 200 years women and people of color in this Nation have been fighting for economic, social and political equality. We have marched and demonstrated. We have proposed legislation. We have tried constitutional amendments. Any progress we have made has come slow and hard.

It took 75 years from the writing of the Constitution until it was amended to forbid slavery. And it took 55 years after that for American women to get a constitutional right to vote. And it was another 45 years before the Voting Rights Act of 1965 effectively gave millions of African Americans the right to vote without risking their lives.

But Mr. President, when it came time for the Constitution to explicitly guarantee the equal rights of women, people said: "We're for the E, and we're for the R, but we're not for the A. We'll give women equality one law at a time."

Well, the Congress has passed a law, a law that does not even guarantee any new rights, but only restores rights taken away by the Supreme Court, and the President of the United States has vetoed it.

President Bush is hiding behind a phony issue. He calls the Civil Rights Act a "quota bill".

Let me tell you, where I come from we absolutely oppose quotas. For too many years, people whose names ended in "ski" or "y" or "o" were labeled with despicable, bigoted slurs. When we tried to get into college or law school or a good job, quotas were used to keep us out.

So you can be sure that no Senator whose name is Mikulski would support a quota bill; and you can be sure that any Senator whose name is Barbara is absolutely supportive of this civil rights bill.

It is time the President began listening to the hard working people of this country, instead of the big businesses and corporate interests that fought this 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.

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 what God has given us? Is it too much to ask that our Government support equal rights for all Americans?

Is it too much to ask that civil rights, for which people marched and fought and died, not be taken away by the Supreme Court; and that they not be denied again by the President of the United States?

We are entering the next century with the broadest spectrum of ethnic diversity this Nation has ever had. We have to make sure that those diverse people—who have come here to better themselves and to help us build our Nation—have equal protection.

And the women who are bringing their talents into the work force, in increasing numbers, need to be recognized as well. America cannot compete economically if we do not encourage all of our citizens to work and to contribute to our economy.

Mr. President, I am the 16th woman to serve in the U.S. Senate. I am also the first Democratic woman to be elected to the Senate in her own right. I do not intend to be the last.

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 we, as a nation, 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.

As a Coloradan, I am particularly appalled by this retrograde attitude. My State was one of the first in the Nation to outlaw lynching—and one of the first to pass civil rights provisions to protect Americans from racism. This progressive tradition reached an apex in the midst of the Second World War when a Republican Governor, Ralph Carr, courageously opposed the internment of Japanese-Americans even though he knew it would cost him his political career. This is the kind of lesson of courage and conviction from which the Bush administration should learn.

Mr. President, the civil rights bill represents a bipartisan effort to simply ensure that American workers are protected against racial, sexual, or religious discrimination. This bill does not require hiring quotas, and it does not represent a new burden on employers or businesses; it merely confirms the original intent of the Federal law—to protect people from discrimination.

President Bush's so-called compromise bill would wash away years of progress in protecting civil rights. The Bush proposal would allow employers to hide discriminatory practices through a very loose interpretation of "business necessity" that could result in businesses refusing to hire someone because of the attitude 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.

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, BUSH 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 racial, sexual or religious discrimination on the job.

The measure had been painstakingly written, and included 30 amendments designed to allay business fears that the new law might be overly restrictive.

Indeed, the bill specifically said it wasn't intended to encourage quotas and that a statistical imbalance in hiring wasn't proof of discrimination. That means, clearly, no quotas.

The proposal also would have given employers 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, has nixed this carefully worded proposal on the flagrantly 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, lest he alienate 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."

None of these Colorado Republicans is a racist; instead, the votes appeared to have been cast out of party loyalty.

But being loyal sometimes means having to tell a leader that he's wrong, 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 voting to override the President'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 rights we fought so hard for in 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 quota 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 quota bill is like saying the First Amendment requires Americans to listen to speeches by politicians. The White House mangles the wording and intent of the bill to fit its own erroneous interpretation. By the President's action both truth and opportunity are lost.

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 were 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 discussed the matter with the distinguished Republican leader, and in order 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 recognized for up to 5 minutes.

Mr. DOLE. Mr. President, first let me indicate for the record I have advised the distinguished majority leader that I will only need about 5 minutes. Let me also say that for some of us who have never voted against civil rights bills, the title alone is not sufficient. I believe the President is correct. We run around putting labels on titles, saying this is a civil rights bill; this is a reform bill; if you vote against it, somehow you are anticivil rights 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 an America where 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 individual rights over group rights. 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. If they want a political issue, they can have it. If they want a civil rights bill, not a jobs quota bill, they can have that this week. I do not have any illusion we are going to 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 exacerbate 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 black Americans. That is why the goal of civil rights enforcement today is a multiracial goal. The civil rights of white working women as well as black men and women 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 honored in the making and broken in 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 effective law of this land 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 pretext 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 firehoses 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 reasoning for a veto is faulty. 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. It is 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 escape their history, 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, the relations of the races have been 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 have 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 for all. The President's veto of this bill does him and his office no honor.

The veto does not reflect a President of all 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.

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 occur 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 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:

[Rollcall Vote No. 304 Leg.]

YEAS—66

Adams	Breaux	Danforth
Akaka	Bryan	Daschle
Baucus	Bumpers	DeConcini
Bentsen	Burdick	Dixon
Biden	Byrd	Dodd
Bingaman	Chafee	Domenici
Boren	Cohen	Durenberger
Boschwitz	Conrad	Exon
Bradley	Cranston	Ford
Fowler	Kerrey	Pell
Glenn	Kerry	Pryor
Gore	Kohl	Reid
Graham	Lautenberg	Riegle
Harkin	Leahy	Robb
Hatfield	Levin	Rockefeller
Heflin	Lieberman	Sanford
Heinz	Metzenbaum	Sarbanes
Hollings	Mikulski	Sasser
Inouye	Mitchell	Shelby
Jeffords	Moynihan	Simon
Johnston	Nunn	Specter
Kennedy	Packwood	Wirth

NAYS—34

Armstrong	Helms	Pressler
Bond	Humphrey	Roth
Burns	Kassebaum	Rudman
Coats	Kasten	Simpson
Cochran	Lott	Stevens
D'Amato	Lugar	Symms
Dole	Mack	Thurmond
Garn	McCain	Wallop
Gorton	McClure	Warner
Gramm	McConnell	Wilson
Grassley	Murkowski	
Hatch	Nickles	

The PRESIDING OFFICER. The Chair would remind the galleries that expressions of approval or disapproval are not permitted under the rules of the Senate.

On rollcall vote 304, the veto override of S. 2104, the yeas are 66, the nays are 34. Two-thirds of the Senators voting, a quorum being present, not having voted in the affirmative, the bill on reconsideration fails to pass over the President's veto.

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

The PRESIDING OFFICER. The absence of a quorum has been suggested.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

The Senator will suspend.

The Senate is not in order. The Senate will be in order before we proceed.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. Will the Senator yield to the Senator from Kansas?

Mr. CHAFEE. Yes, I yield.

Mr. DOLE. Mr. President, I move to reconsider the vote.

Mr. GRAMM. I move to lay that motion on the table.

The PRESIDING OFFICER. The question is on the motion to table the motion to reconsider.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

The motion——

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

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 Senator suspend?

The Senator 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 will 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, interests which must be backed up with 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 of the Government for a short 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 policies, 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 operational failure and 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 are 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 trickled 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 after sine die adjournment 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. This is not simply a narrow 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, some Members of 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 now 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 feel compelled, 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. Nor do I wish to raise an impediment to decisive, forceful action by the administration, nor undermine the clear warmaking prerogatives of the President implicit in the Constitution. Nonetheless, someone has to 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 not enough time left in this session for the required parliamentary steps to bring it to completion before both houses.

It would be easy were I to introduce it to 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 not. Since 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 in the Persian Gulf 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 largely because the President and Congress sent troops in harm's way without even seeking to answer fundamental questions: Whom are we marching off to fight? What is the military objective, which, if achieved would constitute success and allow us to come home with heads held high? Just what are our plans for achieving that objective? What is the endgame?

By its wanton aggression since August 2, 1990, and particularly by seizing and threatening American citizens and besieging our Embassy in Kuwait, the regime of Saddam Hussein of Iraq has put itself in a state of war against the United States. As much as we might wish, we cannot hide from this unpleasant reality, nor pretend that the actions of Iraq are anything other than an act of war.

Mr. President, after the Iraqi attack on Kuwait, this government deployed its forces boldly and decisively, and now we have some 200,000 men and

women in the gulf region. The operation was 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 supported the operation, 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. I would not want the old doggerel repeated about our President: "The noble Duke of York, he had 10,000 men. He marched them up the hill, and then, he marched them down again."

Mr. President, I must ask my colleagues to consider: Why it is 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 ill-advised. 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 Mubarek 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 quarrel is with the United States.

Second and more important, the essentially bilateral nature of the conflict is made unmistakable by the composition 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 a world united in arms 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 his successful defiance. If he offers the Arab States a deal, they just might take it, leaving us to hold the bag.

Iran has basically joined Iraq. Nor should this surprise us. 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 advisers, 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 only insofar as we 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 cohabitation 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 symptoms, 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 are 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.

Besides, 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 cede 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, or intimidate a restoration 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 warlike 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 mere 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 in the sand he need do nothing. It will defeat itself in time. To defeat the embargo, especially of military goods, he must rely on the self-interest of dubious third parties, like Iran, certainly no friend of the United States or the U.S.S.R. The Soviet regime, for example, stands to collect some $50 billion per year in hard cash from the rise in oil prices.

To defeat a war to liberate Kuwait, Saddam can rely on appeals for peace, on Pan-Islamic propaganda, on promises of cheap oil, on threats to set the world on fire, on linking the gulf crisis with the Palestinian issue and invoking jihad against Israel; and finally if necessary, by promising to withdraw from Kuwait, a matter of miles, in exchange for the withdrawal of the United States to the other side of the globe.

Quite simply, Mr. President, our problem is Saddam Hussein and his regime, and nothing but the removal or neutering of that regime will solve it. Anything we do that does not contribute to the elimination of a permanent Iraqi threat is worse than doing nothing.

A life lost or a life taken, except to pull down that regime, is a life wasted. That is what we ought to declare. We ought to declare it because it is true, and because it is useful for the Iraqi people, for the world; and, not least, for ourselves to have no doubts about it.

Consider by way of contrast the video tape message the President delivered to the Iraqi people. He told them their ruler is harsh and lawless—as if they did not already know it. He told them that they would suffer because of their ruler—as if this were news. He told them their army must withdraw from Kuwait—as if they had anything to say about its presence in Kuwait. He told them that the whole world is against them—which they took for a lie because every day on their TV sets they see Arab mobs demonstrating in support of Saddam, and because they see Soviet technicians still in their midst.

Mr. Bush told them that United States objectives were strictly to safeguard Saudi Arabia and to free Kuwait—and left 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 disposal 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 success by counting the bodies of Iraqi soldiers, much less Iraqi civilians. But one fugitive—Saddam Hussein—will be the measure of our success.

How must our Armed Forces and their commanders approach this war, God forbid that we send armored columns to smash Iraq's dug-in tanks and artillery at the cost of thousands of men on both sides who would really rather be someplace else.

Let our military apply the lessons of our blunders in Korea, Vietnam, the Desert One debacle, Lebanon, and Grenada. If Saddam Hussein does not surrender, let the military use all its force, but apply our strength against his weakness, not against his strong points. We must destroy his air force and missile launchers and isolate his far-flung ground forces by making it impossible to resupply and sustain them. Then we can remove him from power. Only then is there a chance that the chiefs of the Iraqi Armed Forces, fearful of going down with him, will get rid of him.

Mr. President, I feel my colleagues recoiling from all the talk of war and destruction. But the Members of this body must remember that the billions of dollars of hardware we have shipped to the gulf are designed to kill. We must decide to use it carefully, or we will act irresponsibly. If we cannot swallow this hard reality, then the stakes in the gulf are not worth the huge financial cost, much less the blood.

But Mr. President, I urge my colleagues to ponder these critical issues and their own responsibilities, as befits the elected leaders of a great and free people, and as called for by our Constitution. We owe it to our military, our allies, and our citizens to define a purpose or to come home. I thank my colleagues for their attention, and yield the floor.

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

Mr. BYRD. Mr. President, will the Senator withhold?

Mr. WALLOP. I withhold.

Mr. BYRD. Mr. President, I thank the Senator.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I have been asked by the majority leader to ask unanimous consent that the vote on the motion to table the motion to reconsider the vote on the veto message S. 2104 be further laid aside until following the next rollcall vote today.

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

Mr. BYRD. Mr. President, it is my understanding that the distinguished Senator from South Carolina will be calling up a conference report. He has every right to do that.

I ask unanimous consent that at such time as he calls up that conference report, the time on the conference report and on any amendments in disagreement, the overall time be limited to——

Mr. HOLLINGS. If the distinguished leader will allow, we will have an amendment by the Senator from Pennsylvania. 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-

hold that until we make an effort to get hold of him.

Mr. BYRD. Mr. President, under the rules the Senator knows conference reports are privileged. As long as the distinguished Senator from South Carolina gets the floor, there is no way the Senate can prevent him from bringing up that conference report unless someone asks for a yea-and-nay vote. That might delay a few minutes. But he has a right to call up that conference report.

I am simply seeking to try to get a little time agreement covering that conference report so that the Senate will not be unduly delayed in proceeding to the Interior appropriations bill. There are seven amendments that we know about under the list that was agreed to yesterday that remain on the Interior appropriations bill totaling 7 hours of debate. If there are seven rollcall votes, that would mean 105 additional minutes. If those rollcall votes were kept to 15 minutes each, it would mean that about 8½ hours to 9 hours remain today on that bill if all time is used, and all of the six amendments are called up. This would mean that if we were to resume consideration right now, we would probably be able to close down no earlier than 9:30.

The longer we delay getting on that bill, the longer we push ourselves into the evening—because I am going to insist that the Senate complete action on that bill today. We have had it now up in the Senate parts of 3 days, and I am going to urge the two leaders to keep that bill before the Senate until we can complete it so we can take it to conference.

That is the reason I am seeking a time limit on the conference report which the Senator from South Carolina will call up. I withdraw the request for the moment.

I understood the distinguished Senator from Maryland wished to be recognized.

Mr. WALLOP. Mr. President, will the distinguished leader yield to me for just a minute?

Mr. BYRD. Yes.

Mr. WALLOP. Senator HEINZ is on his way. I realize the privileged nature of this thing. It is not our intention nor our side's intention, but there was not an understanding of what was contained in the Harkin amendment. I am sure it can be resolved as soon as the Senator from Pennsylvania arrives.

Mr. BYRD. Then if the Senator from South Carolina would not mind waiting for a few minutes until we can resolve that matter, I have some requests that the majority leader has sent to me to propound to the Senate.

Before I proceed with them, how much time does the distinguished Senator from Maryland wish?

Mr. SARBANES. I just want to make a unanimous-consent request.

Mr. BYRD. Mr. President, I yield to the distinguished Senator from Maryland [Mr. SARBANES] for the purpose of his making a unanimous-consent request and making 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 on that administration, 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.

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 each 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.

There being no objection, 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 seized our 24-year-old son in Kuwait. He had gone there three days before the Aug. 2 invasion after repeated reassurances 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 for our country—that if blood were to be shed, it would be for a foreign policy of which all Americans could be proud.

We stand 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 through the U.N. In a single day in 1958, Ike sent some 15,000 soldiers and marines into Lebanon, the biggest peacetime deployment of troops in our history up to that time—a force comparable to what Presidents Kennedy and Johnson dribbled into Vietnam over three long years. But Ike did something else. He instantly went to the U.N. cited the right of nations under the U.N. Charter to engage in collective self-defense, urged the U.N. itself to replace American troops in protection of Lebanon, and pledged that when the U.N. did so, we'd get out. And we did get out, a few weeks later.

He would never mention Saddam Hussein, Ike had a hot temper; he did a lot of boxing as a young man; and he had a swift impulse to lash out at an adversary. But as President he never attacked his enemies by name—not even Stalin.

To him, no great contest should become a personal contest. Sure, Lyndon Johnson bragged about one-day emasculating Ho Chi Minh, the North Vietnamese leader. Ronald Reagan branded Nicaragua's former President, Daniel Ortega, a tinhorn dictator, and President Bush took pokes at Manuel Noriega. Ike never would have. To turn international differences into a name-calling brawl only makes their resolution harder.

"Some day," Ike said of Stalin, "I might have to negotiate with him." And, as his perceptive press secretary, Jim Hagerty, observed, Ike "always left an escape route, both for himself and for the other guy."

He would respect cultural differences. Ike shunned a "white man's party"—white foot soldiers against Vietnamese natives—in the jungles of Asia. He would, I feel sure, shun a white man's party in the Middle East—the prolonged presence of huge numbers of Americans. Whatever we do there should have overwhelming Arab approval and participation. As Ike recognized when he turned back the 1958 British, French and Israeli invasion of Suez, the age of imperialism has ended.

He would respect the rights of the powerless. At times during his Presidency, Ike encountered difficult demands from smaller, weaker countries. These he considered "the tyranny of the weak." But, he told aides, "we must put up with it"—an idea he reiterated later with great eloquence in his military-industrial-complex farewell address,

calling for "a proud confederation . . . of equals."

He would watch the polls. Anthony Eden invaded Egypt in 1956 with the House of Commons split down the middle. "I'd never commit American forces with such weak public backing," Ike said of his old friend.

Worried that American and allied enthusiasm for Middle East action may melt away in a few weeks or months, the Bush Administration may feel a pressure to act now. First, however, we should ask ourselves whether we might end up as a house divided, fighting the wrong war in the wrong place against the wrong enemy.

He would take the long view. After the Lebanon landing in 1958, Ike went to the U.N. General Assembly for a major address on building a lasting peace in the Middle East, including a far-ranging program for increasing the Arab region's water supply food, health and education. The mere cessation of hostility did not suffice for Ike and should not suffice for us.

I know the ardent devotion of President Bush's family to the memory of Dwight Eisenhower. I know the strong personal affection and respect between Ike and President Bush's father when he served as an Eisenhower loyalist in the Senate. And I know that repeatedly President Bush has taken actions—like the prompt and massive buildup of forces in defense of Saudi Arabia, and the organization of an unprecedented worldwide United Nations alliance against Iraqi aggression—that Ike would applaud.

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

Ike has left us a valuable lesson in the successful conduct of international relations. I hope we keep it before us in the days ahead.

PATIENCE IN THE PERSIAN GULF, NOT WAR

(By Zbigniew Brzezinski)

WASHINGTON. The crisis in the Persian Gulf is the first crisis of the post-cold-war era. Thus, fortunately, it does not pose the danger of a U.S.-Soviet confrontation. Nonetheless, if mishandled, the crisis could prompt devastating consequences for the world economy, perhaps result in massive Arab and American bloodshed, and almost inevitably generate major regional instability throughout the Middle East.

It is thus a crisis that is too serious to be resolved by decisions in one capital alone and too dangerous to be addressed on the basis of hysteria. It calls for thorough strategic consultations among the countries concerned—including, beyond the democratic West, the leaders of moderate Arab countries outraged 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 three central concerns:

It must provide for 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;

It must protect the sanctity of the international order against unilateral use of force, which in practical terms means a satisfactory resolution of the status of Kuwait;

It must take into account Iraq's significant military arsenal as a longer-term regional security concern. (Additionally, and depending on whether the crisis is resolved peacefully or militarily, the future of Saddam Hussein's personal leadership may have to be addressed by the international community.)

All three of these issues involve objectives that are desirable, even though not all of these goals are equally urgent or vital. But there is consensus not only in the West but also among the moderate Arabs regarding the imperative need to deter any Iraqi move against Saudi Arabia.

This objective is so vital to the well-being of the world economy that the United States, rightly and courageously, was prepared to fight even alone. That is why it 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 should they 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 alternative—which some favor if peaceful means fail, and some prefer as the more effective solution—involves the use of military power, thereby dealing not only with the issue of Kuwait but also with the challenge posed by the Iraqi military machine. Given the enormous stakes, it is important to assess these alternatives carefully, for their costs and prospects of success differ significantly.

The peaceful coalition 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 democratic publics in the West to support the necessary sacrifices and on their leaders, especially in America, to rebut hysterical calls for military action. The approaching Congressional elections in the United States may tempt some to advocate military action in the expectation that the initial surge of patriotic feeling will work to the advantage of the party in power.

A prolonged embargo will also require major economic cooperation among the members of the coalition. Especially important will be the contributions of Japan and Germany, both exceedingly rich countries yet countries that have made a small contribution compared with America's.

There is thus the risk that, in the pursuit of the peaceful and patient strategy, allied unity may come to be strained by increasingly sharp disagreements regarding the distribution of the burdens involved. These disagreements could become especially acrimonious as the recession—in part stimulated by the higher energy costs and other expenses generated by crisis—deepens in the United States.

THE RISK OF WAITING

The peaceful strategy, in any case, may also be derailed by developments beyond America's and the international coalition's control. One cannot, for example, preclude attempts at deliberate provocations, designed to inflame American public opinion and to precipitate a military collision between America and Iraq.

Given the bitter personal enmity between the Syrian and Iraqi leaders, or in view of reports of Israeli fears that America may opt for a peaceful outcome to the crisis, not to mention Iranian fundamentalist passions, it is also quite possible that outside parties may set in motion events that derail the peaceful strategy. Last but not least, there is the possibility that Saddam Hussein, fearful of being strangled by the international embargo, will himself initiate hostilities.

Finally, it must be admitted that the peaceful strategy cannot in any case resolve the third issue, that of Iraq's military power; at best it can probably yield only 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 precipitated the Iraqi aggression.

In other words, once a sustained embargo had succeeded in convincing Saddam Hussein that he must concede, some confidential discussions, either through Arab intermediaries or perhaps through Soviet ones (and Mikhail Gorbachev deliberately positioned himself in the Helsinki talks with President Bush to be an eventual mediator) would ensue. They would address the adjudication—following an Iraqi withdrawal from Kuwait—of the Iraqi financial and territorial claims (not all of which were unfounded), which will have to take place.

If much of the international community were willing to accept such an outcome, 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 financial costs on all 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, any such outcome would still leave major issues pertaining to regional security and Iraqi military power unresolved.

This is why some argue that the peaceful strategy cannot work and that the crisis must be resolved by force of arms. The peaceful strategy—the critics point out—would resolve satisfactorily the first issue only, the second perhaps partially (and, at best, only after a very prolonged effort), and the third not at all. In contrast, the military strategy would deal with both the second and the third at the same time, while perhaps also enhancing Saudi security for the longer term.

Accordingly, proponents of the military strategy argue that force should be used once the necessary preparations have been completed. Given the pace of the American troop and weapons deployments, that could be as soon as late October (thus before the American Congressional elections) but in any case no later than late winter. 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 be prohibitively costly in casualties and perhaps even impossible to execute without a deployment of forces vastly larger than even the currently projected deployment of some 200,000 American troops.

Military action will therefore require an all-out air assault on Iraq's political and military command centers, key military concentrations and principal industrial-military targets, in addition to some unavoidable ground fighting. Particularly intensive efforts will have to be made to destroy preemptively, any Iraqi capacity to retaliate through missile strikes with chemical warheads.

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 and alone.

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

There is also 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 to become costly and prolonged, 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 drive the Iraqis out of Kuwait. The effort will thus have to be massive in scale. It will probably involve the infliction of thousands, and maybe even tens of thousands, of deaths on the Iraqi civilian population.

And it will involve inevitably heavy fighting against an Iraqi Army that is battle-tested and experienced in defensive fighting. Since it is almost certain that the brunt of the military effort would have to be undertaken by American forces, one must expect therefore also thousands of deaths among American servicemen.

One should not entertain in this connection any illusions that air attacks by themselves will force the Iraqis to capitulate. Total and prolonged U.S. control over the air did not terminate promptly the Korean and Vietnam Wars, nor did it force either Germany or Italy to capitulate. Moreover, it is not possible to predict precisely what course the combat will take and how long it will last. Iraq is not a Panama. The fighting could prove to be heavy and prolonged.

Moreover, even massive air attacks may be unlikely to deprive Saddam Hussein of some capacity to react. One cannot exclude the possibility of sporadic Iraqi gas attacks on Israeli cities and perhaps even a deliberate invasion of Jordon, in an effort to widen the war by drawing in the Israelis. That then could have the effect of transforming the war, in Arab perceptions, into a struggle against an American-Israeli coalition.

Not only the military but also the geopolitical dynamics are unpredictable. At some point the war could also expand in other directions. Syria, Iran and even Turkey (following perhaps a Kurdish uprising within northern Iraq) might all be tempted to pursue their own territorial interests. Iraq might be partitioned; Jordon might be the victim of an Iraqi or Israeli military initiative; and the entire region subsequently Lebanized.

The conflict would thus become regionally destabilizing on a scale that is difficult precisely to define but that could become also impossible to contain. Moreover, if Arab emotions were to become aroused by military action against Iraq that is seen as largely American in origin, the ensuing radicalization of the Arab masses could eventually even produce upheavals in those more moderate Arab states that the United States is currently seeking to protect.

THE COST OF WAR

All of that could produce potentially devastating economic consequences. One would have to anticipate the serious possibility of at least a temporary cutoff in much of the flow of oil from the Persian Gulf. Military action would probably result in the destruction of most of Kuwait's and Iraq's oil facilities, while sabotage could also affect the installations in other gulf states. The price of oil could easily climb to $65 per barrel or even more.

The financial costs of the war by themselves would also be extraordinarily high. It has been estimated that for the United States the costs of large-scale combat could amount to about $1 billion per day. An economic and financial world crisis might thus prove difficult to avoid.

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 to be 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. To put it simply, a policy not of preventive war but of punitive deterrence is the most sensible.

That strategy must be given time to prove effective, and it must be openly conceded that its success may not be compatible with the notion of an Iraqi unconditional surrender regarding Kuwait. More specifically, one should not rule out a priori the acceptability of some arrangement that combines an Iraqi withdrawal with the eventual adjudication of the financial and territorial issues that precipitated the unacceptable act of Iraqi aggression. Nor should quiet mediation by some third parties, either by the Arabs themselves or by the Europeans (such as President Mitterrand), or even perhaps by the Soviets, be discouraged.

As noted, a nonviolent resolution of the Kuwait issue will not resolve the region's security problem. In any case, for some time to come, to insure longer-range regional security, some separate American-Saudi military arrangements will be required.

These might include some provision for the continuing presence of an American security tripwire in Saudi Arabia, designed to insure against any future Iraqi aggression. American naval and air offshore power will probably also have to be enhanced on a continuing basis. At a later stage, it might then prove possible to convene an international conference that deals with the wider issue of regional security. In that setting, the destabilizing and unacceptably ambitious Iraqi military programs could be subjected to some agreed limitations.

In the context of any eventual regional accommodation regarding security, it will probably also be necessary for Israel to finally accept the nonproliferation treaty and to place its own nuclear weapons program under some similar restraints.

Obviously, the resolution of these tangled and complex issues will require prolonged negotiations. For these negotiations to succeed, some progress toward peace on the Israeli-Palestinian conflict may also be needed, given the obvious connection between Israeli and Iraqi military buildups and the persisting possibility of renewed Israeli-Arab hostilities. But all of that represents an agenda for the more distant future. The wider issue of regional security and the Israeli-Arab conflict cannot be and should not be linked directly to the current, more immediate crisis.

To be sure, there are those who argue that Saddam Hussein's military potential must now be pre-emptively destroyed before he acquires nuclear weapons. But the advocates of preventative war, for some of whom the Iraqi occupation of Kuwait is a convenient excuse, have yet to make a compelling case in terms of the American national interest for such a reckless undertaking.

America has lived for 40 years under the shadow of Soviet nuclear weapons, and Stalin or Khrushchev had no compunctions about killing those weaker than themselves. But deterrence worked, and America surely has the power to deter Iraq as well. And so does Israel, which has already acquired nuclear weapons.

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 can be confidently postulated as assuring the productive termination of the ongoing crisis at a cost that is predictable and reasonable. Destroying Iraq but possibly blowing up the Middle East can hardly be advocated as a rational calculus.

Given the stakes, it is particularly urgent that the leaders of the advanced democracies—with America have already successfully assured the deterrence of further Iraqi aggression—sit down together, carefully

analyze their options and recommit themselves to a sustained strategy of punitive deterrence—without dangerous illusions about military solutions.

Mr. WALLOP. Will the Senator from West Virginia yield? I wanted to make a quick observation.

Mr. BYRD. Mr. President, I yield for not to exceed 3 minutes.

Mr. WALLOP. I thank the Senator.

My point is basically that I do not know, and I would not claim to know, nor do I know anybody else who knows, where this body would take us, given a debate and declaration of purpose. My only point is, and I thank the Senator for what he said, where we ought to go, we ought to do it on purpose, and not by a sort of reaction of events, as they tumble out in front of us. That is the one sure path to disaster.

I thank my colleague from Maryland. I was raising questions I think we ought to talk about.

Mr. SARBANES. I thought the Senator had indeed raised fundamental questions, and I think it is important that we start thinking in greater depth on it, to have the benefit of the wide range of views and, particularly, some very careful analysis which has been done, because I think the questions are indeed very fundamental, as the Senator has stated.

Mr. HOLLINGS. Mr. President, on the conference report, Senator HEINZ has agreed to a time, and we can get a time agreement on this, really.

UNANIMOUS-CONSENT AGREEMENT

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 bill, H.R. 5021, I ask unanimous consent that there be a time limit, overall 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 HEINZ' 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, having met, after full and free conference, have agreed to recommend 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 market place. 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 or trade war, recent administrations have opted for the equivalent of unilateral disarmament.

Let's be clear where America stands 4½ decades after World War II. The United States has gone from the world's largest creditor to world's fattest debtor in just 8 years. After running trade surpluses from 1945 through 1970, and as late as 1975, our trade deficits in the 1980's totaled almost $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 the 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 fresh 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 advisers. 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 a further cooling-off period is needed in order to protect the integrity of the U.S. Government's policymaking process. The open revolving door in Washington and the cynicism it engenders 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 concurrence 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. Over on the House side they raised the point that that was a tax and, therefore, they voted that down. Now we have gone along with the House, concurred on both sides, and checked with the Securities and Exchange Commission.

Mr. RUDMAN. Mr. President, the conference report before the Senate today reflects our continued commitment to maintain sufficient funding for the Department of Justice and the Federal judiciary in order to meet our drug and law enforcement needs. While most of the programs and agencies in the bill are funded at or near base levels, we have, to a large extent, funded much of the programmatic increases proposed by the administration for law enforcement agencies. In addition, we have provided $106.8 million above the administration request for savings and loan and financial fraud investigations. As such, for S&L enforcement, the conference agreement provides an additional amount above the President's request of $47.3 million for the FBI, $45 million for U.S. attorneys, and $14.5 million for general legal activities.

If one discounts the nonrecurring costs associated with last year's prison construction appropriation, the Justice Department is effectively receiving a $1.5 billion—or 18.5 percent—increase over fiscal year 1990 funding. Similarly, the Federal Judiciary is being funded at $253.5 million above last year's level, or 14.9 percent. To highlight some of the specific increases, the Drug Enforcement Administration will be funded at a level which is $145.6 million higher than the fiscal year 1990 appropriation. A $113 million increase is provided for the Organized Crime Drug Enforcement task forces. We are providing a $45.3 million, or 10-percent increase for antidrug abuse grants to State and local governments. Given the budget constraints under which we are operating, the conference agreement clearly represents the priority we are placing on addressing the problems of drugs and crime in this country.

In recognition of events in the Persian Gulf, the conference agreement concurs in the President's request to fully meet our responsibilities to the United Nations and other international organizations; to meet our peacekeeping responsibilities around the world; and to pay 20 percent of our arrearage to these international organizations. Furthermore, the conference agreement allows for an expansion of our sealift capacity through an appropriation of $225 million for the Ready Reserve Force of the Maritime Administration.

The conference agreement also reflects the need to respond to the outbreak of democracy throughout Eastern Europe and the rest of the world by maintaining our public diplomacy efforts through the United States Information Agency, the Board for International Broadcasting, and the National Endowment for Democracy.

In view of the limitations placed upon our subcommittee, this conference agreement gives priority to the highest concerns of Congress and the Nation. I'd like to commend the chairman of the Senate Subcommittee, FRITZ HOLLINGS, and the chairman and ranking minority member of the House subcommittee, Congressmen NEAL SMITH and HAL ROGERS, for their excellent work in producing this bill.

Mr. HOLLINGS. Mr. President, I urge that the Senate agree to the conference report on H.R. 5021.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. HOLLINGS. Mr. President, I move to reconsider the vote and move that that motion be laid on the table.

The motion to lay on the table was agreed to.

Mr. HOLLINGS. Mr. President, I further ask unanimous consent that the Senate concur in the amendments of the House to the amendments of the Senate en bloc with the exception of amendment Nos. 9 and 193; that the Senate recede from amendment No. 164; that motions be deemed to have been made to reconsider the votes on the amendments and on the receding from the amendment No. 164 and these be laid upon the table.

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

The amendments of the House agreed to en bloc are as follows:

Resolved, That the House agree to the report of the Committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5021) entitled "An Act 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.".

Resolved, That the House recede from its disagreement to the amendments of the Senate numbered 8, 16, 17, 18, 19, 21, 24, 30, 31, 32, 33, 34, 39, 42, 46, 49 49A, 50 51, 52, 60, 61, 62, 63, 70, 71, 73, 75, 76, 77, 78, 79, 80, 81, 85, 90, 93, 94, 95, 96, 99, 101, 103, 104, 112, 113, 117, 119, 120, 125, 126, 128, 132, 142, 156, 159, 160, and 161 to the aforesaid bill, and concur therein.

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

In lieu of the matter stricken and inserted by said amendment, insert: *including not to exceed $2,000 for official entertainment, $29,595,000*

Resolved, That the House recede from its disagreement to the amendment 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: *$110,250,000*

Resolved, That the House recede 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 matter stricken and inserted by said amendment, insert: *$272,700,000 to remain available until expended*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 5 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 recede 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 effect immediately before September 30, 1982, $209,000,000: Provided, That during fiscal year 1991 total 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 for 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 the university center program 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 individual grant amount to a university center from the Fiscal Year 1990 level shall*

be subject to the reprogramming procedures stated in section 606 of this Act.

ECONOMIC DEVELOPMENT REVOLVING FUND

(RESCISSION)

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 Emergency Drought Relief Act of 1977. Notwithstanding any other provision of this Act or any other law, funds appropriated in this paragraph shall be used to fill and maintain forty-nine permanent positions designated as Economic Development Representatives out of the total number of permanent positions funded in the Salaries and Expenses account of the Economic Development Administration for 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 to which a full-time EDR was assigned as of December 31, 1987

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 "$43,599,000" named in said amendment, insert: $43,099,000

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 11 to the aforesaid bill, and concur therein with the following amendments:

In lieu of the sum "$42,459,000" named in said amendment, insert: $40,549,000

In lieu of the sum "$26,873,000" named in said amendment, insert: $24,873,000

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

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

UNITED STATES TRAVEL AND TOURISM ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses of the United States Travel and Tourism Administration including travel and tourism promotional activities abroad for travel to the United States and its possessions without regard to 44 U.S.C. 3702 and 3703; and including employment of American citizens and aliens by contract for services abroad; rental of space abroad for periods not exceeding five years, and expenses of alteration, repair, or improvement; purchase or construction of temporary demountable exhibition structures for use abroad; advance of funds under contracts abroad; payment of tort claims in the manner authorized in the first paragraph of 28 U.S.C. 2672, when such claims arise in foreign countries; not to exceed $15,000 for representation expenses abroad; and grants to States or other eligible entities pursuant to 22 U.S.C. 2123 for the purpose of providing financial assistance for States whose tourism promotion needs have increased due to disasters; $19,596,000, to remain available until expended.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 14 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert: $1,353,156,000 to remain available until expended, of which $2,200,000 shall be available for construction and renovation of facilities at the Stuttgart Fish Farming Experimental Station, Stuttgart, Arkansas, and to acquire equipment and furnishings necessary for such facility which are consistent with the original plan for the facility, and of which $550,000 shall be available for operational expenses at the Stuttgart Fish Farming Experimental Station, Stuttgart, Arkansas, and of which $400,000 shall be available only for a semitropical research facility located at Key Largo, Florida; and in addition, $34,521,000 shall be derived from the Airport and Airways Trust Fund as authorized by 49 U.S.C. 2205(d); and in addition, $60,900,000 shall be derived by transfer from the fund entitled "Promote and Develop Fishery Products and Research Pertaining to American Fisheries"; and in addition, $7,000,000 shall be derived by transfer from the Coastal Energy Impact Fund: Provided, That grants to States pursuant to section 306 and 306(a) of the Coastal Zone Management Act, as amended, shall not exceed $2,000,000 and shall not be less than $450,000: Provided further, That in addition to the sums appropriated elsewhere in this paragraph, not to exceed $500,000 shall be available from the receipts deposited in the fund entitled "Promote and Develop Fishery Products and Research Pertaining to American Fisheries" for grant management and related activities: Provided further, That notwithstanding any other provision of law, $400,000 shall be available to the South Carolina Coastal Council for the Charleston Harbor Estuary Special Area Management Plan

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 matter stricken and inserted by said amendment, insert: including defense of suits instituted against the Commissioner of Patents and Trademarks; $91,000,000 of which $88,000,000 shall be derived from deposits in the Patent and Trademark Office Fee Surcharge Fund as authorized by law: Provided, That the amounts made available under the Fund shall not exceed amounts deposited; and

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 23 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 "$172,228,000" named in said amendment, insert: $166,228,000

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 27 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 28 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum named in said amendment, insert: $15,252,000

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 set forth in subsection (b) of this section, in addition to any terms and conditions established by rules issued by the Secretary of Commerce.

(b)(1) A company shall be eligible to receive financial assistance from the Secretary of Commerce 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 within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry), and to procure parts and materials from competitive suppliers; and

(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; affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and affords adequate and effective protection for the intellectual property rights of United States-owned companies.

(2) The Secretary of Commerce may, 30 days after notice to Congress, suspend a company or joint venture from receiving continued assistance through the Advanced Technology Program if the Secretary of Commerce determines that the company, the country of incorporation of the parent company of a company, or the joint venture has failed to satisfy 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 "$22,140,000" named in said amendment, insert: *$25,140,000*

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 proposed in said amendment, insert: *$10,051,000*

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 "$352,103,000" named in said amendment, insert: *$343,603,000*

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 proposed by said amendment, insert: *$2,000,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 47 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum "$674,095,000" named in said amendment, insert: *$673,095,000*

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 named in said amendment, insert: *$64,300,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 53 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum "$28,172,000" named in said amendment, insert: *$27,172,000*

In lieu of the sum "$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 proposed 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, $328,000,000, of which $50,000,000 shall remain available until expended: Provided, That any amounts obligated from appropriations under this heading may be used 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 606 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 sum "$1,690,962,000" named in said amendment, insert: *$1,687,962,000*

In lieu of the phrase "activities funded by this appropriation" in the last sentence of said amendment, insert: *construction of Pod C of the Engineering Research Facility at Quantico, Virginia*

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 $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 57 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum $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 59 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum $1,359,843,000" named in said amendment, insert: *$1,357,843,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 64 to the aforesaid bill, and concur therein with an amendment as follows:

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

ADMINISTRATIVE 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-by-industry 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 procurement from the Federal Prison Industries should be retained or revised.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 65 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum "$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 66 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: *, and in addition, $17,000,000, to remain available until expended, shall be available to the Director of the Federal Bureau of Investigation for the National Crime Information Center 2000 project: Provided, That notwithstanding any other provision of law, the grant limitation established in section 504(f) of part D of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by Public Law 100-690 (102 Stat. 4333), 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 74 to the aforesaid bill, and concur therein with amendments as follows:

In lieu of the phrase "During fiscal year 1991 and thereafter with respect" in the first sentence of subsection (b)(1) of said amendment, insert: *During fiscal year 1991 with respect*

In lieu of the phrase "closed in fiscal year 1991 and each fiscal year thereafter—" in the first sentence of subsection (b)(4)(A) of said amendment, insert: *closed in fiscal year 1991—*

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 matter inserted by said amendment, insert:

SEC. 210. (a) Section 286 of the Immigration and Nationality Act of 1952 (8 U.S.C. 1356), as amended, is further amended—

(1) by inserting in subsection (e)(1), after the word "passenger" the phrase ", other than aircraft passengers,";

(2) by inserting ", except the fourth quarter payment for fees collected from airline passengers shall be made on the date that is ten days before the end of the fiscal year, and the first quarter payment shall include any collections made in the preceding quarter that were not remitted with the previous payment" after the words "in which fees are collected" in subsection (f)(3);

(3) by inserting ", within forty-five minutes of their presentation for inspection," after the word "provided" and before the words "when needed" in subsection (g);

(4) by striking the first two sentences of subsection (h)(1)(A) and inserting "There is established in the general fund of the Treasury a separate account which shall be known as the 'Immigration User Fee Account'. Notwithstanding any other section of this title, there shall be deposited as offsetting receipts into the Immigration User Fee Account all fees collected under subsection (d) of this section, to remain available until expended" before the words "At the end of each 2-year period".

(5) by replacing the previously repealed subsection (1) with the following new subsection—

"(1) Report to Congress

In addition to the reporting requirements established pursuant to subsection (h), the Attorney General shall prepare and submit annually to the Congress, not later than March 31st of each year, a statement of the financial condition of the 'Immigration User Fee Account' including beginning account balance, revenues, withdrawals and their purpose, ending balance, projections for the ensuing fiscal year and a full and complete workload analysis showing on a port by port basis the current and projected need for inspectors. The statement shall indicate the success rate of the Immigration and Naturalization Service in meeting the forty-five minute inspection standard and shall provide detailed statistics regarding the number of passengers inspected within the standard, progress that is being made to expand the utilization of United States citizen by-pass, the number of passengers for whom the standard is not met and the length of their delay, locational breakdown of these statistics and the steps being taken to correct any non-conformity.".

(b) The amendment made by subsection (a)(1) of this section shall apply to fees charged only with respect to immigration inspection or preinspection services rendered in regard to arriving passengers using transportation for which documents or tickets were issued after November 30, 1990.

(c) Pursuant to section 202(b) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, the amendments made by this section which transfer receipts from one fiscal year to the next are a necessary (but secondary) result of a significant policy change.

(d) Section 286 of the Immigration and Nationality Act of 1952 (8 U.S.C. 1356), as amended, is further amended—

(1) by inserting in subsection (m), after the phrase "shall be deposited" the phrase "as offsetting receipts";

(2) by inserting in subsection (m), after the phrase "the treasury of Guam" the following: ": Provided further, That fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected";

(3) by inserting a new subsection after subsection (p) as follows:

"(q) Land Border Inspection Fee Account

(1) Notwithstanding any other provision of law, the Attorney General is authorized to establish, by regulation, a project under which a fee may be charged and collected for inspection services provided at one or more land border points of entry. Such project may include the establishment of commuter lanes to be made available to qualified United States citizens and aliens, as determined by the Attorney General.

(2) All of the fees collected under this subsection shall be deposited as offsetting receipts in a separate account within the general fund of the Treasury of the United States, to remain available until expended. Such account shall be known as the Land Border Inspection Fee Account.

(3)(A) The Secretary of Treasury shall refund, at least on a quarterly basis amounts to any appropriations for expenses incurred in providing inspection services at land border points of entry. Such expenses shall include—

(i) the providing of overtime inspection services;

(ii) the expansion, operation and maintenance of information systems for nonimmigrant control;

(iii) the hire of additional permanent and temporary inspectors;

(iv) the minor construction costs associated with the addition of new traffic lanes (with the concurrence of the General Services Administration);

(v) the detection of fraudulent documents used by passengers travelling to the United States;

(vi) providing for the administration of said account.

(B) 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 the Senate in accordance with section 606 of Public Law 101-162.

(4) The Attorney General will prepare and submit annually to the Congress statements of financial condition of the Land Border Immigration Fee Account, including beginning account balance, revenues, withdrawals, and ending account balance and projections for the ensuing fiscal year.

(5)(A) The program authorized in this subsection shall terminate on September 30, 1993, unless further authorized by an Act of Congress.

(B) 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 (q)(1).

(C) If implemented, the Attorney General shall prepare and submit on a quarterly basis, until September 30, 1993, a statue report on the land border inspection project.".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 83 to the aforesaid bill, and concur therein with an amendment as follows:

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

SEC. 211. (A) Notwithstanding any other provision of law, in the specific case involving the Iowa Power Inc. and Redlands, Inc. ownership within the proposed Walnut Creek NWR, condemnation is authorized to determine the just compensation of the Iowa Power Inc. and Redlands Inc. lands, provided there is agreement by both parties involved.

(B)(a) This subsection may be cited as the "National Commission to Support Law Enforcement Act".

(b) The Congress finds that—

(1) law enforcement officers risk their lives daily to protect citizens, for modest rewards and too little recognition;

(2) a significant shift has occurred in the problems that law enforcement officers face without a corresponding change in the support from the Federal Government;

(3) law enforcement officers are on the front line in the war against drugs and crime;

(4) the rate of violent crime continues to increase along with the increase in drug use;

(5) a large percentage of individuals arrested test positive for drug usage;

(6) the Presidential Commission on Law Enforcement and the Administration of Justice of 1965 focused attention on many issues affecting law enforcement, and a review twenty-five years later would help to evaluate current problems, including drug-related crime, violence, racial conflict, and decrease funding; and

(7) a comprehensive study of law enforcement issues, including the role of the Federal Government in supporting law enforcement officers, working conditions, and responsibility for crime control would assist in redefining the relationships between the Federal Government, the public, and law enforcement officials.

(c) There is established a national commission to be known as the "National Commission to Support Law Enforcement" (referred to in this section as the "Commission").

(d) The Commission shall study and recommend changes regarding law enforcement agencies and law enforcement issues on the Federal, State, and local levels, including the following:

(1) The sufficiency of funding, including a review of grant programs at the Federal level.

(2) The conditions of law enforcement employment.

(3) The effectiveness of information-sharing systems, intelligence, infrastructure, and procedures among law enforcement agencies of Federal, State, and local governments.

(4) The status of law enforcement research and education and training.

(5) The adequacy of equipment, physical resources, and human resources.

(6) The cooperation among Federal, State, and local law enforcement agencies.

(7) The responsibility of governments and law enforcement agencies in solving the crime problem.

(8) The impact of the criminal justice system, including court schedules and prison overcrowding, on law enforcement.

(e) The Commission shall conduct surveys and consult with focus groups of law enforcement officers, local officials, and community leaders across the Nation to obtain information and seek advice on important law enforcement issues.

(f) The Commission shall be composed of 19 members as follows:

(1) Five individuals from national law enforcement organizations representing law enforcement officers and management, appointed jointly by the Speaker of the House of Representatives and the majority leader of the Senate.

(2) Five individuals from national law enforcement organizations representing law enforcement officers and management, appointed jointly by the minority leader of the House of Representatives and the minority leader of the Senate.

(3) Two individuals with academic expertise regarding law enforcement issues, appointed by the President.

(4) Two Members of the House of Representatives, appointed jointly by the Speaker and the minority leader of the House of Representatives.

(5) Two Members of the Senate, appointed jointly by the majority leader and the minority leader of the Senate.

(6) One individual involved in Federal law enforcement from the Department of the Treasury, appointed by the President.

(7) One individual from the Department of Justice, appointed by the President.

(8) The Comptroller General of the United States, who shall serve as the chairperson of the Commission.

(g)(1) Members of the Commission shall receive no additional pay, allowance, or benefit by reason of service on the Commission.

(2) Each member of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(h) The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(i) Upon request of the Commission, the head of any Federal agency is authorized to detail, on non-reimbursable basis, any of the personnel of that agency to the Commission to assist the Commission in carrying out its duties under this section.

(j) The Administrator of General Services shall provide to the Commission administrative support services as the Commission may request.

(k) The Commission may, for purposes of this section, hold hearings, sit and act at the times and places, take testimony, and receive evidence, as the Commission considers appropriate.

(l) Any member or agent of the Commission may, if authorized by the Commission, take any action the Commission is authorized to take by this section.

(m) The Commission may secure directly from any Federal agency information necessary to enable it to carry out this section. Upon request of the chairperson of the Commission, the head of any agency shall furnish the information to the Commission to the extent permitted by law.

(n) The Commission may accept, use, and dispose of gifts or donations of services or property.

(o) The Commission may use the United States mails in the same manner and under the same conditions as other Federal agencies.

(p) Not later than the expiration of the eighteen-month period beginning on the date of the enactment of this Act, 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.

(q) 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 84 to the aforesaid bill, and concur therein with an amendment as follows:

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

SEC. 212. (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 Justice Programs, 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 or any similar provision in 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 $2,000,000 may be available for rewards, and to publicize the availability of rewards, as authorized by section 36 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2708), and in addition*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 91 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed by said amendment, insert: *, and in addition, not to exceed $15,000 shall be derived from reimbursements, surcharges, and fees for use of Blair House facilities in accordance with section 46 of the State Department Basic Authorities Act of 1956 (section 119 of Public Law 101-246), and of the total amount appropriated in this paragraph, $350,000 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:

SEC. 302. (a) Not to exceed .5 per centum of the appropriation, Administration of Foreign Affairs, "Salaries and expenses" may be transferred to Administration of Foreign Affairs, "Emergencies in the Diplomatic and Consular Service" or International Organizations and Conferences, "International Conferences and Contingencies" but no such appropriation shall be increased by more than 35 per centum by any such transfer: Provided, That the Department shall follow the normal reprogramming procedures of the Senate and House Appropriations Committees before obligating or expending any funds so transferred.

(b) Funds appropriated in this Act under the heading "Contributions to International Organizations" for payment to the United Nations or any of its specialized agencies, which are not made available to the United Nations or any such specialized agency due to the operation of any provision of this or any other Act, may be transferred to any account under the heading "Administration of Foreign Affairs", notwithstanding any other provision of law: Provided, That the Department shall follow the normal reprogramming procedures of the Senate and House Appropriations Committees before obligating or expending any funds so transferred.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 102 to the aforesaid bill, and concur therein with an amendment as follows:

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

SEC. 304. (a) Section 303 of the Department of State Appropriations Act, 1988 (as contained in section 101(a) of Public Law 100-202 (as amended by section 303(a) of Public Law 100-459)) is amended in the first sentence—

(1) by striking out "$340,000" and inserting in lieu thereof "$440,000"; and

(2) by striking out "section 109(c) of the Department of State Authorization Act, Fiscal Years 1984 and 1985" and inserting in lieu thereof: "section 109 (b) and (c) of the Department of State Authorization Act, Fiscal Years 1984 and 1985".

(b) Section 109(b) of the Department of State Authorization Act, Fiscal Years 1984 and 1985, is amended—

(1) by striking out "Of the amount" through "Spring 1984" and inserting in lieu thereof: "There are authorized to be appropriated each fiscal year $50,000, to be equally divided between delegations of the Senate and the House of Representatives, to assist in";

(2) by inserting after "meeting" the following: "the expenses of the United States Group";

(3) by striking out "which" through "United States"; and

(4) by inserting the following sentence at the end thereof: "Amounts appropriated under this section are authorized to remain available until expended.".

(c) MEXICO.—Section 2 of Public Law 86-420 is amended—

(1) by striking out "$50,000" and inserting in lieu thereof "$100,000"; and

(2) by striking out "$25,000" both places it appears and inserting in lieu thereof "$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: *$9,711,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 106 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: *the Compensation (in accordance with Criminal Justice Act maximums) and reimbursement of expenses of attorneys appointed to assist the court in criminal cases where the defendant has waived representation by counsel, the compensation and reimbursement of travel expenses of guardians ad litem acting on behalf of financially eligible minor or incompetent offenders in connection with transfers from the United States to foreign*

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 108 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed by said amendment, insert: *$132,761,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 109 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed by said amendment, insert: *, to remain available until expended: Provided, That the compensation of land commissioners shall not exceed the daily equivalent of the highest rate payable under section 5332 of title 5, United States Code: Provided further, That not to exceed $81,000 of the amounts appropriated herein shall be transferred to "Salaries and expenses," United States Court of International trade, and not to exceed $4,919,000 of the amounts appropriated herein shall be transferred to "Salaries and expenses," Courts of appeals, District Courts, and Other Judicial Services.*

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 sum named in said amendment, insert: *$71,261,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 111 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum "$37,400,000" named in said amendment, insert: *$37,178,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 118 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the first sum named in said amendment, insert: *$69,000,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 121 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum stricken and inserted by said amendment, insert: *$500,000, to remain available until expended*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 123 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum proposed by said amendment, insert: *$37,040,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 131 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum "$117,794,000" named in said amendment, insert: *$115,794,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 133 to the aforesaid bill, and concur therein with amendments as follows:

In lieu of the first sum "$76,095,000" named in said amendment, insert: *$74,095,000*

In lieu of the sum "$56,095,000" named in said amendment, insert: *$54,095,000*

In lieu of the second sum "$76,095,000" named in said amendment, insert: *$74,095,000*

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 134 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum "$40,671,000" named in said amendment, insert: *$40,299,000*

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 matter proposed by said amendment insert:

LEGAL SERVICES CORPORATION

PAYMENT TO THE LEGAL SERVICES CORPORATION

For payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, as amended, $327,186,000 of which $280,314,000 is for basic field programs, $7,445,000 is for the Native American programs, $10,282,000 is for migrant programs, $1,166,000 is for the law school clinics, $1,060,000 is for supplemental field programs, $662,000 is for regional training centers, $7,663,000 is for national support, $8,315,000 is for State support, $917,000 is for the Clearinghouse, $541,000 is for computer assisted legal research regional centers, and $8,821,000 is for Corporation management and administration.

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 138 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum "$18,936,000" named in said amendment, insert: *$20,000,000*

Resolved, That the House recede from its disagreement go the amendment of the Senate numbered 140 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 not to exceed $3,500 for official reception and representation expenses, $274,753,000, of which $1,500,000 shall be made available for a grant to St. Norbert College in De Pere, Wisconsin, for a regional center for rural economic development, of which $100,000 shall be made available for a grant to the School of Forestry of the University of Montana for a planning study for locating a Value-Added Wood Products Development, Marketing and Small Business Assistance Research Laboratory at the University of Montana, of which $200,000 shall be made available for a grant to Central Arkansas University to establish a national communications and data center for the Small Business Institute program, of which $1,500,000 shall be made available for a grant to the University of Kentucky's Somerset Community College for a regional center for rural economic development with a special emphasis on small business, or which $1,500,000 shall be made available for a grant to the West Philadelphia Economic Development Corporation for a national demonstration project for community economic development and small business assistance, of which $500,000 shall be made available for a Center for Manufacturing Productivity at the University of Massachusetts at Amherst, of which $1,200,000 is for the Small Business Development Center Technical Assistance Program, of which $15,000,000 shall be made available to implement section 24 of the Small Business Act, as amended, of which $1,000,000 shall be made available to implement section 25 of the Small Business Act, as amended, and*

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 preparing or formulating, but not publishing in the Federal Register, proposed rules, nor shall anything herein apply to uniform common rules 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 Administrator and" from the fourth sentence of paragraph (1) of subsection (b) 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. The Administrator is authorized to appoint".

(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 PARTICIPANTS IN THE 8(a) PROGRAM.

Section 602 of the Business Opportunity Development Reform Act of 1988 (15 U.S.C. 637 note) is amended—

(1) in subsection (c), by striking "two" and inserting "5", and

(2) in subsection (e), by striking "September 30, 1991" and inserting "September 30, 1992".

SEC. 3. INTEREST RATE ON CERTIFIED DEVELOPMENT COMPANY LOANS.

Section 112 of the Small Business Administration Reauthorization and Amendment Act of 1988 (Public Law 100-590) is amended by striking from the end of subsection (c) "October 1, 1990" and by inserting in lieu thereof "October 1, 1994".

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 to 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 amendment 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 sources other than the Federal Government. Such non-Federal money may include inkind contributions, including the cost or value of providing care and maintenance for a period of three years 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 grant be used to pay for land or land charges: Provided, That not less than one-half of the amounts appropriated under this

section shall be allocated to each state, the District of Columbia, and the Commonwealth of Puerto Rico on the basis of the population in 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 or the decennial census, whichever is most current. The Administrator may give a priority in awarding the remaining one-half of appropriated amounts to applicants who agree to contribute more than the requisite 25 per centum.

"(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, grantees are directed to utilize small business contractors or concerns in connection with the program established by this section, and shall, to the extent practicable, divide the project to allow more than one small business concern to perform the work under the project.

"(d) For purposes of this section, agencies of the Federal Government are hereby authorized to cooperate with all grantees and 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 herbiciules, 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 total 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) the amendments to the second proviso 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 thereto shall receive funding for the entire term of performance without regard to this amendment and according to the state's pro rata share of a $65,000,000 program as computed on the effective date of this section under population estimates used for calendar year 1990 agreements, plus $50,000 for each state, but no state shall receive less than $200,000.

SEC. 6. SBDC GRANTEE 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 small business development center grant with performance commencing on or after January 1, 1992 to have its own budget and to primarily utilize institutions of higher education to provide 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 90 days after the effective date of this section, the Commission, in consultation with the Agency for International Development, shall enter a contract with one or more entities to—

"(A) determine the needs of small businesses in the designated Central European countries for management and technical assistance;

"(B) evaluate appropriate Small Business Development Center-programs which might be replicated in order to meet the needs of each of such countries; and

"(C) 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 formulate and contract for the establishment of a three-year management and technical assistance demonstration program.

"(c) In order to be eligible to participate, the educational institution in each designated Central European country shall—

"(1) obtain the prior approval of the government to conduct the program;

"(2) agree to provide partial financial support for the program, either directly or indirectly, during the second and third years of the demonstration program; and

"(3) agree to obtain private sector involvement in the delivery of assistance under the program.

"(d) The Commission shall meet and organize not later than 30 days after the date of enactment of this section.

"(e) Members of the Commission shall serve without pay, except they shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out their functions in the same manner as persons employed intermittently in the Federal Government are allowed expenses under section 5703 of title 5, United States Code.

"(f) Two Commissioners shall constitute a quorum for the transaction of business. Meeting shall be at the call of the Chairperson who shall be elected by the Members of the Commission.

"(g) The Commission shall not have any authority to appoint staff, but upon request of the Chairperson, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of such department or agency to the Commission to assist in carrying out the Commission's functions under this section without regard to section 3341 of title 5 of the United States Code. The Administrator of the General Services Administration shall provide, on a reimbursable basis, such administrative support services as the Commission may request.

"(h) The Commission shall report to Congress not later than December 1, 1991, and annually thereafter, on the progress in carrying out the provisions of this section.

"(i) There are hereby authorized to be appropriated to the Small Business Administration the sum of $3,000,000 for fiscal year 1991, $5,000,000 for fiscal year 1992 and $8,000,000 for fiscal year 1993 to carry out the provisions of this section. Such sums shall be disbursed by the Small Business Administration as requested by the Commission and may remain available until expended. Any authority to enter contracts or other spending authority provided for in this section is subject to amounts provided for in advance in appropriations Acts.".

SEC. 8. LOAN SERVICING FEE.

In the Small Business Investment Act of 1958, insert the following new subsection:

"SEC. 503 (e)(3). Notwithstanding any other provision of law, qualified State or local development companies shall be authorized to prepare applications for deferred participation loans under Section 7(a) of the Small Business Act, to service such loans and to charge a reasonable fee for servicing such loans.".

SEC. 9. SMALL BUSINESS DEVELOPMENT CENTER TECHNICAL ASSISTANCE PROGRAM.

(a) IN GENERAL.—The Small Business Act (15 U.S.C. 631 et seq.) is amended by inserting after section 21, the following new section.

"21A. Small Business Development Center Technical Assistance Program.

"(a) The Administration is authorized to make grants to establish pilot programs at 5 Small Business Development Centers in order to increase access by small businesses in each center's service area to online data bases. The purpose of this program shall be to provide small businesses, in states select-

ed to participate in this demonstration program, with improved online access to public and private technology services and expertise, so as to accelerate the transfer of technology and expertise to small businesses and to improve the productivity and economic competitiveness of these small businesses.

"(b) Any Small Business Development Center which is funded by the Administration is eligible to receive an additional grant to provide access to online data bases as described in subsection (a) providing it contributes at least a fifty percent matching contribution.

"(c) The grants authorized by this section must be used to—

"(1) defray all or part of the cost of accessing 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) train 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 Administration for each of fiscal years 1991 and 1992, $1,200,000 to carry out the terms of section 21A of the Small Business Act.

SEC. 10. 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 the 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 (k) under the heading "Economic Development Assistance Programs" at a funding level not less than the level provided during fiscal year 1990 to such entity.

SEC. 11. COOPERATIVE AGREEMENTS.

Section 7(b) of the Small Business Computer Security and Education Act of 1984 (15 U.S.C. 633 note) as amended, is further amended by striking "October 1, 1990" and inserting in lieu thereof "March 31, 1991".

SEC. 12. TRANSFER FROM DISASTER LOAN FUND.

In addition such sums as may be necessary

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 amendment, 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 "$159,708,000" 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 "$9.28" in subparagraph (1) of said amendment, insert: *$9.22*

In lieu of the term "6 cents" in subparagraph (1) of said amendment, insert: *5 cents*

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. 609. (a) None of the funds in this or any other Act may be used to approve the licensing for export of any supercomputer to any country whose government the President determines to be assisting Iraq to improve its ballistic missile technology or chemical, biological, or nuclear weapons capability and so reports to the Congress.

(b) None of the funds in this or any other Act may be used to approve the licensing for export of any supercomputer to any country whose nationals are assisting Iraq to improve its rocket technology or chemical, biological, or nuclear weapons capability: Provided, That 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 or corporations and so reports to the Congress.

Resolved, That the House insist on its amendment 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, and I think I will save time and read that amendment.

The PRESIDING OFFICER. If the Senator will suspend for a moment, the regular order is to report Senate amendment No. 9 in disagreement and Senate amendment No. 139 in disagreement.

Mr. HOLLINGS. I want to get to this and then I am coming back to No. 9.

AMENDMENT IN DISAGREEMENT NO. 139

The PRESIDING OFFICER. The clerk will report the amendment in disagreement, No. 139.

The legislative clerk read as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 139 to the aforesaid bill, and concur therein with an amendment as follows:

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

SECURITIES AND EXCHANGE COMMISSION

SALARIES AND EXPENSES

For necessary expenses for the Securities and Exchange Commission including services as authorized by 5 U.S.C. 3109, and not to exceed $3,000 for official reception and representation expenses, $160,185,000, of which not to exceed $10,000 may be used toward funding a permanent secretariat for the International Organization of Securities Commissions and, for 1991 only, not to exceed $100,000 shall be available to host a conference of the International Organization of Securities Commissions, such sum to cover related translation, printing, facility and other necessary logistic and administrative expenses.

AMENDMENT NO. 3123 TO AMENDMENT IN DISAGREEMENT NO. 139

Mr. HOLLINGS. Mr. President, I move that the Senate concur in the amendment of the House to amendment No. 139 with an amendment which I send to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from South Carolina, [Mr. HOLLINGS], proposes an amendment numbered 3123. 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 Organization 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. 77f(b)) shall increase from one-fiftieth of 1 per centum to one-fortieth 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.".

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 colleague from Pennsylvania.

AMENDMENT IN DISAGREEMENT NO. 9

The PRESIDING OFFICER. If the Senator will withhold, 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 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 between two points abroad, without regard to 49 U.S.C. 1517; 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 28 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 to exceed $30,000 per vehicle; obtain insurance on official motor vehicles, rent tie lines and teletype 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 Ames, Iowa, and of which $7,175,000 is for the Office of Textiles and Apparels, including $3,315,000 for a grant to the Tailored Clothing Technology

Corporation: Provided, That the provisions of the first sentence of section 105(f) and all of section 108(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2455(f) and 2458(c)) shall apply in carrying out these activities; and that for the purpose of this Act, contributions under the provisions of the Mutual Educational and Cultural Exchange Act shall include payment for assessments for services provided as part of these activities. Notwithstanding any other provision of law, upon the request of the Secretary of Commerce, the Secretary of State shall accord the diplomatic title of Minister-Counselor to the senior Commercial Officer assigned to any United States mission abroad: Provided further, That the number of Commercial Service officers accorded such diplomatic title at any time shall not exceed twelve. The Secretary of Commerce shall establish a foreign trade zone for Cedar Rapids, Iowa, not later than February 1, 1991, notwithstanding any other provision of law

The PRESIDING OFFICER. The Senator from Pennsylvania.

AMENDMENT NO. 3124 TO AMENDMENT IN DISAGREEMENT NO. 9

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 clerk will report the amendment.

The legislative clerk read 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 addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. I do not have a copy of the amendment, Mr. President.

Mr. HEINZ. If the Senator will withhold, 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 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 members of immediate families of employees stationed overseas; travel and transportation of employees of the United States and Foreign Commercial Service between two points abroad, without regard to 49 U.S.C. 1517; 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 28 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 to exceed $30,000 per vehicle; obtain insurance on official motor vehicles, rent tie lines and teletype 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 $7,175,000 is for the Office of Textiles and Apparels, including $3,315,000 for a grant to the Tailored Clothing Technology Corporation: *Provided*, That the provisions of the first sentence of section 105(f) and all of section 108(c) of the Mutual Educational and Cultural Exchange Age of 1961 (22 U.S.C. 2455(f) and 2458(c)) shall apply in carrying out these activities; and that for the purposes of this Act, contributions under the provisions of the Mutual Educational and Cultural Exchange Act shall include payment for assessments for services provided as part of these activities. Notwithstanding any other provision of law, upon the request of the Secretary of Commerce, the Secretary of State shall accord the diplomatic title of Minister-Counselor to the senior Commercial Officer assigned to any United States mission abroad: *Provided further*, That the number of Commercial Service officers accorded such diplomatic title at any time shall not exceed twelve.

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 of America. This one 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 legislation that is a part of the United States Code, and as someone who has on occasion worked on a case-by-case basis to assist applicants through the process that they must follow in order to obtain proper approval of a foreign trade zone. In all the years I have been involved with this issue—and I think this statement is true not just for me but for this body—there has never been any effort either in the Finance Committee where it might properly originate, or on the Senate floor, or in the other body to legislate the establishment of a foreign trade zone, and for good reason.

There are simple, clear procedures to be followed in order to create a foreign trade zone. The purpose of the foreign trade zone legislation is clear. We have generally tried to facilitate their establishment when doing so encouraged the establishment of minimal assembly kinds of operations in or adjacent to areas which had good transportation—often ports of entry.

To the best of my understanding, there has never been an application made by the principal party of interest in this foreign trade zone. It happens to be a company called Poongsan a Korean company. They want to, I am told, build a facility that would manufacture brass and stainless steel items.

To the best of my knowledge, it is also unprecedented that any manufacturing facility would be in effect permitted through this kind of legislation but I do not use that as my principal argument or concern. What I am concerned about is whether or not proper procedures have been followed. My information is that they have not. Perhaps my information is incorrect. But if I am right, there is no justification, no excuse whatsoever for trying to legislate something which has not even been applied for through normal processes.

Maybe the reason that no application has been made is because this company felt it could not get it through the normal process. It is a company that has been found guilty of dumping brass mill products in this country. But even more important, from what I understand in neither body, neither the House nor the Senate, 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 side of the Capitol.

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.

So, 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. RUDMAN], was with me during ne-

gotiations 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 Senate's objectives 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 conferees 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 $19,305,879,000. 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 $19,326,768,000 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 $1.4 billion or 19.4 percent increase above the amounts 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, and clerical positions and $47 million to enhance the FBI's 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 1 correctional 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 as 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 spiralling number of failures of financial institutions, particularly savings and loans, and the overwhelming evidence of criminal conduct related to these failures, the conferees 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.

Two hundred nine million dollars is provided for the Economic Development Administration for infrastructure 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 radars, an increase of $53,500,000 over the 1990 level; in addition, the conferees are recommending new funding of $3,000,000 for Zebra mussel research to assist our friends in the Great Lakes States.

The conference agreement also includes the President's request of $787,605,000 to fully fund our assessed contributions to the United Nations, its specialized agencies, and other international organizations. This funding will also meet 20 percent of the arrearage 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 Ready Reserve Force have been deployed for Operation Desert Shield.

In September, the President requested $14,249,000 to increase Arabic broadcasts of the Voice of America to the Middle East; the conferees have 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 priviledge 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?

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 might also 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—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; we have 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 wracked 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. 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 representations and information 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. HEINZ. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 4 minutes.

Mr. HEINZ. Mr. President, I yield myself 1 minute just to say to my friend from Iowa that I have some familiarity with Cedar Rapids. My mother was born there. Indeed, I have not found anyone in the Senate yet who has as many generations of Iowans in their family as I do. I have Senator GRASSLEY beaten. He admits that. And he is hard to beat on issues like that, as you know, because that is his original bailiwick. But because I do know a little bit about Cedar Rapids, I can tell you there are communities a lot smaller than Cedar Rapids that have applied for and have been granted foreign trade zones.

I do not know what kind of a bill of goods has been presented. I know this is not the Senator's doing, but I think the Senator is getting some very questionable information.

I hope my colleagues will understand that if we set a precedent here to simply have communities end run, or applicants in this case—I do not know what the situation is with the city fathers in Cedar Rapids; I have not received any correspondence or anything from the mayor or county commissioners or any of the people—we set a very poor precedent and, most important of all, we deny the public their basic protections here which is an opportunity for public comment that the Foreign Trade Zone Board must provide on this kind of proposal.

I reserve the remainder of my time.

Mr. HARKIN. How much time do I have?

The PRESIDING OFFICER. The Senator has 1 minute and 6 seconds remaining.

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 foreign 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 though stated in their entirety; that an amendment on behalf of Senators JEFFORDS and KOHL be agreed to; printing of a statement by Mr. KOHL be agreed to; all amendments be agreed to and the bill be advanced 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, it is 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 nutrient 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.".

Page 11, strike lines 12 through 21 and redesignate paragraphs (3) and (4) as paragraphs (2) and (3).

2. Page 3, strike lines 3 through 7 and insert in lieu thereof the following: "The Secretary may by regulation require any information required to be placed on the label or labeling by this subparagraph or subparagraph (2)(A) 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.".

3. Page 3, line 24, strike "shall" and insert "may" and page 4, line 1, strike "may".

4. Page 8, line 23, strike "of labeling" and insert "or labeling".

5. Page 9, line 5, strike "may" and insert "shall" and in line 6 insert after "form" the following: "prescribed by the Secretary".

6. Page 17, insert after line 2 the following:

"(D) Subparagraph (2) does not apply to a claim described in subparagraph (1)(A) 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 paragraph (a).

"(E) Subclauses (i) through (v) of subparagraph (2)(A) do not apply to a statement in the label or labeling of food which describes the percentage of vitamins and minerals in the food in relation to the amount of such vitamins and minerals recommended for daily consumption by the Secretary.".

7. Page 20, insert after line 19 the following:

"(D) A subparagraph (1)(B) claim made with respect to a dietary supplement of vitamins, minerals, herbs, or other similar nutritional substances shall not be subject to subparagraph (3) but shall be subject to a procedure and standard, respecting the validity of such claim, established by regulation of the Secretary.".

Page 24, line 8, strike "subject to sections 403(r)(1)(B) and 403(r)(3)" and insert ", subject to sections 403(r)(1)(B) and 403(r)(3) or sections 403(r)(1)(B) and 403(r)(5)(D),".

8. Page 21, strike the quotation marks in lines 7 and 11 and after the references to sections in lines 10, 12, and 15 insert "of such Act".

9. Page 21, redesignate clauses (iii) through (viii) as clauses (iv) through (ix) and insert after line 6 the following:

"(iii) shall, in defining terms used to characterize the level of any nutrient in food under section 403(r)(2)(A)(i) of such Act, define—

"(I) free,

"(II) low,

"(III) light or lite,

"(IV) reduced,

"(V) less, and

"(VI) high,

unless the Secretary finds that the use of any such term would be misleading,".

10. Page 23, strike lines 17 through 21 and insert the following:

"(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.", and

11. Page 24, line 24, strike "foods" and insert "food", page 25, line 1, strike "foods" and insert "food", and page 25, line 6 strike "foods" and insert "food".

12. 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 403(q)(5)(A)".

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".

13. Page 25, line 8, insert after "claim" the following: "of the type described in section 403(r)(1)".

14. Page 25, strike out lines 13 through 16, page 25, line 17 strike "(2)" and insert in lieu thereof "(b)", redesignate subparagraphs (A), (B), and (C) as paragraphs (1), (2), and (3), and on page 28, insert after line 20 the following:

"(c) 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) 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.

"(3) The amendment made by subsection (a), the provisions of subsection (b) 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 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 10, line 9, page 11, line 24, and page 12, line 3, strike "18" and insert "24".

Page 22, lines 9, 15, and 18, strike "18" and insert "24".

Page 27, lines 6 and 17, strike "18" and insert "24".

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 "listed in" and insert "required by" and strike "or (1)(D)" and insert ", (1)(D), or (1)(E)" and beginning in line 17 strike "or (1)(D)" and insert ", (1)(D), or (1)(E)".

18. Page 13, line 5, insert after "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)(ii), (4)(A)(iii), 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 "(v)".

20. Page 22, line 5, strike "and", line 8, strike the period 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: folic acid and neural tube defects, antioxident 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)".

Mr. METZENBAUM. Mr. President, I want to begin by congratulating my colleague from Utah, Senator HATCH, 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 and the manager's statement 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 in a retail establishment 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 food sections of supermarkets, nutrition 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 nutrition content claims which use certain "descriptor" words, like "low-fat" and "light." The Secretary is required to define in 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, the Secretary can best decide how to define the term under this bill.

Mr. President, Senator HATCH and I were the primary authors of the amendments made by the Senate to the House passed bill. As 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. In contrast, the 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.

The purpose for the different handling of conventional food products and dietary supplements is to provide the Secretary flexibility in the development of the procedure and standard for health claims for dietary supplements. With this flexibility, the Secretary will be able to determine the appropriate procedure and standard for dietary supplements. In making that determination, the Secretary should take into account, among the many

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 products.

Mr. MITCHELL. Mr. President, I commend my distinguished colleague from Ohio, Senator METZENBAUM, for his diligent efforts to produce a sound piece of important 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 regulating specialized claims 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 "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 "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 the use of the term light 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 we should not make 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 not be permitted 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 other similar nutritional 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 any vitamin, mineral or other dietary property. Any such 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 by 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 foods 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, "Barleygreen" and similar nutritional powdered drink mixes, Coenzyme Q10, enzymes such as bromelain and quercetin, amino acids, pollens, propolis, royal jelly, garlic, orotates, calcium-EAP (colamine phosphate), glandulars, hydrogen peroxide (H2O2), nutritional antioxidants such 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 1985, 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 1986, 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 healthy. To the extent that Americans are not healthy, our national economy pays the bill. 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 be creative and innovative so that 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 used when describing characterizations of food products. 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 and diet-related claims 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 approval 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, lipids and cancer, 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 standard and procedure outlined in this bill become too arduous, I will ask my colleagues to carefully re-examine these provisions. Food companies should be able to advertise the health benefit of their product so 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 the consumer is 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 is envisioned.

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 food that provides for a warning 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 local warning requirement which 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 respecting 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 to undermining 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, I would say that 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 consumers who can make 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 than 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 standards of identity. It will protect the integrity of important standards of 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 standards 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 mislead 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 inserting in lieu thereof the following: "Any action for the issuance, amendment, or repeal of any regulation under section 403(j), 404(a), 406, 501(b), or 502(d) or (h) of this Act, and any action for the 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

under section 168.140 of title 21, Code of Federal Regulations).

Mr. KOHL. Mr. President, I would like to take just a moment to thank the sponsors of this legislation, Senator METZENBAUM 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 for dairy products. In doing so, it ensures that all petitions or actions to amend or repeal standards of identity, whether existing or new, will be awarded the same degree of scrutiny that they are now ensured.

Mr. President, the dairy industry has been well serviced by standards of identity. And the industry has worked hard to protect the integrity of its products through the standard of identity process. The current section 8 of H.R. 3562 does not, in my mind, provide as thorough 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 HATCH for their tireless work in developing and moving this important legislation this year.

So, 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 committee of conference on the disagreeing votes of the two Houses, on the amendment of the Senate to the amendment of the House to the bill (S. 580) to require 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 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 16, 1990.)

Mr. BRADLEY. Mr. President, about 2½ years ago, with Congressmen ED 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. Often, such deliberations 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 legislation.

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 1986, 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 course 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 a pathetic 7 percent for 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 an education that might otherwise be unattainable. 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 element 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 sex and the proportion of the entire student body, students who earn a degree reported by race and 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 applauded 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 citizens, 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 education 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 an 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 opportunity. 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 student-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 scholarships in football and basketball.

Some athletic associations, such as the National Collegiate Athletic Association [NCAA], have begun to ensure that this data 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. Most of us think of colleges and universities as tranquil and idyllic places. Many times they are.

But college campuses are not walled off from the broader community. And, as the recent tragedy at 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, we 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 assure 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 KASSEBAUM and Becky Voslow of her staff, Senator HATCH and Laurie Chivers of his staff, Senator COCHRAN and Doris Dixon of his staff, and Senator THURMOND and Craig Metz and Kent Talbert from his office. Terry Hartle, Rusty Barbour and Adele Robinson of the Labor Committee staff spent many long hours working on this bill.

Mr. President, this is vitally important legislation and I urge my colleagues to join me in approving it.

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 addresses 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 behind them—people are 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 have 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 policies that encourage students and employees to report criminal actions promptly and accurately to campus and local police; and, a description of programs designed to inform students and employees about the frequency of crimes and crime prevention. This bill will also require from the colleges and universities statistics concerning the number of arrests for the following crime occurring on campus: Liquor law violations; drug abuse violations; and weapons possessions.

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' knowledge of crime committed 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 well as to prospective students, as a 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 Lehigh University in 1986. Their crusade on behalf of their beloved daughter was to ensure that tragic deaths like Jeanne's be prevented.

Crime on our college campuses has been on the rise, and I believe that until a uniform system of reporting is in place, we will not know the actual scope of campus crime. Although in recent years, many institutions have established crime prevention measures to increase campus security, there also is an indication that when rapes and other violent crime occur on campuses, campus security officers may be disinclined to make such information known or available to the public or the campus community. This bill ensures that all colleges disclose this crucial information, forcing those institutions with poor records to improve their performance.

In addition, I believe that public awareness of campus crime will help awaken parents and students to the reality of modern campus life. This awareness, in turn, will help students to be more careful in observing security precautions. Security is not just the responsibility of school administrators, it is everyone's responsibility. Working together, parents, students, and colleges can most effectively fight campus crime.

Overall, I believe the conference report on S. 580 is a success. The conferees maintained many of the strongest measures in both the House and Senate versions. One provision, however, that was dropped from the Senate bill is of particular concern to me be-

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 agree that it is difficult for a college or university to be responsible 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 reduce campus crimes, will not eliminate this national 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, it is unfortunate that it took the tragic murder of students across the country to create momentum to move this important legislation forward. While Members of Congress reviewed this conference report, students were being held hostage at the University of Berkeley, and prior to that, five students were brutally murdered in Gainesville, FL.

The Student Right to Know Act of 1990 is a glimmer of hope and I applaud its passage by the Senate.

Mr. BYRD. Mr. President, I urge that 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. BENTSEN. 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 1990, 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 emigration, 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 cut through much of the redtape 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 United States in 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 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 BIDEN 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 committee-reported substitute, as amended, be considered agreed to; 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; and 40 percent of these users are hard-core or weekly users.

The use of steriods by our young people is troubling, and steriods are a dangerous threat to the physical and mental health of millions of young people. Steriods 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 steriod use. A soon-to-be-released study will reveal that steriod users, like alcoholics, have an increased risks of developing personality disorders including frequent episodes of depression, anxiety, and violence during steriod 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 steriod use by young athletes is that it is cheating. Athletes cheat themselves, they cheat their colleagues, and they cheat society. For millions of young people, sports offers a chance to learn some of society's most basic values. Those values includes, among others, dedication, drive, and sportsmanship. But the use of steriods threatens to undermine these values. Dedication turns to obsession, drive turns to addiction, and sportsmanship turns to dishonesty.

An athlete does not have to take steriods to become a champion. Athletes like Mike Hall, members of the United States powerlifting team and winner of the gold medal in the superheavyweight competition in France, are drug free. Mike Hall also holds the current record for the most weight lifted by a drug-free lifter—a record he is proud to share with young althletes who think they need steriods to become a champion. I am proud of Mike Hall, who is a native of Delaware.

Despite the serious threats that steriods 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 steriod control efforts.

First, one-third of the illegal steriod supply is diverted from legimate U.S. drug manufacturers;

Second, the FDA has only 38 full-time personnel to control a $300 to $400 million illegal steriods trade;

Third, the FDA investigators have neither the authority nor the expertise to attack the increasingly sophisticated steriods 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 steriods that they produce. As a result, the FDA has no idea of whether steriod 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 steriods 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 steriods—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 steriods.

That is why I introduced S. 1829, the Steriods Trafficking Act of 1990. This bill would attack the problem by designating anabolic steriods as a schedule II substance, in the same category as cocaine. Specifically the bill would further restrict the use of steriods in four ways:

First, it would increase steriod 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 steriods 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 steriods; and

Fourth, the bill would require U.S. demand reduction agencies to incorporate steriods in all federally supported drug abuse prevention, education, and treatment programs.

For many young athletes steriods hold the promise of perfection. The promise is shattered, however, when individuals are faced with the brutal reality of steriod abuse: steriods 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, cosponsor 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

SEAFORD.—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 work in providing a positive role model for youth all over the world and for promoting anti-substance abuse.

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 olympic 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 brought the "Gold home for the United States in a number of world class championship competitions, including the recent competitions in Canada in November. He also won a special competition against known steroid users held in Hawaii.

He has an all-time high lift of 633 pounds in the bench press, 953 pounds in squat lift and 815 pounds in the dead lift.

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 aspirations.

"You are a true leader in the war against substance abuse and have recognized the need to impart the wisdom of natural ability without the use of illegal substances to our nation's youth, long before many who stand on the front lines today."

Hall will be presented with the "Personality of the Year" award by The Leader and State Register publisher, George Terwilliger, at a special ceremony on Jan. 23 in the auditorium of the Seaford High School.

According to Windsor, the sight was considered the "perfect setting" for presenting the award.

"What better place for Mike to be given his award than in front of the very people that he works so hard to impress an anti-drug message upon—the youth?

"We appreciate the Seaford High School staff for allowing us the opportunity to present the award in their auditorium," he said.

AMENDMENT NO. 3127

At the appropriate place in the bill, insert the following:

"SEC. . FREE SPEECH PROTECTION.

Section 1961(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;".

Mr. HUMPHREY. Mr. President, the amendment I offer is important, timely, and has already gained the support of strong majorities of both the Senate and House Judiciary Committees.

In brief, this amendment prevents the abuse of the Racketeer Influenced and Corrupt Organizations Act, popularly known as RICO, as a tool to suppress the exercise of first amendment rights. It simply provides that nonviolent public speech, protected by the first amendment, may not be treated as racketeering activity for purposes of crippling RICO lawsuits.

Mr. President, there is considerable support in Congress for broad legislation correcting widespread abuse of the RICO civil action. The Senate Judiciary Committee approved broad RICO reform legislation this year in the form of S. 438, and the House Judiciary Committee also approved strong RICO reform legislation in the form of H.R. 5111.

Due to the limited time left before adjournment, it seems apparent that neither of the broad RICO reform bills will be enacted this year. However, we can and should enact limited RICO reform in the critical area of first amendment freedoms. I think all members will agree that the RICO statute should not be used as a tool to supress free speech. And for that reason I strongly urge my colleagues to approve the limited RICO amendment I now offer.

The RICO free speech amendment has already been approved by both the Senate and House Judiciary Committees as part of the RICO reform bills. The Senate and House free speech provisions were essentially identical, except that the Senate provision limited the measure to noncommercial speech. The amendment I now offer conforms to the House version in order to provide stronger first amendment safeguards and to avoid overly narrow construction of the provision. But the central provision of the 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 intended 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 limit RICO actions to their original purpose of prosecuting genuine racketeers.

But there is one particular abuse of civil RICO that should arouse the concern of every Member of this body: RICO actions are now being used as a conscious and effective tool to suppress freedom of speech in this country.

As but one example, the U.S. Court of Appeals for the Third Circuit upheld the application of harsh RICO remedies against prolife demonstrators engaged in a protest in Philadelphia. Encouraged by that decision, civil RICO suits are underway across the country in a conscious, concerted effort to suppress the first amendment rights of demonstrators. And in order to have the broadest possible chilling effect on potential demonstrations, these RICO complaints include even persons who merely assist in the organization and dissemination of information concerning demonstrations.

Civil RICO actions are suppressing free speech in this country even as we speak. I have learned that there are reputable organizations which are afraid to even send correspondence supporting demonstrations because they have been made aware that such actions may cause them to be named as a defendant in a RICO suit.

I wish to stress that RICO's threat to free speech knows no ideological or political boundaries. Indeed, some of the Nation's leading liberal champions of civil liberties have been among the leading voices in identifying and condemning this abuse of RICO. Washington Post columnist Nat Hentoff, Harvard Law Professor Alan Dershowitz, and the American Civil Liberties Union have all spoken out forcefully against the abuse of RICO as a tool to suppress protest and demonstrations. Even the Washington Post published an editorial stressing the need for Congress to reform RICO to prevent its misapplication to demonstrations and protests.

Professor Dershowitz provided a convincing statement of the need for this amendment 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 protest 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 prolife demonstrators 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 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 coconspirator in a racketeering scheme.

Mr. President, it is clear that RICO has no proper application to these

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,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Steroid Trafficking Act of 1990".

TITLE I—ANABOLIC STEROIDS

SEC. 101. STEROIDS LISTED AS CONTROLLED SUBSTANCES.

(a) ADDING STEROIDS 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 amount of the folllowing chemical designations and their salts, esters' and isomers:

"(i) boldenone,
"(ii) chlorotestosterone,
"(iii) clostebol,
"(iv) dehydrochlormethyltestosterone,
"(v) dihydrotestosterone,
"(vi) drostanolone,
"(vii) ethylestrenol,
"(viii) fluoxymesterone,
"(ix) formobulone,
"(x) mesterolone,
"(xi) methandienone,
"(xii) methandranone,
"(xiii) methandriol,
"(xiv) methandrostenolone,
"(xv) methenolone,
"(xvi) methyltestosterone,
"(xvii) mibolerone,
"(xviii) nandrolone,
"(xix) norethandrolone,
"(xx) oxandrolone,
"(xxi) oxymesterone,
"(xxii) oxymetholone,
"(xxiii) stanolone,
"(xxiv) stanozolol,
"(xxv) testolactone,
"(xxvi) testosterone,
"(xxvii) trenbolone, and

"(B) any substance which is purported, represented or labeled as being or containing any amount of any drug described in subparagraph (A), or any substance labeled as being or containing any such drug.

As used in schedule II, such term shall not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for such administration, except that if any person prescribes, dispenses, or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed a steroid in schedule II of this Act.".

(c) EFFECT OF SCHEDULING ON PRESCRIPTIONS.—Any prescription for anabolic steroids subject to refill on or after the date of enactment of the amendments made by this section may be refilled without restriction under section 309(a) of the Controlled Substances Act (21 U.S.C 829(a)).

(d) 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 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 if its concentration, preparation, mixture or delivery system, it has no significant potential for abuse, and, at a minimum, shall exempt estrogens, progession 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. 360bb); 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) DATE OF ISSUANCE 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 the treatment of a disease or other recognized medical condition pursuant to the order of a physician is guilty of an offense punishable by not more than 5 years in prison, such fines as are authorized by title 18, United States Code, or both.

"(2) Whoever commits any offense set forth in paragraph (1) and such offense involves an individual under 18 years of age is punishable by not more than 10 years imprisonment, 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' means—

"(A) somatrem, somatropin, and any of their analogs; and

"(B) Any substance which is purported, represented or labeled as being or containing any amount of any drug described in clause (A)(i), or any substance labeled as being or containing any such drug; and

"(5) The Drug Enforcement Administration is authorized to investigate offenses punishable by this subsection.".

SEC. 202. CONVICTION OF SECTION 303(e) OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.

Section 2401 of the Anti-Drug Abuse Act of 1988 (Public Law 100-690; 102 Stat. 4181) is repealed.

TITLE III—FREE SPEECH

SEC. 301. FREE SPEECH PROTECTION.

Section 1961(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;".

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 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.

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 substitute 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:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Injury Control Act of 1990".

SEC. 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. 280b(a)) is amended—

(1) in paragraph (2), by inserting after "grants to" the following: ", or 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 "; and

(C) by adding at the end the following new paragraph:

"(3) make grants to, or enter into coopertive 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 the Public Health Service Act (42 U.S.C. 280b-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 control.".

(c) REQUIREMENT OF REPORT ON ACTIVITIES OF AGENCY.—Section 393 of the Public Health Service Act (42 U.S.C. 280b-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 section 391, 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. 280b-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.

Mr. KENNEDY. Mr. President, the financial and human costs of injury in America are immense; the total lifetime cost of injuries occurring in 1988 is estimated to be $180 billion. Injuries resulting from motor vehicles, falls, and accidental shootings are the leading cause of death for those under the age of 45.

Since 1986, the Centers for Disease Control has studied the incidence of injuries and conducted research and educational activities on the prevention of injuries. The Senate amendment to H.R. 5113, which incorporates the provisions of S. 2631, will reauthorize $30 million in 1991, and such sums as may be necessary through 1995, to allow for an increased effort by the Federal Government in injury control.

I urge all of my colleagues to join us in supporting the Senate amendment to H.R. 5113.

So the bill (H.R. 5113), as amended, was ordered to third reading, was read the third time and passed.

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

The Senate continued with the consideration of the conference report.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. HEINZ. I am prepared to yield the remainder of my time if the Senator from Iowa will do likewise.

Mr. HARKIN. I yield the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back.

Mr. HARKIN. Mr. President, I move to table the motion of the Senator from Pennsylvania, 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. All time having been yielded back, the question occurs on the motion of the Senator from Iowa to table the motion of the Senator from Pennsylvania. The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Oregon [Mr. HATFIELD], is necessarily absent.

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

The result was announced—yeas 52, nays 47, as follows:

[Rollcall Vote No. 305 Leg.]

YEAS—52

Adams	Exon	Metzenbaum
Akaka	Ford	Mikulski
Baucus	Gore	Mitchell
Biden	Graham	Moynihan
Bingaman	Grassley	Pell
Boren	Harkin	Pryor
Bradley	Heflin	Reid
Breaux	Hollings	Riegle
Bryan	Inouye	Robb
Bumpers	Johnston	Rockefeller
Burdick	Kennedy	Sanford
Byrd	Kerrey	Sarbanes
Conrad	Kerry	Sasser
Cranston	Kohl	Shelby
Daschle	Lautenberg	Simon
DeConcini	Leahy	Wirth
Dixon	Levin	
Dodd	Lieberman	

NAYS—47

Armstrong	Boschwitz	Coats
Bentsen	Burns	Cochran
Bond	Chafee	Cohen
D'Amato	Humphrey	Packwood
Danforth	Jeffords	Pressler
Dole	Kassebaum	Roth
Domenici	Kasten	Rudman
Durenberger	Lott	Simpson
Fowler	Lugar	Specter
Garn	Mack	Stevens
Glenn	McCain	Symms
Gorton	McClure	Thurmond
Gramm	McConnell	Wallop
Hatch	Murkowski	Warner
Heinz	Nickles	Wilson
Helms	Nunn	

NOT VOTING—1

Hatfield

So 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 in disagreement 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 RUDMAN, 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 strong trading 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 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 maintaining 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 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 of 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 events 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 diplomatic solutions to the civil war 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 the messages we think we're sending to the difference audiences in El Salvador 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 President would 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 Iraq. President Bush and Secretary Baker have emphasized this point quite strongly in recent weeks.

Given that Egypt's participation and leadership is so vitally 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 at home 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 making our scarce resources go as far as they possibly can. I also want to express my appreciation to them for working with me to take into account programs and policies important to me.

Mr. President, I am especially pleased that this bill includes the text of S. 2267, a 2-year extension of the law I wrote which makes it easier for certain historically persecuted groups of refugee applicants to enter the United States as refugees. That law was enacted as part of the fiscal year 1990 Foreign Aid Appropriations Act. It sunsets on October 1, 1990, and the provisions in this bill will assure that the law will continue in effect for the next 2 years.

The law we approved last year formally recognized that the historical experience of certain persecuted minorities in the Soviet Union and Southeast Asia, and a pattern of arbitrary denials of refugee status to members of these minorities, entitled them to a temporarily relaxed standard of proof in determinations about whether they are refugees.

It lessens the evidence required for Soviet Jews, Soviet Evangelical Christians, religiously active Soviet Ukrainian Catholics and Orthodox, and certain categories of Vietnamese, Laotians, or Cambodians to qualify for admission to the United States as a refugee. Once a refugee applicant proves he or she is a member of one of these groups, he or she only has to prove a "credible basis for concern" about the possibility of persecution. Refugee applicants normally must prove a "well-founded fear of persecution."

The law also provides for the adjustment of status from parolee to permanent resident for nationals of the Soviet Union, Vietnam, Laos, or Cambodia who entered the United States on or after September 1, 1988, and before September 1, 1990, as parolees. Under this 2 year extension, parolees in the specified groups who entered the country after August 15, 1988, and before September 1, 1992, will qualify for this adjustment of status.

This law is working as intended. It has replaced an arbitrary and slow process of refugee adjudication in the Soviet Union and Southeast Asia with a stable, consistent and fair process.

It has meant that people terrorized by longstanding hatred and persecution in their native lands are not further traumatized by a system that does not recognize their suffering, or makes arbitrary distinctions between people who have suffered similar fates. I am pleased that the 2-year extension of this law is included in this bill.

I am also pleased that this bill includes the text of S. 3019, the Iraqi Embargo Compliance Enforcement Act, which I introduced on September 11, 1990.

This language bars U.S. military or economic aid to any country that violates the United Nations embargo against Iraq, except if the President certifies to Congress that: First, it is in our national interest to provide such aid; second, the aid would be used to provide humanitarian assistance to refugees in that country; third, the aid will directly benefit the needy people in such country; or fourth, the government is making a good faith effort to comply with the embargo.

Press reports in September indicated that Iraq had received shipments of food from Yeman, Jordan, Libya, Iran, and Sudan, and that Jordan was getting 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 mission for Iraq along the Saudi border.

There have also been press reports that other countries had considered sending food and other supplies to their citizens trapped in Kuwait. Many 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 violate the U.N. embargo 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 fails, military force may be necessary. Thus, the fate of

both the American hostages and American soldiers depends on the success of the U.N. embargo. It is not too much to ask that those countries which benefit from American largesse also support America and the world in enforcing the U.N. embargo of Kuwait.

This provision puts countries that are considering violating the embargo on notice that there will be real consequences to their actions if they now receive U.S. aid. Second, it gives countries that are already violating the embargo and now receive or hope to receive U.S. aid an incentive to stop violating it.

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; and second, bar countries 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 more than 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 for 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 idea of what a Jewish state means. 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 her 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 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 invaluable 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.

AID TO POOR CHILDREN AND ADULTS IN DEVELOPING WORLD

Mr. LAUTENBERG. Mr. President, I rise in support of the fiscal year 1991 foreign aid appropriations bill, and draw my colleagues' attention in particular to funding I have supported for various programs that aim to help poor children and adults in the developing world.

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 relief. UNICEF's efforts now save 3 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 50 million additional children still at risk over the next decade.

The $100 million provided for child survival activities is also vital to accelerating achievements in primary health care for children. These programs complement UNICEF'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-scale investment projects to promote 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.

AID GRANTS TO U.S. PRIVATE VOLUNTARY ORGANIZATIONS

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 courageous people of Lithuania, Latvia, and Estonia during this difficult period of struggle for their independence. This money will help move them along toward economic independence, and in so doing, support their struggle for complete political independence and self-determination.

Mr. President, 1990 marks the 50th anniversary of the Soviet occupation of these once independent countries. In 1940, Joseph Stalin's Red Army invaded the borders of the three autonomous nations of Lithuania, Latvia, and 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 stripped the Baltic people of a great 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 triumped 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 responded with peace. They have earned their freedom. I fervently hope that they will soon enjoy its fruit.

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-old 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. Now, more than ever, we must support the goal of self-determination and independence, a goal which finally appears to be within reach.

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 up his longstanding demand that the republics 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 the world over as a protector of liberty. We cherish the right of every person to participate in the activities and traditions of his or her 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

Mr. LAUTENBERG. 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 democratic elections and is not engaged in systematic abuse 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 delay free, multiparty elections until after its Communist-controlled Parliament adopts 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 dialog.

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 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 this amendment is included in this bill, expressing the priority our Nation attachés 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:

U.S. SENATE,
Washington, DC, September 26, 1990.

Mr. JAMES A. BAKER III,
Secretary of State,
Washington, DC.

DEAR MR. SECRETARY: I am writing to express my deep concern about events in the Yugoslav province of Kosovo, especially the continuing violations of the rights of ethnic Albanians. I commend your efforts to date, and urge you to continue to press the Yugoslavian government to make good on its Helsinki promises, and to make clear to them that their hopes for increased American business investment are jeopardized by the current situation.

I was pleased that Ambassdor Kampelman raised the issue of Kosovo at the Helsinki Conference in Copenhagen and that the Administration publicly expressed its concern over the situation last June. Congress, 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 hardship for residents of Kosovo. The situation thus requires our continued attention and pressure.

In July, Serbia engineered a referendum to delay free, multi-party elections until after its communist-controlled parliament adopts 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. These events wiped out the small measure of optimism that resulted after the April visit of the Helsinki Commission when there were several positive developments in the situation in Kosovo.

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 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 portrayed in statements to the Helsinki Commission delegation and to the U.S. Congressional Human Rights Caucus. Two factors are apparently being used to justify failure to deal with the problems in Kosovo: human rights violations by ethnic Albanians against the Serbian minority in Kosovo and the separatist motives and violent acts of some ethnic Albanians.

Using violations committed by members of one group to justify violations against that entire group in return is intolerable. Using separatist motives to justify violating human rights does not bode well for other Yugoslav republics where separatist sentiment is on the rise. And, dealing appropriately with violent criminals, no matter what their motives, does not require denying fundamental human rights.

Further, I was disappointed that the State Department's June 29, 1990 statement on Kosovo does not mention that the Yugoslavian federal government bears ultimate responsibility for what occurs in Kosovo, saying: "It is incumbent on the ethnic majority in each republic and province to guarantee 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.

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 Helsinki Commission delegation to do what it could to encourage U.S. business to look to Yugoslavia as a partner for trade and investment. I fear that the potential for political and social instability in Yugoslavia will discourage U.S. business.

I urge you to keep the pressure on the Yugoslavian government through every available channel to end all 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. CHAFEE. 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 basic dilemmas facing the United States is how 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. Israel began a systematic closure of all West Bank schools and universities in October 1987; claiming that they were centers of violence.

On July 20, 1989, I offered an amendment urging 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; Israel once again reopened 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 KASSEBAUM 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 8, 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 administration of occupied territories.

I believe the reopening of Palestinian schools and universities will be helpful in encouraging a new era of goodwill.

POPULATION PLANNING

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 nonsense—the unfounded notion that 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 women of reproductive age. The most striking thing to me is that about half of the countries studied, most of which are developing nations, show a contraceptive use age of less than 15 percent. Another one-fourth of the countries listed show a maximum contraceptive use rate of between 15 and 40 percent, with many being at the low end of the scale.

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 changed my mind * * * I have come to believe 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 the 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 deplore 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.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass.

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Oregon [Mr. HATFIELD] is necessarily absent.

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

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

The result was announced—yeas 76, nays 23, as follows:

[Rollcall Vote No. 306 Leg.]

YEAS—76

Adams	Gorton	Mitchell
Akaka	Graham	Moynihan
Bentsen	Gramm	Murkowski
Bingaman	Grassley	Nickles
Bond	Harkin	Nunn
Boschwitz	Hatch	Packwood
Bradley	Heinz	Pell
Bryan	Inouye	Reid
Bumpers	Jeffords	Riegle
Burns	Kassebaum	Robb
Chafee	Kasten	Rudman
Coats	Kennedy	Sanford
Cochran	Kerrey	Sarbanes
Cohen	Kerry	Sasser
Cranston	Kohl	Shelby
D'Amato	Lautenberg	Simon
Danforth	Leahy	Simpson
DeConcini	Levin	Specter
Dixon	Lieberman	Stevens
Dodd	Lott	Thurmond
Dole	Lugar	Wallop
Durenberger	Mack	Warner
Ford	McCain	Wilson
Fowler	McConnell	Wirth
Glenn	Metzenbaum	
Gore	Mikulski	

NAYS—23

Armstrong	Daschle	Johnston
Baucus	Domenici	McClure
Biden	Exon	Pressler
Boren	Garn	Pryor
Breaux	Heflin	Rockefeller
Burdick	Helms	Roth
Byrd	Hollings	Symms
Conrad	Humphrey	

NOT VOTING—1

Hatfield

So the bill (H.R. 5114), as amended, was passed.

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. LAUTENBERG, Mr. HARKIN, Ms. MIKULSKI, Mr. BYRD, Mr. KASTEN, Mr. HATFIELD, Mr. D'AMATO, 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 for the fiscal year ending September 30, 1991, and for other purposes.

The Senate resumed consideration of the bill.

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 controlled and divided between the distinguished Senator from Idaho [Mr. MCCLURE] and this Senator.

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 certitude 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 receiving it from the House 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.

Mr. BYRD. Mr. President, I ask unanimous consent that no other measure 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

fair in that if we are allowed to control this matter in that fashion.

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

Mr. BYRD. Mr. President, the recommendations by the Senate 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 during conference on the Interior bill last year. It is, by nature, a compromise. It does not please everyone, 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 authorizing committees, 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 moneys. 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 consideration of the Interior 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 rewarding. Senator BYRD took one look at it and said, "Good gosh, 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 from the artists who claim 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 voice concern now about the assault on the Nation's basic values by some of these self-proclaimed artists who insist upon mocking the American people and shocking the sensibilities of the American people and who shield themselves behind the sponsorship of the National Endowment for the Arts, which is a loose cannon in terms of spending the taxpayers' money. To this day, these self-proclaimed artists declare that it is somehow censorship for Congress to even contemplate denying the taxpayers' money to finance and reward the kind of sleeze that has been produced by some of these people who have received Federal grants.

Now, that is the history of it.

Since I first brought up the subject last year, little has changed. If anything, it has become worse. All Senators, I am sure, have seen reports, entirely accurate, of the kind of filth that is going on, produced by people who have received funds from the National Endowment for the Arts in the past 15 months.

The same contrived pronouncements still pour forth from officials of the NEA, along with their allies in the arts community. There has been, in fact, a militant display of disdain for the moral and religious sensibility of the majority of the American people. I do not know how many tens of thousands of pieces of mail and telegrams I have received from people all across the country who agree that they should not be forced to subsidize these obscene materials. Other Senators tell me they also have been deluged with similar letters. The American people are darn well sick of this thing. And the provision included in the appropriations bill is not even a fig leaf. It will not have the slightest effect on the practices of the NEA.

Last year, the arts lobby moved in after my amendment was adopted, and a watered-down, meaningless version was substituted in conference. I could not do anything about that because many Senators have connections to the arts community through their wives or others, and frankly they are afraid politically to do what the American people want them to do. Not all Senators, but some have admitted as much to me personally.

Mr. President, I realize more than ever before that what is involved here is far more than a mere debate about

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 can be wasted if the NEA wants 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 this Republic. That is what is involved. 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.

Let us lay to rest 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, provided it is their own wall and their own crayons. But no, this crowd wants the Government—that is to say the American taxpayers—to pay them for that sort of thing, and this Senator says no.

Censorship is when the Government bans the production, distribution, or display of materials in both the private and the public sector. That is censorship. What we are talking about is merely a question of sponsorship. It does not have anything to do with banning anything. It has only to do with the Federal Government financing it at the taxpayers' expense.

So when the Government refuses to pay for the production and distribution or exhibition of certain obscene materials, it is refusing to sponsor this sleaze.

The Government has no obligation whatsoever to require the taxpayers to subsidize projects that are so far beyond the applicability of constitutional protection that the Federal Government in fact could legally ban its dissemination. But the Government's refusal to pay does not prevent people from displaying or selling such materials at their own expense in the private sector.

The point is, if material is legally objectionable, do not try to dip into the public trough to pay for it.

Let me say again that my respect for Senator ROBERT C. BYRD was enhanced by his reaction a year ago and his reaction now to this sort of thing. I say again that I have always had the highest respect for my friend from West Virginia, and I am even prouder of him today.

The committee report notes that the funding for the NEA has been reduced as a result of the repeated fiascoes during the past year.

Just for point of emphasis, I am talking about things that have happened since the watered-down version of what pretended to be a restraint on this giveaway of the taxpayers' money. Under that version, passed last year, the situation has grown worse, not better, and we have the documents to prove it.

The subcommittee also retained the 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. I regret, however, that this disgusting so-called 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 prominent arts lawyer with a prestigious 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, as 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. I hope so.

Last year's conference report language, which is identical to the pending committee amendment which I seek to amend, has this to say:

> None 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—

> and 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 last year because 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 conduct in a patently offensive way, the Government cannot ban it as long as some art expert at the NEA says it has "literary, 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 language, which I am seeking to amend at this moment, will continue to allow the NEA to fund works that are patently offensive. The issue is simple. If you believe that the NEA should continue to fund works such as the Mapplethorpe photos—and I cannot begin to describe those photos—then vote against my amendment. These photos are so bad that the newspapers, which have been so critical of this Senator and others who have stood up on this issue, would not dare publish one of those pictures in their newspaper. Oh, they publish a picture of Mr. Mapplethorpe, a self-portrait. They publish a picture of a rose. But they do not publish a picture of that naked guy with a bullwhip protruding from his posterior, or any of the other Mapplethorpe trash.

We are not talking about the picture of the rose. We are not talking about the picture of Mr. Mappelthorpe. We are talking about his sleaze, which the American people have been required to subsidize and reward.

So if you believe that NEA should continue to waste the taxpayers' money like that, then you should vote to preserve the committee language and vote against the Helms amendment, because that is exactly what is going to happen.

But, on the other hand, Senators who happen to believe that the National Endowment for the Arts should not be allowed to use the taxpayers' dollars to fund rotten material, such as Mapplethorpe and others, "that depict or describe in a patently offensive way, sexual or excretory activities or organs," I suggest Senators will want to vote for my amendment.

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 Greenburg 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 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 caterwauling about being cut off by their once generous, unquestioning Uncle Sam.

Four of the artists, outraged that their National Endowment for the Arts funding for this year had been vetoed, are 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 smearing chocolate 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 goes back to the uproar over the infamous Mapplethorpe and Serrano exhibits, which initiated the national debate on the entire NEA program.

That debate essentially follows one of two tracks—whether there should be any restriction on government-sponsored art according to content, or whether there should be federal tax support for the arts at all.

A sizable number of observers, this newspaper among them, believe the federal art subsidies ought to be halted entirely as a matter of spending priority. That also would put a stop to all that nonsense from the arts people about censorship and end the haggling over what's obscene and what's not.

On the surface, 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.

What bothers a lot of ordinary people is that by its financial sponsorship of the Robert Mapplethorpes and Annie Sprinkles, their government seems to turn hostile to the values held by them and society in general. There is a disturbing perversity 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 refuse to serve blacks.

To hear some tell it, suspension of federal patronage of the arts and artists would make of the nation a cultural wasteland. But the NEA has existed for just 25 years. Does anyone recall American life in pre-1965 being bereft of art, music, literature and theater?

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 condescendingly put down their critics as unschooled 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 Tocqueville 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 week, appropriations for the arts 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 because their applications for federal grants were turned down by the NEA's governing body. It's not easy to tell how many other grants have benefited these artists—Karen Finley, Holly Hughes, Tim Miller and John Fleck. The assistant managing editor of Chronicles magazine, Katherine Dalton, counts "four or five" grants for Mr. Miller over eight years, and "something like nine" for Miss Finley; the other two got grants just last year. Are they suing for the right of untrammeled artistic expression or to retain a permanent

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 or notoriety by smearing herself with the confection. The critics may be divided over whether this is art, but some of us chocolate lovers are moved to tears by the waste. (Chocolate, as a great philosopher once pointed out, is the definitive refutation of the doctrine of free will.)

The decisive question in this Great Hullabaloo, though it may be lost in all the grand pronouncements and moving manifestoes, is not: Is this art? Surely even critics of the NEA's new caution would not be willing to entrust that timeless question—What Is Art?—to the assorted competencies of American congressmen, bureaucrats and judges. 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 democracy and the fundamental 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 New York City.

A very small minority who oppose federal support of the arts are on a war footing, and they are intent on either killing or crippling the arts endowment."—Rep. Pat Williams, Montana Democrat.

And so hysterically on, all because a lot of folks' reaction to a homo-sado-masochistic-arty photograph, or a crucifix in urine, or a waste of good chocolate is: No Sale. Yes, there are zealots who have exploited the shock value of such artifacts to warn that Western civilization is in danger (it probably, always has been). But NEA isn't censoring the trendy. It has just decided not to finance some of it any more. It shouldn't have to, any more than a private patron should have to buy stuff he doesn't like or that might offend Aunt Matilda if she spotted it hanging in the living room. Just because it's the government that's shelling out the money doesn't mean it can't prefer Norman Rockwell to Robert Mapplethorpe.

Thomas Jefferson argued for the separation of church and state because, among other reasons, no one should be compelled to support the propagation of a doctrine he doesn't share. The mixing of art and state presents the same danger. But because a civilized society has an obligation isn't as possible or desirable. So this democratic society has compromised by funding Public Art and leaving the chocolate-encrusted performances to the private sector. It isn't very neat and it won't satisfy everybody, but it's democracy in America.

Public Art is the aesthetic equivalent of civil religion: limited, decorative, unifying, a little dull, maybe-but a legitimate expenditure of public funds. Outraging the public with its own money isn't. That's an establishment of art; its a way of compelling support from people who would never give it voluntarily. (Rest assured, privately supported art can be just as boring, especially if it is intended to shock. Flicking through the channels on cable TV has much the same effect. Years ago, I read a letter to the editor with a phrase that still sticks in my mind: "It gets boring not having peace of mind all the time.")

Those who want to practice Public Art as if it were the private kind are kidding themselves as well as the rest of us if they believe they can go on indefinitely assaulting the sensibilities of their patron. Even the U.S. government will have its attention caught after a while. And that's just what has happened. The application of various 2-by-4s finally woke up even this bureaucracy.

If a public endowment is to continue endowing, it will have to listen to its master's voice—the public's. That, too, is democracy in America. These grants always have been political; what has changed is the kind of politics being practiced (Surely no one contends that politics is unknown in the art world.) The threat to public funding for the arts doesn't come from the NEA but from those artists who have confused a subsidy with a natural right. Now the paying customers have decided to walk out; that would seem their inalienable right.

[From the SBC Bulletin]

REPORT OF COMMITTEE ON RESOLUTIONS

RESOLUTION NO. 4—ON GOVERNMENT SUPPORT OF OBSCENE AND OFFENSIVE "ART"

Whereas, God has ordained government to do good works; and

Whereas, Southern Baptists have historically supported the constitutional rights of free speech and have opposed censorship; and

Whereas, the Supreme Court has held that obscenity is not constitutionally protected (Roth v. U.S., 1957; Miller v. California, 1973); and

Whereas, the Supreme Court has declared that First Amendment rights of speech and expression do not extend to the possession, production, distribution, or sale of child pornography (New York v. Ferber, 1982; Osborne v. Ohio, 1990); and

Whereas, regulations of pornographic material which is deemed to be harmful to minors has been upheld by the Supreme Court (Ginsberg v. New York, 1968); and

Whereas, restrictions on government funding of art which either denigrates or promotes a certain religious belief are constitutionally permissible; and

Whereas, opposing government funding of art is not censorship of art; and

Whereas, taxpayers should not be forced to pay for those things which violate their consciences as Thomas Jefferson said in 1785, to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical . . .; and

Whereas, it has been revealed that the National Endowment for the Arts has had, in recent years, an increasing pattern of support for obscene, highly offensive, morally repugnant, and sacrilegious "Art;" and

Whereas, Congress is considering various proposals to abolish or reasonably restrict the content of what the National Endowment for the Arts may fund; and

Whereas, the President of the United States and some in Congress are opposing legislation which would either abolish National Endowment for the Arts or government funding for or would impose restrictions on types of art it would fund; and

Whereas, the United States Constitution in no way requires the federal government to fund the arts.

Therefore, be it Resolved, That we the messengers of the Southern Baptist Convention meeting in New Orleans, Louisiana, June 12-14, 1990, call on Congress and the President to set standards which prevent funding of highly offensive, morally repugnant, and sacrilegious "Art," or, if such is not done, cease funding the National Endowment for the Arts.

[From the Nova Law Review, Spring 1990]

ART, THE FIRST AMENDMENT, AND THE NEA CONTROVERSY

(By Jesse Helms)

TAX-PAID OBSCENITY

America* has been caught up in a struggle between those who support values rooted in Judeo-Christian morality and those who would discard those values in favor of a radical moral "relativism." As Congressman Henry Hyde has said, "the relativism in question is as absolutist and as condescending self-righteous as any 16th century [Spanish] inquisitor."

For my part, I have focused on the federal government's role in supporting the moral relativists to the detriment of the religious community. I confess that I was shocked and outraged last year when I learned that the federal government had funded an "artist" who had put a crucifix in a bottle of his urine, photographed it, and gave it the mocking title, "Piss Christ." Obviously, he went out of his way to insult the Christian community, which was compounded by the fact that Christian taxpayers had been forced to pay for it.

As one distinguished federal judge wrote in a personal letter to me,

when a federally-funded artist creates an anti-Christian piece of so-called art, it is a violation of an important part of the First Amendment which guarantees the right of all religious faiths to be free from governmentally-sanctioned criticism. When the National Endowment for the Arts contributes money to an artist for him to use to dip a crucifix in his own urine for public display, it is no different [in terms of church and state entanglement] from a municipality's spending taxpayers' money for putting a crucifix on the top of city hall."

The controversy over Andres Serrano's so-called "art" had hardly begun when it was disclosed that the National Endowment for the Arts also had paid a Pennsylvania gallery to assemble an exhibition of Robert Mapplethorpe photographs which included photos of men engaged in sexual or excretory acts. The exhibit also included photos of nude children. A concerned Borough President in New York City sent me a copy of an NEA-supported publication in New York, Nueva Luz, which featured photos of nude children in various poses with nude adults, men with young girls and young boys with adult women.

All of those "works of art" were offensive to the majority of Americans who are decent, moral people. Moreover, as any student of history knows, such gratuitous insults to the religious and moral sensibilities of fellow citizens lead to an erosion of civil comity and democratic tolerance within a society. Therefore, funding such insults with tax dollars surely is anathema to any pluralistic society.

This was the basis of my offering an amendment to the Interior Appropriations bill to prohibit the National Endowment for the Arts (NEA) from using tax dollars to subsidize or reward "art" which is blasphe-

* Senator Helms represents North Carolina in the United States Senate. He is the Minority Leader of the Committee on Foreign Affairs, a member of the Committee on Agriculture, Nutrition and Forestry and a member of the Select Committee on Ethics and the Rules Committee.

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 and Serrano—which created the controversy. Even so, this weakened amendment has been the target of unfounded and often absurd criticisms.

Opponents of the legislation often make the following unfounded and misleading allegations:

1. Restrictions on federal funding for the arts constitutes direct 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 not 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 crayons. It is tyranny, as Jefferson said in another context, to force taxpayers to support private activities which are by intent abhorrent and repulsive.

The enormous response I have received from throughout the country indicates that the vast majority of Americans support my amendment because 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 in the censorship business for 25 years, which means that the only way to get the government completely out of the "censorship business" is to dismantle the NEA.

By its very nature, the NEA has the duty to establish criteria for funding some art while not funding others. So, those who are crying "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 protest that he has been "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 just the opposite. Anything they regard as "art" cannot be obscene no matter how revolting, decadent, or repulsive. As NEA's Chairman John Frohnmayer told a California newspaper, "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 "ban" it. In order to *BAN* obscenity, *Miller v. California* requires the government to prove that materials: (1) appeal to a prurient interest; (2) depict in a patently offensive manner 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 effort 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 Court stated that, "It is hardly lack of due process for the Government to regulate that which it subsidizes." And recently as 1983, in *Regan v. Taxation With Representation*, a unanimous Court reiterated a litany of cases holding that restriction on the use of taxpayers' funds, in the area of expressive speech, do not violate the First Amendment and need not meet the same strict standards of scrutiny.

Thus, it is unlikely that the Supreme Court would require Congress to use the *Miller* test in its entirety in order 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* standard 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 purposes of government funding.*

Thus, the legal effect of the current law is to prohibit nothing. The NEA can cloak even the most patently offensive depictions of sexual or excretory conduct with "artistic merit" simply by deciding to fund the work, thereby making *legally* non-obscene. This was precisely what the current amendment's drafters intended since they wanted to deceive the public into assuming that federal funding for obscenity had been prohibited—when, as a legal matter, it has not. Since last fall, Chairman Frohnmayer has asserted that he would and could fund the Mapplethorpe exhibit under the language passed by Congress.

5. The original Helms amendment is not enforceable

This is nonsense, and those who say that *know* that it's nonsense. There was nothing vague about it—and the Federal Communications Commission is having no problem making the determination that various broadcasts are indecent and/or obscene. The Postal Service is able to do the same thing concerning obscene or indecent mail. The Justice Department's National Obscenity Task Force has been able to determine what is obscene under the federal criminal statutes.

If the FCC, the Postal Service, and the National Obscenity Task Force can handle *their* responsibilities in this regard, why cannot the National Endowment for the Arts do likewise?

6. The amendment chills artistic expression

The "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 has funded only about 20 controversial works out of 85,000 grants over the last 25 years. (This, by the way, is statistical manipulation, but that's an argument for another day.)

The point is this: The "arts community" cannot have it both ways. Either the NEA is funding so many controversial works that eliminating such funding will devastate the arts community—or the NEA has funded so few (20 in 25 years) that an obscenity restriction could have no more than a negligible impact.

My response to the first argument is that if art in America is so dependent on obscenity in order to be creative and different, then Congress has a duty to the taxpayers to shut the NEA down completely, thereby slowing America's slide into the sewer. My answer to the second argument is that if so few offensive works have indeed been subsidized by the NEA, why all the fuss from the "arts community"?

In summary, the National Endowment for the Arts has always had the responsibility and the duty to decide what is and is not suitable for federal funding of the arts—and that has been precisely the problem. The NEA has defaulted upon that responsibility. It has been insulated from mainstream American values so long that it has become captive to a morally decadent minority which delights in ridiculing the values and beliefs of decent, moral taxpayers.

It should therefore be evident that as long as the NEA is given the *sole* authority to decide what is artistic—and thus not obscene—the agency intends to continue to fund obscenity under the pretense that it is "art"—even when the taxpayers disagree. Congress, at a minimum, should use the entire *Miller* test by allowing a panel of lay citizens—and not the self-appointed elitists at the NEA—to decide whether patently offensive works merit taxpayer funding.

Or Congress could just adopt my original amendment, and let the "art community" continue to howl.

[From the Policy Review, Fall 1990]

ABOLISH THE NEA—GOVERNMENT IS INCAPABLE OF DETECTING ARTISTIC GENIUS

(By André Ryerson)

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 awarded a subsidy, say, to General Motors for its Cutlass Supreme Sedan, or to Ford for its Taurus wagon. It is likely that the news media together with the auto 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 cheering 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 liable to error in the long lens of time, where personal taste reigns with magisterial indifference to modes of scientific verification—the arts—we find our government selecting among artists which are worthy 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 sight. In recent years, however, with the rise of photography and "performance art" to places of prominence, the awards the NEA has made in these more accessible art forms have captured media and public attention as never before. With public scrutiny, cries of indignation were not long in coming at the extreme vulgarity of many works supported by the NEA, works of varying technical accomplishment but certain to offend the religious, moral, and aesthetic sensibilities of ordinary Americans.

The downward spiral of taste that the art world has suffered in recent decades follows, in large part, from a mistake about the nature of art that arose from an accident of history. In the 19th century, middle-class mores became wedded to officious norms of academic art, so that the genuine artists of the day, without trying to shock anyone and merely by creating original works, appeared as revolutionary iconoclasts who threatened the social order. Ironically, some of the most brilliant figures of that was emerging as modern art, Manet, Degas, and Cézanne, were men of middle-class values and conservative politics. Neither they nor their liberal colleagues had any intention of overthrowing the social order with their work, a fact attested to by what they had to say for their art and even more by the paintings themselves. Cézanne spoke of achieving classical ideals by handling nature through "the cylinder, the sphere, the cone, all placed in perspective," and by distilling visual essentials in a painting, "producing pictures that are a lesson." Both in creating art and collecting, Cézanne recommended not radicalism, but taste: "Taste is the best judge. It is rare. The artist addresses himself only to an exceedingly restricted number of individuals." He did not consider critics prominent in this group of the elect, though they have since come to dominate the discussion of what constitutes art. "Discussions about art are almost useless," remarked Cézanne. "The labor that achieves progress in one's own craft is sufficient compensation for not being understood by imbeciles."

Impressionist painting's "shock value"—a novel factor in art history—was clearly incidental to the aesthetic value of its works. None of the world's great art until then, through some 5,000 years of labor, had ever been certified as superior by indignant public outcry against it. But ever since the fuss that greeted Impressionism, public scandal has become a convenient "proof" of aesthetic authenticity. By dint of some very sloppy reasoning, the accidental became confused with the essential—at least for certain cultural elites—and a series of simplistic tenets took root: To express the self is to shock. Art is expression. Therefore art must be shocking.

The shallowness of this syllogism is rarely plumbed by the gallery directors, museum curators, art critics, and foundation heads who embrace and propagate it, among other reasons, because it makes connoisseurship an instantly acquired skill. For while judging the intrinsic merit of a new work of art is extremely difficult, virtually anyone can identify which play or painting is likely to be the most shocking to the average citizen. To fall into this basic error is lamentable enough for gallery managers and theater directors restlessly in search of clients. It is wholly unacceptable as the national arts policy of a government of, for, and by the people.

MORTAL CONNOISSEURS

The case for making the NEA more discerning with the people's money has been argued by some capable politicians, including Congressman Henry Hyde (in *National Review*), and by thoughtful art critics such as Samuel Lipman (in *Commentary*). Unfortunately, they err by recommending better judgment at the NEA to clean up the prevailing mess, instead of seeing that the very enterprise of selecting certain artists to receive grants, while rejecting others, is not an appropriate function for a democratic government.

The scandal has resurrected the old question, "What is art?" It has also added a new one to the agenda, "Why have an NEA?"

People outside a given field tend to trust its practitioners with more expertise than they actually possess. Disappointment follows from discovering that doctors do not have all the right answers and occasionally have the wrong ones, that judges do not always know the law, and that professors can be narrow-minded and ignorant. The recent scandal at the NEA should add to our wisdom in this regard, since it involves state-appointed connoisseurs selecting works of art judged so superior to the norm—a man squashing beetles on his chest, a woman defecating on stage, a porn queen inserting a speculum in her vagina to offer the audience a peek, lesbians inflicting wounds on themselves to prove that ours "is a sick society," a crucifix photographed in a jar of urine, a young girl photographed to reveal her genitals, a homosexual with a whip stuck in his rectum—that these achievements deserve the gift of taxpayers' money plus the imprimatur "funded by the NEA."

The whole misadventure ought to instruct the public that artists and art connoisseurs are no less mortal than the rest of humanity, and no more to be trusted to steer the ship of art than generals are to be trusted to choose our wars.

The brouhaha at the NEA obscures, by the very outlandishness of the works rewarded, that even in the most trustworthy and mature hands, ascertaining the value of contemporary art is fiendishly difficult. A great hoax is played on the public when the belief is sponsored that objective criteria exist to discern superior art from the ordinary, the way a consumer service can test the nutrition in a loaf of bread or the acceleration of a given car. And that is why most conservative critics of the NEA, in their moderation, are at odds with the past two centuries of experience, which teach us that there is no sure compass, certainly no unbiased trail guide, in the wilds of contemporary art. At least two generations must pass before any sort of meaningful judgment can be made about the lasting value of a newly minted sculpture, painting, play, or sonata. Critics are needed, certainly, to pass immediate judgment so that we may bestir ourselves to see and hear what in time may prove enduring. But their judgment is fallible and should not be endowed with a perspective it lacks and which only time can provide.

Nor are artists themselves possessed of this gift where the assessment of other artists is involved. An anecdote from the 19th century makes the point. A young painter went to see Manet, the great inaugurator of the Impressionist revolution. The master carefully looked at the young man's canvases, then told him the hard truth. He had absolutely no talent, and ought to find some other vocation. The young man, as it happened, ignored the expert's well-intended advice. His name was Renoir.

When Cézanne was shown some paintings by Van Gogh and asked what he thought of them. Cézanne opined that they were simply the works of a madman.

We expect some professional jealousy in any field, whether among lawyers, doctors, or auto mechanics. But what makes the arts different is that technical skills that are central to other professions are not central to the value of a work of art. Cézanne got lower grades for drawing at the lycée than did his companion Zola. But Cézanne became a great artist despite his awkward draftsmanship because of the quality and power of his vision. Art, as Proust underlined, is above all not a matter of technique, but of vision. And to cultivate a unique 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 no guarantee against poor judgment, not to mention cabals, cronyism, 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 spirit, the embodiment of ideals all too unattainable in politics or commerce? Yes. And that is precisely why the funding of the arts in 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 swings of art fashion that anoint one coterie today and another tomorrow, or by trying to check or balance them by throwing state influence and power behind some others.

The response of a rigorous laissez-faire capitalist to the entire question would be that art is a commodity like any other, and those who want the product should pay for it. 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 only haphazardly?

Some answers are fairly easy. If we want more people to appreciate art, to visit museums with their children, and to invest their taste in an occasional print or painting, an 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 of our cultural 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 pace 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 selection than presently prevail, however, 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, arguably, might prove more distinguished than that of many foundations, and easily of the National Endowment for the Arts.

PART-TIME WORK

Beyond these rather conventional ideas in support of art are innovations yet to be attempted. Once we honestly admit to having no institutional method for identifying greatness among contemporaries (beyond success in the marketplace), we can see that any institutional role for government should aim at helping artists as a class, rather than playing at the roulette wheel of identifying genius.

One innovation of this sort would involve the tax code, to allow artists deductible losses without a limit of years after which the activity is deemed "a hobby," as is presently the case. Another might involve collecting. If we agree that buying art is desirable but beyond the means of ordinary citizens, a tax deduction could be granted for money spent to participate in "art clubs" to buy art and circulate the works among members who share similar tastes, creating, in essence, fluid mini-museums in the private sphere. (This is how Ben Franklin launched what eventually became our system of lending libraries.

On the supply-side of the equation, creating art is a financially hazardous choice among vocations. Yet the risk is widely understood and appreciated. The overriding desire of any artist is to secure, not money, but time—the time needed for creative work. Society has no obligation, however, to sustain every self-declared artist—although the Dutch have attempted this with a workfare-for-artists scheme, paying basic salaries and filling countless warehouses with paintings no one sees or cares about. Dutch artists themselves find the system somewhat depressing, and there appears no great push to repeat the experiment elsewhere.

What remains possible on the part of both government and business is a modest, if neglected, gem of an idea; part-time work.

Flexible work schedules have long been demanded by feminists alert to the special problems of working mothers. Industry is awakening to the need for part-time professional schedules because without them superior workers are leaving. But the concept of part-time work has much wider applications. Whole categories of people, not just mothers, would benefit from the option of part-time work. While some jobs are not susceptible to such arrangements, many others are, and the advent of fax machines and modem-linked computers is loosening and decentralizing the modalities of much traditional work. More fluid work schedules would also make better use of office and factory equipment than does a rigid 9-to-5, five-day week, and would also relieve commuter gridlock and its attendant auto pollution and waste of time.

Yet there remains a suspicion that anyone wishing to work part-time is not to be taken seriously. However, studies reveal that part-time professionals have higher rates of productivity than the 60 to 70 percent levels of full-time workers, and in professions with high "burnout" rates, part-time professionals perform above standard.

With part-time work, both professional and unskilled, made more available, an ambitious but unknown artist would be able to work two 10-hour days, receiving exactly half the salary and benefits of his 40-hour co-worker, and still have five full days a week to pursue his art. He would be self-sustaining, a burden on no one, accepting a more ascetic standard of living in order to pursue a creative ideal.

AMATEUR TREASURES

One can imagine an objection, nonetheless, that would run as follows: "We don't want people working less and producing less: we want them working more. And we certainly don't want a large army of persons playing at art. We want artists who are skilled, competent, in demand, and who work at art full-time. In a word, we want professionals, not amateurs."

The answer to these points is, first, that in a free society people should be able to buy a very precious commodity: time. As we steadily become more affluent in the decades and centuries ahead, more people are going to prefer time to a second or third car in the garage, whether to watch their children grow or to pursue a neglected talent. Time will be seen as the ultimate luxury, and while some will waste it, history shows that leisure has permitted many of the finest works of art and philosophy to arise. And, yes, their authors were very often "amateurs," in that no one was prepared to pay them for their work.

The list of philosophers who were amateurs begins with Socrates, who earned not a drachma for his ideas, and includes Descartes, Locke, Bacon, and Spinoza, whose livelihoods were, respectively, artilleryman, tutor, judge, and lens grinder. Poetry would scarcely exist but for its amateurs, who include Villon, Keats, Baudelaire, Rimbaud, Mallarmé, Whitman, and Dickinson, who earned their living at everything from picking pockets and teaching English to working as a Washington bureaucrat. Proust was an amateur novelist, as were Jane Austen and Stendhal. In discursive writing, Montaigal was one of our more distinguished amateur essayists, as were Pascal and Thoreau. In painting, the names of Degas, Cézanne, Van Gogh, and Modigliani are emblematic of artists who spend most of their lives working at their easels without pay. Western civilization would be a sorry thing without its ledger of unpaid work and the heroism of its visionary amateurs.

DECENTRALIZING JUDGMENT

Other ideas to advance the arts need to be explored. But our ultimate goals and established truths need to be kept in view. The last thing we should want for a democracy is a government rhinoceros attempting to arrange the china shop of aesthetic preference. Nor does it matter whether the disruption proceeds from a belief that art is a tool for improving the people (the old Communist thesis of socialist realism) or from the belief that government is competent to identify artistic genius and reward it (with grants from the NEA for "cutting edge" artists).

The distribution of grant money to a chosen few assumes a wisdom that government does not possess, and affords it powers it does not deserve. A free society naturally develops a healthy pluralism of competing tastes and preferences, whether in cheeses, wines, books, or art. The ethos of a free society aims at decentralizing opportunities and power, not narrowing them. In diversity is strength. This applies as much to art collecting and connoisseurship as to art creation. Only by encouraging widespread, spunky and independent judgment among the public do we improve our chances that an Emily Dickinson or a Cézanne will be identified while still alive. Quite the reverse will occur by "letting the government" take care of what government is utterly ill-designed to do—discern subtlety of expression and artistic genius. Through the NEA we are fostering the worst of all worlds. We are institutionalizing the nation's taste, and doing so at the lowest level of sensationalist vulgarity.

DEATH OF PATRONAGE

The recent scandal of government funding may prove a blessing if the policy implications behind the events are plumbed to their root. The enterprise of identifying enduring art has no agreed-upon criteria, for its standards are hotly debated by critics, curators, and the artists themselves. Government, least of all, is suited to select the worthies amid the crowd. Government has no special authority or expertise whatever in the arts, and its role should be one of a strictly neutral agent so far as regards the success or failure of this artist or that, this school or another.

We should recall that Shakespeare, Rembrandt, Shelley, Keats, and countless other great artists did not depend on government grants to create their works. Their support came from private patrons. Even when governments played a role, it was mainly for the purchase of art in public places—usually sculpture—the selection of which enjoyed broad support. The Church was a great institutional patron, whose place today has been largely taken by corporations and foundations. What is new in recent decades is a widely noted decline in independent taste, An elitist herd mentality has begun to steer the art support process, with timid 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 this taste. We badly need such patrons 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 sorting process and enter the pantheon of the finest painters and poets of the age. In some sense, this is a fundamental condition of art. As Andre' Malraux put it: "Art obeys its own peculiar logic, all the more unpredictable that to discover it is precisely the function of genius."

ART-STATE SEPARATION

The closest policy model to consider might be the government's relation to religion. The tax code grants religious personnel and institutions general advantages on the grounds that religious faith serves society in moral and spiritual ways distinct from the works of commercial enterprise. But we forbid the government from favoring one sect over another, this faith over that. The faiths and sects must compete among themselves for public favor in the marketplace of belief. The state establishes rules of fair play, but otherwise does not meddle in the free choice of individuals and voluntary groups.

The same policy should operate in the arts. The government has no business favoring one school of art over another, or awarding funds to this painter rather than to that. It lacks the competence to do so, because discernment in as personal and private a matter as art is as unsuitable to public measurement as religious faith.

An enlightened arts policy for a free society must respect the diversity that freedom creates, limited only by the frontiers of morally acceptable behavior as defined by law. Government may serve in a general way to facilitate activities deemed good. But where diversity of private taste contends, the state must stand aside.

Mr. BYRD. Mr. President, I ask unanimous consent that the time on amendments be controlled and divided in accordance with the usual form.

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

Mr. BYRD. Mr. President, I ask unanimous consent that the time in opposition to this amendment be under the control of Mr. PELL.

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

Mr. HELMS. Mr. President, may I inquire about the time situation?

The PRESIDING OFFICER. There is 9 minutes 31 seconds controlled by the Senator from North Carolina. The Senator from Rhode Island controls 24 minutes, 28 seconds.

The Senator from Rhode Island.

Mr. PELL. I thank the Chair. Mr. President, I appreciate the arguments and the thoughtful way the Senator from North Carolina has presented his amendment.

I think what this amendment does is seeks to impose content restrictions on projects funded by the endowment. These content restrictions go much further than those funded by the Congress in the fiscal year 1991 Interior Appropriations Act.

The Helms amendment attempts to address offensive depictions of sexual activities. The term "patently offensive" is derived, as we know, from the Miller decision which established a 3-prong test for obscenity. The Helms amendment does not leave the decision about what is obscene to the courts, as we have done in the past. He would exercise prior restraint on matters that may be perceived in the future as offensive.

As we know, prior restraint has been ruled as unconstitutional. The Miller standard uses the judgment that the word "project" would be patently offensive according to community standards. There is no accommodation of the community standards. Obviously, community standards in Los Angeles would differ a little bit from that in my home town of Newport, RI. Standards differ all around. As the saying goes: "beauty is in the eye of the beholder" and I believe it is correct to say that "obscenity is also in the eye of the beholder."

In general, there are some broader questions we will get to when this amendment is being decided upon, one way or the other, and we will make the arguments in full for even moving further away from the directions Senator HELMS would like us to move.

In that regard, too, I believe that any agency that has produced about 85,000 grants with only 20 being lemons is a pretty good record in the Federal Government. I only wish I could say the same for many other Government programs. I appreciate the arguments, and we will get on to a vote shortly. I yield such time as he desires to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I also appreciate the work of the distinguished Senator from North Carolina. He has been, I think, one of the vociferous voices against some of the improprieties that many have criticized with regard to a few grants that the National Endowment for the Arts has at least in the end result, helped to fund.

I think because he has raised this issue, he has been vastly criticized by some. I think some of the criticism has been very unjust. He has gone through a lot of pain, but he is very sincere and he has raised some very important issues here.

I think every one of us in this body, does not want to see patently offensive art in any form, whether it depicts patent sexual activity or excretory activities or organs. I think most people probably would agree with that. But when you start defining what that means, that is where you get into difficulties.

Any time you put a content restriction into the field of art, you are saying you may have difficulties with art that is even good, with art that is excellent, art that in certain ages and in certain times and certain places is offensive to the people there, but becomes major art accepted by the world a century or two later.

So content restriction, it seems to me, is the real issue. I have to say, along with the distinguished Senator from Rhode Island, that when an agency of this Government does 85,000 plus acts and it is criticized maybe 20 times, that is a super extraordinarily successful agency of Government. Not all 20 are going to be found offensive by everybody. Maybe there are more. Maybe there are 100, if you really go through all the 85,000-plus grants, that some people will find offensive. In fact, I think some people will find anything that the National Endowment for the Arts funds offensive, but I am talking about the general public at large.

The question is, do we want to continue with the National Endowment, do we want our artists to have freedom of expression that might lead to the new Michelangelo? I know people today who would be offended by some of Michelangelo's works. The very fact he would have the ambition and temerity to depict God might be offensive to some people. Because he did, we have been inspired for years in the Sistine Chapel and elsewhere.

I know art that would be criticized by some people no matter what it is. I also know that there are certain people who would like to do away with the National Endowment for the Arts and use this particular issue, 20 criticized works of art or approaches to art, some of which I highly criticize, as a means to do away with an agency that has done good all over America.

Mr. President, the problem with content restriction is that it is very diffi-

cult to define what it means and what a recipient will do in advance. We do not want to limit creativity, and it seems to me, that works have to be judged in totality and in content. What may be offensive to the distinguished Senator from North Carolina and me, may not be offensive to a large group of people out there who are better purveyors of art than we are. In his amendment, it is not clear who makes this decision about what materials "depict or described in a patently offensive way, sexual or excretory activities or organs."

This is no way to recapture the funds in this amendment, if there was a way of defining exactly what is meant by his amendment. So there is no way to recapture the funds that will be spent in violation of his amendment, because the only way you can find it in violation is after the fact. Frankly, there is no definition of what patently offensive means. I contend there will be as many definitions as there are different groups of people in our society as to what is or is not patently offensive.

The Supreme Court has spent decades trying to define what obscenity and pornography really are, and they still have not quite defined them. In fact, I think they are as far away today, from a definition, as they were when the first case came before the court. They have outlined some definitions. There are at least some guidelines in the Miller case, but they still leave it up to the local community.

As we all know, the Miller case says that the average person applying contemporary community standards, if that average person applying community standards, would find that the work taken as a whole, appeals to the prurient interest in sex; if the work depicts or describes, in a patently offensive way, sexual conduct; and if the work, when taken as a whole, lacks serious literary, artistic, political or scientific value, then a jury can find that work to be obscene or pornographic. The court really does not define any of those terms themselves. So that is the problem with having content restriction. I think there are the protections provided to recipients of NEA funds.

Mr. President, I do not intend to prolong this. I know what the distinguished Senator from North Carolina is trying to do. I admire him for it. I just happen to disagree with the approach.

What I would like to do, Mr. President, is call people's attention to the amendment that we will file immediately after this one, whether it is adopted or not, because in that amendment we think we provide for sanctions that will work, that will be acceptable to the community, of those who participate in the arts and want to participate in the arts, sanctions and procedural protections, that we think will lead to excluding even more than the 85,000-plus grants of the NEA have done so far, works that the community as a whole, the country as a whole, the people as a whole, would find patently offensive.

But we leave it up to the people who are skilled in the arts to do it. We think there are the incentives in the amendment that we will file afterwards, that will accomplish everything the distinguished Senator from North Carolina would like to accomplish, without the content restrictions, and without trying to bind the artistic community in a way that its freedom of expression will be hurt.

Mr. President, I appreciate what the distinguished 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.

Mr. McCLURE. 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 criminal standards, 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 dabate.

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 about 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 serve 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.

Now, 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 play gynecologist on her with a flashlight. She brazenly declared, "Usually I get paid a lot of money for this, but tonight its' Government funded."

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 repulsive, in my judgment, than Robert Mapplethorpe's. I have attempted to have some copies of them sent over here for Senators to look at them, 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 still gave 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 dab blamed 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 crude, 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 politically. The Senator has described the retribution he has suffered at the hands of that community for his temerity in standing up against this waste of taxpayers' funds.

So my hat is off, as it so often is, to the Senator from North Carolina for being right on the issue, and having the courage to stand up and to make his case so powerfully.

I hope Senators support him. I would go farther, frankly, than the Senator from North Carolina. Just the other day, I remind 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 others on the excuse 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 this kind of stuff. It is a favor for a 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 subsidize the exercise of that 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. PELL. 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 which, as we know, is not protected speech. And to those who say that the Government should not be in the business of using the taxpayers' money to support 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 creatures 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 repul-

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 have 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 appointee and 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 subsidizing.

If the Senator will forgive me, I do not follow his line of reasoning. Let me use the remainder of my time to read the text of 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 taxpayers' 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 not.

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?

There is a sufficient second.

The yeas and nays were ordered.

Mr. PELL. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator controls 5 minutes and 30 seconds.

Mr. PELL. I yield to the Senator from Colorado for a minute, and I would like to retain the remainder of my time.

Mr. WIRTH. I thank the Senator. I will be brief. I had not intended to speak on this amendment until I heard the Senator from New Hampshire talk about the investment of $1 million and getting back $145 million in pandering.

That kind of a discussion and kind of analysis is simply inappropriate on the floor of the U.S. Senate, Mr. President. It is certainly not the level of debate that we ought to have on what is a fundamentally very important issue related to freedom of expression and freedom of speech in the greatest democracy that the world has known.

Mr. President, for more than a year the public, and consequently the Congress, has vigorously debated the National Endowment for the Arts [NEA] and how it does its job. Its job is to fund thousands of programs and productions across the United States, to encourage and sustain a climate where artistic efforts can flourish, and to bring this art to the view of the public.

Last year, in reaction to the support of the work of Andres Serrano and Robert Mapplethorpe, the Congress cut the appropriation for the NEA by $45,000—the total amount for these two grants. Congress also restricted the content of projects receiving grants, leaving it up to the officials of the NEA to determine what is appropriate and what is not. Declaring that these content restrictions would be only temporary, Congress created an independent Commission, composed of members appointed by Congress and the administration, to examine the grantmaking process of the endowment and make recommendations for a more permanent solution. This solution was to be considered during the NEA reauthorization—clearly a more appropriate vehicle than an appropriations bill.

Well, Mr. President, we find ourselves in the waning days of the 101st Congress without the promised reauthorization for the National Endowment of the Arts. Rather, what we find in the Interior appropriations bill is a simple extension of the misguided policy from last year. I opposed these subjective content restrictions then, and I oppose them today—as does 80 percent of the mail I have received from my fellow Coloradans.

Mr. President, the Senate does not have to accept this continuation of business as usual. The Independent Commission has finished its work and made its recommendations. The authorizing committees in the House and the Senate have reported legislation—in large part reflecting these recommendations—and the House has even found the time to approve its version. I believe that the Senate can act in a similarly responsible fashion.

Today, Senators HATCH, PELL, KENNEDY, and KASSEBAUM are offering an amendment to replace the obsolete language currently contained in the bill we are considering. This proposal reflects elements contained within the Senate reauthorization legislation currently pending on the calendar, as well as certain concepts found in the House bill.

The amendment would permit a court of law to determine if the nature of the work is obscene. In the event that a court so rules, the artist or group would be required to repay the grant. Failure to repay would result in loss of eligibility for any future NEA funding.

Mr. President, this amendment will assure us that if an artist creates or produces an obscene work, he or she would be liable for that error. But it would remove the decisionmaking process from politically influenced bureaucrats and it would be made with sufficient due process.

I oppose legislating a moral code on the value of particular works of art. But this amendment we are now considering is a reasonable compromise, one that can work and should be adopted.

Mr. President, the formulation of policy from heated reaction to public controversy is a sure-fire way to make bad decisions. The continuation of such a policy is worse. I urge my colleagues to adopt the Hatch-Pell approach.

Thank you Mr. President, and I yield the floor.

Mr. PELL. Mr. President, I yield 1 minute to Senator ADAMS, who is a cosponsor of the amendment.

Mr. ADAMS. I thank the Senator from Rhode Island very much. I rise in opposition to the amendment of Senator HELMS and in support of the amendment of Senator HATCH, which is an excellent amendment.

Mr. President, I am alarmed that this bill once again contains restrictions on what is art. How can we, as responsible policymakers, vote for a bill that includes language that essentially forbids Federal funding for art that "may be considered obscene?" Almost anything "may" be considered obscene by some. As a young district attorney, I once was asked by enforcers to prosecute a man signing his name as Hugo N. Frye, or "you go and fry," for sending a horse dropping placed in a milk carton through the mail to a Federal district judge, alleging it was sending obscenity through the mail.

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 contained in this appropriations bill and to support the amendment offered by Senator HATCH.

The amendment before you is similar to the compromise adopted by the Labor and Human Resources Committee. The House has supported 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 sanctions. They would be prohibited from receiving 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.

Since 1965, 100 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 of expression 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 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 worldwide respect and admiration 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 1990'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 make this process possible.

The value of an open creative process to an entire society cannot be judged solely by one or two 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, 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, including Trenton, NJ, came 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 the redevelopment of a waterfront 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 on politics, finance, social services, 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 what makes a city successful is the quality of the environment it offers."

Besides Trenton, the Mayors Institute has brought to the University of Virginia the mayor 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 only 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 Nation. In New Jersey, it has helped millions of families enjoy the Hoboken Chamber Orchestra, the McCarther 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 successes 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 Endowments 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 are 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, cards, and phone calls from Iowans expressing their concerns about Federal funding for the arts 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 such offensive exhibits. To do this in the name of free speech is even more revolting.

Mr. President, Senator HELM'S amendment, which simply seeks assurances that taxpayers' money will not be misused, hardly infringes upon an artist's freedom of speech or expression. Artists who are intent on such depictions need not apply for Federal funding.

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.

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 that, 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.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Oregon [Mr. HATFIELD] is necessarily absent.

The result was announced—yeas 29, nays 70, as follows:

[Rollcall Vote No. 307 Leg.]

YEAS—29

Armstrong	Grassley	McConnell
Burns	Heflin	Murkowski
Byrd	Helms	Nickles
Coats	Hollings	Pressler
Cochran	Humphrey	Roth
Conrad	Kasten	Shelby
Dole	Lott	Symms
Exon	Mack	Thurmond
Garn	McCain	Wallop
Gramm	McClure	

NAYS—70

Adams	Durenberger	Mikulski
Akaka	Ford	Mitchell
Baucus	Fowler	Moynihan
Bentsen	Glenn	Nunn
Biden	Gore	Packwood
Bingaman	Gorton	Pell
Bond	Graham	Pryor
Boren	Harkin	Reid
Boschwitz	Hatch	Riegle
Bradley	Heinz	Robb
Breaux	Inouye	Rockefeller
Bryan	Jeffords	Rudman
Bumpers	Johnston	Sanford
Burdick	Kassebaum	Sarbanes
Chafee	Kennedy	Sasser
Cohen	Kerrey	Simon
Cranston	Kerry	Simpson
D'Amato	Kohl	Specter
Danforth	Lautenberg	Stevens
Daschle	Leahy	Warner
DeConcini	Levin	Wilson
Dixon	Lieberman	Wirth
Dodd	Lugar	
Domenici	Metzenbaum	

NOT VOTING—1

Hatfield

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. President, 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 Committee 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 my amendment until this is disposed of. If it takes longer, it does.

Mr. BYRD. Mr. President, I do have. I am attempting to accommodate the Senators and I will accommodate them. If they need 15 minutes——

Mr. STEVENS. Let me assure the Senator, the Senator 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 not 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, BINGAMAN, 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. BINGAMAN, 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 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';

"(8) in subsection (c) (as designated 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 last sentence of subsection (a)' and inserting 'subsection (d)'; and

"(11) by adding at the end thereof the following new subsections:

" '(h)(1) 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 representation by—

" '(i) creating an agency-wide panelist bank, containing names of both qualified arts professionals and knowledgeable lay persons that have been approved by 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) require, where necessary and feasible, the increased use of site visitations to view, and issue a written report on, a work of an applicant in order to assist the panel of experts in making recommendations;

" '(D) require a written record summarizing all deliberations and recommendations of each panel of experts;

" '(E) require that the membership of each panel of experts change substantially from year to year, with no appointment to a panel of experts to exceed 3 consecutive years; and

" '(F) require all meetings of the National Council on the Arts 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 on the date such application is submitted 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)(1) 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 found to be obscene under State 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 produced such project or production or in the State or States described in the grant award as the site or sites of the project or 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—

"'(i) used funds received under section 5 to create or produce the project or production 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 to be determined by the Chairperson of the National Endowment for the Arts, that shall be not less than 3 years after the date such project or production if 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), whichever is longer.

"'(3)(A) Except as provided in paragraph (4), funds required to be repaid pursuant to the provisions of this subsection shall be repaid not later than 90 days after the date such project or production is found to be obscene or to violate child pornography laws pursuant to the provisions of paragraph(1).

"'(B) If a State, local, or regional agency or arts group received funds directly from the Chairperson under section 5 and awarded all or a portion of such funds to an individual or organization that used such funds to create, produce or support a project or production found to be obscene or to violate child pornography laws pursuant to the provisions of paragraph (1), and the Chairperson determines that such individual or organization has not or is not able to repay such funds in accordance with the provisions of paragraph (2) and this paragraph, then such agency or group shall repay such funds to the Chairperson not later than 30 days after the expiration of—

"'(i) the 90-day period described in paragraph (3); or

"'(ii) the waiver period described in paragraph (4).

"'(C) Each individual or organization required to repay funds pursuant to the provisions of subparagraph (A) of paragraph (2) shall be ineligible to receive further funds under this Act until such funds are repaid.

"'(D) If a State, local, or regional agency or arts group is required to repay funds pursuant to the provisions of subparagraph (A) of paragraph (2) or subparagraph (B) of this paragraph and fails to make such repayment in accordance with the provisions of this subsection, then such agency or group shall be ineligible to receive funds under this Act until such funds are repaid.

"'(4) The Chairperson of the National Endowment for the Arts may waive the provisions of paragraph (3)(A) for a period not to exceed 2 years.

"'(5) 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 10(i) of such Act regarding repayment of funds and debarment."

"'(7) The Chairperson 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 wants 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 at the same time.

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 langauge 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 two 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, address the issue head on and provides 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 signifcant 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 good steward of Federal funds. In fact, the NEA organic act already requires grantees to meet a certain number of requirements.

The amendment I am proposing today adds to these requirements by mandating that the funds be returned to the NEA if a criminal court of law determines that the project funded by NEA is obscene or violates child pornography laws. The National Endowment for the Arts will now have a statutory obligation to prevent direct or indirect subsidies to projects of this nature. Artists will also have the right inherent in our legal system which protect them from the whims of individuals in Government who may fashion a standard based on their personal values rather than on community values.

Additionally, NEA will have specific authority to recover grant money that is not spent in accordance with those guidelines and to sanction grantees who flaunt the rule. Congress has never been successful in setting bright line standards when the matter at hand is so subjective in nature, and this is subjective.

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 on the bases that I just mentioned. The panelists will then 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 region 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 this time is inconsistent with the demand for greater accountability from the NEA.

I also want to express my strong support for the NEA and the good work it has done. The National Endowment for the Arts has increased the outreach of opera companies, ballet companies, art museums, local symphony orchestras, and local arts festivals to people throughout our country. These significant and important accomplishments have strengthened our Nation and I think they have enriched our people.

In Utah, the National Endowment for the Arts in our State, a small innermountain State in the Western part of our country, 1.7 million people, the National Endowment has been very helpful with our Utah Symphony Orchestra which has consistently been rated in the top 25 orchestras in the country, many years in the top 10; Ballet West, one of the best ballet companies in the world; the Utah Opera Co.; the Shakespearian festival, world renowned for putting on Shakespearian plays in the summer. Arts festivals, and other approaches. Without that we just would not have had the quality of arts appreciation or life we have today. Today, Utah has become a colony for artists of all forms of art. It has uplifted all of us out in that area.

In the past 25 years, the NEA has made over 85,000 grants that have enriched the lives of people all over our country in every State, not just the State of Utah. They have helped communities all over America to provide cultural activities for their people. Twenty-five years ago, only five States had arts councils. Only five. Today, every State has its arts council.

There are eight times as many professional dance companies today as there were back in 1965; Three times as many professional orchestras; nearly five times as many opera companies, and nearly eight times as many professional nonprofit theaters.

The expansion of cultural activities means that many more citizens have been able to attend performances and exhibits and benefit from the arts. I wish all agencies could do as good as the National Endowment for the Arts. Eighty-five thousand grants and we have 20 that have been criticized, and not all of those would be criticized by everybody in this body.

Some of them deserve every ounce of criticism they have received, but that is a pretty sparkling record. It is a decent record. It is the best of any agency in Government that I know of. It is something we ought to be proud of and not attack it.

As I say, my own State of Utah has benefited substantially from grants to opera, ballet companies, museums, and other cultural activities.

The people of my own State, particularly those Utahns in rural areas, have appreciated diversity of cultural offerings available to them at least partly because of the National Endowment for the Arts. I greatly appreciate the contribution of this legislation to making all of these things possible. Unfortunately, the good work of the National Endowment for the Arts has been obscured by several highly controversial grants. 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 colleague from Utah that would 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 directs the 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 that obscenity has 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 taxpayers' dollars as they are distributed by the Endowment in the future. We differ only on the best way to achieve this.

As 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 painstaking process to find the best 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—in fact, 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 agency 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 was not easy to find common ground. But because of the extraordinary bipartisan effort of my committee colleagues—and I mention Senator KENNEDY, Senator HATCH, Senator KASSEBAUM, 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 points for the obscenity language in the bill before us. By presenting this amendment, we offer Members of the Senate the opportunity to respond to the work of the Labor Committee that was so carefully developed in a bipartisan spirit over the last 5 months.

This amendment addresses obscenity directly but we are mindful to avoid the constitutional pitfalls that would arise with the imposition of guidelines that would establish prior restraint 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 this amendment requires 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 Congress in September, found that, "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." It went on to tell us, and I quote here directly from the Commission report, that:

> The nature and structure of the Endowment are not such that it can make the necessary due process findings of fact and conclusions of law involved in these determinations. The Endowment must, of course, make grants that comply with federal and state law but the appropriate forum for the formal determination of obscenity is the courts.

I ask the Senate to give its support to this amendment which reflects the almost unanimous recommendation of the Labor and Human Resources Committee, as well as the final position of the House of Representatives and the findings of the Independent Commission that was established in the Interior appropriations bill. Taken together, this is a strong endorsement of the amendment before us, and I urge 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. JEFFORDS. 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 KASSEBAUM have devoted 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 funds expended by the National Endowment of the Arts [NEA]. The restrictive language forbids funding of works that may be considered obscene "* * * which, when taken as a whole, do not have serious literary artistic, political, or scientific value." That standard certainly is not one with which we can disagree.

The Hatch amendment, which I cosponsored, modifies that language with regard to who makes the determination. The compromise language was painstakingly developed by the Committee on Labor and Human Resources. That compromise language addresses the question of Federal funding of obscenity or child pornography by debarring anyone convicted by a court of creating or producing such work from NEA funding for at least 3 years and by recouping all Federal funds used to support such work.

Both this amendment and the language in the appropriations bill restrict the promotion of obscenity in the arts. Let us all be perfectly clear: This is not a debate on obscenity. I think I can speak for every Member in this body when I say that no one questions the offensive nature of obscene work and no one questions that there is no room for Federal funding of obscenity.

The debate is not whether Federal money should fund obscene work. The debate is the question of who decides what is obscene.

Thus, the difference is how we approach the matter. The Appropriations Committee places the onus upon the Chairman of the National Endowment for the Arts to determine what is offensive and obscene. The Hatch amendment on the other hand, places that function upon the courts. 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 of 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-

ment are not such that it can make the necessary due process findings of fact and conclusions of law involved in these determinations. The Endowment must, of course, make grants that comply with Federal and State law but the appropriate forum for the formal determination of obscenity is the courts.

This is the conclusion of a commission that this body established in order to resolve a conflict that threatened to undermine the integrity of an important Federal program. Now, the body that put this Commission in place is about to throw away its recommendations, effectively saying that Congress knows better. Congress knows better than the Commission whose goal it was to study the issue intently and diligently and to recommend a resolution.

Instead, this body may adopt language that raises serious constitutional questions under the first amendment protections of free speech and expression, imposing an indirect system of censorship with standards so vague and an impact so severe as to result in a chilling of free expression in our society.

By keeping the language as included within the appropriations bill there is no question in my mind that it will fail a first amendment test. It would represent an impermissible attempt by the Government to restrict speech through a Federal-funded program. I am afraid that we will have created an atmosphere in which artists will fear Government or public reprisal for work that is supported by the endowments.

I have argued for this provision on the merits of placing a decision of determining obscenity in the courts and further argued that such a system would guard first amendment rights. I have not even touched upon the secondary issue of what I believe to be a frustrating and needless debate.

I say that not because I wish to overlook the issue that has been raised with regard to obscenity. Obscenity itself is no small matter.

However, when you put it in the context of the number of grants and awards and all the wonderful things that the NEA does, it becomes one on which we should not focus all of our attention. The Senator from Utah extolled the virtues of the many programs that go on in his State. The same is true in mine, as you see the artists in residence and the wonderful opportunities that young people have to discover the thrill of being involved in the arts.

Between 1965 and 1988, the NEA reviewed approximately 302,000 grant applications and funded approximately 85,000 grants. Last year alone, more than 17,000 grant applications were considered, resulting in 4,600 grants to arts institutions and individual artists. The national attention focused on the NEA involved two particular artists. Together these grants account for less than 3/100 of 1 percent of the total 1988 Arts Endowment budget. That is a small concern.

However, if we are to address this issue it is imperative that we do so in a manner which does not threaten or stifle the free expression of artistic work, which many argue is the signature of our culture.

To me it is a question of risk in our society. Is it not worth the risk of 3/100 of 1 percent to ensure that we do not stifle the potential of just one such future artist? The Hatch amendment achieves the fine balance of restricting Federal funding of obscene art without unduly crippling artistic expression.

I urge my colleagues to support the Hatch amendment.

The PRESIDING OFFICER. Who yields time.

Mr. HATCH. I yield 5 minutes to the distinguished Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. I thank my colleague from Utah, Mr. President.

Let me, first of all, commend him for his leadership on this issue and for his eloquent statement this afternoon in support of his amendment.

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.

When you have a Federal agency after 25 years that extends 85,000-plus grants and at the end of a quarter of a century we are able to look over the landscape and find 20 grants that offended some people, I would suggest that maybe half of those would not even be in controversy today, since some of them were in controversy 10 or 5 years ago, and here we are trying to restrict the ability of an agency to do its job with the kind of record the NEA has.

So I am disappointed in many ways, that we are even engaging in debate, which would restrict the ability of this agency, which has achieved the incredible performance level it has. I find it somewhat remarkable that we are involved in this process at all, where we are defining or restricting the ability of this agency to do its job.

But I commend my colleagues from Utah, as well as others who are responsible for drafting this compromise proposal. In many ways, Mr. President, I regret that they have had to do this because, frankly, as I said a moment ago, I think the agency is performing remarkably well. But the fact is the political realities are such that we need to have some language that is going to satisfy some people, and that the agency is going to do its job.

I just want to be on record, Mr. President, that I think it is doing its job. I think the taxpayers in this country can be deeply proud of an agency of the Federal Government, that after 25 years, a quarter of a century, 85,000 grants, has 20 cases they can point to that upset some people. In a couple cases the grants were not even made to artists. They were made to museums, who in turn, made the grants or chose the artists. The NEA was not even a sponsor in a couple of these cases. Here we are spending good time this afternoon, quibbling over the fact there was some controversial grants extended out of an agency that has performed that well.

I wish to make just a couple of points about the agency, Mr. President, because, unfortunately, I think people assume that these artists are only supported by the National Endowment for the Arts. It has been pointed out by the Chairman of NEA that the $119 million we provide to the NEA actually generates something in the neighborhood of $1.6 billion in private contributions to support artistic productions across this country.

That is a remarkable incentive for generating that kind of private capital to support art in this Nation. In the absence of that kind of seed money, if you will, I suspect, as he does, that that number would be significantly less.

The Senator from Utah pointed out 25 years ago, only a handful of States had arts councils. As a result of the work of the NEA, we now find that all 50 States are engaged, or have arts councils, and are promoting, of course, all sorts of artistic productions, from youth programs to the actual productions of the visual arts, performing arts; really generated a tremendous amendment of interest across the country.

I would like to make an additional point on all of this. The NEA's job ought to be, in a sense, to promote not the accomplished artist, not the one who has arrived, not the one who has achieved commercial acclaim or success. The idea behind this, at least a good part of it, is to say those who have not yet achieved that kind of status, that we believe enough in you, we believe in what you are trying to do, that we would like you to continue what you are doing.

So the essence of the program, in a sense, is to reach out to those artists who have not yet achieved that kind of success, and to say, stick with it, keep trying, we think you are on the right track, we would like to see you do more.

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.

So when we hear 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 heads of state 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 as well in this program.

So, I strongly urge the adoption of the Hatch amendment, and hope we can finally put this issue behind us, and recognize the significant contribution of this remarkable agency that is celebrating its 25th anniversary.

Mr. President, I yield the floor.

Mr. HATCH. Mr. President, I feel very deeply about the arts. I think that is apparent. I am concerned about it. I do not think it is a liberal-conservative issue. I think it is an issue of human understanding.

Shortly after my birth, my folks lost their home in the Depression. My dad built us a home with $50 worth of old lumber that he bought from an old burnt-out shell of a building. We did not have indoor facilities for a number of years in that home. We were very poor.

My father was a building tradesman. In fact, he taught me his trade. I worked at it 10 years myself, and became a full-fledged member of the AFL-CIO as a Journeyman. I am proud of it to this day.

I loved athletics. I would rather have done athletics than anything else. But my mother and my rough old father, who worked with his hands, started me playing the piano when I was 6 years old. I practiced piano for 6 months. I always have remembered what I learned, and I can still flutter around on the piano a little bit. Somehow my folks got their hands on a beautiful violin. Then my mom and dad sacrificed everything they had so that I could have violin lessons.

As an athlete, I have to admit, I did not like carrying that violin to school at first. I got into all kinds of fights over it. Gradually I got so I enjoyed standing up for the violin. My folks encouraged my interest in music and spent less on groceries so I could get season passes to the Pittsburgh Symphony Orchestra, and the old Syria Mosque in downtown Pittsburgh. I walked 2 miles, rode streetcars, transferred all the way over to Oakland, sat in Peanut Heaven in the Syria Mosque, and listened to the great Pittsburgh Symphony Orchestra play.

I saw all the great artists: Roberta Peters, Fritz Kreisler, Rubinstein, Horowitz, you name it. My folks made sure I had the opportunity to appreciate the arts. I could talk about their sacrifices and their encouragement of my interest in the arts for quite awhile.

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, but I was at one time. I have not played the violin since I left high school. However, I was the concert master in our high school orchestra. I was in "Who's Who in America High Schools" for music.

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 schoolground.

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 ORRIN HATCH.

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 NEA, account for billions of dollars of private contributions and increase cultural offerings all over this country.

I feel the same way the distinguished Senator from North Carolina does about pornography, obscenity, filth and, criticism of our fellow religions. However I do not believe that content restrictions will help further the arts. I think such restrictions will hurt the arts. Some will say that my amendment does not do enough. Others will say it goes too far.

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 of 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; this 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 yeild 5, 6 minutes to me.

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 things. 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 adopt ORRIN HATCH, because he is such 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, Senators have come to me and said, "I agree with you, but my wife is active in the arts community, and she said, 'Buster, you better not vote for HELMS' amendment.'" Then there are some Senators who date actresses, and the entertainment industry 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 about that. But I do know that even one pornographic photograph by Mapplethorpe is too many for the taxpayers to have to fund.

The amendment of the Senator from Utah will probably pass because it gives some political cover for the Senators who have just voted against my amendment. That is all it does. And all that it was meant to do.

But let me tell you something. If the amendment's supporters are really expecting to get NEA grants back from artists who have been taken to court and convicted of an obscenity violation, I would advise them not to count on it. In the first place artists are not going to be taken to court. And even if they are, they are not going to be convicted. You just have to look at what happened in Cincinatti to know that.

Mr. President, we cannot duck our responsibility here. But the Senate is ducking it; the Senate ducked it last year and passed some fig leaf legislation to get around my amendment last year. And the sleaze continued, unabated, of course.

I guess I am old-fashioned, Mr. President, but I do not like to talk on the Senate floor about the kind of 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 good things, Mr. President. 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 I would have a little fun with the cab driver. So I said, 'Driver, what does what is past is prolog mean?'" He said, "I thought the cabbie 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 prolog—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. CHAFEE. 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 the) Federal Government into 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 in America, and helping 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, less than 25 have been the subject of controversy. That is a phenomal 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, benefitting 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 1989. 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 operetta; 25 million watched dance performed on TV; 31 million listened to jazz on the radio; 38 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 their history and culture.

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, groups for 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-sponsored projects are not elite, radical activities that are of interest to only a very few. they are projects that are accessible to everyone, projects that improve the quality and richness of our—and our children's—lives. Most of us have probably taken part in NEA-sponsored events without ever realizing it. For example, here are just some of the hundreds of NEA-supported Rhode Island projects:

"Project Discovery," which allowed 18,500 students to attend 41 performances at Trinity Repertory Co. in Providence;

The West Warwick "Chance to Dance" after school activity for over 100 fifth and sixth graders;

Tours and programs for 12,000 students at the RI Museum of Design;

A Pawtucket art program for persons with cerebral palsy;

The Providence "First Night" celebration;

The Langston Hughes Center for the Arts' performances on the cultural contributions of African-Americans;

The Newport Folklore Society;

The Newport Music Festival; and

The Cranston "Big Sister" Association.

Nationally, NEA-sponsored projects are of equally high quality:

The Boston Museum of Fine Arts' Renoir exhibit;

The Music Program and Opera-Musical Theater Program, which provide support to orchestras and opera companies who provide free or discounted tickets to older and disabled persons;

Children's public television programs such as "Wonderworks";

The Dance Theater of Harlem;

Philadelphia's WHYY radio station's "Fresh Air" writers interview program;

The Vietnam War Memorial;

"Metropolitan Opera Presents" and "Great Performances" on public television; and

The American Film Institute.

That is an impressive list. One further note: All four 1990 Pulitzer Prize winners—music, fiction, poetry, playwriting—received, at one point in their respective careers, NEA grants.

If there is any debate today about the importance of the NEA, it should be framed in terms of the overall record of the agency, not in terms of a few individual grants that may have escaped careful scrutiny. A few rotten apples in the bunch should be viewed for what they are—anomalies—instead of being used as the yardstick by which the entire agency is judged.

The amendment that is here before us is a solid compromise that addresses 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 ruling 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 Commisison "recommends against legislative changes to impose specific restrictions on the content of works of art." The report closes by saying that "[t]he 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." And that is certainly true in my State, Mr. President.

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 crafted 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.

So 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 who strongly support the development of the arts and humanites 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 debarring 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 is punished through 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 places decisionmaking 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 more complete information available to panel members by requiring more site visits, followed by a written report to panelists;

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—not only supporting 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 receipients. 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 yields time?

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 oppoition 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 those 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 16. 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 may not necessarily have to be a statute. However, the fact is, in most cases it is a statute.

Mr. McCLURE. I assume you do not find someone guilty of criminal violation unless there is a statute.

Mr. HATCH. Unless the State has a common law or something like that.

Mr. McCLURE. I do not know that there is a common law violation of criminal law.

Mr. HATCH. I presume 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 all stipulate, for the purposes of 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."

The taxpayers 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 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 the kind of 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 their hands are clean. If the National Endowment were to say to me and to say to the American public, we are sorry 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 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 shows that 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 not, 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 project is funded 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 about any 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.

Mrs. KASSEBAUM. Mr. President, I wonder if the Senator——

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-

ance? I would simply say I think the procedural changes that are in the amendment really provide the answer, because real accountability can only be assured by a more open and broader review process. I think it has already been ennunciated what that review process is and what changes have been made there.

I clearly believe, and would say to the Senator from Idaho, that I think with the change in those procedures, such a performance would have been questioned before any money was given to fund the project.

The PRESIDING OFFICER (Mr. BINGAMAN). The time of the Senator from Kansas expired.

Who yields time?

Mr. McCLURE. Mr. President, I would say to my friend from Kansas—and she is my friend and an excellent Senator and I have a very, very high 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.

Now I agree that the movement in this bill, in the amendment before us, is in the right direction. I think the process changes may yield some favorable results. I will note for the record that on page 3 of the amendment, where it describes the lay members, that I read the amendment to say that the lay panel members must be selected from a group who has been approved by the chairman.

Now if that is not a rubber stamp or lapdog process, I do not know what it is. That does not strike me as being an independent review or independent analysis. So as much as I would like to say about moving the process in the right direction, and it does, it does not move it far enough.

Now, to say that, yes, we think they ought to be accountable, I agree with that. I am glad that others agree with that. But what does this amendment do to make them more accountable? I do not think I see that.

I think the process is improved and may yield improvements in accountability, but what I hear from the arts community is that it is none of your darn business what we do with the money you have provided. They do not wish us to hold them accountable. They deny that we have any right to expect accountability.

That is why it is important, from the standpoint of this Senator, that we attempt, as feebly as it might be, attempt to write some standards against which that accountability will be judged. And writing into this amendment the process that if you violate a criminal law you have to pay it back falls far short of the standards of accountability that I think are necessary when it comes to the expenditure of taxpayers' funds.

I think the statement made by the distinguished Senator from Rhode Island about "you shall not apply any prior restraint" 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 want Annie Sprinkle on Temple 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 about this very problem.

When he first arrived in town he said 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 someone who represents 5.5 million 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 definition of obscenity 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. I 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 at midnight 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 those are 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

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.

The PRESIDING OFFICER. The Senator is recognized for 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 their funds?

This argument has nothing to do with whether or not some artist can go off on his own and create whatever he wants. If he wants to do that on his own time and can stand the muster of a potential court test, more power to him. But I do not think we have to fund his effort. I do not think we have to go to the taxpayer and fund his effort when some of these efforts have resulted in works that have been profoundly offensive to the American people; that have profoundly attacked my religion.

I cannot stand for it. My constituents cannot stand for it. I do not think this body should stand for it.

These are the most minimalist of restrictions. We impose guidelines on every other agency and every other expenditure of Government. Why can we not impose one here? Can you imagine us here saying we cannot put any preconditions on HUD or the S&L's and what money they can loan because they ought to have unfettered ability to loan that, and if they make a mistake and the court finds they made a mistake they will not make loans in the future? I cannot imagine us saying that. I support the Senator. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. I yield 2 minutes to the distinguished Senator from Illinois.

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

Mr. SIMON. Mr. President, I join my colleague from Indiana in being deeply offended by two of the things that have been funded. But, in fact, we have guidelines. When my friend from Indiana says that we have guidelines for other agencies and he mentions HUD and the savings and loan, there is a totally different thing when you are talking about guidelines for agencies and what they do and when you are talking about expression by people.

Yes, we have had a couple of things that have offended me, frankly. I do not think they should have been funded.

Out of 85,000 grants in total by the National Endowment for the Arts over the years there have been about 20 that have been controversial.

I think we have some guidelines implicit here. They are loose, but they do precisely what our colleague from Idaho has suggested and that is tightening procedures. If you want to reflect on what we are doing and why we ought to do it, I suggest anyone who is in doubt in this body—and I do not know if anyone is—but go back and read the speech by Senator DANFORTH from Missouri when this issue first came up. It was one of the most eloquent speeches I have heard in my years in the Senate.

Basically, what he was saying is, if 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 Administrator of the National Endowment for the Arts in Mr. Frohnmayer who is moving us in the right direction. I think this is the amendment that should be accepted, and then we 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 of our people to the works 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 388. 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 nonprofit 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 Duluth 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 who might not otherwise exist without the help and support of the NEA. Yes, the NEA has been successful in expanding access to the arts for all Americas.

Mr. President, I would like to share with you one particular instance of NEA funding involving a production by the Great North American History Theater in St. Paul featuring Sister Mary Giovanni Gourhan. The Great North American History Theater is a unique theater that presents works by contemporary artists that explore human stories of real people as a way of connecting us to each other and our common future. Last summer, this theater received NEA support through the State arts board to present four one-act plays entitled "Homegrown Heroes." One of the plays celebrated the life of Sister Giovanni, who is a personal heroine of mine. Sister G, as those of us who know her call her, is best known for founding and leading the Guadalupe Area Project on St. Paul's West Side. I am only too

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 an opportunity 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 taken at the State level in arts 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 endangered the NEA 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 the wet plaster—so when the plaster dries, the painting is permanently 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.

The PRESIDING OFFICER. Without objection it is so ordered.

(See exhibit 1.)

Mr. DURENBERGER. Mr. President, while this work does not cross the line of obscenity which is the center of the debate today, I think 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. Obscene, 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 his 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 constitutents. I share with those constitutents an abhorrence of pornography and obscenty 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 period. 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 grantmaking 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 the Year 1933)

"What do you paint, when you paint on a wall?"
Said John D.'s grandson Nelson.
"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?"
Said John D.'s grandson Nelson.
""Do you use any red in the beard 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?"
Said John D.'s grandson Nelson.
"Is it anyone's head whom we know, at all?
"A Rensselaer, or a Saltonstall?
"Is it Franklin D.? Is it Mordaunt Hall?
"Or is it the head of a Russian?"
"I paint what I think," said Rivera.
"I paint what I paint, I paint what I see,
"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;
"I could even give you McCormick'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,"
Said John D.'s grandson Nelson,
"To question an artists' integrity
"Or mention a practical thing like a fee,
"But I know what I like to a large degree,
"Though art I hate to hamper;

"For twenty-one thousand conservative bucks
"You painted a radical. I say shucks,
"I never could rent the offices—
"The capitalistic offices.
"For this, as you know, is a public hall
"And people want doves, or a tree in fall,
"And although your art I dislike to hamper,
"I owe a little to God and Gramper,
"And after all,
"It's my wall . . ."
"We'll see if it is," said Rivera.

—E.B. WHITE

Mr. DURENBERGER. Mr. President, in summary, I rise in support of the Hatch amendment to substitute the language which we passed 15 to 1 in the Labor and Human Resources Committee for the content restrictions in the underlying bill.

There has been a fair amount of conversation here this afternoon about responsibility to the taxpayer. I rise to say if this is the place that is going to be responsible for the taxpayer, we have not done a good job of demonstrating the capability of designing a legislative answer or any other answer for that responsibility.

Instead, I remind my colleagues of what the mission of the National Endowment for the Arts to the taxpayers, and everybody else in this country, has been since 1965. The first mission has been to facilitate access to the arts that are American to everybody in this country, for people who are poor as well as rich, people who live in rural areas, as well as in big cities. The folks in New York City and the folks in a little town called Barrett, MN, population 388, which has now a nationally recognized Prairie wind players in this little town of Barrett, MN. And because of the recognition to the people in New York City, and in Barrett, MN, today, as compared to 1965, there has been a growth in professional dance companies from 37 to 250; in 1965 there were only 60 professional orchestras in America; today there are 212. I could go on and talk about nonprofit theaters. We talk about individual artists. That is the responsibility that this body has and every one of us has to the taxpayers, to the people of this country.

Our second priority, is to bring recognition to the very best of America's artists, and through a system of national recognition, to make sure that the cultural diversity of this country, that is so well represented by our artists, is conveyed from one generation to another. You cannot do that just in Barrett, MN. You cannot do that just in St. Paul, MN. You can only do that through this National Government and the instrument is the National Endowment.

I strongly support the substitute language of my colleague from Utah.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I regret I was not here earlier in the debate as one of the principal sponsors, along with Senators HATCH, KASSEBAUM, and PELL. We were in the conference on the immigration bill. I commend him for the excellent leadership he has provided in this extremely important area of public policy.

The debate on the future of the National Endowment for the Arts has consumed this body for over a year. Were this truly a debate about the proper role of the Federal Government in supporting the arts, it would be significant enough. But even more significant, is this assault on the First Amendment protection of freedom of expression.

The Endowment has an outstanding record of success and achievement. Not even its harshest critics can point to more than a handful of controversial, or questionable grants in the entire quarter century of its existence.

The National Endowment has had an extremely positive impact on the lives of all citizens of our country. Before the Endowment came into being, arts in America were largely exclusive, now they reach every corner of America. Since 1965, 100 local arts agencies have grown to over 2,000. Total State arts budgets at that time totaled $2.7 million; now the States spend a total of $268.3 million.

Quality and excellence have been the hallmark of the agency.

The last 11 Pulitzer Prize winning plays were developed with the help of NEA at nonprofit theaters. Additionally, "Driving Miss Daisy," a recent released Oscar-winning film, was developed with Endowment support.

For a quarter century, ever since its creation in 1965, the Arts Endowment has enjoyed broad bipartisan approval in Congress. Our support has been overwhelmingly reaffirmed every 5 years since then—and now is surely not the time to walk away from our essential public commitment to the arts and free expression.

Around the world, new freedoms are being won by peoples who have endured censorship and repression all their lives. In Eastern Europe and even the Soviet Union, demands for liberty are being heard and heeded. At a time when Berlin Walls are coming down in many other lands, it would be shameful for the United States to fail the test of liberty by erecting new barriers against free expression here at home.

During the final day of the hearings which the Committee on Labor and Human Resources held on the reauthorization of the Endowment, Maestro Mstilslav Rostropovich took time to share with the committee members, his personal observations on the tragedy of suppression of ideas and expression. He recounted for us that the works of many brilliant composers in the Soviet Union were censored, and his fellow countrymen were deprived of the power and beauty of this part of their national cultural heritage.

He amused the committee with his description of his personal encounter with government censors. He was once asked as a young Soviet artist preparing for a tour in the West what music he intended to play. He told the censors his program included Bach Suite No. 7 and Mozart Sonata for Cello and Piano in G Minor. Well, it seems Bach only composed 6 suites, and Mozart never composed anything for Cello and Piano, but the Government censors were none the wiser.

Government officials are not the appropriate adjudicators of the arts. Art professionals have compiled an excellent track record in developing the peer panel system that is currently in place. We have no business substituting congressional judgments for peer review.

We must resist the calls to censorship—to return to our Nation's regrettable periods of Comstock, McCarthyism, and anti-intellectualism.

A century ago, the painter Claude Monet would probably have been banned in Boston. This year, his impressionist paintings were the toast of the city—with rave reviews and unprecedented 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 Endowment for the Arts.

The arts are a measure of our society. They chronicle our history, record our successes, warn of our weaknesses, expand our understanding, and challenge us to seek what is best in ourselves 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-to-1 by the members of the committee. The bill is a well-constructed and carefully crafted response to the concerns raised in conjunction with the Endowment's controversial grants.

Although the committee worked separately from the bipartisan Independent commission appointed by President Bush this past year, we came to similar conclusions about ways which would be effective and appropriate to improve the Endowment's grantmaking procedures.

On the issue of obscenity, we were able to develop a solution to assure that no Federal funds go to work that is ruled 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 conferees.

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 enjoyment 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 repertory 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 Ailey 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 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 form 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 25-year 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 from NEA funding for at least 3 years anyone 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 courts, and recommended against legislation to impose specific restrictions on the content of works of art supported by the Endowment. "Content restrictions," the commission said, "may raise serious constitutional issues, would be 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 believe that continuation of the peer review system, with its commitment to artistic excellence, will serve us better than any alternative. This Senator, for one, does not believe that the Congress should be in the business of telling artists what is art, or requiring them to take loyalty oaths.

And the American people agree. Several polls conducted since this controversy erupted have indicated that the American public overwhelmingly opposes censorship of controversial art, even if they find it personally offensive. Solid majorities oppose placing content restrictions on Endowment-funded projects. Clearly, the American people recognize the importance of freedom of expression and the value of the arts.

Mr. President, it is ironic that, when the whole world seems to be embracing the idea of freedom, we are facing these challenges to free expression here in the United States of America. Earlier this year, Vaclav Havel, playwright and new President of Czechoslovakia, sent a moving letter to the American artistic community. He said:

> We know first hand how essential is a fierce, independent, creative artistic spirit to the attainment of freedom. Through a long night of repression and control, the artistic community in our land helped keep alive the unquenchable flame of freedom. And artists played a central role in helping organize our final transformation to a new democratic state.
>
> There are those around the world, indeed even in those democracies with the longest tradition of free speech and expression, who would attempt to limit the artist to what is acceptable, conventional, and comfortable. They are unwilling to take the risks that real creativity entails. But an artist must challenge, must controvert the establishment order. To limit that creative spirit in the name of public sensibility is to deny to society 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 our former colleague from the House, John Brademas, now the president of NYU, and Leonard Garment, who is so important a person in the history of the national endowments, both of the arts and the humanities.

Mr. President, I was here in Washington at 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 Senators who do 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 compromise language, which was itself a figleaf and did not restrain 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.

Oh, it is going to take care of 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 offender to trial. So, I make another prediction that the Government will not initiate even one lawsuit. I may be wrong. There may be one somewhere. But I expect there will be none.

Now, the second problem with the pending 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 homoerotic 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 Mr. President, 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 banning anything. We are 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. They assert that the belief that any "art" can be obscene is "a kind of cramp in the consciousness of the unenlightened [read that middle-class 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 BYRD 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 was 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 over $1,000 for the one word poem "Lighght." The NEA'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 obscenities 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 Proxmire 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 objected to NEA support of a play with "disparaging 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. 959(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 fatal 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 what 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.

Under the amendment, 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 obscenity or 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 from the Labor and Human Resources Committee. Under 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, to the Senate. That bill 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 provisions contained in the Interior 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. McCLURE. 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 time to sum up his 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.

Mr. President, I do not want to belabor 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 they are doing a better job. I think they will, so long as they are under scrutiny, do a better job.

I give Mr. Frohnmayer 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.

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. But what disturbs me is that the discussion, without regard to the rightness or wrongness on either side, damages public support for the art. That is what makes me angry.

I said that same thing last year. It makes me angry that people hurt public support for the arts by refusing to recognize that the taxpayers have some rights to tell us what they believe with respect to the expenditure of their money. And the very debate over this issue erodes public support for the funding of the arts.

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 portion of my concern.

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 on in the 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: "Aaaarggh!"

There was never any doubt in my mind that the trial over Robert Mapplethorpe's photographs would bring a "cultural clash" into the courtroom, Soho meets Cincinnati.

But at the trial, the testimony often sounded like a linguistic battle, a tale of two tongues: one side speaking art; one side speaking English. It sounded less like a case about obscenity than about class, elitism, artistic sensibilities and common sense.

Americans often divide like this when dealing with art. One group thinks that Andy Warhol's Brillo Box is brilliant, and the other thinks it's a scam. Each believes the other a pack of fools, though one may be called snobs and the other rubes. Guess which one is larger?

The divide is bad enough when the argument is about Brillo. But when it's about bodies, watch out.

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. This was the sort of thing said in Cincinnati.

In the wake of this, it is remarkable that the verdict was not guilty. A jury without a single museum-goer, artist or student of "What is Art?" decided that the museum was protected turf in the legal quarrel over obscenity.

But the trial in Cincinnati, like the troubles at the National Endowment for the Arts, is partly the result of the art world's own chic insularity. The troubles come because the art community speaks its private language to a circle so small, so cozy and so closed as to be dangerously isolated.

Perfect Moment Number Four: The prosecution asked how art was determined—was it merely the whim of the museum?

The witness, a museum director, said no, it was the culture at large. And this is how he defined the culture at large: "museums, critics, curators, historians, galleries."

I agree with the decision and with those who defended the museum's right to show these photographs. To leave the dark side out of a Mapplethorpe show would be like leaving the tortured black paintings out of a retrospective of Goya's work. It wouldn't be

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, Mapplethorpe set out to capture the line between the disgusting and the beautiful. There is room in life for the deliberately disturbing. The museum's room—a glass case in a separate gallery—was tame enough.

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."

In many cities, there is still the knock of the policeman at the door. Having failed to make its case in public, the art community ends up making it in court. In the history of art, this is not a perfect moment.

Mr. McCLURE. Mr. President, that, to me, is the issue. Public support for the arts, which I wholeheartedly support, must be based upon an understanding of what it is, what its value 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 in doing so, it will invite further 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 conscience or responsible public representation of the taxpayers of this country. I hope the amendment is defeated.

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 to 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 now, but I will go into a little more depth. The amendment addresses the question of Federal funding of obscenity or child pornography. It debars from NEA funding for at least 3 years—they can do it for more than 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 child pornography laws, the person or group convicted for 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.

Three, the person or group which has received or used NEA funds for the work must repay the grant funds to the Government. If for any reason they do not repay those funds, the grantor which gave NEA funds to them will have to repay. Any person or group liable for repayment of NEA funds who fails to do so will be ineligible for NEA funds in the future. So if NEA grants funds to a grantor in Utah, and if they grant it to somebody convicted of obscenity or child pornography, the grantee is supposed to pay it back. If they cannot, the NEA grantor is supposed to pay it back. If they do not, they are debarred for the rest of their lives until they do. That is tough. It is going to be an incentive to not allow this to happen.

We put in a lot of procedural changes, which I think are even more important. The amendment includes a series of changes in NEA procedures and basic NEA statutes. I will discuss a few of them. No. 1 creation of a panelist bank of art professionals and knowledgeable lay persons, and the addition of knowledgeable lay people to the review panels, not done in the past.

Two, standardization of panel procedures. No. 3, a requirement of site visits where necessary and feasible to view works, followed by a written report to the panels. Four, a requirement for a written public record of all panel deliberations and recommendations. No. 5, a requirement for rotating panel membership, so we do not keep the same people on the panel. No. 6, the opening to the public of all National Council on the Arts meetings. Finally, a prohibition of service on a review panel by any individual with a pending application for NEA assistance or by any employee of an organization with a pending application. We think those procedures will help solve this problem

The distinguished Senator from North Carolina said something like this. You cannot find something obscene until after it is funded, but anything funded by NEA is automatically not obscene. That is not true. The fact is, if it is funded by NEA, it still can be found obscene by community standards and in accordance with the Miller rule, under current criminal laws and under this amendment. If it is, found to be obscene the grantee is going to be debarred up to 3 years, and will have to pay back the money. If the grantee cannot, the grantor is going to have to or they will be debarred until they do. The addition of new lay persons on these panels will help ensure we do not have this type of disgusting art in the future. I think we all can agree that a number of these grants are disgusting, and they should not have been funded by NEA. But they are so few and so infinitesimal in number compared to the totality of what the NEA has done, that, it should not constitute the kind of an uproar that has been caused here today.

I am prepared to yield back the remainder of my time.

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

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 quite correctly, referred to the questions of debarment and recovery of funds and repayment of funds and the debarment for the failure to repay funds. In each instance, these are based upon the conviction of a criminal violation under State or local statute, is that 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. McCLURE. 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. McCLURE. 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. McCLURE. 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, as responsible policymakers, vote for a bill that includes language that essentially forbids Federal funding for art that "may be considered obscene?" Almost anything "may" be considered obscene by some. As a young district attorney, I once was asked by enforcers to prosecute a man signing his name as Hugo M. Frye for sending a horse dropping placed in a milk carton through the mail to a Federal district judge, alleging it was sending obscenity through the mail.

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 contained in this appropriations bill and to support the amendment offered by Senator HATCH.

The amendment before you is similar to the compromise adopted by the Labor and Human Resources Committee. The House has supported 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 sanctions. They would be prohibited from receiving 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? Its 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 programs 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.

Since 1965, 100 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. KOHL. Mr. President, I rise today in support of the amendment offered by our colleague from Utah, Senator HATCH.

There are, it seems to me, a number of issues which have been raised and need to be responsed to as we consider this issue. I have heard from constituents who want to abolish the National Endowment, who ask why we should spend anything to support the arts when we spend so little to support education or health care or some other noble cause. Now that is a legitimate question. And is Federal spending went to support artists—which appears to be the assumption of many of the people who make the argument—I might be sympathetic to it. But Mr. President, the purpose of the National Endowment is to support the arts, not just the artists. The Endowment is designed to help programs which bring the arts to our children and our communities. As a result, our society benefits from the program more than an artist does. We don't fund the NEA to keep artists from starving: We fund the NEA to keep feeding our capacity for culture.

Let me give you some specifics, Mr. President. In my own State of Wisconsin, recipients of National Endowment grants include the Madison and Milwaukee Symphony orchestras and repertory theatres, the University of Wisconsin-Madison Museum, rural arts projects, arts education programs in River Falls and Whitewater, a Menomonie design project, the Milwaukee Pabst Artist series, the Ballet Foundation, the Florentine Opera Company, the Milwaukee Arts Museum, literary services and countless other worthy artistic and cultural programs. These are programs which bring the arts to people who would not have access to them if we just depended on the free market laws of supply and demand. These are the people who benefit from the National Endowment.

But we do not hear about that, Mr. President. We don't hear about the increase in the number of dance companies, arts events, orchestras, opera and theater companies in this Nation since the creation of the National Endowment. One time grant recipient, Garrison Keillor, remarked that the National Endowment, "has contributed mightily to the creative genius of America." I agree.

It isn't just the NEA. We don't just give the grants and support the arts. We encourage the community to get involved. In 1988, NEA grants totaling $119 million generated in excess of $1.36 billion in private funds. Continuing to support the NEA allows us to continue to assist communities in leveraging private funds to preserve their culture, to educate their youth and to support the arts.

There is, then, ample reason to continue funding for the NEA. Which leads to the next question: Should we somehow restrict that funding so that it only goes to projects that are unoffensive?

To answer that question we have to find out just how many offensive projects we are funding.

Like many of my colleagues, I have been contacted by constituents expressing concern about their tax dollars being used to pay for pornographic and obscene art. I took those concerns seriously. I've tried to check each assertion that taxpayer's were supporting these exhibits. In each case, I discovered that the exhibits being mentioned did not receive any Federal funding. Since the restrictions imposed during last year's consideration of the Interior and related appropriations bill, I have been unable to find any substance to the claims that taxpayer dollars are being spent to pay for pornographic art.

One performance that was suggested to have been funded by Federal dollars was a New York performance by porn-star Annie Sprinkle. In fact, no NEA money funded any of her performance at the Kitchen Theatre. And the New York State Council on the

Arts, which is a recipient of NEA grants, purposely 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, those seeking political gain 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 for the purpose of funding the arts by adopting section 304(a) of Public Law 101-121: "None 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 * * * 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 which when taken as a whole do not have serious, literary, artistic, political, or scientific value." During the past year, the National Endowment for the Arts has engaged in the highly criticized effort of attempting to comply with those restrictions.

The restrictions have clearly impacted the funding of the arts. The Chairman of the NEA has usurped the decisionmaking authority of council panels. Some of our outstanding artists have refused to play any part in a process that requires them to take an oath concerning the content of their work. And in June 1990, the General Accounting Office testified before the House Subcommitte on Postsecondary Education that the National Endowment had, "met its legal obligation to adopt reasonable controls designed to prevent violations of section 304(a) and that it has the ability to seek recovery of any grant funds that may be used in violation of section 304(a)."

Yet, here we are again. Our distinguished colleague from North Carolina seeks further restrictions of the arts. Where, Mr. President, is the broken system that needs fixed? Why must we continue to politicize the arts, to debate the definition of obscenity knowing full-well that matter is best determined by the courts? The amendment before us addresses the concern of reasonable Americans: it assures that their hard-earned dollars will not be spent to fund obscenity and child pornography.

The amendment states clearly that works determined by the courts to be obscene or in violation of 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 moneys without sacrificing the first amendment to political whims. 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 consultations and compromises 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 amendment offered by Senator HATCH. 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 my colleagues on the Labor and Human Resources Committee for their enormous efforts over the past year in trying to forge a delicate and bipartisan compromise that allows the NEA to operate without imposing "content restrictions" on grant recipients while also providing the Government with the necessary tools to recover money from those artists who produce "obscene" work, as defined by the courts.

It seems to me that there are two vital questions to consider regarding NEA funding for the next fiscal year. First, how can Congress reform the NEA grant process to make it more accountable to the American taxpayer? And second, how can Congress ensure that the NEA continue to provide millions of Americans with the important contribution it makes to our Nation's culture. I believe this amendment addresses both these concerns ably by establishing enforceable mechanisms in the grant process without restricting the freedom of speech vital to artistic creativity.

Since its creation 25 years ago, the NEA has immeasurably enriched the lives of all Americans and has built a proud heritage of artistic accomplishment on which we all can stand. Let us not tear down the NEA by imposing content restrictions on grant recipients and forcing the Congress to micro-manage every single grant and determine whether it deems it obscene. However, I do not believe that the American taxpayer and the NEA will be best served by imposing content restrictions.

Instead, I hope we will support the Hatch amendment and implement the 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 laws.

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 of the Senator from Utah. 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
Akaka	Exon	Mitchell
Baucus	Fowler	Moynihan
Bentsen	Garn	Murkowski
Biden	Glenn	Packwood
Bingaman	Gore	Pell
Bond	Graham	Pressler
Boren	Harkin	Pryor
Bradley	Hatch	Reid
Breaux	Heinz	Riegle
Bumpers	Hollings	Robb
Burdick	Jeffords	Rockefeller
Burns	Johnston	Roth
Chafee	Kassebaum	Sanford
Cochran	Kasten	Sarbanes
Cohen	Kennedy	Sasser
Conrad	Kerrey	Shelby
D'Amato	Kerry	Simon
Danforth	Kohl	Simpson
Daschle	Lautenberg	Specter
DeConcini	Leahy	Stevens
Dixon	Levin	Warner
Dodd	Lieberman	Wirth
Dole	Lugar	
Domenici	Metzenbaum	

NAYS—24

Armstrong	Heflin	McConnell
Bryan	Helms	Nickles
Byrd	Humphrey	Nunn
Coats	Inouye	Rudman
Ford	Lott	Symms
Gorton	Mack	Thurmond
Gramm	McCain	Wallop
Grassley	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.

ORDER 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 MURKOWSKI, 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 amenof 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 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. 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 retains a viable, healthy timber industry.

I know that this compromise goes too 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 conferees, 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

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 not always agreed on every aspect of this legislation, the two Alaska Senators have been very gracious and demonstrated a sincere desire to resolve this important matter. 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 GEORGE MILLER for his tireless 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 is 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. Those lands which remain open to timber harvesting, mining, hydropower development, developed recreation, and other uses will provide the opportunity for economic growth and for protection 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. JOHNSTON. Yes, I agree with the Senator from Alaska.

The PRESIDING OFFICER. 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. Their position was supported 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 2 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 comprise crafted by the House and Senate conferees is less damaging than the House bill but still goes 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 is 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, no commercial timber 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 do everything it can to meet those 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 contrasts 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 volume requirement of the contracts are protected, which means the jobs related to the mill operations are preserved.

Mr. President, the conference bill adds 345,562 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 are 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 errs 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, Lemesurier Island, Inian Island, Salmon Bay Lake, Anan Creek, and the Naha River. These areas have been of great concern to the communities of Gustavus, 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, is 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 surface estate covered by 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 deed. 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 chairman of the Senate 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 some comfort to southeast 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 mark, all of which were rejected. The majority would simply not accept amendments at the meeting of the conferees 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 this legislation has been pending, 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 mill, 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 stablize 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 affect 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 the 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 that negotiations to reach agreement on a land exchange cannot hope to reach a consensus which all affected parties can support. For that reason, I asked that my amendment be removed from H.R. 987 in the conference committee.

It was removed. Now the question remains what is the status of the negotiations. That is simple. There is no congressional mandate for the current negotiations to continue. It is my hope and urging that they will cease. In any case, the deletion of the amendment should clearly send the signal that no negotiations are required or requested by the Congress. Further, it should send a clear signal that any such negotiations cannot be concluded unless the single most affected party, the Greens Creek Joint Venture, for which Kennecott operates the Greens Creek Mine, is not harmed or negatively affected in any way by such negotiations. This means that the Joint Venture must be involved in any negotiations. My own feeling is the current negotiations are not going to be successful. I would advise the Forest Service to begin to look at other options.

Mr. MURKOWSKI. Mr. President, I appreciate the remarks of the distinguished Senator from Utah. I fully understand his point of view. I supported his amendment on the floor and regretfully respect his decision to oppose its inclusion in the conference report. Nonetheless, this was his amendment in the Senate and I must respect his wishes at this time. I want to assure the Senator that the point of this exchange has never been to adversely impact the existing operations at the Greens Creek Mine but to enhance those operations. I agree that future negotiations will only be successful if all parties, including the Greens Creek Joint Venture, are involved. I have long advocated the merits of this land exchange as being not only in the interest of the affected parties but also in the interest of the United States and southeast Alaska. If the parties can get together this can be a win-win situation for everyone, and I would support such an effort.

Mr. President, I yield the floor.

Mr. STEVENS. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has 7½ minutes remaining.

Mr. STEVENS. Mr. President, 19 years ago we received a request from a new group of environmental organizations for a wilderness area in the Tongass. It was 1971, about this same time of the year. They sought approximately 3 million acres of the Tongass to be set aside for a single purpose, taken out of a multipurpose forest that was being run fairly well.

By 1973, we had a study of this subject, and that study recommended that about 1.8 million acres be set aside.

We have been on this subject almost every year for 19 years. By 1978, we had worked out a bill. It was a comprehensive bill dealing with Alaska national interest lands, and we were within 10 minutes from the end of the Congress when my former colleague blocked a conference report just like this, a conference report that would have withdrawn 2.7 million acres of land in the Tongass.

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 through a period of 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 had a land selection that will be severely impacted by one of the areas put aside 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 yardstick is finally cut in half.

Mr. President, I ask unanimous consent that my reservations on the bill be printed in the RECORD.

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

TONGASS—RESERVATIONS ABOUT BILL

SMALL BUSINESS

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 service land wilderness. This bill should have included an exchange which 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.

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 Lisianksi River drainage—which is on the other side of a saddle at the top end of the sound.

The upper three quarters of Hoonah Sound are closed to timber harvesting by this 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 Lisianski withdrawal—VCU 282. This unit was one of the last added to the bill in conference. It is 15,641 acres, with 70 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 have 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 ask, 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:

ANILCA, 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; accordingly, 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 those public lands necessary and appropriate for more intensive use and disposition, and thus Congress believes that the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas, has been obviated thereby.

SEC. 1326(b):

(b) 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 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 systems, new national conservation 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 unit, national recreation area, national conservation 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 Southeastern 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 action will put this issue to rest; 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 that 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 a 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 Alaskan reactions 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 volume requirements of the 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): ". . . [H]opefully this bill will bring an element of peace to the Tongass so planning can be more organized for the continuous timber program."

United Fishermen of Alaska (State's largest fishermen's association): "[the Johnston bill] is a decent package. It does not put the loggers out of business."

Southeast Alaska Conservation Council: "It's bittersweet. Senator Johnston's compromise protects many, but not all, important fish and wildlife areas and it brings about a balanced and fair resolution of this hard-fought battle."

Mr. STEVENS. We have, through the assistance of the two ranking members, Senator JOHNSTON, Senator MCCLURE; my colleague, Senator MURKOWSKI; and Congressman YOUNG, obtained a compromise. As I said, I think it is deficient. But I am willing to accept this request for peace.

I hope that the Senate understands and the Congress understands that we have not sought new assurances in the law. Congress gave us that assurance in 1980 and promptly did not live up to it. This time we are calling on the people who are Members of the House and the Senate to listen to our voices, and to understand that we have looked into the eyes of the people who have the power to change these laws and they 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 Senator 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 majority 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.

The Chair recognizes the Senator from North Carolina.

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 consummation Devoutly to be wish'd." Let us see how it goes.

Mr. President, have the yeas and nays been requested?

The PRESIDING OFFICER. No.

Mr. HELMS. I request the nays and yeas.

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

The yeas and nays were ordered.

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 is 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 Sweden, over the past 10 years. 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—so this guy could take off and 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 the 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 ranged from $25,000 to $45,000 each. He has works on display 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 $30,000 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 for prices ranging from $12,000 to $18,000 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—it's a nice sum, but it's not like winning magabucks." I wish he would tell that to the American families whose taxes were used to pay his grant.

So, 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 American—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 paintings 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 NEA. 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

NEA panel that recommended a $60,900 grant to the Ohio Chamber to support development of what? The guy's own musical compositions. See what I mean by "keeping it in the family," Mr. President?

The Kitchen Theater's artistic director sat on the NEA's 1988 panel of experts that approved a $12,000 grant to the Kitchen. The director of the Institute of Contemporary Art [ICA] in Philadelphia sat on the 1988 NEA panel that gave the ICA a total of $155,000, including the $30,000 award to put the Mapplethorpe exhibition of homoerotic photographs together.

The director of the Center for New Television in Chicago sat on the 1990 NEA panel which awarded the center a $45,000 grant to support its operations.

The executive director of Film/Video Arts, Inc., in New York, sat on the 1990 panel that recommended a $30,000 grant for Film/Video Arts, Inc. to support the firm's operations.

The Director of the Southwest Alternate Media Project, Inc., sat on the 1990 NEA panel that recommended a $35,000 grant to support his organization's general operations.

Mr. President, according to the Washington Times, at least 130 of the approximately 730 peer panelists who assisted the NEA's grant-making process in 1988 sat on panels that gave their own organization's grants.

I say again, come on, what is going on here?

Mr. President, the NEA does have a conflict of interest rule which requires a panelist with a personal stake in the awarding of a grant to excuse himself from the arts panels deliberations of that particular grant. But excusing or recusing oneself from the room is not going to prevent the other panelists from being affected, particularly if they have been lobbied. We all know how that happens.

As Hilton Kramer, chief art critic for the New York Times from 1965 to 1982, says, that rule:

> Has no significance whatsoever because the person leaving the room is the person who is going to vote on the next application when someone else has to leave the room.

Mr. Kramer states further that:

> The very least that can be said of the [NEA] system is that it is very much a buddy system. You give me a grant, I give you a grant, that sort of thing. Among arts professionals, they joke a great deal among themselves about how it works. * * * A votes for B and B votes for A.

Mr. President, I do hope that the NEA has learned something from this kind of outrageous conduct and will hereafter prevent anyone from sitting on any panel considering grants that will benefit that individual or his personal friends or relatives in any way. That is just common decency in the distribution of the taxpayers' money.

I do not intend to offer an amendment at this time to prevent this self-dealing among the NEA's arts panels, but my pending amendment would prevent the most established and successful artists from using the NEA's panel review system to benefit one another at the taxpayers' expense. That does not make sense.

Mr. President, it should be pointed out that the NEA's authorizing statute has never said anything about the NEA giving grants to individuals—which is probably why there has never been a needs test applied to NEA's individual grant recipients. The policy of awarding grants to individuals is the result of an administrative decision made back in the late 1960's.

Michael Straight, who was deputy NEA Chairman from 1969 to 1978, says that individuals' grants has been a catastrophe in the making for 23 years. The arts endowment was created to enrich the lives of Americans through the arts; it was not created to support artists.

Mr. President, the NEA awarded 777 individual grants to individual writers, jazz musicians, choreographers, museum professionals, classical musicians, painters, performance artists, playwrights, mimes, stage designers, and numerous others. Those grants totaled $9,544,222.

The NEA even awards grants to ceramists. Warren MacKenzie recently wrote in the "Ceramics Monthly" publication:

> I find crafts people whose sale of work amounts to approximately $100,000 a year, ones who maintain two or three studios and houses on several continents. These people are applying for and receiving support from the NEA sometimes two or three times in succession.

Then Warren MacKenzie had these logical, sensible words:

> Let the established artists show a little restraint.

That just about says it all. I could not agree more with Mr. MacKenzie, and I thank him for being candid about it. That is why the amendment is now pending at the desk. I hope Senators will join in making sure that the wealthy and the successful artists in the six-figure income will not pick the pockets of the average American out there. Mr. President, I yield the floor and reserve the remainder of my time.

Mr. President, I ask unanimous consent that a table be printed in the RECORD.

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

WEIGHTED AVERAGE POVERTY THRESHOLDS IN 1989

Size of family unit	Threshold	x15
1 person (unrelated individual)	$6,311	$94,665
Under 65 years	6,451	96,765
65 years and over	5,947	89,205
2 persons	8,076	121,140
Householder under 65 years	8,343	125,145
Householder 65 years and over	7,501	112,515
3 persons	9,885	148,275
4 persons	12,675	190,125
5 persons	14,990	224,850
6 persons	16,921	253,815
7 persons	19,162	287,430
8 persons	21,328	319,920
9 persons or more	25,480	382,200

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 rise in opposition to the amendment. 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 that 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 Endowment 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.

But having said that, 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.

Funding this kind of activity, having 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 segment, or, for that matter, of a vast 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 course of 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 successful amendment 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 derogate 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 relationship between the criminal 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 should 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 has 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 given the negative 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 state 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 appropriately our power over the purse.

The PRESIDING OFFICER (Mr. LAUTENBERG). The Senator from North Carolina.

Mr. HELMS. Mr. President, I do not want the Senate to stay in here until 11 or 12 o'clock.

I ask unanimous consent that the yeas and nays on this amendment be vitiated.

The PRESIDING OFFICER. Without objection, it is so 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 material 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 cosigning a letter to Hugh Southern, the then acting chairman of the NEA, asking him to review the NEA's procedures and to determine what

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 works 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—meaning the taxpayers of America—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 this 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 content. Art 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 obviously 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 particular work and the NEA will have 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 breasted woman breast-feeding an infant carrying the title, "Jesus S. . . ." and I shall not finish that word.

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.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BYRD. Mr. President, I would like to inquire if the distinguished Senator would be willing not to have a rollcall vote on the amendment and not call up his remaining amendment if we would accept this amendment and take it to conference on a voice vote?

Mr. HELMS. Absolutely, Mr. President. That will save some time for the Senate.

Mr. BYRD. It certainly will. It will save at least 2 hours of the Senate's time, a half hour on this amendment and a hour and a half on the other one.

Mr. McCLURE. Will the Senator yield? I will be happy to accept it on this side and take it to the conference and deal with it in conference with our House colleagues.

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

Mr. HELMS. I yield back my time. The yeas and nays have not been ordered.

The PRESIDING OFFICER. All time has been yielded back. If there be no further debate, the question is on agreeing to the amendment of the Senator from North Carolina.

The amendment (No. 3132) was agreed to.

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

Mr. McCLURE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, we will soon reach a final vote on this bill. I would like to alert the chairman and ranking member of the subcommittee handling the legislative appropriations bill we hope to get that bill up this evening and dispose of it.

I yield 1 minute to the distinguished Senator from Idaho [Mr. SYMMS].

Mr. SYMMS. Mr. President, I want to say to my colleagues, I think we should note this will be the last time my senior colleague will handle an Interior and related agencies appropriations bill. As one Member of the Senate, I would like to say a personal "well done" to JIM McCLURE for his many years in the Senate. I think my part of the country is going to find we miss him dearly for the job and the work he has done for our part of the country, from a regional point of view, as a member of this committee.

I also extend my thanks to the distinguished chairman of the Appropriations Committee for the many years of cooperation he has given both to this Senator and especially to my senior colleague who has worked so much with Senator BYRD over the years on so many issues important to our State.

I think the Nation will miss my senior colleague's thoughtful leadership, his very persuasive and logical

approach to problems. We wish him well in the future.

Next year when this bill comes before the committee, it will be other Senators handling it. I hope we can measure up in some way to the success on my senior colleague. And I wish to say how much I appreciated working with him these last 10 years in the Senate.

Mr. BYRD. Mr. President, I yield myself 1 minute.

It will be a long time, 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. McCLURE. Will the Senator yield?

Mr. BYRD. Yes.

Mr. McCLURE. I thank the Senator for yielding. I thank my friend from Idaho. Obviously he and I have a very good working relationship which has made it a pleasure for me in the years he and I have served together in the Senate, representing the interests of the people of our State and the broader interests of the Nation. I do thank, also, my friend from West Virginia for the friendship he has exhibited and continues to exhibit. That is something I will cherish for all my life. I 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 22 of that page. 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.

So the committee amendment, as amended, was agreed to.

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 by lay on the table was 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 office until a permanent Forest Service coordinator and a Northern Forest Lands Council are established.

Second, $400,000 should be allocated as $100,000 grants 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 of 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 appropriations 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. Independence NHP is one of our most important historic sites, a monument to our Declaration of Independence and the Constitution, as well as the home of the Liberty Bell. But, 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 about 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. 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 budget request 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.

MARAIS 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 peregin 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 Pollem 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 party. Recently, 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, they have no knowledge of the Fish and Wildlife'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 relevant 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 costruction 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 overcutting is taking place. 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 southwestern region office to request 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 portion of the road construction budget earmarked to implement the Arizona recreation initiative. This is something I cannot support. Outdoor recreation is critical to the well being of Arizonans who love to camp, hike, fish, and hunt, and who have a right to enjoy our national forests. All people have that right. I'm sure we all agree we must be particularly mindful of the elderly, the handicapped and children, who may not have the physical capacity to hike into our natural areas for recreation but who have the need and every right to access and recreational opportunity.

I would like to submit for the RECORD a letter from Mr. David Jolly, the regional forester, which outlines the impacts of the Fowler amendment on my State. I ask unanimous consent that the letter be printed at this point in the RECORD.

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

U.S. DEPARTMENT OF AGRICULTURE,
FOREST SERVICE, SOUTHWESTERN REGION,
Albuquerque, NM, October 22, 1990.

Hon. JOHN MCCAIN,
U.S. Senate, Washington, DC.

DEAR SENATOR MCCAIN: If the Fowler amendment passes and the Senate Committee marks of $3.1 million for recreation roads are then added back in, this will be a net reduction to the Southwestern Region of $3 million. (The original appropriation is approximately $10 million. The Fowler amendment will reduce this to about $4 million. The Arizona roads are about $3 million, leaving a new program of around $7 million or a net reduction of $3 million).

This reduction will require the region to layoff (fire) a number of employees. The severance expenses of this layoff will be about $1.8 million. This is for unemployment and related expenses required by law when the federal government releases people under these circumstances. The $1.8 million is not covered in the appropriation bill. The Region will have to get it from existing appropriations. Furthermore, the law requires these payments be made out of the accounts that paid the salaries of the affected employees. In this case it will be the construction appropriation. The $7 million available in the construction appropriation will be reduced by $1.8 million leaving about $5 million.

The Region could not construct a $3 million dollar recreation roads program in Arizona out of the $5 million remaining. This is especially true when the Region would be expected to produce approximately 120 million board feet of timber from both Arizona and New Mexico at a cost of $4.5 million.

Sincerely,

DAVID F. JOLLY,
Regional Forester.

Mr. McCAIN. Mr. President, I'm also informed that the Fowler amendment would have a number of disturbing economic impacts on my State. Apparently, 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 estimates 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.

As 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 fiscal year 1991 to establish a propane price and inventory system. In addition, I hope that in conference the Senate will retain language encouraging the formation of a public-private consortium to commercialize electric vehicles, and accept the House provision providing funding for the State Heating Oil and Propane Program [SHOPP].

H.R. 5769, the Department of the Interior and Related Agencies Appropriations bill, 1991, will help the Energy Information Administration [EIA] fulfill and begin implementing the promises that have been made to myself, and Senators WIRTH and LIEBERMAN, regarding improving the collection and analysis of information on 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 interruptible natural gas study, will provide the market with more information and policymakers with a better chance to spot and ward off dangerous price spirals. Though the Department is unwilling to recommend adequate inventory levels, EIA will publish current inventory levels with a comparison to the 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, a 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 Federal coordination of this program and no Federal grants to make what information that is being collected more effective. I hope that the conferees will accept the House provisions to revivify 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.

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 for transportation purposes." 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 HELMS. 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 issue of greatest importance to me, 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 for 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 eventually 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. Ohers 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 Ellis Island with 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. At 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 was developed by 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 waterfowl concentration areas 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 $2.8 million for land acquisition at the Great Swamp National Wildlife Refuge. This refuge, located 25 miles west of New York City, is 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 Morristown 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 Refuge.

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 habitats 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 funding 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 in downtown Newark. 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 stuctures 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 only part time. The $150,000 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 them. 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, causing damage to property for some and posing a potential danger to others. Also, residents have had difficulty in securing bank loans and insurance since the incidents.

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 activities 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 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 committee as expressed in its 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 deserve equal treatment.

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 few days worth of oil. The Interior Department estimates of oil in the entire mid-Atlantic planning area would result in offsetting only 13 days of our existing rate of oil imports, according to a CRS study. What we need is a comprehensive, long-term national energy policy which enhances the role of energy conservation, renewable energy, and alternative fuels.

The National Academy of Science took 3 years and the President's OCS 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 questions about 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,
Washington, DC, October 16, 1990.

Senator FRANK R. LAUTENBERG,
U.S. Senate, Washington, DC.

DEAR SENATOR LAUTENBERG: You have requested additional information concerning the Department of the Interior's plans to schedule lease sales 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 LUJAN, 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 .025 percent—of the total 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 arts programs. Far and away, its standard fare is nothing more objectionable than Mozart, Grandma Moses, or traditional clogging.

The number of choruses, dance companies, museums, orchestras, theaters, and opera companies across the country has more than tripled since the NEA began in 1965.

In Vermont, these grants have supported the Mozart 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 and 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 tangent 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 trivialize this institution, 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 majority knows we are not art critics. 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 Mideast 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 procedural 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 ourselves 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. With assistance from the NEA, 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 fellowships 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 school year. These numbers go on and on, and let me tell you that I find these statistics quite impressive. Over 85,000 projects have been funded during the years of the NEA's existence, funded without restrictions, to have achieved this level of success. Yet now, due to 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 me suggest that if our august body was successful enough to engender protests over only 0.03 percent of our votes, worries over reelection would be a thing of the past. As further evidence of its success, I am going to 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 programs 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 art in forms that we are all familiar with: $7,500 to the New Mexico Repertory Theatre to defer expenses associate 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, art that promotes 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 people to preserve customs, language, and values that might otherwise disappear.

Several other groups of artists have contributed to the preservation of the Spanish culture which has played a large role in New Mexico's history. Musica Antiqua de Albuquerque established themselves in 1978 as New Mexico's only professional ensemble to perform music with instruments from the composer's time period. In support of the cultural heritage of the district, their performances are programmed in the early Spanish tradition, with music from the medieval, Renaissance, and Baroque periods.

Endowment funds also assist groups in areas other than performance. The Hispanic Culture Foundation is committed to increasing understanding of the Hispanic 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 a statewide listing of galleries, museums, exhibits, and artistic events related to the hispanic culture. All of these valuable activities will continue to be supported by this years $20,000 grant in expension arts to the Hispanic Culture Foundation.

Several other grants are going to assist rather unusual types of art. Shared Horizons in Corrales, NM, is receiving $30,000 under the heading of Design Advancement and Organizational Project Grants. Reflecting the Nation's growing interest in the environmental movement, this grant money will be used to support creation of a conceptual and visual model for building on fragile natural sites. At New Mexico State University in Las Cruces, funds have been granted to support a visual artists forum. Public exhibits entitled "Modern Art and the Politics of Protest" will be open to the university community as well as the public.

Dual grants have been awarded to the Santa Fe Opera Association. This is an organization that has greatly benefited from NEA assistance as it grew from a fledgling organization to its current status as a world renowned opera. Now the Santa Fe Opera, with a $5,000 grant from the NEA, works to insure the continuation of the arts into the next generation with an apprentice program for young American singers and theater technicians. The examples continue; grants for museum collection, state art in education, and solo artists have been awarded throughout New Mexico.

I have taken the time to share with you these examples of the NEA's work to demonstrate how well the endowment has served New Mexico and our entire Nation. Yet despite the NEA's success, there are Members of the Senate who wish to interfere with the grantmaking process. As passed 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. Artists should be 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.

AMENDMENT NO. 3133

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 agreed to, 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 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 HEINZ 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 officials 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 a loss of jobs in this economically depressed area of Pennsylvania. Sealing the mine will result in the immediate layoff of more than 400 workers, and could ultimately lead to the permanent closure of the mine which produces some 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 attempt to extinguish the fire are not exhausted the fire may burn for years. These fires endangers 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 cannot afford to be out of work for months or longer.

I thank the distinguished chairman of the Senate Subcommittee on Interior Appropriations, Senator BYRD, and the ranking Republican member, Sen-

ator McCLURE, for their assistance in providing this important amendment. In addition, I thank Representative AUSTIN MURPHY for his efforts with this regard.

Mr. President, I thank the Senate in joining with Senator HEINZ and me in support of this amendment.

Mr. BYRD. Mr. President, I yield back my time on the bill.

Mr. McCLURE. Mr. President, I yield back all time.

Mr. BYRD. Mr. President, I ask for the yeas and nays on final passage of the bill.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. BOSCHWITZ] and the 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	Fowler	Metzenbaum
Akaka	Garn	Mikulski
Armstrong	Glenn	Mitchell
Baucus	Gore	Moynihan
Bentsen	Gorton	Murkowski
Biden	Graham	Nickles
Bingaman	Gramm	Nunn
Boren	Harkin	Packwood
Bradley	Hatch	Pell
Breaux	Heflin	Pressler
Bryan	Heinz	Pryor
Bumpers	Hollings	Reid
Burdick	Inouye	Riegle
Burns	Jeffords	Robb
Byrd	Johnston	Rockefeller
Chafee	Kassebaum	Rudman
Coats	Kasten	Sanford
Cochran	Kennedy	Sarbanes
Cohen	Kerrey	Sasser
Conrad	Kerry	Shelby
Cranston	Kohl	Simon
D'Amato	Lautenberg	Simpson
Danforth	Leahy	Specter
Daschle	Levin	Stevens
DeConcini	Lieberman	Symms
Dodd	Lott	Thurmond
Dole	Lugar	Wallop
Domenici	Mack	Warner
Durenberger	McCain	Wilson
Exon	McClure	Wirth
Ford	McConnell	

NAYS—6

Bond	Grassley	Humphrey
Dixon	Helms	Roth

NOT VOTING—2

Boschwitz	Hatfield

So the bill (H.R. 5769), as amended, was passed.

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 conferees 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. BURDICK, Mr. BUMPERS, Mr. HOLLINGS, Mr. REID, Mr. McCLURE, Mr. STEVENS, Mr. GARN, Mr. COCHRAN, Mr. RUDMAN, Mr. NICKLES, and Mr. DOMENICI conferees 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, the never failing courtesy 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 Idaho. It is my hope that we can proceed to the legislative appropriations bill. I understand that is at this moment being discussed by the managers. I am advised by Senator REID that we will be able to proceed.

Mr. President, I will momentarily suggest the absence of a quorum, in the expectation that the managers will be ready to proceed with that remaining appropriations bill shortly.

Mr. BYRD. Mr. President, before the distinguished majority leader yields the floor, will he yield to me?

Mr. MITCHELL. Yes.

Mr. BYRD. Mr. President, I just want to say to all Senators, with reference to the 12 appropriations bills that have been passed, not one single appropriations bill has exceeded the allocation ceiling, which means it demonstrates discipline on the part of the Senate and the Appropriations Committee. I am very proud of the committee, and 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 bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, S. 3207, 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 us 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 $2,187,001,500 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 $245,088,000 over the current level. This amount is within 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 this 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 side of the budget have had a particularly injurious impact 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 to accumulate 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 irreplaceable assets and, more than any other Government entity, symbolize the primacy of informed public will in our constitutional scheme.

We have to remind ourselves, and I think often, just how important and valuable the Capitol and its associated complex really are. The L'Enfant plan of 1792 symbolically expressed the philosophy of the three 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 magnificant paintings and tapestries, the frescoes and friezes and the Minton tile on which we walk—the priceless Brumidi 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 the British burned in the War 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 begun.

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 1958, the east front was replicated, extending it 33 feet and adding 90 rooms. In 1983 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 House and Senate 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 responsibilities—the hearings 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 grandest 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 position 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 to the Architect of the Capitol $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 1991 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 mil-

lion and is a reduction of $7 million from the request.

AGENCY HIGHLIGHTS

Now, Mr. President, a lot of people apparently have the notion that the legislative branch appropriations bill just funds the Congress, its purported perks, and its satellite institutions. That is a serious misconception. Through this bill, we serve the interest all Americans share 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 increases—$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, Lizst, 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 most of our founding fathers, 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. However, there are over 12 million 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 maybe are 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 $352 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 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 operations 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.

GAO recommendations made to the Congress in reports, testimony and other work over the past 8 years has resulted in estimated savings of over $94 billion. So what we spend here is extremely important because it multiplies in savings for this country. This means that every dollar appropriated to GAO has resulted in $40 saved by the American taxpayers.

OFFICE OF TECHNOLOGY ASSESSMENT

Science and technology figure prominently in most of the questions facing Congress today. Yet scientific experts disagree on the answers, and interested parties make conflicting claims. The Office of Technology Assessment [OTA] helps chart a course through these complex areas of disagreement with its impartial assessment reports, technical memoranda, and testimony.

During the last year, OTA has examined many short- and long-term consequences of technological development in many domains. They have examined issues from hazardous waste reduction and management, the defense technology base.

OTA published a report on oilspill cleanup technologies and provided testimony and technical assistance to the Congress during considerations of the 1990 oilspill legislation that was passed and signed by the President in August.

OTA completed a major study on rural health care in the United States which found that rural America lacks health insurance coverage, lives great distances from health care, and suffers from higher rates of chronic disease and disability.

That is a document that is available to everybody in this Congress.

The vast majority of States are concerned about what is happening to the health care delivery system in rural America. What they have done gives us a document that we can use.

The recommended bill contains $19,557,000 for OTA activities in fiscal 1991.

CONGRESSIONAL BUDGET OFFICE

The Congressional Budget Office is a nonpartisan analytic organization that furnishes the Congress with information and analyses on issues relating to the U.S. economy, the Federal

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 OMB. 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, constitute invaluable capital 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 peaceable 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 1,265 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 prinicpal changes.

The House bill establishes a separate House appropriation for its mail costs funded at $58.9 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 funded 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 reforms the House has adopted should assure 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 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] has played 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 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 on this Legislative Branch Subcommittee. There is a lot of reprogramming that has to take place. In the past this has been done by the majority member.

We have adopted in the 2 years we have been working together on this legislative Appropriations Committee, the procedure where both the chairman of the subcommittee and the ranking member, Senator NICKLES, sign off on these reprogrammings. It has worked well and has established, I think, a paper trail that is supportive of what this body wants to do.

I, of course, wish to express my appreciation to the leadership of the full committee: Senator BYRD, our chairman and President pro tempore of the Senate, is not just another Senator. He is a man of the Senate. His dedication to the Congress and to the institutions of representative government, in my opinion, being a history student, is unrivalled. I thank him for his help and support in moving the bill to this point in the process.

Mr. President, the Legislative Branch Subcommittee is hardly regarded as a political plum—especially in the current environment. The programs and agencies in this bill have few organized constituent groups. In fact, they have none. Moreover, the public and media—and unfortunately too many Members of this and the other body, like nothing better than to hold the Congress up to scorn and ridicule. Almost any other subcommittee would be considered a superior assignment from a political point of view. That is why we are so fortunate that Senator HATFIELD, the ranking member of the full committee, is on the subcommittee. He could have any other subcommittee he wants. But he has chosen to continue serving on this one. We are all in his debt for putting the interests of our institutions above his own.

I yield the floor for a statement by the ranking member of the subcommittee, Senator NICKLES.

Mr. NICKLES. Mr. President, I wish to compliment my friend, the chairman of the Legislative Branch Subcommittee, Senator REID. 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 REID said. He went through and gave a good summation of the bill before us, the legislative branch appropriations bill. This bill has a total amount 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 REID 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 about 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 REID 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 REID, Senator FORD, and myself last year in enacting reform that required the House and 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 mail.

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 underappropriated that amount by $33 million. They actually overspent their appropriated account by $33 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 rollcall vote. That remains to be seen. One would prohibit 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 reasons for pushing this is, frankly, 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 Senator 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 990, S. 3207, and Senate committee amendments thereto; and that the committee amendments be agreed to en bloc, provided 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. Reserving the right to object, and I wish to consult with my colleague, but as to the amendments, I ask Senator REID, is he including in the amendments to be offered en bloc these floor amendments?

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. 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 a unanimous-consent request made by my friend and colleague, Senator REID. There is no objection from this side.

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

AMENDMENTS NOS. 3134, 3135, 3136, 3137, 3138, 3139, 3140, AND 3141, EN BLOC

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 buisness 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 Senators can transfer from the mass 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

that such registrations include the number of pieces mailed; and an amendment by Senators NUNN and WARNER relative to the waiver of penalty for continued service in the legislative branch.

Mr. President, I ask unanimous consent that the amendments I have enumerated be agreed to, en bloc.

The PRESIDING OFFICER. 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 PRESIDING OFFICER. The clerk will report the amendments.

The assistant legislative clerk read as follows:

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 PRESIDING OFFICER. Without objection, it is so ordered.

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)(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 an allocation to the next fiscal year; and

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AMENDMENT No. 3135

(Purpose: To permit a Member of the Senate to transfer not to exceed 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: ", 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."

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:

SEC. SPARK M. MATSUNAGA MEDAL OF PEACE.

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 striking out paragraph (9); and

(C) by redesignating paragraph (10) paragraph (9);

(2) by redesignating subsections (c) through (n) as subsections (d) through (o), respectively; and

(3) by inserting after subsection (b) the following:

"(c)(1)(A) 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, 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.

"(B)(i) 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 medals shall be determined by the Secretary of the Treasury in consultation with the Board and the Commission of Fine Arts.

"(ii) The Spark M. Matsunaga Medal of Peace shall be struck in bronze and in the size determined by the Secretary of the Treasury in consultation with the Board.

"(iii) 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).

"(2) The Board shall establish an 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.

"(3) 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 significance.

(b) USE OF MEDAL NAME.—Section 1704(e)(1) of the United States Institute of Peace Art (22 U.S.C. 4603(e)(1) is amended by inserting " 'Spark M. Matsunaga Medal of Peace'," after " 'International Peace',".

(c) 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)".

AMENDMENT No. 3140

SEC. . WAIVER OF PENALTY FOR CONTINUED 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 subsection (b) for employees in positions in the legislative branch for which there is exceptional difficulty in recruiting and retaining qualified employees.

(b) DEFINITION.—The waiver authority under subsection (a) may be exercized—

(1) in the case of a position in the House of Representatives, under procedures established by the Committee of House Administration,

(2) in the case of a position in the Senate, under procedure established by the Committee on Rules and Administration.

AMENDMENT No. 3141

At the end of the bill, add the following:

SEC. . In fiscal year 1991 and thereafter, when a Senator disseminates information under the frank by a mass mailing (as defined in section 3210(a)(6)(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 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 before 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 question is on agreeing to the amendments, en bloc.

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 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.".

Mr. REID. Mr. President, the purpose of this amendment is essentially technical in nature. It modifies a provision adopted on the House floor that reduces discretionary amounts in the bill by 2 percent to conform the language to standard appropriations practice.

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, and 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.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BYRD. Mr. President, the legislative branch appropriations bill for fiscal year 1991, as recommended by the Committee on Appropriations, provides funding for the operation of the Senate as well as for the Library of Congress, the Architect of the Capitol, the Congressional Budget Office, the Office of Technology Assessment, the Botanic Gardens, and the Government Printing Office.

The measure as recommended by the committee did not include appropriations for items exclusively in the jurisdiction of the House of Representatives. It is the intention of the managers to include House items without change at the appropriate time.

The bill as recommended by the Committee on Appropriations provides total obligational authority of a $1,508,651,500. This represents a decrease of $179,761,500 below the recommendations of the President. It is $122,208,900 above the amounts appropriated in fiscal year 1990.

With respect to the subcommittee's 302(b) allocation, the bill as recommended is below its budget authority and below its outlay ceilings.

I commend Senator REID, the chairman of the subcommittee, and I commend Senator NICKLES, the ranking minority Member, for their excellent work in accommodating the priorities of the Senate with respect to congressional operations within the constraints of the budget agreement, and I commend them for bringing a bill to the floor that is below the President's budget request.

Theirs is a somewhat thankless task, but somebody has to do the work. This is an important subcommittee. This is an important appropriations bill.

I also wish to extend my thanks to the subcommittee staff on both sides of the aisle: Jerry Bonham, Keith Kennedy, and Lula Joyce. Their good work makes the task of the subcommittee members and all future committee members less arduous.

I will not review the highlights of the bill. The managers will have done that. The bill as reported by the Appropriations Committee deserves the support of the Senate. I again thank the two Senators, Mr. REID and Mr. NICKLES, in addition to all of the members of the subcommittee on the appropriations for the legislative branch.

Mr. NICKLES. Mr. President, I wish to thank the chairman of the Appropriations Committee for his kind remarks. I comment he mentioned that the request from the administration was for an increase of $469 million, almost $470 million over last year. That came from each one of the agencies that we fund. They just put in their full request. They actually did not go through OMB. I am talking about the Library of Congress, Architect of the Capitol, et cetera.

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 at the desk be in order.

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.

This amendment is an 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. They 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-some percent. 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.

So I think we need to have deficit reduction. 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. The amendment that we are considering now coupled with that will save an additional $90 million-some. If you add the two amendments together, we will have total savings in this bill of $100 million still even after both amendments are adopted. Or assuming maybe that both are adopted, this bill will still increase. I am talking about House and Senate functions. The bill will still increase by $124 million or 6.41 percent over last year.

That is enough to take care of the cost-of-living adjustments. That is enough to take care of the staffing requirements. Frankly, Mr. President, I think that is ample in this day and time when we do really have a budget crisis, when we really do have a deficit problem. I think we need to limit the growth of spending, and this is a good place to start.

I hope my colleagues will agree to this amendment.

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

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

The assistant legislative clerk proceeded to call the roll.

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. Mr. President, so my colleagues will know what the legislative status is or what we are trying to accommodate for tonight for Senators' schedules, we expect that we will have a vote shortly on the amendment that I have pending at the desk that 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. 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. BYRD. 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 reduce the legislative branch appropriations 5 percent across the board. Am I correct?

Mr. NICKLES. The Senator is correct.

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 can 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 and toward Government in general, for that matter. And I can understand it.

Several of us have participated for months in the effort to reduce the budget deficit. And I am sure that the American people have good reason to be impatient and frustrated with the speed, or lack thereof, that both the executive and the legislative branches have demonstrated in coming up with a budget package that will reduce the deficit by $50 billion in fiscal year 1991 and by $500 billion over a period of 5 years.

The legislative branch is one of three branches of Government. The legislative branch, the executive branch, and the judicial branch. The legislative branch is the people's branch. The House of Representatives considers itself to be the people's House. The Senate is the forum of the States. 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 lawgiver, created the Senate of Sparta, made up of 28 Senators. Out of all the institutions that were 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 since its beginning in 1789. I happen to be 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, whether they be these galleries or the galleries out there in the hills and valleys and the prairies and the plains of

this country. We ought to stop fouling our own nests. 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 join us in 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. Anymore, it is almost the 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, Medicaid, Medicare, veterans pensions, 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 scriptures. A certain man 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. Cut it 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 appropriations.

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. The Senator from Oklahoma seeks to serve the people of Oklahoma. The Senator from Nevada seeks to serve the people of Nevada. The Senator from Maryland seeks to serve the people of Maryland. JOHN GLENN seeks to serve the people of Ohio. Senator FORD seeks to serve the people of Kentucky, and they serve them well. Senator THURMOND of South Carolina; Senator PACKWOOD, Oregon; Senator GARN, Utah; Senator LAUTENBERG, 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 presonnel. 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 compete 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, 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 personnel 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

want the other half. This is just a sample.

I know we have grown here, but the country has grown. The population of the country has grown. The problems of the country have grown. We ought to consider that. How can we stand up against this overwhelming army of personnel in the executive branch?

Mr. President, if the Senate wants really to get serious about saving the people's money, let us pass a campaign financing reform bill. That will save the people's money, and they will get a bargain.

The lobbyists and the special interest groups want control of the votes, and once again the people of the country will be more ably represented by their elected representatives. I have had a great deal to say about that over the past few years.

I sought to get a campaign financing reform bill through this Senate and was unable to do it. I offered eight cloture motions to shut off a filibuster, and I was not able to get that done.

But I am telling the people of this country, and I am going to continue to tell them, if they really want to get back to a truly representative Government, they ought to rise up and demand that their elected representatives pass legislation that will wipe out these political action committees, wipe them out, and I expect a lot of the people who are engaged in those PAC's would be happy to see it. I expect they get tired of seeing us come to them with our hats in our hands.

So there are many ways to save money other than to use a meat ax on the people's branch.

I suggest to the distinguished Senators who are on this subcommittee—I compliment them. I compliment the Senator from Oklahoma. He is trying to save the people's money. But I suggest that he uses a rifle rather than a shotgun. Go after those areas. If it is the Architect of the Capitol, go after it. Prepare his case, bring his case to the floor, and let us vote.

But let us not use this easy approach, 5 percent across the board. That is no way to get at warts. If we are going to get the wart, let us cut the wart out.

I am tired of this business of seeing us self-flagellate ourselves, just whip ourselves. Maybe we ought to go home and dive under the bed and say, "Here goes nothing." But let us not condemn everybody else in the act.

I think the Senate has lost its soul. I am sorry to say that.

I am in no hurry. I think the Senate has lost its soul. I wish there was some way we could appropriate money for spine, spine and guts. I would be willing to stand up and vote for that. That is what this country needs, spine and guts. We need to tell the American people the truth and stop this running with every wind that blows.

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 to make the Congress 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 to make savings. 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 may be alone. I was alone yesterday, or the day before. I have lost count of the anodyne of time in most of these last few weeks. But I do not mind standing alone. If I had to do it over again, I would do it again. I expected to be alone on that occasion. I may 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 vote for this, I 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 runover, 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.

Mr. President, I first came 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 way 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 upon 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 here on the floor for a couple 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 fever of over 100. She was sick. 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 Columbia Univeristy.

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 worrisome congressional mail frank. That will come later. Everyone can at that time flex their muscles and vote against congressional mail. 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 funds 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 countryreater Las

Vegas area were forced to double sessions. They were initially overcrowded when they were separate schools. But when they had to close them because of asbestos they were really crowded. They started in the dark, and completed their school day in the dark—two different classes.

Part of what we are doing 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 be spent on.

I serve on the Environment 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 the capabilities of our legislative branch agencies.

As I pointed out in my opening statement, $95 million of the increase recommended by the committee, exclusive of House items, is necessary just to keep the Senate and our joint agencies funded for the existing programs. This leave $28 million to cover all additional workload requirements and needed capital improvements.

Mr. President, just this week there was a rainstorm. We were all inside. I do not know how many of you saw it. I did not. But it was a violent rainstorm. As a result of that downpour there was a leak in the beautiful rotunda of this Capitol behind me caused by, some have said, disrepair. As a result of that there is possible damage to the beautiful frescoes that have been there.

You know, what we are recommending in this bill is for essential items, no puff.

The 2-percent reduction in the House bill and in my amendment would cut another $30 million from the Senate and joint items, leaving them $2 million below current service requirements. Another 3 percent cut on top of this would equal another $45 million. This would leave the agencies in this bill exclusive of the House with exactly half the amount necessary to cover their cost increases, and maintain their existing level programs.

If we do that, we are not cutting fat. We are cutting into really the sinews and the bones of this, as the President pro tempore has stated, the people's branch of the Government. I am only 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 not an attractive bill. This amendment is, maybe some would think, difficult to vote against, especially in the current climate. Cutting 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.

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?

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 comes 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 think, should respond to those 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.

And how often have you 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 of the Congress; that is, our responsibility to determine if the billions of dollars appropriated to the executive branch annually are spent for a good purpose or utterly wasted through fraud or incompetent management?

It is our responsibility, as elected representatives of the people, to be on top of that. The General Accounting Office is our watchdog. They have saved $94 billion in the last 8 years in recommendations that they have made.

Or when you submit vouchers for reimbursement for expenses you have incurred in the performance of your official duties, do we expect these to the paid accurately and promptly? The answer is yes.

So we could go on with examples of how this amendment could cut your staff, and reduce the availability of essential support whether it involves the printing of bills, resolutions, conversations on the telephone, preparations of printed material, analysis on computers, or moving from place to place on elevators and subways. The impact is on the ability to freely meet with each other and citizens of this country, and to deal with the complex issues that face us. We take all these things for granted.

So, as I said, the Library of Congress has things stacked all over that are being ruined—millions and millions of things. I think we should recognize that we have treasures to protect. If this amendment is adopted, the Congressional Budget Office will lose nine professional staff positions. The Office of Technology Assessment would have to furlough all staff for 20 days. The GAO would have to postpone getting the personal computers needed by their analysts and would lack what they need to keep up with what we are going. Thirteen percent of the positions of the Architect of Capitol would be held vacant for an entire year.

These are not mundane matters, but important matters to help us arrive at a point where we can do a good job here on the Senate floor and do an appropriate job of drafting legislation for our constituents, and certainly so that we can do a good job for the people that we represent.

I respectfully submit that the chairman of the Appropriations Committee has really called upon us to have a focus and a direction. And I really believe that this amendment is not well taken, and that the Senator from

Oklahoma is mistaken in this blanket cut. We should defeat this amendment.

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; 31 percent is to the House. 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 Capitol Police. That is more than most of the municipalities surrounding Washington, DC have. I think that is too many. I think some reductions could be made. Maybe they do not have to be made. It goes on and on.

Mr. President, I have a whole list of very large increases that are in this bill, and I am more than happy to go through and come up with an amendment that would call for reducing several of these down.

I told the chairman of the Appropriations Committee that I think he has a good point; maybe there should be a rifle shot.

Also, we have already adopted an amendment that calls for an across-the-board reduction of 2 percent. We have done that already, but I personally think we need a little bit more, because this bill grows, it grows by 12.62 percent, a $245 million increase over last year.

You might say: What have you done in the past? That is a 12.6-percent increase this year. Last year it grew by 8 percent. The year before it grew by 3 percent; 7 percent the year before. Back in 1987 it grew by 2 percent. So we have had lower growth rates until just this last year, and all of a sudden we are growing at 12.5 percent. I think that is too much. I think it is indicative of a lot of problems that we have; the spending is out of control.

I tell my colleagues that, yes, the Senate is 20 percent of this bill. The Senate happens to grow at 12.78 percent. The House grows at 12.89 percent.

Title I, these non-Senate or House functions, which include Capitol Police, Capitol Guide Service, Office of Technology Assessment, CBO, Architect of the Capitol, and CRS, grows by 12.7 percent.

Title II, which are other agencies, grows by 12.29 percent. And so if you look at it altogether, almost everything in this bill grows about 12.5 percent.

So my amendment said across the board, a 5-percent reduction. It would bring spending growth down to 6.4 percent. To me, that makes sense. Maybe that is too much. I have heard colleagues say that it is too much. I do not think it is.

I will include for the RECORD, and I will not go throgh this, but we have significant increases, well above even 12 percent for many items—Senate mail for example—and we will have an amendment dealing with Senate mail. It comes up 49.9 percent higher than last year's level. Sergeant at Arms, $16.7 million, a 22-percent increase. We have the Capitol Building and grounds, $3.8 million; that is a 22-percent increase. CRS, Congressional Research Service, a 15-percent increase. Library of Congress, $28.8 million over last year, a 13.5-percent increase, and so on. GAO salaries and expenses grow by $55.3 million, or a 15.5-percent increase.

And again, I could go all the way through. There are a lot of big increases. Even small increases, small accounts, the office of the majority and minority whips, go up by 33 percent. And on and on. I think some reductions are in order. That is what this amendment calls for. If it is defeated, and it may well be defeated, I do not know what the results will be. We can come back tomorrow, and maybe make more specific reductions. I am happy to do that.

I was kind of following the guidelines the House followed, and also those my colleague, Senator REID, followed, by having a 2-percent reduction. I think a 6½-percent growth in the legislative branch is certainly sufficient. I hope this amendment will be agreed upon.

Mr. BYRD. Mr. President, I will just take 2 minutes, and then I will end. The distinguished Senator mentioned the General Accounting Office. The Geneal Accounting Office is an arm of the Congress. It is the watchdog over the executive branch. It saves the American taxpayer millions of dollars. That is where the $600 toilet seats are discovered. There were the $40 light bulbs which were discovered. However much did those hammers cost?

Mr. REID. It was $700, or $200.

Mr. BYRD. It was $200 per hammer or whatever it was. Way too much.

We talk about cutting the Government Printing Office, and the CBO which has to compete with the Office of Management and Budget. CBO has 226 people. It cost $21 million. The OMB has 750 people and cost $48 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.

We are talking now 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 propound 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 takes place without intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. ARMSTRONG. Mr. President, reserving 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 odered.

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 continued at a special rate above 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 without any 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.

LEGISLATIVE BRANCH APPROPRIATIONS ACT, FISCAL YEAR 1991

The Senate continued with consideration of the bill.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, could I ask the distinguished chairman and manager of the bill just one question, if I might?

Mr. President, is it not the fact that if any Member of Congress feels that the appropriation is too much for their office, for their operations, they have the perfect right to return 5, 10, 75, 95 percent, if they want to, to Treasury, just by not spending it, and just by not drawing it down; is that correct?

Mr. REID. If the Senator from Vermont will yield. There are in fact Senators that do this on a yearly basis, and so the answer to the Senator's question is yes.

Mr. LEAHY. In fact, the Senator from Vermont has turned back well over a half million dollars in a particular period of time in that same fashion.

But on the other hand, each Senator, I might say to my friend from Nevada, I believe had the responsibility to determine, having been elected by that State, what the needs of the State are, and what must be done to serve the interests of that State.

I thank the distinguished chairman.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ARMSTRONG. Mr. President, I congratulate my friend from Oklahoma for offering this amendment. I agree with its intent. I agree with its effect.

I want to clarify a thing or two and make a couple of brief observations. First of all, I want to be sure I understand correctly, if we are to adopt the Nickles amendment, that nonetheless, the result would be an increase in spending for the legislative branch in the next fiscal year over last year. So the talk of cuts is really reducing somewhat the rate of increase in the appropriation.

Mr. NICKLES. The Senator from Colorado is exactly correct.

Mr. ARMSTRONG. And do I understand that as the bill came to the floor, it called for an increase of approximately $122 million in 1991 over 1990?

Mr. NICKLES. No. The yield, the increase when the bill came before us, called for an increase of $245 million. That is a total legislative branch increase in 1991 from 1990.

Mr. ARMSTRONG. Then where did I get the $122 million? I see that listed as the figure on the front of the committee report.

Mr. NICKLES. If the Senator would yield further.

MR. ARMSTRONG. I see it is the difference between——

Mr. NICKLES. I expect that is the increase excluding the House.

Mr. ARMSTRONG. I thank my friend for explaining that. So as the bill came to us, it was an increase of $245 million, or about what percent 11 or 12 percent?

Mr. NICKLES. 12½ percent.

Mr. ARMSTRONG. After the adoption of the Nickles amendment, there will be a remaining increase of about——

Mr. NICKLES. 6.4 percent.

Mr. ARMSTRONG. Mr. President, I do not know whether 6 percent is the magic number, or 7 percent is a good number, or 4 percent would be a good number. But it appears to me that there are a lot of individuals and families and companies out there trying to get by on an increase that is much smaller than 12, 10, 11, or even 6, 5, or 4 percent.

In fact, out our way, there seems to be quite a few people trying to get by on the same amount they had last year; and even some, I hate to tell my colleagues, are getting by on a little less. And a few on quite a bit less. The notion somehow there is inevitable year-by-year growth in the rate of spending for every worthwhile function simply cannot be permitted to pass unchallenged.

I do not want to debate it at any length, but the idea that somehow a 4-percent increase or a 5-percent increase or a 6-percent increase, let alone a 12-percent increase, is just inevitable or to be accepted, and that somehow scaling back even as the Senator from Oklahoma wishes to do is arduous or draconian, or is a stringent measure, just does not square up with the way that most of the constitutents live, or the way the rest of the world works.

Even the prosperous corporations in America, and especially those who want to remain prosperous, have found that they had in many cases to reduce their actual year-to-year expenditures; not just reduce the rate of increase, but in fact cut back on functions which formerly seemed to be important to them, on functions which is past years, they thought they could afford, and in some cases, thought they could not afford to get along without.

So, Mr. President, I think the Senator's amendment is well advised and well justified, just on the simple ground that this is a time when we are trying to get the Federal deficit under control, and Congress certainly is not exempt from that process.

But, Mr. President, there is a larger issue here. Sometime in the next 24 or 48 hours, we are going to be called on

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, in many cases. In 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. Honestly, what he said touched 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 here 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 before us. I think he is right. I hope my colleagues 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 $200 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 $100 million over last year.

I don't believe it is too much to ask—in fact 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 be printed in the RECORD at this point.

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

FISCAL YEAR 1991 LEGISLATIVE BRANCH APPROPRIATIONS

	1990	Fiscal year 1991 House bill	Amount over 1990 (dollars)	Amount over 1990 (percent)	Fiscal year 1991 Senate bill	Amount over 1990 (dollars)	Amount over 1990 (percent)	Nickles 5-percent cut plus mail freeze	Amount over 1990 (dolalrs)	Amount over 1990 (percent)	Nickles under fiscal year 1991 Senate
Senate	392,428,600	442,582,500	50,153,900	12.78	442,582,500	50,153,900	12.78	409,231,975	16,803,375	4.28	33,350,525
House	603,043,500	667,819,000	64,775,500	10.74	680,770,000	77,726,500	12.89	648,392,500	45,352,000	7.52	32,377,500
Title I	1,336,971,100	1,470,864,850	133,893,750	10.01	1,507,723,500	170,752,400	12.77	1,421,115,925	84,144,825	6.29	86,607,575
Title II	604,942,000	671,351,940	66,409,940	10.98	679,278,000	74,336,000	12.29	645,314,100	40,372,100	6.67	33,963,900
Total W/O House	1,338,869,600				1,506,231,500	167,361,900	12.50	1,419,698,525	80,828,925	6.04	86,532,975
Total	1,941,913,100	2,142,216,790	200,303,690	10.31	2,187,001,500	245,088,400	12.62	2,066,430,025	124,516,925	6.41	120,571,475

Notes:
In order to provide fair comparisons, Senate and House mail costs, including House arrearages, are reflected in Senate and House items. The summary provided on page 4 of S. Rpt. 101–533 included fiscal year 1990 House and Senate mail costs as a joint item, reflected 1989 House arrearages as a fiscal year 1990 joint item, reflected 1990 House arrearages as a fiscal year 1991 joint item, reflected fiscal year 1991 Senate mail costs as a Senate item, and did not include fiscal year 1991 House mail costs. The presentation of the Senate report summary, therefore, does not provide fair comparisons between fiscal year 1991 and fiscal year 1990 totals.
Senate Buildings and House Buildings are included in title I as an Architect of the Capitol item and are not reflected in Senate and House items. The summary on page 4 of S. Rpt. 101–533 treated such accounts as House and Senate items and does not reflect the House Buildings account.
To allow comparisons, the Senate entry in the fiscal year 1991 House bill column reflects the amount reported by the Senate Appropriations Committee; such funds were not included in the House-passed bill.
Items under the fiscal year 1991 House bill column assume application of the Penny 2 percent reduction amendment to all items uniformly.
Items under the Nickles proposal assumes application of the 5 percent reduction amendment to all items uniformly.
Items under the fiscal year 1991 Senate bill column do not reflect application of the Penny 2 percent reduction amendment.
Source: Prepared by the Office of Senator Don Nickles—Oct. 24, 1990.

LEGISLATIVE BRANCH SUBCOMMITTEE BUDGET AUTHORITY

[Dollars in millions and fiscal year]

Legislative Branch	1986	1987	Change from 1986		1988	Change from 1987		1989	Change from 1988		1990	Change from 1989		1991 Senate	Change from 1990	
			Dollars	Percent		Dollars	Percent		Dollars	Percent		Dollars	Percent		Dollars	Percent
Total budget authority	1,600	1,635	35	2	1,745	110	7	1,804	59	3	1,941	137	8	2,817	246	13

Senate Appropriations Committee estimates.

Senate officers and employees salaries: $7.3 million, 13.7 percent.
Senate Sergeant at Arms: $16.7 million, 22.8 percent.
Senate official mail: $11.8 million, 49.9 percent.
Miscellaneous items: $1.3 million, 19.0 percent.
Congressional Budget Office: $2.0 million, 10.2 percent.
Capitol Buildings and Grounds: $23.8 million, 22.0 percent.
Congressional Research Service: $6.9 million, 15.1 percent.
Library of Congress salaries/expenses: $21.8 million, 13.5 percent.
Copyright Office salaries/expenses: $3.1 million, 15.3 percent.
Library of Congress furniture: $2.4 million, 94.7 percent.
GAO salaries/expenses: $55.3 million, 15.5 percent.
Many other accounts under one million dollars increase at rates in excess of 10 percent under the Senate bill:
Legislative Counsel, 19.4 percent.
Legal Counsel, 13.6 percent.
Secretary of the Senate, 10.4 percent.
Joint Committee on Taxation, 19.5 percent.
Capital Guide Service, 12.8 percent.
Botanic Garden, 35.9 percent.
Copyright Royalty Tribunal, 25.7 percent.
All of the items outlined above are in addition to House accounts.

Mr. 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 LEAHY'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 vote to support this motion to table, I am not saying we should not make some cuts. I am not saying we should not show some restraints. I have not said that at all. I am simply saying let us cut out the warts. 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 question is on agreeing to the motion to table amendment No. 3143. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from New Mexico [Mr. BINGAMAN], 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. BOSCHWITZ], the Senator from Oregon [Mr. HATFIELD], the Senator from Mississippi [Mr. LOTT], and 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

Adams	Inouye	Pryor
Bentsen	Johnston	Reid
Burdick	Kennedy	Riegle
Byrd	Kerrey	Rockefeller
Cranston	Lautenberg	Sanford
Daschle	Leahy	Sarbanes
Dodd	Lieberman	Sasser
Ford	McClure	Simon
Fowler	Mikulski	Stevens
Gore	Mitchell	Wirth
Hollings	Moynihan	

NAYS—60

Akaka	Durenberger	Lugar
Armstrong	Exon	Mack
Baucus	Garn	McCain
Biden	Glenn	McConnell
Bond	Gorton	Metzenbaum
Bradley	Graham	Murkowski
Breaux	Gramm	Nickles
Bryan	Grassley	Packwood
Bumpers	Harkin	Pell
Burns	Hatch	Pressler
Chafee	Heflin	Robb
Coats	Heinz	Roth
Cochran	Helms	Shelby
Cohen	Humphrey	Simpson
Conrad	Jeffords	Specter
D'Amato	Kassebaum	Symms
Danforth	Kasten	Thurmond
Dixon	Kerry	Wallop
Dole	Kohl	Warner
Domenici	Levin	Wilson

NOT VOTING—8

Bingaman	DeConcini	Nunn
Boren	Hatfield	Rudman
Boschwitz	Lott	

So the motion to lay on the table amendment No. 3143 was rejected.

Mr. NICKLES. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. REID. 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 agreeing to the Nickles amendment.

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 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 clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oklahoma [Mr. NICKLES] (for himself, Mr. HELMS, Mr. PRESSLER, and Mr. WILSON), proposes an amendment numbered 3144.

On page 6, line 22 strike "$35,500,000" and insert in lieu thereof "$23,688,000".

Mr. NICKLES. Mr. President, for the information of all of my colleagues, I am sure my colleagues are aware the majority leader has indicated there will be no more votes tonight.

This amendment basically would reduce the mail account for the Senate from $35.5 million to $23.688 million. That is the same amount that we appropriated last year.

I might also mention for my colleagues' information that for fiscal year 1990 we actually spent $17 million. I do not know that we have the exact figures, but about $17 million. So actually if we went with the $35.5 million we are looking at it would be almost a 100-percent increase over last year's actual mail cost.

The amendment that I have would say, well, we should not appropriate any more money than we did last year. It would leave it at last year's amount. It would save about $12 million.

Several Senators addressed the Chair.

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 funding was.

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 costs 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 just mail as many mailings as each Congressman has, 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 support the Rules Committee, which has worked tireless 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 came out of Philadelphia, as it then was, and the first recipient we have on record, I believe, is from South Carolina.

This has been an aspect of the American democracy. It has been something that has distinguished it from other democracies. For two centuries, we have written to our constituents. Now all of a sudden we find this a burden that the Nation cannot sustain. While we go about and raise a fortune for television and other modes of communication, we tamper with an institution of this body.

I would like to thank the chairman for defending it, even though there are those who know little of what large consequence we deal.

Mr. STEVENS. Mr. President, the great difficulty with this amendment is that it really is just a continuance of a concept of whittling 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 in remote areas about what 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 perspective in terms of what 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 or other, 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 Holikachuk or Unalakleet or Shishmaref what happend to them, they are crazy; they are flat out crazy.

I, for one, wonder about the future of this institution, if we do not have the intestinal fortitude to stand up to some of our critics. Some groups send out direct mail to constituents and point out the cost of our mailing, and yet these groups are sending their mail out, as a nonprofit basis, which is subsidized. Their mail is costing the taxpayers more than our mail costs.

But I tried once to limit that abuse, and no one would listen to me. This body was not about to stop nonprofit mailings. I cannot believe that we are going to reduce this proper cost and continue to reduce our ability to inform the public.

As a matter of fact, the Constitution, as Senators know, protects the right of an individual to contact a Member of the Congress. In my office a communication to me as a Senator is privileged. 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.

But does not everyone who writes to us have a right to get an answer? How far are we going in this drive to try to demonstrate that we are fiscally conservative?

Would we not be more conservative if we walked in here in shorts and underdrawers and demonstrated we did not spend money for clothes?

What is going on is undressing the Senate and telling the people we do not have enough sense to know when we should and should not mail.

As a matter of fact, I think the Senate owes my friend and colleague, the chairman of the Rules Committee, a great deal of thanks. We have and every Member who appeared before the Rules Committee knows we have been very tight fisted with money. What is more, the money that has been allocated to individual Senators this year has not been used. We have controls now. We know precisely who mails and how much they mail and when they mail.

We have set prohibitions. You cannot mail 60 days before an election, both the primary and general election. We are not abusing this mailing privilege.

There were abuses in the past. I think we have controlled those excesses. But it is time now for some people to understand what they are doing. There are other provisions of the bill with which I do not agree. They are going to cause great deal of trouble and embarrassment for us.

The net result of this is that people will raise more campaign money. Remember this: We are trying to stop people from going out and being campaign fundraisers for the first 6 years of their terms. If you cannot get the money through official allowances, people are going to go and raise money and they are going to raise it from the same groups that people say it is wrong to take from.

I can tell you, with one or two exceptions in my time here, now 22 years, I have never had a constituent accuse me of wasting money by sending him or her a newsletter that was informative. There are a couple of them who said they did not think it was too informative. But they write back about the content, not about the fact they received a newsletter. I would hope that somewhere we will get some common sense in dealing with this issue.

There are other issues in this bill that are coming up. I hope we get a time while other Members are listening to explore them. We are sort of talking to the choir here to a certain extent. But, I think the proposal is wrong. I think it is wrong to have a decision to reduce the ability to mail letters to our constituents given the limited amount we now have.

Mr. REID. Mr. President, will the Senator from Alaska yield for a question?

Mr. STEVENS. I yield.

Mr. REID. As he has established and the senior Senator from New York has established, this mail that we send out is not a new perk we developed in the last 10 years. It is something that has been in existence since 1791; is that not right?

Mr. STEVENS. That is correct. I tell the Senator when I came here everyone in the Senate was sending out one newsletter a month. We now have the ability to send out one letter a year?

Mr. REID. It is only 67 letters a year; that is what we have here, be-

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 per year.

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; is that 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, I believe 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 within the blackout 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 major issue. That was 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.

I might say to my friend when I was visiting with some of the members of parliament from Great Britain, I asked them what they do with their mail. They have a card that they send out and for every constituent who writes to them there is a card sent back, a card that says, "Your communication is being received and is being duly noted."

I was interested because I wonder if it would save us money if we did that. I wonder if the Senator from Nevada realizes that the cost of our news letter that go out from the mailing room that are properly sorted according to zip code and bundled is lower than the cost of sending out a postal card. We are sending these now at the lowest reduced rate of presorted and bundled by zip code mail, and therefore the cost to the Senator has been reduced. Not only have we reduced the amount that we can send but we have reduced the cost of what we send, too. It is very efficient. It is as efficient as you can get in terms of our modern mailing tactics for anyone in the private sector.

But again the real problem is what is our responsibility. I agree with the Senator on that. What is our responsibility? And every Senator's responsibility is different, at least every pair of us is different, because we represent different constituencies.

I do not think a lot of people who appear on the floor who object to this mailing account understand my State. I wish they would come and travel with me. As a matter of fact, I wish I were home right now. I am a candidate and have not been home since August.

My constituency is farther from me now than I would be at if I were in Tokyo. The distances in this country are very vast and great and more vast in my State then anywhere else.

Sending out a newsletter is an individual decision. If my people want to vote me out of office for sending 12 newsletters in a year, the fact I am here shows they were not really too upset with those 12 newsletters during the years I first got here.

I tell you, Mr. President, the real thing that bothers me is that in order to secure an approval and applause from the bunch of people who do not understand government we have taken the position that we should continue to reduce the funds to run this Senate beyond what is necessary. I think this bill provides a minimum amount necessary, one mailing per constituent per year. That to me is an absolute minimum.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, before the Senator from Alaska leaves the floor, I would note that the areas in his State, of course, are vast. The State of Nevada is much smaller than the State of Alaska, but it is still a large State. It is the sixth largest State to travel from a place like Laughlin, NV, Winnemucca is 600 miles. It is not often we can get to those places. The only way we can really keep them informed of all the highways and byways in that 600-mile district, except for Reno and Las Vegas which have air service, is through the mail.

So I hope everyone in the Senate understands, when they cannot communicate the way they want, that this amendment is the reason.

Mr. NICKLES. Mr. President, I appreciate the comments that were made by my friend and colleague from Alaska and also from Nevada as well. Again Mr. President, I would just state that the amendment that I have would mean that the appropriated amount would be the same thing as we had last year. We appropriated last year $23.7 million; we did not use it all. We actually only mailed last year, estimates are, about $16.4 million. So we did not even mail all the $23 million.

Now granted, some Senators did and some Senators did not mail any. But the fact is I do not think the American people were deprived of their mail last year. I do not know that constituents were crying to us to please send us more newsletters, please send us more town meeting notices.

The amendment that I have would provide $23.6 million; that is an average of $236,000 per Senator. That is not an insignificant amount. That is significantly over what we have actually mailed in fiscal year 1990.

Mr. President, I do not think this is a draconian change. Basically it leaves the appropriated amount for Senate mail the same as last year. I urge the adoption of the amendment.

Mr. STEVENS. Will the Senator yield for just a minute before he gives up the floor?

Mr. NICKLES. Yes.

Mr. STEVENS. Would the Senator agree that the amount that was appropriated last year was appropriate.

We did not spend all the money we had last year, and I think that is good.

Does the Senator agree with that, He implies there is an undue increase here.

FURTHER CONTINUING APPROPRIATIONS—FISCAL YEAR 1991

The PRESIDING OFFICER (Mr. BURDICK). Will the Senator yield for an announcement?

Pursuant to the previous order, House Joint Resolution No. 681 is deemed considered, read a third time, and passed and the motion to reconsider the vote is laid upon the table.

So the joint resolution (H.J. Res. 681) was passed.

LEGISLATIVE BRANCH APPROPRIATIONS ACT—FISCAL YEAR 1991

The Senate continued with the consideration of the bill.

Mr. NICKLES. Mr. President, I appreciate my friend's question. I am not sure I totally understood 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 FORD from Kentucky and also Senator STEVENS from Alaska because they worked with us, and Senator REID, and we pushed and we had a big battle last year on the floor of the Senate on mail reforms. Some of those mail reforms have taken effect. Some of them had some real bite to them and we have seen a significant savings or cost reduction in Senate mail. The House now is making similar reforms and hopefully they will have similar reductions.

Mr. 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 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 waiting 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 precisely the point I wanted to make. What 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 at least send out one mail 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 Washingon 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 at least have one mailing to their constituencies. 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.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, again I do not want to be too repetitive, but 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, we had that amount appropriated. The Rules Committee allocated that amongst Members last year. They would allocate it amongst Members this year.

Mr. FORD. Will the Senator yield for a question?

Mr. NICKLES. I will be happy to yield.

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?

The PRESIDING OFFICER. 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 chance to vote on it but my amendment says, well, let us appropriate the same amount we did last year. We did not use it all 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 should leave it to the Rules Committee, 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, it 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 constitutents? 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 a series of 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, you have the same provision that 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, so 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 begging bowl in order to serve my constituency. 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 am also not going 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 the most senior 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 run through this process, and 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 wishes to do so shall be able to draw from an account to mail one mailing per capita in his or her State, and that that money will be available from the general funds to operate the Senate. And you can put this total amount somewhere; 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 mailings 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 bulk mail to 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 sending out farmers notices from 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 allocations because they do not get notices anyway.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

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 that the 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 right of the distinguished Senator from Alaska jeopardized in any way.

The PRESIDING OFFICER. Is there objection?

Mr. NICKLES. I object.

The PRESIDING OFFICER. Objection is heard. Is there further debate on the amendment?

Mr. STEVENS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. 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.

AUTHORIZATION TO SIGN HOUSE JOINT RESOLUTION 681

MR. REID. Mr. President, I ask unanimous consent that Senator WENDELL FORD be authorized to sign House Joint Resolution 681.

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

AMENDMENT NO. 3145 TO AMENDMENT NO. 3144

(Purpose: To reduce the appropriation for FY 1991 official mail costs to FY 1990 levels)

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

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS] proposes an amendment numbered 3145 to Amendment No. 3144.

Mr. STEVENS. 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:

In lieu of the language proposed to be inserted, insert "$30,000,000".

Mr. STEVENS. 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 REID. 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.

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.

Mr. REID. 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 agreeing to amendment No. 3144, as amended.

The amendment (No. 3144), as amended, was agreed to.

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 among offices of the Senate, 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. FORD] 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 not have from others, 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, maybe half, 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 would 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 among Members should not be used 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 have a very important impact on specific groups within 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 requested 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 this matter 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.

The assistant legislative clerk proceeded to 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 KLECZKA, 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 motorcycle fleet contains only Hondas, Kawasakis, and Suzukis.

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 KLECZKA, 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 domestically built 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.

REVIEW AND RELEASE OF GAO REPORTS

Mr. JOHNSTON. Mr. President, I want to thank the subcommittee chairman, Senator REID, 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 comment 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 withn 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)

[Fy 1991 in billions of dollars]

302(b) bill summary	Budget authority	Outlays
H.R. 5399, Senate Reported (new budget authority and outlays)	1.5	1.3
Enacted to date	0.1	0.3
Adjustment to conform mandatory programs to resolution assumptions	+(*)	+(*)
Scorekeeping adjustments	0.7	0.6
Bill total	2.3	2.2
Senate 302(b) allocation	2.3	2.3
Total difference	−(*)	−0.1
Discretionary:		
Domestic Discretionary spending	2.2	2.1
Domestic Discretionary allocation	2.2	2.2
Domestic Discretionary difference	−(*)	−0.1
Mandatory spending	0.1	0.1
Mandatory allocation	0.1	0.1
Mandatory difference	(*)	(*)
Bill total above (+) or below (−):		
Presdient's request	0.2	0.2
House-passed bill	−(*)	−(*)
House 302(b) allocation	NA	NA
Programmatic baseline	0.1	0.1

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that there be a period for morinig 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

Terry Anderson has been held captive in Lebanon.

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 negative. The time 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. SANFORD. 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.

Funded by a grant to the UNA-USA 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 their staffs to review 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 were ordered to be printed in the RECORD, as follows:

UNITED NATIONS ASSOCIATION OF THE UNITED STATES OF AMERICA, OCTOBER 1990

[Background Paper]

THE UNITED NATIONS IN THE GULF CRISIS AND OPTIONS FOR U.S. POLICY

The Iraq-Kuwait crisis has directly 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 Iraq to reverse its 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.

This background paper summarizes the key issues confronting 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. The final provision 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-defence 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-defence is considered a principle of customary international law. The principle permit 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 military force in support of another state provided the victim state considers itself under attack and lodges a request for assistance. The World Court has not expressed a view on the lawfulness of a nation initiating military actions in response to the imminent threat of armed attack against another nation.

American reliance on collective self-defense. The United States has relied upon the inherent right of collective self-defense, and frequent references to Article 51 of the Charter, to justify the deployment of U.S. Armed Forces to Saudi Arabia and other states on the Arabian Peninsula, as well as on the adjoining seas. There are no defense treaties between the United States and any Gulf nation. Kuwait, which is the only victim state of Iraqi aggression to date, requested the assistance of the U.S. Armed Forces shortly after the Iraqi invasion. Following meetings with Secretary of Defense Richard Cheney in early August, Saudi government officials requested American military deployments on Saudi territory to help Saudi Arabia defend against possible Iraqi agression against that nation. The United Arab Emirates, Bahrain, Oman, and Qatar (members of the Gulf Cooperation Council along with Kuwait and Saudi Arabia) followed later in August with agreements to permit the stationing of U.S. Armed forces on their respective territories.

Absence of written commitments. During a hearing of the Subcommittee on Europe and the Middle East of the House Foreign Affairs Committee on September 18, the Assistant Secretary of State for Near Eastern and South Asian Affairs, John Kelly, confirmed that there are no written documents, and hence no official record, establishing the commitments of the United States tothe defense of any of the Gulf nations, including Kuwait and Saudi Arabia. Therefore the invocation of the principle of collective self-defense rests upon the oral requests of the victim state of Iraqi aggression and other states in the Gulf region which desire military assistance to defend against possible further Iraqi aggression.

Scope of Security Council resolutions. No Security Council resolution explicitly recommends, requests, or authorizes the deployment of the multinational forces in the Gulf region. Nor does any Security Council resolution direct or acknowledge the right of any nation to use military force in collective self-defense against Iraq. To date the only action taken by the Security Council that is generally understood to authorize the use of force by any portion of the U.S. Armed Forces in the Gulf region, or portions of the military forces of more than 20 other nations deployed there, arises under Resolution 665 which authorizes states participating in the maritime operation of the trade embargo to use "such measures commensurate to the specific circumstances as may be necessary under the authority of the security council to halt all inward and outward maritime shipping in order to inspect and verify their cargoes and destinations."

In mid-August the United States took the position that military force could be used to enforce Security Council Resolution 661, the trade embargo, under the principle of collective self-defense and in accordance with a controversial interpretation of Resolution 661 without further Security Council authorization. Disagreement among Member States of the Security Council and of the United Nations over this interpretation of international law and Resolution 661 ultimately led to Resolution 665.

Interrelationship with collective security. Article 51 of the Charter qualifies the inherent right of collective self-defense by limiting its application when "the Security Council has taken measures necessary to maintain international peace and security." If such measures are undertaken by the Security Council, then the principle of collective self-defense may need to be harmonized with the operation of approved collective security mechanisms. Security Council Resolutions 660-667, 669, and 670 evidence substantial measures taken by the Security Council in response to Iraq's armed attack on Kuwait.

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 39: Security Council determination. Article 39 authorizes the Security Council to determine the existence of any threat to the peace, breach of the peace, or act of aggression. Article 39 further authorizes the Security Council to make recommendations or to decide what non-military and military measures shall be taken "to maintain or restore international peace and security."

Article 40: Provisional measures. Prior to making the recommendations or decisions provided for in Article 39, the Security Council can call upon the parties concerned to comply with specified provisional measures pursuant to Article 40 of the 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 (a provisional measure), and called upon Iraq and Kuwait to begin immediately intensive negotiations and to support other diplomatic efforts (another provisional measure).

Past Security council recommendations: Korea. The power to recommend, as distinguished from the power to decide, was tested by the Security Council at the outbreak of the Korean War. The Security Council made recommendations under Article 39 to authorize military action during

the summer of 1950 when North Korean forces invaded South Korea. With the Soviet delegate absent, the Security Council recommended that Members of the United Nations furnish assistance to repel the armed attack. The Security Council further recommended that those Members providing military or other assistance make it available to a unified command under the United States, requested the United States to designate the commander of such forces, and authorized the unified command at its discretion to use the U.N. flag in operations concurrently with the flags of the various participating nations. 39 Member States offered assistance and 16 of them finally sent armed forces to Korea. When the Soviet delegate returned to the Security Council and exercised the veto power, the General Assembly became seized with the Korean matter under the Uniting for Peace Resolution.

Article 41: Non-military actions. The power to decide, and thus require, specific non-military measures against a violating Member arises specifically under Article 41, which includes in its list of mandatory measures that can be approved by the Security Council "complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations."

Past example: Rhodesia. The Security Council employed its Article 41 power against Rhodesia with a series of decisions in the 1960's that started with an arms embargo and request for Member States to terminate economic relations, proceeded to selective mandatory economic sanctions, and finally authorized comprehensive and mandatory economic sanctions. In early 1966, following the Security Council's selective mandatory economic sanctions against Rhodesia, the United Kingdom requested authority from the Security Council to use military force against a specific oil tanker heading for the port of Beira with a full cargo of oil destined for Rhodesia. The Security Council approved a resolution that authorized the United Kingdom "to prevent by the use of force if necessary the arrival at Beira of vessels reasonably believed to be carrying oil destined for Rhodesia, and empowers the United Kingdom to arrest and detain the tanker known as the Joanna V upon her departure from Beira in the event her oil cargo is discharged there." This resolution represents the only example prior to the Iraq-Kuwait crisis where the Security Council explicitly authorized the use of military force by decision rather than by recommendation. However, that decision was not implemented pursuant to Article 42 of the Charter, which empowers the Security Council to decide upon the use of military force, or pursuant to any other explicitly stated article.

Example: South Africa. Another notable example of Security Council action pursuant to Article 41 is South Africa. In 1963 the Security Council recommended a voluntary arms embargo against South Africa. In 1970 the Council strengthened the voluntary arms embargo with a recommended ban on training of or cooperation with South African forces. In 1975 and 1976 Western permanent members of the Security Council vetoed attempts to make the arms embargo mandatory under Chapter VII, arguing that the threshold requirement of Article 39—that there be a threat to peace—had not been met. But in 1977 the Security Council approved Resolution 418 which imposed mandatory sanctions relating to arms and related material under Chapter VII generally but of the non-military character covered by Article 41. Resolution 418 remains in force.

Article 42: Military action. In the event non-military measures authorized by Article 41 "would be inadequate or have proved to be inadequate," then the Security Council can exercise its power under Article 42 to decide upon mandatory military action. The text of Article 42 offers an illustrative list of such actions, including "demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations." The language of Article 42 thus does not require that the trade sanctions against Iraq and occupied Kuwait prove to be inadequate prior to any authorized use of military force. Rather, the Security Council could determine that the trade sanctions "would be inadequate" and authorize the use of force long before the trade sanctions cripple the Iraqi economy.

The Security Council's authorization under Resolution 665 to enforce the maritime trade sanctions could be interpreted as straddling both Articles 41 and 42 since it contemplates 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 stems in part from the content of the succeeding articles in Chapter VII.

Article 43: Special agreements. Article 43 requires Member States to "undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purposes of maintaining international peace and security." The original intent of the drafters of the Charter in 1945 was that the use of military force by the United Nations pursuant to Article 42 would be accomplished with the armed forces provided under the special agreements entered into between the United Nations and the various Member States. These forces would be available on call for any contingencies that might arise requiring Security Council action under Article 42. Under the terms of Article 45, Member States would have to hold available a certain number of national air-force contingents for immediate service, but again pursuant to terms worked out in the special agreements.

Although Article 43 requires that the special agreements "be negotiated as soon as possible on the initiative of the Security Council," and despite the fact that in 1947 the U.N. Military Staff Committee (discussed below) prepared a report on special agreements, the permanent members of the Security Council disagreed among themselves on so many of the conditions that would ahve to be incorporated in special agreements that none were ever signed. The prospect for special agreements remained nil until the Iraq-Kuwait crisis. During his address to the General Assembly on September 25, Soviet Foreign Minister Eduard Shevardnadze signalled his country's willingness to negotiate and enter into a special agreement with the United Nations.

Articles 45, 46, 47: Military Staff Committee. Articles 45, 46, and 47 govern the Military Staff Committee. Since 1945 there has been a Military Staff Committee consisting of "the Chiefs of Staff of the permanent members of the Security council or their representatives." The function of the Military Staff Committee is "to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament." Any Security Council plans for the application of armed force are to be made "with the assistance of the Military Staff Committee."

During the Cold War the Military Staff Committee was staffed by designated subordinates of the Chiefs of Staff who undertook no substantive work and met regularly but very briefly. But the Security Council has taken a tentative step toward activating the Military Staff Committee in response to the Iraqi aggression. Resolution 665 requests states to coordinate their actions to enforce the trade sanctions "using as appropriate mechanisms of the Military Staff Committee. . . ." But for all practical purposes the Committee remains unused. Command control of the military contingents in the Middle East remains with the respective national governments, as do determination of their rules of engagement.

The Military Staff Committees was intended to function in a system where special agreements made the armed forces of Members available to the Security Council. Since special agreements were never concluded, the Charter's provisions governing the Military Staff Committee remain largely unimplemented. Article 47 states that the "Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Secretary Council." If the armed forces are not placed at the disposal of the Security Council pursuant to special agreements, then arguably the Military Staff Committee would not become involved.

Even if the Military Staff Committee does assume responsibility for the strategic direction of the armed forces, Article 47 further provides: "Questions relating to the command of such forces shall be worked out subsequently." This example, during the Iraq-Kuwait crisis, the Security Council could agree that the United States command the multinational forces under U.N. authority while the Military Staff Committee assists the Security Council, to a degree determined by the United States and other permanent members, in the application of armed force.

Article 48: Mandatory compliance. Further collective security provisions of Chapter VII include Article 48, which requires compliance of Security Council decisions (non-military and military) by all or some U.N. Members as the Security Council may determine. In the Iraq-Kuwait crisis, the Security Council Resolutions 661, 662, 665, 666, and 670 require compliance of all states. Resolutions 660, 662, 664, and 667 are directed solely at Iraq. Article 25 of the Charter (falling under Chapter V which governs the Security Council) embodies the agreement of all Members "to accept and carry out the decisions of the Security Council in accordance with the preent Charter." Resolution 670 specifically refers to the obligations of Members under both Article 25 and Article 48 in the Security Council's determination to insure compliance with and enforcement of the trade sanctions.

Article 49: Obligatory assistance. Article 49 requires U.N. Members to "join in affording mutual assistance in carrying out the measures decided upon by the Security

Council." Resolution 665, for example, requests all states to provide assistance for enforcement of trade sanctions. Resolution 670 requires all states to take such measures as may be necessary to insure effective implementation of the trade sanctions and air embargo.

Article 50: Economic hardship. Article 50 provides that if a Member is "confronted with special economic problems" arising from preventive or enforcement measures taken by the Security Council, then that Member "shall have the right to consult with the Security Council with regard to a solution to those problems." A number of Members have sought economic assistance to offset the losses being absorbed as a result of their compliance with Security Council resolutions during the Iraq-Kuwait crisis. These Members include Jordan, Turkey, and Egypt. However, the Security Council has not taken any collective action to deal directly with such economic problems. That task has been left to the individual permanent members of the Security Council as will as other donor nations, such as Germany and Japan. (See the discussion under Part VII ("Financing") below.)

IV. ENFORCEMENT OF THE UNITED NATIONS TRADE SANCTIONS

The enforcement of the U.N. trade sanctions against Iraq and occupied Kuwait appears, by all accounts, to be largely effective in cutting off almost all international trade with those two nations. The imposition of trade sanctions and their subsequent enforcement have been unprecedented multilateral undertakings pursuant to authority granted by the Security Council.

Three Security Council resolutions. Resolution 661 authorizes the trade sanctions, but does not explicitly authorize any maritime or air operation to enforce the sanctions. Resolution 665 acknowledges the multinational maritime operation that had been launched by the date of that resolution (August 25) and authorizes necessary measures (which is broadly agreed to include the use of minimal force) by the multinational maritime operation to enforce the trade sanctions on the seas. Resolution 670 confirms that the trade sanctions apply to all means of transport, including aircraft, and then sets forth detailed requirements for enforcing the sanctions against air traffic to and from Iraq and occupied Kuwait.

Record of enforcement of maritime operation. By September 27, the maritime operation had interdicted 1,400 vessels to inquire about their cargo and destinations. More than 125 vessels had been boarded; the United States Navy had made approximately 110 of these boardings. Shots had been fired across and bows of vessels three times by American warships and one time by an Australian warship to persuade such vessels to permit inspection of cargo. There had been six instances where vessels loaded with cargo bound for Iraq were prevented from proceeding to port—five of these after boarding, one without boarding.

Air embargo. The air embargo authorized by Resolution 670 created some confusion in the days immediately following its approval due to its ambiguity on the issue of passenger flights to and from Iraq and occupied Kuwait. The resolution is clearly aimed at preventing shipment of cargo to and from those nations. The Sanctions Committee established by Resolution 661 has 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 has further determined that passenger flights of Iraqi Airways are not permitted under 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 resolution explicitly refers to enforcement measures "consistent with international law, including the Chicago Convention. . . ." The Chicago Convention on International Civil Aviation, signed in 1944, does not contain an express prohibition on the use of armed force against civil aircraft. But following the destruction of Iran Air 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." One of those provisions is Article 51 and its incorporation of the inherent right of individual and collective self-defense.

In May 1984, following the destruction of KAL 007 over Sakhalin Island on September 1, 1983, the ICAO Assembly approved an amendment to the Chicago Convention 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 appealed "urgently" to all contracting states of the Chicago Convention to ratify Article 3 bis as soon as possible. As of July 27, 1989, the amendment had been ratified by 52 states. It will not come into force until 102 states have ratified it. The United States, Iraq, Iran, 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, and, in humanitarian circumstances, foodstuff. . . ." What constitutes "humanitarian circumstances" proved to be a contentious issue among members. The United States argued that humanitarian circumstances had not yet arisen to permit shipments of foodstuffs.

This ambiguity led to Resolution 666, which provides that the Sections Committee will make any determination that a humanitarian need exists to ship foodstuffs. The Sanctions Committe must report its determination to the Security Council and recommend how the need should be met. But the Sanctions Committee is limited to recommendations that will be carried out "through the United Nations" and with the cooperation of the International Committee of the Red Cross or other appropriate humanitarian agencies. The distribution of the foodstuffs inside Iraq or occupied Kuwait also must be done under the supervision of the chosen humanitarian agency.

Resolution 670 further stipulates an exemption from the air embargo of "food in humanitarian circumstances, subject to authorization by the [Security] Council or the [Sanctions] Committee established by Resolution 661 (1990) and in accordance with Resolution 666 (1990), or supplies intended strictly for medical purposes or solely for UNIIMOG [the United Nations Iran-Iraq Military Observer Group created in 1988 to observe the cease-fire between Iran and Iraq and monitor troop withdrawals]."

As of September 25, the Sanctions Committee had approved only one shipment of foodstuffs into occupied Kuwait. Iraq agreed in mid-September to allow an Indian ship loaded with foodstuffs and medical supplies to dock in Kuwait and to permit the Indian Embassy in occupied Kuwait and the Indian Red Cross to distribute the supplies.

Enforcement against violator nations. Resolution 670 includes the decision of the Security Council to deal directly with violations of the trade sanctions. In the event the provisions of Resolution 661 or 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 violator state. Rather it requires the Security Council to consider punitive measures if and when such violations occur. This means that further decision by the Security Council will be required to determine and implement any such punitive measures. As of October 3, no case of violation had been considered by the Security Council.

VI. POTENTIAL MILITARY ENFORCEMENT ACTION UNDER CHAPTER VII

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 trade sanctions "would be inadequate or have proved to be inadequate" to compel Iraqi compliance 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 question 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 specify any requirement for special agreements. However, the Security Council probably could not compel any Member to commit any portion of its armed forces to 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 agreements—to make available to the Security Council contingents of the armed forces of Members for the purpose of enforcing Security Council decisions—has been achieved in fact though not in law in connection with the Iraq-Kuwait crisis. The Security Council could decide that, contingent upon the approval of the participating Members of the multinational force, that force 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 authority to negotiate a special agreement with the Security Council, but requires that such agreement be approved by both the Senate and the House of Representatives. Once the special agreement is duly ratified, then the president is empowered to make available to the Security Council "on its call in order to take action under article Article 42" the armed forces, facilities, or assistance provided for under the special agreement. But Section 6 adds the proviso that nothing in the Act "shall be construed as an authorization to the President by the Congress to make available to the Security Council", 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, about assigning any national military command responsibilities to a U.N. command group consisting in part of military officers from other nations reporting to the Military Staff Committee and, in turn, to the Security Council.

Chapter VII of the Charter can be read as providing considerable flexibility on the issue of the military command of an authorized U.N. enforcement body. Even if 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 Security Council." The latter requirement has never been tested and could be narrowly tailored for the military operations authorized by the Security Council.

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. But 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 or coordinated command structure 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 intrusive involvement 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 665 comes close to embracing this approach with its preambular reference to: "Having Decided to Impose Sanctions in Accordance with Chapter VII of the Charter of the United Nations." Resolution 665 then proceeds to acknowledge the "maritime 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 a debate over Article 43 or over the precise 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 been unarmed. Typically, U.N. peacekeeping forces separate belligerent forces and are deployed by the Security Council only with the approval of the parties directly involved. U.N. observer groups sometimes operate alongside U.N. peacekeeping forces and sometimes are deployed independently. The observers usually are tasked to monitor military affairs in a designated territory and to report directly to the Secretary-General.

At some point in the future there may arise an opportunity to deploy a new U.N. peacekeeping force to Iraq, Kuwait, and/or Saudi Arabia either to implement a negotiated settlement or to separate belligerent forces following a military conflict. The only United Nations presence in the region currently is the U.N. Iran-Iraq Military Observer Group (UNIIMOG) referred to in Security Council Resolution 670. This is a small group (numbering in the low hundreds) of unarmed observers from about 15 countries whose mission is to observe the 1988 cease-fire between Iran and Iraq, monitor Iraqi and Iranian troop withdrawals, and to assist in the implementation of Security Council Resolution 598, which also calls for an exchange of prisoners of war. UNIIMOG staffs offices in Teheran and Baghdad. This observer group has no mandate from the Security Council with respect to the current crisis.

A negotiated settlement of the Iraq-Kuwait crisis—one that presumably would restore the sovereignty of Kuwait—could embody an agreement to station a new U.N. peacekeeping force or observer group in Kuwait and along the Iraqi-Kuwait border. The peacekeeping/observer force probably would be required to help restore peace and stability to the area. Its mandate could include monitoring the withdrawal of Iraqi forces from Kuwait, restoring law and order in Kuwait, observing the conduct of any Iraqi or multinational forces that might enter Kuwaiti territory with or without the authority of the Security Council, and patrolling Kuwait's borders.

In the aftermath of a war, a U.N. peacekeeping/observer force could undertake similar duties as well as oversee the exchange of prisoners or war, guard against looting and other threats to public safety, and help restore confidence in the security of Kuwait as multinational forces eventually depart. In the event the United Nations authorizes the use of military force against the Iraqi army and the multinational force is deployed under a U.N. command structure, then it may be proposed that a part of this force be authorized as a peacekeeping force for long-term deployment in Kuwait once the armed conflict comes to an end.

Given the rapidly improving relations between the United States and the Soviet Union, there also is the possibility that the governments of both superpowers would be willing to assign military personnel from their respective armed forces to a U.N. peacekeeping force or observer group in Kuwait. Both countries have done so in the past with U.N. observer groups but never with an armed U.N. peacekeeping force.

There may also arise an opportunity to consider a long-term U.N. naval peacekeeping role in the Persian Gulf. This concept was much explored during 1987 and 1988 when Kuwaiti-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 contributing to the restoration of Kuwait's 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 U.N. peacekeeping force took on a wide range of additional duties.

On a lesser but still significant scale, the Security Council also deployed a 600-member military observer group to Central America (known by its Spanish acronym ONUCA) in 1989 to patrol borders in the region and ensure a halt in cross-border raids and government support for rebels and to help end outside interference in the region. ONUCA consisted of soldiers, observers, and technicians contributed by Canada, West Germany, Spain, and a number of Latin American countries. Another United Nations observer group known as ONUVEN oversaw plans for elections in Nicaragua that eventually were held, again under ONUVEN monitoring, in February 1990. Following the success of those elections ONUCA's mandate was expanded by the Security Council to including monitoring the cease-fire in the region, the separation of

forces, and the demobilization of the Nicaraguan *contras*.

The most ambitious plans for United Nations peacekeeping 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 awaiting the United Nations in the event the Iraqi army is withdrawn or defeated and Kuwait's sovereignty restored. The Security Council could fulfill 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 U.N. 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 threats to peace and stability 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 ballistic missiles, especially in Iraq. A special U.N. agency might be created to undertake inspection of weapons 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 authority or under 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. An effective enforcement mechanism for such an arms embargo may require further Security Council action.

Soviet Foreign Minister Eduard Shevardnadze has proposed the creation of a United Nations arms transfer register to record the flow of weapons between nations. This proposal may prove instructive in developing some kind of arms transfer register for the Middle East.

Proposals for a United Nations conference on the Middle East have circulated for years. But the Iraq-Kuwait crisis has stimulated much more interest in the idea. It could evolve further either as part of a negotiated settlement or as a more likely possibility following a military conflict that restores Kuwaiti sovereignty.

IV. PROSECUTION OF IRAQI VIOLATIONS OF INTERNATIONAL LAW

The United Nations has a long history of defining crimes against peace, crimes against humanity, and war crimes. Much of the international law violated by Iraqi authorities is codified in conventions, treaties, and resolutions approved by or under the auspices of the United Nations. In addition, the United Nations Charter and the Security Council resolutions pertaining to the Iraq-Kuwait crisis will be key documents in determining the character and scope of Iraqi violations of international law.

In 1946 the U.N. General Assembly unanimously adopted Resolution 95(I) which affirmed "the principles of international law recognized by the Charter of the Nuremberg Tribunal and the judgment of the Tribunal." The U.N. International Law Commission endorsed the "Nuremberg principles" in 1950.

The behavior of the Iraqi government and army will be judged against the standards embodied in a host of additional documents, including:

1970 Hague Convention IV Respecting the Laws and Customs of War on Land.

1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare.

1949 Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War.

1954 Hague Convention and Protocol for the Protection of Cultural Property in the Event of Armed Conflict.

1977 Geneva Protocol I Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts.

1961 Vienna Convention on Diplomatic Relations.

1963 Vienna Convention on Consular Relations.

1973 Convention on Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents.

1979 Inernational Convention Against the Taking of Hostages.

The International Court of Justice, the judicial arm of the United Nations, may prove to be an unlikely forum in which to bring a case against any particular Iraqi official or the Iraqi government. The jurisdiction of the Court extends only to cases brought by and between states and not by a state against a national of another state. Further, a state must agree to the jurisdiction of the Court for a particular case either by having accepted the compulsory jurisdiction of the Court in advance (Iraq has not done so) or through an existing treaty violation. Iraq is a party to the 1961, and 1963 Vienna Conventions and the 1973 Convention on Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents. These three multilateral treaties include compulsory jurisdiction clauses. Iraq thus would be obligated to participate in a case brought to the International Court of Justice in connection with Iraqi violations under any of these treaties. Whether Iraq would appear to defend itself or would comply with the judgment of the Court is problematical.

The United Nations has examined proposals for an International Criminal Court ever since the Nuremberg Tribunal. In recent weeks, considerable attention has been focused again on the creation of such a court. In testimony before the House Foreign Affairs Committee on September 4, Secretary of State James Baker regarded the suggestion of an International Criminal Court as a "good one" and spoke about the possibility, notwithstanding the absence of such a court today, of taking "actions against the leadership of the government of Iraq, should that ever become necessary and/or possible, and the military personnel who might be committing violation of the law against our citizens and the citizens of other countries."

Soviet Foreign Minister Eduard Shevardnadze alluded to an International Criminal Court during his September 25 address to the U.N. General Assembly when he emphasized the need to create the necessary legal environment in which to bring individuals charged with "grave crimes against mankind" to justice. The Iraq-Kuwait crisis already has generated more serious interest in the proposal, but it is doubtful any such body would 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 657 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 help 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 reached 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.

I point out, Mr. President, that this legislation does not call for any increase in tolls paid on the Delaware Memorial Bridge. It retains the existing Federal requirement that tolls 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 Environment and Public Works to prepare a detailed summary of the Clean Air Conference agreement. I ask unanimous consent that 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 Conferees have been meeting to reconcile differences in their respective bills to amend the Clean Air Act. On Monday, October 22, the Conferees reached final agreement on provisions which address mobile sources of air pollution, toxic act pollution, acid rain, enforcement, clean air research and miscellaneous provisons. The Conference agreement also includes provisions regarding areas in nonattainment, stratospheric ozone protection, and permits which were agreed to previously. A summary of 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 ozone (smog); more than 40 areas are failing to attain the carbon monoxide standards; and an estimated 58 areas exceed the health standard for particulate matter (PM-10). State and local governments have a major responsibility for implementing measures that will reduce pollution to levels that do not threaten health; the Federal government sets certain minimum requirements and assures that States carry out their responsibilities.

Title I of the Conference Agreement, which adopts the House Title I with a minor change concerning offsets for oxides of nitrogen, divides areas that fail to meet any one of the pollution standards listed above into categories, depending on the severity of the problem, and sets out requirements of different levels of stringency for each category. Following is a summary of the provisions of Title I:

Depending on the severity of the pollution problem, nonattainment areas for any of the pollutants must attain the health standard for ozone within five, ten, fifteen, or seventeen years (twenty years for Los Angeles).

Nonattainment areas for each of the pollutants must achieve specified increments of progress from the present until the health standard is achieved. This new requirement will ensure early ozone reductions and, for the first time, steady progress toward meeting the standard. In the case of ozone, areas must reduce emissions of volatile organic compounds (VOCs), a precursor of ozone, by 4% per year (with waivers for certain specified conditions) until the standard is attained.

In areas exceeding the standard for ozone, service stations dispensing more than 10,000 gallons per month of gasoline (50,000 in the case of small businesses) are required to install equipment on pumps to reduce emissions of VOCs.

Vehicle inspection and maintenance programs must be upgraded in ozone and carbon monoxide areas that already have such programs and must be instituted in most other areas that do not already have them.

The Environmental Protection Agency is required to impose one of the following sanctions in an area that fails to prepare or implement a plan to attain a health-based air quality standard: limited use of Federal highway funds or a requirement that new industry offset emissions at a 2 to 1 ratio.

The definition of major sources in current law is modified so that smaller sources of VOCs are required to control emissions (50 tons in moderate and serious areas; 25 tons in severe areas; 20 tons in extreme areas)

When a State fails to develop a plan that meets the requirements of the law, the Environmental Protection Agency is required to promulgate a Federal Implementation Plan.

The Environmental Protection Agency is required to issue control requirements for a number of sources of pollution, including commercial and consumer products.

TITLE II. MOTOR VEHICLE-RELATED PROVISIONS

Cars and trucks currently account for 50% of the smog (ozone) pollution and 90% of the 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 mandated 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 natural gas derivative.

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 60%, respectively, beginning with 40% of the vehicles sold in 1994 and increasing to 100% of vehicles sold in 1998. Comparable reductions are required for light trucks such as vans and pickups.

The period during which cars 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-1990's—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 1995 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 transmit buses, beginning in 1994, to use cleaner 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 Section 177 language that provides for adoption and enforcement of California auto standards by other States.

The agreement requires enhanced vehicle inspections in the most highly polluted areas. The conferees 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., provided these vehicles are offered 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 0.075 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 standard).

Heavy duty fleet vehicles from 8,500 lbs. to 26,000 lbs. will be required to meet a combined NO_x and hydrocarbon emission standard of 3.15 grams perbrake horsepower hour, which is a 50% reduction below emissions from a 1994 heavy duty diesel engine. If EPA determines this standard is not 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 they are significant contributors to ozone or carbon monoxide problems in more than one area, EPA must regulate their emissions. California would be precluded from adopting its own standards for engines smaller than 175 HP used in construction equipment or farm equipment and from locomotives. Within five years EPA must regulate emissions from new locomotives.

The Agreement would shorten the warranty period for most light duty vehicle emission control components to two years or 24,000 miles starting in 1995 but extends the applicable coverage for major components costing more than $200 (such as the catalytic converter, onboard diagnostics and the electronic control system) to eight years or 80,000 miles. This revision only applies to light duty vehicles.

California Pilot Program

The Agreement contains a pilot program for California, a modification of the House bill. Beginning in 1996, 150,000 clean fuel vehicles per year must be produced for sale in California; by 1999, this number must rise to 300,000. These vehicles must meet California's TLEV (transitional low emissions vehicle) standards (0.125 NMOG, 0.4 NOx, 3.4 CO and 0.015 formaldehyde) until the year 2000 when they must meet the LEV requirements (0.075 NMOG, 0.2 NOx, 3.4 CO and 0.015 formaldehyde). California must assure that sufficient clean fuels are produced, distributed and made available for all clean fuel vehicles to operate exclusively on such fuels in the covered area. If California fails to adopt a fuels program that meets this requirement, EPA must establish such a program within three years.

Other states with serious, severe or extreme ozone non-attainment areas are authorized to "voluntarily" opt-in to the California standard. This voluntary opt-in cannot include any production or sales mandate for vehicles or fuels but must rely on incentives to encourage their sale and use.

TITLE III: AIR TOXICS 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 standards. 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 not later than 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 90% below 1987 emissions levels receives a 6-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 a more stringent standard is necessary to protect the environment.

EPA is required to set such "residual risk" standards for pollutants which may cause cancer whenever the risk is greater than 1-in-1,000,000 to the person in the general population most exposed to emissions from a source in the category.

Permits

Each source subject 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 States, so long as they meet minimum Federal requirements.

Special Provisions for Coke Ovens and Utilities

Coke ovens which achieve a stringent level of control may qualify 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 toxic pollution of the Great Lakes which results from atmospheric deposition of metals and other toxic particulates. EPA is required to take action to protect the water quality of 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 and require MACT. EPA must list sufficient source categories to assure that 90% of the emissions of the 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 designated 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 identify possible hazards 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.

Municipal Incinerators

The Conference agreement includes provision to control the air emissions from municipal, hospital and other commercial and industrial incinerators.

Recycling and ash management provisions from the Senate bill were deleted.

TITLE IV: ACID RAIN PROVISIONS

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 (NOx) 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.

Annual sulfur dioxide emissions are capped beginning in the year 2000.

Marketable Allowances

In addition to its pollution control permit, each source will receive "allowances" equal to the pollution it is permitted to emit. An allowance is a marketable federal permit to emit one ton of sulfur dioxide.

If a source reduces its pollution more than required, it will have left-over allowances 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 I

In Phase I, which begins January 1, 1995, utility powerplants emitting at a rate about 2.5 pounds of sulfur dioxide per million Btu (lbs./mmBtu) (about 111 plants) will have to reduce their emissions to a level equal to 2.5 lbs./mmBtu multiplied by their average 1985-87 fuel consupmtion.

Plants that use certain control technologies to meet their Phase I reduction requirements may either postpone compliance until 1977 or receive early-reduction bonus allowances for reductions they achieve between 1995 and 1997. In addition, Phase I plants that use certain control technologies will also receive 2 for 1 credit for every ton of reduction they achieve below a 1.2 lbs./mmBtu level during Phase I.

A special allocation of 200,000 annual allowances per year will be made in each of the five years of Phase I to powerplants in Illinois, Indiana and Ohio that are required to make reductions in Phase I.

Phase II

In Phase II, which begins January 1, 2000, all utility power plants 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 able to increase their emissions between now and the year 2000 by

roughtly 20% and will then be limited to that level. This requirement is necessary to maintain the nationwide cap on SO_2 emissions.

Bonus allowances are distributed to accommodate growth by units in States with statewide average emissions below 0.8 lbs./mmBtu. Plants that have experienced increases in their utilization in the last five years also receive bonus allowances.

50,000 bonus allowances per year are allocated to plants in 10 Midwestern States that make reductions in Phase I.

Units that use energy conservation or renewable energy will receive special incentive allowances for making early reductions in SO_2 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 allownce "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 affected sources under the acid rain title must meet these standards by the Phase II deadline. This standard will also be set based on low-NO_x burners, and will be updated as new technologies are developed.

EPA is required to promulgate a revised NO_x 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 clean coal 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 if actual 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 ensure 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 four 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 would also have 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, any person 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 90 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 operations without the necessity 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 exceed emissions 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 compromise provisions on—CFC, halon, carbon tetrachloride, and methyl chloroform phase out schedules (see below for table showing schedule);

HCFC production freeze in 2015 and elimination in 2030, coupled with use limitations beginning in 2015 and, for use as a refrigerant in appliances, 2020;

recapture, recycling, and safe disposal regulations to be phased in beginning January 1, 1992;

a July 1, 1992 prohibition on venting during appliance service, repair, and disposal;

effective January 1, 1992, a requirement to use certified recycling equipment when servicing motor vehicle air conditioners;

restrictions on the sale of small cans of class I and class II refrigerants;

a ban on nonessential uses of ozone depleting chemicals;

labeling requirements;

a safe alternatives policy to promote the transition to safe substitutes;

a requirement for Federal agencies to modify procurement regulations in accordance with the requirements and policies of this title;

a prohibition on the export of technologies to produce class I substances and on investments to produce class I or class II substances to nations that are not Parties to the Montreal Protocol;

domestic and international trading of production allowances (industrial rationalization);

authorization for the U.S. contribution to the international fund that has been established to assist developing countries; and

studies on sources of and options for controlling emissions of methane.

Phase out schedules

The percentages in the following table refer to the maximum allowable production as measured against baseline production in percent.

	carbon tetrachloride	methyl chloroform	CFC's and halons
1991	100	100	85
1992	90	100	80
1993	80	90	75
1994	70	85	65
1995	15	70	50
1996	15	50	40
1997	15	50	15
1998	15	50	15
1999	15	50	15
2000		20	
2001		20	
Total	415	[1] 685	440

[1] New authority would be added for EPA to authorize the production of methyl chloroform in an amount not to exceed 10 percent of baseline per year in 2002, 2003, and 2004 for use in essential applications for which no safe substitutes are available.

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 terms, 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 specified sections and titles of the Act, including section 303 (emergency orders), the permits title, the acid rain title, and the stratospheric ozone protection title. Included is authority to issue administrative penalty orders, file civil actions, and initiate criminal proceedings via the Attorney General.

Criminal Penalties

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 permit title, and knowing violations of the acid rain title or the stratospheric ozone protection title. In addition, the agreement provides criminal fines and penalties for the knowing filing of false statements and other similar recordkeeping, monitoring, and reporting violations. Consistent with other recent environmental statues, criminal violations of the Clean Air Act are upgraded from misdemeanors to felonies.

Field Citations

The conference agreement provides new authority for EPA 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 regarding 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 penalties in citizen suits and, rather than directing the payment of penalties into the U.S. Treasury, to direct that the moneys be used to pay for beneficial mitigation projects. The agreement also allows citizen suits to be brought to enforce the requirement to obtain a permit, the conditions of permits, and the requirements contained in SIPs. Finally, in response to the Supreme Court ruling in *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation, Inc.*, 484 U.S. 49 (1987), the conference agreement allows citizen suits to be brought with respect to past violations if there is evidence that the violation has been repeated.

Environmental Audits

The conference agreement includes a statement of managers that encourages 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 were generally similar. The conference agreement adopts the House title with several changes drawn from the Senate bill.

The primary change involves adoption of the Senate's proposal to continue the acid rain research program begun under NAPAP with a Task Force composed of several agency heads. Under the agreement, the President would appoint the chairman of the Task Force. The Task Force would be responsible for reviewing the status 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.

The agreement generally follows the House provisions with respect to the various research and study programs to be conducted by the EPA. It provides for an EPA program of research, testing, and development of methods for sampling, measurement, monitoring, analysis, and modeling of air pollutants. In addition, EPA will be required to conduct an environmental health research program on the short-term and long-term effects of air pollution.

EPA is further directed to conduct an ecosystems research program and, in consultation with the Secretary of Energy and others, to oversee an experimental research and analytical research and field testing effort at the Liquified Gaseous Fuels Spill Test Facility in Nevada. This effort is intended to develop improved models for atmospheric dispersion of chemicals, evaluate existing and future models, and evaluate the effectiveness of certain hazard mitigation and emergency response technologies.

EPA is 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 to determine the risks and benefits to human health and the environment relative to those from using conventional gasoline and diesel fuel.

The Adminstrator is also required to develop and implement a plan for coordinating research with other Federal ecological and air pollution research efforts. A study that compares international air pollution control technologies of selected industrialized countries will also be conducted for the purpose of determining if there exist such technologies abroad that may have beneficial applications in the United States.

Comprehensive Analysis of Benefits and Cost

The EPA is directed to make a comprehensive analysis of the benefits and costs of the various requirements of the Clean Air Act. A council of independent experts would advise EPA on how to predict future costs and benefits of various clean air programs.

OTHER PROVISIONS

Disadvantaged Business Concerns

The conference agreement adopts the House's title X, relating to disadvantaged business concerns, with one substantive modification. Under the bill, as modified, the Administrator shall, to the extent practicable, require that not less than 10 percent of total Federal funding for clean air research relating to the requirements of the Act will be conducted by disadvantaged business concerns.

Wise Job Displacement Provision

The conferees approved a modified version of the Wise Amendment, establishing a program of training and weekly benefit payments for workers terminated or laid off as a consequence of compliance with the Clean Air Act. This program will be administered under the Job Training Partnership Act with a five-year, $250 million authorization, earmarked for displaced workers and to be used for both training and benefit payments. Eligibility requirements for these displaced workers will be developed by the Secretary of Labor in a rulemaking process. Benefit payments are set at the level of unemployment insurance or the poverty level, whichever is higher, and may be received as long as displaced workers are enrolled in approved training programs.

Visibility Provisions

The Conference Agreement retains the Senate provisions concerning visibility. EPA and other federal agencies are directed to conduct a study to identify and evaluate sources of visibility impairment. In addition, EPA is given authority to establish visibility transport regions and commissions.

THE RETIREMENT OF CAPT. THOMAS G. KELLEY, USN

Mr. McCAIN. Mr. President I take this time to note the retirement of Capt. Thomas G. Kelley from the U.S. Navy after a distinguished career of 30 years.

Captain Kelly last served as the Special Assistant to the Chief of Naval Personnel for Legislation. In this assignment, he was responsible for all legislative issues involving Navy manpower and personnel.

He worked closely with the Armed Services Committee over the past 3 years, and has been personally responsible for helping to protect and improve the quality of life for the men and women of the Navy and their families. They could not have had a better spokesman than Tom Kelley.

Tom was a naval officer of extraordinary talents. He continually demonstrated outstanding leadership in every assignment, including command at sea, and major command ashore. All who have served for or with Captain Kelly have nothing but praise and the highest possible regard for him.

He is a man of exemplary character, and the highest sense of personal honor. He epitomizes all that the concept of being a naval officer has meant through the over 215-year history of the U.S. Navy.

These accomplishments, and this distinguished career, are significant enough to merit our thanks and praise. But Tom Kelley did something else in his career that places him

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 recoiless 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 extrication mission completed.

His leadership, bold initiative and resolute determination served to inspire his men. His extraordinary courage under fire, his gallantry at the risk of his own life, and his selfless devotion 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 his wounds, Tom Kelley fought to stay on active duty, and was able to continue a long and distinguished career. As we debate the course of out 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 pleasure of serving as cohost with Representative STENY HOYER of Maryland for the Boys & Girls Clubs of America's annual "Youth of the Year" congressional breakfast. At this 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; Rosa Cross of southeastern Michigan; and Adam Cornell-Stubbs 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 for their ongoing support of the clubs. Accepting the award was the president of CBS/Fox Video North America, Mr. Robert Delellis. We thank him for his dedication to the children of our Nation.

Others 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."

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-Stubbs 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 for always being there for him. He is a fine young man, and I wish him well.

Vice chairman of the board Arnold Burns then closed the annual event by reminding us that Boys & Girls Clubs serve over 1,500,000 young people. Mr. Burns also spoke of the great importance this organization has to our Nation's future strength.

In addition to all who participated in the program, I would like to take this opportunity to give a special commendation to Mr. Robbie Callaway, director of government relations for the Boys & Girls Clubs, and his colleague Mr. Tom Garth, for the excellent work they did in connection with this event. Their efforts are greatly appreciated and were instrumental in making the 20th annual awards breakfast a very special time for all present.

WHAT ARE IRAQI MILITARY AIRCRAFT DOING IN YUGOSLAVIA?

Mr. DOLE. Mr. President, as my colleagues know, the foreign operations appropriations bill we passed today contains a provision that prohibits assistance to foreign governments which are in violation of the United Nations embargo of Iraq. I believe that this foreign aid restriction is critical for the duration of the Middle East crisis. And I believe that it reflects the heart of the international community's consensus, and efforts to respond in unison to the blatant and arrogant aggression of Saddam Hussein.

Mr. President, I would like to draw to my colleagues' attention a recent announcement by the newly elected democratic Government of the Republic of Croatia, one of the constituent republics of Yugoslavia. Last week, the Prime Minister of the Croatian Republic announced that there are Iraqi military aircraft at the Yugoslav Air Force military service installation outside of the Croatian capital of Zagreb. Noting the actions taken by the United Nations, the Croatian Government protested to the commander of the Yugoslav Armed Forces and to the Federal Government of Yugoslavia. The protest condemned the servicing of Iraqi aircraft, as well as overflights by these aircraft—which took place earlier this month.

Mr. President, in my view, these events merit a serious and thorough investigation by the U.S. Government. Moreover, it seems to me that, if the Yugoslav Government is engaged in providing assistance to the Iraqi military, any and all aid from the United States to the Government of Yugoslavia would be precluded under the provisions of this bill. Therefore, I urge the administration to investigate this matter as soon as possible, and to communicate our serious concerns to the Government of Yugoslavia, if this has not already been done.

IISS DOING GOOD WORK IN EASTERN EUROPE

Mr. DOLE. Mr. President, we have completed work on the foreign operations appropriations bill. I want to say a brief word about that section of the bill which will provide funds for United States assistance programs in

Eastern Europe—the so-called SEED Program.

Wisely, we have chosen to focus our assistance efforts where there is real need, and we have a special capacity to help—particularly 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 some of 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 hoped 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 BOB DOLE. But 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 is 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 been said, 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 contributions to the Nation 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 core of our national intellectual life and national memory. With book collections exceeding 14 million volumes, a photography collection in excess of 11 million items, nearly 37 million items in manuscript 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, it is also an unmatched international resource. The Library's Hispanic Division has the largest Spanish and Portuguese language collection outside of the Iberian Peninsula and Latin America; the Library's Arabic language collection is the largest such repository outside of 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 laws 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 infringement—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 private and public libraries, save countless thousands of dollars annually in eliminating the need for local libraries to catalog their own new acquisitions. The Library is also a center of interlibrary lending activity, of book sharing among public and private libraries throughout the United States. In an era of fiscal constraints on many local public libraries and college and university libraries, the Library's loan programs help overcome some unfortunate gaps in the collections of local libraries.

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 UNICEF. This important gathering served to focus 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—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 life of our 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 other 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 we can never be permitted to rest on our laurels. A restless, rapaidly 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 incalculable 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 consistence 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. McCathran, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 1:35 p.m., a message from the House of Representatives, delivered by Ms. Goetz, 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. 2628. 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 toward a new agreement among Antarctic Treaty Consultative Parties, for the full protection of Antarctica as a global ecological commons.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 4638) to revise the orphan drug provisions of the Federal Food, Drug, and Cosmetic Act and the Orphan Drug Act, and for other purposes.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 4808. An act to encourage solar, wind, waste, and geothermal power production by removing the size limitations contained in the Public Utility Regulatory Policies Act of 1978;

H.R. 5687. An act to amend title 31, United States Code, improve the financial management of the Federal Government;

H.R. 5707. 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 fuels, to provide the States more authority to enforce automotive fuel posting 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. 3533. 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, unless such 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. BYRD].

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 report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (H.R. 1430) to en-

hance national and community service, 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 amendment of the Senate numbered 132 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 following bill, in which it requests the concurrence 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 agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment 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 prescribe 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 programs of the United States by establishing a comprehensive inspection program to ensure the quality and wholesomeness of all fish products intended for human consumption in the United States, and for other purposes; with an amendment, in which it requests the concurrence 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 appropriations for fiscal year 1991 for the intelligence 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 security, and for other purposes.

The message further announced that the House disagrees to the amendments of the Senate to the bill (H.R. 5114) making appropriations for foreign operations, export financing, 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. MCHUGH, Mr. LEHMAN of Florida, Mr. WILSON, Mr. GRAY, Mr. MRAZEK, Mr. COLEMAN of Texas, Mr. WHITTEN, Mr. EDWARDS of Oklahoma, Mr. LEWIS of California, Mr. PORTER, Mr. GALLO, and Mr. CONTE as managers 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 purposes.

The message further announced that the House has passed the following joint resolutions, in which it requests the concurrence of the Senate:

H.J. Res. 681. Joint resolution making further continuing appropriations for the fiscal year 1991, and for other purposes;

H.R. Res. 682. Joint resolution waiving certain enrollment requirements with respect to any reconciliation bill, appropriation bill, or continuing resolution for the remainder of the One Hundred First Congress.

ENROLLED JOINT RESOLUTION SIGNED

At 12:12 a.m. (October 25, 1990), a message from the House of Representatives announced that the Speaker has signed the following enrolled joint resolution:

H.J. Res. 681. Joint resolution making further 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 concurrence on October 11, 1990, was read the first and second times by unanimous consent, and referred as indicated:

H.R. 3617. An act to transfer jurisdiction of certain public lands in the State of Utah to the Forest Service, and for other purposes; to the Committee on Energy and Natural 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. 5520. 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 requirements, and for other purposes; to the Committee on Commerce, Science, and Transportation.

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 Earthquake Hazards Reduction Act of 1977 to improve the Federal effort to reduce earthquake 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 RESOLUTIONS 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. 2737. An act to require the Secretary of the Treasury to mint a silver dollar coin in commemoration of the 38th 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. 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 Department of Veterans Affairs Medical Center in Charleston, S.C., as the "Ralph H. Johnson Department of Veterans Affairs Medical Center";

H.R. 3386. An act to prohibit certain food transportation practices and to provide for regulation by the Secretary of Transportation 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 appropriations 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 pruposes;

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 requirements, 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 entitled "An Act to Incorporate 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;

H.R. 5794. An act to amend the Age Discrimination Claims Assistance Act to 1988 to extend the statute of limitations applicable to certain additional claims under the Age Discrimination in Employment Act of 1967;

H.J. Res. 214. Joint resolution designating the week of October 22 through October 28, 1990, as "Eating Disorders Awareness Week"; and

H.J. Res. 518. Joint resolution designating October 12 through October 20, 1990, as "American Textile Industry Bicentennial Week"; and

H.J. Res. 587. Joint resolution committing to the private sector the responsibility for support of the Civil Achievement Award Program in Honor of the Office of Speaker of the House of Representatives, and for other purposes.

ENROLLED BILLS AND JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that on today, October 24, 1990, he had presented to the President of the United States the following enrolled bills and joint resolutions:

S. 1747. An act to provide for the restoration of Federal recognition to the Ponca Tribe of Nebraska, and for other purposes;

S. 2059. An act to establish the Weir Farm National Historic Site in the State of Connecticut;

S. 2203. 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.J. Res. 158. Joint resolution designating October 21 through October 27, as "National Philanthropy Day";

S.J. Res. 307. Joint resolution designating November 11 through November 17, 1990, as "National Women Veterans Recognition Week"; and

S.J. 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 and to clarify that such facilities must comply with such environmental laws and requirements (Rept. No. 101-553).

By 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:

Dennis W. Shedd, of South Carolina, to be United States District Judge for the District of South Carolina; and

James L. Webb, of Oklahoma, to be United States Marshal for the Eastern District of Oklahoma for the term of 4 years.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. CHAFEE (for himself, Mr. PACKWOOD, Mr. JEFFORDS, Mr. COHEN, Mr. SIMPSON, Mr. WILSON, Mr. AKAKA, Mr. WIRTH, Mr. PELL, Mr. BINGAMAN, Mr. METZENBAUM, Mr. HOLLINGS, Mr. ADAMS, Ms. MIKULSKI, Mr. GORE, Mr. BURDICK, Mr. CRANSTON, Mr. BRADLEY, Mr. SIMON, Mr. INOUYE, Mr. KENNEDY, Mr. RIEGLE, Mr. KOHL, Mr. ROBB, 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.

By Mr. DOLE (for himself, Mr. GORTON, Mr. MCCAIN, and Mr. D'AMATO) (by request):

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 the Judiciary.

By Mr. DODD:

S. 3240. A bill 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.

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.

By Mr. METZENBAUM (for himself and Mr. BRADLEY):

S. 3242. A bill to provide a Federal leadership role in the development of approaches to reduce community based tension at the local level; to the Committee on the Judiciary.

By Mr. KASTEN:

S. 3243. A bill to improve disclosure of the tax policy revenue estimating process; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one committee reports, the other committee has thirty days to report or be discharged.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CHAFEE (for himself, Mr. PACKWOOD, Mr. JEFFORDS, Mr. COHEN, Mr. SIMPSON, Mr. WILSON, Mr. AKAKA, Mr. WIRTH,, Mr. PELL, Mr. BINGAMAN, Mr. METZENBAUM, Mr. HOLLINGS, Mr. ADAMS, Ms. MIKULSKI, Mr. GORE, Mr. BURDICK, Mr. CRANSTON, Mr. BRADLEY, Mr. SIMON, Mr. INOUYE, Mr. KENNEDY, Mr. RIEGLE, Mr. KOHL, Mr. ROBB, 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.

TITLE X PREGNANCY COUNSELING ACT

● Mr. CHAFEE. 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 critical for the women of this country.

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. 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 family planning 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 activitiy 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 information about abortion as a legal and medical option. Title X clinics were always allowed to provide counseling and referrals on abortion when an indigent pregnant woman requested such information. Under guidelines issued in 1981 by HHS, clin-

ics were encouraged to provide abortion counseling and referral. These 1981 guidelines stated the following:

Grantees must provide pregnancy diagnosis and counseling to all clients in need of this service. Pregnancy testing is one of the most frequent reasons for an initial visit to the family planning facility, particularly by adolescents. It is therefore important to use this occasion as an entry point for providing education and counseling about family planning.

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;

Infant care, foster care, or adoption; and

Pregnancy termination.

Through these guidelines, HHS made it clear that family planning providers should provide women who seek information about how to manage their pregnancies with nondirective, noncoercive counseling which includes all legal and medical options.

In 1988, however, HHS suddenly decided that not everyone is entitled to complete information about their health care options. In fact, women, poor women, do not share this right. HHS made this clear by issuing new guidelines governing title X which specifically prohibit counselors from counseling or from making referrals on abortion, even if the pregnant woman requests such information. This action effectively created a two-tiered health care system, where women who can afford to go to a private physician, receive complete information, and thus, complete health care. However, women who cannot afford a private physician and who must therefore rely on government subsidized health care, would receive less information, and thus, inadequate health care.

Mr. President, I believe these guidelines are unconscionable, discriminatory and, most important, constitute bad health policy. Under any other medical circumstance, we would not even question whether a patient should be given full information about his or her options. Why then, should we limit the information given to pregnant women? These guidelines conflict with the professional ethics of major medical organizations including the American Medical Association and the American College of Obstetricians and Gynecologists. These organizations, as well as 78 other medical organizations, are opposed to the 1988 guidelines. They insist on the patients' right to full information, and they object to the imminent increase in exposure to medical malpractice for failing to fully advise a patient.

The legislation I am introducing today along with 24 of my colleagues will reverse these guidelines and return title X clinics to the 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. This vote, and the legislation I am introducing today, send a signal that Congress intended in title X to expand—not limit—access to health care for poor women.

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.

CIVIL RIGHTS ACT OF 1990

Mr. DOLE. Mr. President, I am today introducing, at the request of the President, the Civil Rights Act of 1990.

The President's proposal overturns the Patterson and Lorance decisions.

It expands the scope of section 1981.

It addresses some of the potentially troublesome side effects of the Martin versus Wilks and Price Waterhouse decisions.

It adopts a definition of business necessity with teeth, but one that is not so restrictive that it will force employers to hire-by-the-numbers.

And it provides, for the first time in our Nation's history, a remedy—up to $150,000—that will help the women of this country by detering sexual harassment in the workplace.

The President's proposal is the real civil rights bill in this debate.

And I sincerely hope that my colleagues—from both sides of the aisle—will be able to move beyond blind partisanship and give the President's proposal the consideration it deserves.

Mr. President, I am a realist.

I understand that legislation does not always get passed because it "deserves" to get passed.

But the President's bill is deserving.

And if Congress has the will, it seems to me that we can certainly find the way to pass a civil rights bill the President's civil rights bill—before we adjourn later this week.

The choice is ours.

Finally, Mr. President, I want to commend Senators NANCY KASSEBAUM and SLADE GORTON for their leadership in putting a fair, but responsible, civil rights bill before the Senate last week. They have worked long and hard on this issue and they deserve the Senate's, and the Nation's, gratitude.

I also want to thank my Republican colleagues, Senators HATCH, SPECTER, JEFFORDS, and DANFORTH, for their tireless work in trying to broker an acceptable compromise between the administration and Congress. The determination and commitment of these four Senators has won my respect and the respect of their Senate colleagues.

Mr. President, I ask unanimous consent that President Bush's veto message, the full text of the Civil Rights Act of 1990 proposed by the administration, and a section-by-section analysis be printed in the RECORD.

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

S. 3239

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 "Civil Rights Act of 1990".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that additional protections and remedies under Federal law are needed to deter unlawful discrimination.

(b) PURPOSE.—The purpose of this Act is to strengthen existing protections and remedies available under Federal civil rights laws to provide more effective deterrence.

SEC. 3. DEFINITIONS.

Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e) is amended by adding at the end thereof the following new subsections:

"(l) The term 'complaining party' means the Commission, the Attorney General, or a person who may bring an action or proceeding under this title.

"(m) The term 'demonstrates' means meets the burdens of production and persuasion.

"(n)(1) The term 'required by business necessity' means—

"(A) in the case of employment practices that are defended as a measure of job performance, the practice must bear a significant relationship to successful performance of the job; or

"(B) in the case of other employment practices that are not defended as a measure of job performance, the practice must

bear a significant relationship to a significant business objective of the employer.

"(2) In deciding whether the standards described in paragraph (1) for business necessity have been met, unsubstantiated opinion and hearsay are not sufficient; demonstrable evidence is required. The court may rely on as such evidence statistical reports, validation studies expert testimony, performance evaluations, written records or notes related to the practice or decision, testimony of individuals with knowledge of the practice or decision involved, other evidence relevant to the employment decision, prior successful experience and other evidence as permitted by the Federal Rules of Evidence, and the court shall give such weight, if any, to such evidence as is appropriate.

"(o) The term 'respondent' means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining programs, including on-the-job training programs, or those Federal entities subject to the provisions of section 717 (or the heads thereof.".

SEC. 4. 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 EMPLOYMENT PRACTICES IN DISPARATE IMPACT CASES.—

"(1) An unlawful employment practice based on disparate impact under this Title is established only when a complaining party demonstrates that a particular employment practice causes a disparate impact on the basis of race, color, religion, sex, or national origin, and the respondent fails to demonstrate that such practice is required by business necessity: *Provided, however,* That if the elements of a decision-making process are not capable of separation for analysis, they may be analyzed as one employment practice, just as where the criteria are distinct and separate each must be identified with particularity: *and provided further,* That an unlawful employment practice shall nonetheless be established if the complaining party demonstrates the availability of an alternative employment practice, comparable in cost and equally effective in measuring job performance or achieving the respondent's legitimate employment goals, that will reduce the disparate impact, and the respondent refuses to adopt such alternative.

"(2) Notwithstanding any other provision of this title, a rule barring the employment of an individual who currently and knowingly uses or possesses an illegal drug as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the the Controlled Substances Act or any other provision of Federal law, shall be considered an unlawful employment practice under this title only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.".

SEC. 5. CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE 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:

"(l) DISCRIMINATORY PRACTICE NEED NOT BE SOLE MOTIVATING FACTOR.—Except as otherwise provided in this title, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated such practice.".

(b) ENFORCEMENT PROVISIONS.—Section 706(g) of such Act (42 U.S.C. 2000e-5(g)) 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(l), if the respondent demonstrates that it would have taken the same action in the absence of any discrimination. On a claim where a violation is proven under section 703(l) and the respondent demonstrates that it would have taken the same action in the absence of any discrimination, the court may grant declaratory relief, injunctive relief, attorney's fees and costs, and it shall not make an award under section 706(g)(3)".

SEC. 6. FACILITATING PROMPT AND ORDERLY RESOLUTION OF CHALLENGES TO EMPLOYMENT PRACTICES IMPLEMENTING LITIGATED OR CONSENT JUDGMENT OR ORDERS.

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:

"(m) FINALITY OF LITIGATED OR CONSENT JUDGMENTS OR ORDERS.—

"(1) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice specifically required by a litigated or consent judgment or order resolving a claim of employment discrimination under this title may not be challenged by a person who during the period of 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;

"(B) of any relief in the proposed judgment;

"(C) that a reasonable opportunity is available to challenge such judgment or order by a future date certain; and

"(D) that such person will likely be barred from challenging the proposed judgment or order after such date.

"(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 members 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 transparently invalid or was entered by a court lacking 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. 7. EXPANSION OF RIGHT TO CHALLENGE DISCRIMINATORY SENIORITY SYSTEMS.

Section 706(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(e)) is amended by the adding at the end thereof the following sentence: "For purposes of this section, an alleged unlawful employment practice occurs when a seniority system is adopted, when an individual becomes subject to a seniority system, or when a person aggrieved is injured by the application of a seniority system, or provision thereof, that is alleged to have been adopted for an intentionally discriminatory purpose, in violation of this title, whether or not that discriminatory purpose is apparent on the face of the seniority provision.".

SEC. 8. PROVIDING FOR ADDITIONAL EQUITABLE RELIEF IN CERTAIN CASES OF INTENTIONAL DISCRIMINATION.

Section 706(g) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(g)) (as amended by Section 5) is further amended—

(1) by designating the first sentence is paragraph (1);

"(2) by designating the second and third sentences as paragraph (2);

"(3) by designating the last sentence as paragraph (4); and

"(4) by inserting after paragraph (2) (as so designated) the following new paragraph:

"(3) In fashioning remedies for unlawful intentional discrimination under this Title, the court may, in the exercise of its equitable discretion, require the respondent to pay the complaining party an amount not to exceed a total of $150,000.00, if the court finds—

"(A) that an additional equitable remedy beyond those otherwise available is needed to deter the respondent from engaging in such unlawful employment practices; and

"(B) that such an award is otherwise justified by the equities, is consistent with the purposes of this Title, and is in the public interest.".

Section 706 (42 U.S.C. 2000e-5) is further amended by adding at the end the following new subsection:

"(1) JUDICIAL DETERMINATION. —All issues in cases arising under this title shall be heard and determined by a judge, as specified in section 706(f): *Provided, however,* That if the court determines that one or more of the claims presented may require relief under section 706(g)(3), and if the court holds that a jury trial with respect to issues of liability is constitutionally required on claims for such relief, then a jury may be empaneled to hear and determine such liability issues and no others.".

SEC. 9. ALLOWING THE AWARD OF EXPERT FEES.

Section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)) is amended by inserting "(including expert fees)" after "attorney's fee,".

SEC. 10. PROVIDING FOR INTEREST, AND EXTENDING THE STATUTE OF LIMITATIONS, IN ACTIONS AGAINST THE FEDERAL GOVERNMENT.

Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) is amended—

"(1) in subsection (c), by striking out "thirty days" and inserting in lieu thereof "ninety days"; and

"(2) in subsection (d), by inserting before the period", and the same interest to compensate for delay in payment shall be available as in cases involving non-public parties".

SEC. 11. PROHIBITION AGAINST RACIAL DISCRIMINATION IN THE MAKING AND PERFORMANCE OF CONTRACTS.

Section 1977 of the Revised Statutes of the United States (42 U.S.C. 1981) is amended—

(1) by inserting "(a)" before "All persons within"; and

(2) by adding at the end thereof the following new subsections:

"(b) For purposes of this section, the right to 'make and enforce contracts' shall include the making, performance, modification and termination of contracts, and the enjoyment of all benefits, privileges, terms and conditions of the contract.

"(c) The rights protected by this section are protected against impairment by nongovernment discrimination as well as against impairment under color of State law.".

SEC. 12. NOTICE OF LIMITATIONS PERIOD.

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);

(2) by striking our the paragraph designation in paragraph (1);

"(3) by striking out "Sections 6 and" and inserting "Section"; and

"(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 individual referred to in subsection (d) and such individual may bring an action against the respondent named in the charge at any time after 60 days from the time the charge was 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 of physical handicap.".

"(2) APPLICATION TO SENATE EMPLOYMENT.—The rights and protections provided pursuant 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 Act referred to in paragraph (2).

(5) APPLICABLE REMEDIES.—When assigning remedies to individuals found to have a valid claim under the Acts referred to in paragraph (2), the Select Committee on Ethics, or such other entity as the Senate may designated, should to the extent practicable apply the same remedies applicable to all other employees covered by the Acts referred to in paragraph (2). Such remedies shall apply exclusively.

(6) MATTERS OTHER THAN EMPLOYMENT.—

(A) IN GENERAL.—The rights and protections under the Americans with Disabilities Act of 1990 shall, subject to subparagraph (B), apply with respect to the conduct of the Senate regarding matters other than employment.

(B) REMEDIES.—The Architect of the Capitol shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to subparagraph (A). Such remedies and procedures shall apply exclusively, after approval in accordance with subparagraph (C).

(C) PROPOSED REMEDIES AND PROCEDURES.—For purposes of subparagraph (B), the Architect 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.

(7) EXERCISE OF RULEMAKING POWER.—Notwithstanding any other provision of law, enforcement and adjudication of the rights and protections referred to in paragraphs (2) and (6)(A) shall be within the exclusive jurisdiction of the United States Senate. The provisions of paragraphs (1), (2), (3), (4), (5), (6)(B), and (6)(C) are enacted by the Senate as an exercise of the right of the Senate to change its rules, in the same manner, and to the same extent, as in the case of any other rule of the Senate.

(b) COVERAGE OF THE HOUSE OF REPRESENTATIVES.—

(1) IN GENERAL.—Notwithstanding any provision of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) or of other law, the purposes of such title shall, subject to paragraph (2), apply in their entirety to the House of Representatives.

(2) APPLICATION.—The rights and protections under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) shall, subject to subparagraph (B), apply with respect to any employee in an employment position in the House of Representatives and any employing authority of the House of Representatives.

(B) ADMINISTRATION.—

(i) IN GENERAL.—In the administration of this paragraph, the remedies and procedures made applicable pursuant to the resolution described in clause (ii) shall apply exclusively.

(ii) RESOLUTION.—The resolution referred to in clause (i) is House Resolution 15 of the One Hundred First Congress, as agreed to January 3, 1989, or any other provision that continues in effect the provisions of, or is a successor to, the Fair Employment Practices Resolution (House Resolution 558 of the One Hundredth Congress, as agreed to October 4, 1988).

(C) EXERCISE OF RULEMAKING POWER.—The provisions of subparagraph (B) are enacted by the House of Representatives as an exercise of the rulemaking power of the House of Representatives, with full recognition of the right of the House to change its rules, in the same manner, and to the same extent as in the case of any other rule of the House.

(c) INSTRUMENTALITIES OF CONGRESS.—

(1) IN GENERAL.—The rights and protections under this Act and title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) shall, subject to paragraph (2), apply with respect to the conduct of each instrumentality of the Congress.

(2) ESTABLISHMENT OF REMEDIES AND PROCEDURES BY INSTRUMENTALITIES.—The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1). Such remedies and procedures shall apply exclusively.

(3) REPORT TO CONGRESS.—The Chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

(4) DEFINITION OF INSTRUMENTALITIES.—For purposes of this section, instrumentalities of the Congress include the following: The Architect of the Capitol, the Congressional Budget Office, the General Accounting Office, the Government Printing Office, the Office of Technology Assessment, and the United States Botanic Garden.

(5) CONSTRUCTION.—Nothing in this section shall alter the enforcement procedures for individuals protected under section 717 of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16).

SEC. 14. CONSTRUCTION.

Nothing in the amendments made by this Act, or in any statute amended by this Act shall be construed so as to require, permit, or result in the adoption or implementation of hiring, promotion, compensation, or termination quotas by an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining programs, including on-the-job training programs, or those Federal entities subject to the provisions of section 717 (or the heads thereof), on the basis of race, color, religion, sex, or national origin.

SEC. 15. SEVERABILITY.

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

SEC. 16. ALTERNATIVE MEANS OF DISPUTE RESOLUTION.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Acts amended by this Act.

SEC. 17. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect upon enactment.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

The legislation may be cited as the "Civil Rights Act of 1990."

SECTION 2. FINDINGS AND PURPOSE

The Congress finds that this legislation is necessary to provide additional protections and remedies against unlawful discrimination in employment. The purpose of this Act is to strengthen existing protections and remedies in order to deter discrimination more effectively and provide meaningful relief for victims of discrimination.

SECTION 3. DEFININITIONS

This section adds definitions to those already in Title VII. It defines a complaining party as the Equal Employment Opportunity Commission (EEOC), the Attorney Gen-

eral, or a person who may bring an action or proceeding under this title.

The definition of "demonstrates" requires that a party bear the burden of production and persuasion when the statute requires that he or she "demonstrate" a fact.

The term "required by business necessity" is meant 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 required by business necessity. 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 employment goals, that will reduce the disparate imact, and the respondent refuses to adopt such alternative.

In identifying the particular employment practice alleged to cause disparate impact, 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 standards constitutes a single 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. 39,537 (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 employment decisions. The court held that: "the identification by the plaintiffs of the uncontrolled, subjective discretion of defendant's employing officials as the source of the discrimination shown by plaintiff's statistics sufficed to satisfy the causation requirements of *Wards Cove*." This Act contemplates that the use of such uncontrolled and unexplained discretion is properly treated as one employment practice and need not be divided by the plaintiff into discrete subparts.

If the elements of a decision-making process are demonstrated to be not capable of separation for analysis, therefore, they may be analyzed as one employment practice, just as where the criteria are distinct and separate each must be identified with particularity. See letter of Charles Fried to Senator Edward M. Kennedy, March 21, 1990 at 4 n.2.

It should also be noted that, assuming compliance with all other Title VII procedures, if a plaintiff can make a reasonable good faith allegation that the elements of a decision-making process are not capable of separation for analysis, as described above, he or she may file a complaint and commence discovery on that basis, although this does not affect the plaintiff's burden in making out his or her prima facie case.

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 rule is adopted or applied with an intent to discriminate on the basis of race, color, religion, sex, or national origin.

SECTION 5. CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION 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), in which the Court ruled in favor of a woman who alleged that she had been denied partnership by her accounting firm or account on her sex. The Court there faced a case in which the plaintiff alleged that her gender had supplied part of the motivation for her rejection for partnership. The Court held that once she had established by direct evidence that sex played a substantial part in the decision, the employer could still defeat liability by showing that it would have reached the same decision had sex not been considered.

This provision allows the employer to be held liable if invidious discrimination was a motivating factor in causing the harm suffered by the complainant. Thus, such discrimination need not have been the sole cause of the final decision.

The provision also makes clear that if an employer establishes that it would have taken the same employment action absent consideration of race, sex, color, 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 ORDERLY RESOLUTION OF CHALLENGES TO EMPLOYMENT PRACTICES IMPLEMENTING LITIGATED OR CONSENT 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, received notice of the judgment in sufficient detail to appraise that person that the judgment or order would likely affect that person's interests and legal rights, of the relief in the proposed judgment, that a reasonable opportunity was availabale to that person to challenge the 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 protect valid decreees from subsequent attack by individuals who were fully appraised 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*, 109 S. Ct. 2180 (1989). That case arose in the context of a civil rights action, but it turned on principles of fairness and access to court that apply in every area. The Court held that white firefighters who had not been parties to a consent decree that mandated racial preferences could have their day in court to contend that the decree violated their civil rights. The Court rejected the so-called "collateral 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 not had been parties to the original lawsuit.

The section modifies the rule of *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 applicants or employees and had adequate actual notice and an adequate opportunity to assert their interests in the litigation prior to adoption of the decree. This rule strikes a balance between the interest in preserving the finality of judgments and the requirement of fundamental fairness that underlies our judicial system, in which individuals are traditionally guaranteed a meaningful opportunity to assert their inteterest 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 defendant class actions 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 fees against the losing party who brings a frivolous suit is a further deterrent to such challenges.

The section states that it would not alter the rules governing intervention in federal courts. Nor would this action apply to parties to the action in which an order was entered, members of a class represented in an action, or members of a group on whose behalf was sought by the federal government.

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. 2261 (1989), in which female employees challenged a seniority system pursuant to Title VII, claiming that it was adopted with an intent to discriminate against women. Although the system was facially nondiscriminatory and treated all similarly situated employees alike, it produced demotions for the plaintiffs, who claimed that the employer had adopted the seniority 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 statute of limitations begins to run when the act of discrimination occurs and not when its effects are felt.

The *Lorance* rule is contracry to the position taken by the Department of Justice and the EEOC. It would shield existing seniority systems from legitimate discrimination claims. The discriminatory reasons for adoption of a seniority system may become apparent only when the system is finally applied to affect the employment status of the employees that it covers. Moreover, such an application surely focuses the controversy between an employer and an employee more sharply and permits more precise litigation. In addition, a rule that limits challenges to the period immediately following adoption of a seniority system will promote unnecessary, as well as unfocused, litigation. Employees 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 ever challenging the adverse consequences of that system, regardless of how severe they may be. Such a rule fails to protect sufficiently the important interest in eliminating employment discrimination that is embodied in Title VII.

Likewise, a rule that an employee may sue only within 180 (or 300) days after become 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 challange was sufficiently focused and before it was clear that a challenge was necessary. Finally, most employees would be reluctant to begin their jobs by suing their employers.

This change in the law, therefore, is warranted. Indeed, it is necessary to safeguard the same principles upheld by the Supreme Court in *Martin* v. *Wilks, supra,* and discussed in the preceding section.

SECTION 8. PROVIDING FOR ADDITIONAL EQUITABLE RELIEF IN CERTAIN CASES OF INTENTIONAL DISCRIMINATION

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, FSB* v. *Vinson,* 447 U.S. 57 (1986). Such harassment frequently will not be so intolerable that an employee subjected to it immediately leaves. In such circumstances, the only remedy the victim of harassment can obtain under Title VII's remedial scheme as currently drafted is declaratory and injunctive relief against continuation of the harassment.

Such a rule is plainly inequitable. It effectively tells employers that the only consequence of creating an environment so hostile to a woman employee that she is forced to sue to obtain relief is a directive to refrain in the future. Additional remedies for this situation are clearly appropriate and warranted.

At the same time, Title VII's existing framework, with its emphasis on conciliation and mediation, has served the country well as a tool for combatting discrimination during its 26-year history. It would be unwise to jettison it in favor of a tort-style approach including compensatory and punitive damages at a time when our tort system is widely recognized to be in crisis.

Section 8 strikes a reasonable balance between these concerns. It allows courts to award a remedy beyond declaratory and injunctive relief. This remedy consists of a monetary award not greater than a total of $150,000. Courts are authorized to make it available in the exercise of their equitable discretion only where an additional equitable remedy is needed to deter the respondent from engaging in such practices and where such an award is justified by the equities, is consistent with the purpose of Title VII, and is in the public interest.

This section allows 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 related incidents that could arguably be subdivided into distinct unlawful employment practices, or where different claims under Title VII are brought in the same lawsuit, the award that can be obtained under this section for all of them combined is limited to $150,000. Otherwise, plaintiffs and their lawyers will have incentives to spend 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 Americans With Disabilities Act, on account of that Act's section 107, which incorporates section 706 of Title VII by reference.

As new subsection 706 (*l*) makes clear, it is the intention of the Congress that both liability and remedies under section 706, including the new remedy this section creates, continue to be decided by a judge. 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). This provision is important in maintaining to the greatest extent possible the current structure of Title VII's remedies provisions and preventing it from being replaced with a tort-like approach. Because the question of constitutionality is not entirely free from doubt, however, subsection (*l*) also provides that should a court hold that a jury trial with respect to issues of liability is constitutionally required, it may empanel a jury to hear those issues and no others. This ensures that the additional relief this scheme makes available will not become a dead letter should a court find that the Seventh Amendment requires a jury trial on liability.

Finally, it should be noted that this provision is exclusively remedial. It is not intended to recognize or create any new causes of action under Title VII. Rather, it is merely intended to ensure that as to those unlawful employment practices that Title VII already prohibits, the remedial scheme it establishes is adequate and appropriate.

SECTION 9. CLARIFYING ATTORNEY'S FEES PROVISIONS

This section would authorize the recovery of expert witness fees by prevailing parties according to the same standards that govern awards of attorney fees pursuant to Title VII. Under existing law, expert witness fees may not be shifted pursuant to Title VII. See *Crawford Fitting Co.* v. *J.T. Gibbons, Inc.,* 482 U.S. 437 (1987).

SECTION 10. PROVIDING FOR INTEREST AND LENGTHENING FILING PERIOD IN ACTIONS AGAINST THE FEDERAL GOVERNMENT

This section provides that, where the Federal Government is a defendant found to be liable in an action brought under this Title, it is subject to paying the same interest to compensate for delay in payment as in cases involving nonpublic parties. The filing period in such actions is also lengthened.

SECTION 11. PROHIBITION AGAINST RACIAL DISCRIMINATION IN THE MAKING AND PERFORMANCE OF CONTRACTS

Section 11 would overrule *Patterson* v. *McLean Credit Union,* 109 S. Ct. 2363 (1989). In *Patterson,* an employee sued under 42 U.S.C. 1981, alleging that her employer had harassed her on the job, failed to promote her, and ultimately discharged her, all because of her race. The Court held that Section 1981 is limited by its terms to prohibiting discrimination in "mak[ing] and enforc[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 held, the statute prohibits discrimination—whether governmental or private—only in the formation of a contract and in the right of access to a legal process that will enforce established contract obligations without regard to race. While the plaintiff's allegation that she had been discriminatorily denied promotion might fall within the prohibition against discrimination in making contracts, her allegations of harassment on the job addressed only conditions of employment. And there was no allegation that she had been discriminatorily denied access to legal process to enforce her contract of employment.

The law as interpreted in *Patterson* leaves a significant gap in section 1981 coverage that should be filled. This provision would also remove any possible ambiguity for future cases by codifying the holding of *Runyon* v. *McCrary,* 427 U.S. 160 (1976), that section 1981 prohibits private, as well as governmental discrimination.

SECTION 12. NOTICE OF LIMITATIONS PERIOD

This section generally conforms procedures for filing charges under the Age Discrimination in Employment Act with those used for other portions of Title VIII. In particular, it provides that the EEOC shall notify individuals who have filed charges of the dismissal or completion of the Commission's proceedings with respect to those charges, and allows these individuals to file suit from 60 days after filing the charge until the expiration of 90 days after completion of these proceedings. This avoids the problems created by current law, which imposes a statute of limitations on the filing of suit regardless of whether the Commission

has completed its action on an individual's charge.

SECTION 13. 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 require, permit, or result in quotas on the basis of race, color, religion, sex, or national origin.

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 disputes pursuant to the Act.

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 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 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 discrimination right now 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:

Both shift the burden of proof to the employer on the issue of "business necessity" in disparate impact cases.

Both create expanded protections against on-the-job racial discrimination by extending 42 U.S.C. 1981 to the performance as well as the making of contracts.

Both expand the right to challenge discriminatory seniority systems by providing that suit may be brought when they cause harm to plaintiffs.

Both have provisions creating new monetary remedies for the victims of practices such as sexual harassment. (The Administration bill allows equitable awards up to $150,000.00 under this new monetary provision, in addition to existing remedies under Title VII.)

Both have provisions ensuring that employers can be held liable if invidious discrimination was a motivating factor in an employment decision.

Both provide for plaintiffs in civil rights cases to receive expert witness fees under the same standards that apply to attorneys fees.

Both provide that the Federal Government, when it is a defendant under Title VII, will have the same obligation to pay interest to compensate for delay in payment as a nonpublic party. The filing period in such actions is also lengthened.

Both contain a provision encouraging the use of alternative dispute resolution mechanisms.

The congressional majority and I are on common ground regarding these important provisions. Disputes about other, controversial provisions in S. 2104 should not be allowed to impede the enactment of these proposals.

Along with the significant similarities between my Administration's bill and S. 2104, however, there are crucial 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 for employers to defend 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 Supeme Court's *Wards Cove* decision and restore the law that had existed since the *Griggs* case in 1971. S. 2104, however, 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, 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:* "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 Supreme Court in *Griggs* and subsequent cases. This debate, moreover, is a sure sign that S. 2104 will lead to years—perhaps decades—of uncertainty 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 in 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 widely acknowledged to be in a state of crisis. The bill also contains a number of provisions that will create unnecessary and inappropriate incentives for litigation. These include unfair retroactivity rules; attorneys fee provisions that will discourage settlements; unreasonable new statutes of limitation; and a "rule of contruction" that will make it extremely difficult to know how courts can be expected to apply the law. In order to assist the Congress regarding legislation in this area, I enclose herewith a memorandum from the Attorney General explaining in detail the defects that make S. 2104 unacceptable.

Our goal and our promise has been equal opportunity and equal protection under the law. That is a bedrock principle from which we cannot retreat. The temptation to support a bill—any bill—simply because its title includes the words "civil rights" is very strong. This impulse is not entirely bad. Presumptions have too often run the other way, and our Nation's history on racial questions cautions against complacency. But when our efforts, however well intentioned, result in quotas, equal opportunity is not advanced but thwarted. The very commitment to justice and equality that is offered as the reason why this bill should be signed requires me to veto it.

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 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 to 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.*

By Mr. DODD:

S. 3240. A bill 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 ABROAD 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 hurts the United States—our serious lack of knowledge about other countries, their languages, and cultures.

In 1989 fewer than 4,000 of our 12.2 million undergraduate students studied abroad in Asia. This region, which includes several of the fastest growing economies in the world, is of paramount importance to the future of 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 undergraduates 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 economic well-being 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 the 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 know 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 and knowledgeable 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 optional 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. Developing 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 an approved study abroad program 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 put 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 undergraduate education 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 NAFSA—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 nations 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 to support 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 of the flow of 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:

S. 3241

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 CONTROL OF 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

(2) within 10 days of the date of enactment of this Act, property in which transactions have been blocked pursuant to Executive Order 12722 of August 3, 1990.

(b) INVESTIGATIONS.—

(1) DETERMINATION TO BE MADE.—Except as provided in paragraph (2), the President shall conduct an investigation with respect to each person identified pursuant to subsection (a)(1) for purposes of determining whether Iraqi control of U.S. persons engaged in interstate commerce in the United States might impair the national security.

(2) EXCEPTIONS TO REQUIREMENT FOR INVESTIGATION.—An investigation is not required pursuant to paragraph (1) with respect to a person identified pursuant to subsection (a)(1) if the President determines that there would be no reasonable basis for making the determination described 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 (l)(b)(1) 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)(a)(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 section (1)(b)(l) or identified pursuant to section (1)(a)(2) that is held directly or indirectly by any Iraqi person shall vest (when, as, and upon such terms as the President may direct) in such agency or person as the President may designate. Upon such terms and conditions as the President may prescribe, such interest shall be held, used, administered, liquidated, sold, or otherwise dealth with, in the interest of and for the benefit of the United States; and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes. Any payment, conveyance, transfer, assignment, 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; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this paragraph.

(2) PAYMENT OF CLAIMS BY U.S. NATIONALS AGAINST IRAQ.—The President is authorized to pay U.S. creditors and other holders of obligations (including loans, contracts, and all other obligations) for which Iraq has suspended payment or repayment, and the President is directed to equitably distribute the funds gained from the liquidated assets among all creditors and other obligation holders, including the United States government.

SEC. 3. DEFINITION OF IRAQI PERSON.

As used in this Act, the term "Iraqi person" means the Government of Iraq, any entity organized under the laws of Iraq, and 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. 3242. A bill to provide a Federal leadership role in the development of approaches to reduce community based tension at the local level; to the Committee on the Judiciary.

COMMUNITY RELATIONS ACT

● Mr. METZENBAUM. 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.

A quick glance at the newspaper reveals that cross-group tension is on the rise in America. While highly visible cases, like Bensonhurst, and hate crimes by organized groups like the Skinheads or the Klan draw media attention, average teenagers cause most of the problems.

Researchers and community mediation specialists have learned that creating coalitions of community residents from different groups can be a first step in resolving a community problem. When coalitions work on issues of common concern, like youth recreation, drug education or job training, barriers among groups are broken down and frustrations are eased. The reward for these efforts is less violence and the prevention of further conflict.

The Community Relations Act will foster this approach to resolving community based tensions. The bill would fund 20 model, multicultural coalitions in communities which have recently experienced cross-group conflict. Federal money would cover local administrative costs, coalitions would provide an inkind 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 a 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 arises from differences due to race, nationality, religion, sexual orientation or ethnicity. (Events where individuals from various localities go to randomly selected geographic communities to attack people who are 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 about each other and improve their communities and their own life chances.

B. PROGRAM OUTLINE

1. The success of the program depends on the combination of two equally important components: local coalitions and federal administrative 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;

(3) cross locally defined neighborhoods or communities and income groups; and

(4) require all coalition members to play an active role in developing and implementing projects of immediate concern to the communities represented.

c. Coalition projects must:

(1) fulfill a concrete, locally defined need related to youth recreation, training or education; crime; drugs, community development or safety; community recreation or arts; or citizenship participation;

(2) involve a wide range of community residents working together in an ongoing, participatory effort; and

(3) not duplicate ongoing community efforts.

d. Federal funding covers an administrator and related supplies. The local community must provide an in-kind or monetary match. Federal funding would be maintained at 100 percent for 3 years and then decrease by 25 percent each year.

3. Federal involvement:

a. The Community Relations Service of the Department of Justice would aid in the development of multi-cultural coalitions in communities experiencing community based tensions, select coalitions for pending, and provide on-site technical assistance to coalitions, including after their federal funding has been phased out.

b. In addition, the Community Relations Service would provide training for coalition staff, conduct evaluations and conferences and disseminate information regarding the program to all participating coaltions and other interested communities.

c. The Community Relations Service would be assisted by a national advisory board of experts in the fields of civil rights, conflict mediation, community and neighborhood development and law enforcement.

4. Authorization: $5 million for each of the fiscal years 1991 through 1997, which would fund approximately 20 coalitions.

ENDORSEMENT LIST: COMMUNITY RELATIONS ACT

NAACP.
National Organization of Black Law Enforcement Officers.
American Jewish Committee.
American Jewish Congress.
National Urban League.
U.S. Conference of Mayors.
Metropolitan Strategy (Ohio).
Friends Committee on National Legislation.
National Council of La Raza.
Japanese American Citizenship League.
Organization of Chinese Americans.
National Association of Neighborhoods.
National Federation for Neighborhood Diversity.
National Institute Against Prejudice and Violence.
National Puerto Rican Coalition.
ACORN.
National League of Cities.
MALDEF.
National Neighborhood Coalition.
City of Shaker Heights.
Heights Community Congress.
Congress of Racial Equality.
Center for Community Change.
Dr. Mary Francis Berry, Commissioner, U.S. Commission on Civil Rights.
Roger Wilkins.
William L. Taylor, Esquire.

What people are saying about the Community Relations Act:

NAACP: "(this) legislation . . . presents a brave attempt to address the problem of mounting racial tensions in American residential communities. The NAACP is proud to support such a measure and believe that the potential gains of the program far out weigh the program's small price tag."

The United States Conference of Mayors: "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 bring 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 devisiveness 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 through congress."●

● 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 are free and where people care about 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 a common 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 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, introduced today by my colleague Senator METZENBAUM. In 20 communities, this legislation would establish model, multicultural coalitions to resolve the tensions that have divided and imperiled these neighborhoods. 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 on their insights and their firsthand 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 holds 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 wuld 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 congressional revenue estimating process to public scrutiny. This legislation called the Tax Policy Freedom of Information and Sunshine Act would 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 some 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 Congressional Budget Office is 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.

I ask unanimous consent that the full text of the bill be entered in the RECORD:

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

S. 3243

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 "Tax Policy Freedom of Information and Sunshine Act of 1990".

SEC. 2. DECLARATION OF PURPOSE.

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 should not be hidden, but should be disclosed to Members of Congress and the public so that the methods may be analyzed by non-governmental analysts and improved and the quality of the tax policy process enhanced.

SEC. 3. FULL DISCLOSURE OF ECONOMIC ASSUMPTIONS AND METHODOLOGY.

(a) REPORT ON CONCURRENT BUDGET RESOLUTION.—Section 301(e) of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 632(e)) is amended—

(1) by striking paragraph (5) and inserting the following new paragraph:

"(5) the economic assumptions and methodology that underlie each of the matters set forth in such concurrent resolution and any alternative economic assumptions and methodology which the committee considered, with technical explanations setting forth the economic data, assumptions, and methodology in sufficient detail to permit replications of the results by nongovernmental analysts;", and

(2) by adding at the end thereof the following new flush sentence:

"The contents of the report described in paragraph (5) shall be made available to Members of Congress not later than 48 hours before the consideration of the concurrent resolution by the Congress and the technical explanations described in such paragraph shall be made available to the public separately from the report."

(b) REPORTS OF JOINT TAX COMMITTEE.—Paragraph (3) of section 8022 of the Internal Revenue Code of 1986 is amended to read as follows:

"(3) REPORTS.—

"(A) IN GENERAL.—To report, from time to time, to the Committee on Finance and the Committee on Ways and Means, and in its discretion, to the Senate or the House of Representatives, or both, the results of its investigations, together with such recommendations as it may deem advisable.

"(B) REPORTS ACCOMPANYING COMMITTEE OR CONFERENCE ACTION.—To report the economic assumptions and methodology that underlie each of the matters set forth in—

"(i) a bill, resolution, or committee amendment considered or reported by the Committee on Finance or the Committee on Ways and Means, or

"(ii) a conference report with respect to such bill or resolution,

with technical explanations setting forth the economic data, assumptions, and methodology in sufficient detail to permit replications of the results by nongovernmental analysts; such reporting being made available not later than 48 hours before the consideration of the bill, resolution, committee amendment, or conference report by the Committee on Finance, the Committee on Ways and Means, or the Congress and the technical explanations in such report being made available to the public separately from the report."●

ADDITIONAL COSPONSORS

S. 1795

At the request of Mr. HOLLINGS, the name of the Senator from Oregon [Mr. HATFIELD] was added as a cosponsor 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 cosponsor 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 cosponsor 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. 2989

At the request of Mr. HEINZ, the name of the Senator from West Virginia [Mr. ROCKEFELLER] was added as a cosponsor of S. 2989, 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 cosponsor of S. 3072, a bill to amend the Public Health Service Act to establish State health service corps demonstration projects and for other purposes.

SENATE JOINT RESOLUTION 235

At the request of Mr. HUMPHREY, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of Senate Joint Resolution 235, a joint resolution proposing a constitutional amendment to limit congressional terms.

SENATE JOINT RESOLUTION 292

At the request of Mr. PELL, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of Senate Joint Resolution 292, a joint resolution to designate the year 1991 as the "Year of the Lifetime Reader."

SENATE JOINT RESOLUTION 375

At the request of Mr. BOSCHWITZ, the names of the Senator from Virginia [Mr. WARNER], the Senator from Michigan [Mr. LEVIN], and the Senator from Virginia [Mr. ROBB] were added as cosponsors of Senate Joint Resolution 375, a joint resolution to designate October 30, 1990, as "Refugee Day."

AMENDMENT NO. 3115

At the request of Mr. SIMPSON, his name was added as a cosponsor of amendment No. 3115 proposed to H.R. 5769, a bill making appropriations for the Department of the 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 the amendment of the Senate numbered 9 to the bill (H.R. 5021) making appropriations for the Departments of Commerce, Justice, State, the Judiciary, and related agencies for the fiscal year ending September 30, 1991, and for other purposes, as follows:

Mr. President, I move to concur in the amendment of the House to amendment No. 139 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 Organization 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. 77f(b)) shall increase from one-fiftieth of 1 per centum to one-fortieth 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 139 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 members of immediate families of employees stationed overseas; travel and transportation of employees of the United States and Foreign Commercial Service between two points abroad, without regard to 49 U.S.C. 1517; 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 28 U.S.C. 2672 when such claims arise in foreign countries; not be exceed $330,000 for official representation expenses abroad; and purchase of passenger motor vehicles for official use abroad not to exceed $30,000 per vehicle; obtain insurance on official motor vehicles, rent tie lines and teletype 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 Ames, Iowa, and of which $7,175,000 is for the Office of Textiles and Apparels, including $3,315,000 for a grant to the Tailored Clothing Technology Corporation: *Provided,* That the provisions of the first sentence of section 105(f) and all of section 108(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2455(f) and 2458(c)) shall apply in carrying out these activities; and that for the purposes of this Act, contributions under the provisions of the Mutual Educational and Cultural Exchange Act shall include payment for assessments for services provided as part of these activities. Notwithstanding any other provision of law, upon the request of the Secretary of Commerce, the Secretary of State shall accord the diplomatic title of Minister-Counselor to the senior Commercial Officer assigned to any United States mission abroad: *Provided further,* That the number of Commercial Service officers accorded such diplomatic title at any time shall not exceed twelve.

NUTRITION LABELING ACT

METZENBAUM (AND HATCH) AMENDMENT NO. 3125

Mr. BYRD (for Mr. METZENBAUM, for himself and Mr. HATCH) proposed an amendment to the bill (H.R. 3562) to amend the Federal Food, Drug, and Cosmetic Act to prescribe nutrition labeling for foods, and for other purposes, as follows:

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 nutrient 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.".

Page 11, strike lines 12 through 21 and redesignate paragraphs (3) and (4) as paragraphs (2) and (3).

2. Page 3, strike lines 3 through 7 and insert in lieu thereof the following: "The Secretary may by regulation require any information required to be placed on the label or labeling by this subparagraph or subparagraph (2)(A) 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.".

3. Page 3, line 24, strike "shall" and insert "may" and page 4, line 1, strike "may".

4. Page 8, line 23, strike "of labeling" and insert "or labeling".

5. Page 9, line 5, strike "may" and insert "shall" and in line 6 insert after "form" the following: "prescribed by the Secretary".

6. Page 17, insert after line 2 the following:

"(D) Subparagraph (2) does not apply to a claim described in subparagraph (1)(A) 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 paragraph (a).

"(E) Subclauses (i) through (v) of subparagraph (2)(A) do not apply to a statement in the label or labeling of food which describes the percentage of vitamins and minerals in the food in relation to the amount of such vitamins and minerals recommended for daily consumption by the Secretary.".

7. Page 20, insert after line 19 the following:

"(D) A subparagraph (1)(B) claim made with respect to a dietary supplement of vitamins, minerals, herbs, or other similar nutritional substances shall not be subject to subparagraph (3) but shall be subject to a procedure and standard, respecting the validity of such claim, established by regulation of the Secretary.".

Page 24, line 8, strike "subject to sections 403(r)(1)(B) and 403(r)(3)" and insert ", subject to sections 403(r)(1)(B) and 403(r)(3) or sections 403(r)(1)(B) and 403(r)(5)(D),".

8. Page 21, strike the quotation marks in lines 7 and 11 and after the references to sections in lines 10, 12, and 15 insert "of such Act".

9. Page 21, redesignate clauses (iii) through (viii) as clauses (iv) through (ix) and insert after line 6 the following:

"(iii) shall, in defining terms used to characterize the level of any nutrient in food under section 403(r)(2)(A)(i) of such Act, define—

"(I) free,
"(II) low,
"(III) light or lite,
"(IV) reduced,
"(V) less, and
(VI) high,

unless the Secretary finds that the use of any such term would be misleading,".

10. Page 23, strike lines 17 through 21 and insert the following:

"(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.", and

11. Page 24, line 24, strike "foods" and insert "food", page 25, line 1, strike "foods" and insert "food", and page 25, line 6 strike "foods" and insert "food".

12. 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 403(q)(5)(A)".

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".

13. Page 25, line 8, insert after "claim" the following: "of the type described in section 403(r)(1)".

14. Page 25, strike out lines 13 through 16, page 25, line 17 strike "(2)" and insert in lieu thereof "(b)", redesignate subparagraphs (A), (B), and (C) as paragraphs (1), (2), and (3), and on page 28, insert after line 20 the following:

"(c) 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) 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.

(3) The amendment made by subsection (a), the provisions of subsection (b) 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 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 10, line 9, page 11, line 24, and page 12, line 3, strike "18" and insert "24".

Page 22, lines 9, 15, and 18, strike "18" and insert "24".

Page 27, lines 6 and 17, strike "18" and insert "24".

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 "listed in" and isnert "required by" and strike "or (1)(D)" and isnert ", (1)(D), or (1)(E)" and beginning in line 17 strike "or (1)(D)" and insert ", (1)(D), or (1)(E)".

18. Page 13, line 5, insert after "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)(ii), (4)(A)(iii), 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 "(v)".

20. Page 22, line 5, strike "and", line 8, strike the period and isnert 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: folic acid and neural tube defects, antioxident 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)".

JEFFORDS (AND KOHL) AMENDMENT NO. 3126

Mr. BYRD (for Mr. JEFFORDS,) (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:

SECTION 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 inserting in lieu thereof the following: "Any action for the issuance, amendment, or repeal of any regulation under Section 403(j), 404(a), 406, 501(b), or 502(d) or (h) of this Act, and any action for the amendment or repeal of any definition and standard of identity under Section 401 of this Act for any dairy produce (including products regulated under parts 131, 133 and 135 of title 21, Code of Federal Regulations) or maple sirup (regulated under Section 168.140 of title 21, Code of Federal Regulations).

STEROID 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 1961(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;".

INJURY PREVENTION AND CONTROL AMENDMENTS

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".

SEC. 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. 280b(a)) is amended—

(1) in paragraph (2), by inserting after "grants to" the following: ", or 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"; 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. 280b-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 control.".

(c) REQUIREMENT OF REPORT ON ACTIVITIES OF AGENCY.—Section 393 of the Public Health Service Act (42 U.S.C. 280b-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 section 391, 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. 280b-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.—

(a) ELIGIBILITY.—United States nationals held hostage in Lebanon since Jan. 1, 1990 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. KENNEDY, Mr. PELL, Mrs. KASSEBAUM, Mr. METZENBAUM, Mr. DURENBERGER, Mr. SIMON, Mr. JEFFORDS, Mr. DODD, Mr. CHAFEE, Mr. SIMPSON, Mr. ADAMS, Ms. MIKULSKI, Mr. BINGAMAN, Mr. MOYNIHAN, 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';

"(8) in subsection (c) (as designated 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 last sentence of subsection (a)' and inserting 'subsection (d)'; and

"(11) by adding at the end thereof the following new subsections:

"'(h)(1) 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 representation by—

"'(i) creating an agency-wide panelist bank, containing names of both qualified arts professionals and knowledgeable lay persons that have been approved by 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) require, where necessary and feasible, the increased use of site visitations to view, and issue a written report on, a work of an applicant in order to assist the panel of experts in making recommendations;

"'(D) require a written record summarizing all deliberations and recommendations of each panel of experts;

"'(E) require that the membership of each panel of experts change substantially from year to year, with no appointment to a panel of experts to exceed 3 consecutive years; and

"'(F) require all meetings of the National Council on the Arts 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 on the date such application is submitted 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)(1) 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 found to be obscene under State 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 produced such project or production or in the State or States described in the grant award as the site or sites of the project or 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—

"'(i) used funds received under section 5 to create or produce the project or production 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 to be determined by the Chairperson of the National Endowment for the Arts, that shall be not less than 3 years after the date such project or production if 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), whichever is longer.

"'(3)(A) Except as provided in paragraph (4), funds required to be repaid pursuant to the provisions of this subsection shall be repaid not later than 90 days after the date such project or production is found to be obscene or to violate child pornography laws pursuant to the provisions of paragraph(1).

"'(B) If a State, local, or regional agency or arts group received funds directly from the Chairperson under section 5 and awarded all or a portion of such funds to an individual or organization that used such funds to create, produce or support a project or production found to be obscene or to violate child pornography laws pursuant to the provisions of paragraph (1), and the Chairperson determines that such individual or organization has not or is not able to repay such funds in accordance with the provisions of paragraph (2) and this paragraph, then such agency or group shall repay such funds to the Chairperson not later than 30 days after the expiration of—

"'(i) the 90-day period described in paragraph (3); or

"'(ii) the waiver period described in paragraph (4).

"'(C) Each individual or orgnaization required to repay funds pursuant to the provisions of subparagraph (A) of paragraph (2) shall be ineligible to receive further funds under this Act until such funds are repaid.

"'(D) If a State, local, or regional agency or arts group is required to repay funds pursuant to the provisions of subparagraph (A) of paragraph (2) or subparagraph (B) of this paragraph and fails to make such repayment in accordance with the provisions of this subsection, then such agency or group shall be ineligible to receive funds under this Act until such funds are repaid.

"'(4) The Chairperson of the National Endowment for the Arts may waive the provisions of paragraph (3)(A) for a period not to exceed 2 years.

"'(5) 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 10(i) of such Act regarding repayment of funds and debarment."

"'(7) The Chairperson shall develop regulations to implement the sanctions described in this subsection.'.".

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 1,500 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)).".

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.

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 exinguishing the Thomas Portal fire.".

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 an allocation to the next fiscal year; and".

FORD (AND OTHERS) AMENDMENT NO. 3135

Mr. REID (for Mr. FORD, 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. FORD) 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 (i) of section 310 is amended by inserting before the period the following: ", 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 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 striking out paragraph (9); and

(C) by redesignating paragraph (10) as paragraph (9);

(2) by redesignating subsections (c) through (n) as subsections (d) through (o), respectively; and

(3) by inserting after subsection (b) the following:

"(c)(1)(A) 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, giving special attention to contributions that advance society's knowledge and skill in 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.

"(B)(i) 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 medals shall be determined by the Secretary of the Treasury in consultation with the Board and the Commission of Fine Arts.

"(ii) The Spark M. Matsunaga Medal of Peace shall be struck in bronze and in the size determined by the Secretary of the Treasury in consultation with the Board.

"(iii) 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).

"(2) The Board shall establish an 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.

"(3) 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 significance.".

(b) USE OF MEDAL NAME.—Section 1704(e)(1) of the United States Institute of Peace Act (22 U.S.C. 4603(e)(1)) is amended by inserting " 'Spark M. Matsunaga Medal of Peace'," after " 'International Peace',".

(c) 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 for himself and Mr. WARNER) proposed an amendment to the bill H.R. 5399, supra; as follows:

SEC. . WAIVER OF PENALTY FOR CONTINUED 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 subsection (b) for employees in positions in the legislative branch for which there is exceptional difficulty in recruiting and retaining qualified employees.

(b) DEFINITION.—The waiver authority under subsection (a) may be exercized—

(1) in the case of a position in the House of Representatives, under procedures established 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 1991 and thereafter, when a Senator disseminates information under the frank by a mass mailing (as defined in section 3210(a)(6)(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 mass mailing 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. SYMMS, 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 "2 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 langauge 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. . PROHIBITION 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 office may transfer 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. 5399, 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. INCREASE IN AMOUNT.

Subsection (a) of section 8111 of title 5, United States Code is amended by striking out "$500" and inserting in lieu thereof "$1,500".

SEC. 3. 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. 5140) 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. . CENTER FOR COMMERCE AND INDUSTRIAL EXPANSION.

(a) GRANT AUTHORIZED.—(1) The Secretary of Education (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 $8,000,000, as may be necessary to carry out the provisions of this section. Funds appropriated pursuant to this section shall remain available until expended.

SEC. . ASSISTANCE TO PROVIDE BASIC SKILLS IMPROVEMENT.

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. . STATEMENT OF PURPOSE.

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. . CENTERS FOR INTERNATIONAL BUSINESS EDUCATION.

Section 614(a) of the Higher Education Act of 1965 (20 U.S.C. 1130b(a)) is amended—

(1) by striking "$5,000,000" and inserting "$7,500,000"; and

(2) by striking "3 succeeding" and inserting "4 succeeding".

SEC. . DAKOTA WESLEYAN UNIVERSITY.

Notwithstanding the provisions of section 487(c)(2)(B) of the Higher Education Act of 1965, 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 $16,113.

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. 2. 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 provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.)

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. 710. 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 shall solicit contract proposals under subsection (a) from interested parties. In awarding contracts under such subsections, the Secretary shall review such proposals and give priority to those alternatives that are the most cost effective for the Federal Government and that allow for the use of donated land, federally owned 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 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 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 amended by section 101 of this Act) is further amended by adding at the end thereof the following new section:

"SEC. 711. RECOVERY AND RETENTION OF FEES FOR FREEDOM OF INFORMATION REQUESTS.

"(a) IN GENERAL.—The Secretary, acting through the Commissioner of Food and Drugs, may—

"(1) set and charge fees, in accordance with section 552(a)(4)(A) of title 5, United States Code, to recover all reasonable costs 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;

"(2) retain all fees charged or such requests; and

"(3) establish an accounting system and procedures to control receipts and expenditues 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 sued 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 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 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 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. 712. 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 are 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 to matters specified under the provisions of sections 2302 and 7121(c) of title 5" 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 39, 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 11, 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 "disclose" 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, lines 6 and 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), a" and insert in lieu thereof "A".

On page 44, line 4, insert "disclose" 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".

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 period "for disclosures by a 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 statute specifically exempting disclosure under section 552(b)(3) of this title."

GRASSLEY AMENDMENT NO. 3154

Mr. STEVENS (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 that would not have been incurred in the absence of such arbitration proceeding, unless the agency head or his 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.

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION AUTHORIZATION

INOUYE AMENDMENT NO. 3155

Mr. REID. (for Mr. INOUYE) proposed an amendment to the bill (S. 1839) to provide authorization of 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 the following:

That there is authorized to be appropriated for activities of the National Telecommunications and Information Administration $14,554,000 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 ben-

efits required by law, and other nondiscretionary costs, for fiscal year 1991.

SEC. 2. (a) THE CONGRESS FINDS THAT—

(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 needs were satisfied by the Pan-Pacific Educational and Cultural Experiments by Satellite Program (hereinafter referred to as the "PEACESAT Program") operating over the ATS-1 satellite of the National Aeronautics and Space Administration;

(5) the ATS-1 satellite ran out of station-keeping fuel in 1985 and has provided only intermittent service since then;

(6) the Act entitled "An Act to provide authorization of appropriations for activities of the National Telecommunications and Information Administration", approved November 3, 1988 (Public Law 100-584; 102 Stat. 2970), 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 repairing earth terminals in the Pacific communities, by identifying the short-term and long-term needs of the residents of these communities, 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 until viable alternatives are available 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 expeditiously negotiate for and acquire satellite space segment capacity and related ground segment equipment to provide 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 the operation of the satellite 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 enable the Secretary of Commerce to 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 to any books, documents, papers, and records of such recipient that are pertinent to the funds received under subparagraph (A) of this paragraph.

(d) There are authorized to be appropriated $1,000,000 for fiscal year 1990 and such sums as may be necessary for fiscal year 1991 for use by the Secretary of Commerce in the negotiation for and acquisition of capacity and equipment under subsection (c)(1) of this section and the management of the operation of satellite communications services under subsection (c)(2) of 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.

SEC. 3. (a) It is the purpose of this section to improve the ability of rural health providers to use communications to obtain health information and to consult with others concerning the delivery of patient care. Such enhanced communications ability may assist in—

(1) Improving and extending the training of rural health professionals; and

(2) improving the continuity of patient care in rural areas.

(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 the collection of information 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, representatives of the National Library of Medicine, and representatives of different health professionals 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. (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 (I) by striking "; and" and inserting in lieu thereof a period; and

(3) by striking subparagraph (J).

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION ACT

GORE (AND OTHERS) AMENDMENT NO. 3156

Mr. REID (for Mr. GORE) (for himself, 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:

Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Aeronautics and Space Administration Authorization Act, Fiscal Year 1991".

* * * generates critical technology breakthroughs that benefit our economy through new products and processes that significantly improve our standard of living;

(6) the United States aeronautics and space program excites the imagination of every generation and can stimulate the youth of our Nation toward the pursuit of excellence in the fields of science, engineering, and mathematics;

(7) the United States aeronautics and space program contributes to the Nation's technological competitive advantage;

(8) the United States aeronautics and space program requires a sustained commitment of financial and human resources as a share of the Nation's Gross National Product;

(9) the United States space transportation system will depend upon a robust fleet of space shuttle orbiters and expendable and reusable launch vehicles and services;

(10) the United States space program will be advanced with an assured funding stream for the development of a permanently manned space station with research, experimentation, observation, servicing, manufacturing, and staging capabilities for lunar and Mars missions;

(11) the United States aeronautics program has been a key factor in maintaining preeminence in aviation over many decades;

(12) the United States needs to maintain a strong program with respect to transatmospheric research and technology by developing and demonstrating National Aero-Space Plane technology by a mid-decade date certain;

(13) 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 will substantially and increasingly contribute to the strength of both the United States space program and the national economy.

SEC. 102. POLICY.

It is declared to be national policy that the United States should--

(1) rededicate itself to the goal of leadership in critical areas of space science, space exploration, and space commercialization;

(2) increase its commitment of budgetary resources for the space program to reverse the dramatic decline in real spending for such program since the achievements of the Apollo moon program;

(3) ensure that the long-range environmental impact of all activities carried out under this title are fully understood and considered;

(4) promote and support efforts to advance scientific understanding by conducting or otherwise providing for research on environmental problems, including global change, ozone, depletion, acid precipitation, deforestation, and smog;

(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 commercial 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 vehicles;

(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 commerical 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 preminence 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 1997, to prove the feasibility of an air-breathing, hypersonic aerospace plane capable of single-state-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 lunar base and the succeeding mission to Mars, and provide high yield technology advancements for the national economy; and

(16) 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:

(1) For "research and development", for the following programs:

(A) United States International Space Station Freedom:

(i) Notwithstanding 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.

(ii) Such sums as are necessary from funds authorized for the United States International Space Station Freedom shall be used to initiate a flight test of the solar dynamic power program. By May 1, 1991, the Administrator shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a report on the implementation plan for the conduct of a flight test of the solar dynamic power program.

(B) Space transportation capability development, $723,400,000 for fiscal year 1991. Of such funds, $10,000,000 shall be used only for supporting heavy-lift launch vehicle studies, which shall include study of commercially developed variants as well as other appropriate concepts, rather than studying Shuttle-derived heavy-lift launch vehicles alone.

(C) Physics and astronomy, $985,000,000 for fiscal year 1991.

(D) Life sciences, $168,400,000 for fiscal year 1991. Of the amounts authorized for such purposes, by this or any other Act, for fiscal year 1991—

(i) $5,000,000 shall be used for the development of payloads for the Lifesat program; and

(ii) not less than $400,000 shall be used for space food processing studies and bioregenerative modeling assessments.

(E) Planetary exploration, $337,200,000 for fiscal year 1991.

(F) Earth sciences:

(i) $542,500,000 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(a)(1)(A) of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989, not more than $132,000,000 may be made available for the Earth Observing System Platform for fiscal year 1991.

(G) Materials processing in space, $97,300,000 for fiscal year 1991.

(H) 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 experimenter receiving funds obtains at least an equal amount of funds from sources other than the National Aeronautics and Space Administration.

(I) Information systems, $36,800,000 for fiscal year 1991.

(J) Technology utilization, $24,400,000 for fiscal year 1991.

(K) Commercial use of space, $76,600,000 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) Exploration mission studies, $21,000,000 for fiscal year 1991, which is authorized for studies conducted by the National Aeronautics and Space Administration. The Administrator shall provide to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, by March 15, 1991, a report setting forth the goals for academic participation and enhancement of the educational infrastructure with regard to the human exploration initiative.

(P) Safety, reliability, and quality assurance, $33,000,000 for fiscal year 1991.

(Q) Tracking and data advanced systems, $20,000,000 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, 1989;

(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;

(iii) An additional $640,000,000 shall be available for obligation 30 days after the submission of a report summarizing the results of a critical 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; and

(iv) an additional $100,000,000 shall be available for obligation 30 days after the submission of a report summarizing the results of a spacecraft integration and systems test 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 cost containment plan shall be submitted to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate by January 31, 1991, and updated on July 31 and January 31 of each succeeding year until such funds are expended.

(2) For "space flight, control, and data communications", for the following programs:

(A) Shuttle production and operational capability, $1,364,000,000 for fiscal year 1991. Of such funds, $45,000,000 shall be used only for carrying out the safety modifications recommended by the Aerospace Safety Advisory Panel and for such other safety related elements of an Assured Shuttle Availability Program 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) Expendable 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 Financing Bank.

(3) For "construction of facilities" for fiscal year 1991 as follows:

(A) Construction of Neutral Buoyancy Laboratory, Johnson Space Center, $15,000,000.

(B) Construction of Space Station Processing Facility, Kennedy Space Center, $25,000,000.

(C) Construction of Addition for Flight Training and Operations, Johnson Space Center, $12,000,000.

(D) Rehabilitation of Mission Control Center Power and Control Systems, Johnson Space Center, $8,500,000.

(E) Construction of Transporter/Canister Facility, Kennedy Space Center, $5,500,000.

(F) Construction of Processing Control Center, Kennedy Space Center, $9,400,000.

(G) Replacement of Heating, Ventilating, and Air Conditioning System, Hypergolic Maintenance Facility, Kennedy Space Center, $2,100,000.

(H) Replacement of Operations and Checkout Building, West Cooling Tower, Kennedy Space Center, $1,000,000.

(I) Restoration of 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 Fransoceanic Abort Landing Site, Banjul, The Gambia, $3,400,000.

(L) Repair of Condensate System, Main Manufacturing Building, Michoud Assembly Facility, $900,000.

(M) Construction of Project Engineering Facility, Marshall Space flight Center, $17,000,000.

(N) Restoration of Information and Electronic Systems Laboratory, Marshall Space Flight Center $4,000,000.

(O) Rehabilitation of Hydrogen Transfer Facility, Stennis Space Center, $2,700,000.

(P) Restroation of Space Shuttle Main Engine Test Complex "A" Stennis Space Center, $2,800,000.

(Q) Construction of Advanced Solid Rocket Motor Program Facilities, including land acquisition, various locations, $92,000,000.

(R) Construction of Addition to Site Electrical 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 Develpment 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 Labortory, $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, Langely Research Center, $12,000,000.

(BB) Modifications up Upgrade the 30 × 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 System, Lewis Research 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 Addition for 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, $8,900,000.

(KK) Construction of 34-Meter Multifrequency Antenna at Goldstone, CA, Jet Propulsion Laboratory, $13,200,000.

(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, $30,000,000.

(NN) Rehabilitation and modification of facilities at various locations, not to exceed $1,000,000 per project, $34,000,000.

(OO) Minor construction of new facilities and additions to existing facilities at various locations, not to exceed $750,000 per project, $11,000,000.

(PP) Environmental compliance and restoration, $32,000,000.

(QQ) Facility planning and design not otherwise provided for, $28,000,000.

(4) For "research and program management", for fiscal year 1991, $2,252,900,000.

(5) For "Inspector General", $11,000,000 for fiscal year 1991.

(b) LIMITATIONS.—(1)(A) 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 of 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, of the nature, location, and estimated cost of such facility

(2) Any amount appropriated pursuant to this title for "research and development", for "space flight, control and data communications", or for "construction of facilities may remain available until expended. Any amount appropriated pursuant to this title 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.

(3) Appropriations made pursuant to subsection (a)(4) may be used, but not to exceed $35,000, for scientific consultations or extraordinary expenses upon the approval or authority of the Administrator, and his determination shall be final and conclusive upon the accounting officers of the Government.

(4)(A) Funds appropriated 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 cost of each such project, including collateral equipment, does not exceed $200,000.

(B) Funds appropriated pursuant to subsection (a) (1) and (2) may be used for unforeseen programmatic facility project needs, but only if the cost of each such project, including collateral equipment, does not exceed $750,000.

(C) 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. 104. CONSTRUCTION OF FACILITIES REPROGRAMMING.

Authorization is hereby granted whereby any of the amounts prescribed in section 103(a)(3) (A) through (QQ)—

(1) may be varied upward 10 percent, in the discretion of the Administrator or the Administrator's designee, or

(2) following a report 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 to meet unusual cost variations.

The total cost of all work authorized under paragraphs (1) and (2) shall not exceed the total of amounts specified in section 103(a)(3) (A) through (QQ).

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 1 percent of the funds appropriated pursuant to section 103(a) (1) or (2) to the "construction 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 install permanent or temporary public works, 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 Administrator or the Administrator's designee has transmitted 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 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 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 either the Committee on Science, Space, 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 the 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 receipt by 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 with respect to all activities and responsibilities within the jurisdiction of those committees. Any Federal department, agency, or independent establishment shall furnish any information requested by either committee relating to any such activity or responsibility.

SEC. 107. 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 paragraph (3) and inserting in lieu thereof a semicolon; and

(3) adding at the end the following new paragraphs:

"(4) seek and encourage, to the maximum extent possible, the fullest commercial use of space; and

"(5) encourage and provide for Federal Government use of commerically provided space services and hardware, consistent with the requirements of the Federal Government.".

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 Administration Authorization Act, Fiscal Year 1989 (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 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, 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. 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 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 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).

(d) LIMITATION.—This section shall apply only to contracts 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. 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 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 (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 policy described under subsection (a)(1), 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, and educational programs authorized by the Administrator.

(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

(5) a process 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, 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 to the Congress, any additions 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 base;

(2) it is critical to the success of manned missions in space, be they commercial operations of microgravity laboratories or manned missions to Mars, that a realistic appraisal of the influences of the space environment on biological systems is completed 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) space station laboratory hardware specifications are being fixed before fully establishing the objectives and requirements for life sciences research.

(b) STRATEGIC PLAN.—The Administration shall—

(1) review currently proposed manned space flight missions in order to—

(A) identify the physiological and other human factors knowledge base necessary to determine the human capacity to adapt to and perform effectively in the space environment according to mission requirements, including identifying which life sciences parameters must be measured and which technologies, processes, and procedures must be developed; and

(B) develop a schedule indicating when specific components of information, technologies, processes, or procedures identified under subparagraph (A) will need to be acquired or developed in order to verify that human adaptability requirements of manned space flight missions can be achieved;

(2) develop a strategy plan for life sciences research and technology development sufficient to accomplish the life sciences knowledge base acquisition schedule developed under paragraph (1)(B), including—

(A) a crew certification plan setting acceptable crew conditioning standards for Extended Duration Orbiter operations and verifying countermeasures sufficient to meet those standards before actual Extended Duration Orbiter operations; and

(B) a life sciences implementation plan for the design and development of the space station, to be provided as part of the Preliminary Design Review for the space station, and to include crew adaptability standards; and

(3) verify the physiological and technical feasibility of the life sciences implementation plan developed under paragraph (2)(B), as part of the Critical Design Review for the space station.

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 lunar 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 currently planning further unmanned missions to the Moon and to Mars with the possible goal of landing a human on Mars;

(3) a series of international missions to expand human presence beyond Earth orbit would further a spirit of, and follow through on the commitment made in, the 1987 agreement between the Soviet Union and the United States for space cooperation, as well as the successful cooperative agreements the United States has pursued with over one hundred countries since its inception, including the agreement with Japan, Canada, and the European countries for Space Station Freedom;

(4) international manned missions beyond Earth orbit could further encourage a cooperative approach in world affairs unrelated to activities in space;

(5) international manned missions beyond Earth orbit could save the individual nations involved tens of billions of dollars over national missions; and

(6) a multilateral effort for manned missions to establish a lunar colony, a Mars mission, and other missions that have the goal of establishing human presence beyond Earth's orbit and possibly landing a human on Mars would lead to greater understanding of our universe and greater sensitivity to our own planet.

(b) STUDY.—The National Space Council shall conduct a study on International Cooperation 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 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 anticipation of later international manned missions to the Moon and to other bodies, including 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 beyond Earth's orbit; and

(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 commercial providers of space goods and services.

(d) REPORT.—The National Space Council shall, within one year after the date of the 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 not immediately 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 COMMERCE.

(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.—Commencing in fiscal year 1992, and every fiscal year thereafter, the Secretary of Commerce shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a report of the activities of the Office of Space Commerce, including planned programs and expenditures.

SEC. 116. NATIONAL AERO-SPACE PLANE PROGRAM.

(a) NATIONAL AERO-SPACE PLANE PROGRAM.—The Secretary of Defense (hereafter in this section referred to as the "Secretary") and the Administrator shall jointly pursue on a high priority basis a National Aero-Space Plane program whose objective shall be the development and demonstration, by 1977, of a primarily air breathing single-stage-to-orbit and long range hypersonic cruise research flight 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.—

(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-

ture, 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. 2623) is amended by adding at the end thereof the following: "There are authorized to be appropriated to the Secretary to carry out this Act $4,517,000 for fiscal year 1991, of which $250,000 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.".

(b) ACQUISITION BY STATE GOVERNMENTS.—Section 15(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 (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;

"(8) space transportation, including the establishment and operation of launch sites and complementary facilities, the provision of launch services, the establishment of support facilities, and the provision of support services, is an important element of the Nation's transportation system, and in connection with the commerce of the United States there is a need to develop a strong space transportation infrastructure with significant private sector involvement; and

"(9) the participation of State governments in encouraging and facilitating private sector involvement in space-related activity, particularly through the establishment of space transportation-related infrastructure, including launch sites, complementary facilities, and launch site support facilities, is in the national interest and is of significant public benefit.".

(d) CONGRESSIONAL STATEMENT OF PURPOSE.—Section 3 of the Commercial Space Launch Act (49 U.S.C. App. 2602) is amended—

(1) by striking "and" at the end of paragraph (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:

"(4) to facilitate the strengthening and expansion of the United States space transportation infrastructure, including the enhancement of United States launch sites, as well as launch site support facilities, with Federal, State, and private sector involvement, to support the full range of United States space-related activities.".

(e) GENERAL RESPONSIBILITIES OF SECRETARY.—Section 5(a) of the Commercial Space Launch Act (49 U.S.C. App. 2604(a)) 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 "; and";

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

"(3) work to facilitate private sector involvement in commercial space transportation activity, and 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 could severely restrict the use of some orbits within a decade;

(2) the lack of adequate data on the orbital distribution and size of debris will continue to hamper 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 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 agreement on the conduct of space activities that ensures that the amount of orbital space debris is not increased.

SEC. 119. SUPPORT FOR SPACE SHUTTLE ORBITER PRODUCTION LINE.

The Administration is authorized to expend excess funds appropriated for orbiter production under section 101(g) of the joint resolution entitled "Joint Resolution making continuing appropriations for the fiscal year 1987, and for other purposes" (100 Stat. 3341-242) to maintain the space 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.—(1) The National Space Council shall establish a Users' Advisory Group composed of non-Federal representatives of industries and other persons involved in aeronautical and space activities.

(2) The Vice President shall name a chairman of the Users' Advisory Group.

(3) The National Space Council shall from 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 particular commercial entities, are adequately represented in the National Space Council.

(5) The Users' Advisory Group may be assisted by personnel detailed to the National Space Council.

(b) EXEMPTION.—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 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 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 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 the Congress on the advisability 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 preparing the report, the Director shall assess the effectiveness of a National Civil Remote-Sensing Advisory Committee comprised of interested private-sector persons (including remote-sensing data users, data vendors, technology developers, system operators, information management and telecommunications specialists, and social scientists) which would—

(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 that would be responsive to both user and global developments, in terms of—

(A) coordinating land, oceanic, and atmospheric remote-sensing systems, including ground stations;

(B) coordinating research and development, applications, and commercial remote-sensing activities;

(C) fostering effective integration of satellite, aerial, and in situ data; and

(D) assessing current institutional arrangements for the management, exploitation and sharing of both real-time and archived data;

(2) provide recommendations on the conduct of cooperative test and applications 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.

SEC. 127. DEFINITION.

For purposes of this title, the term "Administrator" means the Administrator of the National Aeronautics and Space Administration.

TITLE II—LAUNCH SERVICES PURCHASE

SEC. 201. SHORT TITLE.

This title may be cited as the "Launch Services Purchase Act of 1990".

SEC. 202. 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 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 performance specifically in lieu of detailed specifications relating to vehicle design, construction, 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 Government regulation and oversight and economies of scale which may result in significant cost savings to the commercial launch industry and to the United States;

(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. 203. DEFINITIONS.

For the purposes of this title—

(1) the term "commercial provider" means any person providing launch services, but does not include the Federal Government;

(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 a person undertakes 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. 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 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 available when required;

(3) the use of commercial launch services poses an unacceptable risk of loss of a unique scientific opportunity; or

(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 2304 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) SPECIFICATION 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 compliance with 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; 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 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.

ANTARCTIC PROTECTION AND CONSERVATION ACT

KERRY AMENDMENT NO 3157

Mr. REID (for Mr. KERRY) proposed an amendment to the bill (H.R. 3977) to protect and conserve 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 environment providing a habitat for many unique species 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, the Convention of 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 guarantee the preservation of the frag-

ile 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;

(7) the Antarctic Treaty Consultative Parties have agreed to a voluntary ban on Antarctic mineral resource activities which needs to be made legally binding;

(8) the level of scientific study, including necessary support facilities, has increased to the point that some scientific programs may be degrading the Antarctic environment; and

(9) the planned special consultative meeting of parties to the Antarctic Treaty and the imminence of the thirtieth anniversary of the Antarctic Treaty provide opportunities for the United States to exercise leadership toward 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 Antarctic 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 all 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 south of the Antarctic Convergence as defined in section 303(1) of the Antarctic Marine Living Resources Convention Act of 1984 (16 U.S.C. 2432).

(2) The term "Antarctic mineral resource activity" means prospecting, exploration, or development in Antarctica of mineral resources, but does not include scientific research within the meaning of article III of the Antarctic Treaty, done at Washington on December 1, 1959.

(3) The term "development" means any activity, including logistic support, which takes place following exploration, the purpose of which is the exploitation of specific mineral resource deposits, including processing, storage, and transport activities.

(4) The term "exploration" means any activity, including logistic support, the purpose of which is the identification or evaluation of specific mineral resource deposits. The term includes exploratory drilling, dredging, and other surface or subsurface excavations required to determine the nature and size of mineral resource deposits and the feasibility of their development.

(5) The term "mineral resources" means all nonliving natural nonrenewable resources, including fossil fuels, minerals, whether metallic or nonmetallic, but does not include ice, water, or snow.

(6) 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.

(7) The term "prospecting" means any activity, including logistic support, the purpose of which is the identification of mineral resource potential for possible exploration and development.

(8) 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, which provides 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 international agreements to—

(1) conserve and protect permanently the natural environment of Antarctica and its associated and dependent ecosystems;

(2) prohibit or ban idefinitely Antarctic mineral resource activities by all parties to the Antarctic Treaty;

(3) grant Antarctica special protective status as a land of science dedicated to wilderness protection, international cooperation, and scientific research;

(4) ensure that the results of all scientific investigations relating to geological processes and structures be made openly available to the international scientific community, as required by the Antarctic Treaty; and

(5) include other comprehensive measures for the protection of the Antarctic environment.

(b) It is the sense of Congress that any treaty or other international agreement submitted by the President to the Senate for its advice and consent to ratification relating to mineral resources or activities in Antarctica should be consistent with the purpose and provisions of this Act.

SEC. 6. ENFORCEMENT.

(a) IN GENERAL.—A violation of this Act or any regulation promulgated under this Act is deemed to be a violation of the Antarctic Marine Living Resources Convention Act (16 U.S.C. 2431-2444) and shall be enforced under that Act by the Under Secretary or another Federal official to whom the Under Secretary has delegated this responsibility.

(b) PENALTY.—If the Under Secretary determines that a person has violated section 4—

(1) that person shall be ineligible to locate a mining claim under the mining laws of the United States; and

(2) the Secretary of the Interior shall refuse to issue a patent under the mining laws of the United States, or a lease under the laws of the United States related to mineral or geothermal leasing, to any such person who attempts to perfect such patent or lease application after the Under Secretary has made such determination.

SC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated—

(1) to the Under Secretary not more than $1,000,000 for each of fiscal years 1991 and 1992 to carry out the purposes of this Act; and

(2) to the Secretary of State not more than $500,000 for each of fiscal years 1991 and 1992 to carry out section 5 of this Act.

NOTICES OF HEARINGS

SUBCOMMITTEE ON CONSERVATION AND FORESTRY

Mr. LEAHY. Mr. President, I wish to announce that the Subcommittee on Conservation and Forestry of the Senate Committee on Agriculture, Nutrition, and Forestry will hold a hearing on October 25 at 2 p.m. in SR-328A. The purpose of the hearing is to hear testimony on S. 3200—the North Carolina Wilderness Act of 1990—and S. 2984—the Illinois Wilderness Act of 1990. Senator FOWLER will preside. For further information, please contact Ben Yarbrough at 224-2035.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to hold a business meeting during the session of the Senate on October 24, 1990, at 3:30 p.m., on the nomination of James L. Webb, to be U.S. marshal for the Eastern District of Oklahoma and Dennis W. Shedd to be U.S. District Judge for the District of South Carolina.

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

COMMITTEE ON ARMED SERVICES

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet in open session during the session of the Senate on Wednesday October 24, 1990, at 2 p.m. to consider the nomination of Gen. Merrill A. McPeak, USAF, to be Chief of Staff of the Air Force.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. REID. Mr. President, I ask unanimous consent that the full Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, October 24, at 2 p.m. to conduct a nomination hearing.

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

ADDITIONAL STATEMENTS

TRIBUTE TO CAPITOL OPERATORS

● Mr. DECONCINI. Mr. President, I would like to take a few minutes of the Senate's time to thank the Capitol telephone operators for their always generous and kind assistance. They are a crucial link in the Senate communications system—a link that is a lifeline for most of us. Whether it is early morning or the middle of the night, they are always courteous and responsive to our requests, yet they

rarely, if ever, receive the recognition they deserve. So I would like to extend my thanks and appreciation to each and every one 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 State and our people.

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 solid waste 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 environmental 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 lipservice. 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. Now that's not just a small stand of trees, that's a huge forest.

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 Fund of the 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.

GAO states the problem succinctly:

> The inability of agencies to recoup the sales proceeds to offset their costs for separating wastepaper is a significant obstacle to increased recycling.

My bill addresses this situation by introducing a carrot and stick into the current law. It works by allowing Federal facilities that recycle to keep the revenues derived from the sale of source separated paper, cans, and glass. It gives the managers of these facilities a real economic stake in recycling.

My legislation also requires the General Services Administration to compile a list each year of those Federal facilities that do not comply with recycling regulations currently on the books. This list will be printed in the Federal Register for everyone to see. If Federal bureaucrats are not obeying the law, they must answer to the American public, just as we do on election day.

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, fresher 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 economic boycott of Iraq is both naive and wildly optimistic.

Bush demands that Saddam Hussein withdraw from Kuwait. For Hussein to turn back on the "eternal merger" that he has proclaimed is not like Bush going back on a

campaign slogan like "Read my lips—no new taxes." For Hussein to bow to pressure from the United States—the superpower that arouses more Arab suspicion and fear than any other—would be so humiliating that it would likely mean the end of his reign.

Would a line drawn in the sand of Saudi Arabia and an economic boycott of Iraq bring that much pressure? Hardly.

First, economic boycotts have never been as effective as wartime blockades. And Bush's allies are split because they think a blockade is in fact a military move. But boycotts leak. There are too many countries that will be tempted by Iraq's offer of bargain-basement oil and too many circuitous routes for it to leave and other goods to enter. The Iraqi people will have to tighten their belts, but it will be easier for Hussein to convince them to do that as long as the country cracking the whip is the hated United States.

Second, the Arab world is far from united in its outrage at the Iraqi invasion of Kuwait. In many Arab eyes, the Kuwaiti were the spoiled rich kids of the Middle East. Bush may get some Arab support in the short run, but this is no short-run crisis. As the confrontation drags on and on, more and more Arabs will come to resent the American presence in the land of Mecca more than they do the Iraqi annexation. The rulers of a number of Arab states are feudal lords who will find holding on to power while they're allied with the United States a slippery business.

So the best that Bush can expect from his policy is a confrontation stretching into years—a confrontation fraught with the possibility that at any moment it could escalate into an all-out war. And as time goes on, Bush's support in the Arab world, among the other Western powers, and in America will steadily erode.

But this is the most optimistic scenario. Saddam Hussein commands an army of a million men. The United States fielded half a million men in Vietnam; to appease domestic sentiment, the Pentagon had to implement a policy of rotating troops home at the end of 12 months, just as they were beginning to be seasoned soldiers. The same sentiment will no doubt be felt this time around.

If Hussein does attack Saudi Arabia, the United States would have to follow President Lyndon Johnson's example when he bombed North Vietnam—use its superior airpower against the Iraqi homeland. Bombing Iraq would probably be no more effective in ending the war on U.S. terms than bombing North Vietnam was.

But Hussein has a countermeasure that the Vietnamese did not have. He has a huge stockpile of chemical weapons—enough to lay down a no-man's land 50 miles wide across Saudi Arabia that soldiers could enter only in full protective gear. Fighting in such gear in the desert heat is next to impossible, but the only troops in the world who have had some experience in doing so are the Iraqis.

The problem is perspective. Hitler conquered Western Europe and posed a threat to the entire world. Hussein's aggression is a regional threat. The only way that it could become a threat to the world is if Bush makes it so.

What could Bush have done that would be in keeping with the realities of today's world? Not much to restore the independence of Kuwait, but a great deal to put the United States in a position in which future presidents would not have to face crises rooted in energy.

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 problem is an Arab problem and will have to be dealt with by Arabs. The United States could give both military and economic aid to those Arab countries threatened by Iraq, but it would not send troops.

Second, the United States should not be the architect of a boycott of Iraq, but it could say it would join such a boycott if the Arab states chose to organize one.

Third, and most important, Bush should have coupled these policy statements with 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 H_2O.

The rise of nationalism in the Third World convinced most leaders in the West that the days of Western military intervention 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?●

DR. ILA MARIE GOODEY

● Mr. HATCH. Mr. President, I rise to recognize the volunteer efforts of an individual in my home State who has overcome a great deal of adversity to provide daily service to the community. Dr. Ila Marie Goodey, of Salt Lake City, UT, is a psychologist who was afflicted with polio at the age of 3, leaving her paralyzed, in a wheelchair, and on a respirator.

Through rehabilitation, Dr. Goodey received her Ph.D. but cannot use her expertise for compensation because she is considered medically fragile and will lose her medical benefits. Medical regulations allow very little flexibility, and current regulations prohibit more cost effective preventative measures.

However, because Dr. Goodey is a highly motivated individual, she provides daily service to various community organizations in the State of Utah through personal counseling and support for individuals, families and groups; public relations; lobbying; new programs and services; fundraising; training and supervision of human services; and morale and group cohesion.

Dr. Goodey codeveloped the Center for Disabled Students at the University of Utah and developed a self-hypnosis workshop. She also codeveloped the Attendant Care Program, which allows physically disabled people to live in their own residences.

It has been said that Dr. Goodey exemplifies the spirit of voluntarism that we, as U.S. citizens, strive to honor. Her personal commitment underscores her devotion to community service by illustrating the true meaning of the Golden Rule, which provides us with a moral goal to help others. Although she has and will continue to experience a great deal of personal discomfort because of her condition, she is a model of how individuals can make a difference.

Mr. President, I choose to bring Dr. Goodey's effort to your attention because she is being honored as the 1990 recipient of the J.C. Penney National Golden Rule Award. This award was established in 1982 to promote the importance of volunteer work at the community level and serves to honor those individuals who play a vital role in improving the quality of life for others. She is receiving this award for her work with the University of Utah student services, the Utah State Division of Services to the Handicapped, and the Utah Youth Village.

I feel that Dr. Goodey is the worthy recipient of this award and want to publicly recognize her personal commitment to service.●

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 complete 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 measure their progress? 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 youngsters 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 play an important role in preparing individuals for the work force.

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 proposes a plan of action to improve American competitiveness. In order to implement many of these proposals, however, schools will need additional resources. The call to improve work force 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, cable 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 multichannel 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 HOLLINGS and Chairman INOUYE, 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, PRYOR, GORTON, BURNS, METZENBAUM, BUMPERS, and PRESSLER. 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.

But 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 chairmen graciously agreed to postpone the markup. Throughout this process, the chairmen have been both patient and gracious.

When the markup was rescheduled, the industry representatives told the committee leadership that they did want to work together on a bill. They said that they wanted to end the regulatory and financial uncertainty left 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 minority of Senators 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. And so, cable reform legislation, 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 be 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 especially thank Senators KASSEBAUM, PELL, SIMON, and KENNEDY 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 provide additional scholarship funds 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 grants $5,000 per year scholarships for our Nation's very best students who then agree to teach for 2 years for every year of scholarship that they receive. Chosen from applicants who were in the top 10 percent of their high school class, these students have excelled both in the classroom and in their extracurricular activities. Because I envisioned a program with the same high standards as the Paul Douglas Scholarship but with the potential for even greater funding to cover up to the full costs of education for our future teachers, we today will be creating the National Foundation for Excellence to build upon this concept and both supplement and expand the scholarships for our best students to go into teaching.

The National Foundation for Excellence will also supplement and expand scholarships for the Teacher Corps Scholarship Program. Based on the original Teacher Corps program begun by President Johnson 25 years ago to "enlist thousands of dedicated teachers to work alongside local teachers in city slums and in areas of rural poverty," the newly created Teacher Corps 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 our 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 outstand-

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 locality 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. Since the foundation was begun, we have given out over 20 $5,000 cash awards to our State's best educators and over 400 $1,000 scholarships to our State's best students. Even more importantly, the work of the Oklahoma Foundation for Excellence has led to a new sense of importance and appreciation for our State's outstanding teachers and students. It is time we try to create the same momentum on a national level and that is why I have worked so vigorously on behalf of the National Foundation for Excellence.

Like the Oklahoma Foundation for Excellence, the National Foundation for Excellence will directly involve the private sector and combine the talents and vision of our Nation's educators to help find solutions to the problems we now face. The board of directors will include members appointed by the President of the United States from both the teaching community and the private sector, including our Nation's business and community leaders. Additional private sector representatives will be appointed to the board by Congress and the board will also include Members of the House and Senate, appointed by the leaders of both parties.

By drawing on the talents and commitment of our most respected teachers, business leaders and Members of Congress, we will work together to find solutions. Many of our previous attempts to improve the American education system have failed because they did not bring all the vital players together as one to make the system work. Now more than ever we must forge a strong alliance between the education, private and public sectors to reach our common goal of helping our Nation's students to succeed.

In a report just released by the Department of Education, our students are failing 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. Most importantly, 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, Mr. President, as 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 and our ability to compete in 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 will have a reverberating impact across-the-board in our Nation's classrooms. Some top students have begun to reevaluate the field of teaching and to recognize the many rewards the profession offers. It is our duty as a nation to encourage these students to pursue their interests in teaching and to further elevate the status of this important profession so that more outstanding students will choose this path as well.

In a recent front-page New York Times series on education, Susan Chira chronicled the good and bad news for future teachers. The series was an excellent account of the dilemma many students now face. As Chira pointed out, our Nation's top students have a reawakened commitment to teaching but still face the stigma of a profession that is both underpaid and underappreciated. Because of the new commitment to teaching, education students now typically rank in the top 70th percentile in their high school classes and maintain a B average or better in college, according to The American Association of Colleges for Teachers Education. This is a significant overall improvement in academic performance by future teachers, and bodes well for our children's futures as well. But these same students voice serious concerns about their decision to teach. They recognize that their choice will mean many hardships, not the least of which will be financial.

One of our most talented classroom teachers in Oklahoma, Nancy O'Donnell, was a recipient of many awards in her years as a classroom teacher, including the Oklahoma Foundation For Excellence Award for Excellence in Teaching, given to four outstanding educators each year. Nancy now works at Oklahoma State University in the college of education, helping those committed college students who want to become classroom teachers to realize their goals. Nancy recently told me that she is very pleased with the quality of the students at the college of education, and she is encouraged by the growing caliber of these students. But she says that the college of eduation still can't compete with the college of engineering, for example, in consistently getting students who graduated at the very top of their high school classes. Nancy acknowledges that the main problem in attracting the best and the brightest students to education is financial. If we took steps to provide scholarships and other financial compensation to our 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.

It is our duty, Mr. President, as U.S. Senators, to do all that we possibly can to ensure that our very best students consider teaching as a future career. I am pleased that through this bill we are taking a step toward this responsibility. The National Teachers

Act makes a new and vital commitment to improving opportunities for educators. 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.

In 1950, 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 40 years ago, more than 60 percent larger than that of its northern neighbors.

Population growth in Latin America and the Caribbean has been particularly explosive in the cities, where migration from rural areas compounds 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. Simply imagine 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 the Global Environment, 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 resultant destruction of trees 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 crowded urban areas, river 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, and, last, 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. Previous 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 AID's population programs. I am happy that many of my colleagues signed that letter. I am even more pleased that this year's foreign aid appropriations bill now incorporates the increased levels we sought.

But this is not just a one-time need. So I look forward to your support in the years ahead in coping with the 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,
Washington, DC, September 24, 1990.

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 5.4 billion people. By the year 2000, 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 funding increases for population programs in its foreign assistance appropriations bill. The House bill would provide $250 million through the Development Assistance program and up to $80 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 levels 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 funding 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, J. Lieberman, Ted Kennedy, Don Riegle, 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 education, 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—was 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. If 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 noncollegebound 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 careful 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 cost, educational requirements, 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 with an amendment to 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 36, west half of southwest quarter, Fairbanks Meridian and describe 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 improvments 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 Acquisiton Policies Act of 1970 (Public Law 91-646, 84 Stat. 1905)) 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.

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. 1905)) 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 agreed to.

ATTENDANT ALLOWANCE ADJUSTMENT ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 3911, the Attendant Allowance Adjustment Act.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3911) to amend title 5 of the United States Code to increase the allowance for services of attendants.

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. Are there amendments?

AMENDMENT NO. 3148

Mr. REID. Mr. President, I send an amendment to the desk on behalf of Senator KENNEDY.

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 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:

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. INCREASE IN AMOUNT.

Subsection (a) of section 8111 of title 5, United States Code is amended by striking out "$500" and inserting in lieu thereof "$1,500".

SEC. 3. 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 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. 3911), as amended, was passed.

SCHOOL DROPOUT PREVENTION AND BASIC SKILLS IMPROVEMENT ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 767, H.R. 5140, a bill to improve secondary school programs.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5140) 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.

The PRESIDING OFFICER. Are there amendments?

AMENDMENT NO. 3149

(Purpose: To establish a Center for Commerce and Industrial Expansion at Loyola University of Chicago; to increase the authorization of appropriations for the Centers for International Business Education from $5,000,000 to $7,500,000; and for other purposes)

Mr. REID. Mr. President, I send an amendment to the desk on behalf of Senator PELL.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. PELL, 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. . CENTER FOR COMMERCE AND INDUSTRIAL EXPANSION.

(a) GRANT AUTHORIZED.—(1) The Secretary of Education (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 of 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 $8,000,000, as may be necessary to carry out the provisions of this section. Funds appropriated pursuant to this section shall remain available until expended.

SEC. . ASSISTANCE TO PROVIDE BASIC SKILLS IMPROVEMENT.

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. . STATEMENT OF PURPOSE.

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. . CENTERS FOR INTERNATIONAL BUSINESS EDUCATION.

Section 614(a) of the Higher Education Act of 1965 (20 U.S.C. 1130(a)) is amended—

(1) by striking "$5,000,000" and inserting "$7,500,000"; and

(2) by striking "3 succeeding" and inserting "4 succeeding".

SEC. . DAKOTA WESLEYAN UNIVERSITY.

"Notwithstanding the provisions of section 487(c)(2)(B) of the Higher Education Act of 1965, 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 $16,113.

Mr. SIMON. Mr. President, I rise in support of H.R. 5140, the School Dropout Prevention and Basic Skills Improvement Act of 1990. As we all know, the primary goals of this bill, brought to the floor today by my distinguished colleague, the Senator from Rhode Island, CLAIBORNE PELL, is to assure that this Nation regains its

economic competitiveness by ensuring that each child is educated to his or her full potential and to encourage them to finish secondary school. I want 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 Doyle Center has provided counseling to disturbed 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. Linking computer 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 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 National 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 520(a) of the Public Health Services Act (42 U.S.C. 290cc-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 services demonstration projects for the planning, coordination and improvement of community services (including outreach and consumer-run self-help services) for seriously mentally ill individuals and their families, seriously emotionally and mentally disturbed children and youth and their families, and seriously mentally ill homeless and elderly individuals;

"(B) demonstration projects for the prevention of youth suicide;

"(C) demonstration projects for the improvement of the recognition, assessment, treatment and clinical management of depressive disorders;

"(D) demonstration projects for programs to prevent the occurrence of sex offenses, and for the provision of treatment and psychological assistance to the victims of sex offenses; and

"(E) demonstration projects for programs to provide mental health services to victims of family violence.

"(2) MENTAL HEALTH SERVICES.—Mental health services provided under paragraph (1)(A) should encompass a range of delivery systems designed to permit individuals to receive treatment in the most therapeutically appropriate, least restrictive setting. Grants shall be awarded under such paragraph for—

"(A) research demonstration programs concerning such services; and

"(B) systems improvements to assist States and local entities to develop appropriate comprehensive mental health systems for adults with serious long-term mental illness and children and adolescents with serious emotional and mental disturbance.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 520(e)(1) of the Public Health Service Act (42 U.S.C. 290cc-13(e)(1)) is amended to read as follows:

"(1) For purposes of carrying out this section, there are authorized to be appropriated $40,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993.".

SEC. 3. STATE COMPREHENSIVE MENTAL HEALTH SERVICES PLAN.

(a) FUNDING FOR PLANS.—

(1) AUTHORIZATION OF APPROPRIATIONS.—Section 1924(c) of the Public Health Service Act (42 U.S.C. 300x-10(c)) is amended by inserting before the period the following: ", and $5,000,000 for each of the fiscal years 1991 through 1993".

(2) ESTABLISHMENT OF AUTHORITY FOR USE OF FUNDS UNDER SUBPART 1.—Section 1915 of the Public Health Service Act (42 U.S.C. 300x-3) is amended by adding at the end the following new subsection:

"(e) Amounts paid to a State under section 1914 may be used by the State for the purpose of developing and implementing State comprehensive mental health plans in accordance with section 1925. With respect to compliance with the limitation established in subsection (d), none of the expenditures by the State for the purpose described in the preceding sentence form amounts received under section 1914 may be considered to have been expended for administering the amounts.".

(b) REQUIRMENTS FOR PLANS.—Section 1925 of the Public Health Service Act (42 U.S.C. 300x-11) is amended—

(1) by striking "chronically mentally ill individual" each place such term appears and inserting "individual with a serious mental illness";

(2) by striking "chronically mentally ill individuals" each place such term appears and inserting "individuals with serious mental illnesses";

(3) in subsection (b)—

(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 and 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 to enable such individuals to function outside of inpatient or residential institutions to the maximum extent of their capabilities, including services to be provided by local school systems under the Education of the Handicapped Act.

"(5) The State plan shall describe the financial resources and staffing necessary to implement the requirements of such plan."; and

(E) by adding at the end the following new paragraph:

"(10) The State plan shall describe a system of integrated social services, educational services, juvenile services, substance abuse services which together with 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."; and

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

"(e) The State shall utilize the State mental health planning council described in section 1916(e), or establish a new council with comparable membership requirements, to advise, review, monitor and evaluate all aspects of the development and implementation of the State plan. The comments on such council shall be formally transmitted to the Governor of the State prior to the submission of such plan to the Secretary and such comments should be transmitted to the Secretary together with such plan.

"(f) Not later than March 30 of each year, the Secretary shall prepare and submit, to the appropriate Committees of Congress, a report concerning the development and implementation of the State plans. Such reports shall include—

"(1) the status of the implementation of such plans by the States;

"(2) a description of the extent of the participation of the councils described in subsection (e) in such development and implementation;

"(3) a description of the coordinated services for children and adults conducted under such plans;

"(4) the extent to which State and local public, and private resources are utilized in the enhancement and delivery of designated services; and

"(5) a quantitative measurement of the improvement in services projected and achieved under the 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 subpart 1, as such subpart existed on October 1, 1985"; and

(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: ", taking into consideration savings on inpatient hospitalization that can reasonably be anticipated to result from a well designed and implemented plan".

"(d) MISCELLANEOUS TECHNICAL AMENDMENT.—Section 902(c) of the Public Health Service Act (42 U.S.C. 299a(c)) is amended by striking "subsection (b)" and inserting "subsection (a)".

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 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.

FDA 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 "FDA Revitalization Act".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

SEC. 2. 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 provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

TITLE I—CONSOLIDATED ADMINISTRATIVE AND LABORATORY FACILITY

SEC. 101. CONSOLIDATED ADMINISTRATIVE AND LABORATORY FACILITY.

Chapter VIII (21 U.S.C. 371 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 710. 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 shall 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 those alternatives that are the most cost effective for the Federal

Government and that allow for the use of donated land, federally owned 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 by the Secretary of Treasury.".

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) APPOINTMENT.—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.

"(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 5512 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 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 not be considered as service that is subject to any other retirement system for officers and employees of the Federal Government.".

(c) Section 5948(g)(1) of title 5, United States Code, is amended—

(1) by striking out "or" at the end of subparagraph (H);

(2) by striking out "and" at the end of subparagraph (I), and inserting in lieu thereof "or"; and

(3) by adding at the end thereof a new subparagraph as follows:

"(J) 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.) (as amended by section 101) is further amended by adding at the end thereof the following new section:

"SEC. 711. RECOVERY AND RETENTION OF FEES FOR FREEDOM OF INFORMATION REQUESTS.

"(a) IN GENERAL.—The Secretary, acting through the Commissioner of Food and Drugs, may—

"(1) set and charge fees to recover all reasonable costs 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;

"(2) retain all fees charged for such requests; and

"(3) 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). 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 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 101 and 301) 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 manufactures 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 $18,000,000 for each of the fiscal years 1990 through 1992.".

TITLE V—BIOTECHNOLOGY DEMONSTRATION PROJECT

SEC. 501. BIOTECHNOLOGY DEMONSTRATION PROJECT.

Chapter VII (21 U.S.C. 371 et seq.) (as amended by sections 101, 301, and 401) is further amended by adding at the end thereof the following new section:

"SEC. 713. 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 cooperative, with the permission of any such cooperative and in conjunction with such cooperative, to promote the development of biotechnology.

"(b) REGULATIONS.—The Secretary shall issue such regulations as are necessary to carry out this section.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $10,000,000 for fiscal year 1990 and such sums as are necessary for each of the fiscal years 1991 and 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 at the end thereof the following new chapter:

"CHAPTER X—TRAINING AND LOAN REPAYMENT PROGRAMS

"Subchapter A—Training Program

"SEC. 1001. AUTHORITY.

"The Secretary may make grants to, or enter into contracts with, public or nonprofit academic institutions (including schools of medicine, dentistry, pharmacy, public health, and food science) to enable such institutions to design and develop core curriculum programs that will be used to train individuals in the field of regulatory review.

"SEC. 1002. REQUIREMENTS.

"(a) IN GENERAL.—No grant shall be awarded under this subchapter unless—

"(1) the institution has submitted to the Secretary an application for a grant and the Secretary has approved the application; and

"(2) the institution provides, in such form and manner as the Secretary shall by regulation prescribe, assurances satisfactory to the Secretary that individuals receiving funds through the institution under such grants will meet the service requirement of section 1004.

"(b) APPLICATION.—An application for a grant submitted under subsection (a) shall be in such form, submitted in such manner, and contain such information, as the Secretary may by regulation prescribe.

"SEC. 1003. USE OF GRANTS.

"An institution that receives a grant under this subchapter—

"(1) shall use such grant to—

"(A) design and develop a core curriculum program that has as its primary emphasis regulatory review; and

"(B) train health professionals and scientists in regulatory review; and

"(2) may use such grant to provide stipends, tuition, fees, and allowances (including travel and subsistence expenses and dependency allowances), to individuals who participate in the regulatory review program developed with funds provided under this subchapter.

"SEC. 1004. REQUIREMENT OF SERVICE.

"(a) IN GENERAL.—Each individual who receives funds from an institution through a grant provided under this subchapter shall, in accordance with subsection (c), serve an obligated period of time as an employee of the Food and Drug Administration.

"(b) PERIOD OF REQUIRED SERVICE.—For each month for which an individual receives funds in accordance with subsection (a), such individual shall remain employed for 2 months with the Food and Drug Administration.

"(c) COMPLIANCE.—The requirements of this section shall be complied with by any individual to whom it applies within such reasonable period of time, after the completion of the training of such individual under the grant received under this subchapter, as the Secretary shall by regulation prescribe.

"(d) FAILURE TO COMPLY.—If any individual to whom this section applies fails, within the period prescribed under subsection (c), to comply with such requirements, the United States shall be entitled to recover from such individual an amount determined in accordance with a formula prescribed through regulations issued by the Secretary.

"SEC. 1005. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this subchapter $4,000,000 for fiscal year 1990 and such sums as may be necessary for each of the fiscal years 1991 through 1992.

"Subchapter B—Loan Repayment Program

"SEC. 1011. LOAN REPAYMENT PROGRAM.

"The Secretary shall establish a loan repayment program under which the Secretary shall repay loans incurred by individuals to obtain training in regulatory review in exchange for the individuals serving a period of time as employees of the Food and Drug Administration.

"SEC. 1012. ADMINISTRATION.

"(a) REGULATIONS.—Not later than 1 year after funds are first made available to carry out this subchapter under section 1013, 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. AUTHORIZATION 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 VII—SCIENTIFIC REVIEW GROUPS

SEC. 701. 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 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 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 VIII—HUMAN FOOD SAFETY, TECHNOLOGY, AND NUTRITION ADVISORY COMMITTEE

SEC. 801. HUMAN FOOD SAFETY, TECHNOLOGY, AND NUTRITION ADVISORY COMMITTEE.

Chapter IV (21 U.S.C. 341 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 413. HUMAN FOOD SAFETY, TECHNOLOGY, AND NUTRITION ADVISORY COMMITTEE.

"(a) ESTABLISHMENT.—The Secretary shall establish an advisory committee which shall be known as the 'Human Food Safety, Technology, and Nutrition Advisory Committee' (hereinafter in this section referred to as the 'Advisory Committee').

"(b) COMPOSITION.—

"(1) IN GENERAL.—The Advisory Committee shall consist of 15 members appointed by the Secretary.

"(2) MEMBERSHIP.—In making appointments under paragraph (1), the Secretary shall—

"(A) consult with the Secretary of Agriculture; and

"(B) ensure that the membership of the Advisory Committee includes—

"(i) consumers who are not otherwise represented under this subparagraph;

"(ii) representatives of the food industry;

"(iii) experts in the field of food technology and food production;

"(iv) experts in the application of biotechnology to food products;

"(v) experts in the field of nutrition; and

"(vi) experts in the field of food safety.

"(c) DUTIES.—The Advisory Committee shall advise the Secretary and the Commissioner of Food and Drugs on issues involving food for human consumption, including issues relating to—

"(1) food technology and production;

"(2) food research and development;

"(3) biotechnology and food products;

"(4) food safety;

"(5) the relationship between diet, nutrition, and health; and

"(6) health-related claims for food for human consumption.

"(d) TERMS.—A member of the Advisory Committee shall be appointed for a term of 3 years, except that of the members first appointed, 5 members shall be appointed for a term of 1 year, 5 members shall be appointed for a term of 2 years, and 5 members shall be appointed for a term of 3 years, as determined by the Secretary.

"(e) SUPPORT.—The Commissioner of Food and Drugs shall provide the Advisory Committee with such professional and clerical staff and information as may be necessary for the Advisory Committee to carry out this section.

"(f) TRAVEL EXPENSES.—A member of the Advisory Committee, while so serving away from the home or regular place of business of the member, may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as such expenses are authorized under section 5703 of title 5, United States Code, for employees serving intermittently.".

TITLE IX—AUTOMATION OF FDA

SEC. 901. AUTOMATION OF FDA.

Chapter VII (21 U.S.C. 371 et seq.) (as amended by sections 101, 301, 401, and 501 of this Act) is further amended by adding at the end thereof the following new section:

"SEC. 714. 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 are necessary to carry out this section.".

TITLE X—COMPENSATION AND EMPLOYMENT REQUIREMENTS FOR FDA AND EPA SCIENTISTS

SEC. 1001. COMPENSATION AND EMPLOYMENT REQUIREMENTS FOR FDA AND EPA SCIENTISTS.

The Director of the Office of Personnel Management shall take such action as is necessary to ensure, to the extent practicable, that the level of compensation and employment requirements are comparable for scientists employed by the Food and Drug Administration and scientists employed by the Environmental Protection Agency.

TITLE XI—FUNDING FLOOR FOR FDA

SEC. 1101. FUNDING FLOOR FOR FDA.

Notwithstanding any other provision of law, there shall be appropriated no less than $500,000,000 each fiscal year to carry out the activities of the Food and Drug Administration.

TITLE XII—PLAN OF MANAGEMENT INITIATIVES

SEC. 1201. PLAN OF MANAGEMENT INITIATIVES.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, shall contract for a study of the management initiatives undertaken to assess, prioritize, and improve the efficiency and productivity of the activities of the Food and Drug Administration. Such plan shall provide for identifiable and measurable goals and objectives.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, such sums as may be necessary in each of the fiscal years 1990 and 1991.

AMENDMENT NO. 3150

(Purpose: To make a substitute amendment)

Mr. STEVENS. Mr. President, I send an amendment to the desk for Senator HATCH and Senator KENNEDY.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS] for Mr. HATCH (for himself and Mr. KENNEDY) proposes an amendment numbered 3150.

Mr. STEVENS. Mr. President, I ask that reading of the amendment be dispensed with.

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

The amendment is 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. 2. 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 provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

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. 710. 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 shall 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 those alternatives that are the most cost effective for the Federal Government and that allow for the use of donated land, federally owned 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 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 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 amended by section 101 of this Act) is further amended by adding at the end thereof the following new section:

"SEC. 711. RECOVERY AND RETENTION OF FEES FOR FREEDOM OF INFORMATION REQUESTS.

"(a) IN GENERAL.—The Secretary, acting through the Commissioner of Food and Drugs, may—

"(1) set and charge fees, in accordance with section 552(a)(4)(A) of title 5, United States Code, to recover all reasonable costs 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;

"(2) retain all fees charged for such requests; and

"(3) 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). 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 (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 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 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. 712. 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 are necessary to carry out this section.".

Mr. LEAHY. Mr. President, will the distinguished Senator from Utah 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 is correct.

Mr. LEAHY. I thank my distinguished colleague, the Senator from Utah, for his 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 dollars 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 medicine, 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 crisis, 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, heating and cooling, 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 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. 845

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

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. 2. 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 or other provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

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. 710. 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 shall solicit contract proposals under subsection (a) from interested parties. In awarding contracts under such subsection, the Secretary shall review proposals and give priority to those alternatives that are the most cost effective for the Federal Government and that allow for the use of donated land, federally owned 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 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 service or property, real or personal, as the Secretary determines to be necessary.

"(d) AUTHORIZATION OF APPROPRIATIAONS.—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 amended by section 101 of this Act) is further amended by adding at the end thereof the following new section

"SEC. 711. RECOVERY AND RETENTION OF FEES FOR FREEDOM OF INFORMATION REQUESTS

"(a) IN GENERAL.—The Secretary, acting through the Commissioner of Food and Drugs, may—

"(1) set and change fees, in accordance with section 522(a)(4)(A) of title, 5 United Stated Code, to recover all reasonable costs 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;

"(2) retain all fees charged for such requests; and

"(3) 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). 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 (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 pay rates, the Commissioner of Foods 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. 712. 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 are necessary to carry out this section.".

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.

LAND EXCHANGE IN WEST VIRGINIA

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5433, regarding a land exchange in West Virginia, now at the

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 arbitration, and other techniques for the prompt and ifnormal 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 become increasingly formal, costly, and lengthy resulting in unnecessary expenditures 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 advantageously in a wide variety of administrative programs;

(6) explicit authorization of the use of well-tested dispute resolution techniques will eliminate ambiguity of agency authority under existing law;

(7) Federal agencies may not only receive the benefit of techniques that were developed in the private sector, but may also take the lead in the further development and refinement of such techniques; and

(8) the availability of a wide range of dispute resolution procedures, and an increased understanding of the most effective use of such procedures, will enhance the operation of the Government and better serve the public.

SEC. 3. PROMOTION OF ALTERNATIVE MEANS OF DISPUTE RESOLUTION.

(a) PROMULGATION 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 the implementation of—

(1) the provisions of this Act and the amendments made by this Act; and

(2) the agency policy developed under subsection (a).

(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 head agency employees who 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 to amend any such standard agreements 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 (9) through (11), respectively, and inserting after paragraph (6) the following new paragraphs:

"(7) inform the parties as to the availability of one or more alternative means of dispute resolution, and encourage use of such methods;

"(8) require 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

"§ 581. Definitions

"For the purposes of this subchapter, the term—

"(1) 'agency' has the same meaning as in section 551(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 551(7) of this title, to resolve issues in controversy, including but not limited to, settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, 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;

"(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 memoranda, notes, or 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 arbitral 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 in which a neutral is appointed and specified parties participate;

"(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-

tween 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 resolving the controversy;

"(11) 'party' means—

"(A) for a proceeding with named parties, the same as in section 551(3) of this title; and

"(B) for a proceeding without named parties, a person who will be significantly affected by the decision in 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 persons qualified to provide services as neutrals.

"§ 582. General authority

"(a) An agency may use a dispute resolution proceeding for the resolution of an issue in controversy that relates to an administrative program, if the parties agree to such proceeding.

"(b) An agency shall consider not using a dispute resolution proceeding if—

"(1) a definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;

"(2) the matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended 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 important, and a dispute resolution proceeding cannot provide such a record; and

"(6) the agency must maintain continuing jurisdiction over the matter with authority 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 voluntary procedures which supplement rather than limit other available agency dispute resolution techniques.

"§ 583. Neutrals

"(a) A neutral may be a permanent or temporary officer 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 that the neutral may serve.

"(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 experienced in matters concerning dispute resolution, the Administrative Conference of the United States shall—

"(1) establish standards for neutrals (including experience, training, affiliations, diligence, actual or potential conflicts of interest, and other qualifications) to which agencies may refer;

"(2) maintain a roster of individuals who meet such standards and are otherwise qualified to act as neutrals, which shall be made available upon request;

"(3) enter into contracts for the services of neutrals that may be used by agencies on an elective basis in dispute resolution proceedings; and

"(4) develop procedures that permit agencies to obtain 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 any person on a roster established under subsection (c)(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 compensation for 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 resolution communication, unless—

"(1) all parties to the dispute resolution proceeding and the neutral consent in writing, and, if the dispute resolution communication or dispute resolution document was 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 dispute resolution document is required 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.

"(b) 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 any dispute resolution communication, unless—

"(1) all parties to the dispute resolution proceeding consent in writing;

"(2) the dispute resolution communication or document has already been made public;

"(3) the dispute resolution communication or dispute resolution document is required by statute to be made public;

"(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 and 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; or

"(5) the dispute resolution document or dispute resolution communication is relevant to determining the existence or meaning of an agreement or award that resulted from the dispute resolution proceeding or to the enforcement of such an agreement or award.

"(c) Any dispute resolution communication or dispute resolution document that is disclosed in violation of subsection (a) or (b), shall not be admissible in any proceeding relating to the issues in controversy with respect to which the communication or document was made.

"(d) 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 govern the confidentiality of the dispute resolution proceeding. If the parties do not so inform the neutral, subsection (a) shall apply.

"(e) 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 a refusal of the neutral to disclose the requested information shall have waived any objection to such disclosure.

"(f) 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.

"(g) Subsections (a) and (b) shall have no effect on the information and data that are necessary to document an agreement reached or order issued pursuant to a dispute resolution proceeding.

"(h) Subsections (a) and (b) shall not prevent the gathering of information for research or educational purposes, in cooperation with other agencies, governmental entities, or dispute resolution programs, so long as the parties and the specific issues in controversy are not identifiable.

"(i) Subsections (a) and (b) 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 or 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)(1) 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—

"(A) submit only certain issues in controversy to arbitration; or

"(B) arbitration on the condition that the award must be within a range of possible outcomes.

"(2) Any arbitration agreement that sets forth the subject matter submitted to the arbitrator shall be in writing.

"(3) An agency may not require any person to consent to arbitration as a condition of entering into a contract or obtaining a benefit.

"(b) An officer or employee of an agency may offer to use arbitration for the resolution of issues in controversy, 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

"(a) The parties to an arbitration proceeding shall be entitled to participate in the selection of the arbitrator.

"(b) The arbitrator shall be a neutral who meets the criteria of section 583 of this title.

"§ 588. Authority of the arbitrator

"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 7 of title 9 only to the extent the agency involved is otherwise authorized by law to do so; and

"(4) make awards.

"§ 589. Arbitration proceedings

"(a) 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)(1) 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 privileged evidence may be excluded by the arbitrator.

"(5) The arbitrator shall interpret and apply relevant statutory and regulatory requirements, legal precedents, and policy directives.

"(d) 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 is made in violation of this subsection, the arbitrator shall ensure that a memorandum of the communication is prepared and made a part of the record, and that an opportunity for rebuttal is allowed. Upon receipt of a communication made in violation of this subsection, the arbitrator may, to the extent 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.

"(e) The arbitrator shall make the award within 30 days after the close of the hearing, or the date of the filing of any briefs authorized by the arbitrator, whichever date is later, unless—

"(1) the parties agree to some other time limit; or

"(2) the agency provides by rule for some other time limit.

"§ 590. Arbitration awards

"(a)(1) Unless the agency provides otherwise by rule, the award in an arbitration proceeding 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.

"(b) 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.

"(c) 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. Notice shall be provided to all parties to the arbitration proceeding of any request by a party, nonparty participant or other person that the agency head terminate the arbitration proceeding or vacate the award. An employee or agent engaged in the performance of investigative or prosecuting functions for an agency may not, in that or a factually related case, advise in a decision under this subsection to terminate an arbitration proceeding or to vacate an arbitral award, except as witness or counsel in public proceedings.

"(d) 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. 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.

"(e) An award entered under this subchapter 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 used as precedent or otherwise be considered in any factually unrelated proceeding, whether conducted under this subchapter, by an agency, or in a court, or in any other arbitration proceeding.

"(f) 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.

"(g) 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

"(a) 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.

"(b)(1) 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 10(b) of title 9.

"(2) A decision by the head of an agency under section 590 to terminate an arbitration proceeding or vacate an arbitral award shall be committed to the discretion of the agency and shall not be subject to judicial review.

"§ 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 1342 of title 31.".

(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.
"585. Authorization of arbitration.
"586. Enforcement of arbitration agreements.
"587. Arbitrators.
"588. Authority of the arbitrator.
"589. Arbitration proceedings.
"590. Arbitration awards.
"591. Judicial review.
"592. Compilation of information.
"593. 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;

(2) by striking out "In either" and inserting in lieu thereof "(a) In any"; and

(3) by 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 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 582 of title 5.".

SEC. 6. GOVERNMENT CONTRACT CLAIMS.

(a) ALTERNATIVE MEANS OF DISPUTE RESOLUTION.—Section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 606) is amended by adding at the end the following new subsections:

"(d) Notwithstanding any other provision of this Act, a contractor and a contracting officer may use any alternative means of dispute resolution under subchapter IV of chapter 5 of title 5, United States Code, or other mutually agreeable procedures, for resolving claims. In a case in which such alternative means of dispute resolution or other mutually agreeable procedures are used, the contractor shall certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of his or her knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable. All provisions of subchapter IV of chapter 5 of title 5, United States Code, shall apply to such alternative means of dispute resolution.

"(e) The authority of agencies to engage in alternative means of dispute resolution proceedings under subsection (d) shall cease to be effective on October 1, 1995, except that such authority shall continue in effect with respect to then pending dispute resolution proceedings which, in the judgment of the agencies that are parties to such proceedings, require such continuation, until such proceedings terminate.".

(b) JUDICIAL REVIEW OF ARBITRAL AWARDS.—Section 8(g) of the Contract Disputes Act of 1978 (41 U.S.C. 607(g)) is amended by adding at the end the following new paragraph:

"(3) An award by an arbitrator under this Act shall be reviewed pursuant to sections 9 through 13 of title 9, United States Code, except that the court may set aside or limit any award that is found to violate limitations imposed by Federal statute.".

SEC. 7. FEDERAL MEDIATION AND CONCILIATION SERVICE.

Section 203 of the Labor Management Relations Act, 1947 (29 U.S.C. 173) is amended by adding at the end the following new subsection:

"(f) The Service may make its services available to Federal agencies to aid in the resolution of disputes under the provisions of subchapter IV of chapter 5 of title 5, United States Code. Functions performed by the Service may include assisting parties to disputes related to administrative programs, training persons in skills and procedures employed in alternative means of dispute resolution, and furnishing officers and employees of the Service to act as neutrals. Only officers and employees who are qualified in accordance with section 583 of title 5, United States Code, may be assigned to act as neutrals. The Service shall consult with the Administrative Conference of the United States and other agencies in maintaining rosters of neutrals and arbitrators, and to adopt such procedures and rules as are necessary to carry out the services authorized in this subsection.".

SEC. 8. GOVERNMENT TORT AND OTHER CLAIMS.

Section 2672 of title 28, United States Code, is amended by adding at the end of the first paragraph the following: "Notwithstanding the proviso contained in the preceding sentence, any award, compromise, or settlement may be effected without the prior written approval of the Attorney General or his or her designee, to the extent that the Attorney General delegates to the head of the agency the authority to make such award, compromise, or settlement. Such delegations may not exceed the authority delegated by the Attorney General to the United States attorneys to settle claims for money damages against the United States. Each Federal agency may use arbitration, or other alternative means of dispute resolution under the provisions of subchapter IV of chapter 5 of title 5, to settle any tort claim against the United States, to the extent of the agency's authority to award, compromise, or settle such claim without the prior written approval of the Attorney General or his or her designee.".

SEC. 9. USE OF NONATTORNEYS.

(a) REPRESENTATION OF PARTIES.—Each agency, in developing a policy on the use of alternative means of dispute resolution under this Act, shall develop a policy with regard to the representation by persons other than attorneys of parties in alternative dispute resolution proceedings and shall identify any of its administrative programs with numerous claims or disputes before the agency and determine—

(1) the extent to which individuals are represented or assisted by attorneys or by persons who are not attorneys; and

(2) whether the subject areas of the applicable proceedings or the procedures are so complex or specialized that only attorneys may adequately provide such representation or assistance.

(b) REPRESENTATION AND ASSISTANCE BY NONATTORNEYS.—A person who is not an attorney may provide representation or assistance to any individual in a claim or dispute with an agency, if—

(1) such claim or dispute concerns an administrative program identified under subsection (a);

(2) such agency determines that the proceeding or procedure does not necessitate representation or assistance by an attorney under subsection (a)(2); and

(3) such person meets any requirement of the agency to provide representation or assistance in such a claim or dispute.

(c) DISQUALIFICATION OF REPRESENTATION OR ASSISTANCE.—Any agency that adopts regulations under subchapter IV of chapter 5 of title 5, United States Code, to permit representation or assistance by persons who are not attorneys shall review the rules of practice before such agency to—

(1) ensure that any rules pertaining to disqualification of attorneys from practicing before the agency shall also apply, as appropriate, to other persons who provide representation or assistance; and

(2) establish effective agency procedures for enforcing such rules of practice and for receiving complaints from affected persons.

SEC. 10. DEFINITIONS.

As used in this Act, the terms "agency", "administrative program", and "alternative means of dispute resolution" have the meanings given such terms in section 581 of title 5, United States Code, as added by section 4(b) of this Act.

SEC. 11. SUNSET 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 continue in effect 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 Dispute Resolution 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. The Parliamentarian referred the bill to the Governmental Affairs Committee, which in turn referred the bill to the Subcommittee on Oversight of Government Management. S. 971 was the subject of a subcommittee hearing, which included the testimony from the bill's sponsor. The committee then spent many months working on improving the bill and incorporating suggestions from the ABA, the Justice Department, the Administrative Conference of the United States, public interest groups and other interested parties. There can be no doubt that the final bill, as favorably reported by the full committee on October 19, 1990, which is being considered by 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 and ranking minority members of the Judiciary 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 ROTH, the committee's ranking minority member. It concerned the jurisdiction of S. 971, and sought to make a record 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 or 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. 303), 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 all aspects of the APA. The October 19 sequential referral should not be interpreted any other way.

Mr. LEVIN. Mr. President, I am pleased that the Senate is considering S. 971, the Administrative Dispute Resolution Act, introduced by Senator CHARLES GRASSLEY. This bill was referred to the Subcommittee on Oversight of Government Management, which I chair, and we held a hearing on this innovative legislation last year. Congressman GLICKMAN introduced similar legislation in the House, H.R. 2497, and that was passed by the House on June 5, 1990. The full Governmental Affairs Committee recently voted to favorably report this bill to the Senate with an amendment in the nature of a substitute. That is the bill that is before us now.

I take this opportunity to commend Senator GRASSLEY and his staff for their work in this area and the development of the legislation before us today. I would also like to thank Congressman GLICKMAN and his staff for their parallel effort on the House side. This is an innovative piece of legislation and can result in significant savings in time and money for the Federal Government—something we are in great need of right now.

S. 971 encourages, and establishes procedures for, Federal agencies to use alternative dispute resolution [ADR] to resolve disputes concerning Federal programs. ADR techniques are informal, consensual procedures utilized to reach a resolution by parties in a dispute in lieu of formal litigation. These procedures include settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials and arbitration, or any combination thereof. The goal is to gain more effective, fair, timely, and less costly dispute resolution through the use of informal procedures.

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 route 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 such methods, 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 Michigan, 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-related ADR programs of various types in over 40 States.

Federal agencies can currently engage in many ADR techniques such as mediation, and minitrials without express authorization by statute or regulations. In fact, 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, 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 knowledge 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 administrative programs to agree to use ADR methods. 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. These are listed in section 582(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 subject to safeguards of justicial 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 arbitration 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, it is encouraged.

During the subcommittee's consideration of the bill, concern was expressed over the possibility that binding arbitration involving a Federal agency could result in a private citizen, the arbitrator, exercising 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, 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.

S. 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 the law and with establishing a roster—with the assistance of FMCS—of qualified neutrals for optional use by parties in a dispute. The bill increases the scope of duties for the FMCS to include mediation, training, and other ADR assistance.

Although the provisions of S. 971 are sunsetted on October 1, 1995, 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 as 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 extensive expertise in this area. I 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 communications subject to these 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 bill.

Mr. 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, and I hope we will 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. LEAHY. Our staffs have discussed the confidentiality issues involving this bill to some extent over the last few days, but those discussions did not resolve all of the issues. As chairman of the Judiciary Subcommittee with jurisdiction over the Freedom of Information Act, I was unwilling to carve out an exception in this bill from FOIA requirements in the final days of this Congress. I think such a step requires more deliberation. I can pledge, however, to the sponsor of this bill, Senator GRASSLEY, that I will be happy to work with him next year on this issue and try to determine whether certain dispute resolution communications should be exempt from FOIA.

Mr. GRASSLEY. I thank the Senator from Vermont and look forward to working with him on this matter next year. I yield the floor.

Mr. LEVIN. Mr. President, I am pleased that we were able, for purposes of passing this bill this year and getting the ADR process rolling, to temporarily resolve the confidentality issue. As the Administrative Conference of the United States wrote in its recommendation on this subject, "* * * since settlements are essential to administrative agencies, a careful balance must be struck between the openness required for the legitimacy of many agency agreements and the confidentiality that is critical if sensitive negotiations are to yield to agreements."

The provisions in this bill as amended, do not as yet achieve that balance, and I am pleased that both Senators GRASSLEY and LEAHY have agreed to address this issue more completely next year.

The PRESIDING OFFICER. Are there amendments to the committee substitute?

AMENDMENT NO. 3151

(Purpose: To clarify issues suitable for mediation, conciliation, arbitration, and other such techniques)

Mr. REID. Mr. President, I have an amendment which I send to the desk on behalf of Senator PRYOR 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. PRYOR proposes an amendment numbered 3151.

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 38, line 24, insert the "but shall not extend to matters specified under the provisions of sections 2302 and 7121(c) of title 5" after "decision".

Mr. PRYOR. 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 confusing area. Federal employees, retirees, and applicants for Federal employment have a number of appeal routes open to them depending on their particular circumstance. If S. 971 is read to overlay these current rights with additional appeal mechanisms, the maze may become impenetrable.

My amendment simply says that S. 971 does not apply to appeals involving pay, health or 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 KOHL 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. KOHL, proposes an amendment numbered 3152.

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 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 39, 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 11, 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 "disclose" 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, lines 6 and 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), a" and insert in lieu thereof "A".

On page 44, line 4, insert "disclose" 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".

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 period "for disclosures by a 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".

Mr. KOHL. Mr. President, I rise today to offer an amendment to S. 971, the Administrative Dispute Resolution Act, introduced by my distinguished colleague, Senator GRASSLEY. This bill would increase Government use of alternative methods of dispute resolution. My amendment ensures openness in the process.

S. 971 would encourage Federal 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 an open court system essential to maintain public confidence in the judicial branch. As a substitute for a court trial, alternative dispute resolution should also be open.

Still, we must recognize that for mediation and arbitration to be effective there must be a degree of confidentiality. Parties cannot negotiate candidly if settlement offers and certain other internal documents are subject to later release. Indeed, very few parties would even elect to use an alternative dispute resolution procedure if that were the case.

My amendment strikes the proper balance between disclosure and confidentiality. Under this bill, as amended, only dispute resolution communications may be kept confidential by the parties. Such communications do not include anything that existed before the beginning of the resolution process. Any my amendment makes clear 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 dipsute 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".

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 statute specifically exempting disclosure under section 552(b)(3) of this title."

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 (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 connetion with the arbitration. An award will be made unless the agency head finds that special circumstances would 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 agency heads routinely vacate arbitral awards, after private parties have incurred substantial attorney costs and expenses

Mr. President, I candidly hope and expect that this particular provision 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, particularly 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 GLICKMAN 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 a party to more disputes with the public than ever before: Contract and benefits disputes, formal rulemakings and adversary adjudications, enforcement actions and license revocations. Administrative proceedings, once thought of as being less formal than 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 lawyers 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 arbitration—the most "trial like" of 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 improtant 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 private disputes can 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 S. 971 change current law with respect to the traditional presumption of openness of agency practices. The bil 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 LEAHY. 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" on public policy in a public forum. 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. During this period, the award is essentially 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 warrant 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 neutrals in consultation with ACUS.

The bill amends other statutes such as the Contracts Disputes 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, 1995, 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 cosponsor of S. 971, the Administrative Dispute Resolution Act, I am pleased to see that we are considering 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—the committee of 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 $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 required by law, and other nondiscretionary costs, for fiscal year 1991.

SEC. 2. (a) THE CONGRESS FINDS THAT—

(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 needs were satisfied by the Pan-Pacific Educational and Cultural Experiments by Satellite Program (hereinafter referred to as the "PEACESAT Program") operating over the ATS-1 satellite of the National Aeronautics and Space Administration;

(5) the ATS-1 satellite ran out of station-keeping fuel in 1985 and has provided only intermittent service since then;

(6) the Act entitled "An Act to provide authorization of appropriations for activities of the National Telecommunications and Information Administration", approved November 3, 1988 (Public Law 100-584; 102 Stat. 2970), 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 repairing earth terminals in the Pacific communities, by identifying the short-term and long-term needs of the residents of these communities, 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 necesary 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 until viable alternatives are available 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 expeditiously negotiate for and acquire satellite space segment capacity and related ground segment equipment to provide 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 the operation of the satellite 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 enable the Secretary of Commerce to 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 to any books, documents, papers, and records of such recipient that are pertinent to the funds received under subparagraph (A) of this paragraph.

(d) There are authorized to be appropriated $1,000,000 for fiscal year 1990 and such sums as may be necessary for fiscal year 1991 for use by the Secretary of Commerce in the negotiation for and acquisition of capacity and equipment under subsection (c)(1) of this section and the management of the operation of satellite communications services under subsection (c)(2) of 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.

SEC. 3. (a) It is the purpose of this section to improve the ability of rural health providers to use communications to obtain health information and to consult with others concerning the delivery of patient care. Such enhanced communications ability may assist in—

(1) Improving and extending the training of rural health professional; and

(2) improving the continuity of patient care in rural areas.

(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 the collection of information 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, representatives of the National Library of Medicine, and representatives of different health professionals 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. (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 (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. 1839, the NTIA authorization bill for fiscal years 1990 and 1991 and to support final passage of this amendment by the Senate. This substitute is noncontroversial and enjoys the support of Senator HOLLINGS, chairman of the Commerce Committee.

This bill makes several small but nevertheless significant changes in the law. First, the bill reauthorizes funding for the National Telecommunications and Information Administration 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 $14,554,000, 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.

In 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-

mittee 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 reauthorizes the Peacesat Program, which was first authorized in the NTIA authorization bill for fiscal years 1988 and 1989. NTIA has made substantial progress in restablishing 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 for the purpose of providing 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 1994.

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 panel 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 advantage his urban counterpart has 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 that are typically 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. As a result, 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 service delivery in rural areas. Telecommunications systems can make remote services available locally and improve the flow of educational and 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 through improved communications facilities and services.

Finally, Mr. President, in response to several requests from the telephone companies, this 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 provisions which the telephone companies seek to have changed were included in the version of the bill that the committee reported out last June. The telephone companies, however, did not bring their concerns about these provisions to the attention of my staff until last week. I am disappointed that the telephone companies did not bring this information to us sooner.

Nevertheless, I am always willing to be cooperative, and it appears that the changes that the telephone companies have suggested to have merit. The first change would delete the provision that bars a telephone company from providing service when a caller uses another company's "proprietary" calling card. The provision was intended to protect consumers from being charged rates that are higher than the rates of the company that issued the card. After further reflection, however, it appears that the consumer will be protected even without this provision because of the way the market operates. First, the consumer can ensure that he or she receives service from the carrier issuing the card by simply dialing that carrier's access code. Second, it is unlikely that the company issuing the proprietary calling card will allow another company to provide the service and bill the call to the calling card unless that carrier's rates are reasonable. Otherwise the caller will complain to the company issuing the card.

I believe that regulation, in general, should only be imposed where necessary. For this reason, I have agreed to delete the provision in the bill which prohibits carriers from billing when the customer uses another carrier's proprietary card. This change is agreed upon by all the interested parties to this legislation and is noncontroversial.

The second provision would extend the time period for compliance with the law from 30 days to 90 days. The 30-day provision appeared to be reasonable when it was adopted by the committee in June because it was understood that the telephone companies would be visiting their pay telephone once every month simply to empty the coins collected in each machine.

Subsequent information provided by the telephone companies indicates that some day telephones, especially in rural areas, may not be visited for 2 or 3 months. It now appears that it will be impossible for the telephone companies to post stickers on all their pay telephones, upgrade their software to allow them to identify themselves twice on every call, and amend their contracts with aggregators all within 30 days. An extension until 90 days would avoid subjecting the telephone companies to the penalty provisions 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 Europeans. 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 vital 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.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. SIMON. Mr. President, I rise in support of H.R. 5872. This legislation is noncontroversial legislation that is identical to a bill, S. 868, introduced by myself and Senator ALAN DIXON last year. The legislation simply conforms the treatment of the profit-sharing plans of publicly traded partnerships to that of corporations. It would permit the profit-sharing plans of publicly traded partnerships to invest in units of the employer partnership. Corporate profit-sharing plans can already do this.

Mr. President, the employees of publicly traded partnerships deserve the same opportunity to share in the success of their employer as the employees of corporations. Without this legislation, thousands of employees who would otherwise benefit from their profit-sharing plan's investment in the employer's units will continue to be at a relative disadvantage to a corporation's employees. I urge swift passage of this legislation.

The PRESIDING OFFICER. Without objection, the bill is deemed read a third time and passed.

So the bill (H.R. 5872) was passed.

Mr. REID. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION ACT, FISCAL YEAR 1991

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 814, S. 2287, the NASA authorization bill.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A 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.

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. 3156

(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 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 Senator 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 today's RECORD 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 Congress has provided its guidance to NASA on the future direction of the U.S. space program. 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 system or problems with specific 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 aeronautical research 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 that 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 appropriations 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 industries. In adopting this 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, and I believe this 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 concept 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, particularly in light of expected 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.

But 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 ongoing 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:

S. 2287, NASA AUTHORIZATION ACT, FY 1991

I. NASA FUNDING LEVELS

Bill authorizes $15.023 billion in FY 1991 for the National Aeronautics and Space Administration [NASA]. This represents a $2.726 billion increase over FY 1990 funding levels (22 percent).

SUMMARY TABLE

[In billions of dollars]

	1990 Oper. plan	Pres. request	Proposed auth.
R&D	5.246	7.074	6.968
Space flight	4.556	5.289	5.293
Const/Facil.	.437	.498	.498
R&PM	2.049	2.253	2.253
IG	.009	.011	.011
NASA total	12.297	15.125	15.023

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 NASA's termination of this program. The bill fully 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 assessments. For Planetary Exploration, the bill authorizes $337.2 million, which does not include funding for the CRAF/Cassini mission (authorized separately).

CRAF/Cassini—Authorizes $1.6 billion for the full program cost of the CRAF/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 Total 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 $97.3 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 experimenter ground stations for the Advanced Communication Technology Satellite.

Commercial—Authorizes the President's request of $101 million for Technology Utilization programs and the Commercial Use of Space.

Aeronautics and Space Technology—Authorizes $537 million for Aeronautical Research and Technology. This amount reflects the President's request with $25 million added for subsonic technology and $15 million for high speed computing programs, as well as a $15 million general reduction to be taken at NASA's discretion.

Transatmospheric Research—Authorizes the President's request of $119 million in FY 1991 for NASA's share of this joint NASA/DOD program.

Space Research and Technology—Authorizes $412.9 million, which is $88 million below the President's request, reflecting the termination of funds requested for the Space Exploration Initiative (Moon/Mars mission). The bill also reduces the President's request for Mission Exploration studies to $21 million, limiting these funds to studies conducted by NASA.

Academic Programs—Authorizes the President's request of $50.1 million for the University Space Science and Technology Academic Program.

Space Flight, Control, and Data Acquisitions

Space Shuttle Production and Operations Capability—Authorizes $1.364 billion, which reflects an increase in the budget request of $35 million for Shuttle structural spares, and $45 million for carrying out Shuttle safety modifications recommended by the Aerospace Safety Advisory Committee, with a general reduction of $18 million to be taken at NASA's discretion.

Space Transportation Operations—Authorizes $2.831 billion, which is a reduction of $58 million from the President's request. This reflects the termination of funds requested for the procurement of hardware for unassigned Shuttle flights of opportunity. The bill also includes $4 million for the provision of launch satellites of eligible satellites in accordance with section 6 of the Commercial Space Launch Act of 1986.

Expendable Launch Vehicles—Authorizes the President's request of $229.2 million for Expendable Launch Vehicles.

Space and Ground Network, Communications and Data Systems—Authorizes the budget request of $868.8 million for FY 1991. The bill also provides more than $1.209 billion for a one-time transfer to reduce NASA's debt to the Federal Financing Bank for the Tracking and Data Relay Satellite System.

Construction of Facilities

Authorizes full funding of $497.9 million.

Research and Program Management

Authorizes full funding of $2.253 billion.

Inspector General

Authorizes full funding of $11 million.

II. NASA LEGISLATIVE REQUIREMENTS

Amendments to NASA Act

Directs the Administrator to seek and encourage full commercial use of space, and to encourage Federal government use of commercially provided space services and hardware, consistent with Federal requirements.

Geographical Distribution

Directs the Administrator to distribute research and development funds in order to provide the broadest practicable participation.

Buy American

Imposes Buy American requirement on contracts to domestic firms.

Advanced Solid Rocket Motor Reports

Directs NASA to undertake a series of studies on the cost and capabilities of the Advanced Solid Rocket Motor, along with the National Research Council to assess the quality assurance and testing program at NASA that will ensure the achievement of safety and reliability for ASRM.

Space Shuttle Usage

Establishes the policy specifying the use of the space shuttle for purposes that require the presence of man or require unique capabilities of the space shuttle, or when other compelling circumstances exist.

Life Sciences Strategic Plan

Directs NASA to formulate a strategic plan for life sciences.

Study on International Cooperation in Planetary Exploration

Directs the National Space Council to conduct a study on International Cooperation in Planetary Exploration aimed at developing a strategy for cooperation among the U.S. and other space-faring nations in international manned and unmanned missions, a conceptual design of a possible international manned mission with an inventory of space exploration technologies not currently available to the U.S. but available from other nations.

National Aerospace Plane

Directs NASA and the Defense Department to jointly pursue the National Aerospace Plane program on a high priority basis and directs submission of the joint NASP management plan to Congress.

Commercial Space Launch Act Amendments

Establishes Congressional findings and statement of purpose on the need to develop a strong space transportation infrastructure and the importance of having State government participation. The Secretary of Transportation is directed to promote public-private partnerships in expanding and operating space launch infrastructure.

Space Debris

Expresses the sense of the Congress that the goal of U.S. policy should be that space-related activities in the U.S. should be conducted in a manner that does not increase the amount of orbital debris, and that the U.S. should develop an agreement with other nations to ensure that the amount of orbital debris is not increased.

Space Shuttle Production Line

Authorizes the expenditure of excess funds appropriated for orbital production to maintain the space shuttle production line.

Industrial Application Centers

Authorizes Industrial Application Centers to retain all client income derived from work accomplished under any agreement with NASA.

Users' Advisory Group

Directs the National Space Council to establish a Users' Advisory Group composed of non-Federal representatives of industry and other persons to meet with and provide input to the Council.

Scientific Balloon Launch Site

Authorizes NASA to purchase land in New Mexico for use as a balloon launching site.

Peaceful Use of Space Station

Establishes a policy for the peaceful use of the Space Station.

Small Business Innovation Research

Permits NASA's use of up to 5 percent of the Small Business Innovation Research funds for program management and promotional activities.

Propulsion Strategic Assessment

Directs the National Research Council to report on the requirements, benefits, technological feasibility, and roles of propulsion systems for the future space program.

Title II—Launch Services Purchase

Directs NASA to purchase launch services for its primary payloads (except suborbital launches) from commercial launch companies whenever such services are required. Such a requirement may be waived if the

Administrator determines that: (1) the payload requires the unique capabilities of the space shuttle; (2) cost effective commercial launch services launch services are not reasonably available; (3) the use of commercial launch services poses an unacceptable risk of loss of unique scientific opportunities; or (4) the payload serves national security or foreign policy purposes.

Title II also specifies that commercial payloads may not be accepted for launch as primary payloads on the space shuttle unless the Administrator determines that the payload requires the unique capabilities of 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 for the Office of Commercial Space Transportation in the Department of Transportation. The 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 1988.

National Space Council

Authorizes the President's request of $1.363 million 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 more than $15.02 billion in fiscal year 1991 to support a balanced program of aeronautical research and manned and unmanned 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 initiation 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.

This bill, which is considerably above the mark agreed to earlier this week by the appropriations conferees, reflects the level of support that I and many others believe NASA should receive. Fiscal constraints, however, have forced those of us on the Appropriations Committee to make a number of difficult choices with respect to certain programs under NASA's domain.

However, we must not lose sight of the fact that the space program in this country cannot be driven solely by the budget. There is strong public support for the U.S. space program. This authorization bill reflects that broad support and is an essential part of our ongoing efforts to establish specific priorities for our space program.

Mr. President, problems that have come to light in recent months with the Hubble space telescope and the space shuttle have led many to question NASA's ability to manage the space program. There is no doubt that NASA's image has been tarnished. Yet, we must continue our space exploration program. Others, including the Europeans, Soviets, Chinese, and Japanese, will simply take advantage of our absence if we do not continue our efforts. It is therefore imperative from the point of view of long-term world competitiveness, that we provide the resources needed to ensure our continued leadership in space.

There is one critical administration proposal for fiscal year 1991 that was not included in this bill. During its consideration of S. 2287, the Commerce Committee agreed to terminate all funds requested to support the President's Space Exploration Initiative, which calls for human exploration of the Moon in the next decade and Mars by the year 2019.

Our position has remained unchanged after our discussions with the House. That is, no funds are authorized in this legislation for programs that are associated solely with the Moon/Mars mission. We have agreed to continue funding for ongoing programs, such as the advanced launch system, that have other identifiable mission applications, but we have deleted funds for the President's Space Exploration Initiative.

Right to the point, NASA cannot support a program costing hundreds of billions of dollars over the next 30 years. Constraints on the Federal budget will not allow it, not when payments to interest on the debt are our fastest growing expenditure. To initiate a series of projects with the design of sending humans to the Moon and Mars, without a corresponding financing mechanism, would be sheer folly. Instead, we must focus our limited resources and energies on the space shuttle, space station, and other ongoing programs, as well as the important new initiative proposed under the Mission to Planet Earth Program.

The bill before us also deletes funding for contractor mission architecture studies. We have done this in two ways: by deleting the $16 million requested for such contracts, and by including specific language limiting Exploration Mission studies to those conducted by NASA. With its expertise in outlining future space exploration missions, NASA is eminently qualified to complete any architectual study needed for a future mission to the Moon and Mars. Outside contractor involvement is not needed and, at this time, not desired.

Let me say, however, that it is not my intention to restrict NASA's use of these funds for NASA center team and technical support contracts. Such a prohibition would be unreasonable and is not the intent of this bill.

I would comment briefly on one other section of this bill, that being a sense-of-the-Congress expression urging the involvement of the National Space Council in developing guidelines and policy recommendations on the issue of which Federal agency is responsible for future expendable launch vehicle operations. I strongly urge the Space Council to comply with this provision in an expeditious manner, for it is one of a growing number of interagency disputes that should and must be resolved by the Council. The National Space Council, located in the Executive Office of the President, was created not only to coordinate national space policy, but also to consider and take appropriate actions to resolve disputes among competing Executive agencies.

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 approving this bill today. Prompt action will enable us to send this bill to the House for its consideration and on to the President for his approval.

Mr. DANFORTH. 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 authorizaton level reflects the importance of maintaining the leadership of the United States in space science and exploration in the face of 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 consistently has 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 industries and enhanced the quality of our lives.

I am pleased that the substitute fully funds virtually all of the NASA programs at the levels recommended in the President's fiscal year 1991 budget request for NASA. Prime 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 throughout 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 global change research 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 challenges 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 high as $500 billion over its lifetime. 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 gets little attention but which may, 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 our commercial launch 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 challenge from 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 the United States to meet 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 the U.S. launch companies 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 Space Subcommittee, I join my distinguished colleague from Missouri in support of the committee's substitute amendment to S. 2287, the fiscal year 1991 NASA authorization bill. The committee substitute authorizes $15 billion for NASA in fiscal year 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 U.S. 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 will need to find answers 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.

I am proud that the EROS Data Center in Sioux Falls, SD, will play an important role in these NASA initiatives. The EROS Data Center will serve as a ground-based center that will archive, process, and distribute the enormous volume of data received from the satellites and 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's 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. That date marked the beginning 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

generations to come. Accordingly, I urge my colleagues to adopt the committee substitute to S. 2287.

MISSION TO PLANET EARTH EARTH OBSERVING SYSTEM

Mr. HEFLIN. Mr. President, one of the greatest benefits of America's space program is the opportunity it affords us to look 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, and a scientific 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 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 stressed 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 Space 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 these experiments 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 through 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 times 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 globle—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 smaller 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 sea-viewing 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-obiting satellities 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 state-of-the-art 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; deforestaton of the Amazon and elsewhere; the growth of the desert of East Africa; 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 spacelab activity is contributing to the mission to planet Earth effort with its Atlas spacelab 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.

For eons, our planet 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 warming 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 come 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, interdisciplinary program of 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 changes.

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 revealing detailed 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, a number of 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 and polar-orbiting satellites for weather forecasting and land measurements. Simultaneously, the Earth observing system's data and information system will provide a means for accessing data from these missions and integrating it into global change studies. 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 inner 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.

CAPTURING OMV TECHNOLOGY

Mr. President, the Senate Commerce Committee has expressed its concurrence with the thrust of the language at pages 24-25 of House Report 101-763 to accompany H.R. 5649 regarding the orbital maneuvering vehicle [OMV], which unfortunately, was terminated by NASA several months ago. It is clear that there are significant benefits to be derived from completing key elements of the OMV design, so the legacy of achievements on the program can be preserved for future programs.

As noted in the House report, NASA recognized at the time of termination that a vehicle with capabilities similar to OMV would be a necessary infrastructure element of any space architecture. Accordingly, NASA has recently initiated a phase A study of a Cargo Transfer Vehicle [CTV], whose mission can be defined as providing: First, an alternative to the space transportation system for provisioning of equipment and supplies to space station Freedom; and second, on-orbit capability for unmanned docking, transfer, and undocking of payloads. The CTV will undoubtedly differ in design from the OMV. However, it will use many of the same items of technology that were being developed for the OMV, including some that had been descoped from the OMV at the time of termination of the program.

Following are seven key OMV technology developments that are specific examples of items which should be pursued to the point of transferability to a future program without significant loss:

(1) CONFIGURATION DESIGN

Complete configuration design—incorporating weight reductions and expendable launch vehicle capability, and a trade study between the OMV baseline modular propulsion subsystem, and an integrated propulsion capability leading to incorporation of the selected concept in the resulting configuration.

(2) GROUND CONTROL CONSOLE

Complete ground control console development, incorporating modifications resulting from the man-machine interface and crew reviews.

(3) COMMUNICATION SYSTEM DESIGN

Complete communication system design, incorporating the results of a trade study between the OMV video compression/reconstruction baseline and a Ku-band (non-compressed) video link, plus equipment specifications for the communication system which is selected.

(4) LONG TERM ON-ORBIT STORAGE CAPABILITY

Complete qualification of the AgZn battery and preliminary design (through equipment specification generation) of the GaAs solar array, in

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-to-zero-distance, 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 accomplished in the context of 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 needed 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. Without this legislation, NASA's research would be homeless.

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 becoming 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 building construction, were appropriated in fiscal year 1990.

The PRESIDING OFFICER. The question is on agreeing to the substitute amendment.

The amendment (No. 3156) was agreed to.

The PRESIDING OFFICER. Without objection the bill, as amended, is deemed read the third time and passed.

So the bill (S. 2287), as amended, was passed as follows:

S. 2287

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".

TITLE I—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATIONS

SEC. 101. FINDINGS.

The Congress finds that—

(1) over the next decade, the United States aeronautics and space program will be directed toward major national priorities of understanding, preserving, and enhancing our global environment, hypersonic transportation, human exploration, and emerging technology commercialization;

(2) the United States aeronautics and space program is supported by an overwhelming majority of the American people;

(3) the United States aeronautics and space program genuinely reflects our Nation's pioneer heritage and demonstrates our quest for leadership, economic growth, and human understanding;

(4) the United States space program is based on a solid record of achievement and continues to promote the objective of international cooperation in the exploration of the planets and the universe;

(5) the United States aeronautics and space program generates critical technology breakthroughs that benefit our economy through new products and processes that significantly improve our standard of living;

(6) the United States aeronautics and space program excites the imagination of every generation and can stimulate the youth of our Nation toward the pursuit of excellence in the fields of science, engineering, and mathematics;

(7) the United States aeronautics and space program contributes to the Nation's technological competitive advantage;

(8) the United States aeronautics and space program requires a sustained commitment of financial and human resources as a share of the Nation's Gross National Product;

(9) the United States space transportation system will depend upon a robust fleet of space shuttle orbiters and expendable and reusable launch vehicles and services;

(10) the United States space program will be advanced with an assured funding stream for the development of a permanently manned space station with research, experimentation, observation, servicing, manufacturing, and staging capabilities for lunar and Mars missions;

(11) the United States aeronautics program has been a key factor in maintaining preeminence in aviation over many decades;

(12) the United States needs to maintain a strong program with respect to transatmospheric research and technology by developing and demonstrating National Aero-Space Plane technology by a mid-decade date certain;

(13) 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 will substantially and increasingly contribute to the strength of both the United States space program and the national economy.

SEC. 102. POLICY.

It is declared to be national policy that the United States should—

(1) rededicate itself to the goal of leadership in critical areas of space science, space exploration, and space commercialization;

(2) increase its commitment of budgetary resources for the space program to reverse the dramatic decline in real spending for such program since the achievements of the Apollo moon program;

(3) ensure that the long-range environmental impact of all activities carried out under this title are fully understood and considered;

(4) promote and support efforts to advance scientific understanding by conducting or otherwise providing for research on environmental problems, including global change, ozone depletion, acid precipitation, deforestation, and smog;

(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 commercial 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 vehicles;

(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 cooperation 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 preminence 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 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;

(15) seek innovative technologies that will make possible advanced human exploration initiatives, such as the establishment of a lunar base and the succeeding mission to Mars, and provide high yield technology advancements for the national economy; and

(16) 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:

(1) For "research and development", for the following programs:

(A) United States International Space Station Freedom:

(i) Notwithstanding 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.

(ii) Such sums as are necessary from funds authorized for the United States International Space Station Freedom shall be used to initiate a flight test of the solar dynamic power program. By May 1, 1991, the Administrator shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a report on the implementation plan for the conduct of a flight test of the solar dynamic power program.

(B) Space transportation capability development, $723,400,000 for fiscal year 1991. Of such funds, $10,000,000 shall be used only for supporting heavy-lift launch vehicle studies, which shall include study of commercially developed variants as well as other appropriate concepts, rather than studying Shuttle-derived heavy-lift launch vehicles alone.

(C) Physics and astronomy, $985,000,000 for fiscal year 1991.

(D) Life sciences, $168,400,000 for fiscal year 1991. Of the amounts authorized for such purposes, by this or any other Act, for fiscal year 1991—

(i) $5,000,000 shall be used for the development of payloads for the Lifesat program; and

(ii) not less than $400,000 shall be used for space food processing studies and bioregenerative modeling assessments.

(E) Planetary exploration, $337,200,000 for fiscal year 1991.

(F) Earth sciences:

(i) $542,500,000 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(a)(1)(A) of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989, not more than $132,000,000 may be made available for the Earth Observing System Platform for fiscal year 1991.

(G) Materials processing in space, $97,300,000 for fiscal year 1991.

(H) 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 experimenter receiving funds obtains at least an equal amount of funds from sources other than the National Aeronautics and Space Administration.

(I) Information systems, $36,800,000 for fiscal year 1991.

(J) Technology utilization, $24,400,000 for fiscal year 1991.

(K) Commercial use of space, $76,600,000 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) Exploration mission studies, $21,000,000 for fiscal year 1991, which is authorized for studies conducted by the National Aeronautics and Space Administration. The Administrator shall provide to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, by March 15, 1991, a report setting forth the goals for academic participation and enhancement of the educational infrastructure with regard to the human exploration initiative.

(P) Safety, reliability, and quality assurance, $33,000,000 for fiscal year 1991.

(Q) Tracking and data advanced systems, $20,000,000 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, 1989;

(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;

(iii) an additional $640,000,000 shall be available for obligation 30 days after the submission of a report summarizing the results of a critical 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; and

(iv) an additional $100,000,000 shall be available for obligation 30 days after the submission of a report summarizing the results of a spacecraft integration and systems test 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 cost containment plan shall be submitted to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate by January 31, 1991, and updated on July 31 and January 31 of each succeeding year until such funds are expended.

(2) For "space flight, control, and data communications", for the following programs:

(A) Shuttle production and operational capability, $1,364,000,000 for fiscal year 1991. Of such funds, $45,000,000 shall be used only for carrying out the safety modifications recommended by the Aerospace Safety Advisory Panel and for such other safety related elements of an Assured Shuttle Availability Program 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) Expendable 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 Financing Bank.

(3) For "construction of facilities" for fiscal year 1991 as follows:

(A) Construction of Neutral Buoyancy Laboratory, Johnson Space Center, $15,000,000.

(B) Construction of Space Station Processing Facility, Kennedy Space Center, $25,000,000.

(C) Construction of Addition for Flight Training and Operations, Johnson Space Center, $12,000,000.

(D) Rehabilitation of Mission Control Center Power and Control Systems, Johnson Space Center, $8,500,000.

(E) Construction of Transporter/Canister Facility, Kennedy Space Center, $5,500,000.

(F) Construction of Processing Control Center, Kennedy Space Center, $9,400,000.

(G) Replacement of Heating, Ventilating, and Air Conditioning System, Hypergolic Maintenance Facility, Kennedy Space Center, $2,100,000.

(H) Replacement of Operations and Checkout Building, West Cooling Tower, Kennedy Space Center, $1,000,000.

(I) Restoration of 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.

(L) Repair of Condensate System, Main Manufacturing Building, Michoud Assembly Facility, $900,000.

(M) Construction of Project Engineering Facility, Marshall Space Flight Center, $17,000,000.

(N) Restoration of Information and Electronic Systems Laboratory, Marshall Space Flight Center, $4,000,000.

(O) Rehabilitation of Hydrogen Transfer Facility, Stennis Space Center, $2,700,000.

(P) Restoration of Space Shuttle Main Engine Test Complex "A", Stennis Space Center, $2,800,000.

(Q) Construction of Advanced Solid Rocket Motor Program Facilities, including land acquisition, various locations, $92,000,000.

(R) Construction of Addition to Site Electrical 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) Restoration of Utilities, Wallops Flight Facility, $5,200,000.

(AA) Modifications to the High Pressure Air System, Langley Research Center, $12,000,000.

(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 System, Lewis Research 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 Addition for 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, $8,900,000.

(KK) Construction of 34-Meter Multifrequency Antenna at Goldstone, CA, Jet Propulsion Laboratory, $13,200,000.

(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, $30,000,000.

(NN) Rehabilitation and modification of facilities at various locations, not to exceed $1,000,000 per project, $34,000,000.

(OO) Minor construction of new facilities and additions to existing facilities at various locations, not to exceed $750,000 per project, $11,000,000.

(PP) Environmental compliance and restoration, $32,000,000.

(QQ) Facility planning and design not otherwise provided for, $28,000,000.

(4) For "research and program management", for fiscal year 1991, $2,252,900,000.

(5) For "Inspector General", $11,000,000 for fiscal year 1991.

(b) LIMITATIONS.—(1)(A) 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, of the nature, location, and estimated cost of such facility.

(2) Any amount appropriated pursuant to this title for "research and development", for "space flight, control and data communications", or for "construction of facilities" may remain available until expended. Any amount appropriated pursuant to this title 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.

(3) Appropriations made pursuant to subsection (a)(4) may be used, but not to exceed $35,000, for scientific consultations or extraordinary expenses upon the approval or authority of the Administrator, and his determination shall be final and conclusive upon the accounting officers of the Government.

(4)(A) Funds appropriated 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 cost of each such project, including collateral equipment, does not exceed $200,000.

(B) Funds appropriated pursuant to subsection (a)(1) and (2) may be used for unforeseen programmatic facility project needs, but only if the cost of each such project, including collateral equipment, does not exceed $750,000.

(C) 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. 104. CONSTRUCTION OF FACILITIES REPROGRAMMING.

Authorization is hereby granted whereby any of the amounts prescribed in section 103(a)(3)(A) through (QQ)—

(1) may be varied upward 10 percent, in the discretion of the Administrator or the Administrator's designee, or

(2) following a report 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 to meet unusual cost variations.

The total cost of all work authorized under paragraphs (1) and (2) shall not exceed the total of amounts specified in section 103(a)(3)(A) through (QQ).

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 1 percent of the funds appropriated pursuant to section 103(a)(1) or (2) to the "construction 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 install permanent or temporary public works, 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 Administrator or the Administrator's designee has transmitted 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 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 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 either the Committee on Science, Space, 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 receipt by 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 with respect to all activities and responsibilities within the jurisdiction of those committees. Any Federal department, agency, or independent establishment shall furnish any information requested by either committee relating to any such activity or responsibility.

SEC. 107. 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 paragraph (3) and inserting in lieu thereof a semicolon; and

(3) adding at the end the following new paragraphs:

"(4) seek and encourage, to the maximum extent possible, the fullest commercial use of space; and

"(5) encourage and provide for Federal Government use of commercially provided space services and hardware, consistent with the requirements of the Federal Government.".

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 Administration Authorization Act, Fiscal Year 1989 (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 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, 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. 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 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 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).

(d) LIMITATION.—This section shall apply only to contracts 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. 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 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 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 policy described under subsection (a)(1), 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, and educational programs authorized by the Administrator.

(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

(5) a process 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, 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 to the Congress, any additions 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 base;

(2) it is critical to the success of manned missions in space, be they commercial operations of microgravity laboratories or manned missions to Mars, that a realistic appraisal of the influences of the space environment on biological systems is complet-

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) space station laboratory hardware specifications are being fixed before fully establishing the objectives and requirements for life sciences research.

(b) STRATEGIC PLAN.—The Administration shall—

(1) review currently proposed manned space flight missions in order to—

(A) identify the physiological and other human factors knowledge base necessary to determine the human capacity to adapt to and perform effectively in the space environment according to mission requirements, including identifying which life sciences parameters must be measured and which technologies, processes, and procedures must be developed; and

(B) develop a schedule indicating when specific components of information, technologies, processes, or procedures identified under subparagraph (A) will need to be acquired or developed in order to verify that human adaptability requirements of manned space flight missions can be achieved;

(2) develop a strategy plan for life sciences research and technology development sufficient to accomplish the life sciences knowledge base acquisition schedule developed under paragraph (1)(B), including—

(A) a crew certification plan setting acceptable crew conditioning standards for Extended Duration Orbiter operations and verifying countermeasures sufficient to meet those standards before actual Extended Duration Orbiter operations; and

(B) a life sciences implementation plan for the design and development of the space station, to be provided as part of the Preliminary Design Review for the space station, and to include crew adaptability standards; and

(3) verify the physiological and technical feasibility of the life sciences implementation plan developed under paragraph (2)(B), as part of the Critical Design Review for the space station.

SEC. 114. STUDY ON INTERNATIONAL COOPERATION IN PLANETARY EXPLORATION.

(a) FINDINGS.—The Congress finds that—

(1) the President on July 20, 1989, established the long-range goal of establishing a lunar 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 currently planning further unmanned missions to the Moon and to Mars with the possible goal of landing a human on Mars;

(3) a series of international missions to expand human presence beyond Earth orbit would further a spirit of, and follow through on the commitment made in, the 1987 agreement between the Soviet Union and the United States for space cooperation, as well as the successful cooperative agreements the United States has pursued with over one hundred countries since its inception, including the agreement with Japan, Canada, and the European countries for Space Station Freedom;

(4) international manned missions beyond Earth orbit could further encourage a cooperative approach in world affairs unrelated to activities in space;

(5) international manned missions beyond Earth orbit could save the individual nations involved tens of billions of dollars over national missions; and

(6) a multilateral effort for manned missions to establish a lunar colony, a Mars mission, and any other missions that have the goal of establishing human presence beyond Earth's orbit and possibly landing a human on Mars would lead to greater understanding of our universe and greater sensitivity to our own planet.

(b) STUDY.—The National Space Council shall conduct a study on International Cooperation 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 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 anticipation of later international manned missions to the Moon and to other bodies, including 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 beyond Earth's orbit; and

(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 commercial providers of space goods and services.

(d) REPORT.—The National Space Council shall, within one year after the date of the 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 not immediately 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 COMMERCE.

(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.—Commencing in fiscal year 1992, and every fiscal year thereafter, the Secretary of Commerce shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a report of the activities of the Office of Space Commerce, including planned programs and expenditures.

SEC. 116. NATIONAL AEROSPACE PLANE PROGRAM.

(a) NATIONAL AERO-SPACE PLANE PROGRAM.—The Secretary of Defense (hereafter in this section referred to as the "Secretary") and the Administrator shall jointly pursue on a high priority basis a National Aero-Space 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 cruise research flight 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.—

(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 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. 2623) is amended by adding at the end thereof the following: "There are authorized to be appropriated to the Secretary to carry out this Act $4,517,000 for fiscal year 1991, of which $250,000 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.".

(b) ACQUISITION BY STATE GOVERNMENTS.—Section 15(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 (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;

"(8) space transportation, including the establishment and operation of launch sites and complementary facilities, the provision of launch services, the establishment of support facilities, 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 significant private sector involvement; and

"(9) the participation of State governments in encouraging and facilitating private sector involvement in space-related activity, particularly through the establishment of space transportation-related infrastructure, including launch sites, complementary facilities, and launch site support facilities, is in the national interest and is of significant public benefit.".

(d) CONGRESSIONAL STATEMENT OF PURPOSE.—Section 3 of the Commercial Space Launch Act (49 U.S.C. App. 2602) is amended—

(1) by striking "and" at the end of paragraph (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:

"(4) to facilitate the strengthening and expansion of the United States space transportation infrastructure, including the enhancement of United States launch sites, as well as launch site support facilities, with Federal, State, and private sector involvement, to support the full range of United States space-related activities.".

(e) GENERAL RESPONSIBILITIES OF SECRETARY.—Section 5(a) of the Commercial Space Launch Act (49 U.S.C. App. 2604(a)) 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 "; and";

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

"(3) work to facilitate private sector involvement in commercial space transportation activity, and 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 could severely restrict the use of some orbits within a decade;

(2) the lack of adequate data on the orbital distribution and size of debris will continue to hamper 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 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 agreement on the conduct of space activities that ensures that the amount of orbital space debris is not increased.

SEC. 119. SUPPORT FOR SPACE SHUTTLE ORBITER PRODUCTION LINE.

The Administrator is authorized to expend excess funds appropriated for orbiter production under section 101(g) of the joint resolution entitled "Joint Resolution making continuing appropriations for the fiscal year 1987, and for other purposes" (100 Stat. 3341-242) to maintain the space 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.—(1) The National Space Council shall establish a Users' Advisory Group composed of non-Federal representatives of industries and other persons involved in aeronautical and space activities.

(2) The Vice President shall name a chairman of the Users' Advisory Group.

(3) The National Space Council shall from 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 particular commercial entities, are adequately represented in the National Space Council.

(5) The Users' Advisory Group may be assisted by personnel detailed to the National Space Council.

(b) EXEMPTION.—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 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 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 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 the Congress on the advisability 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 preparing the report, the Director shall assess the effectiveness of a National Civil Remote-Sensing Advisory Committee comprised of interested private-sector persons (including remote-sensing data users, data vendors, technology developers, system operators, information management and telecommunications specialists, and social scientists) which would—

(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 that would be responsive to both user needs and global developments, in terms of—

(A) coordinating land, oceanic, and atmospheric remote-sensing systems, including ground stations;

(B) coordinating research and development, applications, and commercial remote-sensing activities;

(C) fostering effective integration of satellite, aerial, and in situ data; and

(D) assessing current institutional arrangements for the management, exploitation, and sharing of both real-time and archived data;

(2) provide recommendations on the conduct of cooperative test and applications 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.

SEC. 127. DEFINITION.

For purposes of this title, the term "Administrator" means the Administrator of the National Aeronautics and Space Administration.

TITLE II—LAUNCH SERVICES PURCHASE

SEC. 201. SHORT TITLE.

This title may be cited as the "Launch Services Purchase Act of 1990".

SEC. 202. 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 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 performance specifically in lieu of detailed specifications relating to vehicle design, construction, 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 Government regulation and oversight and economies of scale which may result in significant cost savings to the commercial launch industry and to the United States.

(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. 203. DEFINITIONS.

For the purposes of this title—

(1) the term "commercial provider" means any person providing launch services, but does not include the Federal Government;

(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 a person undertakes 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. 204. 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 available when required;

(3) the use of commercial launch services poses an unacceptable risk of loss of a unique scientific opportunity; or

(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 2304 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) SPECIFICATION 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 compliance with 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; 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 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 as amended, was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

APPOINTMENT OF IRA MICHAEL HEYMAN TO BOARD OF REGENTS OF THE SMITHSONIAN INSTITUTION

Mr. REID. Mr. President, I ask unanimous consent 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.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the resolution from the Senate (S.J. Res. 318) entitled "Joint resolution providing for the appointment of Ira 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 after the resolving clause, and insert:

That, in accordance with section 5581 of the Revised Satutes of the United States (20 U.S.C. 43), the vacancy on the Board of Regents of the Smithsonian Institution, in the class other than Members of Congress, occurring by reason of the expiration of the term of A. Higginbotham, Junior, of Pennsylvania, is filled by appointment of Ira Michael Heyman of California. The appointment is for a term of six years and shall take effect on the date on which this joint resolution becomes law.

Amend the title so as to read: "Joint resolution providing for appointment of Ira Michael Heyman 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.

REAPPOINTMENT OF ANNE L. ARMSTRONG TO THE 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 302, a joint resolution to reappoint Anne Armstrong to the Smithsonian Institution's Board of Regents.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the resolution from the Senate (S.J. Res. 302) entitled "Joint resolution providing for the reappointment of Anne L. Armstrong as a citizen regent of the Board of Regents of the Smithsonian Institution," do pass with the following amendments:

Strike out all after the resolving clause, and insert:

That, in accordance with section 5581 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 other than 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 ECOLOGICAL 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 laid before the Senate the following message from the House of Representatives:

Resolved, That the resolution from the Senate (S.J. Res. 206) entitled "Joint resolution calling for the United States to encourage immediate negotiations toward a new agreement among Antarctic Treaty Consultative Parties, for the full protection of Antarctica as a global ecological commons," do pass with the following amendment:

Strike out all after the resolving clause, and insert:

That—

(1) Antarctica is a global ecological commons and should, therefore, be subject to new agreements or protocols which supplement the Antarctic Treaty of 1959, providing for comprehensive environmental protection of Antarctica, and which should for an indefinite period establish Antarctica as a region closed to commercial minerals development and related activities;

(2) under such new agreements, information about mineral or other resources in Antarctica should be obtained under strictly controlled arrangements and should be openly shared in the international scientific community;

(3) the Convention on the Regulation of Antarctic Mineral Resource Activities, though a considerable step forward, does not guarantee protection of the fragile environment of Antarctica and could actually stimulate movement toward commercial exploitation;

(4) pending the negotiation of entry into force of the new agreements referred to in paragraph (1) the Convention on the Regulation of Antarctic Mineral Resource Activities should not be presented to the Senate for advice and consent to ratification;

(5) until such new agreements enter into force, the United States should support the interim restraint measures currently in effect among the Consultative Parties to the Antarctic Treaty; and

(6) the negotiation of the new agreements referred to in paragraph (1) should be fully supported by the United States at the November 1990 meeting of the Antarctic Treaty Consultative Parties in Santiago, Chile.

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.

ANTARCTIC PROTECTION ACT

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Calendar No. 1001, H.R. 3977, an act to protect and conserve the continent of Antarctica.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3977) to protect and conserve the Continent of Antarctica, 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.

Mr. HOLLINGS. Mr. President, I commend Senator KERRY and Senator PELL for their work on the Antarctica Protection Act. A few years ago, I had the good fortune to visit Antarctica and see both the American research base at McMurdo Sound and our base at the South Pole. Thus, I have observed the fragile nature of the Antarctic ecosystem first hand and am aware of the irreversible damage that human activity can cause.

The Commerce Committee has a history of involvement with environmental protection issues in the Antarctic. The committee has jurisdiction over both the Antarctic Marine Living Resources Convention Act and the Antarctic Conservation Act, as well as several other pieces of legislation pertaining to Antarctica. In addition, the Commerce Committee has jurisdiction over the National Science Foundation [NSF], which runs the U.S. Antarctic Program [USAP].

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 [NEPA] 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 needs 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 over 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 resources 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.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. KERRY, proposes an amendment numbered 3157.

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.—Congress finds that—

(1) the Antarctic continent with its associated and dependent ecosystems is a distinctive environment providing a habitat for many unique species 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, the Convention of 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 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;

(7) the Antarctic Treaty Consultative Parties have agreed to a voluntary ban on Antarctic mineral resource activities which needs to be made legally binding;

(8) the level of scientific study, including necessary support facilities, has increased to the point that some scientific programs may be degrading the Antarctic environment; and

(9) the planned special consultative meeting of parties to the Antarctic Treaty and the imminence of the thirtieth anniversary of the Antarctic Treaty provide opportunities for the United States to exercise leadership toward 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 Antarctic 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 all 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 south of the Antarctic Convergence as defined in section 303(1) of the Antarctic Marine Living Resources Convention Act of 1984 (16 U.S.C. 2432).

(2) The term "Antarctic mineral resource activity" means prospecting, exploration, or development in Antarctica of mineral resources, but does not include scientific research within the meaning of article III of the Antarctic Treaty, done at Washington on December 1, 1959.

(3) The term "development" means any activity, including logistic support, which takes place following exploration, the purpose of which is the exploitation of specific mineral resource deposits, including processing, storage, and transport activities.

(4) The term "exploration" means any activity, including logistic support, the purpose of which is the identification or evaluation of specific mineral resource deposits. The term includes exploratory drilling, dredging, and other surface or subsurface excavations required to determine the nature and size of mineral resource deposits and the feasibility of their development.

(5) The term "mineral resources" means all nonliving natural nonrenewable resources, including fossil fuels, minerals, whether metallic or nonmetallic, but does not include ice, water, or snow.

(6) 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.

(7) The term "prospecting" means any activity, including logistic support, the purpose of which is the identification of mineral resource potential for possible exploration and development.

(8) 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, which provides 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 international agreements to—

(1) conserve and protect permanently the natural environment of Antarctica and its associated and dependent ecosystems;

(2) prohibit or ban idefinitely Antarctic mineral resource activities by all parties to the Antarctic Treaty;

(3) grant Antarctica special protective status as a land of science dedicated to wilderness protection, international cooperation, and scientific research;

(4) ensure that the results of all scientific investigations relating to geological processes and structures be made openly available to the international scientific community, as required by the Antarctic Treaty; and

(5) include other comprehensive measures for the protection of the Antarctic environment.

(b) It is the sense of Congress that any treaty or other international agreement submitted by the President to the Senate for its advice and consent to ratification relating to mineral resources or activities in Antarctica should be consistent with the purpose and provisions of this Act.

SEC. 6. ENFORCEMENT.

(a) IN GENERAL.—A violation of this Act or any regulation promulgated under this Act is deemed to be a violation of the Antarctic Marine Living Resources Convention Act (16 U.S.C. 2431-2444) and shall be enforced under that Act by the Under Secretary or another Federal official to whom the Under Secretary has delegated this responsibility.

(b) PENALTY.—If the Under Secretary determines that a person has violated section 4—

(1) that person shall be ineligible to locate a mining claim under the mining laws of the United States; and

(2) the Secretary of the Interior shall refuse to issue a patent under the mining laws of the United States, or a lease under the laws of the United States related to mineral or geothermal leasing, to any such person who attempts to perfect such patent or lease application after the Under Secretary has made such determination.

SC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated—

(1) to the Under Secretary not more than $1,000,000 for each of fiscal years 1991 and 1992 to carry out the purposes of this Act; and

(2) to the Secretary of State not more than $500,000 for each of fiscal years 1991 and 1992 to carry out section 5 of this Act.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment of the Senator from Massachusetts.

The amendment (No. 3157) 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. 3977), as amended, was passed.

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.

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.

Mr. DOMENICI. Mr. President, the Senate has approved H.R. 4090, which will provide Federal protection to the site of the Battle of Glorieta in New Mexico. My colleague from New Mexico, Mr. BINGAMAN, and I sponsored a similar bill, S. 2165, that passed the Senate last week.

Millions of Americans were enthralled recently by PBS's outstanding documentary on the Civil War. This program increased the public's knowledge of the most turbulent era of our Nation's history and has generated new interest in the sites associated with the war.

Mr. President, I am sure that before "The Civil War" aired very few Americans realized that the Civil War was fought not only in the East but also in the Southwest.

In March 1862, Glorieta Pass on the Santa Fe Trail was the site of one of the western-most battles of the Civil War. The Battle of Glorieta Pass, known as the Gettysburg of the West, marked the turning point of the Confederate drive to occupy Arizona and New Mexico and thus establish a foothold for control of the Far West.

The troops fought to a draw, but the Union forces won the battle when a Union regiment snuck behind Confederate lines and burned their supply wagons, thus forcing the Confederates to abandon their campaign.

H.R. 4090 would establish 682 acres at the site of Glorieta Battle as the Glorieta Unit of Pecos National Historical Park. Pecos National Historical Park was established earlier this year by merging Pecos National Monument with the adjacent Forked Lightning Ranch, which will soon be donated to the National Park Service by the Conservation Fund. Pecos National Historical Park currently contains the campsite and headquarters of the Union forces that were involved in the Battle of Gloieta.

The Glorieta Unit of Pecos would consist of the Pigeon's Ranch Site and the Johnson's Ranch Site.

Mr. President, I had a concern about the use of condemnation to acquire the lands that would be protected by this legislation. I am pleased that the legislation has been modified to address those concerns and reduce the possibility that condemnation will be utilized.

The site of the Battle of Glorieta is worthy of protection. This legislation will preserve this site and increase the public's knowledge of this important episode in the Civil War. I am glad the Senate has approved this bill.

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 committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2834) to authorize appropriations for fiscal year 1991 for intelligence and intelligence-related activities of the United States Government, for the Intelligence Community Staff, for the Central Intelligence Agency Retirement and Disability System, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their repective Houses this report, signed by all of the conferees.

The PRESIDENTIAL 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. REID. Mr. President, I urge the conference report be adopted.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report 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.

HIGH PERFORMANCE COMPUTING ACT

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Calendar No. 710, S. 1067, regarding United States leadership in high performance computing.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1067) to provide for a coordinated Federal research program to ensure continued United States leadership in high performance computing.

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 Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause, and inserting in lieu thereof the following:

SECTION 1. This Act may be cited as the "High-Performance Computing Act of 1990".

SEC. 2. (a) The Congress finds and declares 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 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.

(3) Further research, improved computer research networks, and more effective technology transfer from government to industry are necessary for the United States to fully reap the benefits of high-performance computing.

(b) It is the purpose of Congress in 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—

(1) expand Federal support for research, development, and application of high-performance computing in order to—

(A) establish a high-capacity 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 data bases, services, access mechanisms,

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 wider distribution of computer software tools and applications software;

(F) accelerate the development of computer systems and subsystems;

(G) promote the application of high-performance computing to Grand Challenges; and

(H) invest in basic research and education; and

(2) 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 owned or controlled 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 1976 (42 U.S.C. 6601 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 provide leadership in the development and application of high-performance computing. In particular, the Federal Government should support the development of a high-capacity, national research 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 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 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 (hereafter in this title referred to as the 'Council'), shall develop and implement a National High-Performance Computing Plan (hereafter 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 (d) of this section, the Plan shall contain 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 to be revised at least once every two years thereafter.

"(2) The Plan shall—

"(A) establish the 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) consider and use, 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 Institute of Standards and Technology, 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.

"(b) The Council shall—

"(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 Federal agencies, with the National Research Council, and with academic, State, industry, and other groups conducting research on high-performance computing.

"(c) 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 need to revise the Plan, (3) the balance between the components of the Plan, (4) whether the research and development funded under the Plan is helping to maintain United States leadership in computing technology, and (5) other issues identified by the Director of the Office of Science and Technology Policy.

"(d)(1) 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 industry. The National Science Foundation shall also provide researchers with access to supercomputers and have primary responsibility for the establishment, by 1996, of a multi-gigabit-per-second national computer network, as required by section 201 of the High-Performance Computing Act of 1990. Prior to deployment of a multi-gigabit-per-second national network, the National Science Foundation shall maintain, expand, and upgrade its existing computer networks. Additional responsibilities include promoting development of information services and data bases available over such computer networks; facilitation of the documentation, evaluation, and distribution of research software over such computer networks; encouragement of continued 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, through the open standards setting process, standards, guidelines, measurement techniques, and test methods for the interoperability of high-performance computers in networks and for common user interfaces to systems. In addition, the National Institute of Standards and Technology shall be responsible for developing benchmark tests and standards, through the open standards setting process and in conjunction with industry, for high-performance computers and software. Pursuant to the Computer Security Act of 1987 (Public Law 100-235; 100 Stat. 1724), the National Institute of Standards and Technology shall continue to be responsible for adopting standards and guidelines needed to assure the cost-effective security and privacy of sensitive information in Federal computer systems. These standards and guidelines shall be developed through the open standards setting process and in conjunction with industry.

"(C) The National Oceanic and Atmospheric Administration shall continue to observe, collect, communicate, analyze, process, provide, and disseminate data about the Earth and its oceans, atmosphere, and space environment. The National Oceanic and Atmospheric Administration shall improve the quality and accessibility of the environmental data stored at its four data centers and shall perform research and develop technology to support its data handling role.

"(D) The National Aeronautics and Space Administration shall continue to conduct basic and applied research in high-performance computing, particularly in the field of

computational science, with emphasis on aeronauticals and the processing of remote sensing data.

"(E) 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 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 technology 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.

"(F) The Department of Energy and its national laboratories shall continue to conduct basic and applied research in high-performance computing, particularly in software development and multiprocessor supercomputers. Pursuant to the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.), and other appropriate Acts, the Department of Energy shall ensure that unclassified computer research is readily available to North American companies.

"(G) The Department of Education, pursuant to the Library Services and Construction Act (20 U.S.C. 351 et seq.) and the Higher Education Act of 1965 (20 U.S.C. 1060 et seq.), shall encourage the distribution of library and information resources, through library linkages to the National Research and Education Network and through other means.

"(H) The Library of Congress, the National Library of Medicine, and the National Agricultural Library, as national libraries of the United States, shall continue to compile, develop, and maintain electronic data bases in appropriate areas of expertise and provide for dissemination of, access to, and use of these data bases and other library resources through the Network.

"(2) The Plan shall facilitate collaboration among agencies and departments with respect to—

"(A) ensuring interoperability among computer networks run by the agencies and departments;

"(B) increasing software productivity, capability, and reliability;

"(C) encouraging, where appropriate, agency cooperation with industry in development of software;

"(D) promoting interoperability of software;

"(E) distributing software among the agencies and departments; and

"(F) distributing federally-funded, unclassified software to State and local governments, industry, and universities.

"(e)(1) Each 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 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 aids 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 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 Chairman 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 high-performance computing research and development efforts during that preceding fiscal year;

"(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 made in such Plan;

"(4) a summary of agency budgets for highperformance 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. (a) Section 102(a)(6) of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6602(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 will be required.".

(b)(1) Section 401 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6651) 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 unwarranted duplication; and

"(4) further international cooperation in science, engineering, and technology.

"(b) The Council may be assigned responsibility for developing long-range and coordinated 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.

"(c) The Council shall perform such other related advisory 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 interagency plans, conducting studies, and making reports as directed by the Chairman, standing committees and working groups of the Council may be established.".

(2) Section 207(a)(1) of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6616(a)(1)) is amended by striking "established under Title IV".

TITLE II—NATIONAL RESEARCH AND EDUCATION NETWORK

SEC. 201. The National Science Foundation shall, in cooperation with the Department of Defense, the Department of Energy, the Department of Commerce, the National Aeronautics and Space Administration, and other appropriate agencies, provide for the establishment of a national multi-gigabit-per-second research and education computer network by 1996, to be known as the National Research and Education Network, which shall—

(1) link government, industry, and the education community;

(2) provide computer users with access to supercomputers, computer data bases, and other research facilities;

(3) provide users of libraries and other educational institutions with access to the Network and information resources;

(4) be developed in close cooperation with the computer, telecommunications, and information industry;

(5) be designed and developed with the advice of potential users in government, industry, and the higher education community;

(6) be established in a manner which fosters and maintains competition and private sector investment in high speed data networking within the telecommunications industry;

(7) where technically feasible, have accounting mechanisms which allow, where appropriate, users or groups of users to be charged for their usage of the Network and copyrighted materials available over the Network; and

(8) be phased out when commercial networks can meet the networking needs of American researchers.

SEC. 202. In addition to other agency activities associated with the establishment of the National Research and Education Network, the following actions shall be taken:

(1) The Federal Coordinating Council for Science, Engineering, and Technology shall—

(A) establish a Federal Networking Advisory Committee to provide technical advice from the interests involved in existing Federal research networks and the National Research and Education Network; and

(B) 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.

(2) 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 Department of Health and Human Services, and the Environmental Protection Agency shall allow recipients of Federal research grants to use grant monies to pay for computer networking expenses.

(3) The Department of Defense, through the Defense Advanced Research Projects Agency, shall have the primary responsibility for research and development of advanced fiber optics technology, switches, and protocols needed to develop a multi-gigabit computer network.

(4) The National Institute of Standards and Technology shall, in consultation with the National Science Foundation. the National Security Agency, 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 telecommunications 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.

TITLE III—INFORMATION SERVICES

SEC. 301. The National Science Foundation, with assistance from the Department of Commerce (in particular the National Oceanic and Atmospheric Administration, the National Institute of Standards and Technology, the National Technical Information Service, and the Bureau of the Census), the Department of Defense, the National Aeronautics and Space Administration, the Department of Energy, the National Institutes of Health, the Library of Congress, the United States Geological Survey, the Department of Agriculture, 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, but not be limited to—

(1) directories of users of networks;

(2) directories of data bases available over the Network;

(3) identifying, cataloguing, 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 programs;

(4) digital libraries to video programming, books, and journals stored in electronic form and other computer data;

(5) orientation and training of users of data bases and networks;

(6) commercial information services to researchers using the Network;

(7) rapid prototyping of integrated circuits and other devices using centralized facilities connected to the Network; and

(8) technology to support computer-based collaboration that allows researchers around the Nation to share information and instrumentation.

SEC. 302. Within one year after the date of enactment of this Act, the Office of Science and Technology Policy shall report to the Congress on—

(1) how commercial information service providers could be charged for access to the National Research and Education Network in order to defray some of the Network operating expenses;

(2) the technological feasibility of allowing commercial information service providers to use the Network and other federally-funded research networks;

(3) how Network users could be charged for such commercial information services;

(4) how best to protect the copyrights of authors whose work may be distributed over the Network; and

(5) appropriate policies to ensure the security of resources available on the Network and protect the privacy of users of networks.

TITLE IV—SOFTWARE

SEC. 401. (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 astrophysics, geophysics, engineering, materials, biochemistry, plasma physics, and weather and climate forecasting.

(b)(1) The National Science Foundation and the National Aeronautics and Space Administration shall define several Grand Challenges and provide for the research and development of the high-performance computer software and hardware needed to address such Grand Challenges.

(2) The Grand Challenges to be addressed by the National Science Foundation under paragraph (1) could include—

(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;

(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;

(C) computer vision, with the goal to develop vision systems for computers and robots;

(D) ocean sciences, with the goal to develop a global ocean model incorporating temperature, chemical composition, circulation, and coupling of the ocean and atmosphere; and

(E) astronomy, with the goal to develop the computer systems and algorithms needed to process and analyze the very large volume 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 groups 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 and components to accelerate development of software for computers, especially supercomputers. Support shall be provided for research on fundamental algorithms, models of computation, program analysis, and 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.

SEC. 403. The National Institute of Standards and Technology shall adopt standards, developed under an open standards setting process and in conjunction with industry, for software programs purchased or developed by the Federal Government. The purpose of these standards shall be to promote development of interoperable software systems that can be used on different computer systems with different operating systems.

SEC. 404. (a) The Secretary of Commerce shall conduct a study to—

(1) evaluate the impact of Federal procurement regulations which require that contractors providing software to the Federal Government share the rights to proprietary software development tools that the contractors used to develop the software; and

(2) determine whether such regulations discourage development of improved software development tools and techniques.

(b) The Secretary shall, within one year after the date of enactment of this Act, report to the Congress regarding the results of the study conducted under subsection (a).

TITLE V—COMPUTER SYSTEMS

SEC. 501. The National Science Foundation shall provide for research and development on all aspects of highperformance computer systems, including processors, memory and mass storage devices, input/output devices, and associated systems software.

SEC. 502. Where appropriate, Federal agencies shall procure prototype or early production models of new high-performance computer systems and sub-systems to stimulate hardware and software development in North American companies. Particular emphasis shall be given to promoting development of advanced display technology, alternative computer architectures, advanced peripheral storage devices, and very high-speed communication links.

SEC. 503. Within 120 days following the date of enactment of this Act, the Secretary of Commerce, in consultation with the Department of State, the Department of Defense, the Central Intelligence Agency, the National Security Agency, and other appropriate agencies, shall review export controls that hinder the devlopment of foreign markets for supercomputer and other high-performance computer technology made by North American companies, and report to the Congress the results of such review.

TITLE VI—BASIC RESEARCH AND EDUCATION

SEC. 601. The Office of Science and Technology Policy shall oversee and coordinate efforts of the relevant departments and agencies to—

(1) support basic research on computer technology;

(2) create technology transfer mechanisms to ensure that the results of basic research are readily available to North American companies;

(3) promote basic research in computer science, computational science, library and information sciences, electrical engineering, and materials science; and

(4) educate and train more researchers in computer science and computational science.

TITLE VII—AUTHORIZATION OF APPROPRIATIONS

SEC. 701. (a) There are authorized to be appropriated to the National Science Foundation for the research, development, and implementation of the National Research and Education Network, in accordance with the purposes of title II, $15,000,000 for fiscal year 1991, $25,000,000 for fiscal year 1992, $55,000,000 for fiscal year 1993, $50,000,000 for fiscal year 1994, and $50,000,000 for fiscal year 1995.

(b) There are authorized to be appropriated to the National Science Foundation for the purposes of titles III, IV, and V of this Act, $23,000,000 for fiscal year 1991, $53,000,000 for fiscal year 1992, $77,000,000 for fiscal year 1993, $107,000,000 for fiscal year 1994, and $131,000,000 for fiscal year 1995.

(c) To expand its traditional role in supporting basic research in universities and colleges, and in training scientists and engineers in computer science, computational science, library and information sciences, and electrical engineering, there are authorized to be appropriated to the National Science Foundation, $8,000,000 for fiscal year 1991, $10,000,000 for fiscal year 1992, $13,000,000 for fiscal year 1993, $15,000,000 for fiscal year 1994, and $18,000,000 for fiscal year 1995.

SEC. 702. There are authorized to be appropriated to the National Aeronautics and Space Administration for the purposes of titles II, III, IV, V, and VI of this Act, $22,000,000 for fiscal year 1991, $45,000,000 for fiscal year 1992, $67,000,000 for fiscal year 1993, $89,000,000 for fiscal year 1994, and $115,000,000 for fiscal year 1995.

SEC. 703. The amounts authorized to be appropriated under sections 701 and 702 are in addition to any amounts that may be authorized to be appropriated under other laws.

AMENDMENT NO. 3158

(Purpose: To make an amendment in the nature of a substitute)

Mr. REID. Mr. President, I send a Gore substitute 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], for Mr. GORE (for himself, Mr. JOHNSTON, Mr. DOMENICI, and Mr. MCCLURE), proposes an amendment numbered 3158.

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:

SECTION 1. SHORT TITLE.

This Act may be cited as the "High-Performance Computing Act of 1990".

SEC. 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.

Mr. GORE. Mr. President, I rise to offer an amendment in the form of a substitute for S. 1067, the High-Performance Computing Act of 1990. This amendment incorporates most of the provisions of S. 1067 as reported by the Senate Committee on Commerce, Science, and Transportation, and S. 1976, which was reported in July by the Committee on Energy and Natural Resources.

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 supercomputers they need. In many areas of research, including a global climate modeling, aeronautics, and geophysics, researchers are facing computational problems that overwhelm the capacity of today's most powerful supercomputers. 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 mountains 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 shop 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 half a dozen Federal agencies, including NSF, NASA, the Department of Energy, the Department of Defense—particularly the Defense Advanced Research Projects Agency—the Department of Commerce, 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 could join with 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 DOD'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 MCCLURE and I introduced S. 1976, the Department of Energy High-Performance Computing Act, which as 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 it is clear that close 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. 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. 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 said a discouraging 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. We use them at work, 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 how these new machines will improve our lives.

Similar advances are happening in computer communications. For more than 20 years, computers have been able to communicate with each other through computer networks, but most 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 from coast to coast—10 to a 100 times faster than a fax machine. Think about how fax machines have changed the way American business works, and imagine having technology 10 or a 100 times better.

In 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 information in a matter of seconds. When fully deployed, the NREN will be 50 times faster than the fastest national networks available today. It will be capable of transmitting the entire contents of the Encyclopedia Britannica in a second.

The NREN has people in South Carolina and around the country very excited. With a national network, researchers, students, and educators at a small college in South Carolina will have instant access to computers and scientific equipment and data banks previously only available at universities. For small schools throughout the country, this network will be a window to the world of information.

It is hard to oppose the High-Performance Computing Program established by S. 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 astronomers. 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 throught 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 stays there, when it could be helping American industry improve 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 adopt and effectively utilize manufacturing technology to improve their products and their profits. Paul Huray, the vice president for research at USC, recently visited with me to describe his proposal to establish a statewide 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 GORE and Senators JOHNSTON and MCCLURE introduced S. 1976, the Department of Energy High-Performance Computing Act, which as 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 improve our Federal science and technology programs. I urge my colleagues to join me in support of this important bill.

Mr. DOMENICI. Mr. President, I rise in strong support of the pending amendment which would significantly 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, exerting strong leverage on the rest of the computer industry and other cutting-edge areas, and that this Nation simply 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 stong, 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

performance computing effort that would coordinate the efforts of all Federal agencies and departments.

This effort would, among other things, identify how Federal agencies can ensure the interoperability among Federal computer networks, how they can accelerate the development of supercomputer systems and associated software, and how they can provide computing support necessary to address "Grand Challenges" in astrophysics, geophysics, engineering, materials, biochemistry, plasma physics, weather and climate forecasting, to name a few.

Second, it would require the creation by 1996 of a multigigabit national computer network known as the National Research and Education Network, or NREN for short. The NREN would link together Government, industry and the education community, thereby providing computer users, including libraries and educational institutions, with access to supercomputers, computer data bases and other research facilities.

Third, and perhaps most importantly, it would create at the Department of Energy a high performance computing program, thereby giving that agency a new mission. As part of that mission, DOE would be required to create a high-performance computer network, to be known as the Department of Energy Network, which would link the Government, researchers, industry and higher education and research in high-performance computational science and related fields by making the Department's supercomputing facilities more available to students and faculty from the Nation's educational institutions.

But the most important part of the DOE Program, and the one of which I am the most proud, is the establishment of supercomputing research and development collaborative consortia at the Nation's DOE National Laboratories.

The key duties of these DOE National Laboratory collaborative consortia are to undertake basic research and development of high-performance computing hardware and associated software, to undertake research and development of advanced prototype networks, and to conduct research directed at scientific and technical problems whose solutions require the application of high performance computing resources.

At a time when this Nation is cutting back in its military forces and related activities, this is truly a guns into plowshares program for the National Labs, two of which are located in New Mexico.

Mr. President, it is for these reasons that I strongly support the matter now pending before the Senate and urge my colleagues to vote this important amendment.

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 voting.

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, whether owned, leased or rented by the agency, and the NREN. If a Federal agency connects its computer, network or other equipment to the NREN, that computer, network or other 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. In short, agency 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 operating 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 affect 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 section 106(b) does not confer 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 intepretation 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 HOLLINGS, 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 research.

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 the United States, Japan is the single biggest market for, and supplier of, supercomputers.

The United States needs an integrated, cooperative effort among industry, universities and government in supercomputing to meet the challenge of foreign competition. The purpose of the legislation before the Senate today is to establish such 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 for the Federal Government and recommend roles, funding levels and ways to coordinate high-performance computing activities of Federal agencies and departments.

Title 1 also 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 more than 1,000 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 larger portions 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 over a billion bits of data 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 require autonomy from the 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 do not know what 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. Instead 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 sees 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 set forth 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, research, development and testing program. The role of weapons development programs is changing rapidly today. The Department's contributions now extend to a much broader spectrum from the human genome project to enhanced oil recovery. From these new applications the Department can continue to shape high-performance computing.

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.

This title builds on that proven relationship. The Secretary is directed to establish collaborative consortia between its national laboratories and other Federal laboratories or agencies, educational institutions and industry. The consortia will undertake basic research and development of high-performance computing hardware, software, and networks. The consortia 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, operated under a cooperative agreement between the National Science Foundation and MERIT, a not-for-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 network 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".

SEC. 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.

(3) Further research, improved computer research networks, and more effective technology transfer from government to industry are necessary for the United States to fully reap the benefits of high-performance computing.

(4) Several Federal agencies have ongoing high-performance computing programs, but improved interagency coordination, cooperation, and planning could enhance the effectiveness of these programs.

(5) 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.

(b) It is the purpose of Congress in 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—

(1) expand Federal support for research, development, and application of high-performance computing in order to—

(A) establish a high-capacity 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 data bases, services, access mechanisms, 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 wider distribution of computer software tools 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; and

(2) improve planning and coordination of Federal research and development on high-performance computing.

SEC. 3. DEFINITIONS.

As used in this Act, the term—

(1) "Director" means the Director of the Office of Science and Technology Policy; and

(2) "Council" means the Federal Coordinating Council for Science, Engineering, and Technology chaired by the Director of the Office of Science and Technology Policy.

SEC. 4. MISCELLANEOUS PROVISIONS.

(a) Except to the extent the appropriate Federal agency or department head determines, the provisions of this Act shall not apply to—

(1) programs or activities regarding computer systems that process classified information; or

(2) computer systems the function, operation, or use of which are those delineated in paragraphs (1) through (5) of section 2315(a) of title 10, United States Code.

(b) Where appropriate, and in accordance with Federal contracting law, Federal agencies and departments may procure prototype or early production models of new high-performance computer systems and subsystems to stimulate hardware and software development.

(c) Nothing in this Act or in any amendment made by this Act limits the authority or ability of any Federal agency or department to undertake activities, including research, development, or demonstration, in high-performance computing or computer network applications or technologies.

(d) Nothing in this Act shall be deemed to convey to any person, partnership, corporation, or other entity immunity from civil or criminal liability under any antitrust law or to create defenses to actions under any antitrust law. As used in this section, "antitrust laws" means those Acts set forth in section 1 of the Clayton Act (15 U.S.C. 12), as amended.

TITLE I—THE HIGH-PERFORMANCE COMPUTING ACT OF 1990

SEC. 101. NATIONAL HIGH-PERFORMANCE COMPUTING PROGRAM.

The National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6601 et seq.) is amended by adding at the end the following new title:

"TITLE VII—NATIONAL HIGH-PERFORMANCE COMPUTING PROGRAM

"NATIONAL HIGH-PERFORMANCE COMPUTING PLAN

"SEC. 701. (a)(1) The President, through the Federal Coordinating Council for Science, Engineering, and Technology (hereafter in this title referred to as the 'Council'), shall, in accordance with the provisions of this title—

"(A) develop a National High-Performance Computing Plan (hereafter in this title referred to as the 'Plan'); and

"(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 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 recommended role of each Federal agency and department in implementing the Plan; and

"(C) describe the levels 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 computers networks, required to achieve the goals and priorities established under subparagraph (A).

"(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 Institute of Standards and Technology, 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;

"(E) the Department of Energy;

"(F) the Department of Health and Human Services, particularly the National Institutes of Health and the National Library of Medicine;

"(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 considers appropriate.

"(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 systems, 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, biochemistry, 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 funded 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 aids 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.

"ANNUAL REPORT

"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 toward 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 for the establishment of a national multi-gigabit-per-second research and education computer network by 1996, to be known as the National Research and Education Network (hereinafter referred to as the "Network"), which shall link government, industry, and the education community.

(b) The Network shall provide—

(1) computer users with appropriate access to supercomputers, computer data bases, and other research facilities; and

(2) users of libraries and other educational institutions with appropriate access to the Network and information resources.

(c) The Network shall—

(1) be developed in close cooperation with the computer, telecommunications, and information industries;

(2) be designed and developed with the advice of potential users in government, industry, and the higher education community;

(3) be established in a manner which fosters and maintains competition and private sector investment in high speed data networking within the telecommunications industry;

(4) be established in a manner which promotes research and development leading to deployment of commercial data communications and telecommunications standards;

(5) where technically feasible, have accounting mechanisms which allow, where appropriate, users or groups of users to be charged for their usage of the Network and copyrighted materials available over the Network; and

(6) be phased into commercial operation as commercial networks can meet the networking needs of American researchers and educators.

(d) The Department of Defense, through the Defense Advanced Research Projects Agency, shall support research and development of advanced fiber optics technology, switches, and protocols needed to develop the Network.

(e) Within the Federal Government, the National Science Foundation shall have primary responsibility for connecting colleges, universities, and libraries to the Network.

(f)(1) The President, through the Council, shall, within one year after the date of the enactment of this Act, establish an entity or entities to carry out the functions set forth in paragraph (2).

(2) Consistent with the Plan developed under section 701 of the National Science and Technology Policy, Organization and Priorities Act of 1976 (42 U.S.C. 6601 et seq.), as added by section 101 of this Act, the entity or entities established under paragraph (1) shall—

(A) develop goals, strategy, and priorities for the Network;

(B) identify the roles of Federal agencies and departments implementing the Network;

(C) provide a mechanism to coordinate the activities of Federal agencies and departments in deploying the Network;

(D) oversee the operation and evolution of the Network;

(E) manage the connections between computer networks of Federal agencies and departments;

(F) develop conditions for access to the Network; and

(G) identify how existing and future computer networks of Federal agencies and departments could contribute to the Network.

(3) The President shall report to Congress within one year after the date of the enactment of this Act on the implementation of this subsection.

(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 use of the Network, including user fees, industry support, and continued Federal investment, and containing a plan for the eventual commercialization of the Network.

(2) The National Institute of Standards and Technology shall adopt a common set of standards and guidelines to provide interoperability, common 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 commercial information service providers to use the Network and other federally-funded research networks;

(3) how Network users could be charged for such commercial information services;

(4) how to protect the copyrights of materials distributed over the Network; and

(5) appropriate policies to ensure the security of resources available on the Network and to protect the privacy of users of networks.

(i) Nothing in this section confers upon the entity or entities established under subsection (f) any authority to direct a Federal agency's or department's computer networking activities.

SEC. 103. ROLE OF THE NATIONAL SCIENCE FOUNDATION.

(a) The National Science Foundation shall provide funding to enable researchers to access supercomputers. Prior to deployment of the Network, the National Science Foundation shall maintain, expand, and upgrade its existing computer networks. Additional responsibilities include promoting development of information services and data bases available over such computer networks; facilitation of the documentation, evaluation, and distribution of research software over such computer networks; encouragement of continued development of innovative software by industry; and promotion of science and engineering education.

(b)(1) The National Science Foundation shall, and other agencies and departments may, promote development of information services that could be provided over the Network established under section 102. These services shall include, but not be limited to, the provision of directories of users and services on computer networks, data bases of unclassified Federal scientific data, training of users of data bases and networks, access to commercial information services to researchers using the Network, and technology to support computer-based collaboration that allows researchers around the Nation to share information and instrumentation.

(2) The Federal information services accessible over the Network shall be provided in accordance with applicable law. Appropriate protection shall be provided for copyright and other intellectual property rights of information providers and Network users, including appropriate mechanisms for fair remuneration of copyright holders for availability of and access to their works over the Network.

(c) The National Science Foundation shall expand efforts to improve, document, evaluate, and help distribute unclassified public-domain software developed by federally-funded researchers and other software, including federally-funded educational and training software. Such efforts 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 Network; and

(5) 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 Science Foundation for the purpose of this title, $31,000,000 for fiscal year 1991, $63,000,000, for fiscal year 1992, and $90,000,000, for fiscal year 1993.

(3) 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.

SEC. 104. THE ROLE OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.

(a) The National Aeronautics and Space 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 and space science data.

(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 other laws.

SEC. 105. ROLE OF THE DEPARTMENT OF COMMERCE.

(a) The National Institute of Standards and Technology shall adopt standards and guidelines, and develop measurement techniques and test methods, for the interoperatility of high-performance computers in networks and for common user interfaces to systems. In addition, the National Institute of Standards and Technology shall be responsible for developing benchmark tests and standards for high performance computers and software. Pursuant to the Computer Security Act of 1987 (Public Law 100-235; 100 Stat. 1724), the National Institute of Standards and Technology shall continue to be responsible for adopting standards and guidelines needed to assure the cost-effective security and privacy of sensitive information in Federal computer systems.

(b)(1) The Secretary of Commerce shall conduct a study to—

(A) evaluate the impact of Federal procurement regulations which require that contractors providing software to the Federal Government share the rights to proprietary software development tools that the contractors used to develop the software; and

(B) determine whether such regulations discourage development of improved software development tools and techniques.

(2) The Secretary shall, within one year after the date of enactment of this Act, report to the Congress regarding the results of the study conducted under paragraph (1).

SEC. 106. FUNCTIONS OF THE FEDERAL COORINATING COUNCIL FOR SCIENCE, ENGINEERING, AND TECHNOLOGY.

(a) Section 102(a)(6) of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6602(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 will be required.".

(b) Section 401 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6651) 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 designed 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 unwarranted duplication; and

"(4) further international cooperation in science, engineering, and technology.

"(b) The Council may be assigned responsibility for developing long-range and coordinated plans for scientific and technical research which involve new 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.

"(c) The Council shall perform such other related advisory 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 interagency plans, conducting studies, and making reports as directed by the Chairman, standing committees and working groups of the Council may be established.".

(c) Section 207(a)(1) of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C.

6616(a)(1)) is amended by striking "established under Title IV".

TITLE II—DEPARTMENT OF ENERGY HIGH-PERFORMANCE COMPUTING ACT OF 1990

SEC. 201. SHORT TITLE AND DEFINITIONS.

(a) This title may be cited as the "Department of Energy High-Performance Computing Act of 1990".

(b) For the purposes of this title, the term—

(1) "Secretary" means the Secretary of Energy;

(2) "Department" means the Department of Energy;

(3) "Federal laboratory" means any laboratory, or any federally-funded research and development center, that is owned or leased or otherwise used by a Federal agency or department and funded by the Federal Government, whether operated by the Government or by a contractor;

(4) "national laboratory" means any Federal laboratory that is owned by the Department of Energy;

(5) "educational institution" means a degree granting institution of at least a Baccalaureate level; and

(6) "software creation" means any innovation or preparation of new computer software of whatever kind or description whether patentable or unpatentable, and whether copyrightable or non-copyrightable.

SEC. 202. DEPARTMENT OF ENERGY HIGH-PERFORMANCE COMPUTING PROGRAM.

(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. 5901 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 application 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)(1) The Secretary shall provide for a high-performance computer network the "Department of Energy Network" to link the government, research, industry, and education constituencies of the Department.

(2) The Secretary may create networks or make use of existing networks (including the Network established under section 102), to carry out the requirements of paragraph (1).

(b) The Secretary shall promote education and research in high-performance computational science and related fields that require the application of high-performance computing resources by making the Department's high-performance computing resources more available to undergraduate and graduate students, post-doctoral fellows, and faculty from the Nation's educational institutions.

(c) The Secretary shall establish at least two Collaborative Consortia, and as many more as the Secretary determines are needed to carry out the purposes of this Act, by soliciting and selecting proposals.

(1) Each Collaborative Consortium shall—

(A) undertake basic research and development of high-performance computing hardware and associated software technology;

(B) undertake research and development of advanced prototype networks;

(C) conduct research directed at scientific and technical problems whose solutions require the application of high-performance computing resources;

(D) promote the testing and uses of new types of high-performance-computing and related software and equipment;

(E) serve as a vehicle for computing vendors to test new ideas and technology in a sophisticated computing environment; and

(F) disseminate information to Federal departments and agencies, the private sector, educational institutions, and other potential users on the availability of high-performance computing facilities.

(2) Each Collaborative Consortium shall be comprised of a lead institution, which has responsibility for the direction and performance of the consortium, and participants from industry, Federal laboratories or agencies, educational institutions, and others, as may be appropriate.

(3) Each lead institution shall be a national laboratory which has the experience in research on problems that require the application of high-performance computing resources.

(4) Industrial participants in each consortium shall not be reimbursed for costs associated with their own involvement, though the consortium may fund research and development associated with prototype computing technology.

(c) The provisions of the National Cooperative Research Act of 1984 (15 U.S.C. 4301-4305) shall apply to research activities taken pursuant to this section.

(d) Each Collaborative Consortium may be established by a Cooperative Research and Development Agreeement was provided in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a).

(e) The Secretary shall report annually to the Committee on Energy and Natural Resources of the Senate and the Committee on Science, Space, and Technology of the House of Representatives regarding the HPC Program.

SEC. 204. GOVERNMENT AND PRIVATE SECTOR COOPERATION.

In accordance with applicable law, the Secretary may cooperate with, solicit help from, provide funds to, or enter into contracts with private contractors, industry, government, universities, or any other person or entity the Secretary deems necessary in carrying out the provisions of this Act to the extent appropriated funds are available.

SEC. 205. OWNERSHIP OF INVENTIONS AND CREATIONS.

(a) Except as otherwise provided by the National Competitiveness Technology Transfer Act of 1989 (103 Stat. 1674) and any other applicable law, title to any invention or software creation developed under this title shall vest in the United States and shall be governed by the provisions of section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908).

(b) Trade secrets and commercial or financial information that is privileged and confidential and which is obtained from a non-Federal party participating in research or other activities under this title may be withheld in accordance with section 552(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 552(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. 206. 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 $65,000,000 for fiscal year 1991, $100,000,000 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 that 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.

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

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 "," 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

SCOTT M. SPANGLER, AN ASSISTANT ADMINISTRATOR OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE AFRICAN DEVELOPMENT FOUNDATION FOR THE REMAINDER OF THE TERM EXPIRING SEPTEMBER 22, 1991, VICE CHARLES L. GLADSON, RESIGNED.

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, 1993, VICE HERSHEY 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 30, 1993, VICE ROBERT LEE MCELRATH, 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.