

## SENATE—Wednesday, October 2, 1991

(Legislative day of Thursday, September 19, 1991)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the Honorable HARRY REID, a Senator from the State of Nevada.

## PRAYER

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

Let us pray:

*O Lord, thou hast searched me, and known me. Thou knowest my downsitteing and mine uprising, thou understandest my thought afar off. Thou compasses my path and my lying down, and art acquainted with all my ways. For there is not a word in my tongue, but, lo, O Lord, thou knowest it altogether.—Psalm 139:1-4.*

Eternal God, all wise, all powerful, present everywhere at the same time, You have given us life, You know us in our totality—our personal condition, our relationship with family, our desires and ambitions. You know the future and the past, the end from the beginning of history, and everything in between.

As you know us, Lord, individually and corporately, as You see our need, individually and collectively, cover the U.S. Senate with grace and mercy, with insight and understanding. Invade this place with Your presence so that no one can doubt that You are here. And work Your will and Your way to perfection.

In His name who is the Way, the Truth, and the Life. 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 2, 1991.

To the Senate:

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

ROBERT C. BYRD,  
President pro tempore.

Mr. REID 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 now reserved.

## MORNING BUSINESS

The ACTING PRESIDENT pro tempore. There will be a period of time for morning business to be transacted not to extend beyond the hour of 10:30 a.m., with Senators permitted to speak therein, and the time to be equally divided between the Senator from Hawaii [Mr. INOUE] and the Senator from Wisconsin [Mr. KASTEN].

The Senator from Wisconsin.

Mr. KASTEN. Mr. President, I yield myself such time as I may consume.

## ABSORPTION GUARANTEES: HUMANITARIAN ASSISTANCE FOR SOVIET AND ETHIOPIAN REFUGEES RESETTLING IN ISRAEL

Mr. KASTEN. Mr. President, 3 weeks ago, the senior Senator from Hawaii and I discussed an amendment that would relieve the plight of Soviet and Ethiopian refugees in Israel. The amendment is cosponsored by 68 of our colleagues, meaning with Senator INOUE and myself we have 70 sponsors of this amendment. This represents overwhelming support for this proposal.

There can be no doubt: Our amendment deserves this support. After all, for two decades, it has been a key goal of American foreign policy to liberate Soviet Jewry from Communist oppression. The bipartisan policy calling for free immigration of Soviet Jews was begun by the late Senator Henry Jackson with his historic Jackson-Vanik amendment, and has remained a foreign policy cornerstone for every administration since Nixon.

At long last, with the collapse of the Soviet Union and its Communist tyranny, our 20-year effort has succeeded. Since 1989, nearly 350,000 Soviet Jews have immigrated to Israel, and it is estimated that the total will reach 1 million by the end of 1995.

"Next year in Jerusalem" is no longer merely a noble wish; it is a reality, the result of longstanding American policies.

Now that we have succeeded in achieving our bipartisan goal, it would be unconscionable for us to flinch from our responsibility for the consequences. The scope of this current immigration is unlike anything Israel has seen since World War II and the creation of the State of Israel in 1948. It represents an increase of almost 25 percent over the current population.

For the last two decades of the cold war, Israel was the bastion of democracy and pro-Americanism in an ex-

tremely dangerous part of the world. Surrounded by Soviet allies, back when communism was on the offensive, the State of Israel held the line for our side.

Earlier this year, from Texas to Wisconsin, from Maine to Oregon, we all watched on television as the Scud missiles slammed into Israel. We also saw that the Israelis did not retaliate for these terrorist acts, because America asked them not to.

Israel kept faith with America. We must have the moral sense—the loyalty—to do the same.

And we will, because the American people and their Representatives in Congress do not believe in turning their backs on an ally.

Israel needs our help in resettling this massive influx of refugees. Our amendment would extend to Israel the helping hand it so urgently requires.

Our bill provides loan guarantees to Israel to help defray the extraordinary costs of resettling the refugees. The loan guarantees would amount to \$2 billion for fiscal year 1992, and \$2 billion each of the 4 succeeding fiscal years.

These loans guarantees will respond to the urgent human needs of a reliable and heroic friend. It is important, however, that we also understand what the loan guarantees are not.

The loan guarantees are not U.S. grants. Under our loan guarantee bill, the U.S. taxpayer will not be sending any funds to subsidize Israeli housing.

The loan guarantees are not U.S. loans. The Treasury will not be lending money to resettle the refugees. It will merely guarantee that when private sector lenders lend money for that purpose, the U.S. Government will stand surety for the loan. And we all know that Israel has never defaulted on United States loan guarantees.

The only U.S. budget funds involved in the loan guarantee process are the origination fee, which we estimate will amount to \$100 million. Under our bill, Israel, not the United States, will pay for this origination fee, making United States taxpayer funding completely unnecessary. What a small price to pay to help out such a good friend.

I would like to address, however, one specific issue which has been raised by some in the administration about one of the provisions in the amendment. Some attorneys in the administration have interpreted our legislation as mandating a specific scoring. That is not our intention. Furthermore, we do not believe that the language in the

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

amendment lends itself to such an interpretation, for if we were going to mandate scoring under the budget agreement on the Budget Act or the Credit Reform Act, we would have to have specific provisions waiving those laws.

Our legislation does not include such specific provisions. We do not do that.

Obviously, if lawyers at OMB or elsewhere believe that some of the language needs to be changed in order to clarify this particular point, we would certainly consider such changes. The important point to remember here, however, is that there is no intention to direct or mandate scoring—and as I said, we do not believe our language does that.

In a meeting with President Bush on September 10, attended by myself, the Senator from Hawaii [Mr. INOUE] and the senior Senator from Vermont [Mr. LEAHY] who is the chairman of the Foreign Operations Appropriations Subcommittee, we agreed with the President that we would take a couple of weeks in order to try to gauge with our colleagues in the Senate not only their sentiment for delayed consideration of this proposal, but also to gauge the support in the Senate of these absorption guarantees.

Mr. President, it is clear to us that our colleagues do not wish a confrontation over the issue of delay, and I do not wish a confrontation on this issue of the delay. Senator LEAHY has suggested, therefore, that we put off consideration of this proposal for the time requested by the President. After exhaustive consultation with our colleagues, Senator INOUE and I believe that we should accede to the administration's request—and consider the proposal when the foreign operations legislation is brought up sometime in late January or early February of next year.

I believe it is important to note at this point that the President and other high officials of the administration have been, by and large, positive on the substance of absorption guarantees. As I stated when we discussed this issue on September 10, "It is our hope that when time comes for its enactment, it will receive enthusiastic support from all quarters of our Government."

During these last 3 weeks, the President and other officials have indicated their support for absorption guarantees. In a letter the President wrote on September 17, he alluded to his support not only for the State of Israel but—and I quote again—"for the successful absorption of Soviet Jewish and Ethiopian refugees."

White House spokesperson, Marlin Fitzwater, also on September 17, stated that, "there is a commitment that we'll go forth with the loan guarantee." He further stated that, "there is no question for our support for loan guarantees and our interest in helping."

Likewise, the Secretary of State, in a press conference held in Damascus, Syria, on September 18, asserted that there had been no public or private discussions on a "settlement freeze in connection with the question of absorption aid to Israel."

Secretary Baker stressed that the United States has "asked for a delay of 120 days purely in order to give peace a chance. We've asked for a delay because we want to avoid the question of linkage—not promote it. That's the reason we've asked for the delay."

It is also well known that the President has made some six specific commitments on this issue. Most important among them are these: support for guarantees. No additional delay. And the question of scoring will be handled in a reasonable fashion in accordance with the law.

Finally, last Tuesday, Deputy Secretary of State Eagleburger testified before the Senate Judiciary Committee. He stated that the administration has an "obligation to assist Israel with the absorption of Soviet Jews \* \* \* that is not the issue of contention." He further stated in that hearing, in response to an assertion by Senator GRASSLEY that the United States "seems to be linking aid to the peace conference" that "please, Senator, do not assume that we have linked loan guarantees or U.S. aid to the peace process."

Mr. President, I believe that the administration is positive on the merits and substance of this issue and it is therefore proper and right that we accede to the President's request for a delay.

Senator INOUE and I will be working closely with the chairman of the Foreign Operations Subcommittee, Senator LEAHY, and the administration, so that early next year, we can pass a proposal which will be acceptable to all quarters of our Government. I might say not only be acceptable to all quarters of our Government but be enthusiastically supported by all quarters of our Government.

I thank my distinguished friend from Hawaii for standing with me on this. Mr. President, I would like now to send an amendment to the desk on behalf of myself and the senior Senator from Hawaii together with 68 of our colleagues as original cosponsors, and ask unanimous consent that it be printed in the RECORD, and printed as a document. I further ask unanimous consent that the text of the amendment appear in the RECORD following Senator INOUE's statement.

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

(See exhibit 1.)

Mr. INOUE. Mr. President, on September 10, my colleague, Senator KASTEN and I, announced our intention to submit an amendment providing for

guarantees for \$10 billion in loans for Soviet and Ethiopian immigrant absorption in Israel.

I believe I should at the very outset underline the fact that this is a loan guarantee. It is not a grant of money to the people of Israel. We are not giving money to Israel. In many ways, this is just an act of friendship.

For example, Mr. President, if a very dear and close friend of mine should go to a bank and seek a loan and the banker tells him, "We'd be very happy to lend you money but you'll have to get someone to cosign your loan or guarantee your loan," this is all that this bill calls for, that we will cosign or guarantee the loan made by the State of Israel from banks in the United States to help themselves. We are not providing one penny of taxpayers' money. I believe this point is very important.

At that time we announced our intention, we informed our fellow Senators that a dialog was underway with the administration on certain technical aspects of our proposal and that, once these issues were resolved, we would move swiftly to bring the legislation up for formal debate. This, we intend to do. This, we will do at the earliest possible moment.

In the meantime, however, the President of the United States has asked that we delay consideration of the guarantee amendment for 120 days. Although Senator KASTEN and I would like to proceed expeditiously on this urgent issue, we have agreed to the President's request, confident that ultimately this issue will be brought to a successful conclusion.

And so, Mr. President, our decision this morning to formally introduce our absorption guarantee amendment begins the process of deliberation on this important issue. In doing so, we believe we are remaining true to our colleagues and our commitment to resolve this issue in comity with the administration.

We believe strongly that this proposal supports American national interests and that it will be treated with the importance it deserves.

In our many discussions, President Bush has assured us that he remains committed to the cause of Soviet Jewry and is cognizant of the significant impact that the influx of nearly 1 million new citizens will have on the Israeli economy—a 25-percent increase in the country's population in just 5 years.

It may be difficult for most Americans to imagine what this entails, but just imagine the whole population of France placed into the United States in 5 years. That is the effect this program will have on Israel.

We believe that the President recognizes the urgency of resettlement. We remain convinced of his sincerity on the matter of Soviet absorption and his

willingness to meet this great humanitarian challenge as he has met others in Ethiopia, Bangladesh, Kurdistan, and the Philippines—with compassion, with understanding and with characteristic American generosity.

Similarly, Senator KASTEN and I believe that the President recognizes the danger of resurgent Russian nationalism and anti-Semitism and the hardship which any slowdown in absorption could mean to many hundreds of thousands of Jews awaiting emigration.

Undoubtedly, the coming winter months will be difficult for the Soviet people. A counterrevolution, sparked by mass starvation and suffering, could bring totalitarianism back to the Soviet Union and lead, once again, to the captivity of the remaining Jewish population.

We hope and pray that this frightening prospect does not come true. We trust that in requesting a 120-day delay of our guarantee proposal, the President and his advisers have seriously considered this possibility and have drawn up plans accordingly.

Mr. President, over the past several weeks, Senator KASTEN and I have sought the bipartisan counsel of our colleagues on the matter of absorption guarantees. We have been most gratified by the overwhelming support which our proposal has received, as evidenced by the number of Democrats and Republicans who have asked to co-sponsor our amendment. As my colleague, Senator KASTEN, has indicated, 70 U.S. Senators are cosponsors of this amendment.

There should be no doubt that the commitment of the American people to Israel remains strong. There should be no doubt that Congress will support loan guarantees to Israel—not because it is convenient or expedient, but because it is right.

For nearly a quarter of a century, the liberation of Soviet Jewry has been a cornerstone of American foreign policy. As Americans, as free men and women, we have yearned for the day when all of the captive peoples of the Soviet Union would be set free. Today, that time has come.

Let us not squander this great opportunity to make good our vows. History will judge us not by our proclamations, but by our deeds. The Soviet immigrants to Israel need our help. Let us be the first to answer the call.

#### EXHIBIT 1

##### AMENDMENT No. 1247

On page 28, between lines 20 and 21, insert the following:

Title III of chapter 2 of part I of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new section:

"SEC. 226. LOAN GUARANTEE PROGRAM FOR RESETTLEMENT OF REFUGEES IN ISRAEL.—(a)(1) During the period beginning on October 1, 1991, and ending on September 30, 1996, the President shall issue guarantees against losses incurred in connection with loans to

Israel for the purpose of providing economic assistance to Israel and the economy of Israel in connection with the extraordinary costs occasioned by Israel's humanitarian undertaking to resettle and absorb Soviet and Ethiopian refugees. The authority of this subsection is in addition to any other authority to issue guarantees for any such purpose.

"(2) The total principal amount of guarantees which may be issued under this subsection in any fiscal year shall not exceed \$2,000,000,000, except that, in the event that less than \$2,000,000,000 of guarantees is issued in any fiscal year, the authority to issue the balance of such guarantees shall be available in any subsection fiscal year ending on or before September 30, 1996. Each guarantee issued under this section shall guarantee 100 percent of the principal and interest payable on such loans. Loan guarantees shall be made in such increments as the government of Israel may request. The guarantee for each such increment shall be obligated and committed within 30 days of the request therefor, and the issuance of the guarantee for each such increment shall occur within 60 days of such request, unless a later date is selected by the government of Israel.

"(b) The standard terms of any loan or increment guaranteed under this section shall be 30 years, with semiannual payments of interest only over the first 10 years, and with semiannual payments of principal and interest, on a level-payment basis, over the last 20 years thereof, except that the guaranteed loan or any increments issued in a single transaction may include obligations having different maturities, interest rates, and payment terms if the aggregate scheduled debt service for all obligations issued in a single transaction equals the debt service for a single loan or increment of like amount having the standard terms described in this sentence. The guarantor shall not have the right to accelerate any guaranteed loan or increment or to pay any amounts in respect of the guarantees issued other than in accordance with the original payment terms for the loan. For purposes of determining the maximum principal amount of any loan or increment to be guaranteed under this section, the principal amount of each such loan or increment shall be—

"(1) in the case of any loan issued on a discount basis, the original issue price (excluding any transaction costs) thereof; or

"(2) in the case of any loan issued on an interest-bearing basis, the stated principal amount thereof.

"(c)(1) Before the issuance of the first guarantee under this section, the Government of Israel shall provide the President with written assurances that such loans will be used only for projects or activities in geographic areas which were subject to the administration of the Government of Israel before June 5, 1967, to be stated in the same manner as was provided in the grant agreement with Israel for fiscal year 1991 under chapter 4 of part II of this Act.

"(2) Section 223 shall apply to guarantees issued under subsection (a) in the same manner as such section applies to guarantees issued under section 222, except that subsections (a), (e)(1), (g), and (j) of section 223 shall not apply to such guarantees and except that, to the extent section 223 is inconsistent with the Federal Credit Reform Act of 1990, that Act shall apply. Loans shall be guaranteed under this section without regard to sections 221, 222, and 238(c). Notwithstanding section 223(f), the interest rate for loans guaranteed under this section may in-

clude a reasonable fee to cover the costs and fees incurred by the borrower in connection with financing under this section in the event the borrower elects not to finance such costs or fees out of loan principal.

"(3) Notwithstanding any other provision of law, fees charged for the loan guarantee program under this section shall be an aggregate origination fee of \$100,000,000, payable on a pro rata basis as each guarantee for each loan or increment is issued."

The loan guarantees authorized pursuant to section 226 of the Foreign Assistance Act of 1961 (as added by this Act) for fiscal year 1992 and for each of the four succeeding fiscal years shall be made available without need for further appropriations of subsidy cost as the fees required to be paid by the borrower under section 226(c)(3) of the Foreign Assistance Act of 1961 reduce the subsidy cost to zero.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. KASTEN. Mr. President, I yield such time as he may consume to the Senator from Pennsylvania [Mr. SPECTER].

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania is now recognized.

Mr. SPECTER. Mr. President, I thank the Chair. I thank my distinguished colleague from Wisconsin, Senator KASTEN.

I commend Senator KASTEN and Senator INOUE for their strong leadership on this very important subject. And I applaud the action of some 70 United States Senators who are standing together today on the introduction of this legislation which is an important statement of United States humanitarian concerns and a historic affirmation of the strong United States-Israeli relationship.

At the outset I articulate my own perspective and my own roots and the reasons why the humanitarian absorption guarantees are especially important to this Senator. My parents came from Russia. My father came from a small village, Batchkurina, in 1911, fleeing the oppression of the czar and the virulent antisemitism that was present in the Soviet Union in 1911 and remains to this day. My mother came at the age of 5 with her family from an area of Russia-Poland where the territory had been traded back and forth. So from my earliest days, I have understood the problems of Soviet Jewry and the special considerations in providing an opportunity for Jews to leave the Soviet Union.

In supporting this resolution, I do so as a U.S. Senator with the firm belief that this is very much in the national interest of the United States. And I say that, having been a student of the affairs in the Mideast for more than a quarter of a century. On coming to the U.S. Senate some 11 years ago, I sought membership on the Foreign Operations Subcommittee of Appropriations where I have worked with Senator INOUE, Senator KASTEN—Senator KASTEN having been chairman of that subcommit-

tee for 6 years, Senator INOUE having been chairman of that subcommittee for 4 years—and believe that the foreign aid and the humanitarian aid which has come forward from that subcommittee and then to the full Appropriations Committee and then to the Senate has been very important for U.S. national self-interest.

Foreign aid is unpopular, as we all know. And it is with some considerable political risk that 70 U.S. Senators step forward to cosponsor this legislation. This legislation is humanitarian legislation, that is not foreign aid and is a loan guarantee at no cost to the U.S. taxpayer, but it has a symbolic connection with the concept of foreign aid which we allocate for U.S. national self-interest. And the foreign aid allocation, which is about 1 percent of our gross Federal budget, is very important. Much of it might well come within the military budget. And the \$5 billion which is allocated, \$3 billion to Israel in foreign aid and \$2 billion to Egypt, has a very important strategic importance to the United States and, dollar-for-dollar, yields greater results than the \$150 billion which has been allocated on an annual basis to NATO for many, many years. The point is that foreign aid and the separate issue of loan guarantees need to be put in the proper perspective; it's good for promoting U.S. national security interests and global stability.

My preference on the loan guarantees legislation was the preference expressed earlier by Senator INOUE, to proceed with it on our current appropriations bill and not be subjected to 120-day delay. With regard to the notion of linking loan guarantees with settlements—an action by the administration that led to the delay—it should be noted that the Arab nations did not require a commitment to halt settlements as a precondition to come to the peace bargaining table. This linkage issue was injected into the process after the parties had already agreed to meet to discuss peace. Linkage indicates a predisposition to the Arab side and undermines the foundations for a peace conference.

Because Congress was faced with a special request from the President of the United States to delay enacting the loan guarantee legislation, an accommodation was made. But it is the hope of this Senator that the strong statement by 70 Senators today and the strong sentiment which is present in the House of Representatives will be a strong signal that this matter should go forward and be enacted promptly at the end of the 120 days.

I applaud the efforts of the President and the efforts of the Secretary of State in moving forward on the Mideast peace process. And it has been a herculean effort by the Secretary of State, Mr. Baker, in what he has accomplished.

It has been my view for some time, Mr. President, that we had been moving in the direction of a Mideast peace conference—as a result of the changing situation in the Soviet Union—with the loss of Soviet economic support, Syria has been faced with new realities and I believe that they will have to consider the option of peace with Israel.

Egypt and President Mubarak have been supportive of American efforts to create such dialog. In contrast the Saudis owe the United States a great deal—and they owe Israel a great deal as well—for our efforts in defeating the menacing Iraq Army which had invaded Kuwait and which was poised in a position to invade Saudi Arabia.

I say candidly I have been disappointed with the Saudi response and would have expected more, and hope the Saudis yet will be more forthcoming for the Mideast peace process in recognition of Israel's tremendous sacrifice and restraint in absorbing 39 unprovoked Scud attacks and in not responding—at the request of the President of the United States—in order to hold the coalition together; a coalition which created the military victory which liberated Kuwait, saved Saudi Arabia, other Arab Gulf States, and doubtless contributed to the avoidance of tremendous additional destruction.

So the time is ripe to see the peace process go forward and it has been a concern of mine that in acceding to a delay in the request for loan guarantees that there would be a tilt, or the appearance of a tilt, toward the Arab nations. It is wrong to demand concessions by Israel before the bargaining process had begun. And it is my very firm view that the bargaining process has to be left to the parties and that there should not be any inference of the United States taking one side or the other as the parties move to the bargaining table.

A few years ago some 30 U.S. Senators signed a letter to Prime Minister Shamir urging the trading of land for peace, and I refused to join in that letter. I opposed it because I do not think that from this vantage point, thousands of miles from the frontier of danger in the Mideast, that those of us in this Chamber can tell the Israelis, or anyone else, what to do about issues of national security.

It may well be that Prime Minister Shamir has in his mind concessions on the issues of settlements. That is up to him and up to the negotiating parties to discuss. It ought to be remembered that when Prime Minister Begin negotiated with President Sadat of Egypt, that there was a cessation of the settlements for the time being as a judgment of the negotiating parties. There was also a concession of considerable land for peace when Israel returned the Sinai. So there are historical precedents where some flexibility might be

expected. But it is not for the United States and it is not for the Senate to set forward conditions or to prejudice those negotiations in advance.

There have been strong expressions of support for the urgency and importance of loan guarantees from across the country. I regretted the statement which was made by the President about 1,000 lobbyists coming to Washington, DC, on September 12. The representatives of the national Jewish community are not lobbyists, but citizens exercising their rights in our political process.

It is a uniquely different category when citizens come to call upon their elected representatives with three specific guarantees in the first amendment: the right to assemble, the right to petition, and the right to freedom of speech. Such an activity is not a lobbying activity.

It is my hope that this action, with a very strong statement and the very courageous and brilliant leadership by Senator KASTEN and Senator INOUE, will set the stage for moving through with completion of this legislation at the expiration of the 120 days, and in the interim, Secretary of State Baker will continue his road to success in bringing the parties to the bargaining table so that they make strike a balance and move ahead for peace in that very troubled region.

Mr. President, I ask unanimous consent that my prepared statement and a letter to President Bush be printed in the RECORD.

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

U.S. SENATE,

Washington, DC, September 6, 1991.

The PRESIDENT,

The White House, Washington, DC.

DEAR MR. PRESIDENT: I urge your Administration not to delay Congressional consideration on the issue of loan guarantees to Israel.

In my judgment, the issue of the loan guarantees should not be linked to West Bank settlements. I had thought that was the position of the Administration as well.

It also seems unwise to me to link the loan guarantees issue to a Mideast peace conference, because that linkage is likely to create more problems than it will solve.

I hope you had a somewhat restful summer. I have seen you frequently on the news and you are "looking good" notwithstanding the numerous problems you have had to deal with during your August vacation time in Kennebunkport.

I am sending a copy of this letter to Secretary of State Baker.

My best.

Sincerely,

ARLEN SPECTER.

STATEMENT ON LOAN GUARANTEES FOR ISRAEL  
(By Senator Arlen Specter)

I believe that the approval of loan guarantees for Israel is in the best interests of the United States and can contribute significantly toward achieving peace and stability in the Middle East. From both a fiscal and

humanitarian perspective, Congress should immediately approve these guarantees and proceed on our regular schedule to enact the Foreign Aid Appropriations Bill.

While I applaud the efforts of President Bush and Secretary Baker in arranging a Mideast Peace Conference, I oppose their request for a 120-day delay on the loan guarantees. This humanitarian aid should not be linked to collateral political considerations, including settlements. Moreover, Israel should not have to be compelled into making concessions even before the Conference's negotiations even begin.

It should be recalled that loan guarantees were not previously a factor in the evolving peace process. The Arab countries invited to the Conference accepted the invitation without any concession by Israel to cease settlements. Also, Israel abided by a special U.S. request not to bring up the loan guarantee issue last Spring while it was enduring 39 Scud attacks from Iraq without retaliation. (The Israelis suffered over \$3 billion in physical damage and a loss in tourism as a result of the attacks.) Because of the Persian Gulf war, Israel agreed to an Administration appeal to wait until Fall before making the loan guarantee request. This agreement was well known, and it has been public knowledge for months that the Israelis would repeat the request in September.

The most distressing aspect of the Administration's attempt to delay the loan guarantees is that it puts at risk the thousands of men, women and children seeking refuge from anti-semitism and political uncertainty. No one knows when the doors will shut on emigration. The changes in the Soviet Union have been rapid and the government is still very unstable. With the rise of nationalistic movements in Eastern Europe, virulent anti-semitism has again been unleashed and should not be underestimated.

On the fiscal merits alone, the loan guarantees for Israel make good sense. Israel is one of the few nations that has never defaulted on a loan and maintains a highly favorable debt portfolio. Loan guarantees are not in the same category as the \$7 billion in foreign aid debt that the Administration urged Congress to forgive earlier last session. Loan guarantees are not part of the foreign aid budget. By extending such guarantees, the U.S. government would not in any way limit its ability to provide capital for domestic programs. The guarantees would simply allow Israel to borrow at lower interest rates for longer periods of time.

The proposed loan guarantees, allocated at \$2 billion a year for the next five years, would also have a positive impact on the U.S. economy. Much of the money borrowed is expected to come from the American banking community, who would benefit by servicing the loans. A major portion of the loan money would also be spent on American builders and suppliers in the construction and housing industries, generating jobs for American citizens and revenue for American business. Judging from past experiences, the government of Israel estimates that over \$30 billion in goods and services will be imported from U.S. businesses.

Guaranteed loans are essential for Israel's absorption of immigrants, especially since the Israelis are already heavily taxed to meet their national security needs. In 1991 alone, Israel will have to spend over 20 percent of its budget on immigrant absorption. The harsh reality is that soviet immigrants are only permitted to leave with about \$100 and a few belongings; the recently rescued Ethiopian Jews came to Israel with even

less. Because of these circumstances, the cost to transport these immigrants to Israel, feed, house, and then assimilate them into the culture and economy is astounding. Estimates are that it will cost more than \$50 billion to settle the immigrants. The situation is analogous to the United States absorbing some 60 million people, or the entire population of France.

In conclusion, the challenge of emancipating and resettling over one million Soviet and Ethiopian Jews has been a moral quest for many in Congress over the years, including myself. Now that this historical opportunity has finally arrived, we must meet the obligation of ensuring their welfare. To abandon the cause of these immigrants at this stage would be wrong.

Mr. KASTEN. Mr. President, I first of all want to thank the Senator from Pennsylvania, not only for his very strong statement but for his help and his support and his leadership on this issue over the past several months.

A number of us have been working on this issue, going back into last spring, and the Senator from Pennsylvania has been part of this working group. His strong support, his leadership, his efforts are greatly appreciated, I know, by Senator INOUE, also. We look forward to working with him and working together.

Mr. SPECTER. Mr. President, I want to thank my distinguished colleague, Senator KASTEN, for his generous remarks.

Mr. KASTEN. Mr. President, I yield 5 minutes to the Senator from Iowa [Mr. GRASSLEY].

The ACTING PRESIDENT pro tempore. The Senator from Iowa is recognized for 5 minutes.

#### UNITED STATES LOAN GUARANTEES TO ISRAEL

Mr. GRASSLEY. Mr. President, I rise today to express my support for the Kasten-Inouye legislation which provides United States loan guarantees to Israel to assist in that country's historic absorption of Soviet Jewish immigrants.

The controversy surrounding these guarantees in recent weeks has, in my view, obscured the essence and importance of this issue. Loan guarantees to Israel are the fulfillment of a commitment made by this Congress more than a decade and a half ago with the passage of the Jackson-Vanik legislation. Since that time, the free emigration of Soviet citizens has been a central tenet of United States foreign policy toward the Soviet Union—one that nearly every Member of this Chamber has fought for in some manner. In my view, it is most unfortunate that the moral obligation associated with this humanitarian endeavor has become embroiled in the political conflicts of the day.

Mr. President, I am especially proud and gratified that my efforts on behalf of Soviet refusenik families may have contributed to the freedom that so many of those families now find in Is-

rael. The 350,000 Soviet immigrants now living in Israel—and the nearly 100,000 Soviet immigrants coming to this country—were allowed to leave the Soviet Union in large measure because of United States pressure and perseverance. As such, I truly believe the United States has a responsibility to follow through with its commitment to free emigration.

Loan guarantees are the most cost-effective way for the United States to provide a helping hand and a brighter future for these new immigrants. Guarantees are not grants, nor are they loans. A United States guarantee will simply allow Israel to receive more favorable lending terms on the private market and thereby allow the Israeli economy time to reap the benefits of this highly educated and talented wave of immigrants.

Just last week I expressed these sentiments to Deputy Secretary of State Lawrence Eagleburger in his testimony on refugee policy before the Judiciary Committee. At that time, Secretary Eagleburger stated that the United States has a "clear responsibility with regard to those who emigrate from the Soviet Union, either to the United States or to Israel." He went on to say that, "it is also clear that the United States recognizes we have an obligation to assist Israel in the absorption of those Soviet Jews."

Mr. President, I welcome the statements of Secretary Eagleburger. It is my hope that the administration will not allow political disagreements—or issues surrounding the Middle East Peace Conference—to stand in the way of the stated United States obligation to Soviet immigrants. I, therefore, urge my colleagues to support the Kasten-Inouye legislation.

The ACTING PRESIDENT pro tempore. The Senator from Hawaii.

Mr. INOUE. Mr. President, I am pleased to yield to the Senator from Illinois, a Senator who has been a pioneer in this noble humanitarian effort to assist the people of the State of Israel.

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

#### LIVING UP TO OUR RESPONSIBILITIES

Mr. SIMON. Mr. President, I thank my colleague from Hawaii. Let me just add, not in relationship to this, and yet in a very real sense in relationship to this, he has been a superb leader on this issue and on other issues. And until this session of Congress, I had not served on a committee with the senior Senator from Hawaii. I serve on the Select Committee on Indian Affairs, as does the Presiding Officer, Senator REID. Senator INOUE gets no great credit back in Hawaii for his leadership, and he has just done a superb job and I am very grateful to him.

Mr. President, I think what Senator INOUE and Senator KASTEN have done,

and many of us who are cosponsors, it is important for us, among other things, to live up to our responsibilities. We have properly pushed the Soviet Union to permit people to emigrate, but we have in the United States restricted the number of people who can come in. There is only one other place they can go, and that is to Israel.

I happen to differ with the settlements policy of the Government of Israel in terms of the Gaza Strip and West Bank, but only 1.6 percent of the Soviet immigrants are being settled in those areas, so that is an issue that has been blown out of all proportion.

I think, secondly, speaking candidly, it has not been well handled by the administration. You do not punch your friends in the nose publicly. I think phone calls to the Prime Minister of Israel, as well as the Arab leaders, as well as the leaders of Congress, saying we are just going to postpone this for 120 days would have been much better than proceeding as we are. But I am pleased that there is at least some form of informal agreement to move ahead.

I stress that this is a loan guarantee and up to this point, we have had not a single penny lost to Israel because of loan guarantees, so that we are not talking about money being taken out of the U.S. Treasury if the present pattern continues in terms of Israel.

I will add, I applaud the job that Secretary Baker is doing to bring the parties together.

I think all of us, no matter what our party affiliation, no matter what our inclinations, are appreciative of this. In my own experience in labor management relations and other things, if you can get people together around a table, you are halfway home. It looks like a reasonably good shot that we will get people together around the table.

Finally, Mr. President, Senator SPENCER made a good point in that it is up to the negotiators. What we have to do is to facilitate bringing them together. But at that point it is really up to Israel and the Arab nations to try to work out a settlement. I hope they can. I think there are reasonable prospects that they can.

If we would refrain from talking about East Jerusalem, I think it would be helpful. We raise false fears in Israel and false hopes on the Arab side. I can give you a dozen possible scenarios of solving this problem. Not a single one of those includes dividing Jerusalem again. But, again, I am pleased to be a cosponsor. I commend Senator INOUE and Senator KASTEN for their leadership on this. I think we have eased ourselves out of a very awkward situation.

I yield the floor.

Mr. DURENBERGER addressed the Chair.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. KASTEN. Mr. President, I yield 5 minutes to the Senator from Minnesota [Mr. DURENBERGER].

The ACTING PRESIDENT pro tempore. The Senator from Minnesota is recognized for 5 minutes.

#### ISRAEL LOAN GUARANTEES

Mr. DURENBERGER. Mr. President, I rise to offer my support and cosponsorship for the measure introduced by my distinguished colleagues, Senators KASTEN and INOUE, regarding loan guarantees for the absorption of Jewish refugees into Israel. This important financial commitment is consistent with America's centuries-old tradition of encouraging the free emigration of people living under oppressive political conditions.

Mr. President, for almost 20 years, a major predicate of America's foreign policy and international trade policy has been the idea that the Soviet Union and other closed societies must permit free emigration in order to secure normal trade relations with us. The Jackson-Vanik amendment was a milestone in U.S. foreign policy. A landmark event in U.S. efforts to free captive peoples. Now they are free.

In the past 2 years, our unwavering commitment to free emigration has finally borne fruit. A massive wave of immigration into Israel began in 1989 and continues today. Since then, nearly 350,000 Soviet and Ethiopian Jews have emigrated to Israel, and it is estimated that the total will reach 1 million by the end of 1995.

Mr. President, as a nation built by immigrants fleeing religious and political persecution we have a special responsibility to assist Israel in absorbing this massive new wave of immigrants. While we have prodded the Soviets for decades to open their borders, we have not raised our own refugee immigrant ceilings to accommodate the vastly increased numbers of Soviet immigrants that have now been allowed to leave.

In fact, ever since the late 1980's, when the United States began in-country immigration processing in the Soviet Union, it has become far more difficult for Soviet citizens to emigrate to the United States than when the Rome-Vienna immigration pipeline was open. Where else can these immigrants turn except to Israel? And is it not our responsibility to facilitate their absorption in Israel if we are unwilling to accept them?

Mr. President, I believe that nearly all of my colleagues and certainly the President of the United States are committed to granting these loan guarantees. Unfortunately, the issue of loan guarantees has become intertwined with the political and diplomatic efforts surrounding the upcoming Middle East Peace Conference.

I have considered the President's request to delay consideration of these loan guarantees on its merits and its

implications not only for the peace process, but for its impact on the mission of helping Israel absorb its new citizens.

Although I am not fully persuaded that considering the loan guarantee now would derail the peace process, I believe Congress should defer to President Bush and Secretary Baker in a matter of such delicate and sensitive diplomacy. The Congress should support the President in his request for a 120-day delay, and I have done that over the last month.

At the same time, I want to strongly reiterate my view that the lives of the Soviet emigres currently flowing into Israel should not be held hostage to the diplomatic maneuvering that is preceding this peace conference. And there should be no linkage between these loan guarantees and any of the issues that will surely arise in the upcoming negotiations.

Every Arab and Palestinian representative who sits at the peace table should know in advance that the United States will not be looking over the shoulder of the Israeli negotiators second-guessing their bargaining strategy with the threat in January or February of withholding this humanitarian assistance if we disagree with that strategy.

Mr. President, I believe the Israeli Government is making a fundamental political and diplomatic mistake in pursuing the settlement policy in the occupied territories. I have never condoned that policy.

I think we ought to recognize the need to address legitimate Palestinian concerns in the territories. It seems to me that during the course of history, the Palestinians have been caught in the struggle for control of land where they too have lived for many years. That struggle continues today. The land keeps changing hands all of the time, often at the expense of the Palestinian people who genuinely want to live in peace with all their neighbors.

Mr. President, the legislation I am cosponsoring requires the Government of Israel to provide the President with written assurances that these loans will be used only for activities in geographic areas subject to the administration of Israel prior to June 5, 1967.

Those assurances, however, do not guarantee that new settlements in the occupied territories will not be constructed during the peace negotiations. It only assures that funds obtained with U.S. guarantees will not be used in the occupied territories.

Although I do not believe Israel's settlement policies are helpful in resolving matters that divide Israel and its neighbors, that is a matter that ultimately must be resolved in face-to-face negotiations between Israel and its Arab neighbors. Certain segments of Israel's Government and population have insistently refused to give up any of

the territories, but Israel has clearly stated that this matter is on the table. It is negotiable.

Mr. President, When we return in January I expect that we will expeditiously move to grant these loan guarantees. I do not expect, and will not accept, any further delays in the grant of this humanitarian assistance. Let the Israelis negotiate all of the difficult issues with Syria, Jordan, and all of the Arab and Palestinian representatives without any linkage to this humanitarian assistance.

This humanitarian assistance should not and will not be held hostage to Israel's bargaining position at the peace conference. Hafez al Assad should know that what he cannot get from the Israelis, he will not get from the Senate.

Mr. President, the United States should be proud of its role in bringing about the increase in Soviet emigration as well as the Ethiopian exodus. My friend, our former colleague, Senator Rudy Boschwitz played a personal and very effective role in helping Ethiopian Jews emigrate. We should now follow through on this decades' long commitment. Helping the new immigrants help themselves is an honorable enterprise, and we should be proud that we can contribute to Israel's efforts.

Mr. President, I yield the floor.

Mr. KASTEN addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin yields time.

Mr. KASTEN. Mr. President, I yield what time he may desire to the Republican leader, the Senator from Kansas [Mr. DOLE].

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

Mr. DOLE. Mr. President, I thank my colleague, the distinguished Senator from Wisconsin [Mr. KASTEN].

Mr. President, I want to take this time to personally thank my colleague from Wisconsin, Senator KASTEN, and my long-time friend from Hawaii, Senator INOUE, for the very constructive role they have played over the past several weeks. This is a very explosive issue. There have been a number of frustrations expressed by people on both sides of the issue, and certainly it is a matter of great importance to the United States and to the State of Israel.

We do have a very unique relationship with Israel, no doubt about it. It has been there for a long time. It is going to continue. I believe the role that has been played by Senators INOUE and KASTEN has been very important in underscoring the importance of that relationship and in keeping everything on sort of an even keel until we can fully discuss this matter sometime early next year. I am not certain whether the Senators have set a date. There are questions to be asked, as indicated by the distinguished Sen-

ator from Minnesota [Mr. DURENBERGER]. There will be debate. There will be questions. There will be differences of opinion. But the important point is that now we have temporarily resolved this matter because of the personal efforts of my colleagues, Senator KASTEN and Senator INOUE, and for that everyone in this Chamber is very grateful.

So I want to commend the distinguished Senator from Hawaii [Mr. INOUE], and in particular, my Republican colleague, the distinguished Senator from Wisconsin [Mr. KASTEN], for their statements.

The Senate has no more responsible and able Members than the Senators from Hawaii and Wisconsin. And, in a Senate where Israel can count 100 firm friends, it has no stronger supporters than the Senators from Hawaii and Wisconsin.

Today's statements by Senators INOUE and KASTEN reflect both of those facts.

There is no question that Senator KASTEN, in offering the proposal on loan guarantees which he coauthored with Senator INOUE, is reflecting the virtually unanimous sentiment in the Senate that we should help Israel absorb the huge influx of Soviet Jews which continue to pour in every day.

We should offer support because of our longstanding efforts to achieve free emigration for Soviet Jews; because of our special relationship with Israel, and our wish to help it face up to this critical challenge; and most of all because it is the right thing to do.

And, judging by the statements of the President and other senior officials, I don't think there is any question that the administration also supports the concept of assisting Israel confront this monumental task.

So the issue is not whether—but how and when.

In agreeing to the President's recommendation that we postpone consideration of this issue until January or February, Senator KASTEN is demonstrating the kind of responsible leadership that has characterized his service in the Senate. He is going for cooperation—not confrontation; he is helping to bring us together on an issue where we should be together—not dividing us.

There will be serious debate and perhaps some differences of opinion over aspects of the Kasten-Inouye proposal in January, or whenever this issue comes to the floor. While—as I have said—there is near unanimous support for the concept of helping Israel, real questions and concerns remain over just how that should be done; and whether and how our assistance should be related to broader issues, such as Israel's settlements policies. The President certainly has some concerns in these areas, I do, and others do, as well.

So we all look forward to responsible, lively debate in January. It is the way we get things done. It's called the democratic process.

I am confident that, out of that process, we will end up with the best policy and program—the best to help the Soviet Jews, the best to strengthen long-term United States-Israel relations, the best for advancing the chances of peace in the Middle East, and, most important of all, the best for America.

Mr. INOUE addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Hawaii.

Mr. INOUE. Mr. President, I am pleased to yield to a steadfast supporter of this humanitarian effort to assist the people of the State of Israel, the Senator from Maryland [Ms. MIKULSKI].

The ACTING PRESIDENT pro tempore. The Senator from Maryland is now recognized.

#### ISRAEL LOAN GUARANTEES

Ms. MIKULSKI. I thank the distinguished chairman of the Subcommittee on Defense Appropriations for yielding me this time on the bill he and the Senator from Wisconsin have introduced.

Mr. President, make no mistake, I am a steadfast supporter of this bill, which will provide \$2 billion in loan guarantees for 5 years to the State of Israel to deal with the most compelling humanitarian exodus that Israel has faced in this century and perhaps ever.

Mr. President, I commend my two colleagues, the authors of this bill, for providing the type of leadership that they have on this issue, No. 1, not only to meet the compelling humanitarian situation but, No. 2, to go about it in a way that does not exacerbate the discontent either in Israel or the United States on this particular issue.

Mr. President, my constituents have said to me that they are concerned about this issue. They raise many concerns.

In speaking on behalf of the amendment I would like to clarify for them what I think some of their concerns are. As I move around Maryland, whether it is in the suburban shopping malls of Montgomery or Prince George's County, to Hagerstown, Highlandtown, Crisfield, or Cockeysville, people say, Why are we giving \$10 billion this year to the State of Israel?

Mr. President, there is a tremendous misconception. This question is based on an assumed fact. They think we are going to give \$10 billion in cash to the State of Israel or \$10 billion in an actual cash loan to the State of Israel; that is, \$10 billion this year when we have so many compelling needs here in our own country.

Mr. President, I want to set the record straight for both the people of Maryland and for the people of the United States of America.

First of all, let me say this: this money we are talking about is not cash to the State of Israel. It is a loan guarantee. It means we back up a loan that Israel will take in the world market to be able to deal with the influx of immigrants. Our loan guarantee will enable Israel to borrow at lower than current interest rates, which means the money will go to help people, and not to pay interest rates. We will not be giving any cash to Israel this year, next year, or the year after on the loan guarantee issue.

When people say what about the needs in our own State, believe me, I am well aware that right this minute Governor Schaefer is looking State troopers in the eye and saying I have to take you off of I-95, the corridor of cocaine, because we are facing budget deficits. Right now the Governor is saying to the people of Maryland, I will have to ground a Medevac helicopter needed to rescue people in the trauma of accidents.

So, Senator BARBARA MIKULSKI is not for some program that would take the money out of the needs of our own country and go to another. Mr. President, I am telling you that this bill will not do that.

Right now, in our own appropriations bill, Marylanders are very much on my mind, whether it is a modest \$2 million to reseed the oyster beds of the great Chesapeake Bay so my Maryland people can be out there earning a good living knowing that in the State of Maryland good environment is good business, or whether it is the funds we have to bring back into Maryland to make public investments in Goddard or the National Institutes of Health, major employers in my State creating new ideas that will lead to new jobs and new products that we can sell around the world. In my own State where we are facing the trooper layoff the Federal Government, with the leadership provided by Senator SARBANES and me, has funds coming in called Project Achilles to go after the drug pushers in the Washington suburbs and in the Baltimore metropolitan area.

So the people of Maryland should know that Senator BARB MIKULSKI is absolutely on their side.

While we are looking at that, I also must say quite candidly that I was in Israel this summer. I saw a compelling humanitarian need—14,000 Ethiopian Jews airlifted in 48 hours from an area of great civil war and strife, brought to the State of Israel. The men and women who got off that plane from Ethiopia are not only from this century, because of their rural isolated background, but they are from another millenium. Helping them move into the 20th century, from essentially a 14th-century lifestyle, will take three to five generations. Certainly, we can provide a backup to the State of Israel to help them.

At the same time, we have looked at the collapse of the Soviet Union. The good news is that maybe the cold war is coming to an end. Time will tell. But we do know that with the rising tensions in the Soviet Union there is increased hostility toward Jewish citizens and that the need to move to Israel for all who can go and all who want to go is indeed important. For the Soviet Jews who are able to leave, we must not only work with them to provide housing but to provide the kind of economic stimulation that will attract private investment to create jobs and a viable economy.

Mr. President, I really do support loan guarantees. I really prefer no delays, no linkages, and no conditions. But this Senator does not want to be in a prickly relationship with the President of the United States as he conducts foreign policy. I believe that it is the intent of the Congress of the United States to work with the President on peace in the Middle East. But make no mistake. Saddam Hussein did not invade Kuwait because he was cranky with Israel over the Arab-Israeli situation. I want to note that only Israel has been asked to make sacrifices; there has been no calling for sacrifices from any of the Arab nations as they move towards the peace talks.

Yes, there are policy differences on the settlements issues. Policy differences always occur in democratic nations. But where there is absolutely no disagreement is the need to help Israel to be able to help itself deal with the migration and immigration of Soviet Jews and Ethiopian Jews. We are not giving them cash. We are giving them a loan guarantee framework to enable them to help themselves and help the people who came, against incredible odds and under compelling needs, to the State of Israel.

So though I regret the delay, perhaps it would give one pause. I hope that the President will cooperate with the Congress in coming forth with a policy and fiscal framework that the House, Senate, and the President can support.

So, Mr. President, I want to once again conclude by thanking Senators INOUE and KASTEN for their leadership on this. We are moving to a new century. It is a new world order. I think we need to promote those allies that have stood with us during the old century.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Hawaii has 23 minutes, and the Senator from Wisconsin has 15 minutes.

Mr. KASTEN. Mr. President, I yield such time as he may desire to the Senator from Oregon [Mr. PACKWOOD].

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

Mr. PACKWOOD. Mr. President, I thank the Chair and my good friend from Wisconsin.

I very strongly support the loan guarantees for the resettlement of refugees in Israel. I want to divide the reasons for my support into two, if I might.

One, let us take the straight out cost factor. This is not going to cost the United States anything. We are guaranteeing a loan to Israel. Israel has never reneged on any of its debt. This is not some bandit country, some country whose creditworthiness everybody questions, and any time you give them a loan guarantee, you might as well be giving them a grant. That is not Israel.

So let us set aside the cost argument and make sure that the public understands this is not a foreign aid grant. This is a guarantee of credit so that Israel can borrow money at the cheapest possible rates for a short period of time to resettle what is going to be a deluge of refugees.

To put it in perspective, from just Russia alone—Lord knows Israel has been a haven for Jews from all over the world, but from just Russia alone, Israel in the next 2 to 5 years will have to resettle in Israel the equivalent of the United States trying to resettle the entire population of France in the United States.

So it is a mammoth undertaking. But that is the straight kind of crass financial issue. I would hope that no one would quarrel with that.

I would rather now talk about the moral issue. I want to emphasize morality rather than pragmatism. We always talk about Israel as a great ally. They are. America should be so lucky to have such allies elsewhere in the world. We have often said we need this vital listening post, this bastion of democracy in the Middle East. And in an era of troubled relations with all the people in the world, thank goodness we have a good ally.

The problem with that argument is that allies, unfortunately, are shifting acquaintances on occasion. It is amazing that we can fight Germany and Japan, and 5 years after the war is over, they are our strongest allies.

So what I fear, if we put this on a straight pragmatic basis as if, indeed, Russia, the Soviet Union, is finished for a generation as a major power and if, indeed, some of the Arab countries are recasting their views about America with Russia gone, I would hate to think that there might start to grow in this country a feeling, well, we do not need Israel quite as much anymore, the danger has passed.

No, Mr. President, I want to talk strictly on a moral ground, and I will say it flat out: I think Israel has a better claim to the West Bank, or Judea and Samaria, as it is called, than any other country. If you look at history they have far and away the best claim. If you look at Israel at the time of Solomon, and that is roughly the zenith of the united kingdoms, Israel included

all of what is currently Israel and a little of Jordan, and a little of Lebanon, and some of Syria. This was legitimately Israel. The Jewish people in that area were a majority of the population for the better part of 1,400 years.

Then, starting a few hundred years before Christ and continuing on with the Romans, starting with the Syrians, and going through the Romans, the Jews were expelled from their own country, the diaspora. They were forcibly evicted and scattered about the world. And I know nothing in Judeo-Christian, or Anglo-Saxon, or any other law that says you lose your right to your land when you are forcibly dispossessed of it. But they were.

People say that is old history; that is thousands of years ago; that claim does not count. I think it does count, and I think their claim is better than anybody else's.

Let us lay that aside. Who else controlled this area? Rome did for about 600 years. I have seen no one suggest that Italy should get the West Bank because of 600 years of Roman rule. Turkey had it for 1,500 years, roughly, to the end of World War I. I have not heard suggested seriously that Turkey should get the West Bank. Then, of course, at the end of World War I—Turkey having allied itself with Germany—France and Britain took the entire area, except for Saudi Arabia. It is ironic, but nobody wanted it. There was nothing there. France and Britain took the entire area. There were no countries as we understand the countries. It was just a Turkish mandate. Britain and France took the area. France and Britain took what became Lebanon, Syria, Iraq, Jordan, and Israel, and divided it between them.

In the English portion of what is now Israel and Jordan, from that portion, called the Palestinian mandate, there was a promise made that there would be a homeland carved for the Jews. In 1921, England satisfied the Emir Abdullah, grandfather of the present King Hussein of Jordan, who had a good army, and gave him a country that had no history at all—Transjordan, everything east of the Jordan river. It was about 80 percent of the geography of the Palestinian mandate, and world Jewry did not complain. The Jews living in Jordan were expelled. What traditionally and historically had been part of Israel, Jews were now denied access to. Israel had no complaint.

Now we have left in the British mandate what is currently Israel, and during the twenties and thirties, Britain could not keep these. The Arabs did not like them. Soldiers were getting shot and kidnaped. Great Britain said, "we are going to divide this up and get out." In 1937, in the Peel Commission, they suggested a division in which the Arabs would get the Negev, the desert in the south, the West Bank, part of

the north; the Jews would get a fair portion in the north, and Britain would keep Jerusalem and a little corridor to the sea. Jerusalem, the holiest city of the Jewish religion—Britain would keep it all. The Jews said they would agree to that. The Arabs turned it down.

In 1938, the Jewish Agency suggested a division of the remainder of the Palestinian mandate, and they suggested—this is a Jewish recommendation—Arabs would get the Negev, the desert from the south, West Bank, and Jerusalem would be divided, half of it being Jewish, Britain keeping the other half. They did not ask for a united kingdom or united Jerusalem at the time. The Arabs turned it down.

After the war in 1946, another partition was suggested by the Jewish Agency. This time Israel would get the Negev. There had been settlements along there. The West Bank and Jerusalem would be internationalized. The Arabs turned it down. In 1947, the British said we are leaving. We have had the King David Hotel blown up, and soldiers were killed, not unlike our experience in Lebanon. They said, "we are leaving," and they gave it back to the United Nations.

The United Nations suggested a partition in which the Arabs get the West Bank, Israel gets the Negev and most of the north, and Jerusalem would be internationalized. The Arabs turned it down. The Jews accepted all of these partitions that were suggested, that Israel should give up land for peace—they have never gotten peace, but they have given up land. They have given up the Sinai three times in 30 years. They took it in 1956, then after the 1967 war, and in the Yom Kippur war. They gave it back every time in the hope of getting peace.

All during these different eras when the British had Palestine, the Arabs could have had peace and the West Bank, and before World War II, the Negev, and a divided or internationalized Jerusalem, on every occasion the Jews accepted, and the Arabs turned it down.

Then when the Union Jack comes down on May 15, 1948, and the United Nations recognizes Israel, Israel is attacked from all sides. How they ever made it, I do not know. In that war for independence, they hung on. The territory that Israel succeeded in holding in that war was slightly expanded from the United Nations partition, but not significantly different. The Arabs ended up holding the West Bank, and Jerusalem was divided. That was the situation until 1967.

In 1967, of course, Egypt and the Arab countries were getting ready for an attack. Israel's intelligence was good. On the morning Israel thought the Arab attack was probably going to come—because every morning Egyptian pilots were in their planes on the runways—

they made a preemptive air strike and destroyed the Egyptian Air Force on the ground before it ever got off.

That morning, Israel told King Hussein of Jordan to just hold his position. He tried to annex the West Bank as part of Jordan. Only Pakistan and Great Britain recognized the annexation. But he had it. Israel said to King Hussein, you just hold your position, and do not move, and we will not attack you. King Hussein could not resist the temptation to drive west toward the Mediterranean. There was only 10 miles from the West Bank to the sea. He wanted to divide Israel north and south. He was unsuccessful in some of the toughest fighting that came in the 1967 war in the West Bank and in Jerusalem. Israel took it.

They have held it ever since.

Now the question becomes if we are going to go to this peace conference, the argument is if Israel settles in this area, is it going to disturb the peace conference? Therefore, we should not have any loan guarantees unless Israel promises not to settle—translated unless Israel promises to give up their claim to this land.

Mr. President, first they have a better moral claim to it than anybody else—a better moral claim.

Second, Israel has shown time and time again that it is willing to give up land in the hope of getting peace.

I said they gave up Suez three times, the Sinai Desert four times between 1937 and 1947 with different partition plans which they would not have gotten Jerusalem and would not have gotten the West Bank and would not have gotten the Negev. They said we will accept it. They got turned down by the Arabs every time.

So now we come to this year and this issue and the issue of whether this Senate should authorize the United States to guarantee Israel's bonds so that they can settle principally Russian Jewish immigrants. We are all but saying we are not going to do it if you are going to settle in the West Bank.

I would make this argument: Today it is all right for a Frenchman to buy land in the West Bank and live there. It is all right for a Canadian to buy land. It is all right for an American unless you are Jewish. If you are a French Jew or a Canadian Jew or an American Jew, it is alleged there is something wrong with you buying land in the West Bank.

Mr. President, no settlement—and I do not mean this in the sense of settlers—of the problems in the Middle East is going to work unless the parties that have to bargain it actually bargain it and live with it. If it is imposed from the outside, if we think we know the answer, if we think we know how the Jordan River ought to be divided for irrigation purposes, if we think we know where the line ought to be, we say Arabs on one side and Jews

on the other, and the parties do not want it, we are going to be like the British in Palestine. We are going to have a quarter of a million troops and try to police our idea. The answer is we would have as much staying power as we had in Lebanon.

So our position ought to be this:

One, Israel has a better claim to the West Bank, Judea, and Samaria than anybody else, a better claim historically, a better claim morally, and it should not be our position to try to tell Israel what they should do with their own land.

Two, the loan guarantees are not going to cost us anything and they are solid.

Three, with the loan guarantees Israel ought to be able to settle their people wherever they want in their historic lands, and that includes the West Bank.

Four, the Arabs have not made a precondition to going to this peace conference. If it ever gets going, they have not made a precondition that Israel must quit settling the West Bank. We seem to be the one that wants to make that condition and we should not.

Five, let this peace conference start. Let us see what demands are made on Israel. Let us see what demands Israel makes of the Arabs. This peace conference may not be over in a month. It may not be over in a year. It may not be over in 5 years. The people in the Middle East lived together for the better part of 5,000 years and they know each other pretty well. And sooner or later peace will come. Sooner or later another Arab country, just as Egypt did, will say it is not worth the candle. Let us sign a peace treaty with them, and in exchange for signing the peace treaty, let us see what they are willing to give. I want to emphasize "what they are willing to give," not what we think they ought to give. And my hunch is Israel will probably give up more land than I would give up given the same situation. But that is not my choice to make; that is Israel's choice.

If it is going to take another 5, 10, 15, or 20 years for final peace to come to the Middle East, the United States should have patience and we should continue to supply Israel and we should make sure we guarantee these loans so they can settle an immense increase in their population. That ought to be the limit of our policy and the end of it—supply and patience.

If we do that, it is not going to be just a victory for Israel. If we do that, it will eventually be a peace settlement in the Middle East, and I would like to think that that is in America's interest.

So, Mr. President, I very strongly support the efforts of the Senate to pass these loan guarantees, and I would hope it would pass unanimously.

I thank the Chair.

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

Mr. INOUE. Mr. President, I am please to yield 5 minutes to the Senator from Florida.

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

Mr. GRAHAM. Thank you, Mr. President, I appreciate the generosity of the floor manager and our distinguished colleague on this matter.

Mr. President, for more than two decades, the United States has had as one of its priorities in our international relationship with the Soviet Union to have that nation ease its emigration policy. Many of us have been involved over the past several years in individual cases of persons who had been denied the right to emigrate, year after year, for what appeared to be transparent rationale.

We now are seeing the tangible results of those over 20 years of effort to reform the Soviet's emigration policy. Approximately 180,000 Soviet Jews were able to leave the Soviet Union last year, more than any previous year. Hundreds of thousands more are expected to leave in the months ahead.

This is the kind of success that we have been working, literally years to accomplish. This is not the time, now that our policy has succeeded, to walk away from success. We must complete the task.

Let me remind my colleagues that this is a humanitarian task, a task which is in the best traditions of America from the Declaration of Independence to today.

As unrest and uncertainty spread to the Soviet Union, we find ourselves working against the clock to get these people out. There are reports that some Republics are already beginning to throw obstacles in the way of those wanting to emigrate. There is concern that, as the control of the central government is lifted, those enclaves of minority populations within certain Republics may become more vulnerable, more exposed to attack, more subject to anti-Semitism. It is for those reasons, Mr. President, that I strongly support the Inouye-Kasten proposal.

Mr. President, if the Congress decides to delay moving on this legislation, we do so only in deference to a President who has decided that delay is a prudent step to promote peace in the Middle East. I, for one, have serious reservations, whether a delay will improve the chances of gaining approval of these guarantees.

I am convinced that this objective is shared by the majority of this body. The fact that almost 70 of my colleagues have cosigned this legislation is evidence of that.

I am deeply concerned that by delaying action until the first of next year, we will face an even more daunting environment.

First, I am not optimistic that the peace process we are now embarked

upon will produce the results that we had hoped for. If it breaks down, I fear that Israel will be cast as the responsible party, no matter what.

Second, even if the peace process is successful, I believe it will usher in only a cold peace, much like the one that characterizes the peace between Israel and Egypt.

Third, unless our own economy improves between now and the first of the year, we face an even more difficult task of making the economic argument even though it is clear that Israel will bear the complete cost.

In fact, Israel has a perfect credit record, having never defaulted on a loan. Not only will the U.S. taxpayer be unaffected, but our own businesses actually stand to gain from increased exports as Israel purchases capital goods for industries, equipment, computers, and raw materials.

Mr. President, I would say that in my own State, several of our leading business persons are now actively involved in the resettlement process within Israel, including the provision of facilities for resettlement utilizing United States products to do so.

Despite these facts, a worsening U.S. economy will make it harder to get these points across to the American people.

We have already seen some of the confusion where people thought that the United States was making a \$10 billion grant to the State of Israel or a \$10 billion loan. There has been a failure to clearly communicate what is the character of the economic relationship, which is neither a grant nor a loan but a guarantee of loans which will be undertaken by the State of Israel.

Finally, next year will be a Presidential election year. I do not need to remind my colleagues the problems that that will create in debating this measure in that environment.

Mr. President, I cite these points because I do not want this Senate to walk away from a historically successful policy that will affect literally hundreds of thousands of men, women, and children.

Since the mid to late sixties, the United States has had as a policy goal free and open Soviet emigration. The Soviets were slow to respond. In fact, until the 1960's, the Soviets never recognized emigration as a legal right.

As a result of United States pressure, however, the Soviets began allowing limited emigration in the name of family reunification. Even that stopped as a result of the 1967 war but resumed after the war ended. The numbers climbed to 34,000 in 1974.

Then the Soviets began to assess an education tax charging those wanting to emigrate the cost of their Soviet educations.

That triggered the Jackson-Vanik amendment tying most-favored-nation status and Government credits to open

emigration. As a result, Soviet emigration dipped again and then started climbing as the two countries began negotiating SALT II.

Emigration peaked at 51,000 in 1979. Then SALT II stalled, the Soviets invaded Afghanistan, and the relationship soured. Emigration fell off to 1,000 a year during the eighties.

Gorbachev began to turn that around. And now we have a new Soviet law that basically recognizes the right of emigration. Although far from perfect, the law represents a watershed.

Mr. President, the question of loan guarantees is a humanitarian issue, not a peace issue. It is wrong, in my view, for the administration to use humanitarian assistance to impose terms on Israel before negotiations are even under way.

Israel is not only the only democracy in the region but is also a country with which we share cultural and historical ties. A strong and prosperous Israel will help, not hinder, the prospects for peace in the Middle East.

A U.S. commitment to fulfill its two decades of humanitarian commitment to open emigration from the Soviet Union will be true to our Nation's basic principles.

Thank you, Mr. President.

Mr. INOUE. Mr. President, I am pleased to yield to a Senator who has been in the forefront of fighting for the release of Soviet Jews and has been a steadfast supporter of humanitarian efforts to assist the people of Israel, Senator KENNEDY.

Mr. KENNEDY. Mr. President, I thank the Senator for his kind remarks. I want to say how much all of us appreciate his leadership and the leadership of Senator KASTEN and others on the issue, but particularly the work that they have done over a long period of time on this issue of Soviet Jewry, as well as on the issue of the security of the State of Israel.

I commend Senators INOUE and KASTEN for their leadership in putting forward this bipartisan proposal for United States loan guarantees to assist the Government of Israel in resettling the record numbers of Soviet refugees flooding into Israel. It is an impressive demonstration of the broad bipartisan support for these guarantees that 70 Senators are sponsoring this proposal.

All of us regret the unfortunate controversy surrounding this issue. In my view, it was an unnecessary, ill-timed, and ill-advised confrontation that undermines Israel and the peace process itself. Now the issue will be delayed until January, but I look forward to working with my colleagues to assure that the guarantees are provided expeditiously and early next year.

The broad support in the Senate for helping to resettle the Soviet Jews in Israel is a reflection of the deep commitment of the American people to helping those in need. The hundreds of

thousands of Soviet Jews arriving in Israel have become a worldwide symbol of freedom of religion and freedom from persecution. The United States has a responsibility to help them fulfill their dream of "next year in Jerusalem."

For decades, the United States made free emigration a high priority in our relations with the Soviet Union. Since 1974, normal trade relations were linked to a demand that the Soviets let their people go. Advocates of human rights throughout the world wrote letters and engaged in protests and demonstrations in defense of the thousands of Soviet dissidents and refuseniks who were denied permission to choose where they wanted to make their home.

In my own contacts with Soviet leaders, I consistently pressed for the release of these courageous individuals. I recall a memorable and moving meeting I had in 1974 in Alexander Lerner's apartment, where I saw first-hand the intensity of their commitment and the quality of their courage.

The plight of the Soviet Jews was symbolized for many of us by the harsh persecution of Natan Sharansky. Who among us will ever forget the tireless campaign waged by his wife Avital for his release? She stood in front of the White House, in Central Park in New York City, and in many other places and countries urging his release.

These courageous individuals are now living free and safe in Israel. We know their names and their stories and we did not hesitate to help them. Yet today, we risk turning our backs on the hundreds of thousands of other Soviet Jews who may not be a well-known to us but whose stories are no less compelling. Having made free emigration a high priority, the United States cannot now turn aside or walk away.

These innocent victims of years of persecution should not be held hostage to a policy dispute between Washington and Jerusalem. We need to separate the debate over the settlements from the issue of assisting the hundreds of thousands of new immigrants to Israel, the vast majority of whom are not settling in any of the disputed lands.

Since the Berlin Wall fell at the end of 1989, 350,000 Soviet and Ethiopian Jews have arrived in Israel. They have been absorbed into a country of 4 million people, and that process has not been easy. Up to 1 million more are expected over the next 3-5 years. Absorbing that many immigrants in Israel would be equivalent to the United States absorbing the entire population of France—56 million people. Clearly, because of our history and our heritage, we have a responsibility to help these Soviet emigrants establish their new lives in Israel and meet the basic necessities of life.

In fact, the delay is much longer than 4 months. Israel had originally

planned to make this request early this year. But last March, the Bush administration asked Israel to hold off until September. Israel complied with that request, only to be faced with a further delay last month that provoked the current controversy.

As we all know, the Israeli settlements in the disputed territories continue to be a contentious issue, both in Israel and in the United States. And yet, of the 350,000 immigrants who have arrived in Israel, only 3,000—1.2 percent—have settled in the West Bank and Golan Heights. Another 5,800—3.6 percent—chose to live in East Jerusalem. In all, 95 percent of the immigrants to Israel have settled within Israel's pre-1967 borders. In effect, the delay is penalizing 340,000 other settlers because of a controversy involving 8,800.

The United States is not being asked to provide any direct funds to assist these immigrants. Israel's request involves loan guarantees by the United States, not direct loans or direct foreign aid. All we are being asked to do is put the stamp of approval of the United States Government behind Israel's borrowing. That action will enable Israel to borrow funds at a somewhat lower interest rate, in order to help as many immigrants as possible.

The strong bipartisan support for this legislation is a tribute to the fact that the American people understand America's own responsibility to these immigrants. While I regret that the Congress will not address these urgent needs until early next year, I look forward to working to ensure that we meet this responsibility.

All of us hope that Secretary Baker's efforts to move the peace process forward are successful, and that Israel will at last be able to live at peace with her neighbors. While many difficult issues are still to be resolved, Secretary Baker's efforts represent the best hope for peace in over a decade, and I strongly support them.

Again, I commend Senator INOUE and Senator KASTEN for this initiative, and I look forward to working with them in the months ahead to achieve the great goals we share for peace and stability in the Middle East.

Mr. President, again I thank Senator INOUE and Senator KASTEN.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUE. Mr. President, how much time remains?

The PRESIDING OFFICER. Three minutes and 30 seconds.

Mr. INOUE. I yield 2 minutes and 35 seconds to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. D'AMATO. Mr. President, I thank the Senator from Hawaii.

I am pleased, Mr. President, to be able to join with Senator INOUE and Senator KASTEN in an effort to see to it

that the United States keeps its commitment to an ally, a moral promise that was made to the State of Israel during difficult times, to say the least, as Scud missiles came down upon her, as her freedom and the safety of her people, indeed, was placed in peril.

As the only true democracy and certain friend that the United States enjoys in the Middle East, Israel, at our request, withstood incredible provocations. It is our moral responsibility to support this loyal ally.

I have a difficult time understanding how it is that we approve \$5 billion in loan guarantees to Iraq between the years of 1985 and 1990, and now question \$10 billion in loan guarantees for a far different purpose, for a purpose of humanitarian aid to a country that has undertaken a policy which the United States for 20 years has pushed and fought for, and that is to make an opportunity for a home and for safety for those who have none and who were emigrating to the State of Israel.

The fact is, more than \$5 billion of the commercially borrowed money will be spent right here in the United States, creating or retaining up to 100,000 jobs in America.

So I intend to work with Senator INOUE and Senator KASTEN to achieve passage of the loan guarantee program because it is the right thing to do, both for the United States and Israel.

I yield the floor.

Mr. SEYMOUR. Mr. President, I am honored to rise this morning as an original cosponsor of this critical legislation to assist Israel with the greatest demographic challenge the country has ever faced.

Over the next 5 years, approximately 1 million Jews from the Soviet Union and Ethiopia will build new lives and tackle new obligations of citizenship in Israel. This mass movement of humans would proportionally represent the integration of the entire country of France by the United States. The Israelis will have to build approximately 260,000 new homes and 12,000 additional classrooms at a total cost of \$50 billion. Furthermore, the Israeli economy will have to provide another 360,000 jobs for these able-bodied or highly skilled immigrants.

For Israel, the task is clear and its scope is undeniable. The story of the Jewish people during much of our world's history has revolved around persevering minority communities enriching the life of societies everywhere from South America to Eastern Europe.

This story, as all of my colleagues know, has also been repeatedly stained by repression, slaughter, and genocide. In their suffering, however, the Jews held onto their faith and sharpened their sense of cultural identity.

With each passing tragedy, they looked more eagerly to the day when they could settle their own nation, in-

sulated not from the world or fresh ideas, but from the brutality of their oppressors.

For Israel, perhaps more than any other country in the world, the ideas of land and nationhood are eternally linked. And so today, the influx of Soviet Jews presents her nationhood with both another test and another opportunity.

The charter of the United Nations and the foreign policy of this country jealously guard the sovereignty of people and their governments as the unmovable keystones of world order. Israel's sovereignty, Mr. President, uniquely depends on the fulfillment of the homeland dream for any Jewish citizen who wishes to reside in the Jewish state.

Out of their theological tradition and precarious social experience, the Israelis forged this concept of sovereignty. To deny or dismiss it would amount to a denial or dismissal of the Jewish people's need for a single gathering place—or a country—with an open yet distinct culture.

In this light, the housing loan guarantees we consider this morning will help Israel to protect the most basic rights that the United States and the United Nations extend to all nations: Those of sovereignty and self-determination.

I must also add, Mr. President, that we do not place such a high value on sovereignty by mistake. Sovereignty and peace have a little-noted but close relationship, even in the turbulent world of the Middle East. As the confidence of the Israelis in their ability to secure the Jewish homeland rises, so will the prospects for a comprehensive regional peace agreement. And very few achievements would raise that confidence more than the successful absorption of 1 million new citizens over the next 5 years.

The housing loan guarantee issue, therefore, has both a philosophical and a practical angle for U.S. policy in the Middle East. I have just spoken at some length about the former: America has a direct moral investment in supporting Israel's efforts to extend the blessings of freedom and independence to people who struggled through the dark age of communism.

But at the end of this national transformation, Israel will stand as a more self-confident, if not populous, country with a practical stake in a peaceful region. She will have citizens who made great personal sacrifices to realize the simple goals of stable employment, healthy families, and safe neighborhoods.

These, Mr. President, are not the attributes of a warrior nation. Rather, they are the signs of a democratic people who will labor mightily to avoid the trauma of war. Nothing could better serve America's interests in a world more ready than ever to cast the tyrants and dictators aside.

Thank you, Mr. President, and I yield the floor.

Mr. McCAIN. Mr. President, I am pleased to support the bill introduced by Senators INOUE and KASTEN to provide loan guarantees to our staunchest ally and best friend in the Middle East, the State of Israel. As I have often stated, my support is founded in my appreciation for the friendship that has served both the United States and Israel so well. But my support rests also in my conviction that such an action, which would be undertaken at little cost to the taxpayer, is humanitarian in nature. It is intended to help Israel integrate into its society the hundreds of thousands of Soviet and Ethiopian Jews whose emigration to Israel we have consistently advocated.

Mr. President, my support for this measure does not lessen my concern over the tension between the governments of the United States and Israel that was occasioned by differences on the loan guarantee issue. That controversy is in neither country's best interests.

Accordingly, I have counseled members of the administration, Israeli Government officials and Members of Congress on both sides of this issue to seek an honest compromise that will meet Israel's urgent humanitarian needs, as well as respect the President's foreign policy prerogatives.

I am satisfied that we are now on such a sensible course. The introduction of this bill will not deprive the President of the 120 days he asked for to continue facilitating peace negotiations between Israel and its neighbors. His leadership in this area has thus far been nothing short of outstanding. I commend the President for his efforts, and wish him continued success.

I am also pleased that there seems to be a growing recognition that the strong, enduring friendship of the United States and Israel be protected from further damage by a continuing dispute on this issue. Rhetoric on both sides has cooled recently, and I was heartened by President Bush's call for the repeal of the obnoxious "Zionism is a form of racism" resolution passed by the U.N. General Assembly in 1975.

I am hopeful that by delaying the consideration of this bill in deference to the President's wishes and in respect for his worthy stewardship of American foreign policy we will restore the full amity and respect that have long characterized United States-Israeli relations. I am confident that at the end of this delay, the United States commitment to a strong Israeli society will be as clear as ever. For that policy goal is most certainly in the best interests of the United States and Israel.

Mr. BOND. Mr. President, this is an important measure that the Senators from Hawaii and Wisconsin are submitting today. It provides a means for the United States to participate in one of

the greatest humanitarian efforts of our time, the resettlement of hundreds of thousands of Jews from Ethiopia and the Soviet Union.

I am a cosponsor of this amendment because it is right for this Nation to assist Israel in its effort. For a decade and a half this Nation has made free emigration for Soviet Jews a central tenet of all of its negotiations with the Soviet Union. Now that we have finally been successful in that effort, it would be wrong to suggest that we have no responsibility for their resettlement.

The amendment presented today allows us to meet that obligation in a manner that serves the needs of both Israel and the United States. Loan guarantees will allow the United States to provide substantial assistance to Israel without using critical resources that are needed to deal with problems at home.

I also understand the President's concerns on this issue. Though I was disappointed to see the discussion over these guarantees moved from the conference room to the airwaves, I remain confident that we will be able to craft a guarantee package that will be acceptable to all involved. However, as we move toward a compromise and as we move toward a Mideast peace conference, it is essential to ensure that we avoid linking the two issues. The humanitarian effort to resettle the Ethiopian and Soviet refugees is an issue separate and apart from the search for progress toward peace in the region. Any attempt to link the two would simply doom both efforts to failure.

In closing Mr. President, I would just reiterate my hope that we can find an agreement on this issue that will allow us to go forward with the guarantees as soon as Congress reconvenes in January. The need is dire and our concern is increased daily as we read reports from the Soviet Union about efforts in some of the Republics to limit or even to stop Jewish emigration. Without the guarantees—and the other moneys from European countries that our funds will drive—Israel will not be able to provide housing and services and jobs, and the emigration will dry up. If that delay were to result in Jews being caught in the Soviet Union or in individual Republics following a breakup of the union, it would be a great tragedy.

I am certain we can avoid that result. I look forward to working with the sponsors of the amendment as they continue to seek a compromise that will allow this measure to go forward.

Mr. LAUTENBERG. Mr. President, I rise as an original cosponsor of this legislation to extend \$10 billion in loan guarantees to Israel for Soviet refugee absorption.

Over the last two decades, the United States has led the world in appealing for the freedom of Soviet Jewry. A number of former refuseniks have stated

it was U.S. actions which kept alive their hope of religious freedom and respect for human rights. Not only did the United States support Soviet Jewish emigration, but by limiting refugee entry into the United States, our policy actually encouraged them to emigrate to Israel.

One million Soviet Jews are expected to emigrate to Israel over the next 5 years, which will result in an increase of approximately 20 percent of Israel's population. As their dreams come to fruition, the United States is presented with a historic opportunity to help with their absorption and make good on our commitment to them. I strongly support the proposed refugee guarantees as a cost-effective, humanitarian, and urgent means of assisting with Soviet resettlement.

Developments in the Soviet Union, as encouraging as they are, portend a period of political and economic instability and cast a troublesome shadow on the future and safety of Jews in the region. Ethnic nationalism is on the rise in each of the Republics, and the onset of winter and potential famine could fuel ethnic tensions. Historically, the combination of these factors spell uncertainty for Jews in the former Soviet Union.

Soviet Jews have been arriving in Israel at the rate of about 20,000 a month. These refugees, seeking a new life outside of the Soviet Union, need jobs, housing, and the chance for an independent life. The loan guarantees will help provide those opportunities.

Mr. President, the loan guarantees for absorption that would be extended in this legislation will not cost the U.S. taxpayer any money. These are guarantees the United States is providing, not actual dollars. The \$10 billion will be provided to Israel by banks.

I wish that the administration would convey that message to the American public. These are loan guarantees; there will be no cost to the American taxpayer. That wasn't the case with the forbearance on 7 billion dollars' worth of loans that Egypt owed this country. That was real money. The President worked hard to forgive that debt because he thought it was in the best interest of America's foreign policy. I supported him in that.

Now, helping Israel to absorb refugees is also in our best interest. That there are so many Soviet refugees seeking a new life in Israel is a direct result of our successful foreign policy.

We have a window of opportunity now to help provide a safe haven for Soviet refugees seeking a new life in Israel. We have a moral obligation to help them. But the United States has suddenly done an about face on the refugee absorption loan guarantees. The President is walking away from an opportunity to help provide a haven for those refugees from persecution, from harassment, from a long history of second class citizenship.

Mr. President, I support approval of the guarantees promptly, in the most cost effective way possible. I think the President is wrong to link humanitarian loan guarantees with the peace process. He created an issue where none existed.

He is also wrong to link the guarantees with the settlements. We all have high hopes that representatives of Israel and the Arab nations will soon sit down and talk of peace, but there should be no preconditions on our friend and ally, Israel. The United States should not force Israel to concessions before those talks begin. It is wrong to demand that Israel give away the store before she gets to the table.

We can recall that Menachem Begin and Anwar Sadat met without preconditions. Yet they achieved a peace that met the needs of their two nations. I was in Israel when Sadat arrived for those historic negotiations. It was one of the most dramatic and moving moments I have ever experienced.

But we've seen nothing dramatic from the Arabs. The Arab nations haven't made any concessions. And the United States has demanded nothing from them. They continue to cling to the hateful Arab League boycott of American companies that do business with or invest in Israel.

They haven't budged one inch on this, even after U.S. citizens put their lives on the line in a war against Saddam Hussein's aggression. They continue to boycott our companies, and the administration looks the other way. It doesn't pressure them to move on this point. Now that doesn't make sense.

Mr. President, it is wrong to hold Soviet Jewish refugees hostage to a peace process over which they have no control. These loan guarantees are separate from the peace process. They are humanitarian in nature.

The United States fought to secure the right to emigrate for these Soviet Jews. The United States encouraged these people to go to Israel. And, when Israel sought loan guarantees last year, the administration gave every indication that, if delayed until September, the loan guarantees would be considered. We have a moral obligation to fulfill the pledge we made to those who have left the Soviet Union.

I urge my colleagues to join me in supporting this legislation as well.

Mr. ADAMS. Mr. President, along with 69 of my Senate colleagues, I rise today to express my strong support for the Israeli Government's request for \$10 billion in loan guarantees. Although it now appears that the request will not be taken up by the Senate until January—due to the Administration's decision to link the guarantees to the Middle East peace initiative—it is important that we lay the foundation now for the guarantees' prompt and favorable consideration at that time.

I am deeply concerned at the reports I am hearing that treatment of the loan guarantees in January may involve new linkage; to the cessation of settlement construction in the West Bank, to Israeli economic reform, or to some as yet unnamed criterion. This last scenario is one I find most disturbing.

Loan guarantees for humanitarian purposes should not be held over Israel's head in order to further the administration's peace initiative. Any peace that is imposed from the outside will come at too great a cost and will not last. The Arab States have not made the loan guarantees an obstacle to peace. It is inappropriate for the administration to inject this issue into the peace process.

My preference would be to move on the question of loan guarantees now. Clearly, a majority of the Senate supports the guarantees. But given my colleagues' preference to give the administration its 120-day delay, we will simply have to wait.

I fervently hope that peace talks are well underway by the time we reconvene in January. But even if they are not, the loan guarantees must be taken up and they must be granted. I look forward to working with my colleagues on the Appropriations Committee to secure approval of the loan guarantees, without linkage, at the earliest possible time.

Mr. MACK. Mr. President, I am proud to be an original cosponsor of an amendment that would allow the United States to cosign, or guarantee, \$10 billion in commercial bank loans to Israel over the next 5 years. I salute the primary sponsors, Senators KASTEN and INOUE for their strong leadership on this issue.

Many of my colleagues have correctly pointed out that we are not discussing a grant to Israel, or even a loan, but guarantees of loans that Israel will take out with commercial banks. These guarantees are not slated to cost the taxpayer a dime; the cost of the risk, which is 1 or 2 percent of the loan, will be paid by Israel. So the issue here is not cost.

The issue is that Israel stood by us in our time of need, now it is time for us to stand by Israel.

Let us not forget that a few short months ago the American people watched in horror as deadly Iraqi missiles rained down upon the cities of Israel. We cheered as our Patriot missiles intercepted the Iraqi Scuds, we watched as men, women, and children donned gas masks as we heard the sirens wail through our television sets.

During the war, the United States asked Israel to do what perhaps no nation has ever been asked, let alone expected to do—risk her national security at the request of a close ally. For the first time in her history, Israel agreed not to defend herself by attacking Iraqi missile sites.

Israel made the right decision, but let no one think that it was not an agonizing one for the Israeli leadership, a decision that could have cost the lives of Israeli citizens.

Now Israel is asking the United States for help in absorbing a 25-percent increase in her population, about 1 million Soviet and Ethiopian Jews over the next few years. Already in the past 2 years, Israel has taken in twice as many refugees as the United States, about 100 times as many on a per capita basis.

Israelis stood by us, now we should stand by them. It's that simple.

It is unfortunate that the issue of loan guarantees for Israel has become wrapped up in the peace process. I am strongly opposed to linking Arab demands, such as freezing Israeli settlements, to these loan guarantees, and I opposed delaying consideration for that reason.

Mr. President, I hope these absorption loan guarantees will be approved by the Congress as soon as possible. Again, I thank the sponsors for their good work and look forward to the day that Israel can live in freedom, security, and peace, and in continued close friendship with the United States.

I ask unanimous consent that a letter I wrote to Senator PATRICK LEAHY urging him not to delay consideration of the loan guarantees be inserted at this point in the RECORD.

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

U.S. SENATE,  
Washington, DC, September 6, 1991.  
HON. PATRICK J. LEAHY,  
Russell Senate Office Building, Washington,  
DC.

DEAR SENATOR LEAHY: I understand that you intend to delay consideration of the bill that would provide for loan guarantees to help Israel absorb about a million Soviet and Ethiopian Jews over the next five years.

If Congress delays the provision of loan guarantees for Israel, it would be perceived by the Arab world as a clear invitation to link U.S. humanitarian assistance to Israel to concessions in the peace process. I am strongly opposed to any linkage between humanitarian assistance for Israel and the peace process.

The U.S.-Israel relationship must not become a bargaining chip in the peace process. The alliance between the United States and Israel—the only democracy in the Middle East—must not be held hostage to Arab states' demands against Israel.

Throughout the Gulf war, the United States steadfastly opposed any linkage between the U.S.-Israel relationship and the peace process. Now is not the time to give in to the demands of Arab states which seem more interested in wringing concessions from Israel and the United States than in real peace.

The modern exodus of a million Soviet and Ethiopian Jews in a historic victory for freedom, human rights and the long hard work of many Americans. The exodus is far from complete, and its success should not be taken for granted.

It is in America's national interest not to jeopardize the flow of Soviet emigrants to Is-

rael, and to help ensure that the only democracy in the Middle East successfully completes their absorption.

We should not allow Arab states to deter us from pursuing our own national interest, or to use the United States to extract concessions from Israel. I strongly urge you to facilitate the Congressional consideration of these urgent humanitarian loan guarantees for Israel without delay.

Sincerely,

CONNIE MACK,  
U.S. Senator.

Mr. HATCH. Mr. President, I rise in support of providing Israel with loan guarantees for the absorption of an estimated 1 million Soviet and Ethiopian emigres. In July, I strongly endorsed the concept of loan guarantees as a purely humanitarian gesture designed to help Israel cope with the massive influx of refugees. This emigration continues apace today. Every month between 10,000 and 15,000 Soviet emigres arrive in Israel. The United States cannot avert its eyes to the plight of Soviet Jewry, and in my opinion, we have a moral obligation to assist the Israeli Government finance this overwhelming and unprecedented humanitarian effort.

Mr. President, I believe that the administration should be strongly commended for its consummate diplomatic skill in crafting a regional peace conference to be convened later this month. This has been a long and difficult venture. The President has shown a great deal of initiative, leadership, and ingenuity in bringing disparate groups to the negotiating table. Yet the President recently requested that Congress delay loan guarantees for Israel to help keep this peace process on track. In contrast to the administration, I do not believe that these issues should be linked, and I support loan guarantees for three important reasons.

First, Members of this Chamber fought vigorously on behalf of Soviet Jewry, and we should not rest on our laurels. The presently high levels of Jewish emigration we are experiencing should not be taken for granted. Soviet Jews have been persecuted for many years, and receiving exist visas for this group has traditionally been a painstaking and difficult process. The situation in the Soviet Union and the various Republics is in a state of flux, and it is imperative that Soviet Jews leave when the door is open. It seems all too plausible that the ethnic strife, nationalism, and political events in the U.S.S.R. could create an internal situation in which this group is again persecuted, or not allowed to leave certain regions of the country for various reasons. We should act while we have this unique opportunity. The extension of loan guarantees will certainly help in this important endeavor.

Second, although I realize that the administration would like Congress to delay consideration of loan guarantees

for 120 days, this interim period may actually be more harmful than the White House realizes. For example, construction does not immediately follow contracting or the obligation of moneys. There is always a lag effect, sometimes as long as a year. In Israel, the delay is often around 2 years. For those awaiting housing, this could result in serious consequences.

Finally, I believe that the granting the loan guarantees is the proper and moral course of action. I remain firmly committed to the safety and welfare of Israel, and support the immediate granting of the guarantees.

Mr. SANFORD. Mr. President, I am in favor of the United States assisting the State of Israel in resettling Soviet and Ethiopian Jews by guaranteeing the repayment of sums it borrows for this purpose. This is neither a loan nor a grant; it simply permits Israel to borrow at more favorable rates. We have, it seems to me, a moral obligation to assist in this manner.

The necessity of building new housing and creating new jobs is a result of the acceptance of refugees from the Soviet Union and Ethiopia. It has for years been a major policy of this country to press the Soviet Union to permit Jews to emigrate. This resettlement serves our national policy, and illustrates dramatically a historic purpose of the State of Israel, a place where persecuted Jews may come as a matter of right to a homeland.

The President of the United States has expressed a desire to delay consideration of this guarantee until January. This delay has been resisted by a number of people in the Senate and elsewhere. However, in spite of the resistance, it is our President who holds the initiative for the peace talks in the Middle East. For this reason, he is entitled to the benefit of any reasonable doubt. We rely on him for the effort to bring to an end the long strife in this region. So, I must support our President's call for additional time.

This does not mean that I will favor linking the West Bank issues with the loan guarantee. I will not.

From the beginning, we have helped keep Israel strong in a hostile neighborhood. Our policy should be to help Israel remain strong, should be to use our good offices to facilitate peace discussions, and we should be willing to let the nations debate and determine between themselves their longstanding differences.

The PRESIDING OFFICER. The Senator has 1 minute remaining.

The Senator from Wisconsin.

Mr. KASTEN. Mr. President, we have had a truly remarkable morning here in the Senate—a discussion that demonstrates the truly bipartisan support for our Israeli allies. We must work together—Democrats and Republicans, Congress, and the President—to work out how this support will be translated into policy.

We go forward in a spirit of compromise and bridge building, because we are fully conscious of the great principles that unite us: Loyalty to allies. Support for friends. Stability and bipartisanship in foreign policy.

This is what we stand for. As far as the issue at hand is concerned, no cost to taxpayers is involved. These loan guarantees are a consensus policy, and I am glad that we were able to give such strong collective voice to that policy today.

Finally, Mr. President, I ask unanimous consent that an article I wrote for the September 19, 1991, Roll Call be printed at this point in the RECORD.

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

[From Roll Call, Sept. 19, 1991]

LOAN GUARANTEES FOR ISRAEL: A STRONG

"YES" FOR A LOYAL ALLY

(By Senator Bob Kasten)

For two decades, it has been a key goal of American foreign policy to liberate Soviet Jewry from Communist oppression.

The bipartisan policy calling for free immigration of Soviet Jews was begun by the late Sen. Henry Jackson (D-Wash) with his historic Jackson-Vanik amendment, and has remained a foreign policy cornerstone for every Administration since Nixon's.

At long last—with the collapse of the Soviet Union and its Communist tyranny—our 20-year effort has succeeded. Since 1989, nearly 350,000 Soviet Jews have immigrated to Israel—and it is estimated that the total will reach one million by the end of 1995.

"Next year in Jerusalem" is no longer merely a noble wish. It is a reality—the result of our long-standing policies.

Now that we have succeeded in achieving our bipartisan goal, it would be unconscionable for us to flinch from our responsibility for the consequences.

The scope of this current immigration is unlike anything Israel has ever seen since World War II and the creation of the state in 1948.

It represents an increase of almost 25 percent over the current population.

For the last two decades of the Cold War, Israel held out as the bastion of Democracy and pro-Americanism in an extremely dangerous part of the world. Surrounded by Soviet allies—back when Communism was on the offensive—the State of Israel held the line for our side.

Earlier this year, from Texas to Wisconsin, from Maine to Oregon, we all watched on TV as the Scud missiles slammed into Israel. We also saw that the Israelis did not retaliate for these terrorist acts—because America asked them not to.

Israel kept faith with America. Will we have the moral sense—the loyalty—to do the same?

I am confident that we will—because the American people and their representatives in Congress don't believe in turning their backs on an ally.

Israel needs our help in resettling this massive influx of refugees, the influx that represents the success of American foreign policy.

Along with Sen. Daniel Inouye (D-Hawaii), I have introduced legislation in the Senate that would extend to Israel the helping hand it so urgently requires.

Our bill provides loan guarantees to Israel to help defray the extraordinary costs of re-

settling and absorbing Soviet and Ethiopian refugees.

The loan guarantees would amount to \$2 billion for fiscal year 1992, and \$2 billion for each of the four succeeding fiscal years.

These loan guarantees have been requested by the Israeli government, and they represent what the Israelis believe will be an adequate amount to deal with the housing crisis.

That's what the loan guarantees are—a response to urgent human needs, requested by a reliable and heroic friend. It's important, however, that we also understand what the loan guarantees are not.

The loan guarantees are not U.S. grants. Under our loan guarantee bill, the U.S. taxpayer will not be sending any funds to subsidize Israeli housing.

The loan guarantees are not U.S. loans. The Treasury will not be lending money to resettle the refugees.

It will merely guarantee that when private sector lenders lend money for that purpose, the U.S. government will stand surety for the loan. (There's very little risk in that: Israel has never defaulted on U.S. loan guarantees.)

The only U.S. budget funds involved in the loan guarantee process are the origination fee, which we estimate will amount to \$100 million. Under our bill, Israel will pay for this origination fee, making U.S. taxpayer funding completely unnecessary.

Our bill won't cost the Treasury anything. It will meet a major emergency being faced by one of America's best friends. And it is the honorable thing to do. That's why I will be pressing for the enactment of the Kasten-Inouye loan guarantee legislation.

The PRESIDING OFFICER. All time has expired. The Senator from West Virginia.

Mr. BYRD. Mr. President, has morning business expired?

The PRESIDING OFFICER. The time set aside for morning business has expired.

Mr. BYRD. Mr. President, I ask unanimous consent there be an additional 10 minutes in morning business, and that Senators may speak therein.

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

#### PEACE IN THE MIDDLE EAST

Mr. BYRD. Mr. President, the current political environment is filled with transformation and opportunity. Old structures are in advanced stages of decay and collapse throughout Eastern Europe and what is left of the Soviet monolith. Change is also underway in the Middle East, stimulated by the bold, naked grab for Kuwait and the stinging rebuff administered by the coalition led by the United States. These are historic times, times when new forms, new ideas, rearrangements are possible, a springtime thaw is in the atmosphere.

What kind of new order, forms, concepts, structures, alliances, rules, and arrangements will emerge over the next few years will not be the work of some mystical historic force. Historians may characterize the forces of history. But, at bottom, what makes a difference is the broad vision and work of individual men, whose human nature

has never changed. Now is the time for taking the broad perspective, the long look. Now is the time for putting aside the narrow motives of political campaigns, of posturing for advantage on the margin.

I have commended President Bush in the past for seeking to tackle the intractable problems of a peaceful settlement in the Middle East. The emotions and suspicions run through a deep canyon in the Middle East, and the bridging work is horrendously difficult. This is certainly a time for us to give the President our undivided support in his efforts to construct that bridge. The timing is good, and is more suitable now than it has been for many years. So I congratulate the President for his efforts to bring all the parties to the peace table—all the parties to the peace table—to act as a good-faith broker, for helping establish a fair negotiation, without loading the dice to any party's advantage. Therefore I have supported his effort to delay for a very short time consideration of any major new program of largess for Israel. I have also opposed new arms sales to Arab states for the time being. I think the President is taking the broad view, and I am sure that he needs all the mandate and support from us that he can get. The various parties to the differences in the Middle East watch political events in the United States with a fixation. They look for signs that the United States is playing a role of statesman. Only great statesmanship will help transform the Middle East.

That is the right course. Let us support this President in his efforts to maximize on the military victory that was achieved in the Middle East. Let us give this President the tools which he needs to seek lasting peace in the Middle East. That is what is in the best long-term interest of our friends in the region. Now is not the time to prejudge the outcome of the negotiations. Let us be wise and wait to see what progress can be made and then decide what course is in the best interests of our own Nation and of our friends in the region.

This Senator has not joined in this legislation because I believe it is not possible to know the best course at this time. I want to wait to see if progress is made at the peace table. I want to wait to see if progress is made on the settlements issue. I want to wait to see if the American people are satisfied that these loan guarantees should be granted outright or if there should be certain conditions attached, or if they should be granted at all. There are pressing needs here at home and the American people have a right to have their views considered. They are paying the tab.

They have been paying the tab. And make no mistake about it there will be a tab to pay. I regret that so many in

this body appear to have prejudged this issue. That is their right to do, of course. It is my hope that Senators will carefully debate this proposal, with the fundamental interests of this country, the United States, in mind when the time comes to consider it.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, how much time remains in the 10 minutes?

The PRESIDING OFFICER. There remains 3 minutes and 50 seconds.

Mr. DOMENICI. I wonder if I might, before I start, ask for an additional 2 minutes under the same conditions?

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

#### CLARENCE THOMAS

Mr. DOMENICI. Mr. President, it is with pleasure that I rise today in support of the nomination of Clarence Thomas to serve as an Associate Justice of the Supreme Court of the United States.

I have found Clarence Thomas to be a man of strong intellect, integrity, leadership, and achievement. By his qualifications, experience, and character, he has proven that he is a worthy candidate to become a Supreme Court Justice.

I would like to call to the attention of my fellow Senators a response Judge Thomas gave to a question asked by one of our Members, a member of the Judiciary Committee, at hearings on September 13, 1991. Judge Thomas was asked: " \* \* I see these two Clarence Thomases: One who has written some extremely \* \* \* insensitive things \* \* \* and then I hear a Clarence Thomas with a heart. \* \* \* Which is the real Clarence Thomas?"

Judge Thomas responded and said the following: "Senator, that is all a part of me. I used to ask myself how could my grandfather care about us when he was such a hard man sometimes." "But, you know," said the judge, "in the final analysis, I found that he is the one who cared the most because he told the truth, and he tried to help us help ourselves."

Actually, I find that statement, obviously made extemporaneously about a very, very serious subject and a subject of this man's life that deserves a question, I found that answer to be one of the most significant and philosophical statements that he made in the entire process of being questioned.

Let me repeat. He was asked: "Which is the real Clarence Thomas? You have written some extremely insensitive things, and then I hear the Clarence Thomas with a heart." And he said: "Senator, that is all part of me," paraphrasing, as I would put it, "I am some of both. I used to ask myself, how could my grandfather care about us when he was such a hard man sometimes. But,

you know, in the final analysis, I found that he is the one who cared the most because he told the truth, and he tried to help us help ourselves."

Frankly, I believe this distinguished gentleman, whom I happen to know personally and interviewed for a considerable period of time prior to the hearings in Judiciary, could almost seek to be a Supreme Court judge with that philosophy and an intellect and qualification based upon knowing the law. I think that is absolutely, without question, one of the most profound statements made during that hearing and one which gives me great confidence about his future because I believe he is some of both. I believe he will tell the truth, and that is what he said his grandfather did, "and he tried to help us help ourselves."

So, Mr. President, a Supreme Court Justice must be a person of integrity. He or she must be honest, ethical, and fair. A Supreme Court Justice must be a person with strength of character. He or she must possess great courage to render decisions in accordance with the Constitution and the laws of the United States, and they must never fear if, in fact, they have concluded that such is the law. A Supreme Court Justice must be a person with compassion. He or she must respect both the rights of the individual and the rights of society and must be dedicated to provide equal justice under the law.

Obviously, he is going to be a man of compassion. He just got through answering that part as he discussed the two aspects of living, or leading, or growing up, as I just shared them with the Senate.

A Supreme Court Justice should be a person with proper judicial temperament. He or she must understand and appreciate the genius of our federal system and of the delicate checks and balances between the branches of the National Government.

Mr. President, in the opinion of this Senator, Clarence Thomas possesses these qualities and more. His background and upbringing will bring a unique perspective to this Court. When I began looking into his background to find out more about who he was, I ran across a speech that he gave in 1985 at Savannah State College. I believe it was reported on the editorial page of the New York Times. It was entitled "Climb the Jagged Mountain." It was by this distinguished gentleman.

He was speaking to a group of graduating seniors in preparing them for what they would face. He related the story of his early life as an example of being able to endure adversity to achieve excellence. This story reveals one of the most important aspects of his character and it is moving for all those who read it. At this point, Mr. President, I ask unanimous consent that the text of that speech, as covered in the New York Times on July 17, 1991,

be printed in the RECORD. I am not sure it is the entire text, but let me print just what is there.

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

[From the New York Times, July 17, 1991]

#### CLIMB THE JAGGED MOUNTAIN

(Following are excerpts from a commencement speech that Clarence Thomas, President Bush's nominee to the Supreme Court, gave at Savannah State College on June 9, 1985.)

(By Clarence Thomas)

I grew up here in Savannah. I was born not far from here (in Pin Point). I am a child of those marshes, a son of this soil. I am a descendant of the slaves whose labors made the dark soil of the South productive. I am the great-great-grandson of a freed slave, whose enslavement continued after my birth. I am the product of hatred and love—the hatred of the social and political structure which dominated the segregated, hate-filled city of my youth, and the love of some people—my mother, my grandparents, my neighbors and relatives—who said by their actions, "You can make it, but first you must endure."

You can survive, but first you must endure. You can live, but first you must endure. You must endure the unfairness. You must endure the hatred. You must endure the bigotry. You must endure the segregation. You must endure the indignities.

I stand before you as one who had the same beginning as yourselves—as one who has walked a little farther down the road, climbed a little higher up the mountain. I come back to you, who must now travel this road and climb this jagged, steep mountain that lies ahead. I return as a messenger—a front-runner, a scout. What lies ahead of you is even tougher than what is now behind you.

That mean, callous world out there is still very much filled with discrimination. It still holds out a different life for those who do not happen to be the right race or the right sex. It is a world in which the "haves" continue to reap more dividends than the "have-nots."

You will enter a world in which more than one-half of all black children are born primarily to youthful mothers and out of wedlock. You will enter a world in which the black teenage unemployment rate as always is more than double that of white teenagers. Any discrimination, like sharp turns in a road, becomes critical because of the tremendous speed at which we are traveling into the high-tech world of a service economy.

There is a tendency among young, upwardly mobile, intelligent minorities to forget. We forget the sweat of our forefathers. We forget the blood of the marchers, the prayers and hope of our race. We forget who brought us into this world. We overlook who put food in our mouths and clothes on our backs. We forget commitment to excellence. We procreate with pleasure and retreat from the responsibilities of the babies we produce.

We subdue, we endure, but we don't respect ourselves, our women, our babies. How do we expect a race that has been thrown into the gutter of socio-economic indicators to rise above these humiliating circumstances if we hide from responsibility for our own destiny?

The truth of the matter is we have become more interested in designer jeans and break dancing than we are in obligations and responsibilities.

Over the past 15 years, I have watched as others have jumped quickly at the opportunity to make excuses for black Americans. It is said that blacks cannot start businesses because of discrimination. But I remember businesses on East Broad and West Broad that were run in spite of bigotry. It is said that we can't learn because of bigotry. But I know for a fact that tens of thousands of blacks were educated at historically black colleges, in spite of discrimination. We learned to read in spite of segregated libraries. We built homes in spite of segregated neighborhoods. We learned how to play basketball (and did we ever learn!), even though we couldn't go to the N.B.A.

We have lost something. We look for role models in all the wrong places. We refuse to reach back in our not too distant past for the lessons and values we need to carry us into the uncertain future. We ignore what has permitted blacks in this country to survive the brutality of slavery and the bitter rejection of segregation. We overlook the reality of positive values and run to the mirage of promises, visions and dreams.

I dare not come to this city, which only two decades ago clung so tenaciously to segregation, bigotry and Jim Crowism, to convince you of the fairness of this society. My memory is too precise, my recollection too keen, to venture down that path of self-delusion. I am not blind to our history—nor do I turn a deaf ear to the pleas and cries of black Americans. Often I must struggle to contain my outrage at what has happened to black Americans—what continues to happen—what we let happen and what we do to ourselves.

If I let myself go, I would rage in the words of Frederick Douglass: "At a time like this, scorching irony, not convincing argument, is needed. Oh! Had I the ability, and could reach the nation's ear, I would today pour out a fiery stream of biting ridicule, blasting reproach, withering sarcasm and stern rebuke. For it is not light that is needed, but fire; it is not the gentle shower, but thunder. We need the storm, the whirlwind and the earthquake."

I often hear rosy platitudes about this country—much of which is true. But how are we black Americans to feel when we have so little in a land with so much? How is black America to respond to the celebration of the wonders of this great nation?

In 1964, when I entered the seminary, I was the only black in my class and one of two in the school. A year later, I was the only one in school. Not a day passed that I was not pricked by prejudice.

But I had an advantage over black students and kids today. I had never heard any excuses made. Nor had I seen my role models take comfort in excuses. The women who worked in those kitchens and waited on the bus knew it was prejudice which caused their plight, but that didn't stop them from working.

My grandfather knew why his business wasn't more successful, but that didn't stop him from getting up at 2 in the morning to carry ice, wood and fuel oil. Sure, they knew it was bad. They knew all too well that they were held back by prejudice. But they weren't pinned down by it. They fought discrimination under W.W. Law [a Georgia civil rights leader] and the N.A.A.C.P. Equally important, they fought against the awful effects of prejudice by doing all they could do in spite of this obstacle.

They could still send their children to school. They could still respect and help each other. They could still moderate their use of alcohol. They could still be decent, law-abiding citizens.

I had the benefit of people who knew they had to walk a straighter line, climb, a taller mountain and carry a heavier load. They took all that segregation and prejudice would allow them and at the same time fought to remove these awful barriers.

You all have a much tougher road to travel. Not only do you have to contend with the ever-present bigotry, you must do so with a recent tradition that almost requires you to wallow in excuses. You now have a popular national rhetoric which says that you can't learn because of racism, you can't raise the babies you make because of racism, you can't get up in the mornings because of racism. You commit crimes because of racism. Unlike me, you must not only overcome the repressiveness of racism, you must also overcome the lure of excuses. You have twice the job I had.

Do not be lured by sirens and purveyors of misery who profit from constantly regurgitating all that is wrong with black Americans and blaming these problems on others. Do not succumb to this temptation of always blaming others.

Do not become obsessed with all that is wrong with our race. Rather, become obsessed with looking for solutions to our problems. Be tolerant of all positive ideas; their number is much smaller than the countless number of problems to be solved. We need all the hope we can get.

Most importantly, draw on that great lesson and those positive role models who have gone down this road before us. We are badgered and pushed by our friends and peers to do unlike our parents and grandparents—we are told not to be old-fashioned. But they have weathered the storm. It is up to us now to learn how. Countless hours of research are spent to determine why blacks fail or why we commit crimes. Why can't we spend a few hours learning how those closest to us have survived and helped us get this far?

As your front-runner, I have gone ahead and taken a long, hard look. I have seen two roads from my perch a few humble feet above the madding crowd. On the first, a race of people is rushing mindlessly down a highway of sweet, intoxicating destruction, with all its bright lights and grand promises constructed by social scientists and politicians. To the side, there is a seldom used, overgrown road leading through the valley of life with all its pitfalls and obstacles. It is the road—the old-fashioned road—traveled by those who endured slavery, who endured Jim Crowism, who endured hatred. It is the road that might reward hard work and discipline, that might reward intelligence, that might be fair and provide equal opportunity. But there are no guarantees.

You must choose. The lure of the highway is seductive and enticing. But the destruction is certain. To travel the road of hope and opportunity is hard and difficult, but there is a chance that you might somehow, some way, with the help of God, make it.

Mr. DOMENICI. Mr. President, Clarence Thomas has referred to his life experience as "the climb of the jagged mountain." He was born, as everyone knows, on June 23, 1948, in a small home in Pin Point, GA. They did not have any of the nice things of life that we have all grown to expect as we grow up and try to enjoy being Americans. The world of this man as a young person was the world of segregated Georgia.

He learned the value of hard work and had the desire to excel. He at-

tended St. Pius X High School, an all-black school, for 2 years and, in 1964, he transferred to the St. John Vianney Minor Seminary. We even saw some of those testifying who taught him in his early years. We saw a marvelous nun testify about the quality and character of this man. We saw the priest of St. John talking about his service to them as a member of their board. We know that he also graduated from one of the distinguished law schools in America, Yale. We can trace his life as he did public service and worked in the private sector and then for the last year or so serving on the second highest court of this land.

Mr. President, I compliment the President of the United States for sending us this nominee. I intend to vote for him. I do it without any reluctance. I am convinced that we do not know exactly where he is going to come down on the big issues of our day and the future, but I submit, we will never be able to determine in advance what intelligent, enlightened judges will do on the cases of the future. I am of the frame of mind to say the one with the best human experiences, the experiences that count, coupled with a good education and, in this case, add to that having grown up as a black person in the United States, having grown up in poverty, having succeeded in spite of all of that, when you add that to the other qualifications, it seems to me that we do not need to worry about whether we are taking a chance or not with this man. I think he belongs there and he will serve not only the people well, but he will also serve this great Republic well for years and years to come.

I know that some Members of this body may have strong ideological differences with Clarence Thomas. I respect them for that. It is heartening to see, however, that Members of this body realize that the vote on this nomination should rest on whether Clarence Thomas is qualified, not whether a majority of this body agree with his personal philosophy.

Under the Constitution, the Senate has the duty to offer advice and consent on judicial nominees. Congress must scrutinize the nominee to determine whether he or she possesses the qualities that the Americans expect in judges.

As long as a nominee is qualified, the nominee's personal philosophy should not be a consideration unless that philosophy undermines the fundamental principles of our Constitution, or if the nominee's dedication to his or her ideological principles is so strong that he or she cannot be an impartial judge. In the absence of such concerns, the Senate must respect the right of a President to nominate qualified candidates of his choosing.

The evidence of Clarence Thomas' commitment to our constitutional sys-

tem as well as his ability to render sound and judicious decisions has been tested and proven by his record on the Court of Appeals.

Mr. President, a nominee for Supreme Court Justice of the United States must possess the highest standards of integrity, ethics, and commitment to the cause of justice. He or she must be an individual of proven ability and judgment. Clarence Thomas has been thoroughly examined to determine whether he possesses these qualities, and he has not been found wanting.

I salute Judge Thomas, and I hope the Senate will confirm him with an overwhelming vote next Tuesday. I yield the floor.

#### THE RESIGNATION OF RICHARD THORNBURGH

Mr. GRASSLEY. Mr. President, what I come before this body to say this morning should have really been said back in the first or second week of August because that was a time near to the retirement of Attorney General Richard Thornburgh.

I rise today to congratulate him on his vigilant tenure as the Nation's top law enforcement officer.

Since his appointment and confirmation in 1988, Attorney General Thornburgh was the point person in the Nation's war on crime and helped the taxpayers prevent fraud on Government by dishonest contractors.

General Thornburgh left the Department of Justice in August to answer another call, and many of us in this body, at least on this side of the aisle, hope that we have the privilege of working with him.

The job of the Government's top lawyer is among the most difficult in Government. It is not easy to meet the demands of Government officials, the public, and the media, while maintaining fidelity to the law. It is impossible to please everyone.

Indeed, as General Thornburgh remarked on the day of his resignation, quoting a British Attorney General: "An attorney general who becomes popular will not be doing responsibly that which his office demands."

Despite his disclaimer, Attorney General Thornburgh was popular even though he did his job as well as it can be done. The President who appointed him, the law enforcement officers that he led throughout the Nation, and the citizens he protected are all aware of the success he had in enforcing the laws.

Thornburgh's Justice Department has zealously fulfilled its duty to protect the taxpayers from those who would rip off the taxpayers. General Thornburgh demonstrated a firm commitment to fighting crime and Government fraud. Thornburgh's efforts have resulted in the convictions of 71 de-

fense contractors and their employees, settlements with several other major firms, and recovery by the treasury of hundreds of millions of dollars.

Most recently, the Department's Operation Ill Wind resulted in a \$190 million payment to the Government by the Unisys Corp. Unisys pleaded guilty to conspiracy to defraud the United States, to bribery, to conversion of Government property, and to filing false claims and false statements. Unisys will pay the Government another \$10 million as a result of whistleblower Ralph D'Avino's qui tam suit under the amended false claims act. Part of the \$190 million settlement is also the result of a qui tam suit brought by whistleblower Larry Elliott.

Operation Ill Wind resulted in numerous other successful prosecutions of defense contractors in the past 3 years. Hazeltine Corp., Teledyne Industries, Loral Corp., individual Unisys officials, Norden systems officials, Whittaker command and control systems, and cubic defense systems have all been convicted of stealing from the taxpayers under Governor Thornburgh's aggressive investigation of their practices.

The list of companies and executives Thornburgh brought to justice is still long. Boeing paid the Government \$11 million in a settlement to resolve allegations of overcharging by its military airplanes division. Operation Uncover led to five major contractors—Raytheon, Hughes Aircraft, Grumman, Boeing, and RCA—pleading guilty to charges involving the illegal trafficking of sensitive Defense Department documents and agreeing to pay \$15 million in civil claims. General Electric and Northrop were among other defense contractors convicted as a result of Justice Department prosecutions under Thornburgh.

General Thornburgh has been the Government's point man in attacking financial institutions fraud. In just the past fiscal year, 554 financial institutions have been formally charged with major fraud, 681 defendants have been convicted with a conviction rate of 94 percent, 665 defendants sentenced to jail 80 percent, millions of dollars in fines imposed, and even more millions in restitution payments ordered.

Attorney General Thornburgh also led the Justice Department during successful recoveries from individuals and organizations that defrauded the Government in connection with HUD and FDA. In one case, a woman in Maryland nicknamed "Robin HUD" was convicted of embezzling more than \$6 million from the sale of HUD-owned properties. This may be the largest single theft of Government funds by an individual in American history.

I have been glad to see Governor Thornburgh's Justice Department so

vigilant in protecting the taxpayers from those who would defraud them.

Drug kingpins all over the globe have felt the effects of General Thornburgh's aggressive leadership of the war on drugs. General Thornburgh helped create a new legal regime for international drug trafficking, by encouraging the loosening of bank secrecy laws in Europe and elsewhere. Combined with our new money laundering statutes, these allow Justice to keep drug traffickers from spending their illicit profits.

By targeting the traffickers' profits, as well as their product through initiatives like Operation Polarcap, Justice has inflicted major damage on international crime. This has included prosecutions of numerous officers and employees of the Bank of Credit and Commerce International, BCCI, which has laundered drug profits for the Medellin cartel and perhaps others.

Panama's Manuel Noriega is finally facing trial for his drug crimes. Dozens of other drug kingpins have already been locked up, along with hundreds of their minions.

The public FISC has also benefited from the war on drugs. Under Thornburgh's Justice, more than \$1 billion in cash and property has been recovered and added to the Department's assets forfeiture fund—\$353 million of that has been shared with State and local law enforcement agencies. Thus, the drug dealers are paying for their own prosecutions.

Thornburgh's Department was highly successful in combatting domestic organized crime. Attorney General Thornburgh oversaw a major reorganization of the organized crime program, which has enhanced the Government's ability to fight the older Cosa Nostra crime families, as well as new criminal organizations such as the Jamaican posses and the Asian gangs.

Justice under Thornburgh has diligently defended individual liberties. Thornburgh created a new office to enforce the Americans With Disabilities Act, which office is currently drafting regulations detailing the parameters of compliance with ADA. Thornburgh significantly increased the Department's efforts to identify and prosecute perpetrators of hate crimes—acts of violence or intimidation motivated by racial, ethnic, or religious hatred—and to improve reporting of such crimes. In 1989, Justice pursued more than twice the number of Federal cases and prosecutions for hate crimes than in any previous year. In 1990, the Department had a 100-percent success rate in prosecuting hate crimes.

The Civil Rights Division has been aggressive in pursuing housing discrimination and voting rights cases. It has fought employment discrimination in both the North and South, and worked to eliminate the remaining vestiges of segregation in State university systems.

Mr. President, I could never practically list all the accomplishments of Governor Thornburgh during his tenure as Attorney General. Americans could not have had a more persistent protector of their rights to be free from crime, fraud, and discrimination. Clearly, the combination of experience as a prosecutor and as a chief executive makes for a first-rate leader of the Nation's law enforcement. With luck, we will soon have the benefit of his unique skills again in Washington.

#### UNEMPLOYMENT LEGISLATION

Mr. DOLE. Mr. President, yesterday the Senate and the House agreed to the conference report on unemployment insurance extended benefits. When the President receives this legislation, he will veto it, and it is my every expectation that that veto will be sustained.

This puts us in exactly the same position we were in prior to the August recess when this issue was debated. The only difference is that instead of not declaring an emergency, the President will need to veto this bill.

#### DEMOCRATS HAVE DONE NOTHING TO HELP UNEMPLOYED

In this Senator's opinion, during the last 2 months, my colleagues on the other side of the aisle have done absolutely nothing to help in getting extended benefits to America's unemployed workers.

Instead of trying to sit down and work this issue out, the proponents of the conference report intentionally sent a bill to the President that they knew he could not sign.

It is not that the President opposes extended benefits for unemployed Americans. It is that the President will not provide those extended benefits at the cost of destroying last year's budget agreement, adding \$6.2 billion to an out-of-control deficit, and mortgaging our children's futures.

#### DOLE-DOMENICI-ROTH ALTERNATIVE

As promised, Mr. President, yesterday, after the debate was finished, I introduced the Dole-Domenici-Roth alternative as a free standing bill. This bill is cosponsored by a number of Senators, including the Senator from California [Mr. SEYMOUR], the Senators from Missouri [Mr. DANFORTH] and [Mr. BOND], the Senator from Texas [Mr. GRAMM], and the Senator from Indiana [Mr. LUGAR]. I urge my colleagues to study the bill and to throw their support behind it. It is a serious proposal and one that will get benefits out to those who need help.

It provides 6 weeks of additional extended benefits in all States and 10 weeks in those States facing higher unemployment.

In addition, the proposal directs the Secretary of Labor to tackle pockets of unemployment that are not reflected in the statewide or national economy as a whole.

Finally, Mr. President, this proposal pays for itself. There is no sequester and no need to declare an emergency. It does not increase the deficit 1 red cent, and it does not play politics at the cost of future generations of Americans.

The President has said he would sign this bill. That is another basic difference; he will sign this bill. That means that if the Senate and House were sending this bill to the President today instead of the poorly conceived, budget busting conference report, then we would have unemployment benefits going to the unemployed in the next couple weeks.

#### DURENBERGER/BURNS ALTERNATIVE

In addition to this proposal, Mr. President, the distinguished Senators from Minnesota and Montana, Senators DURENBERGER and BURNS, introduced an alternative which would provide for 8 and 15 weeks of additional benefits. While I cannot say for certain that the President would sign this proposal, I would certainly urge him to do that, or to make some compromise between the two proposals, because it does comply with the budget agreement and it is deficit neutral over 5 years.

The Durenberger-Burns alternative will provide more benefits to many States—roughly 32 States—than the conference report adopted yesterday. That is 8 and 15 weeks of additional benefits provided by a bill that is budget neutral and pays for itself.

#### CHOICE IS CLEAR

For this Senator, the choice could not be clearer. My colleagues on the other side of the aisle can continue to play politics and to try to have a showdown with the President by sending the same bad legislation to him. And the same result will ensue: No extended benefit checks will be in the mail.

Or we can take a serious look at the alternative offered by myself, the ranking member of the Budget Committee, and others, or the alternative offered by the Senators from Minnesota and Montana, Senators DURENBERGER and BURNS, and work something out.

Instead of debating politics on the floor and in the media—and I wish the media would understand there is an alternative out there that is responsible, that will pay for itself, and that they might take a serious look at that—we ought to make certain that the people, who through no fault of their own, the unemployed people, people with families, people with no food on the table—get relief soon. I do not think these people are sitting around today debating whether this is a Republican alternative or Democratic alternative. They want something done. They want something passed by the Congress that the President will sign. And they understand that their children, if they are going to have any future, that we

ought to be paying for these benefits as we go along.

Maybe we cannot be as generous as my colleagues on the other side, because they just charge it up to the next generation, charge it to your grandchildren, charge it to anybody; as long as we are spending money, who cares? That is the big difference between the two proposals. We pay for it. We pay for it. We do not add to the deficit.

My colleagues on the other side of the aisle do not care that they are adding \$6.2 billion to the deficit.

I just suggest that families out of work are not sitting around the living room saying "I wish the Republican proposal was a little better; I wish the Democratic proposal was a little better"—whatever. I think what they are doing is trying to figure out where the next meal is coming from and where they are going to find a job and hoping that the Congress would look beyond politics and self-interest and send the President a bill that is fiscally responsible and a bill that he can sign.

If we do that—and we have time to do it yet this week. We can do it today. We ought to pass our bill, send both to the President, let the President make a choice. We should not go off for another weekend unless we resolve this issue. That way the checks can be in the mail and, for the unemployed, food can be on the table.

The PRESIDING OFFICER. The Chair recognizes the Senator from Utah.

Mr. HATCH. Mr. President, I compliment the distinguished minority leader for his comments that he just made. In all honesty, what is being done around here is an exercise in cynical politics. The fact is the approach that is being sent to the President, he has to veto it; there is nothing to pay for it. In all honesty, it is going to cost \$6.2 billion if we can pay for it. It means that the budget agreement last year is broken. Once that is broken, there will be every one of these people who have special projects in this Congress coming up and saying it ought to be broken for that project as well.

The interesting thing about the minority leader's approach and those who support it, including myself, is that this is a bill that will be paid for under the current budget agreement, within that budget agreement, that will solve the problem, that the President will sign, and that will go from there, helping people in our society rather than playing a political game knowing that the President has to veto a \$6.12 billion budget buster and then blaming him for being insensitive when he said he is willing to accept a bill that is within budget, within that budget agreement.

It seems to this Member it is an awfully cynical approach.

I compliment the minority leader for his skill and work on this side and I wish we had more help from the other

side to resolve this problem. And I agree with him: Send both of them to the President; let the President choose which one. If the Democrat proposal is that much better, then he will be criticized for not choosing it if he does not. If the Republican proposal will work, then he should not be criticized for choosing it if he does. But let him make the choice, and not just play the cynical game of knowing he is going to veto the particular budget-busting bill and leaving the people out there without any help at all.

There is not a question of whether or not one side or the other is more willing to help those who are unemployed. We are all willing to. The question is are we going to break the budget in the process, going to break that agreement in the process, going to incalculably spend more money when we can do it in I think a reasonable and good way.

I compliment Senator DOLE for the work he has done on this and I wish we could be more bipartisan on these issues, especially when you have a President that made it very clear that the one bill is unacceptable.

I just thought I had to say that.

#### BROOKLINE ANNUAL TOWN MEETING

Mr. KERRY. Mr. President, today I wish to acknowledge a resolution passed at the Brookline annual town meeting in June of this year. The town meeting is an old Massachusetts institution of broadly representative democracy. The resolution notes that over the last decade there has been a sharp decrease in Federal spending for education, environment, and health care programs, and for community development block grants. This has been accompanied by a dramatic increase in military spending. Given the President's recent announcement of his planned nuclear weapons reductions, I concur with my constituents in Brookline in their call for a redirection in Federal spending from unnecessary military programs toward meeting the needs of our country's citizens.

I ask that a copy of a letter from the Brookline town moderator which contains the text of the resolution appear in the RECORD following my remarks.

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

TOWN OF BROOKLINE, MA,  
Brookline, MA, July 23, 1991.

Senator JOHN KERRY,  
Russell Senate Office Bldg., Washington, DC.

DEAR SENATOR KERRY: At the Brookline Annual Town Meeting in June, it was noted that spending for cities and towns, education, environment, health care and other human services has gone down sharply over the last decade to support dramatically increased military spending. Town Meeting Members expressed the view that with the breakup of the Warsaw Pact and the conclusion of the Persian Gulf War, it is time to re-

verse our spending priorities. Accordingly, the Meeting adopted the following Resolution:

Whereas the Town of Brookline has been forced to cut vital services, programs and employees because of decreased federal spending for cities and towns over the last decade; and

Whereas during this period, federal spending for community development block grants was sharply cut, federal revenue sharing was eliminated, while the military budget has increased dramatically; and

Whereas the \$800 million expenditure for one B-1 bomber would go over most of the Massachusetts state budget deficit for 1991; and

Whereas the Persian Gulf war has now been concluded: Now, therefore, be it hereby

Resolved, That the Town Meeting directs the Moderator on behalf of the town Meeting to call upon our Congressional delegation, the Congress, and the President of the United States to redirect federal spending away from an emphasis on military spending and towards programs in such areas as the environment, energy conservation, public transportation, education, health care, housing and child care to meet the needs of the residents of Brookline and other communities throughout the nation, and be it further

Resolved that the Moderator send this resolution to newspapers of general circulation in this Town to be published and forwarded to our congressional delegation and to the President.

I would greatly appreciate a response to this communication which I can convey to the Brookline Town Meeting Members.

Sincerely,

JUSTIN L. WYNER,  
Town Moderator.

#### CHIROPRACTIC CARE

Mr. THURMOND. Mr. President, prompted by developing needs and skyrocketing costs, America's health care system has undergone tremendous change in recent years. This change has led the Federal Government and its regulatory agencies, as well as individuals and insurance companies, to explore new ways of expanding access to health care while keeping costs to a minimum. One of the more significant aspects of this revised health care climate has been the yielding of traditional medicine to some new types of care.

As the search for optimum health care at minimum cost has intensified, so has the debate over the role individual health professions will play on our Nation's health care future. On September 23, Time magazine published an extensive article about the revolution in health care, concentrating specifically on the increasing acceptance of chiropractic as an alternative treatment for some conditions.

The Time article referred to a new body of research which is validating the effectiveness of chiropractic care in treating various complaints—especially low back pain, one of the most common and costly reasons for job absenteeism in the Nation. The article stresses the fact that the chiropractic profession—is daily gaining more re-

spect from practitioners of traditional medicine.

I ask unanimous consent that the article in Time, entitled "Is There a Method to Manipulation?," be included in the RECORD following my remarks.

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

[From Time magazine, Sept. 21, 1991]

IS THERE A METHOD TO MANIPULATION?

(By Andrew Purvis)

When internist Paul Shekelle was in medical school in the 1970s, the gentle art of chiropractic was widely viewed as bunk: heir to the tradition of bloodletting and rattlesnake oil. The American Medical Association's committee on quackery had branded the practice an "unscientific cult," and medical-school professors had obediently followed suit. The reluctance of the so-called back-crackers to submit their technique to the scrutiny of hard science served only to reinforce the official scorn. Recalls Shekelle: "They were seen as hucksters and charlatans trying to dupe the public into paying for useless care."

The public, meanwhile, seemed happy to be duped. Millions of Americans remained devoted to the healers' manipulative ways. And in recent years that enthusiasm has blossomed. About 1 in 20 Americans now sees a chiropractor during the course of a year. The number of U.S. practitioners jumped from 32,000 in the 1970s to 45,000 in 1990.

Chiropractic has even achieved a certain celebrity cachet. Quarterback Joe Montana got his brawny back manipulated on national TV (during the Superbowl pregame show). Cybill Shepherd grew so attached to her practitioner that she married him. Overseas, where chiropractic is both more popular and more widely accepted by doctors, Princess Di regularly gets her regal back cracked. And Russian ballet stars Vadim Pisarev and Marina Bogdanova reportedly would not risk an arabesque without a periodic adjustment.

Now, almost despite itself, mainstream medicine has started to take notice. Several authoritative studies have confirmed that chiropractic-style spinal manipulation is effective for the treatment of lower-back pain. Leading physicians now openly discuss the technique, and some are even referring their own patients to those once scorned colleagues. Concedes Dr. Shekelle, who directed one of the recent studies: "Their philosophy of disease is totally foreign to us. But for some conditions it sure seems to work."

The growing acceptance was apparent at this year's meeting of the American Academy of Orthopedic Surgeons, where for the first time a symposium was held on back manipulation, and about one-third of surgeons present admitted referring patients for the technique. Some 30 hospitals around the country now have chiropractors on staff, and multidisciplinary clinics that offer both medical and chiropractic care have sprung up in several urban centers. In addition, a small band of "research" chiropractors has begun testing the method in carefully designed clinical trials. "Manipulative medicine," declares Dr. Norton Hadler, a rheumatologist at the University of North Carolina, "is no longer a taboo topic."

One reason for turnaround is that spinal manipulation has held up under study, at least for some conditions. In a report released this July by the Rand Corp., a prestigious research organization in Santa

Monica, Calif., a panel of leading physicians, osteopaths and chiropractors found that chiropractic-style manipulation was helpful for a major category of patients with lower-back pain: people who are generally healthy but who had developed back trouble within the preceding two or three weeks. Another important study published last summer in the British Medical Journal compared chiropractic treatment with outpatient hospital care that included traction and various kinds of physical therapy. Its conclusion: spinal manipulation was more effective for relieving low-back aches for up to three years after diagnosis.

Such positive findings come despite the fact that no one is entirely sure how chiropractic manipulation works. Practitioners assert that they are correcting spinal "subluxations," which they describe as misalignments of vertebrae that result in damaging and often painful pressures on nerves in the spinal cord. Because nerves in the cord connect to every organ and body part, such misalignments, they say, can cause problems in the feet, hands and internal organs as well as the back.

Most doctors are skeptical of this theory. "Chiropractors may sound very authoritative," says Chicago rheumatologist Robert Katz, "but their basic understanding of the pathophysiology of the spine is simply not there." Chiropractors respond that they spend at least four years studying the subtleties of the spine, including exhaustive courses in anatomy, pathology, biochemistry and microbiology, and are in fact far more knowledgeable than many medical doctors about this anatomical region.

Whatever the benefits of manipulation and massage, many chiropractors admit that at least some of their success stems from their attentive manner and holistic approach to disease. Practitioners tend to discuss a patient's entire life-style, emphasizing stress reduction, a healthful diet, exercise and maybe even a change in work habits. Patients love it, especially after experiencing the sometimes narrow approach of medical specialists, who may thoroughly examine a body part without a hint of interest in the human being.

New York social worker Shoshana Shonfield, 40, for instance, was crushed when an orthopedic surgeon told her she would either have to live with chronic back pain or undergo radical disk surgery, with no guarantee of success. Then she found a chiropractor who, she recalls, "did all kinds of wonderful things." In addition to spinal manipulation, the practitioner served up a potpourri of health-care advice on everything from diet to correct posture and toning up muscles in the stomach and lower back. Now, she says, "my back is almost perfect. My body feels aligned; it feels straight."

One study in Washington State found that patients were significantly more satisfied with their chiropractor's manner than with their medical doctor's. Patients may even be too satisfied. One frequent complaint about chiropractors is that treatment goes on for too long. Patients become dependent on regular manipulation, and their therapists are all too happy to accommodate them. Alan Adams of the Los Angeles College of Chiropractors estimates that perhaps 10% to 15% of his colleagues are guilty of this.

While the vast majority of chiropractic patients are treated for back, neck and shoulder complaints as well as minor headaches, some 10% seek help for organic diseases of all sorts. Can manipulation help them? The chiropractic literature is replete with exam-

ples of astonishing cures of ulcers, hypertension, childhood asthma, blindness and even paraplegia. But individual case histories prove nothing, and organized studies are few and far between. Spinal manipulation has been shown to alter the heartbeat and the acidity of the stomach, says Peter Curtis, a medical professor at the University of North Carolina, who studied the technique, "but whether you can cure a peptic ulcer or angina is another question entirely." The A.M.A. withdrew its earlier condemnation of chiropractic as a cult in 1988—after federal courts ruled it an unfair restraint of trade—but it remains adamantly opposed to broad application of chiropractic therapy.

Of course, chiropractic could restrict itself to relieving back pain and still have its hands full. By some estimates, 75% of all Americans will suffer from low-back aches at some point in their lifetime. The annual cost to U.S. society of treating the ubiquitous ailment was recently tallied at a crippling \$24 billion, compared with \$6 billion for AIDS and \$4 billion for lung cancer. If spinal manipulation could ease even a fraction of that financial burden, remaining skeptics might be forced to stifle their misgivings or get cracking themselves.

### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

### FAMILY AND MEDICAL LEAVE ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of S. 5, which the clerk will report.

The bill clerk read as follows:

A bill (S. 5) to grant employees family and temporary medical leave under certain circumstances, and for other purposes.

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

#### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Family and Medical Leave Act of 1991".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purposes.

#### TITLE I—GENERAL REQUIREMENTS FOR LEAVE

Sec. 101. Definitions.

Sec. 102. Leave requirement.

Sec. 103. Certification.

Sec. 104. Employment and benefits protection.

Sec. 105. Prohibited acts.

Sec. 106. Administrative enforcement.

Sec. 107. Enforcement by civil action.

Sec. 108. Investigative authority.

Sec. 109. Relief.

Sec. 110. Special rules concerning employees of local educational agencies and private elementary and secondary schools.

Sec. 111. Notice.

Sec. 112. Regulations.

#### TITLE II—LEAVE FOR CIVIL SERVICE EMPLOYEES

Sec. 201. Leave requirement.

## TITLE III—COMMISSION ON LEAVE

- Sec. 301. Establishment.  
 Sec. 302. Duties.  
 Sec. 303. Membership.  
 Sec. 304. Compensation.  
 Sec. 305. Powers.  
 Sec. 306. Termination.

## TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. Effect on other laws.  
 Sec. 402. Effect on existing employment benefits.  
 Sec. 403. Encouragement of more generous leave policies.  
 Sec. 404. Coverage of the Senate.  
 Sec. 405. Regulations.  
 Sec. 406. Effective dates.\*ERR08\*

## SEC. 2. FINDINGS AND PURPOSES.

- (a) FINDINGS.—Congress finds that—  
 (1) the number of single-parent households and two-parent households in which the single parent or both parents work is increasing significantly;  
 (2) it is important for the development of children and the family unit that fathers and mothers be able to participate in early childrearing and the care of family members who have serious health conditions;  
 (3) the lack of employment policies to accommodate working parents can force individuals to choose between job security and parenting;  
 (4) there is inadequate job security for employees who have serious health conditions that prevent them from working for temporary periods;  
 (5) due to the nature of the roles of men and women in our society, the primary responsibility for family caretaking often falls on women, and such responsibility affects the working lives of women more than it affects the working lives of men; and  
 (6) employment standards that apply to one gender only have serious potential for encouraging employers to discriminate against employees and applicants for employment who are of that gender.

(b) PURPOSES.—It is the purpose of this Act—  
 (1) to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity;

(2) to entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition;

(3) to accomplish the purposes described in paragraphs (1) and (2) in a manner that accommodates the legitimate interests of employers;

(4) to accomplish the purposes described in paragraphs (1) and (2) in a manner that, consistent with the Equal Protection Clause of the Fourteenth Amendment, minimizes the potential for employment discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons, on a gender-neutral basis; and  
 (5) to promote the goal of equal employment opportunity for women and men, pursuant to such clause.

## TITLE I—GENERAL REQUIREMENTS FOR LEAVE

## SEC. 101. DEFINITIONS.

As used in this title:

- (1) **COMMERCE.**—The terms "commerce" and "industry or activity affecting commerce" mean any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include "commerce" and any "industry affecting commerce", as defined in paragraphs (3) and (1), respectively, of section 120 of the Labor Management Relations Act, 1947 (29 U.S.C. 142 (3) and (1)).

(2) **ELIGIBLE EMPLOYEE.**—

(A) **IN GENERAL.**—The term "eligible employee" means any "employee", as defined in section 3(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(e)), who has been employed by the employer with respect to whom leave is sought under section 102 for at least—

(i) 1,000 hours of service during the previous 12-month period; and

(ii) 12 months.

(B) **EXCLUSIONS.**—The term "eligible employee" does not include—

(i) any Federal officer or employee covered under subchapter V of chapter 63 of title 5, United States Code (as added by title II of this Act); or

(ii) any employee of an employer who is employed at a worksite at which such employer employs less than 50 employees if the total number of employees employed by that employer within 75 miles of that worksite is less than 50.

(3) **EMPLOY; STATE.**—The terms "employ" and "State" have the same meanings given such terms in subsections (g) and (c), respectively, of section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203 (g) and (c)).

(4) **EMPLOYEE.**—The term "employee" means any individual employed by an employer.

(5) **EMPLOYER.**—

(A) **IN GENERAL.**—The term "employer"—

(i) means any person engaged in commerce or in any industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year;

(ii) includes—

(I) any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer; and

(II) any successor in interest of an employer; and

(iii) includes any "public agency", as defined in section 3(x) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(x)).

(B) **PUBLIC AGENCY.**—For purposes of subparagraph (A)(iii), a public agency shall be considered to be a person engaged in commerce or in an industry or activity affecting commerce.

(6) **EMPLOYMENT BENEFITS.**—The term "employment benefits" means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a policy or practice of an employer or through an "employee benefit plan", as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3)).

(7) **HEALTH CARE PROVIDER.**—The term "health care provider" means—

(A) a doctor of medicine or osteopathy that is legally authorized to practice medicine and surgery by the State in which the doctor performs such function or action; or

(B) any other person determined by the Secretary to be capable of providing health care services.

(8) **PARENT.**—The term "parent" means the biological parent of the child or an individual who stood in loco parentis to a child when the child was a son or daughter.

(9) **PERSON.**—The term "person" has the same meaning given such term in section 3(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(a)).

(10) **REDUCED LEAVE SCHEDULE.**—The term "reduced leave schedule" means leave scheduled for fewer than the usual number of hours per workweek, or hours per workday, of an employee.

(11) **SECRETARY.**—The term "Secretary" means the Secretary of Labor.

(12) **SERIOUS HEALTH CONDITION.**—The term "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves—

(A) inpatient care in a hospital, hospice, or residential medical care facility; or

(B) continuing treatment or continuing supervision by a health care provider.

(13) **SON OR DAUGHTER.**—The term "son or daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is—

(A) under 18 years of age; or

(B) 18 years of age or older and incapable of self-care because of a mental or physical disability.

## SEC. 102. LEAVE REQUIREMENT.

(a) **IN GENERAL.**—

(1) **ENTITLEMENT TO LEAVE.**—Subject to section 103, an eligible employee shall be entitled to 12 workweeks of leave during any 12-month period—

(A) because of the birth of a son or daughter of the employee;

(B) because of the placement of a son or daughter with the employee for adoption or foster care;

(C) to care for the son, daughter, spouse, or parent of the employee who has a serious health condition; or

(D) because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.

(2) **EXPIRATION OF ENTITLEMENT.**—The entitlement to leave under subparagraphs (A) and (B) of paragraph (1) shall expire at the end of the 12-month period beginning on the date of the birth or placement involved.

(3) **INTERMITTENT LEAVE.**—Leave under subparagraph (A) or (B) of paragraph (1) shall not be taken by an employee intermittently unless the employee and the employer of the employee agree otherwise. Subject to subsection (e), leave under subparagraph (C) or (D) of paragraph (1) may be taken intermittently when medically necessary.

(b) **REDUCED LEAVE.**—On agreement between the employer and the employee, leave under subsection (a) may be taken on a reduced leave schedule. Such reduced leave schedule shall not result in a reduction in the total amount of leave to which such employee is entitled under subsection (a).

(c) **UNPAID LEAVE PERMITTED.**—Except as provided in subsection (d), leave under subsection (a) may consist of unpaid leave.

(d) **RELATIONSHIP TO PAID LEAVE.**—

(1) **UNPAID LEAVE.**—If an employer provides paid leave for fewer than 12 workweeks, the additional weeks of leave necessary to attain the 12 workweeks of leave required under this title may be provided without compensation.

(2) **SUBSTITUTION OF PAID LEAVE.**—

(A) **IN GENERAL.**—An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or family leave of the employee for leave provided under subparagraph (A), (B), or (C) of subsection (a)(1) for any part of the 12-week period of such leave under such subparagraphs.

(B) **HEALTH CONDITION.**—An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or medical or sick leave of the employee for leave provided under paragraph (1)(D) of subsection (a) for any part of the 12-week period of such leave under such paragraph, except that nothing in this Act shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave.

(e) **FORESEEABLE LEAVE.**—

(1) **REQUIREMENT OF NOTICE.**—In any case in which the necessity for leave under subparagraph (A) or (B) of subsection (a)(1) is foreseeable based on an expected birth or adoption, the eligible employee shall provide the employer with prior notice of such expected birth or adoption in a manner that is reasonable and practicable.

(2) **DUTIES OF EMPLOYEE.**—In any case in which the necessity for leave under subparagraph (C) or (D) of subsection (a)(1) is foreseeable based on planned medical treatment or supervision, the employee—

(A) shall make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse, or parent of the employee; and

(B) shall provide the employer with prior notice of the treatment or supervision in a manner that is reasonable and practicable.

(f) **SPOUSES EMPLOYED BY THE SAME EMPLOYER.**—In any case in which a husband and wife entitled to leave under subsection (a) are employed by the same employer, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12-month period, if such leave is taken—

(1) under subparagraph (A) or (B) of subsection (a)(1); or

(2) to care for a sick parent under subparagraph (C) of such subsection.

#### SEC. 103. CERTIFICATION.

(a) **IN GENERAL.**—An employer may require that a claim for leave under subparagraph (C) or (D) of section 102(a)(1) be supported by a certification issued by the health care provider of the eligible employee or of the son, daughter, spouse, or parent of the employee, as appropriate. The employee shall provide a copy of such certification to the employer.

(b) **SUFFICIENT CERTIFICATION.**—Certification provided under subsection (a) shall be sufficient if it states—

(1) the date on which the serious health condition commenced;

(2) the probable duration of the condition;

(3) the appropriate medical facts within the knowledge of the health care provider regarding the condition; and

(4)(A) for purposes of leave under section 102(a)(1)(C), an estimate of the amount of time that the eligible employee is needed to care for the son, daughter, spouse, or parent; and

(B) for purposes of leave under section 102(a)(1)(D), a statement that the employee is unable to perform the functions of the position of the employee.

(c) **SECOND OPINION.**—

(1) **IN GENERAL.**—In any case in which the employer has reason to doubt the validity of the certification provided under subsection (a) for leave under subparagraph (C) or (D) of section 102(a)(1), the employer may require, at the expense of the employer, that the eligible employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information certified under subsection (b) for such leave.

(2) **LIMITATION.**—A health care provider designated or approved under paragraph (1) shall not be employed on a regular basis by the employer.

(d) **RESOLUTION OF CONFLICTING OPINIONS.**—

(1) **IN GENERAL.**—In any case in which the second opinion described in subsection (c) differs from the opinion in the original certification provided under subsection (a), the employer may require, at the expense of the employer, that the employee obtain the opinion of a third health care provider designated or ap-

proved jointly by the employer and the employee concerning the information certified under subsection (b).

(2) **FINALITY.**—The opinion of the third health care provider concerning the information certified under subsection (b) shall be considered to be final and shall be binding on the employer and the employee.

(e) **SUBSEQUENT RECERTIFICATION.**—The employer may require that the eligible employee obtain subsequent recertifications on a reasonable basis.

#### SEC. 104. EMPLOYMENT AND BENEFITS PROTECTION.

(a) **RESTORATION TO POSITION.**—

(1) **IN GENERAL.**—Any eligible employee who takes leave under section 102 for the intended purpose of the leave shall be entitled, on return from such leave—

(A) to be restored by the employer to the position of employment held by the employee when the leave commenced; or

(B) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(2) **LOSS OF BENEFITS.**—The taking of leave under section 102 shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

(3) **LIMITATIONS.**—Except as provided in subsection (b), nothing in this section shall be construed to entitle any restored employee to—

(A) the accrual of any seniority or employment benefits during any period of leave; or

(B) any right, benefit, or position of employment other than that to which the employee was entitled to on the date the leave was commenced.

(4) **CERTIFICATION.**—As a condition of restoration under paragraph (1), the employer may have a policy that requires each employee to receive certification from the health care provider of the employee that the employee is able to resume work, except that nothing in this paragraph shall supersede a valid State or local law or a collective bargaining agreement that governs the return to work of employees taking leave under section 102(a)(1)(D).

(5) **CONSTRUCTION.**—Nothing in this subsection shall be construed to prohibit an employer from requiring an employee on leave under section 102 to periodically report to the employer on the status and intention of the employee to return to work.

(b) **MAINTENANCE OF HEALTH BENEFITS.**—During any period that an eligible employee takes leave under section 102, the employer shall maintain coverage under any "group health plan" (as defined in section 5000(b)(1) of the Internal Revenue Code of 1986) for the duration of such leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously from the date the employee commenced the leave until the date the employee is restored under subsection (a).

#### SEC. 105. PROHIBITED ACTS.

(a) **INTERFERENCE WITH RIGHTS.**—

(1) **EXERCISE OF RIGHTS.**—It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this title.

(2) **DISCRIMINATION.**—It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this title.

(b) **INTERFERENCE WITH PROCEEDINGS OR INQUIRIES.**—It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because such individual—

(1) has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this title;

(2) has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this title; or

(3) has testified, or is about to testify in any inquiry or proceeding relating to any right provided under this title.

#### SEC. 106. ADMINISTRATIVE ENFORCEMENT.

(a) **IN GENERAL.**—The Secretary shall issue such rules and regulations as are necessary to carry out this section, including rules and regulations concerning notice of foreseeable leave, service of complaints, notice of hearings, answers and amendments to complaints, and copies of orders and records of proceedings.

(b) **CHARGES.**—

(1) **FILING.**—Any person (including a class or organization, on behalf of any person) alleging an act that violates any provision of this title may file a charge respecting such violation with the Secretary. Charges shall be in such form and contain such information as the Secretary shall require by regulation.

(2) **NOTIFICATION.**—Not more than 10 days after the Secretary receives notice of a charge under paragraph (1), the Secretary—

(A) shall serve a notice of the charge on the person charged with the violation; and

(B) shall inform such person and the charging party as to the rights and procedures provided under this title.

(3) **TIME OF FILING.**—A charge shall not be filed more than 1 year after the date of the last event constituting the alleged violation.

(4) **SETTLEMENT PRIOR TO DETERMINATION BY SECRETARY.**—The charging party and the person charged with the violation under this section may enter into a settlement agreement concerning the violation alleged in the charge before any determination is reached by the Secretary under subsection (c). Such an agreement shall be effective unless the Secretary determines, not later than 30 days after the notice of the proposed agreement is received, that the agreement is not generally consistent with the purposes of this title.

(c) **INVESTIGATION AND COMPLAINT ON NOTICE OF A CHARGE.**—

(1) **INVESTIGATION.**—Not later than 60 days after the Secretary receives any charge respecting a violation of this title, the Secretary shall investigate the charge and issue a complaint based on the charge or dismiss the charge.

(2) **DISMISSAL.**—If, after conducting an investigation under paragraph (1), the Secretary determines that there is no reasonable basis for the charge that is being investigated, the Secretary shall dismiss the charge and promptly notify the charging party and the respondent as to the dismissal.

(3) **COMPLAINT BASED ON CHARGE.**—If, after conducting an investigation under paragraph (1), the Secretary determines that there is a reasonable basis for the charge, the Secretary shall issue a complaint based on the charge and promptly notify the charging party and the respondent as to the issuance.

(4) **SETTLEMENT WITH SECRETARY.**—On the issuance of a complaint under paragraph (3), the Secretary and the respondent may enter into a settlement agreement concerning a violation alleged in the complaint. Any such settlement shall not be entered into over the objection of the charging party, unless the Secretary determines that the settlement provides a full remedy for the charging party.

(5) **CIVIL ACTIONS.**—If, at the end of the 60-day period referred to in paragraph (1), the Secretary—

(A) has not made a determination under paragraph (2) or (3);

(B) has dismissed the charge under paragraph (2); or

(C) has disapproved a settlement agreement under subsection (b)(4) or has not entered into

a settlement agreement under paragraph (4) of this subsection;

the charging party may elect to bring a civil action under section 107. Such election shall bar further administrative action by the Secretary with respect to the violation alleged in the charge.

(6) COMPLAINT AND RELIEF ON INITIATIVE OF SECRETARY.—

(A) COMPLAINT.—The Secretary may issue and serve a complaint alleging a violation of this title on the basis of information and evidence gathered as a result of an investigation initiated by the Secretary pursuant to section 108.

(B) RELIEF.—On the issuance of a complaint under subparagraph (A), the Secretary may petition the United States district court for the district in which the violation is alleged to have occurred, or in which the respondent resides or transacts business, for appropriate temporary relief or a restraining order. On the filing of any such petition, the court shall cause notice of the petition to be served on the respondent, and the court shall have jurisdiction to grant to the Secretary such temporary relief or restraining order as the court determines just and proper.

(d) RIGHTS OF PARTIES.—

(1) SERVICE OF COMPLAINT.—In any case in which a complaint is issued under subsection (c), the Secretary shall, not later than 10 days after the date on which the complaint is issued, cause to be served on the respondent a copy of the complaint.

(2) PARTIES TO COMPLAINT.—Any person filing a charge alleging a violation of this title may elect to be a party to any complaint filed by the Secretary alleging such violation. Such election must be made prior to the commencement of a hearing.

(3) CIVIL ACTION.—The failure of the Secretary to comply in a timely manner with any obligation assigned to the Secretary under this title shall entitle the charging party to elect, at the time of such failure, to bring a civil action under section 107.

(e) CONDUCT OF HEARING.—

(1) PROSECUTION BY SECRETARY.—The Secretary shall have the duty to prosecute any complaint issued under subsection (c).

(2) HEARING.—An administrative law judge shall conduct a hearing on the record with respect to any complaint issued under this title. The hearing shall be commenced not later than 60 days after the issuance of such complaint, unless the judge, in the discretion of the judge, determines that the purposes of this Act would best be furthered by commencement of the action after the expiration of such period.

(f) FINDINGS AND CONCLUSIONS.—

(1) IN GENERAL.—After a hearing conducted under this section, the administrative law judge shall promptly make findings of fact and conclusions of law, and, if appropriate, issue an order for relief as provided in section 109.

(2) NOTIFICATION CONCERNING DELAY.—The administrative law judge shall inform the parties, in writing, of the reason for any delay in making such findings and conclusions if such findings and conclusions are not made within 60 days after the conclusion of such hearing.

(g) FINALITY OF DECISION; REVIEW.—

(1) FINALITY.—The decision and order of the administrative law judge under this section shall become the final decision and order of the Secretary unless, on appeal by an aggrieved party taken not later than 30 days after the entry of the order, the Secretary modifies or vacates the decision, in which case the decision of the Secretary shall be the final decision.

(2) REVIEW.—Not later than 60 days after the entry of the final order of the Secretary under paragraph (1), any person aggrieved by such final order may seek a review of such order in the United States court of appeals for the circuit

in which the violation is alleged to have occurred or in which the employer resides or transacts business.

(3) JURISDICTION.—On the filing of the record of an order under this subsection with the court, the jurisdiction of the court shall be exclusive and the judgment of the court shall be final, except that the judgment shall be subject to review by the Supreme Court of the United States on writ of certiorari or certification as provided in section 1254 of title 28, United States Code.

(h) COURT ENFORCEMENT OF ADMINISTRATIVE ORDERS.—

(1) POWER OF SECRETARY.—If an order of the Secretary is not appealed under subsection (g)(2), the Secretary may petition the United States district court for the district in which the violation is alleged to have occurred, or in which the respondent resides or transacts business, for the enforcement of the order of the Secretary, by filing in such court a written petition praying that such order be enforced.

(2) JURISDICTION.—On the filing of a petition under paragraph (1), the court shall have jurisdiction to make and enter a decree enforcing the order of the Secretary. In such a proceeding, the order of the Secretary shall not be subject to review.

(3) DECREE OF ENFORCEMENT.—If, on appeal of an order under subsection (g)(2), the United States court of appeals does not reverse or modify such order, such court shall have the jurisdiction to make and enter a decree enforcing the order of the Secretary.

SEC. 107. ENFORCEMENT BY CIVIL ACTION.

(a) RIGHT TO BRING CIVIL ACTION.—

(1) IN GENERAL.—Subject to the limitations contained in this section, an eligible employee or any person, including a class or organization on behalf of any eligible employee, or the Secretary may bring a civil action against any employer (including any State employer) to enforce the provisions of this title in any appropriate court of the United States or in any State court of competent jurisdiction.

(2) NO CHARGE FILED.—Subject to paragraph (3), a civil action may be commenced under this subsection without regard to whether a charge has been filed under section 106(b).

(3) LIMITATIONS.—No civil action may be commenced under paragraph (1) if the Secretary—

(A) has approved a settlement agreement or has failed to disapprove a settlement agreement under section 106(b)(4) or 106(c)(4), as appropriate, if such action is based on a violation alleged in the charge and resolved by the agreement; or

(B) has issued a complaint under section 106(c)(3) or 106(c)(6), if such action is based upon a violation alleged in the complaint.

(4) ENFORCEMENT OF SETTLEMENT AGREEMENTS.—Notwithstanding paragraph (3)(A), a civil action may be commenced to enforce the terms of any such settlement agreement.

(5) TIMING OF COMMENCEMENT OF CIVIL ACTION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), no civil action may be commenced later than 1 year after the date of the last event that constitutes the alleged violation.

(B) EXCEPTION.—In any case in which—

(i) a timely charge is filed under section 106(b); and

(ii) the failure of the Secretary to issue a complaint or enter into a settlement agreement based on the charge (as provided under section 106(c)(4)) occurs later than 11 months after the date on which any alleged violation occurred; the charging party may commence a civil action not later than 60 days after the date of such failure.

(6) AGENCIES.—The Secretary shall not bring a civil action against any agency of the United States.

(7) EXCLUSIVE JURISDICTION ON COMPLAINT.—On the filing of a complaint with the court under this subsection, the jurisdiction of the court shall be exclusive.

(b) VENUE.—An action brought under subsection (a) in a district court of the United States may be brought—

(1) in any appropriate judicial district under section 1391 of title 28, United States Code; or

(2) in the judicial district in the State in which—

(A) the employment records relevant to such violation are maintained and administered; or

(B) the aggrieved person worked or would have worked but for the alleged violation.

(c) NOTIFICATION OF THE SECRETARY; RIGHT TO INTERVENE.—A copy of the complaint in any action by an eligible employee under subsection (a) shall be served on the Secretary by certified mail. The Secretary shall have the right to intervene in a civil action brought by an employee under subsection (a).

(d) ATTORNEYS FOR THE SECRETARY.—In any civil action under subsection (a), attorneys appointed by the Secretary may appear for and represent the Secretary, except that the Attorney General and the Solicitor General shall conduct any litigation in the Supreme Court.

SEC. 108. INVESTIGATIVE AUTHORITY.

(a) IN GENERAL.—To ensure compliance with the provisions of this title, or any regulation or order issued under this title, the Secretary shall have, subject to subsection (c), the investigative authority provided under section 11(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(a)).

(b) OBLIGATION TO KEEP AND PRESERVE RECORDS.—Any employer shall keep and preserve records in accordance with section 11(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(c)) and in accordance with regulations issued by the Secretary.

(c) REQUIRED SUBMISSIONS GENERALLY LIMITED TO AN ANNUAL BASIS.—The Secretary shall not under the authority of this section require any employer or any plan, fund, or program to submit to the Secretary any books or records more than once during any 12-month period, unless the Secretary has reasonable cause to believe there may exist a violation of this title or any regulation or order issued pursuant to this title, or is investigating a charge pursuant to section 106.

(d) SUBPOENA POWERS, ETC.—For the purposes of any investigation provided for in this section, the Secretary shall have the subpoena authority provided for under section 9 of the Fair Labor Standards Act of 1938 (29 U.S.C. 209).

SEC. 109. RELIEF.

(a) INJUNCTIVE RELIEF.—

(1) CEASE AND DESIST.—On finding a violation under section 106, the administrative law judge shall issue an order requiring such person to cease and desist from any act or practice that violates this title.

(2) INJUNCTIONS.—In any civil action brought under section 107, the court may grant as relief against any employer (including any State employer) any permanent or temporary injunction, temporary restraining order, or other equitable relief as the court determines appropriate.

(b) MONETARY DAMAGES.—

(1) IN GENERAL.—Any employer (including any State employer) that violates any provision of this title shall be liable to the injured party in an amount equal to—

(A) any wages, salary, employment benefits, or other compensation denied or lost to such eligible employee by reason of the violation, plus interest on the total monetary damages calculated at the prevailing rate; and

(B) an additional amount equal to the greater of—

(i) the amount determined under subparagraph (A), as liquidated damages; or

(ii) consequential damages, not to exceed 3 times the amount determined under such subparagraph.

(2) **GOOD FAITH.**—If an employer who has violated this title proves to the satisfaction of the administrative law judge or the court that the act or omission that violated this title was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this title, such judge or the court may, in the discretion of the judge or court, reduce the amount of the liability provided for under this subsection to the amount determined under paragraph (1)(A).

(c) **ATTORNEY'S FEES.**—A prevailing party in an action described under this section (other than the United States) may be awarded a reasonable attorney's fee as part of the costs, in addition to any relief awarded. The United States shall be liable for costs in the same manner as a private person.

(d) **LIMITATION.**—Damages awarded under subsection (b) shall not accrue from a date that is earlier than 2 years prior to the date on which a charge is filed under section 106(b) or a civil action is brought under section 107.

**SEC. 110. SPECIAL RULES CONCERNING EMPLOYEES OF LOCAL EDUCATIONAL AGENCIES.**

(a) **IN GENERAL.**—Except as otherwise provided in this section, the rights (including the rights under section 104, which shall extend throughout the period of leave of any employee under this section), remedies, and procedures under this Act shall apply to—

(1) any "local educational agency" (as defined in section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12))) and its employees; and

(2) any private elementary and secondary school and its employees.

(b) **LEAVE DOES NOT VIOLATE CERTAIN OTHER FEDERAL LAWS.**—A local educational agency and a private elementary and secondary school shall not be in violation of the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), solely as a result of an eligible employee of such agency or school exercising the rights of such employee under this Act.

(c) **INTERMITTENT LEAVE FOR INSTRUCTIONAL EMPLOYEES.**—

(1) **IN GENERAL.**—Subject to paragraph (2), in any case in which an employee employed principally in an instructional capacity by any such educational agency or school seeks to take leave under subparagraph (C) or (D) of section 102(a)(1) that is foreseeable based on planned medical treatment or supervision and the employee would be on leave for greater than 20 percent of the total number of working days in the period during which the leave would extend, the agency or school may require that such employee elect either—

(A) to take leave for periods of a particular duration, not to exceed the duration of the planned medical treatment or supervision; or

(B) to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified, and that—

(i) has equivalent pay and benefits; and

(ii) better accommodates recurring periods of leave than the regular employment position of the employee.

(2) **APPLICATION.**—The elections described in subparagraphs (A) and (B) of paragraph (1) shall apply only with respect to an employee who complies with section 102(e)(2).

(d) **RULES APPLICABLE TO PERIODS NEAR THE CONCLUSION OF AN ACADEMIC TERM.**—The fol-

lowing rules shall apply with respect to periods of leave near the conclusion of an academic term in the case of any employee employed principally in an instructional capacity by any such educational agency or school:

(1) **LEAVE MORE THAN 5 WEEKS PRIOR TO END OF TERM.**—If the employee begins leave under section 102 more than 5 weeks prior to the end of the academic term, the agency or school may require the employee to continue taking leave until the end of such term, if—

(A) the leave is of at least 3 weeks duration; and

(B) the return to employment would occur during the 3-week period before the end of such term.

(2) **LEAVE LESS THAN 5 WEEKS PRIOR TO END OF TERM.**—If the employee begins leave under subparagraph (A), (B), or (C) of section 102(a)(1) during the period that commences 5 weeks prior to the end of the academic term, the agency or school may require the employee to continue taking leave until the end of such term, if—

(A) the leave is of greater than 2 weeks duration; and

(B) the return to employment would occur during the 2-week period before the end of such term.

(3) **LEAVE LESS THAN 3 WEEKS PRIOR TO END OF TERM.**—If the employee begins leave under paragraph (A), (B), or (C) of section 102(a)(1) during the period that commences 3 weeks prior to the end of the academic term and the duration of the leave is greater than 5 working days, the agency or school may require the employee to continue to take leave until the end of such term.

(e) **RESTORATION TO EQUIVALENT EMPLOYMENT POSITION.**—For purposes of determinations under section 104(a)(1)(B) (relating to the restoration of an employee to an equivalent position), in the case of a local educational agency or a private elementary and secondary school, such determination shall be made on the basis of established school board policies and practices, private school policies and practices, and collective bargaining agreements.

(f) **REDUCTION OF THE AMOUNT OF LIABILITY.**—If a local educational agency or a private elementary and secondary school that has violated title I proves to the satisfaction of the administrative law judge or the court that the agency, school, or department had reasonable grounds for believing that the underlying act or omission was not a violation of such title, such judge or court may, in the discretion of the judge or court, reduce the amount of the liability provided for under section 109(b)(1) to the amount determined under subparagraph (A) of such section.

**SEC. 111. NOTICE.**

(a) **IN GENERAL.**—Each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees and applicants for employment are customarily posted, a notice, to be prepared or approved by the Secretary, setting forth excerpts from, or summaries of, the pertinent provisions of this title and information pertaining to the filing of a charge.

(b) **PENALTY.**—Any employer that willfully violates this section shall be assessed a civil money penalty not to exceed \$100 for each separate offense.

**SEC. 112. REGULATIONS.**

Not later than 60 days after the date of enactment of this title, the Secretary shall prescribe such regulations as are necessary to carry out this title (including regulations under section 106(a)).

**TITLE II—LEAVE FOR CIVIL SERVICE EMPLOYEES**

**SEC. 201. LEAVE REQUIREMENT.**

(a) **CIVIL SERVICE EMPLOYEES.**—

(1) **IN GENERAL.**—Chapter 63 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

**"SUBCHAPTER V—FAMILY LEAVE**

**"§6381. Definitions**

"For purposes of this subchapter:

"(1) The term 'employee' means—

"(A) an 'employee', as defined by section 6301(2) of this title (excluding an individual employed by the Government of the District of Columbia); and

"(B) an individual described in clause (v) or (ix) of such section;

who has been employed for at least 12 months and completed at least 1,000 hours of service during the previous 12-month period.

"(2) The term 'serious health condition' means an illness, injury, impairment, or physical or mental condition that involves—

"(A) inpatient care in a hospital, hospice, or residential medical care facility; or

"(B) continuing treatment, or continuing supervision, by a health care provider.

"(3) The term 'son or daughter' means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is—

"(A) under 18 years of age; or

"(B) 18 years of age or older and incapable of self-care because of a mental or physical disability.

"(4) The term 'parent' means the biological parent of the child or an individual who stood in loco parentis to a child when the child was a son or daughter.

**"§6382. Leave requirement**

"(a)(1) An employee shall be entitled, subject to section 6383, to 12 workweeks of leave during any 12-month period—

"(A) because of the birth of a son or daughter of the employee;

"(B) because of the placement of a son or daughter with the employee for adoption or foster care;

"(C) in order to care for the son, daughter, spouse, or parent of the employee who has a serious health condition; or

"(D) because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.

"(2) The entitlement to leave under subparagraphs (A) and (B) of paragraph (1) for a birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement.

"(3) Leave under subparagraph (A) or (B) of paragraph (1) shall not be taken by an employee intermittently unless the employee and the employing agency agree otherwise. Leave under subparagraph (C) or (D) of paragraph (1) may be taken intermittently when medically necessary, subject to subsection (e).

"(b) On agreement between the employing agency and the employee, leave under this section may be taken on a reduced leave schedule. Such reduced leave schedule shall not result in a reduction in the total amount of leave to which the employee is entitled under this section.

"(c) Except as provided in subsection (d), leave granted under subsection (a) may consist of unpaid leave.

"(d)(1) If an employing agency provides paid leave for fewer than 12 workweeks, the additional weeks of leave necessary to attain the 12 workweeks of leave required under this title may be provided without compensation.

"(2)(A) An employee may elect, or an employing agency may require the employee, to substitute for leave under subparagraph (A), (B), or (C) of subsection (a)(1) any of the accrued paid vacation leave, personal leave, or family leave of the employee for any part of the 12-week period of such leave under such paragraph.

"(B) An employee may elect, or an employing agency may require the employee, to substitute for leave under paragraph (1)(D) of subsection (a) any of the accrued paid vacation leave, personal leave, or medical or sick leave of the employee for any part of the 12-week period of such leave under such paragraph, except that nothing in this Act shall require an employing agency to provide paid sick leave or paid medical leave in any situation in which such employing agency would not normally provide any such paid leave.

"(e)(1) In any case in which the necessity for leave under subparagraph (A) or (B) of subsection (a)(1) is foreseeable based on an expected birth or adoption, the employee shall provide the employing agency with prior notice of such expected birth or adoption in a manner that is reasonable and practicable.

"(2) In any case in which the necessity for leave under subparagraph (C) or (D) of subsection (a)(1) is foreseeable based on planned medical treatment or supervision, the employee—

"(A) shall make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employing agency, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse or parent of the employee; and

"(B) shall provide the employing agency with prior notice of the treatment or supervision in a manner that is reasonable and practicable.

#### "§6383. Certification

"(a) An employing agency may require that a claim for leave under subparagraph (C) or (D) of section 6382(a)(1), be supported by certification issued by the health care provider of the employee or of the son, daughter, spouse, or parent of the employer, as appropriate. The employee shall provide a copy of such certification to the employing agency.

"(b) A certification under subsection (a) shall be sufficient if it states—

"(1) the date on which the serious health condition commenced;

"(2) the probable duration of the condition;

"(3) the appropriate medical facts within the knowledge of the provider regarding the condition; and

"(4)(A) for purposes of leave under section 6382(a)(1)(C), an estimate of the amount of time that the eligible employee is needed to care for the son, daughter, spouse, or parent; and

"(B) for purposes of leave under section 6382(a)(1)(D), a statement that the employee is unable to perform the functions of the employee's position.

"(c)(1) In any case in which the employing agency has reason to doubt the validity of the certification provided under subsection (a) for leave under subparagraph (C) or (D) of section 6382(a)(1), the employing agency may require, at the expense of the agency, that the employee obtain the opinion of a second health care provider designated or approved by the employing agency concerning any information certified under subsection (b) for such leave.

"(2) Any health care provider designated or approved under paragraph (1) shall not be employed on a regular basis by the employing agency.

"(d)(1) In any case in which the second opinion described in subsection (c) differs from the original certification provided under subsection (a), the employing agency may require, at the expense of the agency, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employing agency and the employee concerning the information certified under subsection (b).

"(2) The opinion of the third health care provider concerning the information certified under

subsection (b) shall be considered to be final and shall be binding on the employing agency and the employee.

"(e) The employing agency may require that the employee obtain subsequent recertifications on a reasonable basis.

#### "§6384. Job protection

"(a) Any employee who takes leave under section 6382 for the intended purpose of the leave shall be entitled, upon return from such leave—

"(1) to be restored by the employing agency to the position of employment held by the employee when the leave commenced; or

"(2) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

"(b) The taking of leave under section 6382 shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

"(c) Nothing in this section shall be construed to entitle any restored employee to—

"(1) the accrual of any seniority or employment benefits during any period of leave; or

"(2) any right, benefit, or position of employment other than that to which the employee was entitled to on the date the leave was commenced.

"(d) As a condition to restoration under subsection (a), the employing agency may have a policy that requires each employee to receive certification from the health care provider of the employee that the employee is able to resume work.

"(e) Nothing in this section shall be construed to prohibit an employing agency from requiring an employee on leave under section 6382 to periodically report to the employing agency on the status and intention of the employee to return to work.

#### "§6385. Prohibition of coercion

"(a) An employee shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with the exercise of the rights of the employee under this subchapter.

"(b) For the purpose of this section, 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or taking or threatening to take any reprisal (such as deprivation of appointment, promotion, or compensation).

#### "§6386. Health insurance

"An employee enrolled in a health benefits plan under chapter 89 who is placed in a leave status under section 6382 may elect to continue the health benefits enrollment of the employee while in leave status and arrange to pay into the Employees Health Benefits Fund (described in section 8909) through the employing agency of the employee, the appropriate employee contributions.

#### "§6387. Regulations

"The Office of Personnel Management shall prescribe regulations necessary for the administration of this subchapter. The regulations prescribed under this subchapter shall be consistent with the regulations prescribed by the Secretary of Labor under title I of the Family and Medical Leave Act of 1991."

(2) TABLE OF CONTENTS.—The table of contents for chapter 63 of title 5, United States Code, is amended by adding at the end thereof the following:\*ERR08\*

#### "SUBCHAPTER V—FAMILY LEAVE AND TEMPORARY MEDICAL LEAVE

"6381. Definitions.

"6382. Leave requirement.

"6383. Certification.

"6384. Job protection.

"6385. Prohibition of coercion.

"6386. Health insurance.

"6387. Regulations."\*ERR08\*

(b) EMPLOYEES PAID FROM NONAPPROPRIATED FUNDS.—Section 2105(c)(1) of title 5, United States Code, is amended by striking out "53" and inserting in lieu thereof "53, subchapter V of chapter 63."

#### TITLE III—COMMISSION ON LEAVE

##### SEC. 301. ESTABLISHMENT.

There is established a commission to be known as the Commission on Leave (hereinafter referred to in this title as the "Commission").

##### SEC. 302. DUTIES.

The Commission shall—

(1) conduct a comprehensive study of—

(A) existing and proposed policies relating to leave;

(B) the potential costs, benefits, and impact on productivity of such policies on employers; and

(C) alternative and equivalent State enforcement of this Act with respect to employees described in section 110(a); and

(2) not later than 2 years after the date on which the Commission first meets, prepare and submit, to the appropriate Committees of Congress, a report that may include legislative recommendations concerning coverage of businesses that employ fewer than 50 employees and alternative and equivalent State enforcement of this Act with respect to employees described in section 110(a).

##### SEC. 303. MEMBERSHIP.

(a) COMPOSITION.—

(1) APPOINTMENTS.—The Commission shall be composed of 12 voting members and 2 ex officio members to be appointed not later than 60 days after the date of the enactment of this Act as follows:

(A) SENATORS.—One Senator shall be appointed by the Majority Leader of the Senate, and one Senator shall be appointed by the Minority Leader of the Senate.

(B) MEMBERS OF HOUSE OF REPRESENTATIVES.—One Member of the House of Representatives shall be appointed by the Speaker of the House of Representatives, and one Member of the House of Representatives shall be appointed by the Minority Leader of the House of Representatives.

(C) ADDITIONAL MEMBERS.—

(i) APPOINTMENT.—Two Members each shall be appointed by—

(I) the Speaker of the House of Representatives;

(II) the Majority Leader of the Senate;

(III) the Minority Leader of the House of Representatives; and

(IV) the Minority Leader of the Senate.

(ii) EXPERTISE.—Such members shall be appointed by virtue of demonstrated expertise in relevant family, temporary disability, and labor-management issues and shall include representatives of employers.

(2) EX OFFICIO MEMBERS.—The Secretary of Health and Human Services and the Secretary of Labor shall serve on the Commission as nonvoting ex officio members.

(b) VACANCIES.—Any vacancy on the Commission shall be filled in the manner in which the original appointment was made.

(c) CHAIRPERSON AND VICE CHAIRPERSON.—The Commission shall elect a chairperson and a vice chairperson from among the members of the Commission.

(d) QUORUM.—Eight members of the Commission shall constitute a quorum for all purposes, except that a lesser number may constitute a quorum for the purpose of holding hearings.

##### SEC. 304. COMPENSATION.

(a) PAY.—Members of the Commission shall serve without compensation.

(b) TRAVEL EXPENSES.—Members of the Commission shall be allowed reasonable travel expenses, including a per diem allowance, in accordance with section 5703 of title 5, United States Code, when performing duties of the Commission.

#### SEC. 305. POWERS.

(a) MEETINGS.—The Commission shall first meet not later than 30 days after the date on which all members are appointed, and the Commission shall meet thereafter on the call of the chairperson or a majority of the members.

(b) HEARINGS AND SESSIONS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before it.

(c) ACCESS TO INFORMATION.—The Commission may secure directly from any Federal agency information necessary to enable it to carry out this Act. On the request of the chairperson or vice chairperson of the Commission, the head of such agency shall furnish such information to the Commission.

(d) EXECUTIVE DIRECTOR.—The Commission may appoint an Executive Director from the personnel of any Federal agency to assist the Commission in carrying out the duties of the Commission.

(e) USE OF FACILITIES AND SERVICES.—Upon the request of the Commission, the head of any Federal agency may make available to the Commission any of the facilities and services of such agency.

(f) PERSONNEL FROM OTHER AGENCIES.—On the request of the Commission, the head of any Federal agency may detail any of the personnel of such agency to assist the Commission in carrying out the duties of the Commission.

#### SEC. 306. TERMINATION.

The Commission shall terminate 30 days after the date of the submission of the report of the Commission to Congress.

### TITLE IV—MISCELLANEOUS PROVISIONS

#### SEC. 401. EFFECT ON OTHER LAWS.

(a) FEDERAL AND STATE ANTI-DISCRIMINATION LAWS.—Nothing in this Act or any amendment made by this Act shall be construed to modify or affect any Federal or State law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability.

(b) STATE AND LOCAL LAWS.—Nothing in this Act or any amendment made by this Act shall be construed to supersede any provision of any State and local law that provides greater employee leave rights than the rights established under this Act or any amendment made by this Act.

#### SEC. 402. EFFECT ON EXISTING EMPLOYMENT BENEFITS.

(a) MORE PROTECTIVE.—Nothing in this Act or any amendment made by this Act shall be construed to diminish the obligation of an employer to comply with any collective bargaining agreement or any employment benefit program or plan that provides greater family and medical leave rights to employees than the rights provided under this Act or any amendment made by this Act.

(b) LESS PROTECTIVE.—The rights provided to employees under this Act or any amendment made by this Act shall not be diminished by any collective bargaining agreement or any employment benefit program or plan.

#### SEC. 403. ENCOURAGEMENT OF MORE GENEROUS LEAVE POLICIES.

Nothing in this Act or any amendment made by this Act shall be construed to discourage employers from adopting or retaining leave policies more generous than any policies that comply with the requirements under this Act or any amendment made by this Act.

#### SEC. 404. COVERAGE OF THE SENATE.

##### (a) COVERAGE.—

(1) APPLICATION.—The rights and protections established under sections 101 through 105 shall apply with respect to a Senate employee and an employing authority of the Senate.

(2) DEFINITIONS.—For purposes of the application described in paragraph (1)—

(A) the term "eligible employee" means a Senate employee; and

(B) the term "employer" means an employing authority of the Senate.

(b) INVESTIGATION AND ADJUDICATION OF CLAIMS.—All claims raised by any individual with respect to Senate employment, pursuant to sections 101 through 105, 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.

(c) RIGHTS OF EMPLOYEES.—The Committee on Rules and Administration shall ensure that Senate employees are informed of their rights under sections 101 through 105.

(d) APPLICABLE REMEDIES.—When assigning remedies to individuals found to have a valid claim under sections 101 through 105, the Select Committee on Ethics, or such other entity as the Senate may designate, should to the extent practicable apply the same remedies applicable to all other employees covered by such sections. Such remedies shall apply exclusively.

(e) EXERCISE OF RULEMAKING POWER.—Notwithstanding any other provision of law, enforcement and adjudication of the rights and protections referred to in subsection (a) shall be within the exclusive jurisdiction of the United States Senate. The provisions of subsections (b), (c), and (d) are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition 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.

#### SEC. 405. REGULATIONS.

The Secretary of Labor shall prescribe such regulations as are necessary to carry out sections 401 through 403 not later than 60 days after the date of the enactment of this Act.

#### SEC. 406. EFFECTIVE DATES.

(a) TITLE III.—Title III shall take effect on the date of the enactment of this Act.

(b) OTHER TITLES.—

(1) IN GENERAL.—Except as provided in paragraph (2), titles I and II and this title shall take effect 6 months after the date of the enactment of this Act.

(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a collective bargaining agreement in effect on the effective date prescribed by paragraph (1), title I shall apply on the earlier of—

(A) the date of the termination of such agreement; or

(B) the date that occurs 12 months after the date of the enactment of this Act.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Thank you, Mr. President. Today I am offering, with my colleagues from Kentucky, Senator FORD, and Indiana, Senator COATS, a compromise amendment, which is a substitute for S. 5, the Family and Medical Leave Act. As a general rule, I have opposed mandates, including some past parental leave legislation. I have even opposed mandates which were supported by 9 out of 10 Members of this body, but I do believe that a case can be made for the adoption of mandates when there are critical national needs.

Can anyone question that strengthening families in America today is a

critical national need? Point to a social problem in our country today and very often it can be traced back to an empty childhood or a shattered family. Drugs, violence, crime, all stem in large part from a breakdown of families.

Mr. President, I regret that the issue before us has turned into such a partisan fight.

I regret that because it makes it difficult for me to offer this amendment in the spirit of bipartisanship and compromise and because I feel that a full debate of the issues, rather than which party is doing what to whom, is what is called for now.

After years of stalemate on the family leave issue, it is time to strengthen families facing tough times. It is time to break the deadlock on this issue with a compromise that will work for families as well as main street businesses.

The workplace of the nineties cannot live by the rules of the 1950's. The fact is that more mothers of young children, even infants, work outside the home than ever before. In 1988, married women with young children comprised the majority of new entrants in to the labor force. More than half of women with young infants return to work outside the home within a year of their child's birth. And contrary to what some of the opponents would have you believe, it is not necessarily out of choice that they do so. In most families it simply takes two incomes to pay the bills. To prove my point: we know that more than two-thirds of women in the work force in the United States today are either single parents or have husbands who earn less than \$18,000 per year. The fact is a family of three or four cannot live comfortably on under \$18,000 per year in most parts of this country. Surveys show us that many married couples would choose to have one person stay home full-time if money were not an object, but it is.

So what happens when a family faces an emergency, an illness, or unexpected chance to adopt, but both partners work? Well, they had better hope they have an understanding employer. Chances are, their employers will not provide coverage for these situations. A 1990 Bureau of Labor statistic study found that only 37 percent of female employees have maternity leave. And of the Fortune 1,500 companies, where one might expect the best coverage of workers, only half offered parental leave beyond the standard 6-week maternity-as-disability period.

Paternity leave is extremely scarce. A 1990 Bureau of Labor statistics study found that only 18 percent of fathers at medium and large firms are covered by unpaid paternity leave. In an era where women contribute to their families' paychecks as a general rule, and some earn more than their husbands, we ought to have policies in place where

men can share in child-care responsibilities, if that is what the family chooses.

According to the Chamber of Commerce, 82 percent of employers provide no leave to care for sick children. And if an employee is sick himself or herself, there is a good chance that he or she works for a company that does not even provide sick leave.

Lower income and younger workers are the hardest hit. They are the least likely of all workers to be covered by employee leave policies. The Census Bureau has found that the less education a woman has, the less likely she is to have leave when she gives birth: Of women with less than a high school education, only 36 percent had leave, compared to 79 percent of women with at least 4 years of college. And women in their teens and twenties were less likely to have leave when they gave birth than those over 30.

Employees without adequate leave suffer increased unemployment, something which surely should be factored in when we are talking about the costs of this legislation. The Census Bureau study found that 71 percent of women giving birth who had leave were back at work within 6 months of the birth, compared to only 43 percent of those without leave. The Institute of Women's Policy Research has found that of female employees who give birth and return to the job market, employees without leave experience on average an additional 104 hours of unemployment solely attributable to lack of leave.

Many companies have told me that they will offer unpaid leave for family needs on a case by case basis, but I believe the statistics I have just cited point out the need for a basic, minimal job protection standard on which all employees can count.

Mr. President, I have not come easily to the position I now hold. For the last several years as I have examined the issues surrounding family and medical leave legislation, I have struggled with two seemingly contradictory beliefs: First, that government should stay out of business' way wherever possible to encourage economic growth and job creation; and second, that as a society we must put children and families first. Indeed, it is well-documented that many of our social afflictions—substance abuse, teen pregnancy, crime and the like—can be traced back to the lack of family structure in an individual's life. Over the last 30 years we have proven that government cannot substitute for families, but we can adopt policies that will strengthen families. And in the case of family leave, we can ensure that employers are provided with a guarantee of job protection to attend to family concerns, in a way that is minimally disruptive to the workplace.

In an effort to address some of the concerns of employers about S. 5's

vagueness, potential for abuse and litigation, potential burdensome costs and unwieldy enforcement procedures, my colleagues from Kentucky and Indiana and I have come up with a series of changes which we believe make the bill more workable, and I hope, more palatable.

I should like to highlight what the amendment would do:

First, it contains the same minimum job protection now in S. 5—we would provide up to 12 weeks of unpaid leave per year for the birth or adoption of a child, or the serious illness of the employee or an immediate family member.

All businesses employing fewer than 50 workers would be exempt, and eligibility would be restricted to those who have worked 1,250 hours, or 25 per week, over the previous year. In addition, they would have to have worked for that company for at least 1 year.

Highly compensated key employees would be exempt from coverage if their absence posed an economic hardship to the employer.

We have completely rewritten the enforcement sections to eliminate quadruple damages and to use instead a procedure paralleling the Fair Labor Standards Act, a well-known commodity for both employer and employee.

We have limited the potential for abuse of the leave by requiring that serious health conditions be such that an employee is unable to perform the functions of his or her position or that the employee can prove he or she is needed to care for a sick family member. Certification by a doctor would be required before an employee could take leave. Further, we require that employees provide at least 30 days notice of intention to take leave wherever the need is foreseeable.

Under the substitute, employers would be allowed to recapture health insurance premiums in cases where an employee simply did not return to work.

And employers are given the flexibility to deal with a potentially disruptive leave situation by transferring an employee to an equivalent alternative position.

Taken together, these changes mean the potential for abuse has been drastically curtailed, the employer has the flexibility to accommodate leave situations and the employer no longer needs to fear the potential of frivolous, costly lawsuits.

Now, family leave opponents are arguing that these changes don't address the real concerns of employers—some are even arguing that these changes will make the bill worse.

Mr. President, the simple fact is that opponents of this bill, particularly Washington business lobbyists, don't want to see any changes that might make family leave workable; they are only concerned with its defeat. And

some say that they are not weighing this legislation on its merits; they are concerned only about the precedent it will set. Their great concern is that passage of this bill will set us down an irrevocable path of mandating all types of benefits, paid and unpaid. And in order to win this debate, they would have you believe, and the people that they claim to represent believe that the battle we are fighting today is that of government-mandated paid leave for all employees in all circumstances.

Mr. President, that is not the battle we are fighting. That is not the issue at hand. The fact is that 95 percent of all employers, and all of small business, is exempt from coverage of this bill.

And this legislation does not impose burdensome costs. The cost of the average employer's benefits package, when you include health, vacation, pension, unemployment insurance, Social Security contributions, and holidays, exceeds \$10,000 per year.

The average cost of this legislation to employers according to the GAO is \$5.30 cents per year. GAO has estimated that at most 1 in 275 workers would take the unpaid leave at any given time. That means a business below 100 employees, 50 to 100 workers, would be at most likely to face the situation only once or twice a year and maybe not that often.

Mr. President, as we debate this issue I think it is important to distinguish between the legitimate concerns business people have about making something they want to do—and making them do something they do not want to do, and in many cases already do—workable and the fears and demons which the Washington lobbyists have conjured up to defeat this legislation.

Our compromise addresses the former, not the latter. But I hope over the course of the debate we can persuade our colleagues that we can debunk the crazy myths propounded by some members of the Washington lobby corps, and move on toward enactment of a compromise which will strike a good balance between providing for the needs of American employees and the legitimate concerns of their employers.

I believe we have dealt fairly with the concerns of employers in this country. The larger issue here is strengthening families.

I would like to take just a few remaining moments to highlight the comments of a man I worked with and have a great respect for, T. Berry Brazelton, in an opinion editorial which appeared in the Wall Street Journal called "The Family Leave Act, From the Baby's Point of View." He talks about the family leave debate in the context of the family stress. He says:

We need to concentrate on a form of desperation that doesn't make the headlines—that of middle-class families. The tension

created by the necessity for both parents to be in the work force pervades their lives. The parents feel there is not enough time left for caring for their children. The family as a nurturing environment for children seems to be disintegrating. We watch the television pictures of children in Romania's orphanages with long-distance pity. But we are cheating our own children of their childhood as surely as did Ceausescu when he set up orphanages in Romania.

Dr. Brazelton concludes that family bonding after a child is born is crucial to both the baby's well-being and the well-being of the family. The baby's well-being ought to be our key concern, and it is a major objective of this legislation.

Similarly Dr. C. Everett Koop, former Surgeon General, whose general hospital background is pediatrics, emphasizes the importance of the bonding process after birth or adoption in a letter of support for the Family and Medical Leave Act. He goes on to say that:

Hospitalized children recover more quickly if one or both of their parents can be on hand to love and comfort them to strengthen their determination, to buoy their morale. There is no doubt that when there was someone in a parental role who was interested in a child and his or her recovery, the child was happier and ultimately, in my judgment, healthier.

I conclude my remarks about this amendment at this time with a thought directed at some of my Republican colleagues. Of some of the more outrageous assertions in this debate, I have been accused of trying to weaken the Republican Party. I think that is outrageous. If anything, I hope that Republicans stand for strengthening families, as we always have. I believe that this substitute does just that, and I urge my colleagues' support.

Mr. President, I ask unanimous consent that the Chair count the time that we have just used against our share of the 2 hours on the Bond-Ford-Coats amendment. I need to confer with my cosponsors before formally calling up the amendment to see if there are any final changes but I believe in the interest of expeditious hearing of this matter that my remarks should be counted toward that time.

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

It is the Chair's understanding that the two managers are to speak before any amendment is sent up.

Mr. FORD. Mr. President, the Chair is correct, and I ask that Senator BOND have charge of the 2 hours which is equally divided, and ask that he yield me approximately 10 minutes.

Mr. BOND. Mr. President, I am happy to yield my colleague from Kentucky such time as he may require.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, first let me compliment my good friend, Senator DODD from Connecticut, for his persistence, patience, and ability to accept the push and pull that has taken place

as it relates to bringing this place of legislation to the floor.

Also, let me compliment my friend from Missouri, Senator BOND, for his effort in working to come up with a compromise that business could be more comfortable with, one that I believe will be acceptable, and my neighbor to the north, Senator COATS, who has worked diligently to put this piece of legislation or our proposed substitute together.

I regret that a party has to, I guess, lower itself to a point where they accuse an individual of damaging the Republican Party because a Member or two from that party would like to help families, would like to help children, would like to make us more productive through a good feeling of employment.

So I say to my friend from Missouri, let it roll off his back like water off a duck's back, if they criticize him because what he is doing is in the best interests of family, children, and productivity.

The other industrial nations that are going ahead of this country have the family leave program. So if they are getting ahead of us maybe we are doing something wrong.

So I hope he will not let it bother him too much and he will not lose too much sleep at night from criticism within his own party.

I am pleased that the Senate will now be able to get on with the action on the Family and Medical Leave Act, S. 5. The small business compromise that I and my distinguished colleagues, Senators BOND and COATS, are offering to this measure is an honest attempt to respond to the legitimate concerns of the business community. We have attempted to produce a workable bill for business that will ensure that workers will not have to choose jobs over families in times of family crisis and emergency.

The fact is, Mr. President, that 25 percent of all our children live in single-family homes, and it is growing. There are 11 million children under the age of 6 in this Nation who have full-time working mothers. When that child becomes ill, his or her parent must often jeopardize their job in order to care for that child.

According to the former Surgeon General, C. Everett Koop—and my distinguished friend elaborated on this—a hospitalized child recovers more quickly if one or both parents can be at the child's side. I do not believe there is a Senator here who, if they had a child that was in trouble, or had been injured, or was sick, would not be at that child's side. Yet, we do not want to pass a piece of legislation, or some do not want to pass this legislation, to give everyone an opportunity to go and be by their child or parent's side in time of emergency.

But if that parent—who in 1 out of 4 cases, 25 percent, is a single parent,

does not have access to leave or must risk losing their job and possibly their health care coverage at a time when the family needs it most—does not take leave that child will suffer.

The fact is, Mr. President, 1 million full-time working moms require care for both their disabled parent and one or more children. The fact is an estimated 80 to 90 percent of all the care for the elderly today is informal care provided by the families. Let me repeat that: 80 to 90 percent of all the care for our elderly today is informal care provided by families.

When that parent becomes ill, or develops life-threatening conditions, such as Alzheimer's disease, cancer, or stroke, and needs care, his or her children must jeopardize their job in order to care for them.

So as we say down in west Kentucky, Mr. President, something about that "ain't" right.

As our society ages, the demands on adult children to provide basic care and support will increase. In those cases where an adult child has no access to a vacation or emergency leave, that parent will suffer.

As Americans' workplace changes, the need for uniform jobs protection increases. Women are now up to 45 percent of our work force. By about 1995, more than 65 percent of our preschool children will have a mother working full time. If business and industry are to continue to grow, we must recognize and value the needs of these workers.

While I wish we could depend upon business to voluntarily do the right thing for these workers, it is clear that this is not the case. Moreover, as our society becomes more mobile, workers need to know that uniform protection will be available.

Senators BOND, COATS, and I have listened long and hard to the concerns of the business community, and many of them were legitimate. The changes included in our compromise provide maximum flexibility for employers to accommodate family needs without disrupting the workplace.

The bottom line is, for as little as \$5.30 per employee per year, this bill will bring both stability and increased productivity to our work force by assuring workers that they will not lose their jobs if they put their families first. Knowing that they will not be put in the position of choosing between family needs and a job, workers will be more productive, more loyal to their employers, and will ultimately provide a more stable work force for their employers.

We believe we have a good, balanced compromise. I believe that this bill is not a mandated benefits bill, but a family value bill. While we cannot legislate values in this body, we can stand up for those things that we believe are right and in the best interest of this Nation. As we continue to grow and

compete with other developed nations, such as Germany and Japan, who have family leave policies, we must ensure that the very values that made this Nation great are not undermined by our drive to be competitive. Given the chance and the full story, I believe that most businesses will support this measure.

In my visits across Kentucky during August, and in recent conversations with Kentucky businessmen and women, I find that when you explain this bill to them, and the changes that we are proposing in the Bond-Ford-Coats compromise, they tend to move such problems with the bill.

On Main Street, U.S.A. businessmen and women are also family men and women who understand the value of allowing parents to be good parents and children to be supportive children in times of need. Let me give my colleagues an actual example of what I think is happening with this bill.

On Monday, my office was flooded with calls from businesses opposed to this bill, ginned up by those organizations inside the beltway trying to substantiate the high salaries they get, and they did not legitimately tell the small businessmen what the Ford-Bond-Coats compromise was. They got that same old song, same old song. Most used the standard line that they oppose mandated benefits. One particular small businessman from one of our poorer regions in rural eastern Kentucky called to express his opposition to this bill.

My staff began asking questions about the size of his business and the company leave policy. While this employer has a paid vacation policy, he has no sick leave policy, because he just cannot afford it. As it turns out, he has only 30 employees. So he will not be covered by this bill. As with most businesses, he has plans and hopes to expand.

When my staff explained the changes made in the Bond-Ford-Coats compromise, particularly the key employee exemption, the notice provisions, and the estimated annual cost of only \$5.30 per employee, he softened. My staff explained that this bill was not really a mandated benefits bill but a job protection bill designed to help working families, to which he commented that his firm was employee oriented. He is all for job protection and really did not have all that much problem with our bill.

This is the attitude I have found, Mr. President, all over Main Street Kentucky. While Washington lobbyists and national groups may oppose this bill, they are having to work overtime to misrepresent what this compromise to the bill does in order to gin up opposition. The fact is that most businessmen and women have families and family emergencies, and they do not need the Small Business Administration

study to tell them that it is always less expensive to accommodate the needs than to replace the worker.

So, Mr. President, let us put the rhetoric aside; let us see this bill for what it really is and not as those inside the beltway wish it to be. Let us do the right thing for the American families. It is time that this body puts the American families first.

I yield the floor.

The PRESIDING OFFICER. (Mr. KOHL). The Senator from Utah is recognized.

Mr. HATCH. Mr. President, today, to get down to the issue at hand, I want to compliment Senator DODD for his efforts in trying to resolve these problems of family and medical leave. These are problems that I do not think are unresolvable. The fact is I think everybody here would like to encourage business and everybody else in our society to provide for some form of leave. The real difference is that the Dodd bill, even as amended by the Bond amendment, is a mandatory bill; it is a bill mandating on the back of business people in this country—especially businesses of a certain size—that they have to do this while leaving everybody else out of the picture.

I mean it is a nice ploy but it really does not cover the problem the way it should.

I compliment Senator DODD for his leadership in trying to do something here. I believe that all businesses ought to voluntarily provide for parental leave and medical leave. It is the mandate that the President objects to, and rightly so. It mandates that we select for the individual employers—or employers and employees—we select for them the fringe benefit they are going to bet in this case. And when you select one fringe benefit, that means you exclude others, because there are only so much money out there that can be spent for these matters.

Frankly, the mandate is what really has put a lot of countries into the problem. The problem is that these countries have been so socialized, have mandate after mandate, that it is easy to create mandates and it is very difficult to stop them from crippling them once you start.

The President's point is that if we mandate parental leave, why not mandate a hundred other things that are also wonderful things if you can do them. The answer to it is we should not mandate. We ought to encourage, but we should not mandate.

Mr. President, my good friend and colleague, Senator DODD, is quite fond of quoting that famous philosopher, Yogi Berra, who once observed, "its like deja vu all over again."

Never has that quote been more appropriate than today as we begin consideration of S. 5, the Family and Medical Leave Act. Because, to be frank, despite the sales pitch we are going to

be given about a bipartisan compromise, we are still being offered an unprecedented, inflexible, Government mandated employee benefit which will strangle personal freedom of choice. It is a radical change in law despite a few minor adjustments.

As a man not given to taking wooden nickles, President Bush turned down the deal flatly.

That should be no surprise. As I said, neither the substance, nor the political landscape, has changed since last year when the same mandated benefit was promptly returned without President Bush's signature. And, this year, like last year, and the year before, President Bush has asked us to consider three simple questions:

First, do we really believe this bill is going to help the United States compete in the global marketplace?

Second, do we really believe that enactment of this bill will help in achieving full economic recovery rather than impede this recovery?

Third, is this unprecedented insertion of a government mandate over personal choice really worth the benefit which we are being told offsets this invasion of freedom?

These are very fundamental questions that I believe the citizens of the United States would expect us to ask about any legislation we consider. They are important questions with implications that stretch far into our domestic and international economic base. They are not questions that we should take lightly.

President Bush would not veto any legislation without having extended it this high degree of inquiry and analysis, particularly legislation that purported to help families. But, on the basis of that well researched investigation of the pros and cons, our Nation's best economic minds have concluded that the likely benefits of this Government mandated benefit simply do not outweigh the intrusive nature of this invasion of personal freedom by the Federal Government. The benefits simply do not offset the very real danger to our economic recovery and to our ability to compete internationally that this bill will cause.

In other words, President Bush and his advisors have uniformly answered each of the three questions I posed with a resounding no.

No, this bill will not help us compete with our global rivals.

No, this bill will not help us in our Nation's efforts to fully recover economically.

No, this bill does not provide more personal freedom and flexibility.

It takes it away. And it imposes the Federal Government on business in this society in a way that will not get the job done anyway.

But, while it is the same old business here, a lot of other things certainly have changed in the world since we last

entertained the idea of mandating employee benefits in the United States.

For instance, just a few weeks ago, on September 15, 1991, the Swedish electorate soundly rejected the idea of a centrally planned government which mandates inflexible benefits exactly like this one.

In doing so, Mr. President, Sweden has now joined the wave of popular opposition to central government control and one-size-fits-all mandates, in favor of a smaller, less intrusive government role. The expectations of the people of Sweden are lower taxes, and trimmed back, more realistic social programs.

The people of Sweden, by virtue of the so-called model mandated benefits which had been shoved upon them by their government, had produced a nation wherein an astounding 57.7 percent of the country's gross national product was government spending. And it is precisely mandates like this that caused that to occur.

That was yesterday for the people of Sweden. They have now said, no more. They have said, take back the mandated benefits—we don't want them at this price.

As I recall, just last year, the Senator from Connecticut was contrasting the United States system to Sweden's, trying to convince us that we were somehow missing something.

"The United States is the only industrialized nation other than South Africa that does not have these government mandated benefits," the Senator from Connecticut repeated over and over again.

Is this not just a bit ironic? As the rest of the world moves toward freedom and individual choice, as the rest of the world rejects their experiments with paternalistic human resources policies, here we are in the United States trying to model our economic system after theirs.

Reporting the downfall of Sweden's Social Democrats, the Washington Post said the people of Sweden did not want—I quote "a suffocating welfare state that costs too much and exerts too much influence over their lives." They rejected mandated government benefits.

Now, true, this is only one mandated Government benefit, but it is one of many that are already on the books and one of many that are going to come if this one passes and if it is not soundly rejected by the President, and vetoed, and sustained.

Why? Swedes, it is reported, died while waiting for bypass surgery as access to vital health care services became increasingly difficult in Sweden's model system. Swedes paid several dollars for bread. Swedish children cannot get into day-care centers. And, Swedish industry has become an oxymoron, as most investment by the private sector is in other countries, not their own.

This is a model system for the United States?

If there is one lesson to learn, Mr. President, from the unrest we have seen in the world over the past few years, it is that our interest in the family simply cannot be separated from our interest in a strong, vital economy. One without the other is deficient.

It is a strong, vital, economy that delivers the jobs to families and keeps food on their tables. It is a strong, vital, economy that produces an astounding array of goods and services in this Nation—goods and services of such diversity, and abundance, that we are the envy of the world, not vice versa.

The Government cannot mandate this kind of economic situation, Mr. President. Just go ask the Swedes. Just go ask the proud citizens of Poland about government mandates for what they think is good for the family.

Just how could the balance between family and a strong economy have been missed by so great a distance as to make small businesses, the backbones of our Nation, so vigorously opposed to this measure.

We do not have to look too far for an answer, Mr. President. Because, President Bush, in straightforward, unambiguous language, told us why in his veto message last year.

President Bush explained that, by focusing exclusively upon a rigid, one-size-fits-all federally mandated benefit, the economic end of the scale is empty. And, that obviously cannot create balance.

Here is how he explained it: While—

I am returning (this bill) without my approval. \* \* \* I want to emphasize my belief that time off for a child's birth or adoption or for family illness is an important benefit for employers to offer employees. I strongly object, however, to the Federal Government mandating leave policies for America's employers and work force. This bill would do just that.

America faces its stiffest economic competition in history. If our Nation's employers are to succeed in an increasingly complex and competitive global marketplace, they must have the flexibility to meet both this challenge and the needs of their employees. We must ensure that Federal policies do not stifle the creation of new jobs, nor result in the elimination of existing jobs. The Administration is committed to policies that create jobs throughout the economy—serving the most fundamental needs of working families.

The strong American labor market of the past decade is a sign of how effectively our current labor policies work. Between 1980 and 1989, the United States created 18 million new jobs. In contrast, within European countries, where mandated benefits are more extensive and labor markets less flexible, job growth has been weak. Between 1980 and 1989, all of Europe generated only 5 million new jobs. As a nation, we must continue the policies that have been so effective in fostering the creation of jobs throughout our economy. (This bill) is fundamentally at odds with this crucial objective.

The President continues:

(This bill) ignores the realities of today's work place and the diverse needs of workers.

Some employees may believe that shorter paid leave is more important than the lengthy, unpaid leave mandated by this legislation. Caring for a sick friend, aunt, or brother might be as critical to one employee as caring for a child to another. In other cases, some employees may prefer increased health insurance or pension coverage rather than unpaid family and medical leave.

Choosing among these options traditionally has been within the purview of employer-employee negotiation or the collective bargaining process. By substituting a "one-size-fits-all" Government mandate for innovative individual agreements, this bill ignores the different family needs and preferences of employees and unduly limits the role of labor-management negotiations.

We must also recognize that mandated benefits may limit the ability of some employers to provide other benefits of importance to their employees. Over the past few years, we have seen a dramatic increase in the number of employers who are offering child care assistance, pregnancy leave, parental leave, flexible scheduling, and cafeteria benefits. The number of innovative benefit plans will continue to grow as employers endeavor to attract and keep skilled workers. Mandated benefits raise the risk of stifling the development of such innovative benefit plans.

The President closes:

My Administration is strongly committed to policies that recognize that the relationship between work and family must be complementary, and not one that involves conflict. If these policies are to meet the diverse needs of our nation, they must be carefully, flexibly, and sensitively crafted at the work places by employers and employees, and not through Government mandates imposed by legislation such as (this).

Mr. President, clearly, no one wants to help American families more than President Bush. We all want to help families who want, and need, more time for essential functions.

But, in plain truth, the issue is one of method, not motive. No Republican Member I know, and not one employer I have ever spoken to, disagrees with the purpose—but, they strongly object to the mandate. They strongly object to the Federal intrusion.

I know the Senator from Connecticut never wanted this to turn into such an embittered stalemate between the businesses who oppose this bill and the interest groups who support it. That should not have happened. That is tragic, because both management and labor have families. They are the same in this regard. And, they need to work with each other, rather than against each other, if family life in this country is ever going to work its way out of this recession and into a competitive position internationally.

Method, not motive, drives this debate. Design, not purpose, has created the barriers between us.

But, our disagreement over method and design is fundamental. It is an issue about the role of Government—whether the United States Congress is going to offer families in the United States the type of help that the Social Democrats in Sweden offered; or,

whether we will offer the type of help that provides personal choice and individual flexibility.

Unfortunately, the President will veto this bill. That veto will be sustained. The bottom line is, sadly, that all of the efforts of the Senator from Connecticut and the Senator from Missouri will go down the drain because the structure of their bill is a mandate requiring employers to give workers something they have not earned.

It costs nothing to give back something that has already been earned, Mr. President. The economic turmoil begins at the point when we in Congress mandate that employers provide benefits not earned. And, that is when the three general principles I mentioned earlier come into play.

Let me repeat these three principles so we can all use them as benchmarks for evaluating the acceptability of the legislation we are being asked to support.

First, do the facts reveal that the implementation of this mandate for unearned benefits would weaken our Nation's competitive posture in the global marketplace?

Second, as the United States struggles to fully regain domestic economic strength and vitality, should we entertain a mandate that business provide unearned benefits?

Third, the days when we in the Congress mandate unnecessary, inflexible, rigid Federal standards which choke off individual choice—benefits—should be long, long over. Congress has never mandated that employers pay benefits that have not been earned. Should we begin at this critical moment in our economy's transition into recovery to require a rigid, inflexible benefit that some Americans may not even want? And many will not even want this, although there are some who will.

Let me share with my colleagues how a recent article by Claudia Winkler, in the Washington Times, answered this question. Looking at what had happened in Sweden, she concluded, "an overreaching welfare state is extraordinarily hard to prune back. Americans should go no further toward creating one here."

That is what this debate is all about. Do we want to take this step toward creating an America modeled after Sweden and other nations which use Government-mandated benefits as the centerpiece of their social policy?

The New York Times ran an article dated September 26, 1991, in which the following rationale for supporting this bill was offered:

The Dodd-Bond bill is cautious; its cost will likely be measured in the hundreds of millions of dollars. Meanwhile, the bill sends an important signal about how society values families and children. These gains are worth grabbing.

In another Washington Times article on September 26, 1991, this was said about the Dodd-Bond bill:

The Dodd-Bond bill benefits mostly upper-class couples who can afford to take unpaid leave, penalizing those who earn less money and have to return to work as early as they can and get fewer benefits.

The article, by nationally syndicated columnist Suzanne Fields, concludes:

More than half of the businesses surveyed by Gallup for the National Federation of Independent Business say that they will finance the imposed leave with cuts in insurance and vacation benefits provided to other employees.

The Senator from Connecticut has said he has been offered no evidence that any business has ever scaled back on another benefit to pay for mandated leave. More than half of the small businesses in the Nation say they would do exactly that.

And, that raises the question of whether individuals may prefer the benefits that may be taken away over the Government mandates that will trigger the tradeoff.

First, plain common sense suggests that personal choice is limited by the imposition of a one-size-fits-all Government mandate. The vast majority of working families want the flexibility to choose for themselves what is best for their families. For instance:

A recent poll by the Gallup organization reveals that 99 percent of all the employees in the United States, 99 percent, when asked in straightforward terms what their most valuable benefits would be, chose fringe benefit areas other than family leave or personal medical leave.

Thus, only 1 percent of all working family members surveyed in this Nation said they would value the leave benefits provided under S. 5 above all their personally applicable benefits for their families.

Evidence also strongly suggests that employees vastly prefer to control their own futures. Working family members want, and demand, the ability to choose their own benefits packages—by this I mean benefits relevant to their own unique circumstances and lifestyles. Exemplifying this demand is:

A 1991 study by the Penn-Schoen organization found that 89 percent of all adults polled in the United States prefer to have employee benefits freely negotiated between themselves and their employers and not imposed by Federal mandate.

In another recent study conducted by the American Enterprise Institute, data revealed that a majority of Americans believed that the Government should not mandate that employers provide benefits such as family and medical leave.

This study found that only 31 percent, less than one-third of those questioned, believed that granting unpaid leave was something that a company should be forced to do.

Now, other surveys strongly evidence the belief of working parents that they

need flexibility to spend more than 12 weeks with their children following birth—that any help the Congress provides in this area ought to extend an option to spend more than 12 weeks.

This very strong desire is evidenced through the most recent Census Bureau data that reveal that 67.1 percent of all mothers remain at home with a newborn after the first 12 weeks have passed.

In fact, almost 50 percent of new mothers, according to this Census Bureau data, do not work for pay at all during the first year of their newborn's life. Half—a full half—of all new mothers decide not to work during the first year.

Census Bureau data also reveal that almost 50 percent of all working mothers who do return to work after just 12 weeks following the birth of a child, and before the expiration of 1 year thereafter, choose, freely choose, part-time working arrangements rather than full-time working arrangements.

And, even more astounding, the evidence unequivocally suggests that fully half of the women who left work for the birth of a baby expressed the desire to remain at home for the first 2 or 3 years of their child's life.

And, a full 39 percent expressed a desire to remain with their new child until he or she started school at age 6.

Maybe the Census Bureau got it all wrong. But, when one adds it all up, it appears to me that these facts paint a rather clear picture of the utility of the Dodd-Bond bill as it stacks up against the desires and needs of working parents.

Now other strong evidence finds no compelling need, at all, for S. 5. For instance:

A 1985 Harris poll found that a full 73 percent of U.S. employees believed that their employer already made adequate provision for both emergency and regular needs of working parents. When specifically asked if they were happy with the arrangements made, nearly three-quarters of all working Americans were quite content. Think about that.

In fact, a recent survey by the U.S. Chamber of Commerce found that 99 percent of the 6,367 companies questioned voluntarily—they did not need a mandate to do it—they voluntarily provided some type of paid fringe benefits to assist working families such as hospital coverage, profit sharing, dental plans, and/or family leave.

What is more, a recent Conference Board Study, released just a few weeks ago, found that nearly two-thirds of the companies that participated said that they had expanded work-family programs in their workplaces during the past year.

These respondents cited alternative work arrangements such as part-time, job sharing, telecommuting, and compressed workweeks as arrangements

which have been put in place to facilitate a better balance between work and family.

In all, 9 of 10 companies provided benefits far beyond those legally required, and 8 of 10 provided such benefits in the form of cafeteria plans under which employees could freely choose the types of benefits most appropriate for their individual circumstances.

I believe this argues for flexibility and the ability to choose. What working families really want, and what in practice has been happening in this area, are things the Congress simply cannot address with a mandate of 12 weeks leave, chosen to the exclusion of all other fringe benefits. These data clearly suggest that this was the question put to the people and that their answer was "No." They want flexibility to work out solutions, not one-size-fits-all mandates that will actually limit the boss' options for accommodating our needs.

Other evidence strongly suggests that given a choice, employees prefer to have greater choice in deciding the types of benefits they receive over more benefits, per se. In other words, quality, not quantity, is what people are telling us they want.

A 1986 study by the Opinion Research Corp. found that 70 percent of those employees questioned said that they would pay more out of pocket for the opportunity to configure benefits to better meet their own personal needs rather than have these choices made by an employer.

So if we listen to what the people are saying, what they clearly want is flexibility to choose among competing fringe benefit programs and not have mandated what they have to take.

Regardless of the well-intended motivations of Members of the U.S. Senate, they are clearly telling us thanks, but no thanks; we do not want it. They do not want the Congress to make these choices for them. Moreover, not only does the data prove that most employers are already responding to these needs, but also 73 percent of working Americans asked in a Harris poll said strongly that they believe their employer already made adequate provision for both emergency and regular needs of parents.

Mr. President, if this suggests anything, it is that the voices that we have been listening to in Congress represent a small minority of Americans. If there is any doubt about this, consider another recent survey which indicates that as many as 90 percent of all Americans have absolutely no idea that the Congress is considering this bill today.

From this small minority of advocates, the proponents have gathered some impressive anecdotal evidence, and this type of evidence is very helpful in sensitizing legislators to the types of problems faced by some fami-

lies. Indeed, I sympathize with these citizens and sincerely regret that they have experienced so much difficulty. There are anecdotes and there are cases where things are not good, but does that justify mandating a Federal program on top of all the other mandates we have and emphasizing that there will be a lot more if this one passes?

It seems that these views really are out of step with the majority. But assuming we all have the desire to help balance the family work of the minority of Americans who are petitioning us to do so, the question is whether we must resort to a policy that is in such obvious conflict with everyone else. Let me share some of the evidence that relates to the discriminatory impact of S. 5.

What we mean by discriminatory impact is that different classes in this country benefit in varying degrees and that many will receive no benefit at all from this type of mandate. For instance, because of an exclusion based on business size, almost half of the working family members of the United States are not even eligible for mandated benefits under this bill. Almost half will not even be affected, will not receive these benefits, and yet we are mandating them throughout the society.

In fact, data finds that 95 percent of the businesses operating in the United States have 50 employees or fewer. This is the cutoff. Ninety-five percent.

Companies employing 50 or fewer workers provide jobs to almost half of the total U.S. employment picture. They are not covered by this. The reason they are not is because of the expenses, because they could not get it passed if they tried to, because everybody knows this is going to be a costly thing to society, and everybody knows we are going to be choosing the fringe benefits by the almighty wisdom of us in Congress, all 535 of us. We will be choosing the benefits for half of the 120 million employees in this country and excluding the other half.

Thus, it takes no mathematical genius to conclude that based on the facts, almost half of the working family members in America will receive no benefit at all from S. 5. Data from the Small Business Administration indicates that small businesses, those that would be exempt under this proposal, are where a disproportionate number of women and minorities work in this country. Thus, those individuals who really probably need these benefits the most, and those we think would be more inclined to use family leave benefits as well, are those the least served under S. 5.

I am not presenting this evidence so it will cover 100 percent. We cannot do that. If we did that, everybody would understand what a crummy piece of

legislation this is, though well-intentioned.

On page 34 of the State of the Small Business: A Report to the President, a report that was transmitted to the Congress, it states: "Women are more likely to be employed in small business." So who is going to be hurt by this the most? Women. And generally single heads of households, and that is two-thirds of the women's work force in America, by the way. They are either single heads of household with children at home or they are married to husbands who earn less than \$15,000 a year. We found that out in the child-care debate.

It seems, obviously, since small businesses with fewer than 15 employees are exempt and small businesses hire a disproportionate number of women, that S. 5 has missed the mark. It has missed its mark, that is for sure and it is discriminatory. This legislation is not covering those individuals the bill's sponsors say it is supposed to help. Again, we are going to be covering those businesses with 15 employees or better—they generally pay more and give more—while the others, the people who really need it, are left out. The reason they are is because they could not pass the bill if they put them in.

Moreover, those excluded by S. 5 are hit by both barrels of this discrimination shotgun, and this is why: Mandated benefits are not free. As much as they tell you that it is only going to cost \$5.30 per employee per year, if you believe that, then, to borrow a quote from Senator KENNEDY, I have a bridge in Brooklyn I would like to sell to you.

Mandated benefits are not free. If they were, we would give anyone an unlimited amount of time off for any reason and not be concerned for the impact on the economy. Why should we give an unlimited amount of time off? Why should we not give them 6 years for those children? It makes sense to me if that is what we are trying to do. If we are trying to help families, why do we not help them the right way?

The reason we cannot is because it is expensive doing what they are doing here and it is discriminatory favoring some in our society against everyone else.

Economics 101 provides some real world insight about the impact of mandating new benefits. It teaches that faced with higher costs of production, an employer will cut back other costs and raise prices to compensate. It is a very simple balancing equation. If an employer raises the price of a cheeseburger by a dime, all consumers have to pay that extra dime or go without. It would be impossible for the Federal Government to mandate that only employees eligible for family leave benefits have to pay the extra dime.

So while we will all pay more due to these price increases by virtue of the broad exemption in S. 5, only about

half who pay this extra dime will receive any benefit at all. Not only will we turn our backs on those who will most likely need this benefit, but we will also force them to pay so that others much less in need can enjoy these benefits at their expense.

Is it any wonder some commentators are calling S. 5 a yuppie bill? In fact, I am proud to tell Senator DODD I am sure he is going to be the champion of the yuppies in this country once this bill passes. What a wonderful time. He will deserve it, and I will be the first to be there to compliment him on his new title.

Mr. DODD. If my colleague will yield on that point, I appreciate that. But if this is a yuppie bill to provide 6 years of unpaid leave, the only people I can possibly think of who might enjoy that benefit would be the Fortune 500.

Mr. HATCH. As a matter of fact, if you get 6 years of unpaid leave, which my approach would provide without mandating on the backs of the employers and without any costs but recognizing the needs for mothers to be home, I think it is more family-oriented than anything we are doing here today.

Mr. DODD. If my colleague will yield further, to make one point here, I commend my colleague for proposing that piece of legislation. But in fairness to it, to provide 6 years of unpaid leave, I do not know anybody in America, I do not know a single person, even a top paid chief executive officer, who could possibly take advantage of 6 years out of the job without being paid.

Mr. HATCH. They do not have to under my approach. They can take up to 6 years if they want to, which gives them the full flexibility, and take up to a week or 6 years, whichever is better. One thing is for sure, it is not a mandate and applies to everybody equally.

I think it makes sense rather than 12 weeks which does not make sense where there are a lot of costs involved. As I understand it, those costs the Senator claims are only \$5.30 per person per year, is that correct? Could I ask the Senator that?

Mr. DODD. I would be delighted to answer. The General Accounting Office, which did the analysis of this says \$5.30, a little less than 2 cents a day.

Mr. HATCH. The Senator seems confident in that figure?

Mr. DODD. That is the health insurance that gets carried as opposed to my distinguished colleague from Utah who does not provide for those in 6 years, so there would be no insurance for people. What we do not calculate here, if someone is to take on a new hire, the estimates are that it is far more costly. According to surveys done in the business community—the Small Business Administration, under the Bush administration, did a survey—they claim it would be far more costly for a business to take a new hire than to give someone a few weeks of leave and bring

them back or have a temporary come in. So the cost is \$5.30 per covered worker per year. We do not know but we can only assume that number would actually be reduced because of the cost savings of not going out and having a new hire.

Mr. HATCH. I am going to try to finish. I notice there are other colleagues who want to speak. I notice the distinguished Senator from Indiana has been here for quite a while.

I have to say that some commentators are calling S. 5 a yuppie bill because individuals currently working in larger businesses receive more while individuals working in smaller businesses receive less, or will certainly be likely to receive fewer benefits in the first place, or no benefits at all. At the same time, all of these individuals pay the extra dime, to use my illustration, for the cheeseburger to pay for those benefits.

Let us look at another economic possibility. The economic alternative to raising prices is to cut costs. Commonly used means of cutting costs are layoffs, hiring freezes, reduction in hours, or even the dismissal of employees.

Who are the most likely workers to suffer these cutbacks?

Another example of Economics 101 at play in the workplace is that the least productive workers or workers with the least seniority are the first to go. So if we review the evidence about which groups have the least seniority and which seem to possess the fewest skills, again it is women and minority workers because they are most often the newest entrants to the labor force.

Let me address evidence of another nature. That is the evidence that this legislation will force a benefits tradeoff for all employees, not just those taking advantage of leave.

To illustrate, let us talk about an employment situation we can all relate to, the Senate. Each Member of the Senate has a budget to hire staff. Obviously, as much as we may want to, we cannot provide pay and benefits which exceed available funds, although I have noticed in the House they have been able to bounce some checks over there with their own special fund. For any employer, including the Senate, there is a limit.

The employers I have worked with refer to the benefits aspect of this equation as the benefits pie. And like any pie there are only so many slices to be taken before it is all gone, before all the benefits budget dries up.

An elderly worker who may want additional retirement benefits may lose the opportunity to gain this piece of the pie because we in Congress are mandating family leave benefits.

Single workers who may want more vacation time may lose that option. Workers with teens who may have more interest in profit sharing for col-

lege expenses may lose those important options. You could go on and on under different options and different fringe benefits people would want and who will be foreclosed to a degree because of the mandate we are requiring in this bill.

That is precisely why working Americans are telling us that they want choice and flexibility with regard to employer fringe benefits. Without this choice, without this flexibility, we cut off the options of the many to satisfy the needs of the few.

For example, a study prepared by an interest group strongly advocating passage of S. 5 asserts that the costs of S. 5 will not be as great as some employers contend because instead of hiring new workers to perform the jobs of people on leave, those employers will just disburse the work among other employees.

Well, does not common sense dictate that an increase of hours worked by one employee who must remain on the job deprives him or her of time with his or her family? Is this not a discriminatory impact against some so that others can benefit? Someone who cannot afford to take unpaid leave must work longer hours so those who can afford unpaid leave can remain at home with their children.

But, if that is not enough, let us address a more dismal discriminatory impact of this legislation. This is the suggestion that S. 5 may lead to discrimination against younger women of childbearing age that employers will want to avoid hiring if possible.

A recent survey conducted by the Gallup organization found that if Congress passes this bill, 40 percent of the employers said they would be less likely to hire young women. Economically, that is a fact of life. It is discriminatory against young women.

Mr. President, when we put all of this evidence together, I think a few questions are in order. First, if the vast majority of Americans want freedom of choice and flexibility in choosing workplace benefits, why are we entertaining such an inflexible approach as the one contained in S. 5?

The answer is because we as compassionate legislators desire to address the needs of those who need help balancing work and family.

Now, that is fine and good. We all agree with that. But why have we crafted a bill which so strongly discriminates against those who cannot afford unpaid leave so that those who can afford to do it can be given this advantage?

Who are those who cannot afford unpaid leave? A recent study by the senior Republican economist on the Joint Economic Committee told us clearly who could not afford this type of leave. This report says, "Saving rates are lowest among poorest families." I do not think anybody would disagree with that.

Does it take a Ph.D. economist to figure out who will take this leave under S. 5? It is certainly not going to be the poor.

Some have been content to vote for this legislation without having been made aware of that particular fact. But let us face it, a family with no savings cannot seriously consider a quarter-year leave without pay. Conversely, well-to-do families with a sizable nest egg can afford to and will take the time off. You can count on it.

So, Mr. President, I believe this brings me back to the Point where I started. Helping American families is really not the issue here because a high percentage of them already are helped in the sense of businesses what are voluntarily doing this. The others are not. But we could come up with a way of helping them I think without making it mandated. The issue here is whether the United States should enact an unprecedented mandated employee benefit that will not help American workers across the board and in fact will discriminate against about half of the American workers, most of whom will be young women and the poor and minorities. And by the way, the benefits will go primarily to those who probably could afford to do it anyway.

Desire to facilitate a better balance between work and family, it seems to me, is not at issue. But whether this mandated employee benefit is going to help or hinder the United States in efforts to compete in global competition is at issue. That could take away jobs from everybody if we do not do what is right.

Whether or not this is the right time to be enacting Government-mandated benefits when our economy is at a critical stage and turning the corner to full recovery is at issue.

At the beginning of this statement, Mr. President, I said we should never forget that the interests of the American family and the interests of a sound and vital economy should never be viewed as separate.

The purpose of our being here today is supposed to be a facilitation of balance between work and family. So, in closing, I just want to repeat three simple questions and ask that each Senator answer these questions before casting his or her vote.

One, will this particular bill lead America down the road to full economic recovery or will it stall our efforts? I think it is pretty hard to make the case it will help us down the road to economic recovery.

No. 2, will this bill enhance our ability to compete internationally or will it further erode our competitive posture? Keep in mind a lot of countries in the rest of the world that have been under the aegis of Government mandates have been struggling to get them off, to be free like us so they can have the free competitive posture that we do

so they can compete, and here we are putting them on at the very same time they are trying to get them off.

Three, would free Americans chose the Government mandate if they were given another choice which extended them the flexibility to meet their own unique family needs? I think it goes without saying that the answer to that is no.

If any of these questions can be answered in the negative, I think we have to wonder if this is the right way to achieve balance between work and family in American life.

I was pleased to have worked with the Senator from Connecticut on the landmark child-care legislation, and he certainly did a great job there. I was very proud to be with him.

I know how sincere he is here. So I do not particularly want any of my remarks to be considered hypercritical of him. His intentions are wholly honorable, good, and I appreciate them and respect them. I can only say I am sorry that he is not on the right side of this issue at this time. Economic-wise he certainly is not. I know from this and other experiences on the Labor Committee, Senator DODD can be very persuasive and is. He has done a remarkable job promoting this bill. If it passes and becomes law, he deserves all the credit. I will not add the latter part on this. But he has done a remarkable job promoting this bill.

I congratulate him for his success to this point. But I beg to differ with him on the merits on the Family and Medical Leave Act even in its slightly revised form. It is only slightly revised by the current amendment, and the amendment offered by my good friend and colleague from St. Louis who himself is trying to resolve this problem in a credible and good way. I wish that other concepts could have been given the same level of attention as we have been giving to this.

I simply reiterate the fact that we are all motivated trying to do what is right for the family. We only differ with the approach. It is the mandate of one-size-fits-all approach that is incorporated in S. 5 that I believe is inconsistent with our Nation's overall economic gains—most importantly, inconsistent with the desires and the needs of America's families.

So I appreciate being able to say these words. I felt like they needed to be said because it at least lays out the groundwork in some of the differences that we have on this bill, and I suggest that all Senators really think this thing over before voting for S. 5; that regardless of what happens, the President is going to veto, and I hope that veto will be sustained.

I hope we will put forth the greater effort trying to find real flexible fringe benefits that will benefit the American people, not just 50 percent of them but all of them.

Thank you. I yield the floor.

Mr. PACKWOOD. Mr. President, I rise today along with Senator DODD, Senator BOND, Senator FORD, and numerous other cosponsors, both Republican and Democrat, in strong support of the Family and Medical Leave Act. I am a longtime advocate of this legislation and today my enthusiasm is even greater because of the growing bipartisan support this bill is receiving. I want to thank Senator BOND and Senator DODD for their hard work to tailor a compromise bill to respond to the concerns of the business community.

My State of Oregon is an excellent example of the success of family and medical leave laws. In 1988, Oregon enacted legislation to allow 12 weeks of parental leave for parents of newborns and seriously ill children. At the time, a great deal of opposition and concern was heard from those who feared it would cost too much, be difficult to implement, and that employers would be forced to cut back other benefits to employees. I am happy to say that experience has proved these claims meritless.

Oregon was so pleased with the benefits of the original legislation that this year it expanded the law to add leave for serious medical conditions. Oregon's new law is one of the Nation's most comprehensive family and medical leave plans.

A report entitled "Beyond the Parental Leave Debate: The Impact of Laws in Four States" was issued on May 22, 1991, by the nonprofit Families and Work Institute. The study featured Oregon and three other States which already have family leave laws. The vast majority of employers in those States reported that they had no problems with those laws—91 percent said that the laws' requirements were not difficult to implement. In fact, 42 percent of Oregon employers said it was actually extremely easy to implement.

The vast majority of employers in all four States surveyed also reported no significant increase in costs.

For example: 81 percent reported no increase in unemployment insurance costs; 71 percent reported no increase in training costs; 55 percent reported no increase in administrative costs; and 73 percent reported no change in health insurance costs.

There may be skeptics among my colleagues who will say, just because a few States have a good experience with family leave, why should I want it for my State? The best answer I can give you is that the Family and Medical Leave Act is profamily. Whatever side of the political spectrum you may be on, profamily legislation benefits your constituents. This bill allows parents to spend the first few critical weeks of their child's life with the child. It also allows a worker whose child, parent, spouse or who himself is critically ill, to take the necessary time for recovery

at home. Having the opportunity to deal with a crisis without fear of job loss strengthens families and keeps them together.

The Family and Medical Leave Act has diverse support, including most major women's organizations, church groups including the Catholic Conference, and both conservative and liberal Members of Congress. That is because it is truly profamily: It helps working parents, gives pregnant women more options, and allows families to take care of their own.

I would like to address some of the concerns about the cost of this legislation. From a fiscal standpoint, it is win/win. The taxpayers win, and business wins. Let me explain. When a worker loses a job due to a family crisis, they experience a loss in earnings that is passed on to the taxpayer. Workers who cannot return to their jobs often must resort to receiving assistance from welfare or unemployment. In its 1989 cost estimate of the Family and Medical Leave Act, the General Accounting Office estimated that the cost to the public of not having family and medical leave amounts to about \$8 billion annually.

Business wins, too. A study commissioned by the Small Business Administration found that the cost of permanently replacing an employee is significantly greater than that of granting family or medical leave—demonstrating that the Family and Medical Leave Act may actually reduce costs to business.

The Family and Medical Leave Act deserves your support for all these reasons. I urge you to vote for it.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I yield 15 minutes to the distinguished cosponsor of this amendment, the Senator from Indiana.

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

Mr. COATS. Mr. President, I thank my friend from Missouri for yielding the time. I also thank him for his very serious and effective efforts in addressing some concerns that he and I and others have had relative to the original bill that was introduced.

I think this substitute that we are debating here this morning and which we will be voting on this afternoon addresses those concerns. I am proud to be a cosponsor of that substitute.

I have invested a great deal of time and energy and effort into the question of how we, as a Federal Government, can best respond to the very real, very legitimate needs of our children, youth, and families.

As a Member of the House of Representatives, I served for a number of years as ranking member on the Children, Youth and Families Select Committee and then, upon coming to the

Senate, asked for and was privileged to receive ranking position on the Senate equivalent committee, although it is a standing committee in the Senate, on children, family, drugs, and alcohol.

My work on both of those committees and over the past decade or so, and listening to literally hundreds of experts come and testify, visiting sites throughout the country, talking with people who have been interested and invested their time and career into the whole question of the American family, has led to one inescapable conclusion. That conclusion is that the breakdown of the family is the root cause of many, if not most, of the social ills experienced by today's youth and by our families.

We have attempted at the Federal level to address those problems, whether they be substance abuse, child abuse, poverty, problems of housing, education, teen pregnancy, on and on the list goes. We have attempted to address those with now more than 100 Federal programs; 390 separate line-items of expenditures providing billions of dollars of support for our children and families designed to address the problems that they face.

All of those programs address what I would describe as the symptoms of a deeper root cause of the problem or a deeper disease, and many, many experts will tell you—there seems to be a consensus growing among various schools of thought, different points of the political perspective and spectrum—that the family is the root cause of the problem; that dysfunctional families lead to dysfunctional children; that functional families can be the best preventive medicine that money can buy or that society can support.

As a result of this conclusion, I have attempted to address a number of my efforts toward ways of strengthening the American family: That led to my introduction and involvement in the House in the effort back in 1984-85 of doubling the personal exemption which was tragically and shamefully out of proportion to the contributions of the family to this society, which had slipped from its original level in 1948 of \$600 per taxpayer and spouse and dependent and increased to \$1,000, but measured by any index of inflation was way behind where it should have been.

Thankfully, that legislation was passed in the 1986 Tax Reform Act through introducing a redoubling of that in the Senate. And that is a bill which at some point I hope we can debate, talk about, and enact into law with the American Family Act which is 20 or more separate initiatives all designed to strengthen the family.

I recognize we simply cannot come to Washington, write a law, and mandate strong families; that much of what is taking place in the family in today's society and much of what needs to take place in order to strengthen that fam-

ily has to come completely outside of any type of legislative effort. But we can encourage, we can remove impediments, we can attempt to foster family friendly policies at the Federal, State, and local government levels.

So when the idea of parental leave came along, it was an idea that captured my attention and many of my sympathies, because as a concept, the idea of parents being able to take time to spend with their children, either at birth or at times of critical illness, or spend times with ailing parents or other family members, that is a very critical concept that we ought to be fostering.

So I was sympathetic to it. While I was not a cosponsor, I indicated that I certainly wanted to support the concept and work toward something that I thought we could all embrace.

I announced in the committee when we held hearings on this, and then addressed it, that while I would not be a cosponsor of Senator DODD's original bill because I felt there were some legitimate concerns that ought to be addressed, I would attempt to work with him to address those concerns, and if we could find a substitute or an alternative that addressed those legitimate business concerns, many of which the Senator from Utah has outlined, then I would support the effort.

I believe in this proposal that we have on the floor here before us today. We have addressed those concerns.

The reality, Mr. President, is that while experts recognize that there can be no substitute for the two-parent family, with one wage earner and one spouse staying home—particularly in those critical early years to nurture the development of that child, while that is the desirable model that best offers hopes for development of stable, nurtured, emotionally well-developed children—the reality is in today's society that is becoming increasingly difficult to achieve.

Economic pressures mandate that many women must enter the workplace to supplement the family income. Some do so in pursuit of a career and in pursuit of furthering their own personal goals. And that is fine. But the reality also is that many women do so because that is the only way they can make ends meet.

It is the only way the mortgage can get paid, the way money can be saved for higher education, and shoes can be bought, bills can be paid, clothes can be provided for their children.

The other reality that we deal with is that, tragically, today many children are being raised in single-parent homes, and many fathers who have fathered those children, who are now separated or divorced from that family, are not providing the support. And those women have absolutely no choice, other than welfare or working to provide for their family.

It is inconceivable to me that we should have policies that would bias that decision to welfare and not in support of providing for the family through the workplace. Yet, in doing so, we obviously face situations where that single parent is the sole breadwinner for the family.

In each of those circumstances arises, on occasion, situations in which time is needed to spend with those children. I would like to make the argument—I will attempt to—that that time needs to be—as Dr. Armand Nicolai of Harvard has said—sustained, continuous, personal, close, warm, and a nurturing relationship between both parents and child. Often that is not possible.

While I make no pretense that this legislation before us today is going to provide that sustained, continuous, nurturing relationship, it is definitely a step in the right direction in doing so.

The question comes to us: How do we cope with this current situation, and how do we address, from a policy standpoint, those policies which will encourage a family-friendly workplace, and encourage, particularly during critical times, the ability of either both parents or one parent, or single parent families, to spend that time with their children at critical points?

It is somewhat ironic to me that much of the opposition to this concept comes from the fact that the situation might be one which is ripe for abuse. People say, well, employees are going to use this not to spend time with their children, but to go deer hunting, and not to spend time with a sick child, but to take a vacation to Disneyland. It is going to be abused.

There are a whole number of reasons, I think, why this will not be the case. But because there were legitimate business concerns that were raised about abuse, about the concept of: What about a key employee, who leaves at a critical time in a job that is important to the families and to the welfare of a particular business? What about the idea of someone being provided benefits, never intending to come back to work after their leave time has expired?

What about the impact on small businesses—those businesses that really do not have enough employees or cannot provide the flexibility to simply give one or more employees the time off, without some flexibility of arranging that time schedule? Those and others were very legitimate concerns raised by business.

It is for that reason that I had suggested to Senator DODD that we work to resolve those. Through the very diligent efforts of my colleague from Missouri, Senator BOND, through the cooperative spirit evidenced by Senator DODD, and through work that my staff and others have put into this, I believe

we have come up with a compromise on this bill that addresses those legitimate business concerns.

First of all, everyone needs to understand that any leave time taken is unpaid. No one is mandating that businesses pay for this leave time. So, in my opinion, that removes a great potential for abuse. Very few, if any, employees are simply going to say: I need 10 or 12 weeks, or whatever, with my child; this is a critical time—either birth, adoption, or critical illness—and I need to have this time; I recognize I will not be paid for it, but it is so important to the functioning of our family that I be there now, and I am willing to do this on an unpaid basis.

That, above all other protections, I think, is a protection for business that is irrefutable. The fact that we have recognized that small businesses will be adversely impacted, and therefore exempted, all those businesses of 50 employees or less, which is 95 percent of the employers in this country, certainly addresses those legitimate concerns of small business.

We have raised in the compromise the number of hours to be worked before you are eligible from 1,000 to 1,250. We have allowed a key employee exemption for 10 percent of the employees to address that situation where you might have a supervisor, or a key person that you need, to be able to sit down and be more flexible in the time. We have a provision to recapture health insurance premiums, if the employee does not come back to work. We have redefined serious health conditions to tighten up on that definition, and to make sure that the employee is unable to perform their functions at their position. We have provided for certification by medical doctors with the right of the employer to require a second opinion. We have tightened up the standards for enforcement.

We have put a whole number of procedures in here designed to address the concerns of business. And I think the product that we have before us today, the Bond-Ford-Coats substitute compromise amendment, strikes a very good balance between the very legitimate needs of parents at critical times in the lives of their families, and the very legitimate concerns of business relative to abuse of this process.

Mr. President, I want to spend a few minutes here talking about what some people have said: "Senator COATS, you have a hidden agenda; you are trying to accomplish something here beyond just the mere technicalities of the bill." And they are right; I do have a hidden agenda. I have a hidden agenda because I think it is good policy for this Nation to encourage mothers and fathers to spend more time with their children, without the fear of losing employment, or losing their jobs. That is what this bill tries to do.

I want us to enact policies that cause people to think about the relationship between parent and child, and what a child needs, particularly in those early years, from his or her parents. I want us to think and evaluate legislation in terms of what impact this will have on the family, because we have a raft of irrefutable testimony that the family is the core functioning essential element of this society, the glue which holds our society together, the basis by which values are transmitted. And strengthening families can reap us immense benefits, not only in terms of future costs to society that result from dysfunctional families, but from the benefits society can achieve from emotionally stable, secure, and nurtured children.

So I do have a hidden agenda. I want to promote policies that give families the opportunity to spend more time with their children.

Is 12 weeks a magic number? No, it is not. The magic number is a lifetime. That is the amount of time that parents need to consider spending with their children in order to provide that strength of families that is so important to our society. But is 12 weeks a good start? Yes, it is.

I am hoping that, in 12 weeks, mothers and fathers will fall in love with their children. I am hoping that they will understand the importance of a relationship with their child, which will carry much beyond 12 weeks, which will carry into early years in terms of how they prepare themselves for school, how they are going to be there at critical times in their lives, and that it sends this signal: When you are facing a tough time, whether you are 1 month, 12, 18, or 40 years of age, I am going to be there and available. My job is not more important. I now have the ability to say to my employer that this is really important, this is a critical time. It is so important to me that I am willing to forgo my income. But this is a time I have to be there.

Whether it is to be with elderly parents, critically ill children, or newborns, that is something we need to encourage. A lot of people have written about that, a lot of people that I have listened to very carefully, who have invested their lifetime and their careers in nurturing and fostering development between families and children. They have indicated how important it is to provide this option.

Dr. T. Berry Brazelton, who testified before our committee on a number of occasions, makes an interesting point. He also agrees that 12 weeks is not a magic number. Dr. Brazelton talks about the need of a relationship to exist throughout the child's early years. But he has also said this. He said mothers who know that they have to go back to work too soon—that they have to go back to work too soon; most mothers have to work. They know they

have to work. Those that know they have to go back to work too soon after their baby's birth are often afraid to become too attached to the child. They are afraid of breast feeding because the pain of leaving their infant is too great.

This subtle distance between mother and child reduces the parent's ability to parent and the child's ability to develop his potential. When parents learn to nurture the baby, they are bound to learn about the commitment to the baby and to each other.

Dr. Brazelton maintains in order to support families, we as a Nation must protect that period in which the attachment process between parents and baby is solidified and stabilized. Again, is 12 weeks the magic period? No, it is not. We could argue for more. Certainly, 12 weeks is better than the current, 3, 4, or 5 weeks that is the most that any mother can expect.

I think we need to listen when Dr. Brazelton says that mothers who fear that going back to work will interfere with the bond they do not want to break often never try to form that bond in the first place.

Dr. Burton White, a Ph.D. and expert on families, in his book, in the first 3 years of life, stresses that the goal of giving an infant a feeling of being loved and cared for is the single most important goal in getting a child off to a good start in life. Dr. White then goes on to talk about the phases of a child's life, and I wish I had time to develop that. Perhaps some other time we can.

Pennsylvania State University psychologist J. Belsky and many others have written about the extraordinary importance for the human infant to firmly establish a relationship with a caring adult.

The events of that period of life that are the very beginning of life, when a mother looks into a baby's eyes; when a baby for the first time opens his or her eyes and recognizes that there is something special here; when a baby first takes a breast in its mouth and forms that attachment with the mother; the little sounds that take place and the feeling and the touching that takes place, that is a critical time.

To deny a mother that opportunity, or to say to a mother: You have to forfeit that opportunity, even if you are willing to do so without pay, I do not think that that is the kind of policy that we ought to be advocating.

So I am proud to add my name to the very diligent work of my friend from Missouri, my friend from Connecticut, my friend from Kentucky, and others, to try to find that critical balance between family and work, recognizing that unless the workplace is profitable and successful, then we cannot provide economic security for families, but also recognizing that unless that family is strong and has time in which to nurture its development and develop

those bonds, that we are not going to have healthy families.

Finding that balance is difficult. I believe we have taken a great step forward in doing that, and I hope that my colleagues will join me in supporting the Bond-Ford-Coats substitute.

I thank my friend from Connecticut for all his dedicated work on this effort, and we literally would not be here on the floor today were it not for his efforts.

Mr. President, I yield back any remaining time I might have.

The PRESIDING OFFICER (Mr. GORE). The Senator from Connecticut.

Mr. DODD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DODD. As I understand it, opening statements by any Member here would not be counted against the time on the respective amendments that have been allocated under the unanimous-consent request.

Is that correct?

The PRESIDING OFFICER. The Senator is correct, so long as those amendments are not pending.

Mr. DODD. I thank the Chair.

Mr. President, first of all, let me begin by expressing my gratitude to some people here who are still on the floor before they may have to leave.

First of all, to Senator BOND of Missouri for his willingness to listen to some arguments, about a year ago, and some offers on how we might deal with what Senator COATS has very correctly described as the critical balance question here. And he has been a remarkable ally in all of this in trying to put together a piece of legislation that will deal with that critical balance, because I do not believe anyone here is desirous of trying to deal with a legitimate problem of one segment of our society at the expense of another. There is no value in that.

If we are going to stand up here and offer a proposal that we think will make a difference for children and families and the price at which we do that is to cripple businesses in this country, then what do we gain, in effect? If we cause erosion in jobs, or in any way cause damage to our economy, it seems to me it becomes a wash, and probably at net loss in the process.

Simultaneously, of what value is it to say that we are only going to watch out for the business interests, and disregard what happens to families and children today, who are caught in the critical problems that have been so eloquently described by my colleagues here this morning already, in the awkward, difficult, frustrating choices that we know already are having an impact on these families and on children?

I do not know of anyone here who wants to be in the position of saying: We are sorry; we want to disregard them because of some concerns, legiti-

mate or illegitimate, identified by the so-called business community. Someone ought to be careful, describing the community that they are a monolith or who imagine it as no difference.

Senator COATS, who I referred to as being an invaluable help on the Subcommittee on Families and Children, has been a terrific supporter of these issues that affect children and families. We have had some disagreements, as is the case with people, on how best to approach some questions, on the fundamental, underlying issue of whether or not we ought to be at least thinking hard and listening to the business people.

We can at least allow you to make some difference in the changing environment that so adversely affects people as they try to cope with the difficult burdens of being parents, being good employees, being good workers, being good breadwinners, and being good children themselves, in this particular legislation, because we are trying our best to have families involved so we do not have institutional care, with unknown people watching out over our own parents. If they are caught in a problem where they need some personal attention or love, no doctor, no nurse, however well intentioned, can even remotely come close to providing the care of a parent or a child when they are in that particular critical moment or time in their lives.

Trying to strike that balance, he has been an unfailing ally in that particular effort, and I am deeply, deeply grateful for his support and backing on this legislation.

Of course, Senator FORD, who is also a cosponsor of the Bond-Ford-Coats substitute, has been a tremendous supporter of trying to fashion again language here that would deal with the critical balance that Senator COATS has described.

So, Mr. President, we have come a long way. It has been 5 years since I first introduced this legislation, and in 5 years we have had voice votes on this bill in the past and never had very lengthy debate about family and medical leave legislation. This is the first real opportunity in 5 years to actually have some full debate, and a few hours from now, a vote on this proposition, a proposition, we feel, whose time has come.

We think it does strike the critical balance between the concerns—legitimate concerns—of business in this country, and the demands and needs of families.

Mr. President, it is somewhat ironic, in a way, that those who I think have spent the time on the issue, and I notice the presence of my colleague from Minnesota, as well. I refer to him for his tireless time and effort. He spent, I do not want to say how many hours of his time, talking about this issue and trying to figure out ways in which we

could come up with some good answers here for this particular approach.

But again, I never questioned for a single second his deep commitment to families and children and how best we can do that in a way that will serve their interests. So I thank him.

Mr. DURENBERGER. Mr. President, will the Senator yield?

Mr. DODD. I yield.

Mr. DURENBERGER. Mr. President, I have a comment which I hope is helpful.

First, let me compliment the Senator, because I think I sat with him 5 years ago when he started this process.

Mr. President, I think we all ought to be grateful to our colleague from Connecticut for whatever virtue which you ascribe to somebody who will take something on and spend 5 years trying to bring it to this point.

But I must say, listening to the arguments being made this morning against this legislation, there is one that I am just prompted, at this point—as long as the Senator recognized the fact that we have had differences of opinion—to comment on. And this is the notion that somehow the Senator and his legislation are mandating on every employer in America that they have to give 12 weeks off every year to all of their workers.

I mean, one of the notions that I thought I picked up watching my colleagues this morning is that we are imposing this new mandate on every employer in America, that they have to provide all of this, 12 weeks off, where in effect, as I understand the proposal, it says you cannot fire somebody for paying a certain amount of required attention to their family. As the Senator from Indiana said so clearly here, the birth of a child is important not only to the worker but to the employer. The illness of a family member we know is important to employers in America. How do you think we got 100 billion dollars' worth of tax subsidies under health insurance?

If you want to talk about a mandate that is in existence, let us talk about health insurance. There is not a law that says everybody has to have health insurance, but you, as an employer in America, if you do not have health insurance, you do not get employees. So whoever of our predecessors made the decision we are going to spend the taxpayers' money so that employers could provide health services free for their employees and their families was mandating that if we want to do business in America, you better provide health services for your employees.

So it just struck me, as I listened to this argument about competition this morning and putting America's business out of business, that this mandate business has been around a long time. And it has been around a long time particularly in the areas of health services for families and for workers. This

is not new. I will say more about that later.

But in that respect, the knock that has been put on the legislation of the Senator from Connecticut that it mandates the new health benefits is precisely the wrong way to approach this issue.

Again, I appreciate the Senator's leadership.

Mr. DODD. I thank my colleague from Minnesota.

Lastly, Mr. President, no discussion of this legislation would be complete without also making reference to the Chairman of the Labor Committee, without whose leadership and support none of this would happen or move at all. So I am deeply grateful to the senior Senator from Massachusetts [Mr. KENNEDY] as well for providing the leadership on the committee that would help us bring this legislation along to the point that it is today.

Mr. President, I am often struck by the fact that so oftentimes we in this body, no matter how much effort we make to be in touch with our constituencies—and I know Members do spend time on weekends and during recess weeks to be back and discuss the various problems people face—I oftentimes think there are problems our constituencies face that we are not probably as in tune with as we could like to be.

One of those probably is the issue of critical family problems that occur. It is normally not the subject of discussion at town meetings to have someone walk up and talk about a highly personal problem they may have with the death or serious illness of a parent or a spouse or their children and what has happened in that workplace setting.

But we know from our own experience here that many of our colleagues have been in the situation where there has been a serious family problem, and we know how we feel about that among ourselves. And with the permission of the Chair, because as I sat here, Mr. President, thinking about this issue, I was struck with the coincidence that our distinguished colleague in the Chair, the Senator from Tennessee, only a few short months ago went through the critical problem of having a child struck by an automobile. It was a moment of great tension and frustration, I know, for our distinguished friend in the Chair. And the Senator did what I think everybody else in this Chamber would have done. He was there with his child, just as I believe every single Member would have done here.

I do not know this, but I suspect our colleague missed some votes and was not able to attend some hearings here in the Senate that he would otherwise have been a participant of because his son was in trouble. I do not know of a single Member here, I am certain no constituent of his or any editorialist in the country or any commentator on

public policy would have ever suggested the distinguished junior Senator from Tennessee should have been anywhere else than where he was.

I mentioned Senator KENNEDY a moment ago. Certainly, many will recall not many years ago when his son was discovered to have cancer. He went through a terrible period of time. I know our colleague from Massachusetts spent time with his child, missed votes, and was not here for a lot of debate on various issues. I know of no one who thought for a single second that he should have been anywhere else.

I saw a moment ago our distinguished colleague from Utah, Senator GARN, my good friend, who courageously donated an organ to one of his children not too many years ago. I know my friend from Utah missed some time, could not be here. I know of no one that would have suggested that he should have done anything else. In fact, I do know that many of our constituents, if not all, applauded the courage of doing it, taking care of a child at the time of need.

And yet none of us in this Chamber were ever even remotely threatened with a loss of employment or the loss of pay—we are not even talking about pay here. We all did what we instinctively knew you had to do just, as others do in the private sector.

A chief executive officer, a top ranking official, if their spouse or their parent or a child were in serious jeopardy, is there any doubt in their mind where they would be at that moment? Would they worry about their pay? Would they worry about their benefits? Would they worry about being criticized for spending time in that particular moment? I defy anyone to suggest to me that that would be the case. No one would be critical.

And yet, regrettably, there are millions of people in this country who are not Members of the Senate, who are not Members of the House of Representatives, who are not chief executive officers, who work on our lines of production, who work in factories and industries, who face the very same problems that U.S. Senators and chief executive officers face every single day.

And yet, unfortunately, they do not receive the same kind of treatment. Because, God forbid, they would go and say to someone, "My wife is seriously ill. I have got a child who is seriously ill. I need time. Don't pay me, but give me some time to be with that family member. And can I please come back and have my job in a few days, a few weeks if it is necessary?" And regrettably the answer over and over again is "No."

Mr. President, all we are trying to do with this bill is to say in those moments that every single American knows and understands—if it has not happened to them personally, it has

happened to their own family members or neighbors or coworkers—in that particular moment of crisis, take some time. Take some time. Be with your family, be with your child, be with your spouse, be with your parent and help them get back on their feet and then come on back to work. That is all this legislation does.

And we exempt all small employers because we honestly felt it was not fair to ask a small employer to have to bear that kind of a burden.

And, frankly, Mr. President, small employers, we think, take care of this problem because they know the employee. If it is a small shop, you know your workers, and because in human decency says, if I have someone who works for me, I will take care of them. I am not worried about that.

But where it is a large setting, it is virtually impossible for the employer to know everybody. They cannot be dealing with them on a personal level like that. So we exempt all employers in this country who employ 50 or less people.

We also say to them, under the leadership of Senator BOND and Senator COATS and Senator FORD, in fact, go a bit further. If you have 10 percent of your employment force that you think is critical to you, they are exempt as well. So the number actually goes beyond 50. It can be 10 percent of whatever your number is. We also say, look, you bring up a good point. We count temporary people who come in, part-time people. That can be a burden. You have to be almost a full-time employee. You have to work for a year for the employee to qualify for this.

We went further. We said, listen, if you know you have a problem coming up, you have to let your employer know 30 days in advance of a problem, to try to at least take care of those concerns raised by employers and some business people in this country.

And, Mr. President, I would suggest if the White House has other ideas in this vein they think would help—I have been begging for 5 years for some suggestions on how this can be improved. I must tell my colleagues here I have never had a single response from the White House in 5 years on how do we improve this bill except they were just flatly opposed to it.

So, Mr. President, I would hope today, as our colleagues consider this legislation, they try and step back a bit; step back a bit and move themselves away from a lot of the little details here that I know are important. I know the devil can be in the details and I am not suggesting that they avoid the details. But too often I think we get so involved in the bureaucracy of the bill, what is section 101, what is section 102, paragraph B, subsection 3 says—we can get all wound up in that.

I think Senator BOND will be the first to say we have not crafted a perfect

bill here. There is no suggestion of that kind. But I would ask my colleagues to step back and say what are these guys trying to do here? What are they really trying to do? And is what they are trying to do such an impediment, such a burden that it ought to be flatly rejected? Or, do they have a good idea here that may provide, in fact will provide, a needed benefit for people in the workplace today?

I was accused awhile ago of introducing a yuppie bill; this was a yuppie bill. Somehow only those in the upper-income categories will take advantage of this. The Senator from Missouri laid it out in chapter and verse, who we are talking about here. Two out of every three women in the work force today are either single heads of household, the sole providers of their families, or have spouses who earn less than \$14,000 a year. I do not know of anyone who would define that crowd as yuppies. In a sense, if they have a family problem, if they have a problem with a child, is there any doubt in their minds what they have to do, how they wrestle with those problems? To suggest this is a yuppie bill is unfortunate, but is an effort, I think, to move the attention away from what legislation is before us and try to create some sort of different argument here than is actually before us.

I will go into greater details on the legislation later, but I really urge my colleagues to step back and just consider what Senator BOND and Senator FORD and Senator COATS are doing here with this substitute. You have to exhaust all your other benefits, by the way. You have to use your vacation time and sick leave and everything else before you get a day of this. We have done everything possible we know how, to assuage the fears and concerns of those in the business community who are worried about what this legislation means. And when some suggest, by the way, that this is going to make us less competitive, our major competitors have proposals dealing with family leave that go far beyond what we have talked about here—the Japanese, the West Germans. In fact, Mr. President, we are the only industrialized country in the world that does not have a proposal like this or something similar to it.

Of our major competitors, we stand alone. The Small Business Administration, I mentioned already, did a survey; the General Accounting Office; surveys of employers in the four Midwestern States have examined this issue. The irony is that every employer who has adopted a family leave policy swears by it. Every witness we had before us who had utilized some fashion of this, said it was one of the best things they had ever done.

It raised their retention rates, dropped absenteeism, increased productivity. The testimony was overwhelm-

ing from those who had actually had experience with this. The irony was we heard from some witnesses from the business community who talked about what they thought this might do; what they were fearful it might do. When you compare that testimony from the business community who were actually practicing family and medical leave, there is just no comparison whatsoever.

So I hope as people look at this bill today, if they want to examine some of the details, they will appreciate what we have accomplished here and also understand, with all the rhetoric—and, Mr. President, God knows every single Member of this body, I guarantee, on every single weekend and every single recess, no matter what the subject matter is, stands up and gives a speech today and talks about the American family and how they care about them and how they worry about them and how they are concerned about their welfare and their children. You cannot find a speech being given at the local, State, or Federal level by the President, any Member of Congress in the last 2 years, where the American family is not sitting up there in bright lights.

Mr. President, here is a chance to do something about the speeches; to say to American families we are not only talking about you, we are going to do something for you here.

There is no impact on the Federal budget. There is not a nickel of Federal dollars here. Nobody's taxes are going to be touched. It is 2 cents a day per covered worker. That is what the estimates are from the GAO, and maybe less than that, to provide for the opportunity for people in a family situation to be good employees, to be good, productive citizens and simultaneously be good parents, be good spouses, be good children themselves when it comes to trying to keep this unit together that everyone talks so eloquently about in speeches before every imaginable group in this country.

Today you will have a chance to say whether or not those speeches mean a lot to you. You will go home and talk about families and what you have done for them. Here is something you can do for them in very concrete terms and in no way jeopardize the business community in your State or district in this country at all.

So, Mr. President, again I commend my distinguished colleague from Missouri. He has been courageous. He has shown great intestinal fortitude in facing, I know, a lot of pressures, and I admire him. It is a courage we do not oftentimes see in public life. We have all felt the pressure at one time or another. Some buckle under it. Some stand up to it. The Senator from Missouri stood up, and every Member of this body ought to know it. The Senator from Indiana as well, with the

courage he displayed, decided he would put his constituents, his families, his business community first. And that is what they have done by offering this substitute, along with the Senator from Kentucky.

I commend them for their efforts. I am hopeful we will prevail. I am still very hopeful that President Bush will sit down and talk with us, if he has some ideas on how he thinks we can improve this. This debate is not going to be foreclosed today. We are anxious to hear his ideas and suggestions and I am more than willing to incorporate them into this legislation if that will help us get a piece of legislation passed here that will do what we hope it will do for families and workers in this country.

So the offer still is out there. We are anxious to meet, talk, discuss, if that is the case. But today the Senate must express its thoughts and its views and we will have that opportunity in a few short hours. We look forward to that support. We look forward to adopting, after 5 years, a piece of legislation we think will make a difference, a real difference for families in this country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I express my sincere thanks to the distinguished Senator from New Mexico. I know he wanted to make a speech off of this measure. Before he does that I want to take a minute to say what is totally unnecessary, and that is, my good friend from Connecticut, who is the original sponsor of this legislation, has demonstrated once again why he is known as the champion of children's and family issues. His most eloquent comments about the very real family crises that Members of this body have felt, touched home to me. None of us lost our jobs. None of us even lost pay. Yet we did not hesitate and we would not hesitate to take time off from work for a family crisis.

I believe he has made the case in a most compelling fashion that the workers who are at the lower end of the scale, as well as those of us fortunate enough to be at the higher end of the pay scale, should have some protection. We do provide that in this measure.

AMENDMENT NO. 1245

(Purpose: To provide a substitute amendment)

Mr. BOND. Mr. President, I now call up amendment No. 1245.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Missouri [Mr. BOND], for himself, Mr. FORD, and Mr. COATS, proposes an amendment numbered 1245.

Mr. BOND. 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. BOND. Mr. President, I thank the Chair and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I ask unanimous consent I be allowed to proceed for up to 5 minutes as in morning business without it counting against the time on this amendment.

The PRESIDING OFFICER. Without objection. It is so ordered.

JUDGE CLARENCE THOMAS

Mr. BINGAMAN. Mr. President, when the Senate votes next week on the nomination of Judge Clarence Thomas to the Supreme Court of the United States, we will be carrying out one of the most important duties entrusted to us by the people of this Nation.

It is a duty none of us take lightly, for the very foundation of our democracy—the Constitution and the Bill of Rights—is at stake. I, like all my colleagues, am well aware of the critical role the next Supreme Court Justice will play in ensuring the stability of that foundation, or in reshaping it.

The decision of whether to consent to this nomination was not an easy one. A decision of this magnitude never is and never should be.

However, after listening to the Judiciary Committee's hearings and reviewing Judge Thomas' professional background, I have concluded that Judge Thomas does not meet the standard that should be required of a Supreme Court nominee. Therefore, Mr. President, I will oppose the President's nomination of Judge Thomas to the Supreme Court.

The reasons for my decision are two:

First, I do not believe that Judge Thomas' legal background and experience qualify him to sit on our Nation's highest court; and

Second, I believe that, for whatever reason, Judge Thomas purposely denied the members of the Senate Judiciary Committee and the American people straightforward and credible answers to questions posed during his nomination hearing.

Mr. President, I believe Judge Thomas is a fine man, and my decision to vote against his nomination to the Supreme Court is not intended to take anything away from him or his accomplishments over the last 43 years.

His perseverance in the face of adversity and discrimination and his rise from poverty to the Eighth Circuit Court of Appeals are truly inspiring and admirable. But those accomplishments alone do not qualify him to sit on the Supreme Court of the United States.

We, in the Senate, have the right and the duty to demand more.

The inadequate qualifications of this nominee are plainly evident when his nomination is compared, as Dean Erwin Griswold pointed out during last month's hearing, with the past nominations of Charles Evan Hughes, Harlan Fiske Stone, Robert H. Jackson, and Thurgood Marshall. The depth of experience and ability they brought to their post is what the American people expect and deserve in nominees to the highest court in our land.

The American people have the right to expect that the President will nominate well-qualified, experienced individuals to the Supreme Court. And if he does not, the American people have the right to expect that the members of the Senate will reject the nomination.

Mr. President, I know that there are well-qualified, experienced individuals in the United States—many of them minorities and women—fully qualified to serve on the highest court in the land. But today, Judge Thomas is not one of those people. At some future date, after a period of time on the Court of Appeals, he may be.

The Supreme Court is not intended to be a learning ground. It is not a stepping-stone to something better. It is an irrevocable, life-long position of unparalleled importance and power in our system of Government. And we cannot consent to nominations to the Court with our fingers crossed, hoping that the nominee will evolve into a sufficiently qualified Justice over a period of time.

Too much is at stake; too many important decisions will confront this nominee and this Supreme Court—decisions that will affect our lives and the lives of our children, grandchildren, and even our great-grandchildren.

Judge Thomas' legal background and experience are not the only reasons for my opposition to his nomination. I am also troubled by the nominee's obvious unwillingness to be forthcoming with the members of the Senate Judiciary Committee during last month's hearing.

Certainly, a nominee can refuse to answer any question he chooses; but when questions are repeatedly and purposefully avoided, as I believe they were during last month's hearings, I have to ask myself why, and I have to make my decision on the nomination accordingly.

In the case of Judge Thomas' hearing, I have to ask myself why the nominee's answers were so obviously structured to reveal as little information as possible.

For example, is it realistic to believe that a sitting judge, a man who was in law school when the landmark Roe versus Wade decision was handed down, has no opinion of the case? That he has never discussed it with anyone? This is what he told the committee, despite the fact that he has cited Roe versus

Wade as one of the most important decisions issued by the recent Supreme Court.

Mr. President, as a lawyer, I find such an assertion difficult to comprehend.

In the final analysis, each Member of the Senate must vote on the basis of what he or she believes is in the best interest of the American people. I, for one, do not believe those interests will be well served, at this time, by confirming Judge Thomas as an Associate Justice to the Supreme Court. Thank you, Mr. President.

I yield the floor.

The PRESIDING OFFICER (Mr. AKAKA). The Senator from Tennessee is recognized.

Mr. GORE. Mr. President, I would like to speak in favor of the pending legislation. I do not believe the managers are here. I ask unanimous consent that I be allowed to speak as in morning business for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Tennessee is recognized for 5 minutes.

#### IN SUPPORT OF FAMILY AND MEDICAL LEAVE

Mr. GORE. Mr. President, I am pleased to address the Senate on this occasion in support of the Family and Medical Leave Act. I wish to pay my compliments to the author of the legislation, the Senator from Connecticut, and all of us know what it means to take 5 years and devote it to a project like this. All of us on both sides of the aisle have been personally contacted by the Senator from Connecticut many times during these last 5 years as he has worked so hard to get this legislation to where it is now. I really do want to compliment him for all the work he has done on the substance of this legislation.

I also want to join him in offering compliments to the Senator from Missouri [Mr. BOND], the Senator from Kentucky [Mr. FORD], and the Senator from Indiana [Mr. COATS] who have offered this compromise which has been worked out with the cooperation of the Senator from Connecticut and addresses many of the concerns which were initially expressed by some within the business community about this legislation.

I have received contacts from many in the business community who are still opposed to this legislation, and I understand their opposition, and I also understand the general thrust of the intellectual case made against this bill: If you try to mandate something, you are going to be heavy handed and you are going to create more problems than you solve, and all of that.

But, Mr. President, I want to say to my colleagues, I have evaluated those objections as best as I can and weighed

them against the positive results which I am genuinely convinced will come from this legislation. I do not think it is even close. I do not think I have ever seen a piece of legislation come to this Chamber where the merits are so clearly on one side of the argument. I know that sounds maybe a little abrasive to those who sincerely believe the legislation is a bad idea. But it sure does seem like a clear cause has been made for this bill.

Most Americans know too well the difficult decisions that accompany having a family and having a career. Often a worker cannot be with a newborn child, or a sick child, or ailing parent because doing that would mean the risk of losing a job. That has been documented. People can come over here and say those are just anecdotal examples pulled out to make a distorted case. It is just not true.

What the Senator from Connecticut said a few minutes ago is very true; that in the places of business where there are a handful of employees and everybody knows each other on a first-name basis, it is just obviously human nature that this is going to be worked out. But it is also true that since the beginning of the industrial revolution, a distance has opened up between employer and employee. Many businesses, thank goodness, are closing that gap, and even larger firms are figuring out ways to, once again, remain in personal contact with the men and women who work in that business.

But we have not made that transition yet, and so many thousands, and hundreds of thousands, of men and women in this country still work in places where the organizational framework is such that there is not that direct contact. It is in those places of business where the insensitivity creeps in, not because the managers are necessarily bad individuals, but it is just the way that system operates. It is the way it works.

Other Members of the Senate have had personal experiences. I would like to just briefly tell you about my experience. My son was almost killed 2 years ago. When he was in the hospital, my wife and I were able to be there with him. Look at this issue for just a moment, Mr. President, from the standpoint of a child who has been injured. Just try to imagine yourself as a child with a tube going down your throat and not able to talk, with IV's all over the place, and medication, and a tremendous amount of fear, a tremendous amount of uncertainty about what is going to happen, a lot of pain, a lot of anguish, a lot of emotional distress.

What does it mean to you if you are a child in that situation to be able to look up and see the comforting face of your mother and your father? What does it mean? I will tell you, Mr. President. For some children, it means the

difference between recovering and not. For some families, it means the difference between surviving that trauma and moving on, and breaking up, and not being able to cope with it.

How many families do you know that have gone through a shattering experience and then suffered an aftershock where the family splits up? It is so common; it happens all the time.

Now, if the child is there in the hospital bed and the parent goes to the employer and says, "My child is injured. I really have to be with my child," and the employer says, "Well, if you go, it means losing your job," what kind of choice is that? What kind of choice is it? It is not a hypothetical case. It happens all too frequently. This legislation will prevent that.

Is this a hard choice? Is it really hard to decide how to vote on this bill? I do not believe it is. I just cannot accept that. I do not think there has ever been legislation in this session of Congress where it was so clear what the right decision is.

The Senator from Indiana spoke eloquently a few moments ago about another case where a newborn is with his or her parents, and the mother of the child has to go immediately back into the work force. And he quoted Dr. Berry Brazelton, one of the authorities who has worked very closely with the Senator from Connecticut in shaping this legislation, who offered some evidence that some parents anticipating the psychological pain of having to rip themselves away from that newborn after 2 or 3 weeks protect their hearts by not letting themselves open up fully and completely and bond totally and fully. So the distance that ought not be there is there. And the child does not sense that? Of course, the child senses that.

You have heard the phrase "dysfunctional families." A whole body of analysis is coming out into the public policy dialog now about the consequence of dysfunctionality in families. What is the beginning of that dysfunctionality? The beginning of it is in that relationship between parent and child. If it is not well established at the beginning, if the child is not given that sense of wholeness and well-being which comes when that relationship is firmly established at the beginning, put on firm footing, then the problems flow from there.

This legislation addresses that. It does not solve all of the problems, but it says that parents with a newborn can go to their employers and say I want a sufficient amount of time to be with this newborn, to get my family off to the right kind of start, establish those relationships at the beginning and avoid the problems that will come later on if that is not done.

Mr. President, there is an awful lot more I could say about this, and I will revise and send for the RECORD.

I close because I know others are waiting to speak. I am pleased and genuinely honored to support this legislation which gives more Americans the option I had when my son was injured, and that is to be where they are supposed to be and to be there when they are needed.

Again, in urging my colleagues to vote for families, vote for strong families and support this legislation, I close where I began. I cannot believe this is all that tough a decision for anybody who really looks at the merits of this legislation. Let us vote for this bill, and if we have to override a veto, whatever we have to do, let us make sure this is the basic law of the land.

I yield the floor.

#### FAMILY AND MEDICAL LEAVE ACT

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. Who yields time on the amendment?

Mr. DODD. Mr. President, I ask unanimous consent that any time the distinguished Senator from Massachusetts may take would come off the time of the distinguished Senator from Missouri.

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

The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, it is long past time for the Senate to step up to the plate on the issue of the family and medical leave. This legislation provides long overdue assistance to working parents struggling to balance the responsibilities of work and family.

Senator DODD deserves great credit for his tireless efforts on behalf of America's families and children. Our bill has new momentum and support, because every year that passes, the issue becomes even more urgent for working families, and the resistance of our opponents become even more untenable.

I also want to commend Senator BOND, who has joined in developing a realistic compromise that accommodates many of the concerns raised by the business community.

This bill provides 12 weeks of unpaid leave per year to workers for childbirth or adoption, or when the employee or a close family member such as a parent, child, or spouse had a serious illness. It covers both private and Government employees.

Under the original bill, employees who have worked 20 hours a week for at least 1 year would be eligible to receive the benefits. To meet the concerns of the business community, that threshold has been increased to 25 hours a week in the substitute bill.

To meet the concerns of small business, the bill exempts firms with less than 50 employees within a 75-mile radius. The compromise would also allow

an employer to deny leave to the highest paid employees, if their absence poses an economic problem for the business. As a result of these compromises, 95 percent of employers and 60 percent of workers are not covered by this legislation.

Employees would be required to provide either 30 days notice or reasonable notice of leave, whenever possible, so that employers can plan in advance for the absence of the workers.

Another key aspect of this bill requires employers to maintain health insurance coverage during the leave period. Fear of losing health insurance is one of the primary concerns of workers. No worker should have to worry about such coverage at a time when a child or spouse is seriously ill.

To protect businesses, any employee who fraudulently takes such leave is subject to a recoupment action by the employer for the cost of health coverage.

Compared to laws in other countries, this legislation is a modest response to the urgent needs of working families. Canada provides 15 weeks of family leave and 12 weeks of medical leave—with the Government paying 60 percent of the cost.

The West German Government pays 100 percent of the cost of 19 weeks of family leave for its workers.

The need for similar national legislation in the United States is obvious. Today's work force is very different than it was even 10 years ago.

Women are entering the labor market at a rapid rate. Their number has doubled since 1970—and the increase shows no sign of abating. By the year 2000, three out of every four children will have mothers in the work force.

The stereotype of the past—a father at work and a mother at home caring for the children—has increasingly been replaced by families headed by working couples or single working parents.

Two out of three women working outside the home today are the sole providers for their children, or have husbands who earn less than \$18,000 a year. Large numbers of families today depend on a woman's income to survive, and our economy needs to adjust to that reality.

Debating whether or not mothers should work is a futile exercise. We cannot turn back the clock to earlier times. Women and mothers are working in record numbers. They will continue to do so, and employers should adapt to their needs and responsibilities.

Some States have made major strides to develop family leave policies to reflect this changing situation in the workplace—but the reforms vary widely from State to State. Similarly, some businesses have voluntarily taken initiatives to address the needs of families by implementing reasonable leave policies. These States and firms should

be commended for this progress, but it is far from enough. Family leave is a national issue, and it deserves a national solution.

The productivity of workers and the lives of their families will be improved by sensible steps to make the workplace more responsive to their needs.

When my son, Teddy, was hospitalized with cancer years ago, I spent a great deal of time away from my office in Washington, so that I could be with him. That time away was an obligation I had as a parent. Because Senate schedules are flexible, I was able to take the time off I needed. Millions of Americans are not so lucky, and they deserve the helping hand from Congress that this legislation will provide.

In the hearings on this measure, we have some tales of harsh attitudes of businesses. To take, for example, when Edward and Paige Hoffman's young son was struck by lightning in St. Louis, they rushed to his hospital bed to care for him through his tragedy. Edward Hoffman was fired from his work, because he spent too much time with his son in this emergency and not enough time on the job.

No parent should be forced by any employer in America to choose between the child they love and the job they need.

Workers also deserve a fair opportunity to care for aging parents. Over 20 percent of the 100 million American workers have some caretaking responsibilities for an older person. Without an adequate national leave policy, many of them will have to reduce their work hours or leave their jobs. This bill allows a worker to take unpaid leave to care for an elderly parent—a responsibility that businesses should encourage, not prevent.

Finally, it is time the disinformation campaign involving this bill was brought to a halt. The Chamber of Commerce and certain other business groups are already papering the Senate and the House with misleading statements about the dangers of this measure. They allege that the bill will hurt employees, not help them. Well, I say it's time to let workers speak for themselves. The working men and women of the Nation support our proposal in overwhelming numbers. They need help, they deserve help, and Congress should respond.

In poll after poll, Americans show their overwhelming support for enacting family and medical leave policies. A 1990 Wall Street Journal poll found that 71 percent of American voters favored such a law. Over 80 percent of all respondents in a Gallup Poll agreed that employers should be required to provide medical and parental leave. And the results are similar in all parts of the country. There is no question about what the American people want—it is a question of when Congress is going to catch up to the will of the people.

Opponents attack our proposals, without offering a serious alternative. They criticize our statistics and studies, without offering evidence of their own. They retain high-paid lobbyists to argue their case. But most working men and women have no such resources. If we do not speak for them, who will?

A recent study by the Small Business Administration reported that the costs of permanently replacing employees are significantly greater than granting family leave. That wasn't the answer our opponents wanted. So distribution of the study was halted.

The United States is the only industrialized country in the world that does not have a national family leave policy, and it costs us dearly. Women workers who take time off for the birth of a child lose over \$600 million a year in earning power. More than \$100 million a year in additional welfare costs must be paid to cover employees without leave.

The lack of medical leave costs workers and taxpayers an astounding \$16 billion a year in lost wages and Government benefits such as unemployment compensation, food stamps and welfare. Few measures we consider offer us this unique chance to help working men and women, and also reduce the Federal and State budgets at the same time.

The Family and Medical Leave Act is essential legislation—and it ought to pass now. No business lobby, no matter how well-financed—and no administration, no matter how beholden to business—can continue to deny the will of the American people.

In years gone by, Congress has waged similar battles to enact antichild labor laws, social security, medicare, unemployment compensation, the minimum wage, workplace health and safety laws, and other fair labor standards to protect working men and women against exploitation by businesses inclined to put profits first and families last.

This bill is another important advance in that unending struggle. It offers simple justice and a helping hand to millions of working families across the Nation. It deserves to be enacted into law now, even if that means overriding another misguided veto by the President.

Mr. President, I, too, want to join in commending our colleague from Missouri, Senator BOND, as well as Senator FORD, for all of their help and interest in helping to fashion this legislation and express appreciation to our colleagues on the other side of the aisle, Senator COATS, Senator JEFFORDS, and others who have signed on to support this program. In a very true and real sense, this issue should be nonpartisan, and in the best sense a bipartisan effort to bring some sense of family into the workplace in our country.

I pay special tribute to our friend and colleague from Connecticut, Senator DODD, who has been the real spearhead for this legislation, as in many other pieces of legislation affecting families and particularly affecting children.

Mr. President, as has been pointed out during the course of the debate, this is not a new issue. It is not a new issue for the Congress and Senate. We had the opportunity to debate this issue in this Chamber over a period of days just over a year ago.

Unfortunately, we were not successful in that particular effort because we were not able to override a veto. But as has been pointed out during the course of this debate and discussion, this legislation is a further modification of what I think was strong legislation the last time the Senate passed it.

It truly is a compromise to deal further with some of the concerns of Members about the amount of time that would actually be available to workers should they have to spend that time with a sick child or sick parent. It also established a higher threshold on temporary workers, to ensure those who were actually going to be able to benefit and be able to return to their job demonstrated a significant commitment to their job. Now we know, with the Bond amendment, they will have to average 25 hours a week, be with a company in excess of a year. And there has also been a further modification in terms of the enforcement mechanism of this legislation which will encourage conciliation, encourage, when there are grievances, use of a tried, tested, and effective measure in providing remedies to both the individual who may be adversely affected and denied the parental leave but also any employer who is familiar with the types of remedies under the Fair Labor Standards Act, familiar with the procedures, familiar with the process, familiar with the kinds of enforcement mechanisms. In a very creative way the compromise moves on that area.

So for those who have been the most critical, I think the compromise itself has moved in a very significant and important way to relieve them of these kinds of concerns.

I, too, join with Senator DODD in hoping that the President may ultimately look at this legislation, which has strong bipartisan support, which is a further modification of what was passed previously, which addresses the previous concerns of those who have opposed this legislation, with those adjustments, with a real evaluation in terms of cost, and be able to support it.

Mr. President, I hope, too, as we move through the consideration of this legislation today and the House of Representatives moves forward on the legislation, the Chamber of Commerce and other economic interests that have been opposed to this legislation will

cease and desist their disinformation campaign.

I think all of us who followed this legislation over a period of time recognize the extraordinary disservice that those organizations provided, showing inflated assessments in terms of the cost of this legislation. Hopefully, as a result of the record that has been made earlier today and in the course of these hearings, that particular red herring has been safely put to bed, because it should be—because the justifications which are made by the chamber and other groups which effectively have opposed this legislation continue to oppose this legislation just as they have opposed the legislation that has been accepted by this body on child labor; just as they opposed legislation to try to ensure that the men and women who are working in the work places of this country are going to have safe and healthy work sites—and the whole range of different legislation that is to try to ensure that the workers of this country are not going to be exploited; that survival of the fittest may be a good law in the jungle but it does not have a place in terms of the working places for men and women in this country.

Mr. President, this legislation, as has been pointed out by the principal sponsors, really is a reflection of the changed workplace, as it truly exists today, where hard-working men and women, hard-working heads of households who need these jobs, who depend on these jobs, who want to work, in many instances have to work, most instances have to work, will not be put in the extraordinary position of having to choose between the child that they love, the child that they need.

Mr. President, I heard the very eloquent comments of our good friend and colleague from Tennessee, Senator GORE, as he shared with us the trials and tribulations that he faced, the very extraordinary tragedy that affected his son, and I think all of us are thankful that child has made the absolutely extraordinary recovery that child has.

But I think all of us in this body were touched by the extraordinary accident that affected that extremely young person. And all of us admire the courage of that young boy in his recovery, and also admire the dedication of his parents, Senator GORE and Mrs. Gore, in looking after that child.

I think many of us in this body have had similar circumstances. I mentioned previously about the challenges that faced our family when my son, Teddy, had cancer at the age of 12, had 2 years of chemotherapy, 3 days every 3 weeks. I was able to be with Teddy on each of those occasions for a period of 2 years. We were able to, with the accommodation at that time, of Senator Mansfield, which did not really disrupt the Senate in any way. I was able to, I think, meet the most important re-

sponsibilities which were to my family and also my responsibilities as a Member of this Senate.

The Senate has a flexible schedule. We have seen that in the last 48 hours in terms of accommodating different Members, in terms of times of votes, and in scheduling different legislative undertakings. That is the way this institution works. But that does not work for many of those young workers, men and women, fathers and mothers, who are facing the challenge of a sick child.

I will include in the RECORD, in my formal remarks, the testimony of parents who were torn between giving attention to their child or to their parent, and how they responded by giving that attention to their child and to their parent. And it resulted in losing their jobs. In a number of instances both parents lost their jobs when they were looking after children. It is difficult to believe that exists. I do not think there is probably any Member of this Senate who has not been faced with similar circumstances, if not themselves, by their immediate staff. I think all of us try to respond in a humane way to those particular challenges.

But that does not always exist out there in the harsh light of the workplace in this country.

All we are attempting to do in this sense is try to provide at least some consideration for that parent and for that child. We have been able to do it for ourselves here in the United States Senate. We are able to do it for ourselves in the Congress, in the House of Representatives. Why not just try to do something decent and fair for families in this country, and do it for working men and women? That is what this is all about.

I believe that this is important legislation. It is really a down payment in terms of trying to recognize at least part of the challenge that exists for families today in our country. As has been pointed out frequently, every other industrial nation in the world has this and more in terms of parental leave, and paid parental leave.

Mr. President, I agree with those who say that after we pass this legislation, we in this body, people around the country are going to say, "Why did it take so long? What was the furor about? How could there have been really opposition?"

I hope that this legislation will be overwhelmingly accepted this afternoon, that the President will put his veto pen away and sign what is extremely important for working families in this country.

Mr. DODD. Mr. President, at this point may I inquire of the Chair what the time allocations are?

The PRESIDING OFFICER. The Senator from Missouri has 6 minutes and 13 seconds. The minority manager has 60 minutes.

Mr. DODD. Mr. President, I would at this point note the absence of a quorum, and ask that the time be charged against both sides.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEAHY. 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 Chair informs the Senator from Vermont that we are presently in a time that is limited to 2 hours, equally divided and controlled by the minority manager, and also the majority manager.

Mr. LEAHY. Mr. President, I ask unanimous consent that I be able to speak for 5 minutes, with time allotted by the Senator from Missouri [Mr. BOND]. I am informed that it is OK with him.

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

#### ISRAELI LOAN GUARANTEES

Mr. LEAHY. Mr. President, for the last 3 weeks, the United States and Israel teetered on the brink of a damaging confrontation over a humanitarian program to assist Soviet and Ethiopian Jews immigrating to Israel.

Fortunately, we pulled back from the brink. Thanks to the restraint of all involved, we avoided a fight neither side, administration or Congress, can win.

It is essential that nothing interfere with the peace process in the Middle East. The President asked for a short delay in action on Israel's request for \$10 billion in loan guarantees for immigrant absorption. He says this is needed for his efforts to convene a peace conference. That delay is being granted him.

As chairman of the Foreign Operations Subcommittee, which writes the foreign aid appropriation bill, I have agreed with the President and the leadership, including the distinguished chairman of the Appropriations Committee, as well as my good friend and ranking member, Senator KASTEN, to hold off that bill until next January. This will help avoid a premature clash that serves no one's interests, while guaranteeing a must pass bill on which to include a loan guarantee program.

Delaying the fiscal 1992 foreign aid bill means there will have to be a continuing resolution to fund the overall foreign aid program during this period. We are now in a short-term continuing resolution for all appropriations bills which have not yet been enacted, which is most of them. Before the end of October, it will be necessary to enact a longer continuing resolution for the foreign aid program to carry us to February. Further restraint on the

Israeli loan guarantee request will be necessary when we move that continuing resolution. I hope all Senators understand how important it is for every one of us to respect the consensus among the White House, the congressional leadership, and Israel, that consideration of Israel's request for the guarantees will be postponed until the Senate takes up the House-passed foreign aid appropriation next year.

Frankly, Mr. President, a lengthy continuing resolution will cause problems and difficulties in the foreign aid program. Yet these problems are the best guarantee of action on a Senate bill early next year. The continuing resolution must not become a mini foreign aid bill with so many exceptions to the usual formula approach that it makes everyone comfortable. The administration, the Senate and the House, all must want and need a complete foreign aid appropriations bill conferred and enacted next February. Otherwise, there could be a temptation merely to add the Israeli loan guarantees to that continuing resolution and extend it for the full year. That is a course which I strongly oppose. We must pass a Senate bill and go to conference with the House on a regular fiscal 1992 appropriation.

I have consulted about this concern with my ranking member, the Senator from Wisconsin, and I am pleased that he agrees with me. His cooperation in working out a way to ensure a vehicle for the loan guarantees next January has been invaluable.

There is a great deal of understandable concern, not only among the American Jewish community, but among all others who believe the United States has a moral responsibility to help Israel receive an expected 1 million immigrants. Many fear the administration will link its support for loan guarantees to a freeze on Israeli settlements in the occupied territories.

There is no doubt that President Bush, like every President since Lyndon Johnson, opposes Israeli settlements as an obstacle to peace and contrary to U.S. policy. However, I doubt that Prime Minister Shamir's government will agree to a freeze on settlements outside the negotiating framework. Last May, I suggested to Prime Minister Shamir a temporary suspension of settlements in parallel with an Arab suspension of the economic boycott and the state of war to help the prospects for a peace conference. He adamantly said settlements were an issue for the negotiations between Israel and the Arab parties about the occupied territories.

At the same time, it is eminently reasonable for the United States to insist that its assistance for the immigrants not contradict or undermine longstanding United States policy on Israeli settlements. When the loan guarantees do come before the Senate,

I will recommend several conditions to make them consistent with U.S. policy and to protect all American taxpayers.

Today, a proposal was introduced by my very good friends, the ranking member of the Foreign Operations Subcommittee, Senator KASTEN, and the chairman of the Defense Subcommittee, Senator INOUE, who is also a member of the Foreign Operations Subcommittee. It has a large number of co-sponsors. However, I am not one.

It is only fair to say at the outset that I cannot support this proposal in its current form. It seeks no economic reforms by Israel that would help it strengthen its weak economy and could significantly reduce the budgetary costs to Israel of the program. I believe it contradicts the purposes and procedures of credit reform. There is no mechanism for independent monitoring of the use of these guarantees to ensure they are used only in accord with U.S. law and policy. And it does not provide any means to address the thorny problem of Israel's settlements activities.

I strongly support a loan guarantee program to help Israel absorb an anticipated 1 million immigrants over the next several years. But I cannot support a proposal which simply hands over to Israel \$10 billion in loan guarantees without any provisions to deal with these and other issues.

In my view, for a number of reasons Congress should not appropriate the entire \$10 billion in loan guarantees up front, as this proposal would do. Instead, we should provide just the first installment of \$2 billion in loan guarantees, though I would include in the foreign aid bill a firm declaration by Congress that it intends to provide \$10 billion in loan guarantees to Israel over 5 years. Israel needs this assurance in order to plan and make commitments for the immigrants.

In addition, there should be a requirement for a major restructuring of Israel's heavily centralized and inefficient economy. This will help Israel's international credit rating, reduce interest rates on the loans, lower future subsidy costs, and lessen the risk that the American taxpayer might have to step in to cover a default.

There should also be a dollar for dollar reduction in the loan guarantees by whatever amount Israel plans to spend on settlement activities. This would ensure that our aid does not help, directly or indirectly, any further expansion of settlements in the territories. A dollar-for-dollar reduction in absorption aid would not be a settlements freeze, but it would make this aid consistent with U.S. Middle East policy.

We also ought to include a ban on the use of any of the absorption assistance outside Israel's borders before the Six Day War in June 1967 when it occupied the West Bank and Gaza. Reliance on verbal promises and written assurances about intentions in the past has just

caused too many misunderstandings. United States policy in this regard should be written into law so there is no ambiguity.

Over the coming weeks there will be intense discussion about how to structure an immigrant absorption loan guarantee program. These are some ideas which I believe need to be included in this special aid program for Israel. They could form the basis of a program that meets the needs of all involved: the peace process, the immigrants, the President, Congress, and Israel.

I welcome the statement of the distinguished senior Senator from Wisconsin that he intends to work with me, other involved Senators, and the administration to fashion a program all elements of the U.S. Government can support. I look forward to working closely with him, the President, and others to accomplish that goal, which I firmly believe is attainable.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. 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.

#### FAMILY AND MEDICAL LEAVE ACT

The Senate continued with the consideration of the bill.

Mr. REID addressed the Chair. The PRESIDING OFFICER. Who yields time to the Senator?

Mr. REID. It is my understanding, Mr. President, that Senator DODD controls part of the time; is that correct?

The PRESIDING OFFICER. The Senator from Utah has 55 minutes.

Mr. HATCH. How much time does the Senator need?

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

Mr. REID. I do not want to impose on the Senator from Utah. The Senator from Connecticut has asked that I spend some time on the legislation. I do not want to take away from the Senator from Utah. I want to speak in support of the legislation.

It is my understanding, Mr. President, that Senator DODD, at a subsequent time, will have time in opposition to the Hatch amendment. I ask unanimous consent that I be allowed to use some of that time. I see the Senator from Connecticut is now on the floor. I ask if that agreement is agreeable to the Senator from Connecticut.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Through the Presiding Officer, I direct the question to the Senator from Connecticut. It is my under-

standing the Senator from Connecticut, at some subsequent time, will have time allotted in opposition to the Senator from Utah, and I am wondering if I could use some of that time.

Mr. DODD. Mr. President, it is all right with the Senator from Connecticut to allocate some of that time assuming an appropriate request. I have no difficulty responding to that request. Whatever time the Senator from Nevada wishes at that time I will be glad to allocate to him.

Mr. ADAMS. Mr. President, I would like to address an inquiry to the managers.

Mr. REID. Mr. President, is the unanimous-consent agreement approved?

The PRESIDING OFFICER. Without objection, the Senator may proceed. The Senator from Nevada.

Mr. REID. I yield to the Senator from Washington for a question.

Mr. ADAMS. I inquire of the manager. As I understand it, the manager, Senator HATCH, has agreed to yield me 3 minutes of his time on the bond compromise bill. I wanted to confirm that. Is that correct, that I may have 3 minutes of the Senator's time?

Mr. HATCH. Yes. The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I first express my appreciation for the hard work—and that is an understatement—of the chairman of the Subcommittee on Children, Senator DODD. This is something that he has worked on not for days or week, but years. I know during my entire time here in the Senate, some 5 years, Senator DODD has been working on some aspect of this legislation. So I congratulate and applaud the Senator from Connecticut. I am personally pleased to see the Family Medical Leave Act before the Senate again.

Mr. President, I ask that we stop and consider and maybe imagine a society where people had to choose between having a child or keeping a job. To imagine a society like that would be realistically to imagine a society like we have, because in the United States that is the stark reality, that is a decision that people must make, and especially women must make; that is, whether she can have a child and still have a job, because, you see, in our country today that is a choice that women must make every day, whether they are going to have a child and, if they have a child, whether they are still going to have a job.

Or we can imagine a society where people had to choose between taking care of a sick parent or spouse or keeping a job. That imagination, if one had it, would again relate basically to the society we now have.

Or imagine a society again where people had to choose between coming to work sick or keeping a job. Again, for all these scenarios that I men-

tioned, you do not have to imagine this because that is a fact that is in the United States today. That is what exists here in our country.

We have had many examples, many cases, that have been forwarded to my office, just as I am sure the Presiding Officer's mailroom gets letters of really sad stories about people who have had to make these choices. Anyone in these Senate Chambers—in Illinois, Utah, Connecticut, Washington, Minnesota those situations happen and are happening every day; that is, whether a woman who has a child is going to be able to come back to work after that child is born, because the law in the United States does not require that employer to maintain that job. And when I say maintain the job, that does not mean while the woman is off on maternity leave that she is asking to be paid; all she wants is her job back. That is really what this legislation is all about.

Again, I indicate to my colleagues that we all have had examples in our mailrooms of some sad stories, and I can relate a number out of memory, but one that comes to my mind is a man who is a miner, who had a daughter with cancer. In the final weeks of his little girl's life, the miner asked his boss, his supervisor, for time off to spend with the child before the child died. The supervisor refused this request and the miner had to go to work every day during last weeks of this little girl's life.

Each of the examples that I have spoken of a society where you had to choose between having a child and keeping a job, a society where people had to choose between taking care of a sick spouse or parent or keeping a job, these situations would have been remedied had a bill passed in the House and the Senate last year become law. Why did it not become law? It did not become law because it was vetoed by the President and the House and Senate did not have enough votes to override that veto.

I think it is wrong that the veto took place. I was disappointed in President Bush. I have great respect for President Bush. We all admire his family and the closeness of that family unit that we see with his wife Barbara, their children, and I have to believe that he got some bad advice. I cannot in my wildest imagination think that he would do what he did; that is, veto this legislation, some of the most important legislation, I think, to come before this body in a long time.

I hope that this legislation, which is different, not as good, but different, certainly a lot better than nothing, I hope that the President's advisers will recommend to the President that he sign this legislation. Because, you see, this legislation is going to make for a better society. Why? Because it will increase productivity, it will make ab-

senteism lower, it will improve loyalty that employees have for their employers. We are talking about competition almost every day in this body and in the other body. There are talks about the United States not being competitive, that an automobile here cannot be built as cheaply as an automobile there, that our manufacturing processes cannot compete with other countries' because labor costs are higher, or we have more problems with environmental laws.

Let me tell you one of the reasons that we have trouble competing is because employees in many instances are happier in other countries because of the work conditions, and one example is what we have right here. All the United States' major competitors have leave policies. Let me repeat that, Mr. President. Not most, but all, of the United States' major competitors have leave policies similar to the legislation that is now before this U.S. Senate. Germany, Japan, Canada, dozens of Third World countries have a paternal leave policy.

So today we are looking at a new version of family and medical leave legislation. Some are saying this is a watered-down version. I do not think we have to harp on that, we do not need to belabor the point. The fact is that once again we have now before this body a family and medical leave legislative package that is a good package. There are some provisions—key employees are exempted, restrictions on part-time employees tightened, penalties for breaking the law are reduced from last year's bill.

While this may not be as good, I think it is fine legislation, I think it is legislation we should pass overwhelmingly in this body, not because it is necessary to override the President's veto, because I do not think the President will veto this, but, regardless, we should send a message to the White House that this is going to become law regardless of advice that the President gets.

I yield the floor.

Mr. ADAMS. Mr. President, I ask Senator HATCH if I may use the time now.

Mr. HATCH. I yield 3 minutes to the Senator.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. ADAMS. Mr. President, I rise in support of the Bond amendment to the Family and Medical Leave Act. We are asking to meet some very basic human needs with this legislation, and what could be simpler than asking that every American worker have the right to take a short leave from their job for the birth of a child, to take care of a serious family illness, and to be secure in knowing that he or she can return to their job. This is pretty simple. It could not be more basic. Every industrialized country in the world, every

one of them, has been providing their citizens with the right to family medical leave for generations.

Even South Africa provides all of its citizens with guaranteed family medical leave. Can the United States afford to do any less?

Some business groups oppose the idea. President Bush has opposed the idea. They say it is bad business. Wrong.

The Japanese provide their work force with guaranteed medical leave; the Germans provide their citizens with guaranteed medical leave. Does anyone believe these countries would adopt national policies that are bad for business? Just look at the balance sheet and you will find the answer.

Family medical leave is good for business. Three out of four care givers in this country are women. Women are moving into the American work force in record numbers. We must provide them with these simple guarantees. Without the benefit of job-protected leave, these women risk losing their jobs, forfeiting their health and pension benefits. At the very time in life when the joy of childbirth should be secure, these demands are put upon them. When the demand of the seriously ill family member must be attended, they have the problem.

And men deserve no less. If the American family is to be reborn, if we are to find again the values that have kept us together instead of tearing us apart, we must support this simple human family legislation.

This bill recognizes another reality in American business; the rise of the part-time worker. More and more businesses are turning to part-time workers. Many are older workers. A disproportionate number are women. Most of them work without benefits. This bill recognizes the part-time worker and provides family medical leave for them.

I hope that the Bond amendment will be adopted, I know it is supported by Senator DODD, because no employee should be asked to sacrifice the health and well-being of their family in order to keep their job.

Much will be said of this bill, that will hurt American business. Some States provide family medical leave now and they found nothing but benefits in this program. Workers are attracted to States that have passed family medical leave. Enlightened employers, who voluntarily provide family medical leave, have found they have an advantage in hiring the best workers and keeping them.

Mr. President, I am not asking us to get out in front on a new social issue. All I ask is that we join the rest of the civilized world in providing our workers and their families with decent care.

I yield the floor.

I thank the manager for yielding me the time.

The PRESIDING OFFICER. Who yields time?

Mr. DIXON. Mr. President, may I inquire of the distinguished Senator from Utah as to whether I could have a very brief moment to speak about this amendment, maybe only a couple of minutes maximum, and then a brief amount of time, independent of the discussion on this amendment, to read a column from the Chicago Tribune pertinent to other matters under discussion presently in the Senate?

I understand he has about 45 minutes remaining on this issue before we go to the Durenberger amendment. I wonder whether I might occupy a very brief period of time, probably not in excess of 5 or 6 minutes?

Mr. HATCH. I would be glad to do that. I do need to reserve some of our time because other Senators want to come and speak and I have some more things I would like to say.

But I am happy to yield 5 minutes to the Senator from Illinois.

Mr. DIXON. I thank the Senator.

Mr. President, may I ask for the yeas and nays on the pending Bond-Ford-Coats amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second.

Mr. HATCH. Parliamentary inquiry, Mr. President: Is it not true that the yeas and nays were already ordered by the unanimous-consent agreement on all three amendments?

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. DIXON. May I ask again, Mr. President, for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. DIXON. I thank my colleagues and I thank the Chair.

First of all, very briefly, on the Bond-Ford-Coats amendment, may I simply say, Mr. President, that I am pleased that the sponsors and others involved in this have accommodated many of us who had some basic concerns about this bill. I urge my colleagues to understand that this amendment makes major revisions in this bill which are very important.

I would like to just give you one example. I come from an era when every youngster worked during his youth while going to school, because I am a child of the Depression. And in those days, one had to work to help support the family. I can recall all through junior high school and high school working 2 hours after school every day of the week, 8 hours on Saturdays, and if you will do your simple math, that is 2 times 5 is 10, and 8 on Saturday is 18.

In the original bill, Mr. President, my colleagues suggested that a person would be eligible for leave benefits if one worked 17 hours a week. I ex-

pressed my concern earlier to the distinguished principal sponsor, Senator DODD, who everyone acknowledges has worked assiduously on this for many years. I said those folks ought not be eligible. And, of course, we all know now that in this present amendment, it restricts employee eligibility to those who have worked 1,250 hours in the prior year, which is 25 hours per week. Now we are getting into a legitimate part-time employee, I would argue, Mr. President. I think that is very worthwhile.

One of the other significant provisions of this substitute will permit employers to exempt key employees, the highest paid 10 percent of the work force, from the total when you enter into the mathematics involved. Another provision requires the employee to give 30 days notice. Those are fundamentally sound improvements in this bill.

And on the time of my friend from Utah, I would observe that all of those things in the Bond-Ford-Coats compromise are well thought out amendments that significantly strengthen this bill and make it a more acceptable bill for a great many people who had concerns about it.

Having said all that, on the bill, Mr. President, I ask unanimous consent to depart from the bill to talk about another subject matter very briefly and read a column from the Chicago Tribune which will take only a few minutes.

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

#### EXTENSION OF UNEMPLOYMENT COMPENSATION BENEFITS

Mr. DIXON. Mr. President, for some period of time now, we have been discussing the question of extending unemployment compensation benefits. That has been a big issue for a period of time in the Congress. It was before us prior to our August work break. I discussed it at town hall meetings, on talk shows and other things while I was home.

Now we have passed another bill, Mr. President, which is going to the President's desk. We will all remember that the President signed the first bill, but he did not certify that it was a national emergency, so folks did not get the money in the extension of the unemployment compensation benefits.

We have now passed a bill that declares it an emergency and the concern is, will the President sign or veto?

Everybody in the country is aware of the issue because it has been the lead item in all the media, that the House has passed this bill by a vetoproof majority. And everybody in the country knows that the Senate passed it, I think, with 65 votes, a couple short of a vetoproof majority.

So the question now, Mr. President, is, what will the President do? I would hope he signs it. But if he does not, what will the Congress do? I hope, Mr. President, that in this kinder and gentler Nation there would be some people that would want to join us to override, if the President does veto.

I want to read this article from the Chicago Tribune, the Sunday paper, this past week, September 29, by John McCarron, the financial editor of the Chicago Tribune. I read from that article verbatim. The title is, "Talk of Rebound Cheap to Jobless."

Here is what John McCarron says:

It happened to Hal, my father-in-law. Then to Wally, my golf partner.

The PRESIDING OFFICER (Mr. WELLSTONE). The time of the Senator has expired.

Mr. DIXON. I did not have an assignment of time, may I say to the President. I had unanimous consent to read the column and was not informed I had a time limitation.

I ask unanimous consent to read a column, that is one column in the Chicago Tribune.

The PRESIDING OFFICER. With time not charged to either side? It is the Chair's understanding the Senator from Utah had yielded 5 minutes to the Senator from Illinois.

Mr. DIXON. I apologize to my colleague. I did not hear the time yielded. I had spoken on the subject of the amendment.

If my distinguished colleague does not want to yield time, I will find whatever time there is in the day.

Mr. HATCH. Why do I not yield another 2 minutes. Can the Senator do it in that time?

Mr. DIXON. In all fairness to my colleague who is a dear friend and old trial lawyer in his own right, I must tell him I cannot read this column in 2 minutes, and I sure am going to read the column sometime today. But if he cannot yield the time now, I appreciate the fact. Do not be embarrassed. I do not want to impose on my colleague. I can do it later.

Mr. HATCH. I can yield a couple of minutes, but I have to save some time for others who wish to speak, and I want to speak, and I have to keep some of this time on this amendment because we are running out of time on the back end of this debate.

Mr. DIXON. May I say to my friend from Utah, I will be glad to come back and do this, but I want to have the impact of this column on the President of the United States and my colleagues in the Senate on a matter that is of paramount importance to the country. If I cannot do it now, I want to use it at a later time. I have no problem not doing it now.

Mr. HATCH. I would ask my colleague to do it at a later time, if he could.

Mr. DIXON. Does my friend, Senator DODD, have any more time on the

Hatch amendment, may I inquire of the Chair?

The PRESIDING OFFICER. On the Hatch amendment, the Senator from Connecticut does have time; 51 minutes.

Mr. DIXON. Well, I can return at that time.

Mr. HATCH. How much time does the distinguished Senator need?

Mr. DIXON. May I say to my friend from Utah, here is the column in the Tribune. I am going to read it at a fairly speedy rate. I do not know how long that takes because I did not do it before I got here.

Mr. HATCH. I have some time on the back end of this. We have 2 hours on my amendment. Why do I not give my colleague 5 minutes on the 2 hours.

Mr. DIXON. My colleague is very generous. I thank him.

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

Mr. DIXON. "Talk of Rebound Cheap to Jobless," John McCarron says from the Tribune.

It happened to Hal, my father-in-law. Then to Wally, my golf partner. Now it's happening every week to thousands of workers, blue collar and white, from New York to L.A.

They are being laid off, furloughed, forced into early retirement or just plain fired. And if the economy doesn't turn around soon, "they" will include a lot of "us".

Get ready for the ugly side of Recession '91. For more than a year, sales have been off and corporate profits have been down. Companies have responded by tightening inventories, slashing budgets for travel and equipment and freezing new hires. Until now, this has caused most of us only minor discomfort; I miss the rent-a-plants that used to decorate the newsroom, but I haven't missed a paycheck.

But now, as the recession drags into a fourth quarter, corporate America is reaching for stronger medicine. Call it consolidation or downsizing or whatever you please. Everywhere you look—in the newspaper columns or down the hall—somebody is being laid off or prodded into retirement.

Last week it happened at Ameritech, where 3,000 managers soon will be enticed into hanging it up, and at Union Carbide, where 5,500 employees will be cut in the next three years.

This month the bell tolled for 2,200 workers at Du Pont, 1,800 at PepsiCo's Frito-Lay division, 1,900 at Nynex, 350 at Emerson Radio and 1,000 at First Chicago Corp.

One analyst who tracks public announcements of layoffs figures that corporate America is laying off employees at the rate of 2,200 every business day. And that doesn't include those fired from "ma-and-pa" operations. The broader picture was provided by the Labor Department Thursday. It said that in the week ended Sept. 14, 439,000 Americans claimed unemployment benefits for the first time.

I'm no economist, but I think it's safe to say that layoffs of this magnitude do not bode well for an economic recovery anytime soon.

People who have just lost their jobs are not likely to head for a shopping mall. They are more apt to hunker over the kitchen table, where they can pore over help-wanted ads and figure a way to stretch their \$270-a-

week unemployment benefit across the mortgage note, utility bill and grocery tab.

When those benefits run out, in 26 weeks, the fortunate among the unfortunates will draw down on saving accounts, break into their individual retirement accounts or redeem their children's college bonds. That's pain.

Congress wants to extend unemployment benefits by 20 weeks. A \$6.1 billion extension passed the Senate last week and is being reconciled with a similar measure that had cleared the House.

But President Bush has threatened to veto the package as too expensive. He favors a \$2.4 billion plan that would extend benefits by only 10 weeks and whose cost would be defrayed by the sale of unused radio frequencies and the tightening of student loan repayments.

Both extension plans would be temporary, ending when the recession does. But when will it end? The administration claims that it bottomed out in May and that a slow but steady recovery is underway.

That view got splattered last week when the Commerce Department again revised downward its estimate of what the economy did in the April-to-June period. The gross national product fell for a third quarter in a row, shrinking at an annual rate of 0.5 percent.

In other words, the economy is dead in the water, drifting slightly backwards. That puts enormous pressure on George Bush; as the 1992 election approaches, he has to get things moving. Trouble is, the usual pick-me-ups don't seem to be working.

The administration has helped pressure the Federal Reserve into lowering and re-lowering the discount rate, now down to 5 percent, the lowest level in 18 years. But it turns out that neither the banks nor their customers are in a position to do much borrowing. Some experts predict there will be another rate cut by year-end, but what if even cheaper money fails to get things moving?

One thing you can expect the president to do is redouble his campaign to lower federal taxes on capital gains. Bush will argue that investors will pump their higher returns into the economy, creating jobs. But lowering taxes on the well-to-do may not play well around all those kitchen tables.

To score points there, the president may have to give some ground on the extension of unemployment benefits. George Herbert Walker Bush may not know anybody who has been laid off, but he reads the papers, and 2,200 layoffs a day is nothing to sneeze at.

Not when you consider that every one of the newly unemployed has dozens of friends, family members and fellow workers who share their pain. Or worry that they may be next.

Mr. President, I conclude—

When my father-in-law was forced into retirement last year, it really wasn't so bad. He got a good severance package and precious time to spend with his grandchildren. Wally got a good retirement deal, too, and has since trimmed seven strokes from his golf game.

He concludes, the last paragraph, Mr. President:

You worry, though about the younger ones not ready to retire. Such as Olivia, our newsroom receptionist. Friday was her last day. I hope she catches on someplace else or at least gets her benefits extended.

Mr. President, this is a column about America. This is a column about hundreds of thousands, millions of people

who had work, lost work, are looking for work, cannot get work and need the help of the Government.

Mr. President, I ask unanimous consent that this column from the Tribune be printed in the RECORD.

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

#### TALK OF REBOUND CHEAP TO JOBLESS

(By John McCarron)

It happened to Hal, my father-in-law. Then to Wally, my golf partner. Now it's happening every week to thousands of workers, blue collar and white, from New York to L.A.

They are being laid off, furloughed, forced into early retirement or just plain fired. And if the economy doesn't turn around soon, "they" will include a lot of "us".

Get ready for the ugly side of Recession '91. For more than a year, sales have been off and corporate profits have been down. Companies have responded by tightening inventories, slashing budgets for travel and equipment and freezing new hires. Until now, this has caused most of us only minor discomfort; I miss the rent-a-plants that used to decorate the newsroom, but I haven't missed a paycheck.

But now, as the recession drags into a fourth quarter, corporate America is reaching for stronger medicine. Call it consolidation or downsizing or whatever you please. Everywhere you look—in the newspaper columns or down the hall—somebody is being laid off or prodded into retirement.

Last week it happened at Ameritech, where 3,000 managers soon will be enticed into hanging it up, and at Union Carbide, where 5,500 employees will be cut in the next three years.

This month the bell tolled for 2,200 workers at Du Pont, 1,800 at PepsiCo's Frito-Lay division, 1,900 at Nynex, 350 at Emerson Radio and 1,000 at First Chicago Corp.

One analyst who tracks public announcements of layoffs figures that corporate America is laying off employees at the rate of 2,200 every business day. And that doesn't include those fired from "ma-and-pa" operations. The broader picture was provided by the Labor Department Thursday. It said that in the week ended Sept. 14, 439,000 Americans claimed unemployment benefits for the first time.

I'm no economist, but I think it's safe to say that layoffs of this magnitude do not bode well for an economic recovery anytime soon.

People who have just lost their jobs are not likely to head for a shopping mall. They are more apt to hunker over the kitchen table, where they can pore over help-wanted ads and figure a way to stretch their \$270-a-week unemployment benefit across the mortgage note, utility bill and grocery tab.

When those benefits run out, in 26 weeks, the fortunate among the unfortunates will draw down on savings accounts, break into their individual retirement accounts or redeem their children's college bonds. That's pain.

Congress wants to extend unemployment benefits by 20 weeks. A \$6.1 billion extension passed the Senate last week and is being reconciled with a similar measure that had cleared the House.

But President Bush has threatened to veto the package as too expensive. He favors a \$2.4 billion plan that would extend benefits by only 10 weeks and whose cost would be defrayed by the sale of unused radio frequencies and the tightening of student loan repayments.

Both extension plans would be temporary, ending when the recession does. But when will it end? The administration claims that it bottomed out in May and that a slow but steady recovery is underway.

That view got splattered last week when the Commerce Department again revised downward its estimate of what the economy did in the April-to-June period. The gross national product fell for a third quarter in a row, shrinking at an annual rate of 0.5 percent.

In other words, the economy is dead in the water, drifting slightly backwards. That puts enormous pressure on George Bush; as the 1992 election approaches, he has to get things moving. Trouble is, the usual pick-me-ups don't seem to be working.

The administration has helped pressure the Federal Reserve into lowering and re-lowering the discount rate, now down to 5 percent, the lowest level in 18 years. But it turns out that neither the banks nor their customers are in a position to do much borrowing. Some experts predict there will be another rate cut by year-end, but what if even cheaper money fails to get things moving?

One thing you can expect the president to do is redouble his campaign to lower federal taxes on capital gains. Bush will argue that investors will pump their higher returns into the economy, creating jobs. But lowering taxes on the well-to-do may not play well around all those kitchen tables.

To score points there, the president may have to give some ground on the extension of unemployment benefits. George Herbert Walker Bush may not know anybody who has been laid off, but he reads the papers, and 2,200 layoffs a day is nothing to sneeze at.

Not when you consider that every one of the newly unemployed has dozens of friends, family members and fellow workers who share their pain. Or worry that they may be next.

When my father-in-law was forced into retirement last year, it really wasn't so bad. He got a good severance package and precious time to spend with his grandchildren. Wally got a good retirement deal, too, and has since trimmed seven strokes from his golf game.

You worry, though, about the younger ones not ready to retire. Such as Olivia, our newsroom receptionist. Friday was her last day. I hope she catches on someplace else or at least gets her benefits extended.

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

The Senator from Utah has 44 minutes remaining.

The Senator from Utah.

#### FAMILY AND MEDICAL LEAVE ACT

The Senate continued with the consideration of the bill.

Mr. HATCH. Mr. President, I am going to take some of this time to remark a little bit about the pending Dodd-Bond amendment. Then I am going to take some time to analyze my amendment because time will be available at the end of the day.

Mr. President, I ask unanimous consent that a letter from President Bush to Senator DOLE be printed in the RECORD.

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

THE WHITE HOUSE,  
Washington, October 1, 1991.

Hon. ROBERT DOLE,  
Republican Leader, U.S. Senate,  
Washington, DC.

DEAR BOB: As the Senate moves toward consideration of S. 5, the Family and Medical Leave Act, I want to reiterate my position on this issue. I strongly support the goal of encouraging family leave policies through voluntary negotiations between employers and employees. However, it is both inappropriate and counterproductive for the Federal Government to mandate blanket fringe benefit packages that treat all employees the same and benefit one employee perhaps at the expense of another. Workers and managers should have the freedom to sit down together and develop a benefit package that best meets their specific needs.

America faces its toughest competition in history. We must maintain the flexibility to meet these challenges directly in the most competitive way. At the same time, we must promote an environment of cooperation in which workers and managers together strive for their greatest productivity. We should not impose additional burdens and restrictions on employers and employees, particularly at this crucial time.

Accordingly, should S. 5 or any other mandated leave legislation be presented to me, I will veto it.

Sincerely,

GEORGE BUSH.

That is as clear as can be. The President is going to veto this legislation. And I presume he will even though it is a discriminatory bill that benefits the more well-to-do and leaves the poor out of the equation.

Mr. President, during the debate today, I have tried my best to convince my colleagues to oppose the Family Medical Leave Act and or instead, support the American Family Protection Act.

But first, let me reiterate that no one on this side of the aisle, and not the President of the United States, opposes the concept of family leave. No one does. We do not differ with the Senator from Connecticut on the concept of family leave except with regard to the mandated nature of his bill. Again, where we disagree is on the method that has been chosen to promote family leave, not the motive.

The legislation before us calls for a mandated one-size-fits-all benefit. Except it does not fit everyone. One size fits only 50 percent of the workers of America and leaves the bottom half of the pay scale out of the equation. It discriminates against them. I have made that case earlier.

I have elaborated on the reasons why I believe this measure should not pass. Let me just summarize those arguments.

We can argue all day long about cost estimates, but the plain fact is that the proposal is not free. To comply with this bill, employers must make adjustments in the benefits they offer workers. They must continue to pay benefits for employees who are not working. This obviously incurs a cost. As a result, workers may not get the com-

pensation packages they actually prefer because Government has not only required a family leave benefit, but a family leave benefit that measures up to a Federal standard.

So, Mr. President, the first reason Senators should not support the Dodd-Bond bill is because it is not only a mandate on employers, it is a mandate on workers as well, and a discriminatory mandate at that.

The second reason, Mr. President, is that all of this cost shifting is not good for the economy as a whole. Employers must be free of the same kind of rigidities that have plagued the economies of many nations in Europe, especially the East bloc nations. Every new requirement we impose on business renders American industry less able to adapt to changing economic conditions. We then become even less competitive.

Finally, S. 5, with or without the Dodd-Bond amendment, is not the only possible answer to the problems confronting families. There is an alternative. I believe the American Family Protection Act, which I will offer as an amendment to this bill, offers advantages to families that S. 5 does not. It does so in a way that permits maximum flexibility and choice for both employers and workers, and it applies to everybody in America, not just a selected few who can afford to take the family medical leave.

Let me review my personal concerns which fall into four categories: First, federally mandated benefits of this type are by nature rigid and inflexible. The ability of working parents to freely choose is strangled, and this runs counter to the modern trend of cafeteria style benefits for employees. Cafeteria benefits are benefits laid out on the table that the employee can choose among. The Dodd-Bond bill would run counter to this trend. It says that you have to take this benefit to the exclusion of some of these others.

Second, this legislation is discriminatory in impact. It is not what the vast majority of employees want; yet will have to pay for. Moreover, those most in need of the family protections intended under this particular bill will suffer because of its passage.

Third, at a time when economic recovery ought to be the central concern of this Nation, the facts clearly indicate this bill would have negative economic impacts.

Fourth, the bill is simply ineffective. It establishes three critical objectives: First, to promote bonding between parents and children; second, to enable parents to spend time with seriously ill children in their time of need; and third, to enable workers to provide care for elderly parents who need continuous care in time of need.

Regrettably, this bill does not satisfy these purposes. It falls short and it is, therefore, ineffective.

Shortly, I will send a substitute amendment to the desk. I call it the parental options amendment. But let me clarify just a few points before I do.

First of all, let me clarify why many refer to this as a yuppie bill. If an individual earns \$20,000 a year, the opportunity cost of forgoing income for a period of time is less than if the individual earns, say, \$100,000 a year. This is because the loss of income is, for lower incomes, offset at least in part by savings in work-related expenses: Child care, nursing care, commuting, et cetera, and in lower taxes. So the cost of staying out of the work force for a period of time is less than the income that would have been earned.

If the leave period is limited to 12 weeks, the individual cannot reap significant cost savings. The family still has to have child care after 12 weeks, get to work, buy lunches, so forth. It is much more likely that 12 weeks' leave will equate to a 12-weeks loss of income.

These work-related costs take a larger percentage of the income of lower- and middle-income workers than for upper-income workers who will benefit from this bill. They are the only ones who are going to benefit from this bill. Therefore, families with only 12 weeks cannot really benefit from the Dodd-Bond approach. Yet, they may benefit from the Hatch alternative approach.

Under the alternative, they can make their own budget calculations and decide how much leave to take. They can take 1 month or 6 years for parental leave. It is up to them. They can do anything in between. They can take the exact time they need. They can adjust it to their budget. They can make a determination what to do and how to do it.

Let me give an example. Let us say the Smiths had a baby. Mrs. Smith works as a secretary for \$18,000 a year. She would like to stay home until her child is old enough for preschool but is concerned that she will lose her seniority at work. She has also worked long enough for this company to be vested in the pension plan.

After doing the arithmetic, the Smiths have figured that after savings from lower taxes, which can be estimated at about \$3,000, including FICA taxes, work expenses and not having to pay nearly \$7,200 for child care, that the real cost of Mrs. Smith's extended leave is in the neighborhood of \$7,000. The Smiths may decide to forego a new car and allow Mrs. Smith to stay home. The Smiths get to choose for how long they make the decision. When she wants to return to work, she has the right of preferential rehire and the retention of all of her earned benefits, including seniority, that had accrued up to that time.

Now, Mr. President, let me follow-up by taking just a few minutes to share some of the comments which appeared

in the media recently on this issue. Some of this information is, in my opinion, very instructive. For instance, in the September 20 Washington Times an editorial entitled "Welfare for the Yuppie Class" reads:

No sooner had the House voted a 20-week extension of unemployment benefits than Democrats and moderate Republicans in the Senate made their move to resurrect a "family and medical leave" law that would force American businesses to give their workers 12 weeks off without pay, but with continued health benefits. This may be one of the few instances in recent history where Congress has demonstrated an understanding of the law of supply and demand: The House created a demand for unemployed people, the Senate moved to fill it.

The editorial continues:

The law would transfer wealth from working mothers and fathers who can't afford to take 3 months off to "career" women and dilettante yuppie men who can.

I hate to say it, but that editorial hits the nail right on the head.

I also have to point out that the Senator from Connecticut said that this amendment responds to the legitimate concerns of business. I just want to make sure there is no confusion here certainly about business' position on this issue.

Almost uniformly, business strongly opposes this bill. I have a number of letters from business people in Utah, some of which I have culled out to give today. I have here letters from almost every business group in opposition to this bill. For instance, let me read from the letter from the National Federation of Independent Business, which is the Nation's foremost advocate for small business.

I ask unanimous consent that the letter in full be printed in the RECORD.

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

Washington, DC, September 20, 1991.

Hon. DAVID L. BOREN,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR BOREN: Senator Bond's substitute amendment to Senator Dodd's Family and Medical Leave Act, S. 5, fails to correct the fatal flaw of mandated leave—the mandate.

The Bond substitute succeeds only in making personnel leave policies more impersonal and bureaucratic. It encourages direct intervention of government into highly personal family matters and ensures the complete loss of privacy for an employee.

The Bond substitute still mandates a 12 week unpaid leave policy for all employers with 50 or more employees. It refines the definition of serious health condition and reduces damages against an employer for violation of the act from triple damages to double damages.

It is obvious from this substitute that proponents still do not understand small businesses' fundamental opposition to mandated leave. The substitute now not only invites the government into business management, but sets up the medical profession as the final arbitrator of what functions are necessary for every employee's position within a

business. This substitute is a frontal attack on the way small business does business.

This bill simply misses the point—neither business owners nor employees want the federal government dictating employee benefits. A recent Gallup survey conducted for NFIB showed 94 percent of small businesses already providing family leave. In addition, a Penn-Schoen survey found 89 percent of workers prefer to negotiate benefits directly with their employer.

A soon-to-be-released report by W. Steven Barnett, Associate Professor, Rutgers University and Gerald Musgrave, President, Economics America entitled "The Economic Impact of Mandated Family Leave Legislation" aptly characterizes the view held by proponents regarding government mandates. The report notes the argument that mandated leave will save business' money is a "... novel economic theory that business not only does not know what is in its best interest, but cannot be counted on to maximize profits even when told how to do so."

Unfortunately, the Bond substitute makes not only the application for leave, but the granting of leave and the return from leave a legal minefield for both the employer and the employee. It creates exemptions and opportunities for challenge by either party at every stage of the process.

Small business owners continue to oppose any effort by Congress to interject the federal government into employee benefits and will adamantly oppose the Bond substitute.

Sincerely,

JOHN J. MOTLEY III,  
Vice President,  
Federal Governmental Relations.

Mr. HATCH. Mr. President, let me just read a paragraph or two. It says:

It is obvious from this substitute—

Meaning the Dodd-Bond substitute— that proponents still do not understand small businesses' fundamental opposition to mandated leave. The substitute now not only invites the Government into business management, but sets up the medical profession as the final arbitrator of what functions are necessary for every employee's position within a business. This substitute is a frontal attack on the way small business does business.

This bill simply misses the point—neither business owners nor employees want the Federal Government dictating employee benefits.

That is from the NFIB. There is no question that they represent the vast majority of small business people in this country, and do a very good job. There are other letters.

I ask unanimous consent that all these letters be printed in the RECORD.

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

JONES/RICHARDS & ASSOCIATES,  
Ogden, UT, March 20, 1989.

Re: Parental leave and other mandated benefits

Senator ORRIN G. HATCH,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR HATCH: I am angry! I hope you will get angry too!

Why does the Congress of this Nation feel that they must continually tell businessmen how to run their business.

Choice and the selection of employee benefits to be offered is one of the few ways a

small business can compete against major businesses. If this choice is taken away from small business it will be one more stumbling block leading to the demise of effective small business in America.

The concept of parental leave as expressed in the bills currently before the Congress is anathema to effective management principals. If key people are to be absent from our business for 10 to 13 weeks, how are we expected to keep our business operating. By the time a replacement is trained he or she are no longer needed and all the cost and disruption of the interim period is wasted. Even though the parental leave is proposed as unpaid leave, the cost to business will be horrendous.

Please!, please! take the strongest stand you can against this legislation.

Yours truly

KENNETH W. JONES, A.I.A.,  
President.

INTERMOUNTAIN WEST  
MANAGEMENT CORP.,

American Fork, UT, March 17, 1989.

Senator ORRIN G. HATCH,  
U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: This issue of mandated parental leave has been brought to my attention by NFIB. They are right! This measure, if enacted, would be a gross disservice to all Americans. Sure it appeals to the wage earner, to those who become more and more addicted to the "free lunch" trap. I say, let us not be lured by these seeming "good for the family" enticements. Rather, let us examine the more far reaching impacts this measure could have on our economic system. After all, doesn't the consumer ultimately pay for these increased costs of doing business?

Mandated parental leave is a mistake. Vote No!

Cordially,

TIM H. MORRIS.

CHALLENGER SCHOOLS,  
Orem, UT, March 15, 1989.

Senator ORRIN G. HATCH,  
U.S. Senate, Washington, DC.

SENATOR HATCH: It is so critical now to help our economy thrive—with the enormous federal debt, the low Gross National Product, and the Trade Deficit so huge. It is a time to help small and large businesses flourish, because they are the very breath of our nation! House Bill 770 and Senate Bill S. 345 will kill our company! We simply cannot afford such extravagance. Soon we will have to just say, "Oh, to heck with working hard—let's just join the rest of the government bureaucrats, workers, and welfare recipients—it's just too hard to try to keep a business thriving and growing."

You know, some people think owning a business is just "trying to get rich." Let me tell you, it means bleeding—sweating—and worrying—night, day, vacations, weekends, and while sitting on the can! But we do it because we like to produce!

Rather than kill us and our productive spirit, why doesn't Congress do something like making tax breaks or deductibles so that we can afford to do more for our employees? Take a peek at the methods that Japan is using to help it's industries and employers. Yes, we want to take care of our company and our fellow employees, but if someone does not start thinking about the employers, there won't be any of us left to produce and create jobs for people!

Parents can only pay a finite amount for child care and education—it is so critical

that you vote against this bill. Please—save America and its lifeblood. These bills will kill us and our nation's business incentive! Urgently!

BARBARA B. BAKER.

FOREST PRODUCTS SALES,  
Murray, UT, March 17, 1989.

Senator ORRIN G. HATCH,  
U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: After reviewing Senate bill 345, I am concerned about the effect this bill will have on small businesses. I feel we already carry a heavy burden of government involvement. Some of these things are for the good of everyone, some are not. In an ever shrinking world, where competition is increasing, small businesses do not need another shackle around our ankles. This bill I am sure would actually put a lot of small businesses out of business. Utopia is a noble desire, but the real world must take precedence. I just want to register with you my feelings on this matter.

Sincerely yours,

THOMAS E. BUTTERFIELD,  
President.

BRIGHAM CITY, UT, March 16, 1989.

DEAR SENATOR ORRIN G. HATCH: I am opposed to mandated employee leaves. It is just one more attempt to force small business out of business. I was too young to fight the Germans, Japanese, and Koreans, and I wasn't called to fight the Vietnamese. But now I have to fight daily for my freedom. In the scriptures it says we will have to fight to preserve our freedoms, but I never dreamed that I would be fighting my own government. It is just like we have fought and lost a war with a socialistic power, and we are now being subjected to all of the socialistic policies. Every year I have less freedom than the year before because of new government laws that take my freedoms away.

I am a dentist. When I applied and was accepted to Northwestern University Dental School you had to have excellent grades and references for the 120 openings in the freshman class there were as many as 5000 applicants. Now Northwestern has reduced its class size to just 50 openings and has a hard time finding even that many qualified applicants. Some dental schools in the U.S. are taking applicants whom you wouldn't have work on your dishwasher, let alone your body.

What I'm getting at is that the government has passed so many laws and regulations that no one with talent wants to subject themselves to the governmental abuse. Qualified young people are looking to jobs or positions where they don't have to put up with all of the new mandated socialism. I can write each day about some new bill that is again trying to remove our freedom, that I'm opposed to, but that is fighting a losing battle.

Please use your power and authority to make government our friend and not an enemy we have to fight. Please don't let the United States become a socialistic power, because we all know that leads to failure.

Sincerely,

MICHAEL E. ALLEN, D.D.S.

BLANDING, UT, March 15, 1989.

Senator ORRIN HATCH,  
U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: Very simply put, those of us in the small-business sector cannot in any way afford the mandated parental

leave. Please do all that you can to defeat this bill.

Thank you,

STAN HURST,  
Treasurer.

SWIM FINANCIAL CORP.,  
Orem, UT, March 15, 1989.

Hon. ORRIN HATCH,  
Senate Russell Building, Washington, DC.

DEAR SENATOR HATCH: I recently caught wind of a piece of legislation now pending before Congress which, if enacted, will require employers to give parental leave to their employees. (H.R. 770, S45.) As a small business owner as well as being a partner in several other small businesses, I find this legislation to be appalling. I view it as a direct intrusion by the Federal Government into the free market by mandating certain fringe benefits whether or not it is desired or in the best interest of employer or employee.

As one takes a serious look at the widening gap between the cost of an employee to an employer (including various FICA taxes, unemployment compensation, workers compensation and other compulsory benefits) versus what the employee himself actually receives after he pays his share of FICA and taxes, we can see that this gulf between cost of employer versus income to the employee becomes a very real hindrance in working out mutually satisfactory relationships with employees. It seems such things as medical benefits and the type of parental leave as is suggested in the pending legislation should be a subject of free, uninhibited negotiation between the employees and their employer. This type of federal intrusion into the free market will see no limit unless the principle is really discussed as to what role does a government have into mandating certain relationships between employer and employee.

This legislation smacks of an organized labor effort to force upon all employers by legislative fiat what could not be gained in the free market place by negotiation. This type of legislation is coercive by nature and totally contrary to the provisions of our constitutional free society. I ask your help in defeating this legislation, not just in amending it, but in defeating it as the principle upon which it is based is entirely wrong.

Sincerely,

GAYLORD K. SWIM.

DAYWEST ENTERPRISES, INC.,  
Ogden, UT, March 21, 1989.

Senator ORRIN HATCH,  
U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: The proposals before Congress to mandate parental leave (H.R. 770 & S. 345) would be a major disaster for my company if enacted into law. We are in the Long Term Care business, employing 130 people, most of whom are young women still in their childbearing years, and mostly non professionals.

This legislation would create a serious financial problem for us because we would have large numbers of employees on parental leave with the company paying the cost of health insurance while they are gone.

And there is no possible way we can hold a job for parental leave by keeping a position empty; we must hire new staff for periods of extended leave. What are we suppose to do fire an existing employee when the one on leave returns? How fair is that to the person you just hired?

We cannot afford health insurance as it is. CORBA and section 89 have only compounded the problem. If this legislation also passes, we would most likely discontinue offering

health insurance entirely. This law would also make it more difficult for us to recruit new employees because they would be afraid of being fired after 10 weeks when someone comes back from parental leave.

There is absolutely no need for government to get involved in this issue anyway. Our employees who leave for maternity reasons are always able to find good jobs when they are ready to return to work, even though it may not be with the same company.

This is not a "family issue" at all, but just another unwarranted government intrusion into free enterprise that will create more problems than it will ever resolve.

Please vote against it.

Sincerely,

L. ALLEN DAY,  
Daywest Enterprises, Inc.

MACA SUPPLY CO.,  
Springville, UT, March 14, 1989.

Senator ORRIN HATCH,  
U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: This letter is being written as an official protest against the legislation contained in Senate Bill S. 345.

Maca Supply is a small business employing approximately 50 persons and we strongly oppose the mandated parental leave legislation for the following reasons:

When we hire an individual we have a specific need for that person in the organization. We expect him to be in attendance during every regular work shift. If we hadn't needed him we wouldn't have hired him. It is not that we are against employees having time off, but we feel we should have the final say as to the justification of the time off.

Our production depends upon the person being on the job during every shift. We don't have the funds to have a back-up for every person in the plant.

A person's regular attendance is expected and any unscheduled time off is detrimental to our production.

Finally we are opposed because we strongly feel that further government control will only stifle business activity. We also feel that the decisions governing leave of absent should be left in the hands of the people who foot the bill, and not in the hands of a governmental regulatory agency.

If past legislation of this type is any indication of what to expect, it is almost certain that this is only the beginning, and future regulations will most assuredly follow.

Please be mindful of the free enterprise system and the fact that federal regulations generally confuse, and only lead to further regulations. Loopholes will certainly be found, and with these loopholes, gigantic concessions will have to be made by the small business community.

Consider this letter an official protest, and a concerned expression of our firm and continued opposition to this type of legislation.

Sincerely yours,

KENT LARSEN,  
Manager.

PETERSON COMPANY-UTAH,  
Salt Lake City, UT, March 10, 1989.

Senator ORRIN HATCH,  
U.S. Senate, Washington, DC:

The provisions of the mandated parental leave legislation would be a disaster to small business. There is no way we could survive 20-23 weeks leave as proposed by House Bill HR770 or Senate Bill S-345. As a matter of fact I don't see how large businesses could survive unless these provisions.

I am utterly dismayed that representatives of the people could possibly propose such leg-

islation and hope our Utah delegation will take the lead in its defeat.

Respectfully,

RAY H. COOK,  
Ex-Vice President, Peterson Co.-Utah.

WANGSGAARD HEATING  
& APPLIANCE CO.,  
Logan, UT.

DEAR ORRIN: As a small business owner, I am flabbergasted at even the thought of mandated parental leave (S45).

At a time when we are being asked to get more productivity out of our employees, some of Congress seems to be right there to kick us in the teeth. I think these people need a mandated leave of absence to get back in touch with reality.

Yours truly,

BRENT WANGSGAARD,  
President.

K-C MANUFACTURING  
& SALES, INC.,  
Pleasant Grove, UT, March 13, 1989.

You are forcing employers to hire older and in perfect physical shape employees.

That will put young families (who need work to feed children) and older individuals who's health may be questionable, in welfare lines.

You'll be putting another group in poverty, congratulations!

Another step in making us less competitive in the world and closer in bankrupting our country.

KEVEN WILSON.

BLAKE ELECTRIC CO.,  
Richfield, UT, March 13, 1989.

Hon. ORRIN G. HATCH,  
U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: I am writing concerning a bill that has been brought to our attention by the National Federation of Independent Business. The bill S. 345 seems to be completely out of reason in relation to small business as it would create hardships, personnel not on the job, as well not completing work done that is needed on a daily basis.

This bill could drastically reduce production activity, which would reduce output, potential growth, stop production, and would be a loss to revenue on City, County, State, and National levels.

I hope you will do all you can to defeat these bills. We appreciate your support and good voting record in the past.

Sincerely,

GLEN BLAKE,  
Blake Electric Co.

BEAZER ENGINEERING,  
Logan, UT, March 14, 1989.

Hon. ORRIN G. HATCH,  
U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: In our business we have no way to absorb or pass on the increased costs that the Parental Leave legislation would impose on us. We ask you to vote against this measure

Sincerely,

ALBERT BEAZER.

MENDENHALL CONSULTING ENGINEERS,  
South West Jordan, UT, March 14, 1989.

Senator ORRIN G. HATCH,  
U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: I am writing to express my opposition to Senate Bill (S. 345) mandating parental leave.

This bill is not in the best interest of small businessmen in the State of Utah. My com-

pany is a service company, when employees are not here and not producing we lose money. If I were required to give 10 weeks leave to someone I would have to close the doors, declaring bankruptcy.

Larger service companies that I have worked for in the state would just increase their fees to cover the costs of the leaves. Their higher fees are already making many larger companies non-competitive in the Utah market.

Please vote against this bill.

Thank you.

Sincerely,

GREG B. MENDENHALL, P.E.

MID-STATE CONSULTANTS, INC.,  
Springville UT, March 14, 1989.

Senator ORRIN G. HATCH,  
U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: I am writing to voice my opposition to the proposed legislation regarding parental leave. In a small company, when a key employee takes an extended leave it is difficult if not impossible to hire a competent temporary replacement. Also, the cost of providing health insurance to an absent employee as current premiums would be substantial.

Although the rights of workers do need to be considered, in this case the government seems to be going a step too far. Each individual situation should be evaluated by the employer as well as the employee, and not mandated by law.

Sincerely,

TERRY D. BROWN,  
President.

GREEN & SONS AGENCY,  
Ogden, UT, March 14, 1989.

Senator ORRIN HATCH,  
U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: My letter concerns Senate bill (S. 345) mandated parental leave, which I strongly oppose. As a small business owner; if this bill went into law I am sure we, as well as other business owners, would have no choice but to reduce the number of employees because of additional inconvenience and expense.

The bill's sponsors, I am sure, want to move quickly to put it to a vote this time around in hopes to "sneak" this bill through. It would only be one more move toward ruination of small business.

I urge you to do everything possible to kill this bill in its tracks.

Sincerely,

WAYNE H. GREEN,  
President.

Alexandria, VA, September 20, 1991.

U.S. SENATE,  
Washington, DC.

DEAR SENATOR: On behalf of the 25,000 members of the Printing Industries of America (PIA) and the Graphic Arts Legislative Council, I urge you to oppose S. 5, the Family and Medical Leave Act of 1991.

Our members value flexibility in providing employee benefit packages which are tailored for their workforce. Employers in the graphic arts industry use this flexibility to respond to the changing needs of today's workforce. S. 5 eliminates flexibility and throws an unnecessary burden upon businesses. Recent polls such as one conducted by the Employee Benefits Research Institute have shown that American workers do not rate family and medical leave as a preferred benefit. Thus, a government mandate is unwarranted.

In addition, our European neighbors have shown as that big government does not bene-

fit the national economy. While supporters of S. 5 continue to point to the experiences of European countries with mandated benefits, these same countries continue to explore ways to remove the shackles to their economies caused by inflexible employee benefit and labor market policies. The deterioration of Eastern European governments spilling over to Western European countries such as Sweden shows that big government does not work. Sweden is a prime example of a welfare state which has failed. In contrast, our nation's reliance upon the marketplace as the best mechanism for determining good employee benefit packages has and continues to work.

As the nation struggles to bounce back from the recession and strengthen its economy, government mandates in legislation such as S. 5 will only hinder the process and hurt our nation. For the businesses and workforce in your state as well as the nation, say no to mandated benefits and oppose S. 5, the Family and Medical Leave Act of 1991.

Sincerely,

BENJAMIN Y. COOPER,  
Senior Vice President, Government Affairs,  
Printing Industries of America.

Mr. HATCH. Mr. President, I am sure these letters are typical of the concerns other Senators have heard. I underscore the fact that the vote, I am told by the National Federation of Independent Business, will be a key small business vote.

This first, from a construction company in Logan, Ut:

DEAR SENATOR HATCH: I am concerned with the proposition to enact mandated parental leave. This is a totally one-sided proposed law. It is too expensive, too burdensome. It might be considered apple pie, but it is certainly bitter to the taxpayers.

I encourage your support in defeating the proposed mandated parental leave.

There are a lot of others that I have from Utah that I also find to be very interesting on this issue. One is from IBEC in Ogden, UT.

DEAR SENATOR HATCH: We very much believe in families. However, the Government is not in the business of dictating what benefits we should offer our employees, unless of course the Government would like to pay for those benefits.

We respectfully request that you vote no on any and all bills that mandate parental leave or health insurance for any business establishments of any size.

Please stick to the business of Government and concentrate your efforts on balancing the budget.

It is interesting. Here is another one from a business in North Salt Lake, UT.

DEAR SENATOR HATCH: Please vote against S. 345. Mandated parental leave is not an issue that Congress should address. This would unwittingly leave the option to employees to walk out at any time they feel a need to take care of domestic matters. As an employer it does not leave the opportunity for employers and employees to sit down and discuss the problems the employee may have, or that the employer may have.

As a regular course, our company allows parental leave when we understand the circumstances of the employees. But more than that it gives us the opportunity to negotiate these times so the employee and employer

can satisfy their needs by working out an equitable solution.

Well, I think these are points. I could go through a lot of other letters.

I ask unanimous consent that these letters be placed in the RECORD.

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

LE GRAND JOHNSON  
CONSTRUCTION Co.,  
Logan, UT, March 13, 1989.

Hon. ORRIN HATCH,  
Washington, DC.

DEAR SENATOR HATCH: I am concerned with the proposition to enact mandated parental leave. This is a totally one-sided proposed law. It is too expensive, too burdensome.

It might be considered apple pie but it is certainly bitter to the taxpayer.

I encourage your support in defeating the proposed mandated parental leave.

Very truly yours,  
LE GRAND JOHNSON CONSTRUCTION Co.,  
MAX L. JOHNSON, President.

IBEC,  
Ogden, UT, March 14, 1989.

Senator ORRIN G. HATCH,  
Russell Senate Office Building, Washington,  
DC.

DEAR SENATOR HATCH: We very much believe in families. However, the government is not in the business of dictating what benefits we should offer our employees, unless of course the government would like to pay for those benefits.

We respectfully request that you vote no on any and all bills that mandate parental leave or health insurance for any business establishments of any size.

Please stick to the business of government and concentrate your efforts on balancing the budget. The current deficit will cripple us for years to come unless you act now, due to all the wonderful programs you and your colleagues have enacted. Have you considered ending outdated programs and biting the proverbial political bullet with an across the board spending reduction. If we all pay the price of reduced spending you're more likely to get the people behind you than if you single out groups for item cuts that then say "why me?", and pressure you into restoring the cut. Shades of the Hill AFB furlough and the McDonald Douglas jobs in Salt Lake, for example. Above all, do something to correct this imbalance!

Sincerely,

HELEN REEVES TAYLOR,  
Vice President.

GETTER TRUCKING, INC.,  
North Salt Lake, UT, March 20, 1989.

Senator ORRIN G. HATCH,  
U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: Please vote against S. 345. Mandated parental leave is not an issue that Congress should address. This would unwittingly leave the option to employees to walk out at any time they feel a need to take care of domestic matters. As an employer it does not leave the opportunity for employers and employees to sit down and discuss the problems the employee may have, or that the employer may have.

As a regular course, our company allows parental leave when we understand the circumstances of the employees. But more than that it gives us the opportunity to negotiate these times so the employee and employer can satisfy their needs by working out an equitable solution.

Please vote against Senate Bill S. 345.

Sincerely,

GETTER TRUCKING, INC.,  
WILLIAM R. GETTER,  
Executive Vice President.

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

The PRESIDING OFFICER. The Senator from Utah has 29 minutes and 23 seconds.

Mr. HATCH. Mr. President, I notice the distinguished Senator from Idaho is present. I would like to interrupt my remarks to yield 4 minutes to him, and then I will go into the Hatch substitute and why I think it is a far superior bill to the Dodd-Bond bill, and why I think it would work in the best interests of all American families, not just the few that the Dodd-Bond bill does.

So at this point, I would be delighted to yield 4 minutes to the distinguished Senator from Idaho.

Mr. CRAIG. Mr. President, I thank my colleague from Utah for yielding.

Let me, first of all, associate myself with the remarks he has just made as they relate to the important piece of legislation that is before us, S. 5, and amendments that he will soon be offering to this legislation that deal with parental leave.

I had developed legislation as an amendment to the parental leave bill known as S. 841. I will not have the opportunity to introduce that as an amendment because it would require the 60-vote point-of-order budget waiver, because it would be a tax credit to be offered to business and industry, especially that 5 percent which does not now provide through the private approach a parental leave or an individual leave opportunity that currently exists in the marketplace.

Why will I oppose S. 5, and why am I suggesting that every Member of this Senate ought to oppose S. 5? Is it the merit? No, not in total, Mr. President. It is not the merit or the concept of the legislation itself, from the standpoint of what it pretends to do. I think we are certainly all in favor of the employee and the employer developing a relationship that recognizes the plight of the employee.

But what I oppose, and what I think this Senate ought to oppose, is a mandate, a Federal mandate that says you will.

I am not allowed to introduce my legislation because of its potential budget impact, and yet there is absolutely no consideration for the impact of S. 5 on the private economy of this country, the viability of that economy and, more importantly, its competitiveness in a world economy.

As the rest of the world would tend to free itself a little bit, and we hope a good deal more, we tend to be centralizing the authority over the private sector of this country right here, in the Senate and in the Congress of the United States. I think that is what Federal

mandates are all about. When we cannot afford to do it, because we have literally bankrupted our country through Government expenditure, we are now saying we are going to solve the additional social ills that we can no longer afford from the Federal level through mandates to the private sector with which the private sector must comply.

I am all in favor of parental leave when it is a negotiated leave, when it is a relationship that is freely established between the employee and the employer. I would even go so far, as I have in the legislation that I developed, S. 841, to offer the incentive to do so by encouraging through greater tax incentives that kind of an opportunity to exist.

In fact, the legislation that I would have proposed, if we had not had to adhere to the false budget agreement that this country and this Government now struggles under, would have even provided greater flexibility in the marketplace than the kind of mandates that are proposed through S. 5. That is reality.

So when the American public, which observes our actions on a daily basis, becomes frustrated over what is or is not done, part of it is not done because of the rules and regulations that we straitjacket ourselves to; part of it is not done because we no longer believe that the private sector ought to be as free as it is, as it should be, to negotiate its own relationship, partly because there are some who believe in greater and enhanced central control over the kinds of relationships that my colleague from Utah is suggesting that we free up; that we really do create the incentives, but we allow the private sector to make the choice. We allow the employee and the employer to come together in that kind of a negotiated relationship.

The PRESIDING OFFICER. The Senator's 4 minutes have expired.

Mr. CRAIG. Mr. President, I thank the Chair.

I stand in strong support of the amendment of my colleague from Utah that he will be presenting, and I hope this Senate will rally in support of a more voluntary, freer approach to the marketplace and to the relationship that has been traditionally, Mr. President, the relationship negotiated between the employee and the employer.

I thank my colleague for yielding time.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah now has 24 minutes and 11 seconds.

Mr. HATCH. Mr. President, I thank my colleague.

I yield 5 minutes to the distinguished Senator from Washington.

Mr. GORTON. Mr. President, if the U.S. Senate wants to act on behalf of American families and businesses, then it should look to my home State of

Washington. There you will find a family leave law that strikes a necessary balance that protects both families and small businesses. Look there, and you will find a model for this Senate to follow.

In today's difficult economic times, many couples face enormous financial burdens when starting and raising a family. The unexpected onset of tragic illnesses of a spouse, parent, or child can also add tremendous challenges to working men and women. People in such dire circumstances should not be forced to choose between losing a job and caring for a loved one.

Fortunately, the tradition of family and medical leave is a common and accepted fact of American businesses, small and large. Across the Nation, employers and employees enter private agreements every day to establish equitable solutions to the worker's difficult situation. That is the preferred and customary method of managing employee crises as indicated by a poll which found that 89 percent of the American public believes that benefits should be decided between employer and employee, not by the Federal Government.

However, some States, including my own State of Washington, have recognized the need to legislate balanced family leave policies to cover large businesses. Washington State recognizes this need by providing for up to 12 weeks of unpaid parental leave to care for a new or adopted child. That legislation applies to businesses with more than 100 employees. I fully support such individual State efforts to address the unique needs of their families and local economies.

It was my hope that the U.S. Senate would follow Washington State's lead by enacting similar legislation that serves families and businesses. I wanted legislation that recognized the current financial struggles of businesses which employ 50 to 100 people; businesses which are vitally important to our economy. Instead, the best the Senate has done is offer legislation that is unfair to medium-sized businesses, excessive in its mandated benefits, and designed to provoke a Presidential veto. This cannot possibly benefit families who need wise and compassionate legislation from their Representatives.

For the past few weeks I have heard from many Washington State businesses. From Spokane to Seattle, and Bellingham to Kennewick, employers with more than 50 employees have urged me to recognize their contribution to our economy and not impose further unreasonable Government regulations. They simply can't afford it.

There is a significant difference between requiring businesses with 50 or more employees to provide mandated benefits, and the Washington State standard of 100 or more employees. Ac-

cording to the Washington State Department of Employment Security, in 1990, the total number of employers with 100 or more employees was 2,830. The combined employee payroll for these employers is 1,009,382. The total number of employers with 50 or more employees is 6,512. The combined employee payroll for these employers is 1,262,093. Lowering the threshold for family leave from 100 to 50 would mean an additional 3,682 employers or 130-percent expansion of the number of covered employers. The Washington State Legislature has debated this issue at length and has decided against lowering the exemption rate.

I cannot support Federal legislation that lowers the threshold beyond that which my State has expressly established. Although I applaud the Senators from Connecticut, Kentucky, Missouri, and Indiana for their efforts to lessen the burden on companies, the compromise legislation is still not close enough to the Washington State legislation to win my support.

The single greatest benefit that this Senate could provide the American people, especially those who must care for new children or ill parents, is a sound and growing economy. In an ideal world, Washington State would never have to legislate their family leave policy. However, it is a reasonable approach that acknowledges the need to protect families while maintaining a sound economy. Regrettably, this legislation does not recognize that balance and I will vote against it. Instead, I will vote for the version sponsored by the Senator from Utah. This alternative, while not similar to the Washington State law, does recognize the same balance which I seek. I commend the Senator from Utah for his efforts to provide legislation with sound economic and family principles.

Mr. President, in connection with this debate, as with many others, we seek socially highly desirable goals.

We change the various mix of socially, highly desirable goals we seek from day to day depending upon the nature of the issue before us. But in this case that goal, that extremely worthy goal, is family strength, cohesion, and stability, accommodating to very real needs that very real people have as medical and other emergencies touch them.

Yet, we concentrate so heavily on that single goal that we almost ignore other goals which are equally important. Certainly, in the situation with which we are faced today, the most important single goal is a restoration of a strong, booming, and growing economy.

It is overwhelmingly clear from the correspondence which we receive on this issue that the heart of the economy of the United States, small- and medium-sized businesses, are almost universally against this bill. They feel

that it simply adds one more burden, one more inhibition to their ability to grow, to make appropriate management decisions, to provide the jobs which, after all, are the basis for any kind of family benefits from employment.

How do we solve that problem, Mr. President? How do we gain the maximum in sensitivity toward our families with the minimum disruption of our economy? I believe that the proposal of the Senator from Utah does that. In some respects its rewards are more generous, considerably more generous, than those that underlie this amendment. At the same time, it does not impose absolute mandates on business. It does not disrupt the kind of planning process which any successful business must have.

There is yet another method of reaching these goals. My own State legislature has debated this issue over an extended period of time and has put into the law of the State of Washington a proposal not dissimilar from that of the Bond amendment, except for the tremendously distinguishing feature of a floor of 100 employees rather than a floor of 50 employees. And it is, of course, from exactly those vital small businesses that fall into that category that I have heard the widest ranging objections to this bill.

Mr. President, I might even have been disposed to ignore those objections if while we were debating this bill we were in a vital and growing economy. But if there is one overwhelming message which we get today, it is that, one after another, we are adding to the burden, the inhibitions of those very businesses and entrepreneurs who provide the jobs for a growing economy.

I am convinced, regrettably, that we simply cannot add to those burdens and expect at the same time a vital lift out of the recession in which this country finds itself. As a consequence, I believe that we should either adopt the proposal of the Senator from Utah, one with which those small businesses can live, or allow a few more years for competition to create voluntarily exactly the situation which is sought by this bill. But during the midst of a recession, to add one more great difficulty—one more inhibition to the ability to produce more jobs—will cause more misery and more difficulty than this particular proposal will ever create.

So, Mr. President, I advocate the adoption of the amendment by the Senator from Utah together with that of the Senator from Minnesota, but I believe that in the absence of the adoption of the amendment by the Senator from Utah, this bill, regrettably, should be rejected.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I ask unanimous consent that I may take 5 min-

utes of the time that would be allocated to the distinguished Senator from Utah on the time that has been allocated to him under the unanimous-consent request.

Mr. HATCH. Mr. President, it appears to me that—it is now 2:35—Senator DURENBERGER is about ready to call up his amendment. I understand that he has 1 hour on his amendment and I have about 15 to 19 minutes remaining. Thus, it would be about 3 p.m. when he begins his presentation. Having been told that he will consume his entire time, that would take us to 4. Following, I am supposed to have 2 hours on my amendment.

So, let me say that I would like to accommodate my colleagues. But, I would like to yield to the distinguished Senator from Mississippi about 7 minutes, and then I will address my amendment in the remaining time I have before 3. If we just had a few minutes before 4 p.m. to talk about my amendment, maybe we could start this series of votes pretty close to 4.

I do not want to hold up our colleagues even though I supposedly have 2 hours after Senator DURENBERGER has completed his presentation. I want my colleagues to understand that we may not be able to vote right at 4. I intend to see that we vote pretty darned close to 4 if I can have it, even though it means waiving an awful lot of the 2 hours.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? Without objection, it is so ordered.

Mr. DODD. Mr. President, thank you very much.

I will try to use less time, Mr. President. But there has been a lot of discussion here from a number of our colleagues about the fact there is a benefit tradeoff, that if the family and medical leave legislation is adopted, some other benefit that employees presently have would somehow be diminished or taken away.

In December 1988, we held hearings in the Labor Committee, and this suggestion was made at that time as well, that somehow we are going to cause employees to lose some benefits if this particular proposal is adopted. I made the mistake that no freshman law student would ever make. I asked the witnesses, without knowing the answer to the question, I simply said: Would you identify for me the name of one single company in this country that has ever reduced anyone's benefit as a result of adopting family and medical leave practices? That was a silly question to ask, for anyone who knows anything about a trial, if you do not know the answer to the question. I did not know the answer to the question.

That question was asked in December 1988. We are now in October 1991, and I have been waiting for them to name one company in this country that has

ever adopted a family and medical leave or a parental leave program that has reduced any other benefit that they provided to their employees. Never one example has there been cited, and yet that has been a major argument here this afternoon, that employees will lose other benefits if, in fact, they provide this particular benefit or are required to provide this particular benefit.

Mr. President, to suggest somehow that this legislation is going to do that when in fact no business has ever come forward and said, in fact, "Senator, we want to let you know we have reduced our benefit package because we adopted parental leave as a policy in this particular firm or business."

It is a little difficult to see, but I will put up this chart here just to identify. The average benefit package per employee in this country, take everything an employee gets, is roughly \$10,000. That is aside from wages. That amounts to legally required medical, vacation, pension, holidays, and sick leave. You add them up, beginning at the top, \$2,577, down to sick leave, which is \$386 a year. The total is about \$10,000 a year. We are talking about here, according to the General Accounting Office, the last item, \$5.30 a year, 2 cents a day for family and medical leave.

To suggest somehow this same employee is going to lose some of these benefits for 2 cents a day is absolutely ridiculous, without merit or foundation, and there is not one single example to even substantiate or support the accusation. There is a package of \$10,000 of benefits, \$5.30 benefits, 2 cents a day, and somehow because this is required, these other benefits are going to be reduced. That is just ridiculous.

I know the argument gets made. I will leave this chart up for my colleagues to look at, but there is no substantiation whatsoever for that allegation.

I reserve the remainder of my time.

Mr. HATCH. Let me say that I will put into the RECORD a statement by one of the groups that support this bill, that refutes what the distinguished Senator from Connecticut has to say. We will get that and put it in the RECORD later.

I yield 7 minutes to the distinguished Senator from Mississippi.

Mr. LOTT. Mr. President, I thank the distinguished Senator from Utah for yielding me this time.

I have a few points I want to make against the Family and Medical Leave Act. I know most of the debate here today has been from Senators supporting this bill. It is easy to do that, and it is understandable; you want people to have family and medical leave. We all do.

But there are some reasons why we should not mandate it from the Federal

level. It has a fatalistic history. This will not become law. Maybe we are going to prove a point by passing it through the process and sending it to the President. But he will veto it, and it will be sustained, and then what? It will meet the final result—to not become law.

As is always the case, it seems to me, when we have a problem in this country, the Senate says: Let us solve this problem with a Federal law. Let us mandate it. Let us say this must be done, or this must be done, even if we don't need it.

Some people argue: why are you opposed to this? It will only affect maybe 5 percent of the businesses in America. That is my point. If only 5 percent is going to be affected, why do we need this? We can argue over statistics. Maybe it is more than that. But business and industry in America are doing their job here. They are giving maternity leave and sick leave.

I have some statistics that I am going to quote in a moment. My main point against this bill, once again, is that it is a federally directed mandate. And bill after bill after bill coming through the Senate this year puts more paperwork, more regulatory burdens, and more mandates on business and industry, particularly small business in America.

You might say, well, if you are under 50 employees, you are not affected. A lot of small businesses have 60 employees. If we mandate that small businesses must handle family and medical leave in accordance with what is included in this bill, this is going to be a problem for them.

Let me read an editorial. I do not get to read editorials very much in the USA Today newspaper, because most of the time I do not agree with them. This time they got it right, so I will read it, because it is a very good summation of my problems. It is entitled: Family leave, yes; Federal law, no. I added the word "Federal."

In an ideal world, work and family life would never clash. In our imperfect world, the two collide constantly.

Real-life people have or adopt children who make 24-hour demands. Real-life people care for ailing relatives whose needs aren't confined to hours left over from a full workday.

No one should have to add the fear of losing a job to the burdens of meeting family responsibilities.

The wise employer will ease those burdens by offering family and medical leave because it's decent, humane—and good for business.

Family-leave benefits can lure and keep the best workers less expensively than higher salaries. And hiring new employees is more expensive than hanging on to those with experience, even though they have to leave for a while.

I added the last phrase there.

"More and more businesses have realized this," and more will offer family leave, as they see the value in doing it.

The Family and Medical Leave Act scheduled for Senate action this week would force

firms with 50 or more employees to offer 12 weeks of unpaid leave for childbirth, adoption or family illness.

What a company should do and what it should be made to do by law are two different things.

Laws can't accommodate the varied needs of varied businesses. Laws could harm employees' interests because employers might lean away from hiring women of childbearing age, lean toward hiring temporary workers who don't qualify for benefits; or be unable to afford benefits employees might want more, like on-site day care.

Family leave decisions should be hammered out between workers and employers, to the mutual benefit of both. That might not mean unpaid leave, but job sharing, or flexible hours, or higher salaries with less time off.

Laws would be too clumsy and confining to cope with the complexities workers face in the real world.

That is from the September 30, editorial page in USA Today. It sums up my concerns about this particular bill.

I am also worried about the fact that we are talking about 12 weeks of leave. That is 3 months. I am also concerned about whether this will be done every year.

In the real world, if you had the possibility, which could happen, of children being born, or adoption, or sickness in the family, you could do it year after year. And what about proof of illness? It is very unclear to me whether you must show certification, or a doctor's statement, that you have an illness, or there is illness in the family. The bill language says "may require certification," not "must" or "shall."

Also, let me share some statistics with my colleagues here: A survey of 3,460 firms in the wholesale distribution industry revealed that 65 percent of these businesses offer either paid or unpaid leave, specifically for the birth, adoption, or care of an employee's ill child.

The GAO, General Accounting Office, an arm of the Congress, reported in March 1991 that almost all of the companies it surveyed provided maternity and paternity leave.

A small business survey reveals that approximately 60 to 70 percent of firms that employ 16 or more workers offer job-guaranteed sick leave.

So, statistically, I think we see that businesses, employees, and employers are dealing with this.

Yes; we should have maternity leave or paternity leave. I am a parent. I have two children. I know that there is a need to have some time to be with that newborn child. That is particularly true, I think, with the mother. But it goes both ways. But, for the Federal Government to mandate that it has to be done, and how much it has to be done, I think, is fundamentally wrong.

I also understand the problems of having sickness in the family. All of us have experienced that. Again, the Federal Government should not be getting

into one more area of mandates. This looks good. It sounds good. But in practice, No. 1, it is not needed; No. 2, it is going to hurt more than it helps.

I really think you are going to find there are some women who would have been employed that, if this bill becomes law, will be less likely to be employed. So I urge my colleagues to not support this legislation. I know it has an astronomical appeal and push for it, but it is not needed and it is going to cause problems.

At the very maximum, I think we should go with the Hatch substitute. Quite frankly I am not particularly enamored with it either. The Hatch substitute is a little better because it does not mandate this benefit but encourages flexibility for a longer period of time, which may actually be needed in single incidents. I thank the distinguished Senator for this time.

I yield the floor.

Mr. HATCH. I yield 3 minutes to the distinguished Senator from Iowa.

Mr. GRASSLEY. Mr. President, I thank Senator HATCH very much for yielding me this short period of time. I want to spend 3 minutes talking about an amendment that will not be offered, but one that should be a part of this bill.

I had intended to offer an amendment to the parental leave bill, which would have extended coverage to employees of this body, the U.S. Senate, on the same terms as private sector employees have this law applied to them but, I have been prevented from offering my amendment to this bill.

Perhaps, Mr. President, the word "prevented" is too strong a term. After all, I could have continued to object, last night to the unanimous-consent agreement until my amendment was included.

But of course, tied up with the UC agreement on parental leave was the vote on confirming Judge Clarence Thomas to the Supreme Court, and, of course, from my perspective getting Judge Thomas on the Court is an overriding concern of mine. After all, this bill is very unlikely to become law—the President has promised a veto that at least one House will sustain. But of course, the presence of Judge Thomas at the start of the Supreme Court's term is critical for the Court's work and justice being done. And he will begin to make a difference right away, long before parental leave could ever become law.

So, Mr. President, I have given up my right to amend this parental leave bill or at least to offer my amendment. But I did it only because the Senate leadership assured me that I would have a right to bring up a similar amendment to the civil rights bill, where it is very much germane, and we are going to be debating that in a couple weeks.

At that time I will be ready to debate this issue. We can talk about the hy-

pocrisy of Congress—the above the law attitude that runs rampant around here. We set rules and tell Americans to follow these rules, but we refuse to apply the same law to ourselves.

Congress employs more than 37,000 people all over this Nation—more than 7,000 are Senate employees. But these 7,000 employees do not have the same rights that other Americans have. Oh, yes, they can file a complaint with the Senate Ethics Committee for certain grievances. But if they do not like the result, our answer is just simply, "tough luck." For every other employee in America, there is a right to take the employer to court and get damages and sometimes penalties and even reinstatement to a job. Not so for our employees.

Well, Mr. President, I take no pride in helping to run the last company town in America.

We have got to do better. And, I will be back on the civil rights bill, ready to debate this issue fully. Some of my colleagues claim my amendment violates the Constitution. I'm confident it does not. The speech and debate clause does not immunize us for illegal employment decisions. And, frankly there just isn't a separation of powers problem.

Some of my colleagues object to my amendment because they are afraid that they will be subjected to frivolous lawsuits that could hurt them politically. Well, my answer to that is: "Senator, have a dose of your own legislative medicine, then maybe you'll understand what so many employers go through." Getting sued has become part of what it means to live in this great Nation of ours. And if those of us who work up here would understand that better, perhaps we'd think more critically about the kinds of laws we pass.

It is time we stopped being hypocrites.

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

Mr. HATCH. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 7 minutes 40 seconds.

Mr. HATCH. Let me take a few minutes on the amendment that I intend to propose after the distinguished Senator from Minnesota proposes his amendment.

#### HATCH SUBSTITUTE: PARENTAL OPTIONS AMENDMENT

For millions of American families, the conflicts between work and family are unavoidable. Senators on both sides of this issue, I believe, are struggling with how best to help families cope with these conflicts. I agree with those who think that we can play a role in providing a better environment for work and family, but I firmly believe that my proposal does a better job of this than S. 5.

The Bond-Dodd substitute, which was debated earlier today, would establish

an unprecedented Federal mandate that prescribes new, unearned employee benefits along with complex Federal rules and regulations. Keep in mind complex rules and regulations is something no one really addressed so far.

Another, more realistic approach focuses on protecting employee seniority, earned benefits, and accrued pay status and offers greater flexibility to both employees and employers.

The approach which I have just described is embodied in a bill that Congressman STENHOLM and I introduced several months ago called the American Family Protection Act and that I am offering as a substitute today, following the distinguished Senator from Minnesota. It provides up to 6 years of leave for parents to bond with children and up to 2 years to care for seriously ill children or close family members. The differences between this substitute and other approaches warrant analysis.

A designed, federally prescribed mandate, which is what S. 5 is both in its original and modified forms, is inflexible, ineffective, and discriminatory in impact.

Mr. President, we have made a lot of points on that particular matter.

Mr. President, here are the facts:

First, bonding is the interaction between parent and child that begins immediately after birth and foreshadows the infant's later socio-emotional development. Without this postbirth intimacy, many children are at high risk of developmental difficulty. Facilitating this bonding must be the central objective of any legislation in this area.

According to the experts, the first 4 to 6 months are critical in this bonding process. More precisely, they note, bonding is a continuous process lasting years. By any standard, the 12 weeks allowed in S. 5 are clearly not enough.

Second, providing job protection for individuals who must care for seriously ill children, elderly parents, or close family members is another objective. But, by definition, a serious illness is one that may not run its course within the allowed 12-week period.

Third, mandated benefits are not free. Accepting this reality, proponents of S. 5 in its original and modified forms exempt from coverage small businesses with fewer than 50 employees. But the other reality is that in so doing, they have made almost 50 percent of the Nation's working parents—those working for small employers who are least likely to have their own leave programs—ineligible for the benefits that it requires be provided to the other half of the working parent population. Proponents of this mandated benefit, in apparent recognition of the harsh burden it would impose on smaller employers, are forced to exclude those employers, thereby discriminating against their employees.

My point, Mr. President, is that Congress cannot set in statute a specific period of mandatory leave than can effectively balance the needs of workers with the recognized economic realities of the workplace. If we choose a limited time period, as proponents have had to do in an effort to at least minimize or control the severe costs and burdens of this mandate on employers, the time of permitted leave will be too short to accomplish their own goals.

On the other hand, because the alternative which I have proposed does not establish new mandated unearned benefits, but rather preserves only those benefits which have already been accrued, there is no need to exclude 95 percent of this Nation's employers. Further, because this alternative does not consist of an inflexible Federal mandate which forces employers to keep a particular job open for the leave period, it permits parents far more flexibility, up to 6 years in fact, to choose the length of time right for their circumstances.

How does the American Family Protection Act work?

Here is an example. Mary Smith is free to spend more time with her newborn—as much as 6 years. When she decides to return to work, she would simply notify her former employer. If the same job she held when she left, or a similar job, is available, the employer must rehire her. If Mary had 10 years seniority with the firm when she left, she gets that restored upon her return. If the same or a similar job is not available when Mary is ready to return to work, the employer is obligated to notify Mary of any subsequent opening and offer her that position for up to a year later.

Mr. President, this concept of preferred rehire has been successfully used to assist veterans of Armed Forces seeking reentry into the civilian labor force.

It does not make any sense to mandate a new employee benefit that will impose unprecedented obligations and new costs on employers, particularly when the tradeoff necessary to make the costs bearable render the benefit inadequate to fulfill its purpose. This mandate makes even less sense when it exempts almost half of the labor force.

Mr. President, I ask unanimous consent that I be given 5 minutes from my 2 hours' time following the Durenberger matter.

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

Mr. HATCH. But, even more important, families deserve the right to choose. Congress can help families the most by giving them options, and that is precisely what this alternative does. Undoubtedly, Mr. President, opponents of this alternative will be quick to point out that it does not guarantee, as S. 5 does, that the person's job will be waiting for them at the precise time

they want to return to work. This observation is correct. But, the tradeoff for S. 5's guarantee of reemployment after an inadequate 12-week leave period is my alternative's providing up to 6 years, if needed, with at least the likely prospect for an employee that he or she will return to their former or a similar position and have their accrued benefits restored upon return.

I believe that families in America today feel terrible pressures of having to choose between care of their children or sick loved ones and their work obligations—and 12 weeks hardly meets the needs of these families. Up to 6 years would. And, yes, the tradeoff between 12 weeks off and potentially 6 years off has to be that reemployment assurances are provided rather than guarantees.

Another argument against this alternative is that it may work for the very well off parents who can afford to leave the workforce for a protracted period, but does nothing for lower income parents. All I can say to this argument, Mr. President, is that it cannot be coming from working parents. Do my colleagues have any idea what day care costs today? Let me describe the unfortunate reality, Mr. President. A quite average day care center in Washington, DC, which cares for the children of parents representing a wide cross section of income levels, costs \$14,340 for two children per year. The way I calculate it is that, even excluding the additional costs involved in transporting two kids to day care, a parent would have to gross at least \$18,000 a year to just break even. These mothers, currently at or around the break-even point, may feel constrained to keep working nonetheless in order to retain some level of employment security or so as not to lose the years of seniority they have accrued with their particular employer. My alternative, while no guarantee, mitigates both of those concerns. It may just give that struggling working class mother and her children an opportunity to be together during those important developmental years.

Mr. President, the Hatch-Stenholm substitute has the support of the U.S. Chamber of Commerce, perhaps our oldest and largest business organization, as well as the Family Research Council which is dedicated to promoting family-friendly public policies. Additionally, SER-Jobs for Progress, which has been in the forefront of Hispanic issues, has endorsed this proposal. These organizations have enthusiastically supported this proposal and joined Congressman STENHOLM and myself at a press conference last summer. I thank them for their support; I hope Senators will take their recommendation.

So, I think the approach we are proposing here gives the time necessary, provides the necessary assurances, gives and maintains the seniority and,

frankly, is not a mandate in the sense that the Dodd-Bond bill is. Over the long term, it will work better and cause less loss of business than the Dodd-Bond approach. Lastly, it will not go down that ominous, terrible road of more mandates on the back of business in this country. We all know that they are only for the benefit of the upper half or the upper-half crust of our society.

My amendment applies to everybody—across the board. It will help everybody—across the board. It will get employers and employees together to voluntarily resolve their problems, as contrasted to a mandate like the Dodd proposal. I think it is a far superior approach to solve these problems. It is far more humane. It will allow for more bonding of both parent and children and in the process work very, very well.

Mr. President, I yield the floor.

Mr. PELL. Mr. President, as a longtime supporter of family and medical leave legislation, and as an original cosponsor of S. 5, the Family and Medical Leave Act of 1991, I wish to state in the past, we have come very close to seeing this legislation become law. As you know, similar legislation was passed last year by both the Senate and the House, but was vetoed by President Bush. I was extremely disappointed that the President chose to veto a bill that is so important to American workers and their families. But I am deeply gratified and appreciative that the senior Senator from Connecticut [Mr. DODD], the chairman of the Subcommittee on Children, Family, Drugs and Alcoholism, of which I am a senior member—simply won't take no for an answer where the health and welfare of American families are concerned. It is through his leadership and commitment to making family leave a right of every worker that we are here again today, in the face of another potential Presidential veto. I would like to congratulate Chairman DODD both for his commitment to bringing to this Nation sensible family leave legislation and for his willingness to listen and respond to the legitimate concerns that have been raised in connection with this legislation over the last 5 years.

The Family and Medical Leave Act has existed in a variety of forms since it was first introduced several Congresses ago. But it has consistently offered us the opportunity to address what are certain well-documented needs of many American families. Facts presented during a hearing held by our subcommittee earlier this year illustrate a disturbing and strong trend toward one-parent families: from 9.1 percent in 1960 to 24.3 percent in 1987. In addition, with the majority of both men and women now in the work force, in many cases there is simply no one family member who can address urgent

family needs without risking the loss of his or her job.

The Family and Medical Leave Act will address not only some immediate and changing needs of the average family, but also the demands and realities of the American workplace. It contains many provisions to address the scheduling and other administrative concerns of those businesses affected: only 5 percent of all businesses. It will also help increase worker productivity and reduce turnover and absenteeism. And it will do all this at low cost: GAO estimates that the cost to employers for this important family legislation will be about \$5.30 per covered employee per year.

As you know, the bill is quite simple. It provides only that workers who must take time off for the birth, adoption, or illness of an immediate family member, or for personal illness, may take limited unpaid leave without losing their jobs. I am particularly pleased that this bill allows for unpaid leave for the illness of a parent. In my own State of Rhode Island, which has one of the largest percentages of elderly citizens of any State, this is a particularly important provision.

Rhode Island was one of the first States in the country to recognize the critical and growing need for family leave laws, and has already enacted similar legislation. But with no national policy, there is nothing to ensure not only competitiveness between the States, but also that every State is a good place for families to live.

Mr. President, the Senator from Utah has offered an alternative that essentially makes family and medical leave benefits optional. As I understand the Hatch substitute, it would require only the preferential rehiring of a worker who has taken family or medical leave, but would not guarantee the employee his or her job upon returning to work. Instead, the Hatch substitute says that the employer must give preferential consideration to rehiring the employee during the up to 6 years of leave permitted, and only if that job or a similar job is still available.

Mr. President, I seriously doubt the viability of the Hatch alternative, which I believe is most convenient for the employer at the expense of the employee needing leave. However, I believe that the business concerns which the Senator from Utah seeks to address in his amendment are well addressed by the Bond-Ford-Coats amendment that was debated earlier today. That compromise amendment makes numerous refinements to the legislation that are intended to accommodate the needs articulated by some of the covered employers, and strikes a sensible balance, I think, between the urgent family and health care needs of the employee and the reasonable expectations and business practices of those employers.

Mr. President, I would respectfully call to the attention of my colleagues the story of James Callor of Helper, UT. Mr. Callor's story appears in a publication called "Family and Medical Leave/Working Families Speak: Case Studies of Americans Who Need Family and Medical Leave" (second edition), published by the Women's Legal Defense Fund. I am reading from page 73.

Mr. Callor worked as a fire boss for a mining company for eight years. Fire bosses enter a mine before other miners to check for gas and other hazardous conditions.

In 1982, Mr. Callor's four-year-old daughter was diagnosed as having cancer. She underwent a series of operations, including a kidney removal and a hysterectomy. However, this string of surgeries proved unsuccessful and Mr. Callor was told by doctors that his child would not survive more than a few weeks.

Mr. Callor asked his supervisor for an indefinite leave to be with his daughter during her last weeks. Despite an excellent attendance record over eight years, he explains his supervisor refused to grant him any leave in excess of his accrued sick leave and vacation—a total of 13 days. Angry and frustrated, Mr. Callor felt that he has to abide by his supervisor's denial of additional time off, because he could not afford to lose his job. Three weeks after his request, his daughter died.

Mr. President, this publication quotes Mr. Callor as follows:

I was a good worker for that company. When they'd call me out at 2 a.m. to fireboss, I'd always go. I hardly ever missed work. But when my little girl was dying, they wouldn't even give me the time to be with her. I sit back and remember the situation and know I did everything I could for her, but it would have been a lot easier on our family if the company had seen fit to help. It's something you never expect, and it can happen to anybody.

Mr. President, the Callor family tragedy shouldn't happen anywhere in America: Not in Rhode Island, and not in Utah. We may not be able to prevent the tragedy of a child dying or becoming very sick, but certainly we can provide to that child the comfort of his or her family, and provide the family with the chance to help, to show love, or to grieve.

For the sake of the next generation, and for the sake of the sick children and elderly today who have no one at home to care for them, we must as a Nation decide that we will not make our workers choose between their loved ones and their jobs.

Mr. President, I urge my colleagues to support the Bond-Ford-Coats substitute, and I thank those Senators for their hard work in forging a compromise on this critically important legislation. It is my hope that the Senate will today take the first step in ensuring that family and medical leave soon becomes a right of every worker in need.

Mr. DECONCINI. I rise today in support of the Bond-Ford-Coats substitute amendment to the family and medical

leave bill. I call on my colleagues to cast their vote on the side of America's working families. I urge President Bush not to veto this legislation.

In 1988, George Bush ran on a pro-family platform. He ran on a pledge of parental and medical leave. He said and I quote:

We need to assure that women don't have to worry about getting their jobs back after having a child or caring for a child during serious illness. This is what I mean by a kinder and gentler nation.

Mr. President, working mothers should not have to choose between a job they need and a child who needs them. George Bush recognized this in 1988. In 1988, he saw parental leave as a family need. Now he sees it as a Federal mandate. To George Bush I would like to quote the words of Republican MARGE ROUKEMA, a member of the President's own party and a principal architect of the bill. It happens that she also cared for her own son when he was dying of leukemia. "The debate over the Family and Medical Leave Act," she states, "is not about mandates or benefit packages. It is about values and a standard of decency."

Another Republican, Congressman HENRY HYDE from Illinois, also has a response to the President. "I am not appalled that this is a Federal mandate," the Congressman states. After all, "we mandate job security for jury service \* \* \* and ROTC duty. It seems to me," he concludes, "for motherhood, for caring for a sick member of your family, that our economy and our society should be compassionate enough to include them."

Dr. T. Berry Brazelton, "America's pediatrician," charges that the United States is "the least child-oriented society in the world." I implore my colleagues to think of this if they are confronted with a veto override. Failure to override will only continue a public policy that puts the needs of our children and families on this Nation's back burner.

It is a fact: Almost two-thirds of the mothers in this country now work. Yet we are the only industrialized nation—the only one, with the exception of South Africa—that does not provide mothers who want to stay home and care for their newborn child some assurance that they can return to the job they left.

More than 75 nations have family-leave policies, most with pay. This list includes nations with the strongest national economies. Workers in West Germany and Japan—our toughest trade competitors—get 14 weeks of leave with pay. Even countries like Libya, Iran, and Cuba provide maternity leave with pay.

The bill President Bush has threatened to veto would provide minimum family leave protection for America's workers. Specifically, it would give workers up to 12 weeks of unpaid

leave—to repeat, unpaid leave—when a child is born or adopted, or when a spouse, child or parent has a medical emergency that requires family care.

I would remind my colleagues that the family leave bill passed by both Houses of Congress last year was a compromise bill. It was a bipartisan compromise bill which was changed significantly from the original legislation introduced in 1985. We are again trying to strike a bipartisan compromise by further loosening some of the requirements in the family leave legislation that we passed last year.

Those who forged this compromise worked long and hard to satisfy what they thought might be legitimate business fears. I think this bill represents a reasonable compromise between competing interests while still retaining the basic elements necessary to protect the family unit.

Mr. President, the legislation we are talking about covers only firms with 50 or more employees—roughly 5 percent of all companies. This means that 95 percent of employers and 44 percent of employees would not be covered at all. The bill provides no more than 12 weeks leave in any one year. Many enlightened and successful businesses have far more generous parental leave programs than this.

The bill before us today requires medical certification of serious illness. We are not talking about a parent with the flu. We are talking about a child with cancer who must have radiation treatments. We are talking about an elderly parent recovering from a stroke who needs home care.

As MARGE ROUKEMA says, and I repeat, "the debate over the Family and Medical Leave Act is not about mandates or benefit packages. It is about values and a standard of decency."

All of us support the President's desire for a kinder and gentler Nation. But we must have the courage to vote our values into public policy.

Mr. President, make no mistake—America's families are stressed out. All the statistics we have—increasing divorce rates, drugs, rising teen pregnancies, school dropouts, suicides—show that we are in deep, deep trouble in America. As Dr. Brazelton states, "the family is where we've got to turn to try to give kids a different future than the one we've provided in the past generation."

Let's start here and now. National polls show that four out of every five American voters favor mandated unpaid leave. It is a phoney argument to say that the Federal Government should not mandate how employers treat their employees. While most firms treat employees fairly, some do not. Congressional mandates help to nullify the unfair advantage that would accrue to those companies that don't deal with their employees fairly. A safe workplace, a minimum wage,

and social security coverage are just a few of the Federal "mandates" that now no longer seem controversial or unreasonable.

Let us show our commitment to children and families by providing our workers some measure of protected job leave. Let us show our commitment by offering some assurance to young people who want children and who need jobs to raise them. Let us show our commitment to working families by overriding the President's veto should he take that course of action.

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

All time, the Chair would observe, on the Bond amendment has expired.

The Chair recognizes the Senator from Minnesota [Mr. DURENBERGER].

Mr. DURENBERGER. Mr. President, it is my understanding, under the unanimous-consent agreement, that I have an hour on my amendment which is equally divided.

The PRESIDING OFFICER. The Chair will state that on the Durenberger amendment there is 1 hour equally divided. The time will begin when the amendment is offered.

AMENDMENT NO. 1248 TO AMENDMENT NO. 1245

(Purpose: To establish arbitration procedures.)

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

The PRESIDING OFFICER (Mr. LIEBERMAN). The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. DURENBERGER] for himself and Mrs. KASSEBAUM, proposes an amendment No. 1248 to the Bond amendment numbered 1245.

Mr. DURENBERGER. 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 section 107 of the amendment and insert the following new section:

**SEC. 107. ENFORCEMENT.**

(a) SENSE OF CONGRESS.—It is the sense of Congress that parties with a dispute regarding rights provided under this Act should attempt to resolve the dispute without resort to litigation.

(b) ARBITRATION.—

(1) IN GENERAL.—An eligible employee who alleges that an employer has violated a right of the employee provided under this Act shall, in order to enforce the right, submit the dispute to binding arbitration in accordance with this section.

(2) WRITTEN NOTIFICATION.—Not later than 180 days after the date of an alleged violation of the right, the eligible employee shall notify the employer in writing that such alleged violation has occurred.

(3) COMPLAINT.—On submission of the notification described in paragraph (2), the eligible employee or the employer may file a complaint regarding the alleged violation with the Department of Labor. The Secretary shall by regulation specify procedures for filing the complaint.

(4) SELECTION OF ARBITRATOR.—

(A) LIST.—Not later than 10 days after receiving such a complaint regarding an eligible employee and an employer, the Secretary shall make available to the employee and employer a list of not fewer than seven arbitrators. Such list shall include, at a minimum, two names provided by the Federal Mediation and Conciliation Service. Each arbitrator on the list shall possess such qualifications as the Secretary shall by regulation specify.

(B) SELECTION.—The eligible employee and employer shall choose a mutually acceptable arbitrator (referred to in this section as the "arbitrator") from the list provided by the Department of Labor. If the employee and employer are unable to agree on an arbitrator, the Secretary shall appoint the arbitrator.

(5) HEARING DATE.—The eligible employee and employer shall schedule a mutually acceptable date to conduct a hearing with the arbitrator under subsection (c), which hearing shall take place not more than 60 days after the date of choosing the arbitrator. The Secretary or the arbitrator may grant an extension of the hearing date for good cause shown.

(c) HEARING.—

(1) IN GENERAL.—The arbitrator shall conduct a hearing regarding the complaint submitted under subsection (b)(3) in accordance with the procedures set forth in this subsection.

(2) DISCOVERY.—The eligible employee and employer shall be entitled to make appropriate requests for discovery prior to the hearing. The Secretary shall by regulation specify the appropriate scope for the discovery requests. The ruling of the arbitrator on the discovery requests shall be final, binding, and nonreviewable.

(3) EVIDENCE.—The arbitrator shall preside over the hearing and take into consideration written and oral evidence as presented by the eligible employee and the employer. The arbitrator may utilize the Federal Rules of Evidence as a guideline for determining the admissibility of evidence during the hearing, but the Federal Rules of Evidence shall not be determinative.

(4) DECISION.—The arbitrator shall issue a written decision to the eligible employee and the employer not later than 30 calendar days after the last day of the hearing. The decision shall be final, binding, and nonreviewable, except as provided in this Act.

(d) REMEDY.—

(1) EQUITABLE RELIEF.—

(A) IN GENERAL.—If an arbitrator determines that an employer has violated any right provided under this Act, the arbitrator may issue an order enjoining the employer from engaging in such conduct, and may order, as appropriate, equitable relief directly attributable to and proximately caused by the violation, including reinstatement or full or partial backpay.

(B) DETERMINATION OF BACKPAY.—Backpay awarded under this subsection shall not accrue from a date more than 2 years prior to the date of filing of written notification to the employer under subsection (b)(2). The arbitrator shall reduce the backpay that an eligible employee would otherwise have recovered by the amount of the interim earnings of the employee or the amounts that the employee could have earned with reasonable diligence.

(2) DAMAGES.—No arbitrator shall issue an order under paragraph (1) awarding punitive damages, or compensatory damages for pain

and suffering, emotional distress, or other injury under the common law.

(3) FEES.—The arbitrator, in the discretion of the arbitrator, may award reasonable attorney's fees and arbitrator fees to a prevailing party in a hearing brought under subsection (c).

(e) JUDICIAL REVIEW.—

(1) ARBITRATION ORDER.—

(A) IN GENERAL.—An eligible employee or an employer who was a party to an arbitration hearing under subsection (c) may seek vacation, modification, or enforcement of the arbitration order resulting from the hearing in the State or Federal court in which the eligible employee resides or works, or where the employer operates.

(B) APPLICATION.—An application for vacation, modification, or enforcement of such an order shall be filed not later than 90 days after the date of the issuance of the order.

(C) BASIS FOR VACATION OR MODIFICATION.—The court may vacate or modify such an order if the court finds that—

(i) the order was procured by corruption, fraud or other improper means;

(ii) there was evident partiality by the arbitrator;

(iii) the arbitrator exceeded the powers of the arbitrator under this Act; or

(iv) the arbitrator committed a material and manifest error of law.

(D) FEES AND COSTS.—In an action for vacation, modification, or enforcement of an order of an arbitrator under this subsection, the court may award reasonable attorney's fees and court costs to a prevailing party.

(2) OTHER REVIEW.—No person may commence a civil action to enforce a right provided under this Act except—

(A) in accordance with this section; or

(B) in an action brought under the Constitution.

In section 106(c) of the amendment, strike "or is investigating" and all that follows through "section 107(b)".

In section 108 of the amendment, strike subsection (f).

Mr. DURENBERGER. Mr. President, earlier today I had the opportunity to compliment the authors of this legislation, and I will add my compliments to the opponents of the legislation as well, particularly the members of the Labor and Human Resources Committee who have spent a great deal of time over the last 5 or 6 years on this issue.

I have not been at this issue quite as long as my friend, Senator DODD, from Connecticut, although I have been involved a little over 4 years right now. I voted against the bill in the committee both in the 101st Congress and earlier this year. I did not vote against the bill on the issue of mandates, as many of my fellow Republicans have done, or anticompétitiveness, which is an argument I think the author put to rest with a chart just a minute ago. I voted against the bill because there have been serious flaws in how this bill will be implemented, how it will affect the employee benefits structure for more than 50 million workers in America, and how the potential for it being a pro-family, pro-employee bill could be defeated.

During debate in committee, both last year and this year, I have attempted to offer amendments that I be-

lieve would improve the bill and make it a workable bill. I wanted to offer a substitute, for example, modeled after the family leave law which is in place in one of the more liberal States in the country, Minnesota. But the committee majority rejected it in favor of this much broader legislation which is before us.

Mr. President, I do not agree with my President that this bill has flaws in its mandate. If our society can mandate worker protections in wages, as it does, appropriately, and hours, as it does, appropriately, and health and safety, as it does, very appropriately, then this society can protect the worker from job loss due to absence for birth or attendance at meeting family medical needs. There is no question about that.

If our society can provide \$100 billion a year in tax relief to workers whose employers provide them and their families with paid medical services, then we can certainly tolerate the far smaller costs associated with absence from the workplace when a family member's health is involved.

Employer-paid health insurance in America is about \$221 billion a year. As the Senator from Connecticut pointed out; it is over \$2,500 per worker per year, compared to sick leave and family of about \$340 or \$350.

So mandates are not the issue.

I would note that the provision for 12 weeks a year of medical leave is relatively untested. It will be most difficult to administer. It is fraught with the potential for lawsuits, particularly from the income class most likely to use these unpaid medical leave provisions.

Mr. President, this Senator wants a family medical leave bill to work. I want to help the father with the sick daughter diagnosed with leukemia who has to be taken to the hospital periodically for cancer treatment. I want to help the female employee who wants to be with her husband when he is hospitalized for open heart surgery. I would like to help the man who wants to be with his sick father after that father slips, falls, breaks a hip, and requires constant attention.

Mr. President, I lived with a dying wife and mother for 3½ years. My employer cared. My colleague, Senator WELLSTONE, had a caring employer when his parents were very sick and needed him.

These are situations, Mr. President, when our society should allow working men and women to care for their family members without penalty.

As I previously noted, the Federal Government provides a subsidy already of \$100 billion a year to encourage this kind of protection for workers. Considering the scale of that subsidy, I can see no reason why we should then turn around and say it is OK for an employer to fire a worker because his child, wife, or parent is sick.

So I applaud Senator DODD for his hard work in trying to promote the family structure. Along with the Senator from Connecticut, I am pro-employee and I am pro-family. My amendment will eliminate that section of the Senator's bill that is anti-family, anti-employee, anti-employer but pro-lawyer.

I am proposing an amendment to the Family Medical Leave Act that will replace the current enforcement section and substitute a far less cumbersome and expensive binding arbitration mechanism.

I know the politics of this issue may require some to refuse to budge from where they are on either side. The story of the bill so far is that its authors have had a difficult time getting support from the other side. The supporters of the President's view say this effort to improve this piece of legislation might get a few more votes for it.

Well, I just ask the question: What is wrong with improving it? I offer this amendment because I believe I was elected to help make good public policy, and, in my view, this amendment vastly improves the bill.

So I encourage my colleagues to really look at the consequences of what we are doing—federally mandating a brand new fringe benefit for every employee of every company in America with more than 50 employees. Judge for yourselves if this amendment, the one I offer, is not a better amendment for employees who have been wronged under this act.

As currently written, the Family Medical Leave Act is modeled after the Fair Labor Standard Act. Accordingly, it provides for lost wages, benefits, and other compensation, as well as double liquidated damages. What many of my colleagues may not realize is that the FLSA, the Fair Labor Standard Act, and therefore the family medical leave bill forces the aggrieved employee into Federal district court and allows the parties to demand a jury trial as well. And I find that troublesome because I believe that our Federal judiciary is already overcrowded, and because the whole notion of going to our court system to deal with these types of problems is simply wrong.

Only in America do we seem to go to court first or to the lawyer's office and then to court. After a parent stays home from work to care for her daughter who had an appendectomy, and then is discharged for not coming to work, do we not want to encourage that broken relationship between the employer and the employee to be healed. We want to get that mother her job back, not spend years in Federal court while putting BMW's in the garages of lawyers.

Mr. President, make no mistake, there is going to be an explosion of questions and issues of how the Medical leave provisions of this bill will op-

erate in the real world. What types of emergencies will justify leave? How will promotion and layoff policies be effected by this new Federal benefit? Questions will inevitably lead to disputes which will inevitably wind up, under the current bill, flooding the Federal district court of this country.

And I can assure every Member of this body that if this bill becomes law, 1 year from now we are going to be hearing from employees and companies complaining about delays and costs associated with this bill.

I remind my colleagues that barely 5 years ago we thought we could improve the fairness in the distribution of employee health benefits and pass something called section 89. It did not take long for everyone in the real world to raise thousands of questions about how section 89 would work. We tried to fix it, but ultimately we had to repeal section 89.

Mr. President, let us make certain that we do not flood the Federal courts with the same type of implementation questions that we faced with section 89.

Mr. President, a brief examination of the statistics confirms my fears about the state of the Federal courts and how this bill will exacerbate the problem.

There are 3 times as many lawsuits filed today as in 1960, and the United States has 30 times the lawsuits per person than Japan. Now, if you want to deal with competitiveness, try that one. In 1990, there were 251,113 total filings in Federal district court. The number of cases pending at the end of 1990 increased from 265,000 to 272,600 cases. Further, the number of cases, and the percentage, that were over 3 years old increased from 22,000, 9.2 percent, to 25,000, 10.4 percent.

These family and medical leave violations are just the sort of claims that should be resolved quickly. After all, an employee who requests and then is denied leave wants fast relief. As we all know, going to Federal court is not a place for efficient claim disposition. Let us take a closer look at the backlog in our Federal courts.

On these charts, I have the documented evidence from the Administrative Office of the United States Courts, the median number of months from issue—when the defendant answers the complaint—to trial. If Senator DODD wants jury trials, then every Senator ought to know how long, on average, the parties will have to wait for the trial. As we can see, there is quite a backlog.

On average, plaintiffs must wait 14 months from issue to trial. In some States, the average wait is much longer. In Minnesota, it takes 20 months from issue to trial. Senator DODD's constituents in Connecticut must wait 21 months for a Federal jury trial. Some States are simply incredible.

Over here we have a worst cases chart. Our neighbor to the south, Iowa,

has a backlog of 39 months—3 years and 3 months. Louisiana has a backlog of 26 months; the western district of New York has a 29-month backlog; and the western district of Tennessee has a 30-month backlog. In reality, many people are waiting much longer.

Mr. President, what do these abstract numbers really mean? Let us say that on November 1, an employee of General Dynamics Electric Boat Division in New London, CT, takes leave to care for his sick mother. And what happens if General Dynamics refuses to grant him leave? Under Senator DODD's bill, that employee will have to wait until August 1993 and maybe longer, to resolve his dispute with his employer.

Is that what we want for the working families of this country. Do we want them to have to wait 2 to 3 years, and probably far longer to resolve these issues with their employer. Do we need to maintain 2 to 3 years of litigation tension at the workplace between an employee and his employer?

Mr. President, if the employee is unfortunate enough to have to deal with the courts of Iowa, he or she is going to have to wait until January 1995 to get this dispute resolved.

Mr. President, the incredible backlog of court cases in this country is precisely the reason that many Senators have been looking at alternative dispute resolution mechanisms to resolve product liability, and medical liability issues. We ought not be considering expanding the backlog in our courts through creation of new Federal rights of action.

If justice delayed is justice denied, then I do not believe that providing employees with access to Federal jury trial can be characterized as dispensing justice.

I ask unanimous consent, Mr. President, the tables indicating the median time from issue to trial be printed in the RECORD at this point.

The PRESIDING OFFICER. Without objection, it is so ordered. (See exhibit 1.)

Mr. DURENBERGER. The trend toward more court backlogs likely will continue. According to the Director of the Administrative Office of the U.S. Courts, "criminal felony filings \* \* \* increased 9 percent in 1990 \* \* \*" With crack cocaine users and drug kingpins flooding our court system, I see no need to create a new civil cause of action. It seems to me that we should be focusing on ways to avoid going to court, rather than creating new ways to get people into the courtroom. We must learn to allocate our scarce resources effectively, and the Dodd jury trial provision takes the country in the wrong direction.

I want the country to recognize that we are squandering precious resources. Forbes estimated that individuals, business, and government spend more than \$80 billion in direct litigation

costs, and \$300 billion in indirect litigation efforts. And for their effort, plaintiffs wind up with only 43 percent of winnings from lawsuits. Lawyers and the court fees siphon off the rest.

I say to my colleagues, the politician who probably went up the highest in the polls during the month of August this year was the Vice President of the United States because of his appearance at the American Bar Association, and what we had to say about this problem.

But we can take one small step today to change the dangerous litigious trend we are facing. My binding arbitration amendment will assist employees in achieving prompt, efficient dispute resolution. Under my amendment, plaintiffs will file a complaint with the Department of Labor, and that Agency will provide a list of arbitrators from which the parties can choose. The hearing must be scheduled within 60 days of choosing the arbitrator. This timetable assures prompt resolution of these important claims.

After the hearing, the arbitrator must issue a written opinion, which may provide for equitable relief, including reinstatement, backpay, and/or a cease and desist order. In no circumstances may the arbitrator award compensatory or punitive damages.

The arbitrator's decision shall be reviewable under standards set forth in the Federal Arbitration Act, a statute enacted in 1925 to reverse centuries of judicial hostility to arbitration agreements. I quote from *Shearson American Express v. McMahon*, 482 US 220, 225 (1987). A party may seek modification or vacation of the arbitrator's award if the award was procured by corruption or other improper means, if the arbitrator exceeded his powers under the act, or if the arbitrator committed a material error of law.

This limited review grants the parties full due process rights to assure a fair and equitable result, without giving the losing party a second bite at the apple by appealing a decision that should be upheld at the hearing level.

I would like to focus for a moment on due process rights of the parties, because I know that some Senators will be concerned about taking away the employees' right to a Federal jury trial.

The Supreme Court just a few short months ago approved the arbitration of an Age Discrimination in Employment Act [ADEA] claim. In *Gilmer v. Interstate/Johnson Lane Corp.*, 111 S.Ct. 1647 (May 13, 1991), the Court upheld an agreement to arbitrate an employee's age discrimination claim against his employer.

Significantly, the Court stated that there is a broad Federal policy favoring arbitration.

It is by now clear that statutory claims may be the subject of an arbitration agreement, enforceable pursuant to the [Federal

Arbitration Act]. Indeed, in recent years, we have held enforceable arbitration agreements relating to claims arising under the Sherman Act, the Securities Exchange Act of 1934, and the civil provisions of the Racketeer Influenced and Corrupt Organizations Act. (citations omitted). In these cases we recognized that "by agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial forum." *Gilmer*, 111 S.Ct. at 1652.

The Supreme Court has recognized that antitrust claims, where treble damages and attorneys fees are at stake, can be arbitrated. The Supreme Court has recognized that Securities Act violations, where public rights and the public interest in maintaining the integrity of the securities market are at stake, can be arbitrated. And the Supreme Court has held that age discrimination claims, where the public interest in enforcing our employment laws is at stake, can be arbitrated.

Given these statements by our Supreme Court, it seems clear that binding arbitration is capable of vindicating important statutory rights. Arbitrators are competent to interpret Federal statutes, and in particular, those statutes include Federal laws that have important societal effects. How can proponents of this bill claim that binding arbitration is similar to the Fair Labor Standards Act, and yet reject a Supreme Court case that allows arbitration of an employment-related age discrimination case?

Most important, Mr. President, the arbitration mechanism is necessary because employees cannot find lawyers to take discrimination cases. I previously mentioned that there is a tremendous backlog of cases in Federal court. Employees who believe they have a meritorious claim will either hire a lawyer on a per hour basis, or on a contingency fee basis.

If the lawyer agrees to a contingency fee arrangement, then the lawyer will not get paid anything until the court renders final judgment. With the backlog in the courts averaging 14 months from the time the employer answers the complaint to the time of trial, and with many States registering backlogs of 18 to 22 months, many potential suits never see the light of day.

Only very wealthy plaintiffs, can muster the resources to pay a lawyer on a per hour basis for a 1½ to 2 years. These cases are never brought, and again, the employee is the one who loses.

I ask unanimous consent at this point that a recent article printed in the New York Times entitled "Workers Find It Tough Going Filing Lawsuits Over Job Bias" be printed in the RECORD.

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

(See exhibit 2.)

Mr. DURENBERGER. Finally, Mr. President, there are many cases that never should be filed. Frivolous lawsuits abound, and employers wind up settling cases in order to dispose of them quickly.

One short example. With the backing of expert testimony from doctors and members of the police department, a woman claiming psychic powers was awarded \$1 million when she persuaded a Federal jury she lost her psychic powers following a CAT scan. That, too, was a waste of resources. My amendment will allow both employers and employees either to handle disputes themselves or hire lawyers. But the will get an efficient and a quick hearing.

Both parties will find themselves ahead of the game. I am confident that the bill sponsors will claim that the S. 5 enforcement mechanism is in the best interest of the employee, but I think between the backlog in the courts, the fact that plaintiffs cannot find attorneys, that binding arbitration is in the best interest of the employees.

I believe the binding arbitration amendment has great merit. It is an idea that has been successfully applied to other employment discrimination statutes, and I hope the authors will admit that it is properly applied to family medical leave. I encourage my colleagues to support it.

Mr. President, I ask unanimous consent that a series of questions and answers on this subject be printed in the RECORD.

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

#### QUESTIONS AND ANSWERS

How does the binding arbitration provision work?

An employee alleging a violation of the Family Medical Leave Act ("FML") may file a complaint with the Department of Labor. The DOL will send a list of seven arbitrators, two of which shall be from the Federal Mediation and Conciliation Service.

A hearing will be scheduled within 60 days. The arbitrator will preside over the hearing, and take evidence as appropriate. The arbitrator then issues a written opinion.

What type of claims would be subject to arbitration under the Durenberger amendment?

There are two types of claims that will arise. The first is denial of leave, where the employee requests and then is denied leave by his/her employer. The key issue will be whether the employee has met the requirements imposed by the Act—acquired the proper certification of illness, complies with the employer notification requirements, etc. These are simple factual questions that labor arbitrators, interpreting collective bargaining agreements, have vast experience with.

The second is when a person claims discrimination after exercising their rights under the Act. For example, a person is denied a promotion, discharged, or otherwise discriminated against in the terms and conditions of employment after taking family

leave. This also constitutes a simple factual inquiry, which, again, arbitrators routinely decide. [Example: Was the person discharged "for just cause" as required by the collective bargaining agreement, or was the employer's reason for discharging the individual a "mere pretext."]

What type of Discovery will be available?

The Department of Labor will issue regulations providing for appropriate discovery. I must express my concern that the Department provide for a fair, equitable process. The Supreme Court noted in *Gilmer v. Interstate/Johnson Lane and Shearson American Express*, two recent Supreme Court decisions approving arbitration of Age Discrimination Act, RICO and antitrust claims, that those types of claims could be arbitrated, so long as they provided "a fair opportunity" for the parties to present their claims. See *Gilmer* 111 S.Ct. at 1655.

In the Court's view, "although these procedures might not be as extensive as in the federal courts, by agreeing to arbitrate, a party trades the procedures and opportunity for review of the courtroom for the simplicity, informality, and expedition of arbitration." *Gilmer*, 111 S.Ct. at 1655.

As long as the DOL regulations provide a "fair opportunity" for employees to present their claims, then the sponsors believe that the intent of Congress will be satisfied.

The plaintiffs in *Gilmer* has limited discovery available.

What kind of judicial review will be available?

Either employers or employees may seek modification or vacation of an arbitrator's award based on well-established standards set forth in the 1925 Federal Arbitration Act. Thus, an award may be set aside if procured through fraud or corruption, if the arbitrator exceeded his powers under the Act, or if the arbitrator exhibited material error of law. A court could not reinterpret the disputed facts as found by the arbitrator.

Is there a due process problem with not providing a federal court remedy?

There is no due process problem. The Supreme Court has upheld the arbitration of federal statutory claims, including Age Discrimination in Employment Act (ADEA) claims. As long as the arbitral forum provides a "fair opportunity" for employees to vindicate their statutory rights, then the Supreme Court has allowed arbitration of such claims.

However, if there is any doubt as to the Constitutionality of this amendment, then we could agree to provide expedited review from the appropriate federal court.

Are there people currently in the workforce who are qualified to serve as arbitrators?

The Federal Mediation and Conciliation Service (FMCS) currently maintains a list of at least 1,700 qualified arbitrators throughout the country. Under the Durenberger amendment, the Department of Labor would provide a list of 7 arbitrators to the parties, 2 of which would be derived from the FMCS list.

The American Arbitration Association, a nonprofit corporation specializing in arbitration services, maintains a list of \* \* \* arbitrators.

How much do cases cost to arbitrate?

Although individual costs vary depending upon the complexity of the case, most arbitrators charge about \$450/day. Because Family Medical Leave cases will probably require one day for the hearing, and the arbitrator will probably take one day to write the opinion, the arbitrator should charge about \$1,000 for the hearing.

Under the Durenberger amendment, the parties could hire lawyers to handle the hearing, or they could represent themselves. Assuming that the employee hired a lawyer, it probably would take about two days to review the employment file and interview witnesses, and one day to actually do the hearing. If the lawyer charged \$500/day, then the employee would be expected to pay up front \$1,500 for legal fees and half the arbitrator's fee (\$500). This \$2,000 amount is quite small compared to the thousands of dollars it takes to litigate a case to trial in federal court. Handling the pretrial motions alone in the federal court would take longer than the whole arbitration proceeding.

Would the employee have to pay for his/her attorneys' fees and arbitration costs if the employee prevailed?

No, under the Durenberger amendment, the arbitrator, in his discretion, may award the prevailing party attorneys fees and arbitration costs. Thus, it might not cost the employee anything at all to take his or her claim through the arbitration machinery if he or she prevailed on the merits of the dispute.

Is it not true that, in aggregate, arbitration claims can cost the same amount as ordinary civil litigation because most arbitration claims are pursued through to trial, while most civil lawsuits settle before trial?

No, arbitration is less expensive and much faster at resolving disputes. Both labor and management arbitrate contractual disputes on a regular basis with great success. There is no reason to make a federal case out of every dispute that arises in the workplace.

Moreover, although proponents of Family Medical Leave argue that a jury trial is necessary, the fact is that 98 percent of all civil cases settle before trial. This suggests that the vast majority of litigants prefer a private settlement procedure to a federal court proceeding. So why not save time and money and legislate toward providing that private dispute mechanism?

What type of Remedies are available to the arbitrator?

The Durenberger amendment is modeled after Title VII of the Civil Rights Act of 1964. Accordingly, it allows the arbitrator to award reinstatement, backpay, or other make-whole equitable relief that the arbitrator deems appropriate. Under no circumstances would pain and suffering or punitive damages be available.

#### Median time from issue to trial date by State

State	Months <sup>1</sup>
Alabama:	
Northern .....	9
Middle .....	9
Southern .....	14
Alaska .....	22
Arizona .....	20
Arkansas:	
Eastern .....	12
Western .....	7
California:	
Northern .....	16
Eastern .....	20
Central .....	12
Southern .....	18
Colorado .....	17
Connecticut .....	21
Delaware .....	17
District of Columbia .....	12
Florida:	
Northern .....	23
Middle .....	13
Southern .....	11
Georgia:	
Northern .....	19
Middle .....	16

State	Months <sup>1</sup>
Southern	12
Hawaii	14
Idaho	21
Indiana:	
Northern	15
Southern	19
Illinois:	
Northern	12
Central	17
Southern	10
Iowa:	
Northern	39
Southern	14
Kansas	20
Kentucky:	
Eastern	18
Western	19
Louisiana:	
Eastern	11
Middle	26
Western	22
Maine	14
Maryland	11
Massachusetts	30
Michigan:	
Eastern	14
Western	17
Minnesota	20
Mississippi:	
Northern	18
Southern	15
Missouri:	
Eastern	10
Western	15
Montana	21
Nebraska	16
Nevada	17
New Hampshire	21
New Jersey	23
New Mexico	18
New York:	
Northern	26
Eastern	19
Southern	19
Western	29
North Carolina:	
Eastern	12
Middle	19
Western	15
North Dakota	20
Ohio:	
Northern	13
Southern	18
Oklahoma:	
Northern	12
Eastern	7
Western	11
Oregon	11
Pennsylvania:	
Eastern	12
Middle	10
Western	24
Rhode Island	12
South Carolina	8
South Dakota	11
Tennessee:	
Eastern	13
Middle	11
Western	30
Texas:	
Northern	17
Southern	23
Western	11
Eastern	11
Utah	14
Vermont	13
Virginia:	
Eastern	5
Western	13
Washington:	
Eastern	17
Western	17
West Virginia:	
Northern	23

State	Months <sup>1</sup>
Southern	13
Western	13
Wisconsin:	
Eastern	20
Western	7
Wyoming	9
<sup>1</sup> Months.	
<i>Worst Cases in median time from issue to trial date by State</i>	

State	Months <sup>1</sup>
Iowa: Northern	39
Louisiana: Middle	26
New York:	
Northern	26
Western	29
Tennessee:	30
<sup>1</sup> Months.	

**EXHIBIT 2  
WORKERS FIND IT TOUGH GOING FILING  
LAWSUITS OVER JOB BIAS  
(By Steven A. Holmes)**

ALBANY, GA.—John Henry Smith Sr., a black employee of the Dougherty County Health Department, wanted to sue his employer with a claim of racial bias when he was passed over for a promotion. But, like an increasing number of people who want to file such suits, he could not afford the up-front cost of a lawyer and could not find one willing to take his case on a contingency basis. He tried several lawyers in Albany. Then he tried in Athens, Atlanta, Columbus and Macon. The last one turned him down two weeks before the statute of limitations on his case was to run out.

**YOU EDUCATE YOURSELF**

Frantic, Mr. Smith decided to represent himself, though he is a high school dropout with a General Educational Development certificate. So far, by spending late nights in the local courthouse library, reading law books, Mr. Smith has managed to file the necessary court papers.

"It takes a whole lot of time 'cause you don't know what you're doing," he said. "But you kind of educate yourself as you go along."

As the nation wrestles intellectually and politically with the issue of civil rights, the legal system appears to be growing increasingly inhospitable toward individual race and sex discrimination cases. Lawyers more and more are turning away such cases, say experts in employment law and lawyers representing plaintiffs and employers.

They say the cases are time-consuming, difficult to win and bring far less money than other civil litigation like personal-injury suits, which permit punitive damages.

Lawyers themselves say, moreover, that they face increasingly conservative judges who are bored by, if not downright hostile to, such cases.

While much of the evidence is anecdotal, a survey conducted in May by the National Employment Lawyers Association, a group made up of about 1,000 lawyers for plaintiffs, found that 44 percent of its members rejected more than 90 percent of the job-discrimination cases that had been brought to them.

Last year, a committee of lawyers and judges appointed by Congress to study the Federal court system noted that the monetary stakes in some job-discrimination cases might be so small that "even with the potential to recover attorneys fees, claimants sometimes find it difficult to litigate in Federal court because they cannot find counsel to take their cases."

Sometimes, but not often, plaintiffs who cannot find lawyers receive court-appointed

counsel. Sometimes they then elect to represent themselves, though they tend to be unschooled in the complexities of the law.

"They're getting killed in court," Jeanette Johnson, a civil rights lawyer in Dallas, said of the poor blacks and women who represent themselves. "It's like sheep to the slaughter."

Most often, experts say, those who seek to bring such cases simply abandon the thought of getting any redress in the Federal courts.

"What happens is that they end up not being able to enforce their rights," said Lex Larson, president of Employment Law Research, a North Carolina concern that publishes manuals on labor law. "They go out and find another job, and forget the whole thing."

**HIGH COURT'S EFFECT**

Experts say the growing reluctance of lawyers to take on job-bias claims is a trend that was intensified by a number of Supreme Court decisions making it harder for plaintiffs to bring such cases. A bill to reverse these decisions has been stalled in Congress by a dispute over whether it would compel employers to adopt hiring and promotion quotas.

Many lawyers say they are hampered by two Supreme Court decisions. The first, in 1982, limited their ability to bring large and potentially lucrative suits on behalf of whole classes of plaintiffs; the second, in 1989, virtually barred them from winning large monetary awards in race-discrimination suits, except those involving hiring. Claims alleging bias in hiring are a small minority of job-bias suits.

Plaintiffs' lawyers say they end up representing small individual claims brought by poor or working-class blacks or women who often cannot pay their normal rates. If they prevail, they say they often end up squabbling with judges over how much the losing party must pay them in fees.

"It's extremely difficult to earn a living in employment discrimination, virtually impossible," said Martha Pearson, an Atlanta lawyer who last November, after 10 years, quit a firm that represents plaintiffs in job-bias cases and joined a firm that represents local school boards in Georgia.

**DIFFICULTY WITH SUITS**

Amy Totenberg, an Atlanta lawyer who has been litigating job discrimination for 14 years, said: "The case has to be so excellent, and you're looking for someone who has some resources to finance it. So automatically you're looking at upper-middle-class people or middle-class plaintiffs."

Even some lawyers who represent employers acknowledge the difficulty in plaintiffs' winning discrimination suits and the difficulty for lawyers to earn a living handling such cases.

"You don't have the big easy class-action cases you had in the 1970's and 1980's, where you could get a big dollar settlement and attorneys fees over relatively simple issues," said Lawrence Z. Lorber, a Washington lawyer who represents large corporations. "Now, there are testing cases where you need experts and a lot of up-front money. It's an arena where the targets are fewer, the issues are more complex and the litigation takes longer, because the courts are jammed."

Plaintiffs who must fend for themselves in Federal court enter a bewildering world of procedures and jargon that make small-claims court seem user-friendly by comparison.

With legal papers spread before her on a mahogany table, Muarlean Edwards of Al-

bany prepared to represent herself in a job-discrimination lawsuit against a local hospital.

But when a visitor asked her whether the hospital's lawyers had filed a motion for summary judgment, a routine legal maneuver asking the judge to quickly decide the case in the defendant's favor, Mrs. Edwards's face went blank.

"What is that?" she asked. "Is that when they set how much you're going to get?"

#### BIG BACKLOG IN AGENCY

While private lawyers seem more and more reluctant to take race- and sex-bias cases, the Federal Government is not picking up the slack. In the 1990 fiscal year, the Equal Employment Opportunity Commission, the Federal agency charged with enforcing job-discrimination laws, filed 524 lawsuits in Federal courts. While this is an increase over the 486 suits in 1989, the agency has a backlog of about 45,000 cases that have yet to be even investigated.

Unless the plaintiff cannot find representation elsewhere, current Federal regulations preclude Legal Aid Societies that receive Federal funds from taking on cases, like employment-discrimination lawsuits, that can generate fees for lawyers.

Because of these rules, these agencies concentrate their limited resources on other areas of civil litigation, like family law, welfare rights and landlord-tenant disputes, said Clinton Lyons, executive director of the National Legal Aid and Defenders Association, a group representing Legal Aid Societies and public defenders offices. As a result, Mr. Lyons said, lawyers in these agencies tend not to have the expertise to handle job-bias suits.

In contrast to race- and sex-discrimination cases, lawyers say there is little hesitation in taking on clients who claim age discrimination. Those cases tend to be more lucrative because, under Federal law, juries can award monetary damages equal to twice the amount of back pay that was lost because of the discrimination. Also plaintiffs in age-bias cases, who are often white male executives who have lost their jobs as a result of a company cutting management positions, are more attractive clients than blacks, Hispanics or working-class women, some lawyers say.

"Age discrimination is still the white males preserve," said a Washington lawyer who represents employers, speaking on condition of anonymity. "Typically, the plaintiff is a middle- or upper-management employee who has been laid off. They are much more sympathetic figures to juries. More importantly, they make bigger salaries so they can pay the upfront costs of litigation. And, if you win and get a back pay award, the amount the lawyer gets is even bigger."

For now, plaintiffs like Mr. Smith who are walking into court alone must rely on their own common sense and perhaps a sympathetic ear on the bench.

"I hope to keep going until the judge tells me this isn't right, do something else," Mr. Smith said. "I couldn't live with myself if I stopped now."

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

Mr. DOMENICI. Will the Senator yield 5 minutes to the Senator from New Mexico?

Mr. DURENBERGER. I yield 5 minutes to my colleague.

Mr. DOMENICI. I thank the Senator and assure him I am going to speak in favor of his amendment.

Frankly, Mr. President, I do not stand up to speak of the technicalities of the court remedies versus arbitration remedies if and when this new right comes into being. I speak today about common sense, and the common sense is, if we are going to create some new rights in the marketplace of America, we ought to learn from the past. The past tells us that, if we create these rights and let the courts of America and the lawyers of America and the juries of America get involved in deciding the rights, the wrong people will benefit. Those who have been discriminated against, or those who have been harmed by the law will get little, if anything, of the proceeds of this kind of litigation. I do not know why.

I confess to the Senate—and it is a confession in these days—that I am a lawyer. I cannot do anything about that. I just happened to be one a long time ago when I came here, so I guess I still am. I will also tell my colleagues that I think my family is going astray because three of my children are lawyers. I am trying to talk the rest of them into not being lawyers, but I am not sure it will work. I am hopeful not all of them will be.

We will just be ruining America even worse than is occurring now. From what I can tell, the economy of the United States has a new dimension and a new way of predicting, and it is this, I say to the Senator from Minnesota. You can predict American prosperity like this: It will be inversely proportionate to the number of lawyers in the practice of law in America in any given year. It seems to work. I am sure it is not the only result, but it does point up something very interesting.

The person who came up with that is the CEO for Martin Marietta, Norm Augustine, who wrote a book about America and took a full chapter to talk about litigation, what it does of a detrimental nature to the United States and, in the process, helps little, if any, in particular those who ask for the help in the first place.

So I am here to suggest that for those who want the people of this country to receive this new benefit, I am not at all sure this benefit is going to become law this time around. I am not at all sure the proposal on the underlying bill is the right one. I am not at all sure that giving the kind of 12 weeks of unpaid benefits with the right to go back to work is the right thing to do.

But let me assure my colleagues of two things: One, it is not free. It will cost somebody, and, hopefully, before the day is out, I will speak to that as it pertains to the American economy. It is interesting that in the same week that we are talking about unemployment in America, the recession in America and the Democrats are proposing more unemployment compensation and the Republicans are proposing to

extend unemployment benefits, we are today talking about a new benefit that will cost the workers of America and ultimately the employers of America, who will produce less jobs because they will make less money, and anybody ought to know that. But we will talk a little more about that later.

For now, let me suggest we would be doing everyone a favor including those who might be denied the rights created by this bill, if we decided to make a new start in behalf of remedies and to say they are no longer going to the courts of America to be handled by the lawyers of America on contingency fees so that those who should get benefits will not and before we get them 2 or 3 years will pass and clog the courts, which are already having difficulty getting anything significant and right done because we are asking them to do the impossible.

So I think we ought to adopt the formula and the idea of the distinguished Senator from Minnesota [Mr. DURENBERGER] and his cosponsor, who I understand is the Senator from Kansas [Mrs. KASSEBAUM]. I think it is a good step in the right direction to send that signal today. Whether or not this bill becomes law, we will have taken a very good step.

I say to my friend, Senator DURENBERGER, so he will know I am serious about this, another committee that he sits on and will have hearings on hopefully is a subject that has to do with medical malpractice. That is another one where the courts, the jury system is providing absolutely ruinous in terms of costs on every American in health care versus the benefits received. I hope when that comes before the distinguished Senator, we will also be talking about overhauling that court system in favor of something that is more apt to work.

I thank the Senator for yielding, and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. DODD. Mr. President, I yield 7 minutes to the distinguished Senator from Vermont.

The PRESIDING OFFICER. The Senator from Vermont [Mr. JEFFORDS] is recognized.

Mr. JEFFORDS. Mr. President, I reluctantly rise in opposition to the amendment. A great deal of what has been said I agree with. There is no question but we have become a litigious society and lawyers oftentimes prove to be the only winners. Therefore, I do favor such things as reform in court liability situations and medical malpractice and other things where we do get into the kind of deep-pocket theory that an injustice has occurred, maybe it is not a legal one, but we should go after somebody with deep pockets and get what we can from settlement or going to court.

However, that is not the situation that we face here. We face the option,

which is presented by the Senator from Minnesota, that says that you will have one option, not two as the present bill has, one, to go to court and, two, to use the present procedures under the Fair Labor Standards Act, which I will get into in a minute. You have two options under the present bill, one of which could lead to the kind of situation to which the Senator referred under certain circumstances. On the other hand, the other option, which is an equitable one and used now by many claimants, in fact just about all of them if not all of them, is under the Fair Labor Standards Act. Most of those are resolved without any court action.

What the Senator from Minnesota does is limit it to an arbitration, a binding arbitration agreement, a situation which, to my knowledge, except in rare circumstances involving certain patent things and those sorts of things, is not a remedy which is available. And why not? Because you do not have the protection of the courts, you do not have the protection of juries, you do not have the protection of normal systems, and you only get into binding arbitration in our society when you have bargained for it in your own contracts and said, OK, it will be better for us if we take care of these kind of problems by getting an arbitrator to come in, usually in union bargaining agreements, et cetera, so the resolution can be made listening to a third person without the delays of the court system.

But there is another option under the bill presently, and that is a procedure which is set up under the Fair Labor Standards Act at present. In that relief, you can pursue your case yourself or the Secretary can go ahead and pursue it for you. It gives you an opportunity, for instance, to be in the administrative process. There is court protection at the end, I think, although there obviously is one under DURENBERGER, but under the grossest of circumstances, you have the normal process of appeals made through the administrative process under the bill now. Under that situation, it will be much cheaper for you than going through arbitration. Arbitration is going to require lawyers' fees. The argument is that you somehow get away from the lawyers. Very rarely are you going to get into a binding arbitration case without lawyers.

Second, you are going to have witness fees under this amendment, expert witness fees. Going through the administrative procedure in the bill before us, that would be covered in most circumstances by the Government.

So you have two options under the bill at present and you have only one under the Durenberger bill, one which is not used in any other area of the law outside some sophisticated situations.

Second, it would be less expensive. Under the present situation, like 80 or

90 percent of the cases are resolved through settlement in the administrative process and thus it has an excellent system right now.

Before I go to the remedy situation, which is related, the Senator from Connecticut [Mr. DODD] showed how small the cost would be to employers by implementing this provision of the bill. He has pointed out it would be something like \$5.30 for the year to be able to handle these kinds of situations.

In my own experience, in my office, we have had this in effect now ever since we introduced the bill, and we have not had a single period of time that we have had to resort to using the provisions.

So I want to make sure people understand that, one, the possible cost to the employer is very small and, second, and perhaps in some sense unfortunately, the number of employees covered is not very large either. For instance, as has already been pointed out, 95 percent of the employers are eliminated, a substantial number of employees are eliminated. And then when you get to that population which is probably the most likely to use it, that is, the workers between 16 and 24, 63 percent of these workers, studies show, are only in employment for a year or less, which means that 63 percent of the employees would not be covered, would not receive any remedy under the bill that we are backing. And from the age group of 25 to 34, about a third of them would not be covered because they worked for less than a year, a year or less.

So we have already a symbolic bill to most, certainly the younger generation, yet an important step forward to try to bring equity in this Nation with respect to the other industrialized nations in the world.

So I would hope, again just in summary, to point out we oppose the Durenberger amendment, those of us who are for the Bond-Ford-Coats amendment, because it limits much more your remedies that you have available to you to receive recovery. And again, I remind you that the maximum you could get is double the loss paid or benefits that you did not receive. So it is a pretty limited bill to start with. But the remedy it has is a much more equitable and better one than the amendment offered by the Senator from Minnesota.

Mr. President, I rise in strong support of the Bond-Ford-Coats substitute for the Family and Medical Leave Act, S. 5, reported by the Senate Labor Committee.

I commend my colleagues, particularly my Republican ones, for cutting through the rhetoric and coming up with a realistic way to help the working people of this country, their children and their spouses.

You could carpet the Capitol with all the nice speeches we politicians give on

supporting the family. But today, we will see who puts their vote where their mouth is.

America has changed remarkably over the past few decades, and our workplaces are no exception. More and more women are entering the work force. For the vast majority, this decision is driven by stark, economic necessity.

We do not have the happy family of "Father Knows Best" or "Leave it to Beaver." We have families of divorce, of poverty, of scratching out a living only a pay check or two away from foreclosure.

As our workplace changes, so, too, must the rules that govern it. Some employers have adapted. Employers in my State have put these sort of policies in place and testify to their contribution to a stable, productive workplace.

The evidence from those States that have legislated similar policies is clearly on the side that this type of approach is not burdensome for employers. And without doubt, it benefits employees and their families.

The arguments against this legislation have been discredited by their own shrillness. The cost of this legislation may be debatable, but it certainly is not substantial.

Who's covered? About 5 percent of the employers in this country. And even of the covered work sites, substantial numbers of workers will be ineligible for coverage.

Under the Bond compromise, workers will have to be on the job for a year before they are eligible for any leave. What does this mean? Well, 63 percent of all workers 16 to 24 have been on their job for a year or less, and 31 percent of workers aged 25 to 34 have an equally brief tenure. Combine the 2 and some 43 percent of young workers of prime childbearing age may be ineligible.

And beyond these basic numbers, another 10 percent of workers may be ineligible under the key employee exclusion. Even more are exempt due to their part-time status.

Thus, I think it should be obvious on its face that the reach of this legislation affects a limited population of workers.

And of those eligible, will they suddenly avail themselves of week after week of unpaid leave? Not very likely.

I have had this policy in my own office for years now, and I do not think that any employee has asked for a single day of unpaid leave for family or medical reasons.

With medical bills to pay, with the mortgage or rent due, few employees will make this decision lightly. But those few deserve our protection. When their back is up against the wall, when a true and tragic emergency strikes, parents will sacrifice their jobs for their family.

Why on Earth should they? If all of our prose is worth anything, we ought to be able to spare them from making this sacrifice. We ought to be able to craft legislation that will balance the real needs of employers with those of employees.

In fact we have. Mr. President, I urge the overwhelming adoption of the Bond-Ford-Coats compromise.

The PRESIDING OFFICER. Who yields time?

Mr. DURENBERGER. Mr. President, I believe I have just under 6 minutes remaining. I intend to take a couple of those minutes, but in case anyone else needs to speak in opposition—

Mr. DODD. Mr. President, if my colleague will yield, I thought the Senator had more time remaining than that. Let me yield 2 minutes to the distinguished Senator from Maryland.

The PRESIDING OFFICER. The Senator from Maryland [Ms. MIKULSKI] is recognized.

Ms. MIKULSKI. I thank the chairman of the committee for yielding. I thank him for his leadership on this issue.

Mr. President, I want to speak in behalf of the family leave bill, to point out that this is not some huge act of congressional or corporate kindness. It sets minimum standards of decency and compassion for America's families and gets our workplace ready for the future. This measure is good for business and good for American families. The facts speak for themselves.

A recent Small Business Administration study showed that it cost business more to replace an employee than it does to grant them extended unpaid leave if they need to care for a family member.

Arguments against unpaid family leave are both outdated and shortsighted.

First, let us face it, when we talk about taking care of the family, where there is illness, particularly chronic illness, women are the ones who must take time off to care for the family. Our work force depends more on women than any other Western democracy, except for Scandinavia and Canada, and yet it does the least for them to be able to meet those dual responsibilities. It makes sense to give that work force leave when it is desperately needed. It is a way to retain loyal and trained workers.

Second, it is in the best interests of companies not to have the workers on the job who are under severe stress. They have accidents and their productivity is below par.

It is time for American business to get a reality check.

Most families have two wage earners just to get by. The days of Ozzie and Harriet are over. Eventually those wage earners will have family medical needs. It makes good business and common sense to give them the time they

need to take care of their crisis and then get back to work. This is what our country needs.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. DODD. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator from Connecticut has 20 minutes and 20 seconds remaining.

Mr. DODD. I yield 6 minutes to the distinguished Senator from Missouri.

Mr. BOND. Mr. President, I thank my distinguished colleague. I certainly share the concerns that have been voiced by our colleague from Minnesota about the potential for adopting new legislation which would cause an explosion of litigation. That was, frankly, one of the amendments that I made to the underlying bill. I was fearful that a quadruple damage provision could develop a whole new bar, filing suits on family and medical leave.

What we hope to adopt in this substitute is a mirror image of the Fair Labor Standards Act. Under that act, there would be single damages only, or, if the employer were in flagrant violation, willful violation of the law, possibly double damages.

As I understand it, Mr. President, and I think this is one thing we may need to clarify, right now 97 percent of Fair Labor Standards Act cases are settled without litigation.

The question has been raised: will this spur a whole new growth industry in litigation? I honestly do not think so. But if it should, if the Fair Labor Standards Act is producing far more litigation than remedies, then I think I would join with my colleague from Minnesota to urge an administrative review so that we could change the procedure.

But, Mr. President, this debate is about protecting a person's job at no pay, and I believe that the enforcement standards will enable employees to keep their jobs and to take leave that they need.

Ninety-five percent of American businesses would be exempt. Only the largest 5 percent would be covered. We are not talking about paid leave. No worker is required to get paid leave under the legislation. No small business under 50 employees will be covered.

Let me make it clear. I oppose any mandated paid leave. I oppose it today. I will oppose it tomorrow. And to say that this is the beginning for paid leave, I can say that there are quite a few of us who support this who will be here to say no. We support leave with health insurance but not with pay.

I do not think it is appropriate to make the argument on hype now. The argument has been made that this is a yuppie protection bill. My colleague from Utah has said that. No one could afford to take this leave.

That argument might apply even better to a 6-year leave or an extended leave. One of the major premises behind the amendment we offer today is to ensure that people would not be using this to take a 12-week vacation every year. That is the point raised by my colleague from Mississippi.

In drafting the compromise, we worked hard to eliminate the potential for abuse, to ensure that it is taken only in those needy situations. We have tightened the definition of serious health condition for self and for family members. We have required 30 days' notice for leave in most cases. The fact that most women in the work force have husbands earning under \$18,000 per year, or single parents, means that most families would be unable to afford leave except that which is absolutely necessary. It would result in temporary income loss, which is a tremendous disincentive. But it would not result in permanent job loss and it would not result in loss of health care benefits.

The GAO has said that they project only 1 out of 275 employees would be taking that leave each year. Workers will take unpaid leave so that they may be with a child who has leukemia, a spouse has been in an accident or if they have parents who have suffered heart attacks or strokes.

Around lunchtime today, my colleague from Connecticut made a very powerful argument that, among the 100 colleagues in this body, one Member took off time and was away from work when his child was injured in a very serious auto accident. He did not lose his job, and nobody begrudged him that time off.

Another has taken time off when a child had cancer. Another has taken time off for a transplant. Another for a family emergency. We all kept our jobs. I have taken weeks off for a serious medical emergency, an operation. Other colleagues have taken time off for their serious health conditions. I believe that the same kind of protections can be reasonably had, although we will not provide paid leave for workers at the lowest end of the economic scale, those at low-wage levels.

There is an argument that has been made that in the time of a recession it is not time to put a new burden on businesses. Unfortunately, in the time of recession is just when those who we seek to protect most need that protection. In a rough economy, Americans look to us for leadership, for protection, and for support—not stalemate or inaction.

I think we ought to point out in closing that, in States where family leave laws have been implemented, there is no evidence correlating family leave requirements with a negative effect on business employment or, in fact, in business growth. Studies have shown there is a positive correlation between

State parental leave laws and small business expansion.

Finally, our colleague from New Mexico has worried about the cost. This legislation will cost the 5 percent largest businesses in the Nation less than \$5.30 per year per covered worker. This, to me, is not going to result in a tradeoff with other benefits. It is, in fact, a very valuable protection for the worker, the employee, who has a serious family situation.

Mr. President, I yield the floor.

I thank my distinguished colleague from Connecticut.

Mr. DURENBERGER. Mr. President, I yield 2 minutes to my colleague from Oklahoma.

Mr. NICKLES. Mr. President, I rise in support of Senator DURENBERGER'S amendment. I compliment him for it. It is an amendment that needs be agreed to if this bill becomes law. I hope this legislation does not become law, but certainly this amendment should be adopted.

I will tell you. I happen to have a little experience in the private sector. I have been in Federal court. I heard my colleagues say this is a Fair Labor Standards Act, and commonplace. I tell you that I have been before the Federal district court where it took over a year to hear our case. We spent thousands of dollars, trying to accumulate the data.

We had to come up with endless records. Basically, it was an harassment suit that we did end up winning. However, we did not really win. We won the court case, but the attorneys were the real winners. We paid a lot of money to our attorneys. The other attorneys made a lot of money.

But what was the resolved? Nothing. It added to the ever growing court case backlog which, in my State, is about a year—nationally, it is longer than that.

So I think the Senator from Minnesota, Senator DURENBERGER, has an outstanding resolution to this problem: Let us handle it through arbitration. I compliment him on his amendment.

Let me make it clear in this short statement that I am not against parental leave. As a matter of fact, in my company, we had paid maternal leave. We had paid sick leave. We offered paid benefits for those who needed it. If they had a child or family member that was ill, or if they had a serious problem, we allowed them to take the time they needed. We did not put a time constraint on it by 2 weeks, 3 weeks or 12 weeks. It depends on the illness; it depends on the situation at home.

Mr. President, let us not dictate and mandate on businesses throughout America what Congress deems is necessary. Let us allow that to be decided between the employers and employees and allow them to be flexible in working out what is mutually beneficial, not what is dictated by Washington, DC.

I thank my friend and colleague from Minnesota.

Mr. DURENBERGER. Mr. President, I yield myself such time as I may need.

Part of my response is to the objection that certain of these cases are going to take forever, cost a lot of money, and create problems for the employees and the company.

The other part is a bulk of these FLSA cases are minimum wage cases, overtime, or it is the records of the company that are in contest, not the health status of families, not the health status of relatives, not the intention of an employer in withholding from compensation or something like that. That is the kind of case that is going to get you the result that neither the Senator from Oklahoma, as the employer, nor his employee, sought.

What it all boils down to is simply this: Do we want this bill to work or do we not?

There are valid arguments on both sides over the bill. The proponents are right to say society has changed and our employee's benefit laws should change with it. The opponents are right when they say it is easier said than done; that this bill will not accomplish everything the proponents say it will do.

My amendment offers something to people on both sides. This is a bill that is going to pass. It may even become law.

But I want it to be pro-family. I want it to be pro-worker. The fact that this is a mandate does not kill the bill in my mind. We have lots of mandates. The problem with this bill is it has no way to adequately resolve the problems that it will create. So workers that we are trying to help will spend years in the courts instead of working.

Any new employment bill creates controversies. What does this term mean? What does that standard mean? I suspect this bill, which will affect millions of employees in thousands of settings, will create more than its share of problems.

I am offering an arbitration mechanism. It is fair. It is definitive. And most of all, it is fast, especially compared to litigation. It gets the worker back on the job. It gets the benefits they are entitled to in their pocket, not the lawyers' pocket. And most importantly, it gets everybody back to work.

Mr. President, do I have any time remaining?

The PRESIDING OFFICER. The Senator has 1 minute 30 seconds remaining.

THE DEFINITION OF "SERIOUS HEALTH CONDITION"

• Mr. HARKIN. I would like to enter into a colloquy with the distinguished authors of the pending amendment. It is my understanding that under the Bond-Ford substitute the term "serious health condition" means an illness,

injury, impairment, or physical or mental condition. It is also my understanding that the term includes those conditions that require inpatient care in a medical care facility or continuing treatment by a health care provider.

In addition, it is my understanding that the term is intended to cover conditions that affect an employee's health to the extent that he or she must be absent from work, as well as conditions that affect the health of an employee's family member such that he or she is similarly unable to participate in school or in his or her regular daily activities. Examples of such serious health conditions include but are not limited to heart attacks, most cancers, back and other conditions requiring therapy, strokes, secondary conditions which accompany certain disabilities, appendicitis, pneumonia, nervous disorders, and injuries caused by accidents on and off the job.

It is also my understanding that this definition of "serious health condition" is intended to include emergency health conditions that require immediate short-term treatment to prevent serious aggravation of the condition or to minimize the likelihood of longer-term illness or injury, or a more severe disability. Severe concussions, which often require a brief but immediate medical treatment to ensure against long-term damage provide an example of such conditions as does the treatment of decubitus ulcers—pressure sores—in people with physical disabilities. I would like to ask the Senators from Missouri and Kentucky, is it the intent of the Bond-Ford substitute to cover such conditions?

Mr. BOND. As the Senator stated, leave is not limited to just those cases of injury or illness, but extends also to "\*\*\* a physical or mental condition." It is our intent that if such conditions otherwise meet the requirements of the bill, leave should be granted.

Mr. HARKIN. It is also my understanding that the definition of serious health condition under the Bond-Ford substitute includes conditions that require intermittent visits to a health care provider for treatment, such as periodic chemotherapy treatments for a cancer patient or periodic speech and other therapies for children with hearing impairments or other disabilities. Is that understanding correct?

Mr. BOND. Yes, intermittent care is provided under the bill for qualifying serious health conditions.

Mr. HARKIN. Another question please. Sometimes parents of children with disabilities need to take time off so that they can do such things as monitor and regulate medication levels before their child can safely return to school. Additionally, people with physical and mental disabilities sometimes experience certain conditions which may limit their abilities and require some time off work to get the condi-

tion under control. Is it the intent of the Bond-Ford substitute to cover such conditions?

Mr. BOND. As I pointed out, we intend that such qualifying conditions be covered.

Mr. HARKIN. I have one last question. It is my understanding that the definition of "serious health condition" under the Bond-Ford substitute includes pregnancy and childbirth. For example, a pregnant patient generally receives prenatal medical treatment on an ongoing basis and may be temporarily incapacitated due to severe morning sickness or other complications. She later receives inpatient care for the actual period of childbirth, and receives ongoing medical treatment while she recovers from childbirth—a period of about 6 to 8 weeks for a normal delivery, with longer periods necessary if complications arise. Am I correct in my understanding that pregnancy and childbirth are considered to be serious health conditions under the Bond-Ford substitute?

Mr. BOND. Yes, the definition of serious health condition under this substitute definitely includes pregnancy and childbirth.

Mr. FORD. I concur with the statements of my colleague from Missouri, Senator BOND. •

Mr. DURENBERGER. Mr. President, as I say, I want this bill to work and keep its promises. One of the ways you can make sure it does keep its promises, if it passes here into law, is to vote for this amendment.

With that, I yield the remainder of my time.

Mr. HATCH. Mr. President, I ask for the yeas and nays on the Durenberger amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. Mr. President, I ask unanimous consent that I may send my amendment to the desk at this time and ask that it be in order to ask for the yeas and nays.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HATCH. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second? Is there objection to ordering the yeas and nays at this time?

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. I ask unanimous consent that the time for the previously ordered votes be changed to occur at 4:15

p.m.; that the time between now and then be equally divided and in the usual form.

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

Mr. HATCH. Mr. President, my understanding is we are going to try to have 10-minute rollcall votes for all four votes?

Mr. DODD. We believe that is possible. That has to be cleared by the leaders of both sides.

Mr. HATCH. We are hoping that all four votes will be 10-minute rollcall votes, beginning at 4:15, and I presume the leader will tell us if he decides that is the case.

Mr. President, parliamentary inquiry. Are the votes now lined up on this in order, and are they in proper order for voting with regard to the family and parental leave?

The PRESIDING OFFICER. The Chair advises the Senator that the votes are now lined up to begin at 4:15.

#### AMENDMENT NO. 1249

(Purpose: To provide a substitute amendment)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], Mr. LUGAR, for himself and proposes an amendment numbered 1249.

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:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "American Family Protection Act of 1991".

#### SEC. 2. PURPOSE.

The purpose of this Act is to facilitate stability in United States families by providing reemployment opportunities for eligible individuals who leave employment for legitimate family purposes.

#### SEC. 3. DEFINITIONS.

As used in this Act:

(1) **COMMERCE.**—The terms "commerce" and "industry or activity affecting commerce" have the meanings given the terms in paragraphs (3) and (1), respectively, of section 120 of the Labor Management Relations Act, 1947 (29 U.S.C. 142 (3) and (1)).

(2) **ELIGIBLE INDIVIDUAL.**—The term "eligible individual" means an individual who meets the criteria established in paragraphs (1) through (5) of section 4(a).

(3) **EMPLOYEE.**—The term "employee" has the meaning given the term in section 3(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(e)).

(4) **EMPLOYER.**—The term "employer" means any person engaged in commerce or in any industry or activity affecting commerce.

(5) **IMMEDIATE FAMILY MEMBER.**—The term "immediate family member" means—

(A) a child of a parent;

(B) a current, legally recognized spouse; or

(C) a parent.

(6) **LEGITIMATE FAMILY PURPOSE.**—The term "legitimate family purpose" means a purpose described in paragraph (1)(B), (2), (3) or (4) of section 4(c).

(7) **ORIGINAL POSITION.**—The term "original position" means the position described in section 4(a)(2).

(8) **PARENT.**—The term "parent" means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, or a legal guardian.

(9) **SECRETARY.**—The term "Secretary" means the Secretary of Labor.

(10) **SERIOUS HEALTH CONDITION.**—The term "serious health condition" means—

(A) a condition caused by an accident, a disease, or another physical condition that—  
(i) poses an imminent danger of death; or  
(ii) requires hospice care or hospitalization for extreme emergency care; or

(B) a mental or physical condition that requires constant in-home care.

(11) **SIMILAR POSITION.**—The term "similar position" means a position at the same location as the original position and with like seniority, status, duties, and responsibilities and equivalent pay and benefits.

#### SEC. 4. REEMPLOYMENT RIGHTS FOR ELIGIBLE INDIVIDUALS LEAVING EMPLOYMENT FOR LEGITIMATE FAMILY PURPOSES.

(A) **REEMPLOYMENT RIGHTS.**—An individual shall be entitled to reemployment as described in subsection (b) if the individual—

(1) was an employee of the employer from whom reemployment is sought for not less than 2,000 hours of continuous employment during the 14-month period preceding the provision of notice under subsection (d);

(2) left a currently held position with the employer for a period of time for a legitimate family purpose, as described in subsection (c);

(3) did not accept intervening employment exceeding 17.5 hours per week with any employer during the period;

(4) has provided the notice and documentation described in subsection (d); and

(5) has applied for reemployment as described in subsection (e).

(b) **REEMPLOYMENT.**—

(1) **AVAILABLE EMPLOYMENT.**—Except as provided in subsections (f) through (h), an employer shall restore an eligible individual to employment in the original or a similar position, if available at the time the individual applies for reemployment under subsection (e).

(2) **SUBSEQUENTLY AVAILABLE EMPLOYMENT.**—

(A) **NOTIFICATION BY EMPLOYER TO ELIGIBLE INDIVIDUAL.**—Except as provided in subsections (f) through (h), if the original or a similar position is not available when an eligible individual applies for reemployment under subsection (e), an employer shall—

(i) so notify the individual; and

(ii) if a similar position becomes available not later than 1 year after the date the individual applies for reemployment under subsection (e), notify the individual of the availability of the position and restore the individual to employment.

(1) **MANNER OF NOTIFICATION.**—

(i) **PROVISION OF ADDRESS BY EMPLOYEE TO ELIGIBLE INDIVIDUAL.**—An eligible individual who changes address prior to the date described in subparagraph (A) shall submit the new address to the employer by certified letter.

(ii) **DELIVERY OF NOTIFICATION BY EMPLOYER TO ELIGIBLE INDIVIDUAL.**—An employer shall make the notification described in subparagraph (A) by a certified letter delivered to the last address provided to the employer by an eligible individual.

**(C) TIMING OF NOTIFICATION.—**

(i) **IN GENERAL.**—Except as provided in clause (ii), an employer shall allow an eligible individual, in order to respond to the notification described in subparagraph (A), not fewer than 15 days after the date that the employer relinquishes formal control of the certified letter described in subparagraph (B)(i) to the postal service, or other bona fide delivery system.

(ii) **ECONOMIC REASONS.**—If economic necessity requires an employer to fill a similar position earlier than 15 days after the date described in clause (i), the employer shall—

(I) allow an eligible individual not fewer than 5 days after the date to respond to the notification described in subparagraph (A); and

(II) notify the individual of reasonable time limitations within which the individual must accept the offer contained in the notification and commence performance of the duties of the position.

(D) **AVAILABLE ALTERNATIVE EMPLOYMENT.**—Notwithstanding any other provision of this section, if the original or a similar position is not available when an eligible individual applies for reemployment under subsection (e), the employer and eligible individual may agree that the eligible individual shall be employed in any available position with different duties or responsibilities, or of lesser seniority, status, benefits, or pay, until the original or similar position becomes available.

(c) **PERIOD OF TIME FOR A LEGITIMATE FAMILY PURPOSE.**—For the purposes of this section, a period of time for a legitimate family purpose shall include a period of time—

(1) taken by a parent during the period that precedes the birth of a child—

(A) because of a serious health condition or on the advice of a physician; and

(B) for purposes directly related to the birth of the child;

(2) not to exceed 6 years and taken by a parent following the birth of a child for the purpose of caring for and nurturing the child;

(3) taken by a parent following adoption of a child and ending not later than 6 years after the birth of the child; or

(4) not to exceed 2 years and taken by an individual because of a serious health condition of an immediate family member and for the purpose of providing necessary medical and personal care to the family member.

(d) **NOTICE AND DOCUMENTATION.**—In order to be eligible for reemployment under this section, an individual shall—

(1) provide to the employer a minimum of 30 days written notice that the individual desires, or finds it necessary, to leave the position for a legitimate family purpose, unless under the totality of the circumstances it is impossible for the individual to provide such notice; and

(2) promptly furnish such reasonable documentation as the employer may request of the legitimate family purpose that prompted the provision of notice under paragraph (1), unless under the totality of the circumstances it is impossible for the individual to promptly furnish the documentation.

(e) **APPLICATION.**—In order to be eligible for reemployment under this section, an individual shall submit a written application to the employer that demonstrates that the individual remains qualified to perform the duties and responsibilities of the original position that existed at the time the individual gave the notice described in subsection (d)(1).

(f) **PRIOR RIGHT OF REEMPLOYMENT.**—If two or more eligible individuals seek to exercise

reemployment rights established under this section in conflict, the individual who first made application for reemployment shall have the prior right to be restored to employment. Restoration of an eligible individual to employment shall not otherwise affect the reemployment rights of other eligible individuals wishing to be similarly restored.

(g) **EXEMPTION.**—An employer shall not be subject to this section with respect to an eligible individual if—

(1) circumstances have so changed, between the time that the employer received the notice described in subsection (d)(1) and the time the individual applies for reemployment under subsection (e), as to make reemployment unreasonable; or

(2) the employer instituted formal or informal disciplinary action against the individual prior to delivery by the individual of the notice described in subsection (d)(1).

(h) **WAIVER.**—

(1) **AVAILABILITY.**—Absent coercion by either party, an employer and an employee of the employer may jointly agree, in writing, to—

(A) vary the requirements and conditions of the reemployment rights provided under this section; or

(B) substitute another employment arrangement, or an employment benefit or package of employment benefits, for the reemployment rights provided under this section.

(2) **EXPLANATION.**—

(A) **REQUIREMENT OF RECEIPT.**—In order for the agreement described in paragraph (1) to have effect, the employee described in paragraph (1) must receive a written explanation of the rights and remedies provided under this section before signing the agreement and must enter the agreement knowingly.

(B) **MODEL EXPLANATION.**—The Secretary shall prepare and publish in the Federal Register a model written explanation of the rights and remedies provided under this section. An employer may legibly reproduce the model explanation and generally distribute the explanation annually, or post the explanation permanently in a conspicuous place in the workplace, in order to satisfy the requirement described in subparagraph (A).

**SEC. 5. ENFORCEMENT.**

(a) **ENFORCEMENT BY THE SECRETARY.**—

(1) **CHARGE.**—In order to obtain enforcement of section 4, any eligible individual who believes that an employer has failed or has refused to comply with the provisions of such section shall file a charge with the Secretary within 180 days of the failure or refusal. Upon receipt, the Secretary shall investigate the charge to determine if a reasonable basis exists for the charge.

(2) **DISMISSAL OF CHARGE.**—If the Secretary determines that there is no reasonable basis for the charge, the Secretary shall dismiss the charge and promptly notify the eligible individual and the employer named in the charge of the dismissal.

(3) **ISSUANCE OF COMPLAINT.**—If the Secretary determines that there is a reasonable basis for the charge, the Secretary shall issue a complaint based upon the charge and shall promptly notify the eligible individual of the issuance.

(4) **ACTION.**—If the Secretary issues a complaint under paragraph (3), the Secretary shall attempt to resolve the complaint with the employer through an informal conference. If the Secretary is unable to resolve the complaint as a result of such informal conference the Secretary may—

(A) file a civil action in the United States district court for the district in which the el-

igible individual described in paragraph (1) sought reemployment; or

(B) dismiss the complaint with notice to the individual and the employer named in the charge.

(5) **BURDEN OF PERSUASION.**—In any civil action brought under paragraph (4) with respect to an eligible individual, the Secretary shall have the burden of persuasion that the individual—

(A) has satisfied the requirements in paragraph (1) through (5) of section 4(a); and

(B) is qualified to perform the duties and responsibilities described in section 4(e).

(6) **REMEDY.**—If a court finds, in an action brought under this subsection, that an employer has failed to comply with section 4 with respect to an eligible individual, the court may order the employer to comply with the provisions of such action and to compensate the individual for any loss of wages or benefits caused by the failure of the employer to comply with such action.

(b) **ENFORCEMENT BY AN ELIGIBLE INDIVIDUAL.**—

(1) **ACTION.**—If the Secretary issues a notice of dismissal to an eligible individual under subsection (a)(4)(B), the individual may bring a civil action in the United States district court for the district in which the individual sought reemployment.

(2) **BURDEN OF PERSUASION.**—An eligible individual who brings a civil action under this subsection shall have the burden of persuasion regarding the elements of explanation described in subparagraphs (A) and (B) of subsection (a)(5).

(3) **REMEDY.**—

(A) **COMPLIANCE OR COMPENSATION.**—If a court finds, in an action brought under this subsection, that an employer has failed to comply with section 4, the court may order the employer to comply with the provisions of such section and to compensate the individual for any loss of wages or benefits caused by the failure of the employer to comply with such section.

(B) **ATTORNEY'S FEES.**—A court may award attorney's fees to the prevailing party in an action brought under this subsection, if the court determines that the award is appropriate.

**SEC. 6. CONSTRUCTION.**

The Act shall be construed—

(1) to grant an eligible individual any rights to a position with duties, responsibilities, seniority, status, benefits, or rates of pay beyond the rights possessed by the individual at the time the individual presented a notice to an employer under section 4(d)(1); or

(2) to impose on an employer any nonvoluntary obligation to provide training of any type, or to offer reemployment in any position, or at any other location, than that specifically stated in this Act.

Mr. DODD. Mr. President, I yield 3 minutes to the distinguished Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I do not know if I can do this in 3 minutes. My friend from Connecticut caught me by surprise here.

Let me just say that I would thank the Senator from Minnesota [Mr. DURENBERGER] for his remarks, about my parents. As the Senator knows, both of them had Parkinson's disease and I really know what it is like to have to work and try to take care of a parent or parents. I really appreciate his remarks.

I must say that I think some of this discussion today—I tried to listen to it—reminds me of a Yiddish proverb about how you cannot dance at two weddings at the same time.

So many people have said something for families and for parents being able to take care of children but then we have an important piece of legislation before us that does just that and they find reasons to oppose it. No. 1, it is supposed to be central government. This is not some revolutionary program. This is a new mandate of labor standards, pure and simple.

No. 2, the Senator from Utah says it is discriminatory, because it is harder on low-income people, because it is more difficult for them to take off 10 weeks. Well, if you were to talk to a low-income wage earner and ask her or him would you like not to have the option at all, they would say they want the option.

Finally, my colleague from Minnesota has presented a solution in his amendment, which I think is a solution in search of a problem. The Family and Medical Leave Act will not lead to a bonanza of litigation. There is just no evidence for that. That is why enforcement of it is through the Fair Labor Standards Act which has served us well from 1938. What evidence we have is that 97 percent of the cases have not had to go to litigation.

The senior Senator from Minnesota says these will be different kinds of questions. We do not know whether or not in the future there will be a problem with litigation. Here is what we do know: binding arbitration is no substitute for judicial review, and it is simply unprecedented in Federal labor standards legislation for employees not to be able to go through the court system to protect their rights.

I think the amendment of the senior Senator from Minnesota greatly weakens this bill. It will make it difficult for a single parent, or two parents, to be able to enforce their rights to be able to take some time off to take care of a child.

For those reasons I oppose it.

Finally, let me say to the senior Senator from Minnesota, that binding arbitration applies to labor and management when you are interpreting a contract, when you have a coequal partner relationship, coequal power. When we are talking about a parent with a sick child, wondering whether he or she can take some time off and not lose their job, that is not an equal bargaining relationship.

This amendment really strips away the enforcement of this very bill. I think it negates all that Senator DODD and others have worked for. For that reason, with a considerable amount of reluctance, I will vote against this amendment.

I yield the floor.

Mr. DODD. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Connecticut has 9 minutes and 50 seconds remaining.

Mr. DODD. The proponent?

The PRESIDING OFFICER. The proponent has 13 minutes remaining.

Mr. DODD. On the Durenberger amendment?

The PRESIDING OFFICER. It is the understanding of the Chair that all time would be aggregated on the two pending amendments, equally divided.

The Senator from Connecticut has 9 minutes, and the proponent of the amendment 13 minutes.

Mr. DODD. Rather than waste any more time finding out how much time is left, I will take 3 minutes.

Mr. President, let me, first of all, thank my colleague from Minnesota, the distinguished Senator DURENBERGER, for a lot of help on this legislation. My colleagues ought to know that the staffs have spent a lot of time together, and a lot of what is in the Bond-Coats-Ford substitute are ideas that emanated out of the office of Senator DURENBERGER. While the debate now is on this particular amendment, there has been lot of work on other aspects of this legislation. I thank him and his staff for that help.

I disagree with Senator DURENBERGER on this particular amendment. We have had long discussions about it. In fact, in many ways, I am a bit in an awkward position. Philosophically, there is a lot of merit to the idea of the option of arbitration. We have talked about it. The problem is that we are dealing with it on one specific bill, rather than in a generic form.

Senator DANFORTH and I proposed something similar to this in product liability. We did not get very far. Nonetheless, the concept is of offering options to people in terms of how they dispute resolutions.

The problem here, in a sense, is that I do not necessarily believe that on this legislation, since we have designed a system under the fair labor standards and under Bonds-Coats-Ford, to allow for, in a sense, arbitration without getting to court—in a sense, that is incorporated into this. We set up a system to allow that—if a complaint occurred—before it gets into court, you try and resolve the matter, rather than actually jumping right into a court proceeding.

As was identified by Senator WELLSTONE of Minnesota, about 97 percent of these cases actually have been resolved without having to get to court. So when it takes some time, there is a resolution process. In fact, it has been successful without having to get into lengthy litigation.

In 1990, the Department of Labor investigated 7,400 Fair Labor Standard Act cases and determined there were violations of law in 5,200, of which 2,000 were referred to litigation. I will state that again: There were 7,400 com-

plaints, and actually, out of the 7,400, 2,000 ended up in the courts.

So, in a sense, the process, while not working perfectly, is working.

While we may have broad problems, we want to design legislation and create options, and it seems we ought to do that across the board rather than picking out one particular set of circumstances where I do not think we can say with certainty what the problems are likely to be. So I hope that my colleagues would reject this amendment, with all due respect to its author.

Tort reform is, in my view, long overdue, in the broad sense. But, in this particular area, where we have made significant modernizations in the application of the Fair Labor Standards Act, we are only getting a few cases right now, and it seems that we ought to take that into consideration and see if we cannot draft some generic legislation, rather than trying to apply something where we are not sure how it would actually work.

Regretfully, I urge my colleagues to reject this amendment.

I, simultaneously, hope we can get to a point where we can have a good discussion, debate, and have legislation come forward on how to move forward offering options, generally, whether it be in tort reform, or specifically in product liability, or specifically in fair labor standards. And it makes sense to me. In this particular case, not knowing what we are dealing with here, talking about a whole new area of law, applying a new standard of law, I think is dangerous to go off that cliff without knowing more about what we are doing here.

So, Mr. President, I urge the rejection of this amendment at the time of the vote.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. DODD. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Connecticut has 5 minutes remaining. The Senator from Utah had 13 minutes remaining.

Mr. HATCH. Mr. President, I yield 4½ minutes to the distinguished Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I greatly respect the efforts of Senator BOND and Senator DODD, who worked long and hard to shape a constructive policy regarding family and medical leave practices. The legislation now before us presents me with a difficult choice. No one denies the importance of allowing workers time off to cope with family emergencies or the birth of a new child.

I sympathize deeply with those forced into the untenable position of having to decide between their families and their jobs. Yet at the same time, I am troubled by the larger unforeseen

and unintended consequences of Federal involvement of this kind.

Without a doubt, we have witnessed over the last three decades major changes in the composition of our work force and the economics of the family. Greater numbers of women with young children are now wage earners and many families are dependent on these wages.

Also increasing are the numbers of elderly dependents whose responsibility for care is shouldered by a working son or daughter. Typically, when a family crisis hits, these dedicated workers must find a way to manage responsibilities at home as well as in the workplace.

In order to meet these changing needs and to attract highly skilled employees, some businesses have already responded with comprehensive leave programs. Others have approached the problem on a case-by-case basis.

Unfortunately, not all employers have adequately recognized the increasing demands on working parents, the commitment involved in caring for a newborn, or the pressures workers face when an illness strikes at home.

How should we in Congress react to this lack of responsiveness on the part of some in the business community? Should we mandate a response? Should we require all employers with 50 or more workers to offer no less than 12 weeks of family and medical leave? These are questions I have wrestled with for the last three Congresses, and each time I have reached the same answer: Regretfully, I cannot support this legislation.

Were it solely a matter of mandates per se, I would be less hesitant. There is no question that Congress has approved a variety of mandates in the workplace, from restrictions on child labor to standards for safe working conditions.

To my knowledge, however, this is the first time Congress has mandated a benefit. It is the first time we have required businesses to offer a form of compensation which businesses must pay for and which workers must accept—regardless of any agreement to the contrary.

Up until now, Congress has wisely refrained from interfering with this bargaining relationship—the give and take between employer and employee—however uneven at times it may be. This has allowed maximum flexibility for wage and benefit packages to be shaped according to the size and fiscal constraints of businesses, and the needs and desires of workers.

I am particularly concerned, for example, that the growing trend toward more flexible benefit programs will be constrained by Congress mandating benefits, to the detriment of those employees who do not need or desire those benefits.

The great diversity of business needs in this country makes it very difficult

for the Federal Government to devise a single plan that addresses the needs of all workers, without adversely affecting the ability of employers to meet those needs.

I have listened during the course of this debate to various estimates of the cost of S. 5, ranging from a low of \$5.30 per employee per year, to a total cost of \$7.9 billion annually. What this really illustrates is that, in fact, we do not really know the true cost of this legislation. Even if the lowest estimate is correct, clearly this cost will vary depending upon such factors as the size or geographic location of a business.

For example, a company of 51 employees located in rural western Kansas will have far greater difficulty in absorbing the costs associated with absent workers than, say, a company of 5,000 in Wichita or Kansas City. Yet, it is precisely these smaller companies that create the greatest number of new jobs and at this time can ill afford additional burdens.

Mandating a new benefit will either result in diminishing current benefits or reducing current wages. The same dollar will be spent on workers, only the pie will be sliced along different lines. We cannot avoid the fact that when we mandate a benefit, it will increase benefit costs, which in turn will have a direct impact on the labor market, either curbing wage increases, discouraging the hiring of new workers, and perhaps even accelerating layoffs in hard times.

Mr. President, I appreciate the efforts of Senator BOND and others to fashion a workable bill. Unfortunately, the suggested changes only serve to underscore the difficulties inherent to this well-meaning legislation. For every new requirement, an enforcement mechanism must be implemented, along with the attendant regulations and necessary paperwork, adding further to the regulatory burdens of small- and medium-sized businesses.

Moreover, carving out exceptions and loopholes only creates the additional potential for unintended and undesirable consequences, which we, with our limited Washington perspective, cannot anticipate until it is too late.

For example, a Kansas City employer of several hundred workers also maintains a small office of five employees in Amarillo, TX. While the bulk of its employees would be covered, those in Amarillo, by virtue of their isolation, would be exempt. How, I was asked, can an employer deny this benefit to those workers, while the rest of the company is eligible to take family and medical leave? If the employer permits this benefit, will he be able to continue to operate this office successfully?

Consider the key employee exemption in the Bond amendment. How will these workers feel if they are singled out as ineligible for parental or medical leave? Or, consider the part-time

worker exception. Will this merely encourage employers to hire part-time workers, for under 25 hours per week, in order to avoid the requirements of this legislation? Unfortunately, I do not know the answers to these questions.

Mr. President, leave for caring for a family is good for business, and it certainly is good for families. None of us would deny that. It is my hope that a growing number of employers will provide those benefits.

But for the reasons I have listed above, as well as the uncertainty about the health of our economy, I am voting against the Dodd-Bond legislation, and I would urge my colleagues to do so as well.

The PRESIDING OFFICER. Who yields time?

The Senator from Utah has 7 minutes and 6 seconds remaining.

Mr. HATCH. I yield 4 minutes to the distinguished Senator from Kansas.

The PRESIDING OFFICER. The Republican leader has the floor.

Mr. DOLE. Mr. President, I agree completely with my colleague from Kansas, Senator KASSEBAUM.

Mr. President, my opposition to S. 5, the Family and Medical Leave Act of 1991, is no secret.

I had hoped that when the compromise on this legislation was announced last month, that perhaps this difficult issue would be resolved.

Unfortunately, Mr. President, this compromise, which is being marketed as a "new and improved" version, is the same product with some different packaging.

#### EVERYONE SUPPORTS FAMILY LEAVE

Mr. President, there is no controversy here over whether family leave is good or not. I strongly support such programs and believe that they have served—and will continue to serve—a very important role in the work place where more and more American families find both parents out of the home.

Along the same lines, Mr. President, I also support health insurance benefits, disability plans, life insurance, vacation, sick leave, maternity leave programs, continuing education and professional development programs, and all the other infinite types of programs and benefits that the employers of this Nation voluntarily provide to their work force.

But this is not the issue, Mr. President. We are not voting on whether family leave is a good idea. Instead, we are voting on whether the Government knows best how to spend everyone's benefit dollars.

#### COMPROMISE DOES NOT ADDRESS MANDATE ISSUE

It is for this exact reason that the compromise to S. 5 does not solve the real problems.

While the amendment deals with some of the structural and administra-

tive glitches of S. 5—such as the damages provisions and the definition of serious health condition—it does nothing to address the problem of the mandate.

The point is that the Federal Government should not be telling each and every employer and employee that one type of benefit is better for them than another type of benefit.

#### MANDATES DO NOT WORK FOR BUSINESS OR LABOR

Business can allocate only a specific amount of money for fringe benefits. They have projections and budgets and part of those plans is how much they will spend on salaries and how much they will spend on benefits.

The real world effect of this legislation, this mandate, is that employers will revisit those projections and budgets and cut back on something else.

While the Senator from Connecticut, Senator DODD, and the other proponents of this legislation, would have you believe that the cost of this legislation is negligible, the fact is that this bill costs business a ton of money—money that might of otherwise be earmarked for a COLA, or a child care center, or to business expansion producing more jobs, or simply to paying off debt and making ends meet so that no layoffs occur.

A recent survey by the Gallup organization of over 950 small businesses indicated that if this bill were to become law, more than half of small firms would establish stricter personnel policies and cut back employee benefits such as paid vacations and health insurance.

So while the proponents of this legislation may have good intentions in trying to help the American family, the effect of this legislation will be to take away benefits that were once freely negotiated between the employer and employee.

#### "ONE-SIZE-FITS-ALL" HURTS EMPLOYEES

Mr. President, I also do not understand how the proponents of this legislation justify to the American people that a one-size-fits-all approach to employee benefits is good for them.

Those who are unmarried—who have no interest in a family—don't want leave to have children.

Older workers have no interest in leave to have a family.

And yet, what the Congress wants to tell the American people is that such leave is good at the cost of benefits American workers might otherwise prefer and receive from their employer.

Such paternalism and interference is completely unwarranted. Indeed, we have seen an explosion during the last decade in the types of benefits offered by employers and the flexibility of those benefits.

Recently, for example, a lot of companies have begun introducing so-called cafeteria style plans. These plans give employees a fixed dollar amount to spend on benefits and let

them pick which ones they want from a long menu.

It is my understanding that cafeteria plans are very popular and let employees shape their benefit program to their own personal, individual needs.

If this bill were to become law, the effect is that employers would give employees fewer dollars to spend on benefits they would otherwise choose cafeteria style in order to provide the mandated family leave.

I might add that a Gallup Poll found that only 1 percent of 1,000 respondents listed parental leave as their most valuable employee benefit. And a January 1991 Penn & Shoen survey found that 89 percent of 1,000 respondents preferred that employee benefits be decided privately between employers and employees rather than mandated by the Federal Government.

#### S. 5 IS A TAX ON EMPLOYERS

Mr. President, in this Senator's opinion, this bill amounts to nothing more than a tax on employers.

It looks like my colleagues on the other side of the aisle have decided that since the Federal Government is broke—and with about 30 States experiencing serious budget problems as well—the next place to find hard cash to pay for benefit programs is to dig into the pockets of the employer community with a bunch of mandates.

The problem, Mr. President, is that this tax—this mandate—will ultimately come out of the pockets of employees through a reduction in other benefits such as a cost-of-living increase; or paid health insurance premiums; or through the loss of jobs or job growth as companies bottom lines—already suffering from a sluggish economy—are squeezed further against the wall.

#### PRESIDENT WILL VETO

Finally, Mr. President, I have a letter that President Bush sent me stating that he will veto S. 5 or any other mandated leave legislation presented to him.

I ask unanimous consent that this letter be printed in the RECORD.

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

THE WHITE HOUSE,  
Washington, October 1, 1991.

HON. ROBERT DOLE,  
Republican Leader, U.S. Senator, Washington, DC.

DEAR BOB: As the Senate moves toward consideration of S. 5, the Family and Medical Leave Act, I want to reiterate my position on this issue. I strongly support the goal of encouraging family leave policies through voluntary negotiations between employers and employees. However, it is both inappropriate and counterproductive for the Federal Government to mandate blanket fringe benefit packages that treat all employees the same and benefit one employee perhaps at the expense of another. Workers and managers should have the freedom to sit down together and develop a benefit package that best meets their specific needs.

America faces its toughest competition in history. We must maintain the flexibility to meet these challenges directly in the most competitive way. At the same time, we must promote an environment of cooperation in which workers and managers together strive for their greatest productivity. We should not impose additional burdens and restrictions on employers and employees, particularly at this crucial time.

Accordingly, should S. 5 or any other mandated leave legislation be presented to me, I will veto it.

Sincerely,

GEORGE BUSH.

Mr. DOLE. First, let me say that I think we have a package that has been slightly improved. You could not improve it much, because it was so bad. But it has been improved a little with the amendment offered by Senators BOND, COATS, and FORD.

But I think we have to ask ourselves one very basic question. This is a tax on business; it is a tax increase. We might as well just pass a tax increase for everybody with 50 or more employees, every business. OK, this is a tax increase. That is what this is. It is a mandate.

The Senator from Kentucky said it is not a mandate; it is a Family Protection Act. I had one handout awhile ago. It said mandate; mandate in the Dodd bill; mandate in the Bond amendment, the same. Mandate on one side, and the same on the other.

They say it is a mandate. It is a mandate. How many mandates can we pass onto States? How many mandates can we pass onto employers? I finally figured it out. The Federal Government is broke. We have about 30 States that are broke. We have the five biggest cities broke. And some in the Senate still want a group hanging. All right. We can get them if we start right now, and they are called employers. They are people with 50 or more employees this year.

I note that another improvement was they modified this little Commission that was going to study what effect this would have on 50 or fewer employees. You know, we are doing 50 this year. They took it out. They put in broad language. The Commission can now study anything. Policies.

This bill will be vetoed and sustained either in the Senate or the House. But it will be back next year, and should it pass, I would predict within 3 or 4 years, they will say let us lower it to 40, and then 30, and then 25, and then 20, and then 10, and then bingo.

So there are a lot of things happening in the private sector. I support health insurance benefits, disability plans, life insurance, vacation, sick leave, maternity leave programs, continuing education, professional development programs, and all the other infinite types of programs and benefits that the employers are providing now—not the Federal Government, but the employers are providing.

If we just had to vote on whether family leave is a good idea, the vote would be 100 to nothing. But you all have to ask the employees and include results of polls where they surveyed 1,000 employees; 89 percent said: let me work it out with my employer. We do not want the Federal Government in Washington, DC, telling somebody in Topeka, KS, this is what you have to do. Whether married or single, young or old, children or no children, one plan fits all.

We also, in a Gallup poll, found that only 1 percent of 1,000 respondents listed parental leave as the most valuable employee benefit. Where is the demand for this legislation? There is not any, if you talk to people who would have to pay for it.

I wish we had had a vote on the \$5.30 amendment the Senator from Utah had. Maybe we should have included that in the agreement of yesterday. That would have carried, and that might have been the end of this so-called legislation.

But this is a tax, a tax increase on employers. It is a mandate. It is a mandate on employers. It is the long arm of Washington, DC, reaching out all across America, saying: You are going to do this whether you like it or not.

If you want to vote for a tax increase, this is your opportunity.

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

The Senator from Utah.

Mr. HATCH. Mr. President, first of all, I would like to say I think the Durenberger amendment should be supported. Binding arbitration, I think, would save everybody millions, if not billions, of dollars over the years.

The average termination suit cost about \$20,000. Under this approach, it would cost around \$1,000, and it would work better and help alleviate the congestion in Federal courts that is eating us all alive.

Mr. President, the problem with the Dodd-Bond bill is, number one, it is an unprecedented mandated employee benefit. It injects the Federal Government into each of our lives, telling us what to do.

Second, it restricts flexibility both for employers and employees.

Third, it has a discriminatory impact because half of all employees and 95 percent of all businesses are exempt from the bill. Generally, the people who will not get the benefits are those who are poorer, less educated, and less trained. So half of all employees and 95 percent of all employers are exempt from the bill.

Fourth, it is ineffective. It is impossible for parents to bond with new babies over a 12-week period. And, by definition, a serious illness is likely to last longer than 12 weeks.

And last but not least, it is an approach that would be vetoed by the President.

The Hatch substitute is supported by a number of organizations, including business organizations, family research organizations, and Hispanic organizations such as SER—jobs for progress. It is not a mandated benefit. The measure only returns to people what they have already earned. Unlike S. 5, it does not provide new, unearned mandated benefits.

In contrast, S. 5 only provides for 12 weeks of leave. My substitute allows employees to leave the workplace for up to 2 years to care for a sick family member and up to 6 years to care for a child.

My substitute applies to everybody, not just 50 percent of all employees and 5 percent of all businesses.

And, my substitute has a protected right of reemployment. It extends a right of preferential rehire. If an employee takes leave for a family purpose and he or she applies for reemployment, the employer must offer either the same or an equivalent job, if such a job is available.

So, Mr. President, I think if we want to pass a real family leave bill, we should all vote for the Hatch substitute. The votes are not there for passage now, but I think I have made a case against the mandated employment benefits which will linger.

I yield whatever time I have remaining to the distinguished Senator from Connecticut.

Mr. WALLOP. Mr. President, had there been other amendments in order to this legislation, I would have offered three; one requiring an economic impact analysis on any legislation which creates a new or revised Federal mandate for public or private sector employees; an amendment to strike title III of the bill, creating a Commission on Leave, and finally an amendment to require employees to pay their share of the cost of health insurance while on leave.

The amendment requiring an economic impact analysis is nearly identical to an amendment I offered—and the distinguished Labor Committee chairman, Senator KENNEDY accepted—to the minimum wage legislation adopted by this body in 1989. Unfortunately, that minimum wage bill was vetoed by President Bush and the subsequently enacted legislation did not contain this provision.

We have now been debating versions of family and medical leave legislation for the past 6 years. Just as the proponents of S. 5 believe extended leave periods are vital to today's working conditions, my amendment is crucial to the considerations we should give to the need for such benefits. So I regret that we failed to enact this amendment prior to consideration of S. 5 this year. Perhaps an economic impact analysis would convince my colleagues once and for all of the bad habits, that is, Federal mandates, which we cannot seem

to break as demonstrated by this legislation.

What we cannot support by taxes and deficit spending, we simply disguise as a cost-free benefit and put in the laps of the American people. That benefit then becomes their obligation to provide, but not without cost to businesses and our economy.

Thus the specific purpose of my proposal is to expose faulty perceptions with accurate information. The family and medical leave bill provides the perfect forum for this discussion. It is a well-intended piece of legislation. Certainly all employers want to do their utmost to provide a wide variety of benefits for their employees. But we are imposing a benefit which affected employers cannot afford and for the most part working employees do not need or may also not afford. The Federal Government does not belong in the business of establishing benefit policies that have voluntarily been addressed by employers as unique circumstances arise with their employees. And we should not ignore the positive elements of a flexible employer/employee relationship.

By mandating a benefit, we remove that flexibility, reduce the employer's ability to meet the needs of their work force and potentially force them to cut back benefits to employees across the board.

S. 5 also does not take into account the indirect costs associated with extended periods of leave. In many instances, it will be difficult or nearly impossible for employers to recruit and train temporary replacements. These replacements and attendant productivity drains are costly propositions, particularly for small businesses already struggling to survive the strains of today's economy. Yet, in many businesses, positions cannot remain vacant for two or three months. So the Family and Medical Leave Act leaves businesses with two choices: A full plate or empty pockets, and GAO feels neither represents a loss—but then their analysts get paid for their view whether or not they are right. Business lives a real life.

My proposal would carefully measure the consequences of translating good intentions into unworkable programs. The Senate should have these data up front in order to make an informed decision—a decision which will obviously impact the lives of all Americans. Without this information, we will not know the effect of the legislation on the economic growth and development of new businesses and the health of existing businesses.

The economic impact statement contained in the report accompanying S. 5 pays little attention to the economic consequences of its enactment. I quote from the report:

There is no evidence of economic impact on consumers as a result of S. 5. Costs to

consumers cannot be expected to increase since the additional costs to employers are minimal—based on a 1989 GAO study, estimated as \$5.30 per year per covered employee—and since there is no evidence of greater business losses where State laws require similar family and medical leave. The GAO study concluded that the cost of family and medical leave legislation to employers would be less than \$236 million annually. This cost results exclusively from the continuation of health insurance coverage for employees on unpaid leave.

This \$236 million figure is as shocking as it is wrong. Yet it is typical of the General Accounting Office which has literally no concept of what it costs to do business. No small wonder that the American public has so little faith in what we do here to represent them. The GAO may be the congressional watchdog, but they are rarely vigilant in their regard for small business needs. Some of us here in this body have been in business. We know full well what it means to meet a payroll; to provide benefits for employees. So I ask my colleagues this question: What about the cost of replacement workers?

Employers who must hire and train temporary replacements and continue to pay expensive health insurance premiums for employees on unpaid leave, have two options: Either they hire fewer workers or provide less pay and fewer benefits to workers who don't take leave.

As such, I believe employees should be required to pay their cost of health insurance while on temporary leave. This principle is already established under the Consolidated Omnibus Reconciliation Act [COBRA] of 1985 whereby employees laid off or taking temporary periods of leave must pay up to 102 percent of the cost of health premiums.

No one would dispute that this country is plagued by the unrelenting high cost of health care. The United States now spends 12.4 percent of its gross national product on health care. Since 1970, the total cost of employer fringe benefits for employee health benefits has more than doubled. Likewise, total fringe benefits paid by employers have risen 13 percent. Obviously, these statistics show that it is becoming more and more difficult for employers to cover the continually rising costs of medical insurance.

The bill we are considering today does nothing to address rising health care costs. To the contrary, it merely puts an excessive burden on employers to absorb these costs, while also covering the cost of replacement workers. No one wants to spoil the picture of mom and dad spending 12 weeks bonding with junior, but someone is going to have to do the work until they return.

Parental leave is fine as one possibility in a basket of benefits. When it becomes obligatory, both management

and workers are deprived of choice. Such mandates will only disrupt the labor market and, in the long term, result in lower cash compensation for workers and increased unemployment particularly among the working poor.

Many analysts feel that our system of private health insurance exacerbates the problem of rising costs because consumers are insulated from the real cost of health care services. We have been proposing such mandated employer-sponsored health insurance for the last few years. Proposing such uniform Federal policy isn't going to help our society, nor is one inflexible policy going to help the American family. Let us decide what is important and enact legislation that will address rising health care costs, not provide Band-Aid attempts.

Mr. SYMMS. Mr. President, I oppose S. 5, the parental leave bill.

I oppose it, first, because I believe in the freedom of choice. The decision concerning the sorts of benefits which the employees of a particular company want to receive should be a decision between those employees and their employer. Do they prefer higher salaries and no unpaid leave? What about greater employer health insurance contributions and no unpaid leave? What about 3 weeks of paid leave? Or a longer vacation?

S. 5 would remove all of those decisions from the employer and the employee and place them in the hands of the Federal Government. Ironically, this is being done by the same people who cynically bandy about the word "choice" when it suits their purposes.

I also oppose S. 5 because it would impose yet another regulatory burden on business at a time when many businesses are struggling to compete with Japanese and European corporations. The Small Business Administration has estimated that this legislation could cost American businesses as much as \$1.2 to \$7.9 billion a year—enough money to pay the salaries of up to 260,000 employees at a rate of \$30,000 a year.

We have already witnessed the loss of jobs which overregulation has caused—not to mention the recession precipitated by our most recent tax increase. The last thing we need is to place even more impediments on American business at a cost of tens of thousands of productive jobs.

Finally, I oppose S. 5 because the details of the legislation are seriously flawed. "Serious illness" is defined so liberally that it includes kleptomania, transvestism, and drug addiction. The mechanism for determining whether a serious illness exists is a real "Rube Goldberg device." Furthermore, the leave is, contrary to the representations of the sponsors, not "unpaid leave" at all, since the employer would have a legal requirement that he continue to fund the missing employee's health insurance.

All of this can only have the effect of discouraging employers from hiring women—a result which would work to the severe detriment of the very people which this legislation is supposed to help.

Mr. President, it can be cold comfort that this would not be the first intrusive, counterproductive program cynically advanced for the purpose of erroneously persuading classes of constituents that they would get something for nothing.

This bill is not needed, therefore, I urge a "no" vote.

Mr. DODD. Mr. President, how much time remains?

The PRESIDING OFFICER (Mr. CONRAD). Five minutes, 30 seconds.

Mr. DODD. Mr. President, I yield whatever time he may desire to the majority leader.

Mr. MITCHELL. Mr. President, Members of the Senate, over the past decade the United States has witnessed an ever increasing number of women entering the work force, many with very young children, many of whom seek to rejoin the work force shortly after the birth of their children.

Job protection during times of childbirth and family illnesses ought to be a basic right for working Americans. Especially now with the economy in recession, job protection is even more important to the stability of American families. This is a family measure for American families.

To know that a worker has the flexibility to take care a newborn child or to care for an ailing parent without the fear of losing the job ought not to be remarkable. It ought to be a matter of course.

The composition of the American work force is changing. That change should be reflected in our policies.

This is an important bill for American women. It offers to American women equal economic opportunity, and it means that the question before us is whether American women will have economic independence.

The number of women working today is greater than ever before. Many of these women are working out of necessity. They need to work to raise their family's income to a level that will allow them to feed their children, make their rent or mortgage payments, car payments, and provide other basic necessities.

An increasing number of women are single parents who have no other option. They must work to provide for their family. But the fact remains, also, that 65 percent of married women work.

We ought not to force American women to choose between their jobs and their families. Too many women have been forced to make a painful choice between the economic imperative of working to supplement their families' income and the anxiety of

caring for a seriously ill child. Too many women have to make that choice. It is unfair to them.

Too many women have had no job to return to after recuperating from the birth of their child.

The Family and Medical Leave Act would provide unpaid leave. Unpaid leave for birth, adoption, or care of a sick child. It would also provide unpaid leave for an employee's own serious medical illness or to care for an employee's seriously ill parent.

The United States is the only major industrialized country without a family medical leave policy. In fact, most other industrialized nations provide some type of paid leave. We are not talking about paid leave here, but unpaid leave, with the guarantee of a job to which to return.

Protecting jobs for those who must take leave to care for their families in times of crisis is not unreasonable. It is humane. Protecting jobs for those individuals who become seriously ill is not unreasonable. It is humane. It is reasonable. It is fair.

Enactment of this family leave law will not alleviate the stress a family feels when faced with a serious illness of a parent or a child, the loss of earnings. But it will alleviate the stress they feel, the real stress, when there is no job to which to return.

Enactment of this family leave law will provide a basic assurance of job security for the men and women during times of crisis. A number of States have already enacted such laws. It is now time for the Federal Government to act as well.

Mr. President, on that note, I would just like to make a comment. We have heard a lot of talk here, the usual statements that we ought not to have the Federal Government getting into this area of economic regulation. But the very same Senators who make that argument are sponsors of and promoting all kinds of other legislation to do that which they now warn against.

How many times have we heard speeches on the floor here in favor of product liability legislation that would extend the Federal Government wholly into an area that for 200 years has been left to the States? The very same people who stand here today and say we should not have the Federal Government do this in behalf of American women are prepared to force the Federal Government into areas previously left to the States in behalf of large corporations.

How about giving American women the opportunity for economic equality and economic independence? That is the issue here today. That is the issue.

Are we prepared to say that we will no longer tolerate American women being denied economic opportunity; we will no longer tolerate second-class status for American women? We are going to see that they get the same

equality and free economic choice that is available to women all over the world.

I urge my colleagues to support this bill. It is a sound, sensible, reasonable, fair measure.

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

The PRESIDING OFFICER. All time has been yielded back.

Mr. DODD. Mr. President, I inquire of the majority leader, has there been a proposal to reduce the time of these votes?

Mr. MITCHELL. Mr. President, I ask unanimous consent that all votes after the first vote be for 10 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. MITCHELL. Let me make clear that I mean all votes that are stacked in succession be for 10 minutes after the first vote.

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

VOTE ON AMENDMENT NO. 1248

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senator from Minnesota [Mr. DURENBERGER]. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FORD. I announce that the Senator from Iowa [Mr. HARKIN], the Senator from Nebraska [Mr. KERREY], and the Senator from Arkansas [Mr. PRYOR], are necessarily absent.

The result was announced—yeas 40, nays 57, as follows:

[Rollcall Vote No. 214 Leg.]

YEAS—40

Breaux	Gorton	Nickles
Brown	Gramm	Pressler
Burns	Grassley	Roth
Chafee	Hatch	Seymour
Coats	Heflin	Simpson
Cochran	Helms	Smith
Cohen	Kassebaum	Specter
Conrad	Kasten	Stevens
Craig	Lott	Symms
Danforth	Lugar	Thurmond
Dole	Mack	Warner
Domenici	McCain	
Durenberger	McConnell	
Garn	Murkowski	

NAYS—57

Adams	Exon	Mikulski
Akaka	Ford	Mitchell
Baucus	Fowler	Moynihan
Bentsen	Glenn	Nunn
Biden	Gore	Packwood
Bingaman	Graham	Pell
Bond	Hatfield	Reid
Boren	Hollings	Riegle
Bradley	Inouye	Robb
Bryan	Jeffords	Rockefeller
Bumpers	Johnston	Rudman
Burdick	Kennedy	Sanford
Byrd	Kerry	Sarbanes
Cranston	Kohl	Sasser
D'Amato	Lautenberg	Shelby
Daschle	Leahy	Simon
DeConcini	Levin	Wellstone
Dixon	Lieberman	Wirth
Dodd	Metzenbaum	Wofford

NOT VOTING—3

Harkin	Kerrey	Pryor
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So the amendment (No. 1248) was rejected.

Mr. DODD. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 1245

The PRESIDING OFFICER. The question is on agreeing to the Bond-Ford-Coats substitute amendment, amendment No. 1245. The yeas and nays have been ordered. The clerk will call the roll.

The assistant bill clerk called the roll.

Mr. FORD. I announce that the Senator from Iowa [Mr. HARKIN], the Senator from Nebraska [Mr. KERREY], and the Senator from Arkansas [Mr. PRYOR] are necessarily absent.

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

The result was announced—yeas 65, nays 32, as follows:

[Rollcall Vote No. 215 Leg.]

YEAS—65

Adams	Dixon	Mikulski
Akaka	Dodd	Mitchell
Baucus	Durenberger	Moynihan
Bentsen	Exon	Murkowski
Biden	Ford	Nunn
Bingaman	Fowler	Packwood
Bond	Glenn	Pell
Bradley	Gore	Reid
Breaux	Graham	Riegle
Bryan	Hatfield	Robb
Bumpers	Inouye	Rockefeller
Burdick	Jeffords	Roth
Byrd	Johnston	Sanford
Chafee	Kennedy	Sarbanes
Coats	Kerry	Sasser
Cohen	Kohl	Simon
Conrad	Lautenberg	Specter
Cranston	Leahy	Stevens
D'Amato	Levin	Wellstone
Danforth	Lieberman	Wirth
Daschle	McCain	Wofford
DeConcini	Metzenbaum	

NAYS—32

Boren	Hatch	Pressler
Brown	Heflin	Rudman
Burns	Helms	Seymour
Cochran	Hollings	Shelby
Craig	Kassebaum	Simpson
Dole	Kasten	Smith
Domenici	Lott	Symms
Garn	Lugar	Thurmond
Gorton	Mack	Wallop
Gramm	McConnell	Warner
Grassley	Nickles	

NOT VOTING—3

Harkin	Kerrey	Pryor
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So the amendment (No. 1245) was agreed to.

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

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

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 1249

The PRESIDING OFFICER. The question now occurs on the amendment of the Senator from Utah [Mr. HATCH]. 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. FORD. I announce that the Senator from Iowa [Mr. HARKIN], the Senator from Nebraska [Mr. KERREY], and the Senator from Arkansas [Mr. PRYOR] 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 32, nays 65, as follows:

[Rollcall Vote No. 216 Leg.]

YEAS—32

Brown	Hatch	Pressler
Burns	Heflin	Rudman
Cochran	Helms	Seymour
Craig	Kasten	Simpson
Dole	Lott	Smith
Domenici	Lugar	Stevens
Durenberger	Mack	Symms
Garn	McCain	Thurmond
Gorton	McConnell	Wallop
Gramm	Murkowski	Warner
Grassley	Nickles	

NAYS—65

Adams	DeConcini	Metzenbaum
Akaka	Dixon	Mikulski
Baucus	Dodd	Mitchell
Bentsen	Exon	Moynihan
Biden	Ford	Nunn
Bingaman	Fowler	Packwood
Bond	Glenn	Pell
Boren	Gore	Reid
Bradley	Graham	Riegle
Breaux	Hatfield	Robb
Bryan	Hollings	Rockefeller
Bumpers	Inouye	Roth
Burdick	Jeffords	Sanford
Byrd	Johnston	Sarbanes
Chafee	Kassebaum	Sasser
Coats	Kennedy	Shelby
Cohen	Kerry	Simon
Conrad	Kohl	Specter
Cranston	Lautenberg	Wellstone
D'Amato	Leahy	Wirth
Danforth	Levin	Wofford
Daschle	Lieberman	

NOT VOTING—3

Harkin	Kerrey	Pryor
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So the amendment (No. 1249) was rejected.

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

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

The motion to lay on the table was agreed to.

Mr. SIMPSON. Mr. President, I would like to take a few moments to explain my opposition to the family and medical leave bill that has once again captured the attention of the Senate. Speaking as a husband and also as the father of three marvelous children, I am intimately familiar with the added responsibilities and pressures that parents experience when a newborn baby arrives. Being a parent is a joyous and rewarding experience, but there is no denying the fact that meeting the special needs of a newborn infant can be a very demanding and difficult enterprise. I have been in that situation—three times now—and I understand completely the anxiety and concern that can result.

I also know something about the difficulties that arise when there is an

ailing parent or some other kind of illness in the family. My family and I are now caring for my dear dad who is laboring along in his 93d year. His quality of life has diminished greatly in recent years. Caring for him is a labor of love, but it is also a sad and sometimes difficult thing to do. My mother and my wife Ann's mother each are 90. They are special and vital and add much to our lives. At one time or another, almost every family has experienced—or will experience—the anguish and concern that result when a loved one suffers from illness or injury. That is very much a part of life, so it is understandable that there is so much fascination with this subject.

I think we would all agree that parental leave policies are surely an effective and sensible approach to alleviating the pressures felt by many working Americans who have young children and aging parents. If an employer chooses to offer this benefit to its employees—and many do—that is commendable. Parental leave policies can be beneficial to both parties when employers and employees have the opportunity to properly negotiate terms that are appropriate to their own particular circumstances. I applaud these kinds of flexible and responsive management policies, and I believe we should make it as attractive as possible for employers to offer family-friendly policies. Because family leave is such an important and valuable benefit to those who may need it, we should encourage employers to provide this benefit—but we should stop short of another congressionally imposed, inflexible mandate that may arm the very people it was intended to help.

While I support the concept of parental leave, I do strongly object to any proposal that would mandate the personnel policies of private employers. That is exactly what this bill does. It would dictate to employers what benefits they must provide, to whom they must be provided, and under what circumstances they must be provided—regardless of whether or not employees desire the benefits. If there was some overriding Federal interest that was served by regulating the personnel policies of private employers, then perhaps that would justify this action. However, I am unaware of any such Federal interest that exists in this instance and I would strongly suggest that the Federal Government restrict its activities to those matters which are within its proper sphere of influence.

I do understand the great temptation to mandate employee benefits. This new era of tight budgetary constraints is especially painful for the tax-and-spend liberals who are now limited in their ability to create new programs. So what we have now is this effort—almost an obsession for some—to take money out of the pockets of employers

and force them to provide benefits that the Federal Government would like to provide, but cannot afford. By disguising the true costs of these benefits, Congress can pretend to be doing something for the American people without directly raising their taxes.

Many legislators believe that by forcing businesses to foot the bill, they have found the ultimate free lunch. In truth, Americans gain no free lunch when businesses are forced to absorb the cost of Government programs. Let there be no mistake about that. The costs associated with mandated benefits are very real and significant. The cruel trick of mandated benefits, of course, is that their true cost is ultimately borne by the workers they are supposed to help. Higher labor costs not only undermine our Nation's international competitiveness and destroy American jobs, but they also result in higher prices for consumers at home. In addition, the Federal Treasury takes in reduced tax revenues from a slower growing economy. Clearly, there are no winners in this situation.

Let us also be very clear about what this bill does not do. It does not in any way guarantee that employees will receive a larger overall package of benefits. In fact, many employees who have no need or desire for family and medical leave may find themselves worse off than before if their employer has to eliminate existing voluntary benefits in order to make up for the increased costs of providing the mandated benefits. In some instances, anticipated wage increases may even be offset or delayed if employers have to use these resources to provide the mandated benefit. These are not outcomes that most people would associate with good public policy, so I do think we should be honest in presenting the American people with a complete picture of what this bill would accomplish.

Finally, I would like to address this matter of just what is meant by being profamily. Some proponents of this legislation would have the American people believe that anyone who opposes mandated parental leave doesn't care about babies or old people or working families. I find that a tiresome and bombastic argument, but it is not surprising because that is the approach we so often see when the facts or the substance of an issue are lacking. Claiming to be profamily is just about as safe as any position one will ever take in this Chamber and it certainly appeals to the emotions in a way that few others can or ever will.

But I must seriously question whether this is a profamily measure when it would discourage employers from hiring young people of childbearing age. If Congress mandates parental leave benefits, employers will have powerful incentives to discriminate against those workers who are most likely to use the family leave benefit. Women at the

bottom of the economic ladder—the uneducated, the untrained, and unskilled—will bear a disproportionate share of this burden. The experience of European nations who presently mandate generous leave benefits in that women of childbearing age are frequently unemployed or clustered in low-paying jobs. Given this fact, it hardly makes sense for the United States to imitate a policy that has already been demonstrated in other countries to have a negative impact on those people whom it was intended to help.

By mandating benefits, as this bill proposes, Congress would interfere with employer-employee negotiations and the collective bargaining processes that have made this kind of flexibility possible for so many years. I am deeply disturbed by the attitude that goes along with this proposal. What kind of arrogance is it that makes Congress think it knows better than the American people what benefits they may need? I, for one, will not pretend that I am better able than my constituents to decide what is best for them. To do that in Wyoming would be a sure-fire prescription for political pain and trouble.

The fundamental problem with this legislation is that it completely disregards the rather obvious fact that all employees do not have the same needs and preferences. In the real world—as we know it today—a worker who has no children or parents may prefer to have prescription drug benefits rather than family and medical leave. Others may prefer to have child care benefits, tuition benefits, or profit sharing arrangements. That is the beauty of the present system. Employers and employees can negotiate a benefits package that is tailor-made to their particular needs and circumstances. This bill flies in the face of all of that. It is very untimely and wholly unnecessary—but has a very nice political ring to it. But it's still very bad.

Mr. DURENBERGER. Mr. President, I would like to state my support for the Hatch alternative to Senator DODD's Family Medical Leave Act. Although I do not believe that it goes far enough, I think the theory underlying the Hatch proposal has great merit, and therefore I am voting for it.

Under the Hatch bill, an employee would be eligible to leave the workplace for up to 2 years to care for a sick child, and up to 6 years to care for a child, and be granted a preferential right of reemployment. In other words, after an employee gives birth to a child, the employee could take up to 6 years off to care for the child, to nurture the child, to be a parent to the child, and the employer would have to grant the individual reinstatement to his or her job if that job were still available.

In my view, this bill offers a wonderful opportunity for employees to bond with their children. If the U.S. Senate wants to promote families, then I think that we should support opportunities for parents to spend extended periods with their children. It just makes good sense.

Mr. President, I want to point out that although profamily groups support this bill, many who oppose Senator DODD's bill want to use the Hatch bill as a complete substitute. I want to be clear that I am not voting for the bill for that reason. I want to see the Hatch bill as a supplement, not a substitute, to the Dodd family leave bill. There is nothing inconsistent with supporting preferential rehire rights to employees who take time off to be with their children, and supporting 12 weeks of unpaid parental or medical leave for those who need a short period to be with newborn children, or sick parents, sick spouses, or sick children.

Many people cannot afford to take 3 years off from work to be with their children. It is difficult to take that much time off. But then again, many people cannot afford to take 12 weeks of unpaid leave either.

Mr. President, I suggest that in a nurturing society, where we want to support families in times of need, that 12 weeks of unpaid leave in times of great job—when a child is born, as well as in times of trouble—when a relative is sick and needs loving attention, is something that we in America ought to provide.

But let us face it. Twelve weeks is not that long to bond with a child. And 12 weeks is not always enough time to care for a sick child. The Hatch bill allows those who can afford it to spend more than 12 weeks with their children when their children need that time. As a U.S. Senator, I think that both of these bills are profamily, and because I am a profamily Senator, I want to indicate my support for the Hatch proposal, even though it is clear that it lacks the support to become law.

Mr. President, it is unclear at this time whether Senator DODD's 12-weeks' unpaid family medical leave proposal has the strength to override a Presidential veto. I clearly support the Dodd bill, and I voted for it. But if the Dodd bill does not retain veto strength, then my hope is that Senator DODD will incorporate many of the positive attributes in the Hatch bill into the Dodd proposal. Accordingly, we should use the Hatch initiative as an effort to bridge the gap between the parties, so we can move forward toward supporting our most important societal institution—the American family.

Mr. GRASSLEY. Mr. President, the birth or adoption of a child, an ailing parent or loved one. These are family challenges that have confronted most of us at some time in our lives. It seems that the problems facing Amer-

ican families have grown more complex over the last decade. And perhaps this new decade will not offer much relief.

How then can we best assist families, as they cope with crisis or adjust to a new family addition, and still be responsible to their job? I recognize that many families struggle to reconcile the many competing factors in their lives. However, I don't believe that the family and medical leave bill, which we are debating today, provides much relief for the average family.

Providing family and medical leave is a very desirable employment benefit for many people and, certainly employers should be encouraged to make such benefits available. In fact, the practice of providing family and medical leave is common in the private sector. Surveys have shown that over 60 percent of companies grant some type of leave. Recently, the Gallup organization conducted a survey of 950 small businesses concerning family and medical leave policies and found that 95 percent provided family emergency leave on request and 94 percent granted their most recent request for leave.

However, the question today is not whether leave policies are desirable benefits but rather is the use of Government mandates and their associated costs the best means to achieve a worthy goal?

Certainly employers should be encouraged to make such benefits available if there is the need and desire among the employees. However, I object to the Federal Government mandating leave policies. The Federal Government is not suited to determine the individual needs of workers and their families. It should not force its judgment into the employer-employee relationship, by legislating what benefits should be provided.

If the Government begins to legislate benefits, employers may be forced to eliminate, or reduce, voluntary benefits, such as flextime and child care, in order to pay for the mandatory ones. If it does, a dilemma is created. Is mandating one benefit at the expense of other benefits, perhaps more desirable ones, in the best interest of all the involved employees? This bill is an unprecedented attempt to legislate employment benefits. It ignores the diversity of our work force and its diverse needs. Senator BOND has attempted to reach a compromise on this issue, and I commend him for his effort. However, the fundamental issue remains unchanged. His compromise retains the Federal Government mandate.

It seems reasonable that before the Federal Government begins legislating specific new benefits we need to have a clear understanding of what the resulting costs will be to the employee, the employer and the consumer. To date, we do not have firm data on the total cost parental leave would have on the economy. Legislating leave policies

will burden employers, especially smaller and medium-sized businesses with the cost of mandated leave regardless of their ability to absorb such costs. Faced with the additional costs of providing the benefit the employer will have two choices. Either cut back on other benefits and salary, or increase the prices of their goods or services, which will be borne by all consumers.

During this time of economic uncertainty we need to stimulate the economy and create jobs, not burden employers with additional costs. The additional costs associated with legislated benefits will have the opposite effect on the economy. Jobs will be lost and consumer prices will rise. Does this help families as they also struggle to climb out of the recession?

Furthermore, a mandated family and medical leave policy will not assist the working poor, those families that often need the most assistance. This benefit is irrelevant to low-income or single heads of households. Although the provisions of the bill offer them the chance to leave their job, how many will actually be able to afford to lose 3 months salary? Many poor working families struggle to save and few can cover unexpected expenses. These families need assistance. However, this bill doesn't give them the opportunity to take advantage of leave benefits.

Conversely, high-income wage earners can easily afford to forgo 3 months salary. They are more likely to accrue the necessary savings to support their families for 3 months. So, while high-income individuals and families will take advantage of leave benefits, all, including the poorer workers, will be forced to bear the costs. Is this fair?

There is one final reason why I cannot support the parental leave bill—and that is because it gives congressional employees second-class coverage. The bill would allow staff to complain of violations of the bill to internal administrative committees—here, in the Senate, the Ethics Committee. That is the only recourse for congressional staff. All other employees, if they were not satisfied with the administrative proceedings, could proceed in Federal court, but not so for employees of Congress.

This is simple hypocrisy on the part of Congress. I have an amendment on this subject, but I was not allowed to offer it. Senate leadership has indicated that I will be given the opportunity to offer a similar amendment to the civil rights bill. But that still leaves inadequate parental leave coverage for congressional employees.

Well, Mr. President, it looks like many of my colleagues are ready to tell the American people, again, "do as I say, not as I do." We want employers to live by certain rules, but we aren't willing to live by the same rules. I take no pride in the fact that Congress—

with more than 37,000 employees throughout the country—is the last company town in America.

Some of my colleagues will charge that my idea of covering Congress violates the speech and debate clause, or the doctrine of separation of powers. I'm confident it doesn't, and I'll be ready, during consideration of the civil rights bill, to debate this issue fully.

So, Mr. President, for all of these reasons, I regret I cannot support the family and medical leave bill.

How, then, do we assist families as they struggle to raise their children and care for loved ones and earn a living? One way is to put money in their pockets and relieve some of the day-to-day pressure on those struggling to make ends meet. I have introduced the emergency tax relief for families legislation consisting of two bills that would provide much-needed tax assistance to families.

The first bill would expand the young child tax credit to up to \$500 for families with adjusted gross income of under \$50,000 and children under 5 years old.

The second bill would increase the dependent Federal tax exemption from the current \$2,100 to \$7,000 by the year 2000. Specifically, this measure will increase the exemption from the current \$2,100 to \$3,000 by the next tax season followed by approximately a \$500 increase every year until we reach the \$7,000 mark. The nearly \$5,000 loss due to inflation only underscores the growing unfairness to families reflected in the Tax Code.

It is choice and flexibility that assists families. Many families have limited choices because they have limited resources. My tax initiative would provide many families with the resources to make some choices. Flexibility also helps families—whether it is the flexibility to spend their money as they wish or to select the benefits that assist them the most. The family and medical leave bill eliminates choice and flexibility. The goals of this bill are worthy, but mandated leave benefits and their associated costs are not the most efficient means to achieve this goal.

Mr. CRANSTON. Mr. President, I rise today in support of, S. 5, the Family and Medical Leave Act of 1991. I am proud to be an original cosponsor of this legislation, which is aimed at helping families cope with the pressures and problems of combining family responsibilities and needs with the demands of the workplace.

Our Nation's work force has changed dramatically in the past decade. A majority of parents are in the work force today, and they face tremendous difficulties in attempting to meet dual obligations. All too often, rigid and inflexible policies have hindered those efforts. Studies, like one conducted by the Women's Legal Defense Fund, doc-

ument why this legislation is needed. This study, "Working Families Speak: Case Studies of Americans Who Needed Family and Medical Leave," consists of case studies from around the country which detail the tragic stories of family members who lost their jobs because they took time off for the birth or adoption of a child, or to care for a sick relative. This legislation is needed to prevent these situations and to help keep people off the unemployment rolls.

The cost of this legislation has been of great concern to many members of the business community. A study commissioned by the Small Business Administration, however, showed that the net cost to employers of placing workers on leave is always substantially smaller than the cost of terminating an employee. An analysis done by the GAO concluded that there would be little, if any measurable net costs to employers resulting from enactment of this legislation beyond the cost of continuing health insurance coverage during the period of unpaid leave. The GAO estimates the cost of providing medical and family leave to be \$5.30 per eligible employee per year. Many studies have concluded that it is more cost effective to implement a leave policy than to hire and retrain new workers.

There is much that needs to be done to make work and family life more compatible, and we need to continue to develop proposals designed to help families stay together and function better while fulfilling multiple responsibilities. Working men and women need compassionate policies that allow them to function both as part of strong families and as productive members of the work force. This legislation is a step toward assisting families in meeting their dual responsibilities in a manner that is fair to employers and employees alike. It is unfortunate that in the course of consideration of this legislation, compromises were reached which would deny the protections outlined to millions of American workers. Nevertheless, the Family and Medical Leave Act offers an opportunity to do something really constructive to help families function, and I urge passage of this important and greatly needed legislation.

Mr. BRADLEY. Mr. President, I am pleased that the Family Medical Leave Act of 1991 is again before us. I am a cosponsor of the Senate bill and am a supporter of the Bond-Ford-Coats substitute amendment. This act provides up to 12 weeks per year of unpaid job-protected leave for employees for personal or family medical reasons, and for parents upon the birth or adoption of a child up to the age of 18. Businesses with less than 50 employees would be exempt from the bill. This act supports the American family and supports American economic growth into

the 21st century through support of the American work force.

The number of mothers of childbearing age who have entered the work force—as well as the growing number of older Americans in need of family support and care—has made family medical leave an issue of growing need and concern. Nationally, 51 percent of mothers of children under the age of 1 are in the labor force, 66 percent of mothers with school-aged children are in the labor force, 96 percent of all fathers with school-aged children are in the labor force, and over 2 million families provide care for the frail and elderly that live in the communities of our country.

Mr. President, it is a fact of present-day American society that in over 85 percent of households both parents work or a single parent supports the family. I am increasingly concerned that we find ways to reconcile the need to help families care for their children—as well as their aging parents—with the need for working parents to remain productive members of the work force. I believe that the Family Medical Act addresses the concerns of working parents and provides appropriate job security for these families.

The American work force should not be forced to choose between their jobs and caring for their families. I urge adoption of this legislation and I urge the President not to veto it. America's families need this legislation.

Mr. BAUCUS. Mr. President, I do not take this vote lightly. This legislation, the Family Medical Leave Act, has been the subject of debate for many years. I have thought about this proposal from every angle over a long period of time, and my conclusion is to support it.

I represent a State whose economy is overwhelmingly made up of small business. Most are very small, four or fewer employees.

This legislation, because it exempts businesses with fewer than 50 employees, won't help most Montanans. And Montanans have just as great a need for family and medical leave as anyone in any State.

I know the burdens facing small businesses across this Nation. As a member of the Small Business Committee, I have heard countless hours of testimony on the difficulties created by endless Federal regulations that take precious time away from the real work at hand—running a business, contributing to the economy, producing a payroll and a livelihood for employees, and of course paying taxes.

Small businesses are the cornerstone of our country's economy. And yet small businesses often get the short end of the stick. They pay more for health insurance just because they're small. They can't take advantage of many of the benefits available to big corporations, particularly leverage in

purchasing, tax breaks, and access to greater resources.

I am convinced that mandates are not a good idea, as a general rule, because they create and add to the burdens faced by small businesses.

But there are some burdens and responsibilities that must be borne by all, large and small. Minimum wage rates, a safe workplace, and equal employment opportunity, for example.

Mr. President, I support the Bond-Ford compromise because in our society workers and their families need the protections it affords. The family is in trouble, and we need to ease the burdens upon it. There are times when sick children need their parents to be with them. There are times when an elderly person needs their adult children to care for them. Families should be able to take care of their own without the threat of losing their job.

Mr. President, this is a fairness question as well as an economic one. Employers can take leave if they wish, and so should their employees. In addition, every other industrialized nation has a family-leave policy.

As I have said, this compromise will still leave employees of most small businesses without these protections. Should this bill become law, it is my hope that as large companies implement family-leave policies, smaller businesses will see the advantages to their employees—and to their business—of following suit voluntarily.

Mr. ROCKEFELLER. Mr. President, I am proud to be an original cosponsor of Senator DODD's Family and Medical Leave Act. This bill is an important measure to ease the stress and strain American families face. It deserves to become law. The Senate will pass this bill with bipartisan support, and I urge President Bush to take a fresh look at the legislation.

Instead of vetoing this bill to score political points, the President should reconsider his position and sign this reasonable package to support American families.

Balancing work and family responsibilities is an extremely difficult task. As chairman of the National Commission on Children, I had a unique opportunity to travel across our country to discuss the stress families face in our society.

The commission made a site visit to Charleston, WV. During our visit, each commissioner visited a family in their home to talk with parents and children about making ends meet. Such one-on-one visits are truly illuminating. Demands on a parent's time are enormous.

Both parents in these families desperately needed to work, usually full time, just to pay the bills, buy groceries and other necessities. But these parents also worried about health insurance and care for their children. They didn't know what they would do

if their child became seriously ill and needed their care, but they couldn't get time off. They cannot afford to lose their job and the health insurance coverage it provides. No parent should be forced to choose between caring for a child, during a serious medical emergency, and losing their livelihood.

Conflicting obligations and responsibilities cause tremendous stress and impose difficult choices.

The birth or adoption of a child is a wonderful event for families. But it is also a dramatic change and people need time to make adjustments. Parents must revise their schedules and adapt to caring for an infant. Having time to nurture an infant and build lasting bonds is crucial, especially during the first few months of life. Working parents would like to take some time off when they have a child, but they need the security of knowing they can return to their job within a few months.

Likewise, when tragedies occur, families also need time to cope. During a serious illness, families often face a crisis. If both a husband and wife work, who can care for an aging parent during a serious illness? Or who can stay home for a few weeks with a gravely ill child? What happens when a person faces a serious illness and is unable to work for several weeks? In such circumstances, families will be facing huge medical bills, so having a secure job to return to after taking time off to care for a family member is a priority.

Senator DODD's bill offers answers to families struggling to cope with these situations. It is a very reasonable measure to provide 12 weeks of unpaid leave to employees for the birth or adoption of a child. It will also cover individuals who need time off because of a serious personal health problem which makes them unable to work, or people who must take time to care for a seriously ill family member.

Under this legislation, people who need time off could take it with the secure knowledge that their job would be waiting for them at the end of those 12 weeks. During their unpaid leave, their health benefit rights would also be protected.

This bill offers families security and support so that working adults can cope with major family events without running the risk of losing a job.

The legislation also recognizes the legitimate concerns of businesses. Genuine efforts have been made to respond to the concerns of small businesses. I commend Senator DODD for his extraordinary efforts to reach out to the business community. Every reasonable effort has been made to minimize the impact of family leave on small businesses. A bipartisan compromise is within our reach.

I also want to stress the benefits of having a family-leave policy. Companies that already offer family leave report gains in productivity, higher re-

tention rates, and reduction in replacement and retraining costs.

Our families are changing. Many children are raised in single-parent homes. Women have joined the workforce in record numbers. More than 66 percent of married mothers are now looking for work outside the home. Such dramatic changes have increased pressures on families. To respond to these changes, our country needs to develop more flexible workplace policies and practices.

All of our major industrialized competitors—a total of 57 countries—have some type of family-leave policy. Our country stands alone in its unwillingness to encourage business to offer family-leave policies. This should be changed. We should pass the Family and Medical Leave Act, and President Bush should sign it.

Mr. AKAKA. Mr. President, I rise in strong support of the Family and Medical Leave Act of 1991. I am proud to be an original cosponsor of S. 5, and commend the senior Senator from Connecticut [Mr. DODD] for his leadership on this issue. I also want to associate myself with the insightful opening remarks delivered by my friend from Connecticut earlier this afternoon.

Mr. President, I strongly support this beneficial legislation to provide 12 weeks of unpaid leave to care for a newborn or adopted child, a sick spouse, child, or parent, or for an employee's own treatment of a serious illness, protect an employee's job and benefits, and continue health insurance coverage during the unpaid leave. It disturbs me that the United States is the only major industrialized country without a family leave policy. All of our economic competitors, including Germany, Japan, and Canada, have recognized the importance, indeed, the national interest, of helping workers balance occupational and familial responsibilities. This legislation gives substance to the rhetoric of concern voiced by so many of us in support of the American family and traditional family values.

S. 5 is necessary to promote the stability and economic security of families. Demographics show that the baby boom generation is becoming increasingly caught between child care and parent care in three-generation households. Furthermore, the number of single-parent households and those in which both parents work is increasing significantly. Yet, national employment policies have the effect of forcing individuals to choose between job security and their families. Indeed, it is time for the administration to realize the stresses and difficult decisions confronting today's working families.

Mr. President, S. 5 affords the American wage earner a minimal safety net of job security when family needs require their complete attention. Opponents of S. 5 have argued that the bill

mandates costly new benefits, which impose unrealistic and anticompetitive burdens upon the business community. In reality, nothing could be further from the truth. A 1990 survey of business, commissioned by the Small Business Administration, concluded that costs incurred by business with the enactment of S. 5 would be nominal. The SBA study further found the costs of permanently replacing an employee to be significantly greater than those of granting an employee up to 12 weeks of leave. Studies done by the General Accounting Office and other impartial organizations have reinforced the SBA findings.

The Family and Medical Leave Act will also advance the goal of equal employment opportunity for men and women. Due to the nature of the roles of men and women in our society, primary responsibility for family caretaking often falls upon women, and historically affects their careers considerably more than those of men. This reality of life has created the serious possibility that employers may discriminate against employees and job applicants who are women. This legislation will serve to minimize the potential for job discrimination on the basis of sex by ensuring that leave is available on a gender-neutral basis.

Mr. President, most of today's two-parent families are working families. Sixty-six percent of mothers with school-aged children work outside the home. Fifty-one percent of mothers with infants under age 1 are in the paid labor force. In my own State of Hawaii, the percentage of mothers working outside the home is even higher.

In Hawaii, by and large, it is imperative that both parents work outside the home to provide the basic necessities for their families. Our cost of living, the high cost of housing, food, and transportation require both parents to work. In addition, familial and economic realities have resulted in situations where a large number of multigenerational or extended families share a residence. A person caring for a newborn infant, sick child, or elderly parent should not have the additional hardship of worrying about job security or continued health benefits.

Mr. President, I also support the amendment offered by Senator BOND and Senator FORD which provides greater flexibility and safeguards for employers covered under the act. Great care has been taken to incorporate the concerns expressed by employers into the Family and Medical Leave Act. The Bond-Ford amendment would allow covered employers to exempt key employees, and tighten restrictions on part-time workers who are eligible.

By establishing good faith exceptions for employers and streamlining enforcement provisions to parallel enforcement procedures under the Fair Labor Standards Act, the Bond-Ford

amendment would also address the objection raised with the bill the Congress passed last year regarding the possible increase in lawsuits. The amendment also eliminates consequential damages and limits damage remedies to an employee wrongfully denied leave.

Mr. President, this legislation is far from the comprehensive family and medical emergency coverage many of us support, and it is not the onerous, burdensome Government mandate that opponents have attempted to portray. Rather, S. 5 is a responsible, reasonable bill which takes into account the economic realities confronting workers and employers in the American workplace. It represents a good faith, flexible compromise and deserves our enthusiastic support. I urge my colleagues to vote for S. 5.

Mr. LEVIN. Mr. President, I am pleased to be an original cosponsor of the Family and Medical Leave Act of 1991 which would provide 12 weeks of unpaid employee leave for the birth or adoption of a child, or the serious illness of the employee or an immediate family member. This balanced proposal will help our Nation stay in step with the changing needs and structure of the American family.

In the last 25 years, there have been dramatic changes in the composition of the American work force. Most notable is the significant increase in two-earner and single-parent families. Currently there are nearly 29 million two-earner families in the United States and 7.7 million single-parent families. This shift in work trends make today's families particularly susceptible to economic ruin when a parent loses his or her job because of a personal or family illness or the birth of a child.

The Family and Medical Leave Act also covers the illness of an elderly parent. According to the National Council on Aging, nearly two-thirds of the nonprofessional caregivers of elderly, ill, or disabled persons are working women. Informal, unpaid caregiving by family members and friends provides 80 to 90 percent of the care to the elderly.

Employees should not be punished because they need time to take care of their families. Children are born. Family members get sick. Parents should not have to choose between economic ruin and caring for their loved ones. It is time to support public policies which promote the interests of the family.

As a member of the Senate Small Business Committee, I am particularly supportive of the proposals put forth in the Dodd-Bond amendment to this legislation. This amendment seeks to further lessen the burden on smaller businesses and make implementation of this leave a smoother procedure. For example, the Dodd-Bond amendment would implement a key-employee exemption which would enable employers to exempt the highest paid 10 percent

of the employees from coverage of this act. This would decrease the odds of smaller businesses losing upper level employees whose absence could greatly disrupt the flow of business. The Dodd-Bond amendment would define eligible employees as those who have worked 25 hours per week over the previous 12 months. The original proposal required only 20 hours per week over 12 months.

It is important to note that this legislation, because it applies solely to businesses with more than 50 employees, exempts 95 percent of our Nation's businesses. This is a dramatic figure. Further, it has been reported the Family and Medical Leave Act would impose minimal cost to the 5 percent of businesses it does cover. In 1989, a General Accounting Office study estimated that the annual cost of this bill would amount to only \$5.30 per covered employee. In a similar study, the Small Business Administration [SBA] stated that "the net cost to employers of placing workers on leave is always significantly smaller than the cost of terminating an employee." The SBA therefore concluded that the costs to small businesses would be relatively small. Studies conducted in States which have already enacted family leave laws have shown that employers in these States have been able to adhere to these laws at minimal cost with few problems in implementation.

Mr. President, this legislation strikes the appropriate balance between the humanitarian needs of the family and the business needs of the employer. It should become law.

Mr. THURMOND. Mr. President, I rise today in opposition to S. 5, the Family and Medical Leave Act of 1991.

Over the past few years, the Congress has debated various proposals which would mandate employers to provide several weeks of family and medical leave for the birth or adoption of a child, of for the care of a sick family member. While family and medical leave is desirable and should be encouraged, a Federal mandate in this area—as this legislation would require—does not take into account the varying needs and circumstances of employers and employees.

One employee may want a family leave benefit, while another may prefer to choose a different one from among the wide range of benefits now being offered by many businesses. I am concerned that this legislation could hamper the ability of employees to freely choose benefits which best meet their individual needs.

It is important to note that the side offerings of employee benefits in the late 1980's and early 1990's have resulted from the energy, vitality, and flexibility of the private sector. These offerings demonstrate the ability of American business to respond to a changing market and a willingness to

accommodate the needs of a diverse work force.

Businesses should continue to have the freedom to respond to the market, and not have mandates for benefits. From the very formative years of this Nation, the free market has played a vital role in the private sector and employer/employee relations. Let us continue to build on this freedom.

Because I believe S. 5 stifles these market principles, and the rights of individuals to choose among different benefits, I intend to vote against this legislation.

●Mr. HARKIN. Mr. President, I rise today to voice my support for S. 5, the Family and Medical Leave Act of 1991, and to urge my colleagues to do the same. I am pleased to have been an original cosponsor of the bill and would like to express my appreciation to Senator DODD for the work he has done to focus on the needs of children and families.

Since World War II we have witnessed tremendous demographic and societal changes in our country. In more than 85 percent of U.S. families, either both parents or a single parent are employed outside the home; two-thirds of mothers with children under the age of three work outside the home; and 24 percent of all children grow up in single parent families. The work force has changed dramatically since the 1950s when in most families, only the father worked outside the home. This bill not only recognizes the many changes that have happened to families and children but considers the responsibilities many Americans have in providing care for older relatives. This is profamily legislation for the 1990s.

There currently is a patchwork of State laws and employer benefit plans which provide family and medical leave benefits, but no comprehensive national policy. We have strong and convincing data that family and medical leave policies make good business sense with reduced employee training costs and increased worker productivity. However, the coverage is disparate.

This bill is a modest approach and balances the interests of business with the needs of families. Briefly, the bill offers job protection and continues health insurance benefits for workers during times of family crisis. The legislation provides up to 12 weeks of unpaid leave for childbirth, adoption, or serious illness of an immediate family member. Small businesses are exempt from providing coverage and the General Accounting Office estimates the annual cost will be about \$5.30 per employee. This is a small price for the peace of mind provided for workers trying to balance work and family responsibilities.

If you listen to the arguments against family and medical leave they sound familiar. Opponents argue that

the leave will be difficult to administer and will cost businesses too much money. These arguments sound familiar because they were the same arguments used to oppose enactment of child labor laws, minimum wage and the 40-hour work week.

We now have data from a recent Oregon study of parental leave programs in that State which disputes some of the arguments against this legislation. In 1988, Oregon enacted legislation that offered unpaid parental and pregnancy leave for workers, with an exemption for small business. Since that time there have been only 34 complaints from employees who were denied leave benefits. Only 12 percent of employers found the leave policy difficult to implement, and 88 percent said they did not have to reduce other benefits in order to provide the protection; 94 percent of workers have endorsed the law. The success of the parental leave program prompted the Senate of Oregon to expand the program to include family medical leave, making it comparable to the legislation we are considering today. If it works for Oregon, it will work for the country.

More than 160 organizations, including the National Parent Teacher Association, the Children's Defense Fund, and the National Association of Area Agencies on Aging, have endorsed the Family and Medical Leave Act and have worked for enactment of this important legislation. I urge my colleagues to vote to provide this much needed and long overdue protection for American workers and their families.●

Mr. HATFIELD. Mr. President, I rise today as a strong supporter of S. 5, the Family and Medical Leave Act of 1991. Traditionally, I have been reluctant to support congressional action to impose new mandates on the business community. However, I have few reservations today. I have been a cosponsor of this legislation in each of the last three sessions of Congress because I believe a national family leave, policy is in the best interest of this country.

There are many compelling reasons for supporting family leave not the least of which is the activity in my own State of Oregon. Oregon has adopted a broad family leave policy and has been a leader in the implementation and promotion of national parental leave legislation. Oregon's current law covers employees who work for companies with 25 or more full- or part-time employees and provides for 12 weeks of leave. Oregon's experience thus far has been very positive. Benefits have not been reduced, companies have not gone bankrupt or had massive layoffs, and parents have returned to work. In some instances we have even seen employers expand benefits beyond what the current law requires. Due to the success of parental leave in Oregon, our State legislature recently amended the law to include medical leave as well.

The States have always been excellent laboratories for good public policy. This case is no exception. Oregon's model proves that family leave is not a fiscal disaster but a necessary part of our national effort to support America's families. I believe the time has come for us to put our families first, not because it is politically popular but because it is critical to our continued development as a compassionate nation. We must move this legislation to the top of the agenda of national priorities.

Mr. President, I have personally seen the benefits of family leave. I view my staff as my extended family and have always placed a high priority on the human needs of each individual in my employ. While I have normally offered extended leave periods to my staff, recently I have taken this a step further by providing paid leave for the first month of leave in most cases. I am also flexible in making further arrangements if one of my "family members" suffers from a catastrophic illness or injury. I have adopted this policy for one simple reason—to reinforce the belief that one's family should not be held hostage to an individual's paycheck.

We all know that the American economy is dependent on its working families. And the work force is changing: 66 percent of mothers with school-aged children are in the paid labor force; 51 percent of mothers with infants work outside the home. Women accounted for more than three-fifths of the increase in the civilian labor force since 1979. These demographics force us to alter our workplaces to meet the needs of America's new work force.

America is one of the few industrialized countries which does not have a comprehensive approach to providing leave to care for other family members as well as leave to workers who need to recover from their own illness or injury. With the exception of the United States, most of the industrialized countries, including many third world countries, 135 in all, have some form of parental leave. For example, Austria, Japan, and Sweden all provide some form of paid parental leave. Rather than viewing these policies in terms of their minimal fiscal constraints, these countries have clearly put their priority on strong families. They can't help but benefit from the impact of their decision.

If we as legislators expect to help many of this Nation's poor break the cycles of poverty, how can we deny them the opportunity to care for a sick loved one or give birth to a new child without the threat of losing their jobs? Medical leave is crucial to low-income workers who are economically vulnerable to injury or illness. I need not remind this body that single-parent families are on the rise in this country. Many families are not only dependent

on a single individual's paycheck but also as the sole provider of health insurance and parenting. The opportunity to care for an ill loved one rather than risk financial catastrophe is a serious concern for many of these families. It is time that we give the American workers the opportunity to stay off welfare and unemployment rolls and remain on the company payrolls. It is time we put people first.

I know that this legislation is not a cure-all to many of the problems and concerns which I have raised today. However, this is a step in the right direction. I won't argue that 12 weeks is enough time for a mother and a newborn to bond properly. I won't argue that 12 weeks is enough time to care for someone who is suffering from the devastating effects of Alzheimer's disease or injury. However, I do feel that an acceptable balance can and has been reached between the fiscal impacts of a national leave policy and the needs of our families. I am proud of the work done in my State on this issue and I strongly believe the scepter is now appropriately passed to the Congress.

Mr. MCCONNELL. Mr. President, my vote today on the Bond substitute to the Family and Medical Leave Act of 1991, also known as S. 5, is not so much a reflection of my views on the merits of the legislation as it is an expression of concern about the bill's potential effects on an already feeble economy.

I have nothing but respect for the principal author of this substitute amendment, my colleague from the State of Missouri, and I believe his efforts to find a compromise on this issue deserve the strongest commendation.

Further, I have been a supporter of generous family and medical leave policies, not only for the private sector, but for the Government as well, including my own Senate offices. As an employer who has strived to accommodate my employees' family needs, I have found it absolutely essential to have flexibility in arranging mutually agreeable extended leaves of absence.

Just as no two personal circumstances are the same, no one solution can easily embrace them all. Some employees need a few months at half pay, some need to work at home, some need to work part time; and as long as the employee has done a good job in the past, any reasonable employer will do his or her very best to accommodate that unique need. But with family leave, one size does not fit all.

Nevertheless, not all employers are reasonable; and because of that, I understand the reason for the Family and Medical Leave Act. We need to protect employees, and strike a balance between the needs of the marketplace and the needs of individuals who work in that marketplace. That was my reason for supporting similar legislation

last year, although no recorded vote ever was taken on the issue.

Nevertheless, we are living in markedly different times from those which accompanied the debate on family leave in past Congresses. In previous years, this country enjoyed an era of unprecedented economic expansion: Businesses were sprouting up, new jobs were being created, real income was rising, and unemployment was falling.

In some sense, we could afford to consider new workplace mandates while our economy was expanding. Businesses, it seemed, could absorb all the added costs imposed by congressional fiat. So, for the last several years, Congress has piled on more regulations, new obligations, free benefits, and higher taxes—and for a while, the economy kept growing despite it all.

Today, however, we are mired in a continuing recession. Our Nation's economy is in feeble health, its fiscal arteries clogged by tax increases and massive regulatory burdens. Compare where this country is today with where we were only a year ago: Last June, when we considered a family leave bill similar to the package before us today, the unemployment rate nationwide was only 5.3 percent. A year later, total unemployment spiked at 7 percent and has dropped off only slightly since then.

In each of the five quarters since the family leave bill was passed by the Senate last year, the U.S. gross national product has increased by less than 2 percent per quarter. In fact, in three of those five quarters, the GNP has actually shrunk. Factory orders are down, construction spending is down, durable goods orders are down, and no one has the confidence to lend money to stimulate a recovery.

My home State of Kentucky has taken it particularly hard on the chin in these difficult economic times. Layoffs have spurred the unemployment rate up to 7.4 percent in Kentucky. In June 1990, when we were discussing this legislation, Kentucky's unemployment rate was 6.1 percent.

Some Kentucky businesses have simply shut their doors. And all of the other business people with whom I've met over the last several months tell me they simply cannot afford another cost or requirement or burden or regulation. They are on the brink. My concern is that any further mandate—even one that I might support in better times—could be the straw that breaks the camel's back in such extremely fragile economic circumstances.

The top priority of this Congress and the administration must be to get the economy back on its feet. Only then, when people are back at work, when more jobs are being created again, and when this country's fiscal health is restored, then we can look at proposals like this one to make jobs better and workers' lives easier.

I am looking forward to that day as much as everyone else in America. Until then, however, I cannot support any massive work force mandates like the measure before us today. Too much has changed and too much is at risk with regard to our Nation's economic future.

As a gesture of good faith, however, I support the substitute amendment offered by Senator HATCH, which requires firms to give rehiring preference to employees who take up to 6 years of leave for family or medical reasons. This measure advances the same concerns of the underlying bill—as well as the bill I supported last year—without placing an unsustainable burden on businesses and the economy. My hope is that Congress will take this affirmative step in the right direction, and then revisit this issue when the economy is on a sounder footing.

Mr. President, I yield the floor.

Mr. METZENBAUM. Mr. President, I admit to some mixed emotions about the subject of today's debate. On the one hand, I wish to commend Senator DODD for his steadfast leadership on this critical issue for working families. Once again, I am pleased to be an original cosponsor of S. 5, the Family and Medical Leave Act.

But, at the same time, I am frustrated that we have to repeat this debate this year. This legislation is long overdue. Frankly, it should have been signed into law last year.

Regrettably, President Bush vetoed this carefully tailored measure last year. Instead of responding to the needs of America's working families, he once again sided with the high-priced corporate lobbyists.

We need this legislation to keep pace with profound changes in the American working family. The once-typical single wage-earner family is rapidly vanishing. Less than 10 percent of American families fit that model. Instead, today's typical family depends on two incomes to survive. Nearly 60 percent of American women are now in the work force.

But workplace practices have not kept pace with this revolutionary change in the makeup of the work force. Workers are all too often forced to choose between a job and a family. This bill allows workers to have both—job security along with the time needed to care for a family member. No worker should lose a job because he or she needs to take a few days or a few weeks off to care for a newborn infant, a sick child, or a dying parent or spouse.

Let me take a moment to emphasize the need for the bill's elder and spousal care provisions. We can all recognize the importance of providing leave for parents of newborn or adopted children. That issue goes to the heart of making our young, working families as strong as possible.

But we must also recognize the significance of granting the same protection to mature, working families, by providing leave for spousal or elder care. The statistics demonstrate that older workers, particularly older women, increasingly have primary responsibility to care for all family members—older parents, spouses, and children. A significant percentage of these working caregivers have had to quit jobs, rearrange work schedules, reduce work hours, or take time off without pay to fulfill caregiving obligations. They need the protection of this legislation as much as young parents.

This year, as in years past, we have again heard business lobbyists make shrill predictions that this bill will ruin our economy and mark the end of capitalism as we know it. We have heard that song as a reason to oppose Social Security, minimum wage, child labor, civil rights, plant closing, and many other types of decent, progressive legislation. It is a tired refrain, one that has been proved false as often as it has been raised.

In this instance, the business lobbyists' complaints are ridiculous. First, we have already exempted 95 percent of the businesses in this country. Not 25 percent, not 50 percent, but 95 percent. That exception nearly swallows the rule, leaving over 60 percent of the work force unprotected. I do not believe that such a broad exemption is warranted, but I accept with reluctance that it was necessary as part of this compromise.

Second, let's remember the most stark fact about this bill: The leave it provides is unpaid. There is zero payroll cost. The only cost a covered employer would face would result from the continuation of health insurance coverage. The U.S. General Accounting Office estimates that cost to be only \$5.30 per employee per year. I am sure the business community has paid each of their lobbyists a lot more than five bucks to lobby against this bill.

Moreover, that is a paltry sum compared to what we lose every year in production, training costs, and public assistance expenditures due to the lack of a national leave policy. The Institute for Women's Policy Research puts this number at \$715 million a year.

So let us pass this legislation now, before it gets watered down beyond recognition. This profamily legislation is a matter of basic human decency. I urge my colleagues to support it, and I urge the President to come to his senses and sign it when it comes across his desk. To those in the business community who so vehemently oppose it, I would only say, "brother, can't you spare five bucks?"

Mr. MACK. Mr. President, the family and medical leave bill which we are discussing today is a classic example of legislation that will have the opposite effect of what its authors intend.

The bill's objective is clear. It attempts to give working families the opportunity to take unpaid leave to attend to family and medical emergencies, while retaining the ability to return to those same jobs after the emergency is over. It's a great concept. But the method is just plain wrong.

If I thought for one moment that this bill would truly help families, I would enthusiastically support it. The truth is that the Family and Medical Leave Act displays a remarkable lack of understanding of how the world works.

If Congress mandates that businesses have to provide unpaid leave for employees, two things will happen. First, businesses will employ relatively fewer of the kinds of people who are likely to need to take family and medical leave. This certainly means that women of child-bearing age will be hurt, not helped by this bill.

The second effect is that marginal businesses will cease operating or hire fewer workers than they otherwise would. It is certainly true that losers here will be lower skilled workers.

Mr. President, this bill is not only the product of illogical thinking, but it is a symptom of the antigrowth agenda of the U.S. Congress.

Nobody on this floor disagrees with what this legislation intends to do. I would love to see American workers wealthy enough to be able to take unpaid leave for all sorts of family and medical emergencies. Even more, I'd love to see American businesses healthy enough to be able to provide paid leave, not just unpaid leave, for their workers.

But those circumstances will not occur so long as Congress refuses to enact legislation that generates economic growth and stimulates job and wealth creation. With rare exceptions, Congress has been consistently antagonistic toward the kinds of policies which improve the economic well-being of American families.

Congress has no excuses. It is no secret that if we reduce tax and regulatory burdens, the U.S. Congress can do much more to produce an economic climate where families can afford to deal with medical and other emergencies.

But we do not enact these kinds of policies. Congress has consistently resisted attempts to pass progrowth legislation. Congress has refused to lower the capital gains tax rate; ignored the presence of the confiscatory Social Security earnings test; failed to assure that the personal exemption kept pace with inflation; and stubbornly raised new taxes and tax rates in the misguided belief that only the wealthy will be affected. If Congress were to adopt a positive attitude toward the creation of family wealth, even the concept of a Family and Medical Leave Act would be redundant.

But until Congress ceases its vendetta against wealth creation, the cir-

cumstances that have spawned the Family and Medical Leave Act will continue. I cannot and will not support this misguided legislation.

**FAMILY AND MEDICAL LEAVE ACT WILL PROVIDE BADLY NEEDED HELP TO OUR FAMILIES**

Mr. KERRY. Mr. President, it has been said that the only constant is change. Nowhere is that more completely the case than in and with respect to the American work force. We have witnessed one profound change after another. Many—indeed, arguably most—of the change has been to the immediate benefit of employees, as work environments and working conditions have been made healthier, safer, and more pleasant. Laws such as minimum wage and collective bargaining have offered an important measure of equity and minimum economic standards; the majority of employees have come to be covered by health insurance and other benefits provided and partially to fully funded by employers.

But in some respects the change in the complexion of the work force itself, mirroring other cultural, social, and economic movement, has outstripped the adjustments to accommodate those changes.

That surely is true in the case of the dramatic increase in the incidence of single-parent families with children, very significant increase in cases where both parents in a family work outside the home, and increasing numbers of cases where families find themselves with partial or complete responsibility to provide care for elderly or infirm relatives.

Where both parents work, the case in a majority of American intact families, or where a single parent works, an illness of any family member or the birth of another child often forces Americans in the work force to make an excruciating choice between meeting the needs of their families and their need for employment. While there has been a steady increase in the quantity and quality of employer-provided fringe benefits, so that a majority of American workers are provided some form of medical insurance, and many employers offer some form of family or medical leave, there is no uniformity across industries or across the Nation.

Most employers who offer any form of family or medical leave limit its applicability to complications for the mother or child related to child birth. It has been reported that only 16 percent of employers have a policy permitting a worker to take leave—even leave without pay—in the case of an ill child or other family member, and only 14 percent of employers have a policy permitting a worker to take leave in the case of an ill parent.

Mr. President, this is causing untold grief for untold millions of Americans. The anguish of illness is compounded by the anguish of making the untenable choice between caring for family

members or working. When one realizes that the United States is the only industrialized nation in the world without a national family leave policy, I can see no justification for the Congress not acting immediately to establish such a policy.

Doing so is not just beneficial for American workers and their families. Aiding families in this way will enable them to be stronger. It is probable that workers from such families, experiencing less stress and fewer untenable choices, will be a more stable and dependable work force with higher productivity. Businesses will not experience, with nearly the current frequency, the loss of the experience and knowledge represented in long-time employees who have chosen their families when forced to choose between them and their jobs.

Particularly with the adoption of the Bond-Ford substitute today, I am satisfied that the bill on which we are voting has been crafted in such a way that the legitimate and important concerns of the business community have been addressed responsibly:

Small businesses with 50 or fewer employees have been exempted—an exemption which, incidentally, covers 95 percent of employers in the Nation.

Employee coverage by the bill's provisions is extended only to those who have worked 1,250 hours over the previous 12 months—or 25 hours per week on average—and for at least 12 months.

Enforcement procedures have been simplified and streamlined to parallel longstanding Fair Labor Standards Act procedures.

All consequential damages are eliminated and damage remedies are limited to actual losses. Employers are permitted "good faith" exceptions when they have reasonable grounds for believing they have not violated the law.

Employees must provide 30 days notice for foreseeable leaves for birth, adoption, or planned medical treatments, and must provide medical certification justifying the need for leave for the employee's or immediate family member's illness.

Employers may recapture health insurance premiums paid on behalf of employees on leave if the employee does not return to work other than in exceptional circumstances.

I wish to offer my sincere compliments to the senior Senator from Connecticut, Mr. DODD, for his tireless efforts to develop this legislation and bring it to this point of Senate passage. I extend compliments and appreciation to the distinguished Senator from Missouri, Mr. BOND, and the distinguished Senator from Kentucky, Mr. FORD, who labored with the Senator from Connecticut to produce the compromise which will achieve significant bipartisan support today.

Mr. President, this Nation needs this legislation. American families need

this legislation. This is no longer a cutting edge or frontier issue in the developed world. We are, regrettably, virtually the last in line to take such a step. It has been too long in coming, but, truly, it is better late than never.

I enthusiastically endorse the bill as amended today and urge President Bush to accept the idea that its time has arrived and permit his administration to work with its proponents in both the Senate and the House to complete action on the legislation in the very near future.

Mr. CHAFEE. Mr. President, I am pleased to support the compromise amendment offered to the Family and Medical Leave bill by my distinguished colleagues, Senators BOND, FORD, and COATS.

Senator BOND and Senator DODD, the principal sponsor of S. 5, should be congratulated for their efforts to work out an agreement on the Family and Medical Leave bill. Every good piece of legislation requires some tradeoffs, some compromises, and today's final product is the result of many years of hard work.

I have supported parental leave legislation for a number of years. Back in the 100th Congress, I joined my friend from Connecticut, Senator DODD, as a principal cosponsor of the Parental and Medical Leave Act of 1988. Although that legislation has evolved considerably over the years, today's bill attempts to address the same fundamental issue: how to balance an employee's job responsibilities with his or her family obligations.

The past quarter century has seen dramatic changes in the makeup of the Nation's work force. Women have entered the work force in record numbers. More and more children are being raised by single parents. And in 9 out of 10 two-parent families, both parents work outside the home—usually out of economic necessity.

S. 5 would provide employees with 12 weeks of job security in the event that a worker must request leave to care for a newborn, a sick child, or an ailing parent. It would help ease the fears of employees who fear dismissal if they take an unpaid extended leave due to a family emergency. In short, it is a good bill that responds to the changing needs of the American family and the American worker.

This amendment makes a number of changes to the bill, and goes a long way toward addressing the concerns of the Nation's business community while reflecting our awareness of the need for employees to help care for members of their families.

The compromise package makes three significant changes to S. 5. First, it limits employee eligibility to those individuals who have worked 1,250 hours, or an average of 25 hours per week, over the previous 12 months. Second, it would permit employers to

exempt key employees from coverage under the act. And third, it would prevent abuse of the legislation by requiring employees to repay health insurance premiums paid during the leave if that employee does not return to work at the end of his or her leave.

I urge my colleagues to support this compromise amendment, and I look forward to full Senate approval of S. 5.

Mr. LAUTENBERG. Mr. President, I rise in support of S. 5, the Family and Medical Leave Act of 1991. As a cosponsor of this bill, I strongly believe that parents should not have to choose between their economic livelihood and staying home with their new or sick babies.

Mr. President, it is about time that the Congress enact a family and medical leave bill. At least 75 countries all over the world have already enacted such laws, including all Western industrialized countries. Furthermore, 15 States, including my State have recognized the burden on today's working families and have passed family and medical leave legislation.

Mr. President, we live now in a new world. Recent data show that over 80 percent of working women are in their prime childbearing years. In addition, less than 10 percent of all families are two parent families where the father is the breadwinner and the mother stays at home to care for the family. The Congress needs to recognize these remarkable changes in our society and pass this legislation to provide minimal job security to new parents and people who are forced to deal with family medical emergencies.

Mr. President, adjustments in the bill have been made to address the concerns of business. The bill exempts small businesses with fewer than 50 employees from the provisions of this bill. Key employees, the highest paid 10 percent of the work force, may be excluded by employers. Also, employees must have worked 1,250 hours over the previous 12 months in order to be eligible. This exemption applies to 95 percent of all employers. Secondly, a recent survey of business executives by the Small Business Administration found that granting an employee unpaid family and medical leave costs less than terminating an employee. The study showed that the cost to a business of granting a worker leave ranged from 97 cents per week to \$97.78 per week compared to a total of \$1,131 to \$3,152 to replace a terminated employee.

I understand that the President has threatened to veto this legislation. I urge my colleagues to pass this bill and override a veto if necessary to bring minimal security to working parents so that they do not have to choose between providing loving care to their family and maintaining economic livelihood.

Mr. BIDEN. Mr. President, today the Senate will pass legislation to estab-

lish a national policy for family and medical leave. This is landmark legislation that reflects the changing nature of the American work force.

By choice and by economic necessity, the one-wage earner family is no longer the norm. Gone are the days of father as breadwinner, mother as bread maker. Gone are the days when the men went to work and the women cared for the children. Those were the days of my childhood; but they are not the days of today's children.

Two-thirds of all mothers with children under the age of 3 now work outside the home. Some choose to; some have to. The reasons may vary, but the result does not. With more women working and an increasing number of single-parent households, a national family and medical leave policy is a necessity.

The shift away from the one-wage earner family means that, today, a parent may not be able to be at home in the crucial early days of childhood and during times of great family need. Economic conditions in the 1990's have effectively prevented this needed care from being available. That's what this legislation is all about.

The Family and Medical Leave Act gives families in need a chance to care for each other without having to risk economic disaster. It will provide up to 12 weeks of unpaid leave to care for a newborn child or a seriously ill family member, continue the employee's health benefits, and guarantee that person his or her job upon return.

But in looking at this issue, another lesson is clear, one that Senator HATCH raised this afternoon: 12 weeks of leave may simply not be enough, particularly with newborn children. That is why I find Senator HATCH's alternative proposal—allowing up to 6 years of family leave and 2 years of medical leave—interesting. Unfortunately, it has been offered as an either/or option. Either we vote to grant employees up to 6 years of family leave without a protected job, or we vote to grant 12 weeks of leave with a guaranteed job. Yet, I am not so sure these proposals are in conflict.

The intent of the Family and Medical Leave Act is to give parents the widest range of choices. That is why I would like to see us examine combining these proposals—allowing short unpaid leave with a guaranteed job for those who need short term leave or can afford no more; and at the same time allowing lengthy leave for those who can and want to stay at home with their children for several years. I am not aware of any attempts to combine these proposals, and there are sure to be complications with such a policy. However, it appears to be an approach worth further study.

One of the concerns raised about the Family and Medical Leave Act were fears of tremendous costs this bill

could impose on American businesses. I will admit that this is not a whimsical worry; businesses have legitimate concerns. It should be noted, however, that the smallest of businesses—those with less than 50 employees—are exempt from this bill. And for the larger businesses that are covered, the wildest estimates of cost will not be realized.

An authoritative study on this matter was undertaken by the General Accounting Office [GAO] in 1989. The GAO estimated the cost to employers to be \$188 million per year. With the recent increase in health insurance premiums—which employers must continue to provide during periods of leave—the total cost of this bill has increased to an estimated \$244 million per year. In the aggregate, the numbers are large. But, it amounts to just \$5.30 per employee per year. A survey by the Small Business Administration found similar results. The cost to all businesses—before excluding the smallest of businesses as this bill does—would be \$6.70 per employee per year.

In 1988, one of the largest companies in the United States, DuPont, surveyed the needs of its employees. The results were not surprising. The survey revealed what the proponents of family and medical leave have recognized all along: that workers place a high priority on the ability to balance work and family. This study should be a signal to business that times have changed. The concerns of today's employees are different from those of a generation ago, and America's companies, to ensure a productive work force, need to recognize that change.

Yet, a 1990 study of 253 corporations found that 72 percent did not offer parental leave, and 62 percent of those said they would only offer the benefit if the Government required them to do so. As for employees, the Bureau of Labor Statistics reports that only 37 percent of females in companies with over 100 employees and just 14 percent of females in companies with less than 100 employees are offered a parental leave benefit. For men, the numbers are much smaller.

I recognize that American businesses have concerns about the effect on their operations. But, this bill represents a good compromise.

American families and America's children have concerns, too. They are looking for assistance to avoid an unpleasant, and truly unnecessary, choice between their jobs and their families. Very few steps could be taken by the U.S. Senate that would serve our Nation's families more than this legislation. I urge my colleagues to vote for this bill.

#### WISCONSIN FAMILY LEAVE

Mr. KOHL. I thank my colleague for his willingness to help me clarify the intent of this Federal legislation. As he is aware, the State of Wisconsin already has in place the Wisconsin Fam-

ily and Medical Leave Act (section 103.10 Wisconsin Stats and Wisconsin Administrative Code 86.02). There is some concern with the way in which this and other Federal legislation impacts that law and I would appreciate the Senator's understanding of that.

Mr. DODD. Wisconsin has certainly been a pioneer in providing these benefits to employees and I would be happy to respond to the Senator from Wisconsin's questions.

Mr. KOHL. A recent ruling by a Wisconsin administrative law judge held that the provision of Wisconsin FMLA enabling employees to substitute accrued paid leave for unpaid family leave was preempted by ERISA as to an employer's ERISA plan that paid out sick leave. Is it the intent of the sponsors of this bill that the provisions of the Employee Retirement Income Security Act of 1974, as amended, shall not prevent the substitution of accrued paid leave for unpaid family leave, regardless of the source of funding for the paid leave?

Mr. DODD. Yes. The Bond-Ford substitute provides that either an employer or an employee may elect to substitute accrued paid leave for unpaid Family and Medical Leave. The provisions of this Family and Medical Leave Act preempt ERISA. The authors of the legislation have no intent of undercutting the family and medical leave laws of States that currently allow the provision of substitution of accrued paid leave for unpaid family leave, regardless of the nature of the family leave. Certainly, under Wisconsin law, if an employer or an employee opts to substitute accrued paid leave for the purposes of unpaid leave to care for a newly adopted child, it would be our intent that they be allowed to do so.

Mr. KOHL. Another recent decision by a New Jersey lower court held that the provision of New Jersey's State leave legislation requiring that employers continue their contributions to workers' medical coverage during leave is preempted by ERISA. Is it the intent of the sponsors of this bill that the provisions of the Employee Retirement Income Security Act of 1974, as amended, shall not prevent the continuation of employers contributions to workers health insurance coverage during family and medical leave?

Mr. DODD. Yes. The Family and Medical Leave Act also requires that employers continue their contributions to workers' medical coverage during leave. It is the intent of the sponsors of this bill that the provisions of this legislation serve as a floor, not a ceiling.

Mr. KOHL. Is it the intent of the bill sponsors that the provisions of ERISA would not preempt any provisions of State family and medical leave provisions?

Mr. DODD. Yes, as Federal legislation enacted subsequent to ERISA, it is

certainly our intent that the Family and Medical Leave Act supercedes ERISA to the extent that ERISA preempts State leave law provisions. Enactment of the Federal FMLA will still allow States to provide even more generous leave protections for workers. The FMLA makes clear that State leave laws that are at least as generous as the Federal legislation are not preempted by ERISA, or any other Federal law.

Mr. KOHL. I thank my colleague from Connecticut. I understand from his remarks that should the State law provide, employers and employees would retain the right to substitute accrued paid leave during their family and medical leave, regardless of the purpose of that leave. I thank my colleagues.

#### MEASUREMENT OF HOURS OF SERVICE ELIGIBILITY

Mr. BOND. The purpose of section 101(2)(C) is to require use of legal standards and principles applicable to section 7 of the Fair Labor Standards Act, as developed in relevant judicial precedent, and where needed for clarification, Department of Labor regulations, to determine whether an employee has worked the minimum number of hours required for eligibility in this subsection even for employees otherwise excluded or exempt from Fair Labor Standards Act coverage. This section is further intended to incorporate, for the purpose of measuring employee family leave eligibility, the longstanding section 7 work measurement rule that "hours of service" include all hours "controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer", including "all the time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place." Applying section 7 standards and principles to the legislation under consideration here will clarify any uncertainty about employee eligibility regarding the latter. I refer my colleagues to the U.S. Supreme Court cases cited in Labor Department section 7 rules at 290 C.F.R. 785.7, since these precedents and rules have been used successfully for well over 40 years in measuring employee eligibility for other Federal labor law benefits like overtime pay which are linked to hours of service.

Mr. DODD. Will my distinguished colleague yield for a point of further clarification?

Mr. BOND. I yield for such purpose.

Mr. DODD. It is my understanding that certain airline industry employees such as flight attendants are exempted from coverage by section 7 and other Fair Labor Standards Act provisions. It is also my understanding that defining and measuring hours of service for such employees varies greatly among the carriers for compensation purposes,

especially since many of these employees are paid according to the amount of time they are in the air even though their work also requires them to perform ground duties. Is it the Senator's intent that section 7 work measurement principles shall apply to these and other employees for the limited purpose of deciding family and medical leave eligibility notwithstanding such employees' exclusion or exemption from section 7 or other FLSA provisions?

Mr. BOND. Yes, that is the intent. Section 7 principles would apply to employees such as airline flight attendants for all time they must be on duty, in-flight or otherwise, without regard to their exemption or exclusion from section 7 itself on any other Fair Labor Standards Act provisions.

#### ATTORNEY'S FEES AND EXPERT WITNESS FEES UNDER FMLA

Mr. DODD. In reviewing section 107(a)(3) of the substitute, I note that a court shall, in addition to any judgment awarded to the plaintiff, allow a reasonable attorney's fee, among other fees and costs, to be paid by the defendant. It is my understanding that this particular provision is modeled after section 216(b) of the Fair Labor Standards Act, and therefore should be interpreted in the same way as the FLSA. According to the Federal courts, the award of attorney's fees under the FLSA is mandatory and unconditional. A court has to discretion to deny fees to a prevailing plaintiff; its discretion extends only to the amount allowed. *Christiansburg Garment Co. v. E.E.O.C.*, 434 U.S. 412, 415 n.5 (1978); *Shelton v. Ervin*, 830 F.2d 182, 184 (11th Cir. 1987); *United State, Tile and Composition Roofers v. G&M Roofing*, 732 F.2d 495, 501 (6th Cir. 1984); *Hagelthorn v. Kennecott Corp.* 710 F.2d 76, 86 (2d Cir. 1983); *Graham v. Henegar*, 640 F.2d 732, 736 (5th Cir. 1981 (en banc)). Is my understanding of how section 107(a)(3) is intended to be interpreted correct?

Mr. BOND. The Senator's understanding is indeed correct. The intent of the language is that the award of a reasonable attorney's fee is governed by the FLSA standard as enunciated by the Federal courts.

Mr. DODD. It is also my understanding that under Federal Rule of Civil Procedure 11 a plaintiff may have to pay attorney fees for the defendant.

Mr. BOND. Although rule 11 of the Federal Rules of Civil Procedure also permits the award of fees against a plaintiff who files a frivolous action, such a sanction is available against a plaintiff only when, according to the words of the U.S. Court in *Christiansburg Garment Co. v. E.E.O.C.*, 98 S. Ct. at 701 "a court finds that his claim was frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly became so."

Mr. DODD. I also note that the substitute provides for reasonable expert

witness fees, in addition to any judgment awarded to the plaintiff, to be paid by the defendant. It is my understanding that this provision comes in direct response to the Supreme Court's holding in *West Virginia University Hospitals, Inc. v. Casey*, 111 S. Ct. 1138 (1991). In that case the Court made clear that expert witness fees will be awarded as part of attorney's fees only if explicitly authorized by statute. Is that understanding correct?

Mr. BOND. Yes. That provision is intended to respond to the Court's holding in *West Virginia Hospitals* by providing explicit authorization for the award of fees for services in litigation rendered by experts.

#### REQUIREMENT OF 30 DAYS' NOTICE

Mr. DODD. The Bond-Ford substitute requires that an eligible employee provide the employer with at least 30 days' notice of the need for leave for birth, adoption, or planned medical treatment when the need for such leave is foreseeable, "subject to the actual date" of the birth, adoption, or treatment. It is my understanding that such 30-day advance notice is not required in cases of medical emergency or other unforeseen events—for example, a premature birth, or sudden changes in a patient's condition that require a change in scheduled medical treatment. Similarly, parents who are waiting to adopt a child are often given very little notice of the availability of a child. In these situations, it is often impossible for an employee to give 30 days' advance notice. Is it the intent of the Bond-Ford substitute that such notice will not be required in cases of emergency or unforeseen changes in the dates of birth, adoption, or planned medical treatment?

Mr. BOND. Yes. The language "subject to the actual date" of birth, adoption, or planned medical treatment in the Bond-Ford substitute is intended to require 30 days' advance notice of the need for leave to the extent possible and practical. Employees who face emergency medical conditions or unforeseen schedule changes will not be precluded from taking leave if they are unable to give 30 days' advance notice.

#### CLARIFYING PREGNANCY DISABILITY LEAVE AS MEDICAL LEAVE

Mr. DODD. My understanding of the Bond-Ford substitute is that when a woman is physically unable to work because of pregnancy, childbirth, or related medical conditions, she is entitled to leave for her serious health condition under section 102(a)(1)(D) of the substitute. Thus, while she is on leave for these reasons, she is entitled to any temporary disability or other compensation as the employer or other insurance may provide for these purposes. Is that correct?

Mr. BOND. The Senator is correct.

Mr. DODD. My understanding of the substitute is also that once a woman is physically able to work after

recuperating from childbirth and related medical conditions, she is then eligible for leave to care for the newborn child under section 102(a)(1)(A) to the extent that she has not exhausted her 12-week leave period. Is that correct?

Mr. BOND. Yes.

#### DEFINITION OF EMPLOYER

Mr. DURENBERGER. The Senator from Connecticut defines employer as including "any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer" and "any successor in interest of an employer." The FLSA, which the Senator says he has patterned this bill after, omits the latter phrase. Title VII omits both phrases. I find this new language confusing.

Does the "directly or indirectly" language, for example, imply that a general contractor would step into the shoes of its subcontractor when the subcontractor fails to grant leave to its employees?

Mr. DODD. No. The directly or indirectly language is not designed to address situations involving a general contractor and a subcontractor. This language should be interpreted in accordance with FLSA precedents. It is designed to cover situations of common ownership and control. For example, if a large conglomerate owned a subsidiary, and the holding company exercised ownership and control over the subsidiary, then the holding company could potentially be liable for influencing the subsidiary's decisions to delay leave.

Mr. DURENBERGER. Also, does the successor language mean that an employee can sue the employer who discriminated against the employee plus all succeeding owners of the business. For example, Joe Smith buys Lunds Grocery Store. Two weeks afterwards, an employee who had been denied leave under the previous owner files suit against Joe Smith as the successor of the employer who actually violated the act. Under this act, is Joe Smith intended to be liable for the previous owner's actions, even when there was no prior knowledge of any violation or action by the aggrieved employee? At a minimum, the language is confusing, and at worst, it suggests open-ended liability to almost all parties that in any way interact with an employer. What does the Senator really intend?

Mr. DODD. The bill is not intended to provide open ended liability. I would not expect that this successorship language should be interpreted in accordance with similar language in labor law statutes. Successors or buyers that take over the business without notice should not be liable. However we do not want to create a situation where employers are using transfer of ownership as a subterfuge to undermine the protections of the act.

Mr. DURENBERGER. There has been some confusion with the various changes in the drafts of the bill. I sim-

ply want to make sure that I am clear that in the Bond-Dodd substitute no "pain and suffering" or "punitive" damages are available.

Mr. DODD. It is the Senator from Connecticut's view that no pain and suffering or punitive damages would be allowed under S. 5.

#### GOOD FAITH

Mr. DURENBERGER. The Bond-Dodd substitute has included a "good faith" clause, suggesting a two pronged subjective and objective standard. What exactly does the Senator mean by this "good faith" defense? If an employer believes there was a violation but a reasonable person would not so believe, then under S. 5 as written, liquidated damages would be appropriate. Perhaps this simply should use an objective standard?

Mr. DODD. This good faith clause is identical to a provision in FLSA, and we intend it to be interpreted in the same manner. This provision says that if the employer's violation of the Act occurred in good faith and the employer had reasonable grounds for believing that it was not violating the Act, the court may reduce the damages to the amount of actual losses plus interest, rather than double that amount.

#### SICK OR ANNUAL LEAVE

Mr. DURENBERGER. By including "sick leave and annual leave" in the list of employee benefits, I assume that the Senator means that the court may grant the plaintiff who has been fired sick leave or annual leave that they would have accrued if they had been treated in a nondiscriminatory manner. For instance, if fired after requesting leave, the person would have accrued leave after dismissal and that accrual may be recovered.

The bill also allows the employer to require an individual to use his or her other paid leave prior to receiving leave under this bill. It is my reading of the bill that sick and annual leave that the employer could have required the employee to use prior to taking leave under the Act and which the employee actually used is not recoverable as damages by an employee who has been denied leave and stayed on the job. Is this a correct interpretation?

Mr. DODD. Yes, that is correct.

Mr. DURENBERGER. Also, I need to be assured that the court will not award damages in the amount equal to the time that the employee requested for leave to an employee who was denied leave and stayed on the job. That would constitute double recovery, because the employee actually was paid for the time he/she worked.

Mr. DODD. The employee who was denied leave and stayed on the job would not be paid twice for time actually worked. However, that employee could seek damages in the amount of any actual monetary losses sustained

by the employee as a direct result of the violation.

#### EXPERT WITNESSES

Mr. DURENBERGER. The Bond-Dodd substitute allows for attorneys' fees and other costs, specifically citing expert witness fees. Both FLSA, and title VII only provides attorneys' fees. FLSA, provides attorneys' fees and "other costs." As you know, lawyers have become experts themselves at abusing the use of "expert witnesses." For example, with the backing of "expert testimony" from a doctor and members of the police department, a woman claiming psychic powers was awarded \$1 million after she persuaded a Philadelphia jury that she lost her psychic powers following a CAT scan. Is it the Senator's intent that employers under this Act be required to pay for such experts?

Mr. DODD. It is our intent that employers be required to pay reasonable expert fees.

#### SECTION 104—EMPLOYMENT AND BENEFITS PROTECTION

Mr. DURENBERGER. The bill requires an employee to be restored to "the position of employment held by the employee when the leave commenced," or "to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment." In the real world many employers will respond to a worker on leave by reassigning work that individuals on leave had to other employees. In fact, this is the most common current practice among employers.

My concern is that as the bill is written, it is unclear whether "other terms and conditions" would include specific work assignments. The simplest case I can foresee is that a lawyer takes leave and a large case has to be reassigned. By the time the employee is ready to return to work, the case is almost ready to go to court and it might be disruptive to give the case back to the original lawyer. Yet under the bill it is unclear whether or not the employer would be forced to return this case to the original lawyer. What specifically do you mean by "other terms and conditions?" Does the Senator intend that specific work assignments be included within the definition of "other terms and conditions?"

Mr. DODD. I agree with my distinguished colleague from Minnesota. We certainly want to allow flexibility in these situations, and allow the employer to continue to retain control over work assignments.

#### EMPLOYMENT BENEFITS

Mr. DURENBERGER. The Senator defines "employment benefits" as "all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a policy or practice

of an employer or through an 'employee welfare benefit plan'."

The bill allows employees to sue for "damages in the amount of \* \* \* employment benefits denied or lost to such employee by reason of the violation."

As I read this language, it would be conceivable that an employee could sue for benefits that the employer offered, even if the employee never took advantage of them. For example, an employer could offer a variety of different benefits under a cafeteria plan, but the employee is only entitled to a total of three. A loose reading of the language in the bill would entitle the individual to receive damages in the amount of all benefits denied.

The language is somewhat confusing. Does the Senator intend to allow an individual to sue for damages that he or she was not actually receiving at the time of the violation?

Mr. DODD. No, for example in the case of a cafeteria plan, the bill is only designed to provide damages for benefits that the individual had selected at the time of the violation and that were actually lost due to the violation.

Mr. DURENBERGER. The Senator states that the taking of leave under section 102 shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced. How does this work for bonuses. For instance, what happens if an employer has a bonus system that gives bonuses to any employee who produces 100 widgets. An employee, who took leave under this Act produced 93 widgets, and files a suit claiming that had it not been for the time they took under the act, they would have been able to meet the bonus requirements. Is this bill intended to allow this employee to sue for lost benefits in this situation?

Also, bonuses are included as recoverable under the damages section of this bill. What do you intend if, for example, an employee receives a bonus one year, then is discharged for a discriminatory purpose under S. 5? Would a plaintiff be entitled to a bonus for the duration of the discharge, even if fellow employees received no bonus due to an economic downturn? Even if there is no way to know whether plaintiff would have earned his/her bonus?

Mr. DODD. I would like to respond to each of the situations that my distinguished colleague from Minnesota has raised. In the case where bonuses are awarded on the basis of the number of widgets produced, I would not intend the employee to receive the bonus.

Regarding the second situation, the awarding of a bonus would depend on how speculative that award would be. If other employees would not have been awarded the bonus due to an economic downturn, and therefore it appeared that the employee in question would not have earned his or her bonus, then

damages in the amount of the bonus would not be appropriate.

#### DIRECTLY ATTRIBUTABLE DAMAGES

Mr. DURENBERGER. The phrase "lost to such employee by reason of the violation" under the damages section seems to be very broad. One could interpret the language to include all consequential damages flowing from the breach, no matter how attenuated or unforeseeable, could be awarded to plaintiff under that standard. For instance, an employee whose health insurance lapsed after wrongful discharge might encounter a large medical bill. If the employee paid the medical bill with his/her house mortgage money, and then the bank foreclosed on the house, should the employer have to pay for the cost of a new house for the employee or rental payments for the next 20 years? I would submit that employer is only responsible for the medical bill. Would this be a correct interpretation of this situation?

Mr. DODD. Yes, this would be correct. The damages arising from the loss of the house would not be wages, salary, or other compensation denied or lost by reason of the violation.

#### MIXED MOTIVE CASES

Mr. DURENBERGER. I suspect that there will be mixed motive cases under this act where an employer has a legitimate as well as a discriminatory reason for discharging or demoting the individual requesting leave. How do you intend that mixed motive cases be treated?

Mr. DODD. Let us take the example of an employee fired allegedly because of poor performance and because the employer is unwilling to grant requested family leave. The employer would not be liable for wages and compensation of the employee if the poor performance was such that the employee would have been terminated absent any considerations of family leave. But the employer could be liable for the denial of the request for leave, and injunctive relief.

#### DEFINITION OF "SERIOUS HEALTH CONDITION" AND ABILITY TO PERFORM FUNCTIONS OF JOB

Mr. DURENBERGER. As I read the definition of "serious health condition" in the Bond substitute, it is very broad. Included within that definition an illness, injury, impairment, or physical or mental condition that involves not only in-patient care, but also "continuing treatment by a health care provider." Under this definition, an individual with a minor allergy condition, on-going arthritis, or a broken bone, could lay claim to a "serious health condition."

This may be intentionally broad. However, the problem, as I see it arises when this definition is applied in conjunction with the requirements for when an individual can take leave, specifically the language that allows an individual who "because of a serious health condition \* \* \* is unable to per-

form the functions of the position." Combining these two ideas—serious health condition and unable to perform the functions of the job—an individual could take leave if he or she had a broken foot and was unable to walk copies of reports to the adjoining office down the street, which is one of a myriad of responsibilities of that employee. Because a serious health condition has made that individual unable to perform a function of his job that employee is entitled to leave. Even if a person is able to do 95 percent of the job, the employee does not have the right to reassign that specific task to another employer for a period of time, and the employee is entitled to leave. Is this the intent of the Senator from Connecticut?

Mr. DODD. The bill is not intended to allow an employee to abuse leave in this way. It is expected that if an employee is able to perform the major functions of the job then leave would not be appropriate.

Mr. DURENBERGER. I thank my colleague.

The PRESIDING OFFICER. Without objection, the committee substitute, as amended, is agreed to.

Mr. GARN. Mr. President, I have no objection to a voice vote, but in lieu of having a rollcall vote, I would like to make it known that I would vote against it if we did have one.

The PRESIDING OFFICER. The RECORD shall so state.

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 it pass?

So, the bill (S. 5), as amended, was passed, as follows:

S. 5

*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 "Family and Medical Leave Act of 1991".
- (b) TABLE OF CONTENTS.—\*ERR08\*

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.

**TITLE I—GENERAL REQUIREMENTS FOR LEAVE**

- Sec. 101. Definitions.
- Sec. 102. Leave requirement.
- Sec. 103. Certification.
- Sec. 104. Employment and benefits protection.
- Sec. 105. Prohibited acts.
- Sec. 106. Investigative authority.
- Sec. 107. Enforcement.
- Sec. 108. Special rules concerning employees of local educational agencies.
- Sec. 109. Notice.
- Sec. 110. Regulations.

**TITLE II—LEAVE FOR CIVIL SERVICE EMPLOYEES**

- Sec. 201. Leave requirement.

**TITLE III—COMMISSION ON LEAVE**

- Sec. 301. Establishment.
- Sec. 302. Duties.
- Sec. 303. Membership.
- Sec. 304. Compensation.
- Sec. 305. Powers.
- Sec. 306. Termination.

**TITLE IV—MISCELLANEOUS PROVISIONS**

- Sec. 401. Effect on other laws.
- Sec. 402. Effect on existing employment benefits.
- Sec. 403. Encouragement of more generous leave policies.
- Sec. 404. Coverage of the Senate.
- Sec. 405. Regulations.
- Sec. 406. Effective dates.

**SEC. 2. FINDINGS AND PURPOSES.**

(a) FINDINGS.—Congress finds that—  
 (1) the number of single-parent households and two-parent households in which the single parent or both parents work is increasing significantly;

(2) it is important for the development of children and the family unit that fathers and mothers be able to participate in early childrearing and the care of family members who have serious health conditions;

(3) the lack of employment policies to accommodate working parents can force individuals to choose between job security and parenting;

(4) there is inadequate job security for employees who have serious health conditions that prevent them from working for temporary periods;

(5) due to the nature of the roles of men and women in our society, the primary responsibility for family caretaking often falls on women, and such responsibility affects the working lives of women more than it affects the working lives of men; and

(6) employment standards that apply to one gender only have serious potential for encouraging employers to discriminate against employees and applicants for employment who are of that gender.

(b) PURPOSES.—It is the purpose of this Act—

(1) to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity;

(2) to entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition;

(3) to accomplish the purposes described in paragraphs (1) and (2) in a manner that accommodates the legitimate interests of employers;

(4) to accomplish the purposes described in paragraphs (1) and (2) in a manner that, consistent with the Equal Protection Clause of the Fourteenth Amendment, minimizes the potential for employment discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons, on a gender-neutral basis; and

(5) to promote the goal of equal employment opportunity for women and men, pursuant to such clause.

**TITLE I—GENERAL REQUIREMENTS FOR LEAVE**

**SEC. 101. DEFINITIONS.**

As used in this title:

(1) **COMMERCE.**—The terms "commerce" and "industry or activity affecting commerce" mean any activity, business, or industry in commerce or in which a labor dis-

pute would hinder or obstruct commerce or the free flow of commerce, and include "commerce" and any "industry affecting commerce", as defined in paragraphs (3) and (1), respectively, of section 120 of the Labor Management Relations Act, 1947 (29 U.S.C. 142 (3) and (1)).

(2) **ELIGIBLE EMPLOYEE.**—

(A) **IN GENERAL.**—The term "eligible employee" means any "employee", as defined in section 3(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(e)), who has been employed—

(i) for at least 12 months by the employer with respect to whom leave is sought under section 102; and

(ii) for at least 1,250 hours of service with such employer during the previous 12-month period.

(B) **EXCLUSIONS.**—The term "eligible employee" does not include—

(1) any Federal officer or employee covered under subchapter V of chapter 63 of title 5, United States Code (as added by title II of this Act); or

(2) any employee of an employer who is employed at a worksite at which such employer employs less than 50 employees if the total number of employees employed by that employer within 75 miles of that worksite is less than 50.

(C) **DETERMINATION.**—For purposes of determining whether an employee meets the hours of service requirement specified in subparagraph (A)(ii), the legal standards established under section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) shall apply.

(3) **EMPLOY; STATE.**—The terms "employ" and "State" have the same meanings given such terms in subsections (g) and (c), respectively, of section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203 (g) and (c)).

(4) **EMPLOYEE.**—The term "employee" means any individual employed by an employer.

(5) **EMPLOYER.**—

(A) **IN GENERAL.**—The term "employer"—  
 (1) means any person engaged in commerce or in any industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year;

(ii) includes—

(I) any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer; and

(II) any successor in interest of an employer; and

(iii) includes any "public agency", as defined in section 3(x) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(x)).

(B) **PUBLIC AGENCY.**—For purposes of subparagraph (A)(iii), a public agency shall be considered to be a person engaged in commerce or in an industry or activity affecting commerce.

(6) **EMPLOYMENT BENEFITS.**—The term "employment benefits" means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer or through an "employee benefit plan", as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3)).

(7) **HEALTH CARE PROVIDER.**—The term "health care provider" means—

(A) a doctor of medicine or osteopathy that is legally authorized to practice medicine or

surgery by the State in which the doctor performs such function or action; or

(B) any other person determined by the Secretary to be capable of providing health care services.

(8) PARENT.—The term "parent" means the biological parent of the child or an individual who stood in loco parentis to a child when the child was a son or daughter.

(9) PERSON.—The term "person" has the same meaning given such term in section 3(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(a)).

(10) REDUCED LEAVE SCHEDULE.—The term "reduced leave schedule" means leave that reduces the usual number of hours per workweek, or hours per workday, of an employee.

(11) SECRETARY.—The term "Secretary" means the Secretary of Labor.

(12) SERIOUS HEALTH CONDITION.—The term "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves—

(A) inpatient care in a hospital, hospice, or residential medical care facility; or

(B) continuing treatment by a health care provider.

(13) SON OR DAUGHTER.—The term "son or daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is—

(A) under 18 years of age; or

(B) 18 years of age or older and incapable of self-care because of a mental or physical disability.

#### SEC. 102. LEAVE REQUIREMENT.

(a) IN GENERAL.—

(1) ENTITLEMENT TO LEAVE.—Subject to section 103, an eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period—

(A) because of the birth of a son or daughter of the employee;

(B) because of the placement of a son or daughter with the employee for adoption or foster care;

(C) in order to care for a son, daughter, spouse, or parent of the employee who has a serious health condition; or

(D) because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.

(2) EXPIRATION OF ENTITLEMENT.—The entitlement to leave under subparagraphs (A) and (B) of paragraph (1) for a birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement.

(3) INTERMITTENT LEAVE.—

(A) IN GENERAL.—Leave under subparagraph (A) or (B) of paragraph (1) shall not be taken by an employee intermittently unless the employee and the employer of the employee agree otherwise. Subject to subparagraph (B), subsection (e), and section 103(b)(5), leave under subparagraph (C) or (D) of paragraph (1) may be taken intermittently when medically necessary.

(B) ALTERNATIVE POSITION.—If an employee seeks intermittent leave under subparagraph (C) or (D) of paragraph (1) that is foreseeable based on planned medical treatment, the employer may require such employee to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that—

(i) has equivalent pay and benefits; and

(ii) better accommodates recurring periods of leave than the regular employment position of the employee.

(b) REDUCED LEAVE.—On agreement between the employer and the employee, leave

under subsection (a) may be taken on a reduced leave schedule. Such reduced leave schedule shall not result in a reduction in the total amount of leave to which such employee is entitled under subsection (a).

(c) UNPAID LEAVE PERMITTED.—Except as provided in subsection (d), leave granted under subsection (a) may consist of unpaid leave.

(d) RELATIONSHIP TO PAID LEAVE.—

(1) UNPAID LEAVE.—If an employer provides paid leave for fewer than 12 workweeks, the additional weeks of leave necessary to attain the 12 workweeks of leave required under this title may be provided without compensation.

(2) SUBSTITUTION OF PAID LEAVE.—

(A) IN GENERAL.—An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or family leave of the employee for leave provided under subparagraph (A), (B), or (C) of subsection (a)(1) for any part of the 12-week period of such leave under such subsection.

(B) SERIOUS HEALTH CONDITION.—An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or medical or sick leave of the employee for leave provided under subparagraph (C) or (D) of subsection (a)(1) for any part of the 12-week period of such leave under such subsection, except that nothing in this Act shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave.

(e) FORESEEABLE LEAVE.—

(1) REQUIREMENT OF NOTICE.—In any case in which the necessity for leave under subparagraph (A) or (B) of subsection (a)(1) is foreseeable based on an expected birth or adoption, the eligible employee shall provide the employer with not less than 30 days notice of the intention to take leave under such subparagraph, subject to the actual date of the birth or adoption for which the leave is to be taken.

(2) DUTIES OF EMPLOYEE.—In any case in which the necessity for leave under subparagraph (C) or (D) of subsection (a)(1) is foreseeable based on planned medical treatment, the employee—

(A) shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse, or parent of the employee; and

(B) shall provide the employer with not less than 30 days notice of the intention to take leave under such subparagraph, subject to the actual date of the treatment for which the leave is to be taken.

(f) SPOUSES EMPLOYED BY THE SAME EMPLOYER.—In any case in which a husband and wife entitled to leave under subsection (a) are employed by the same employer, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12-month period, if such leave is taken—

(1) under subparagraph (A) or (B) of subsection (a)(1); or

(2) to care for a sick parent under subparagraph (C) of such subsection.

#### SEC. 103. CERTIFICATION.

(a) IN GENERAL.—An employer may require that a claim for leave under subparagraph (C) or (D) of section 102(a)(1) be supported by a certification issued by the health care provider of the eligible employee or of the son,

daughter, spouse, or parent of the employee, as appropriate. The employee shall provide, in a timely manner, a copy of such certification to the employer.

(b) SUFFICIENT CERTIFICATION.—Certification provided under subsection (a) shall be sufficient if it states—

(1) the date on which the serious health condition commenced;

(2) the probable duration of the condition;

(3) the appropriate medical facts within the knowledge of the health care provider regarding the condition;

(4)(A) for purposes of leave under section 102(a)(1)(C), a statement that the eligible employee is needed to care for the son, daughter, spouse, or parent and an estimate of the amount of time that such employee is needed to care for the son, daughter, spouse, or parent; and

(B) for purposes of leave under section 102(a)(1)(D), a statement that the employee is unable to perform the functions of the position of the employee; and

(5) in the case of certification for intermittent leave for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment.

(c) SECOND OPINION.—

(1) IN GENERAL.—In any case in which the employer has reason to doubt the validity of the certification provided under subsection (a) for leave under subparagraph (C) or (D) of section 102(a)(1), the employer may require, at the expense of the employer, that the eligible employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information certified under subsection (b) for such leave.

(2) LIMITATION.—A health care provider designated or approved under paragraph (1) shall not be employed on a regular basis by the employer.

(d) RESOLUTION OF CONFLICTING OPINIONS.—

(1) IN GENERAL.—In any case in which the second opinion described in subsection (c) differs from the opinion in the original certification provided under subsection (a), the employer may require, at the expense of the employer, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the information certified under subsection (b).

(2) FINALITY.—The opinion of the third health care provider concerning the information certified under subsection (b) shall be considered to be final and shall be binding on the employer and the employee.

(e) SUBSEQUENT RECERTIFICATION.—The employer may require that the eligible employee obtain subsequent recertifications on a reasonable basis.

#### SEC. 104. EMPLOYMENT AND BENEFITS PROTECTION.

(a) RESTORATION TO POSITION.—

(1) IN GENERAL.—Any eligible employee who takes leave under section 102 for the intended purpose of the leave shall be entitled, on return from such leave—

(A) to be restored by the employer to the position of employment held by the employee when the leave commenced; or

(B) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(2) LOSS OF BENEFITS.—The taking of leave under section 102 shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

(3) LIMITATIONS.—Nothing in this section shall be construed to entitle any restored employee to—

(A) the accrual of any seniority or employment benefits during any period of leave; or  
 (B) any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(4) CERTIFICATION.—As a condition of restoration under paragraph (1), the employer may have a uniformly applied practice or policy that requires each employee to receive certification from the health care provider of the employee that the employee is able to resume work, except that nothing in this paragraph shall supersede a valid State or local law or a collective bargaining agreement that governs the return to work of employees taking leave under section 102(a)(1)(D).

(5) CONSTRUCTION.—Nothing in this subsection shall be construed to prohibit an employer from requiring an employee on leave under section 102 to periodically report to the employer on the status and intention of the employee to return to work.

(b) EXEMPTION CONCERNING CERTAIN HIGHLY COMPENSATED EMPLOYEES.—

(1) DENIAL OF RESTORATION.—An employer may deny restoration under subsection (a) to any eligible employee described in paragraph (2) if—

(A) such denial is necessary to prevent substantial and grievous economic injury to the operations of the employer;

(B) the employer notifies the employee of the intent of the employer to deny restoration on such basis at the time the employer determines that such injury would occur; and

(C) in any case in which the leave has commenced, the employee elects not to return to employment after receiving such notice.

(2) AFFECTED EMPLOYEES.—An eligible employee described in paragraph (1) is a salaried eligible employee who is among the highest paid 10 percent of the employees employed by the employer within 75 miles of the facility at which the employee is employed.

(c) MAINTENANCE OF HEALTH BENEFITS.—

(1) COVERAGE.—Except as provided in paragraph (2), during any period that an eligible employee takes leave under section 102, the employer shall maintain coverage under any "group health plan" (as defined in section 5000(b)(1) of the Internal Revenue Code of 1986) for the duration of such leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously from the date the employee commenced the leave until the date the employee is restored under subsection (a).

(2) FAILURE TO RETURN FROM LEAVE.—The employer may recover the premium that the employer paid for maintaining coverage for the employee under such group health plan during any period of unpaid leave under section 102 if—

(A) the employee fails to return from leave under section 102 after the period of leave to which the employee is entitled has expired; and

(B) the employee fails to return to work for a reason other than—

(i) the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under subparagraph (C) or (D) of section 102(a)(1); or

(ii) other circumstances beyond the control of the employee.

(3) CERTIFICATION.—

(A) ISSUANCE.—An employer may require that a claim that an employee is unable to return to work because of the continuation, recurrence, or onset of the serious health condition described in paragraph (2)(B)(i) be supported by—

(i) a certification issued by the health care provider of the eligible employee, in the case of an employee unable to return to work because of a condition specified in section 102(a)(1)(D); or

(ii) a certification issued by the health care provider of the son, daughter, spouse, or parent of the employee in the case of an employee unable to return to work because of a condition specified in section 102(a)(1)(C).

(B) COPY.—The employee shall provide, in a timely manner, a copy of such certification to the employer.

(C) SUFFICIENCY OF CERTIFICATION.—

(i) LEAVE DUE TO SERIOUS HEALTH CONDITION OF EMPLOYEE.—The certification described in subparagraph (A)(i) shall be sufficient if the certification states that a serious health condition prevented the employee from being able to perform the functions of the position of the employee on the date that the leave of the employee expired.

(ii) LEAVE DUE TO SERIOUS HEALTH CONDITION OF FAMILY MEMBER.—The certification described in subparagraph (A)(ii) shall be sufficient if the certification states that the employee is needed to care for the son, daughter, spouse, or parent who has a serious health condition on the date that the leave of the employee expired.

SEC. 105. PROHIBITED ACTS.

(a) INTERFERENCE WITH RIGHTS.—

(1) EXERCISE OF RIGHTS.—It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this title.

(2) DISCRIMINATION.—It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this title.

(b) INTERFERENCE WITH PROCEEDINGS OR INQUIRIES.—It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because such individual—

(1) has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this title;

(2) has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this title; or

(3) has testified, or is about to testify in any inquiry or proceeding relating to any right provided under this title.

SEC. 106. INVESTIGATIVE AUTHORITY.

(a) IN GENERAL.—To ensure compliance with the provisions of this title, or any regulation or order issued under this title, the Secretary shall have, subject to subsection (c), the investigative authority provided under section 11(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(a)).

(b) OBLIGATION TO KEEP AND PRESERVE RECORDS.—Any employer shall keep and preserve records in accordance with section 11(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(c)) and in accordance with regulations issued by the Secretary.

(c) REQUIRED SUBMISSIONS GENERALLY LIMITED TO AN ANNUAL BASIS.—The Secretary shall not under the authority of this section require any employer or any plan, fund, or program to submit to the Secretary any books or records more than once during any

12-month period, unless the Secretary has reasonable cause to believe there may exist a violation of this title or any regulation or order issued pursuant to this title, or is investigating a charge pursuant to section 107(b).

(d) SUBPOENA POWERS.—For the purposes of any investigation provided for in this section, the Secretary shall have the subpoena authority provided for under section 9 of the Fair Labor Standards Act of 1938 (29 U.S.C. 209).

SEC. 107. ENFORCEMENT.

(a) CIVIL ACTION BY EMPLOYEES.—

(1) LIABILITY.—Any employer who violates section 105 shall be liable to any eligible employee affected—

(A) for damages equal to—

(i) the amount of—

(I) any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation; or  
 (II) in a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to 12 weeks of wages or salary for the employee;

(ii) the interest on the amount described in clause (i) calculated at the prevailing rate; and

(iii) an additional amount as liquidated damages equal to the sum of the amount described in clause (i) and the interest described in clause (ii), except that if an employer who has violated section 105 proves to the satisfaction of the court that the act or omission which violated section 105 was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of section 105, such court may, in the discretion of the court, reduce the amount of the liability to the amount and interest determined under clauses (i) and (ii), respectively; and

(B) for such equitable relief as may be appropriate, including, without limitation, employment, reinstatement, and promotion.

(2) STANDING.—An action to recover the damages or equitable relief prescribed in paragraph (1) may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of—

(A) the employees; or

(B) the employees and other employees similarly situated.

(3) FEES AND COSTS.—The court in such an action shall, in addition to any judgment awarded to the plaintiff, allow a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

(4) LIMITATIONS.—The right provided by paragraph (1) to bring an action by or on behalf of any employee shall terminate, unless such action is dismissed without prejudice on motion of the Secretary, on—

(A) the filing of a complaint by the Secretary of Labor in an action under subsection (d) in which—

(i) restraint is sought of any further delay in the payment of the damages described in paragraph (1)(A) to such employee by an employer liable under paragraph (1) for the damages; or

(ii) equitable relief is sought as a result of alleged violations of section 105; or

(B) the filing of a complaint by the Secretary in an action under subsection (b) in which a recovery is sought of the damages

described in paragraph (1)(A) owing to an eligible employee by an employer liable under paragraph (1).

(b) ACTION BY THE SECRETARY.—

(1) ADMINISTRATIVE ACTION.—The Secretary shall receive, investigate, and attempt to resolve complaints of violations of section 105 in the same manner that the Secretary receives, investigates, and attempts to resolve complaints of violations of sections 6 and 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206 and 207).

(2) CIVIL ACTION.—The Secretary may bring an action in any court of competent jurisdiction to recover on behalf of an eligible employee the damages described in subsection (a)(1)(A).

(3) SUMS RECOVERED.—Any sums recovered by the Secretary on behalf of an employee pursuant to paragraph (2) shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to each employee affected. Any such sums not paid to an employee because of inability to do so within a period of 3 years shall be deposited into the Treasury of the United States as miscellaneous receipts.

(c) LIMITATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), an action may be brought under subsection (a) or (b) not later than 2 years after the date of the last event constituting the alleged violation for which the action is brought.

(2) WILLFUL VIOLATION.—In the case of such action brought for a willful violation of section 105, such action may be brought within 3 years of the date of the last event constituting the alleged violation for which such action is brought.

(3) COMMENCEMENT.—In determining when an action is commenced by the Secretary under subsection (b) for the purposes of this subsection, it shall be considered to be commenced on the date when the complaint is filed.

(d) ACTION FOR INJUNCTION BY SECRETARY.—The district courts of the United States shall have jurisdiction, for cause shown, over an action brought by the Secretary to restrain violations of section 105, including actions to restrain the withholding of payment of wages, salary, employment benefits, or other compensation, plus interest, found by the court to be due to eligible employees.

**SEC. 108. SPECIAL RULES CONCERNING EMPLOYEES OF LOCAL EDUCATIONAL AGENCIES.**

(a) APPLICATION.—

(1) IN GENERAL.—Except as otherwise provided in this section, the rights (including the rights under section 104, which shall extend throughout the period of leave of any employee under this section), remedies, and procedures under this Act shall apply to—

(A) any "local educational agency" (as defined in section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12))) and an eligible employee of the agency; and

(B) any private elementary and secondary school and an eligible employee of the school.

(2) DEFINITIONS.—For purposes of the application described in paragraph (1):

(A) ELIGIBLE EMPLOYEE.—The term "eligible employee" means an eligible employee of an agency or school described in paragraph (1); and

(B) EMPLOYER.—The term "employer" means an agency or school described in paragraph (1).

(b) LEAVE DOES NOT VIOLATE CERTAIN OTHER FEDERAL LAWS.—A local educational

agency and a private elementary and secondary school shall not be in violation of the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), solely as a result of an eligible employee of such agency or school exercising the rights of such employee under this Act.

(c) INTERMITTENT LEAVE FOR INSTRUCTIONAL EMPLOYEES.—

(1) IN GENERAL.—Subject to paragraph (2), in any case in which an eligible employee employed principally in an instructional capacity by any such educational agency or school seeks to take leave under subparagraph (C) or (D) of section 102(a)(1) that is foreseeable based on planned medical treatment and the employee would be on leave for greater than 20 percent of the total number of working days in the period during which the leave would extend, the agency or school may require that such employee elect either—

(A) to take leave for periods of a particular duration, not to exceed the duration of the planned medical treatment; or

(B) to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified, and that—

(i) has equivalent pay and benefits; and

(ii) better accommodates recurring periods of leave than the regular employment position of the employee.

(2) APPLICATION.—The elections described in subparagraphs (A) and (B) of paragraph (1) shall apply only with respect to an eligible employee who complies with section 102(e)(2).

(d) RULES APPLICABLE TO PERIODS NEAR THE CONCLUSION OF AN ACADEMIC TERM.—The following rules shall apply with respect to periods of leave near the conclusion of an academic term in the case of any eligible employee employed principally in an instructional capacity by any such educational agency or school:

(1) LEAVE MORE THAN 5 WEEKS PRIOR TO END OF TERM.—If the eligible employee begins leave under section 102 more than 5 weeks prior to the end of the academic term, the agency or school may require the employee to continue taking leave until the end of such term, if—

(A) the leave is of at least 3 weeks duration; and

(B) the return to employment would occur during the 3-week period before the end of such term.

(2) LEAVE LESS THAN 5 WEEKS PRIOR TO END OF TERM.—If the eligible employee begins leave under subparagraph (A), (B), or (C) of section 102(a)(1) during the period that commences 5 weeks prior to the end of the academic term, the agency or school may require the employee to continue taking leave until the end of such term, if—

(A) the leave is of greater than 2 weeks duration; and

(B) the return to employment would occur during the 2-week period before the end of such term.

(3) LEAVE LESS THAN 3 WEEKS PRIOR TO END OF TERM.—If the eligible employee begins leave under paragraph (A), (B), or (C) of section 102(a)(1) during the period that commences 3 weeks prior to the end of the academic term and the duration of the leave is greater than 5 working days, the agency or school may require the employee to continue to take leave until the end of such term.

(e) RESTORATION TO EQUIVALENT EMPLOYMENT POSITION.—For purposes of determina-

tions under section 104(a)(1)(B) (relating to the restoration of an eligible employee to an equivalent position), in the case of a local educational agency or a private elementary and secondary school, such determination shall be made on the basis of established school board policies and practices, private school policies and practices, and collective bargaining agreements.

(f) REDUCTION OF THE AMOUNT OF LIABILITY.—If a local educational agency or a private elementary and secondary school that has violated title I proves to the satisfaction of the administrative law judge or the court that the agency, school, or department had reasonable grounds for believing that the underlying act or omission was not a violation of such title, such judge or court may, in the discretion of the judge or court, reduce the amount of the liability provided for under section 107(a)(1)(A) to the amount and interest determined under clauses (i) and (ii), respectively, of such section.

**SEC. 109. NOTICE.**

(a) IN GENERAL.—Each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees and applicants for employment are customarily posted, a notice, to be prepared or approved by the Secretary, setting forth excerpts from, or summaries of, the pertinent provisions of this title and information pertaining to the filing of a charge.

(b) PENALTY.—Any employer that willfully violates this section shall be assessed a civil money penalty not to exceed \$100 for each separate offense.

**SEC. 110. REGULATIONS.**

Not later than 60 days after the date of enactment of this title, the Secretary shall prescribe such regulations as are necessary to carry out this title.

**TITLE II—LEAVE FOR CIVIL SERVICE EMPLOYEES**

**SEC. 201. LEAVE REQUIREMENT.**

(a) CIVIL SERVICE EMPLOYEES.—

(1) IN GENERAL.—Chapter 63 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

**"SUBCHAPTER V—FAMILY LEAVE**

**"§ 6381. Definitions**

"For purposes of this subchapter:

"(1) The term 'employee' means—

"(A) an 'employee', as defined by section 6301(2) of this title (excluding an individual employed by the Government of the District of Columbia); and

"(B) an individual described in clause (v) or (ix) of such section;

who has been employed for at least 12 months by an employing agency and completed at least 1,250 hours of service with an employing agency during the previous 12-month period.

"(2) The term 'health care provider' means—

"(A) a doctor of medicine or osteopathy that is legally authorized to practice medicine or surgery by the State in which the doctor performs such function or action; or

"(B) any other person determined by the Director of the Office of Personnel Management to be capable of providing health care services.

"(3) The term 'parent' means the biological parent of the child or an individual who stood in loco parentis to a child when the child was a son or daughter.

"(4) The term 'reduced leave schedule' means leave that reduces the usual number of hours per workweek, or hours per workday, of an employee.

"(5) The term 'serious health condition' means an illness, injury, impairment, or physical or mental condition that involves—

"(A) inpatient care in a hospital, hospice, or residential medical care facility; or

"(B) continuing treatment by a health care provider.

"(6) The term 'son or daughter' means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is—

"(A) under 18 years of age; or

"(B) 18 years of age or older and incapable of self-care because of a mental or physical disability.

#### "§ 6382. Leave requirement

"(a)(1) An employee shall be entitled, subject to section 6383, to a total of 12 workweeks of leave during any 12-month period—

"(A) because of the birth of a son or daughter of the employee;

"(B) because of the placement of a son or daughter with the employee for adoption or foster care;

"(C) in order to care for the son, daughter, spouse, or parent of the employee who has a serious health condition; or

"(D) because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.

"(2) The entitlement to leave under subparagraphs (A) and (B) of paragraph (1) for a birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement.

"(3)(A) Leave under subparagraph (A) or (B) of paragraph (1) shall not be taken by an employee intermittently unless the employee and the employing agency of the employee agree otherwise. Subject to subparagraph (B), subsection (e), and section 6383(b)(5), leave under subparagraph (C) or (D) of paragraph (1) may be taken intermittently when medically necessary.

"(B) If an employee seeks intermittent leave under subparagraph (C) or (D) of paragraph (1) that is foreseeable based on planned medical treatment, the employing agency may require such employee to transfer temporarily to an available alternative position offered by the employing agency for which the employee is qualified and that—

"(i) has equivalent pay and benefits; and

"(ii) better accommodates recurring periods of leave than the regular employment position of the employee.

"(b) On agreement between the employing agency and the employee, leave under subsection (a) may be taken on a reduced leave schedule. Such reduced leave schedule shall not result in a reduction in the total amount of leave to which the employee is entitled under subsection (a).

"(c) Except as provided in subsection (d), leave granted under subsection (a) may consist of unpaid leave.

"(d)(1) An employee may elect, or an employing agency may require the employee, to substitute for leave under subparagraph (A), (B), or (C) of subsection (a)(1) any of the accrued annual leave under subchapter I of the employee for any part of the 12-week period of such leave under such subparagraph.

"(2) An employee may elect, or an employing agency may require the employee, to substitute for leave under paragraph (1)(D) of subsection (a) any of the accrued annual leave or sick leave under subchapter I of the employee for any part of the 12-week period of such leave under such paragraph, except that nothing in this subchapter shall require an employing agency to provide paid sick

leave in any situation in which such employing agency would not normally provide any such paid leave.

"(e)(1) In any case in which the necessity for leave under subparagraph (A) or (B) of subsection (a)(1) is foreseeable based on an expected birth or adoption, the employee shall provide the employing agency with not less than 30 days notice of the intention to take leave under such subparagraph, subject to the actual date of the birth or adoption for which the leave is to be taken.

"(2) In any case in which the necessity for leave under subparagraph (C) or (D) of subsection (a)(1) is foreseeable based on planned medical treatment, the employee—

"(A) shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employing agency, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse or parent of the employee; and

"(B) shall provide the employing agency with not less than 30 days notice of the intention to take leave under such subparagraph, subject to the actual date of the treatment for which the leave is to be taken.

#### "§ 6383. Certification

"(a) An employing agency may require that a claim for leave under subparagraph (C) or (D) of section 6382(a)(1), be supported by certification issued by the health care provider of the employee or of the son, daughter, spouse, or parent of the employee, as appropriate. The employee shall provide, in a timely manner, a copy of such certification to the employing agency.

"(b) A certification provided under subsection (a) shall be sufficient if it states—

"(1) the date on which the serious health condition commenced;

"(2) the probable duration of the condition;

"(3) the appropriate medical facts within the knowledge of the health care provider regarding the condition;

"(4)(A) for purposes of leave under section 6382(a)(1)(C), a statement that the employee is needed to care for the son, daughter, spouse, or parent and an estimate of the amount of time that such employee is needed to care for the son, daughter, spouse, or parent; and

"(B) for purposes of leave under section 6382(a)(1)(D), a statement that the employee is unable to perform the functions of the position of the employee; and

"(5) in the case of certification for intermittent leave for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment.

"(c)(1) In any case in which the employing agency has reason to doubt the validity of the certification provided under subsection (a) for leave under subparagraph (C) or (D) of section 6382(a)(1), the employing agency may require, at the expense of the agency, that the employee obtain the opinion of a second health care provider designated or approved by the employing agency concerning any information certified under subsection (b) for such leave.

"(2) Any health care provider designated or approved under paragraph (1) shall not be employed on a regular basis by the employing agency.

"(d)(1) In any case in which the second opinion described in subsection (c) differs from the original certification provided under subsection (a), the employing agency may require, at the expense of the agency, that the employee obtain the opinion of a third health care provider designated or ap-

proved jointly by the employing agency and the employee concerning the information certified under subsection (b).

"(2) The opinion of the third health care provider concerning the information certified under subsection (b) shall be considered to be final and shall be binding on the employing agency and the employee.

"(e) The employing agency may require that the employee obtain subsequent recertifications on a reasonable basis.

#### "§ 6384. Employment and benefits protection

"(a) Any employee who takes leave under section 6382 for the intended purpose of the leave shall be entitled, upon return from such leave—

"(1) to be restored by the employing agency to the position of employment held by the employee when the leave commenced; or

"(2) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

"(b) The taking of leave under section 6382 shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

"(c) Except as otherwise provided by law, nothing in this section shall be construed to entitle any restored employee to—

"(1) the accrual of any seniority or employment benefits during any period of leave; or

"(2) any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

"(d) As a condition to restoration under subsection (a), the employing agency may have a uniformly applied practice or policy that requires each employee to receive certification from the health care provider of the employee that the employee is able to resume work.

"(e) Nothing in this section shall be construed to prohibit an employing agency from requiring an employee on leave under section 6382 to periodically report to the employing agency on the status and intention of the employee to return to work.

#### "§ 6385. Prohibition of coercion

"(a) An employee shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with the exercise of the rights of the employee under this subchapter.

"(b) An employee allegation of a violation under subsection (a) is within the jurisdiction of the Merit Systems Protection Board under section 1204(a)(1) and may be investigated by the Special Counsel as a prohibited personnel practice under section 1214.

"(c) For the purpose of this section, 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or taking or threatening to take any reprisal (such as deprivation of appointment, promotion, or compensation).

#### "§ 6386. Health insurance

"(a)(1) Except as provided in paragraph (2), an employee enrolled in a health benefits plan under chapter 89 who is placed in a leave status under section 6382 may elect to continue the health benefits enrollment of the employee while in leave status and arrange to pay into the Employees Health Benefits Fund (described in section 8909) through the employing agency of the employee, the appropriate employee contributions.

"(2) The employing agency may recover the contributions that the agency paid for

maintaining such enrollment during any period of unpaid leave under section 6382 if—

“(A) the employee fails to return from leave under section 6382 after the period of leave to which the employee is entitled has expired; and

“(B) the employee fails to return to work for a reason other than—

“(i) the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under subparagraph (C) or (D) of section 102(a)(1); or

“(ii) other circumstances beyond the control of the employee.

“(3)(A) An employing agency may require that a claim that an employee is unable to return to work because of the continuation, recurrence, or onset of the serious health condition described in paragraph (2)(B)(i) be supported by—

“(i) a certification issued by the health care provider of the employee, in the case of an employee unable to return to work because of a condition specified in section 6382(a)(1)(D); or

“(ii) a certification issued by the health care provider of the son, daughter, spouse, or parent of the employee in the case of an employee unable to return to work because of a condition specified in section 6382(a)(1)(C).

“(B) The employee shall provide, in a timely manner, a copy of such certification to the employing agency.

“(C)(i) The certification described in subparagraph (A)(i) shall be sufficient if the certification states that a serious health condition prevented the employee from being able to perform the functions of the position of the employee on the date that the leave of the employee expired.

“(ii) The certification described in subparagraph (A)(ii) shall be sufficient if the certification states that the employee is needed to care for the son, daughter, spouse, or parent who has a serious health condition on the date that the leave of the employee expired.

#### “§ 6387. Regulations

“The Director of the Office of Personnel Management shall prescribe regulations necessary for the administration of this subchapter. The regulations prescribed under this subchapter shall be consistent with the regulations prescribed by the Secretary of Labor under title I of the Family and Medical Leave Act of 1991.”

(2) TABLE OF CONTENTS.—The table of contents for chapter 63 of title 5, United States Code, is amended by adding at the end thereof the following:

#### “SUBCHAPTER V—FAMILY LEAVE AND TEMPORARY MEDICAL LEAVE

“6381. Definitions.

“6382. Leave requirement.

“6383. Certification.

“6384. Employment and benefits protection.

“6385. Prohibition of coercion.

“6386. Health insurance.

“6387. Regulations.”

(b) EMPLOYEES PAID FROM NONAPPROPRIATED FUNDS.—Section 2105(c)(1) of title 5, United States Code, is amended—

(1) by striking “or” at the end of subparagraph (C); and

(2) by adding at the end the following new subparagraph:

“(E) subchapter V of chapter 63, which shall be applied so as to construe references to benefit programs to refer to applicable programs for employees paid from nonappropriated funds; or”.

### TITLE III—COMMISSION ON LEAVE

#### SEC. 301. ESTABLISHMENT.

There is established a commission to be known as the Commission on Leave (hereinafter referred to in this title as the “Commission”).

#### SEC. 302. DUTIES.

The Commission shall—

(1) conduct a comprehensive study of—

(A) existing and proposed policies relating to leave;

(B) the potential costs, benefits, and impact on productivity of such policies on employers; and

(C) alternative and equivalent State enforcement of this Act with respect to employees described in section 108(a); and

(2) not later than 2 years after the date on which the Commission first meets, prepare and submit, to the appropriate Committees of Congress, a report concerning the subjects listed in paragraph (1).

#### SEC. 303. MEMBERSHIP.

(a) COMPOSITION.—

(1) APPOINTMENTS.—The Commission shall be composed of 12 voting members and 2 ex officio members to be appointed not later than 60 days after the date of the enactment of this Act as follows:

(A) SENATORS.—One Senator shall be appointed by the Majority Leader of the Senate, and one Senator shall be appointed by the Minority Leader of the Senate.

(B) MEMBERS OF HOUSE OF REPRESENTATIVES.—One Member of the House of Representatives shall be appointed by the Speaker of the House of Representatives, and one Member of the House of Representatives shall be appointed by the Minority Leader of the House of Representatives.

(C) ADDITIONAL MEMBERS.—

(1) APPOINTMENT.—Two Members each shall be appointed by—

(I) the Speaker of the House of Representatives;

(II) the Majority Leader of the Senate;

(III) the Minority Leader of the House of Representatives; and

(IV) the Minority Leader of the Senate.

(ii) EXPERTISE.—Such members shall be appointed by virtue of demonstrated expertise in relevant family, temporary disability, and labor-management issues and shall include representatives of employers.

(2) EX OFFICIO MEMBERS.—The Secretary of Health and Human Services and the Secretary of Labor shall serve on the Commission as nonvoting ex officio members.

(b) VACANCIES.—Any vacancy on the Commission shall be filled in the manner in which the original appointment was made. The vacancy shall not affect the power of the remaining members to execute the duties of the Commission.

(c) CHAIRPERSON AND VICE CHAIRPERSON.—The Commission shall elect a chairperson and a vice chairperson from among the members of the Commission.

(d) QUORUM.—Eight members of the Commission shall constitute a quorum for all purposes, except that a lesser number may constitute a quorum for the purpose of holding hearings.

#### SEC. 304. COMPENSATION.

(a) PAY.—Members of the Commission shall serve without compensation.

(b) TRAVEL EXPENSES.—Members of the Commission shall be allowed reasonable travel expenses, including a per diem allowance, in accordance with section 5703 of title 5, United States Code, when performing duties of the Commission.

#### SEC. 305. POWERS.

(a) MEETINGS.—The Commission shall first meet not later than 30 days after the date on which all members are appointed, and the Commission shall meet thereafter on the call of the chairperson or a majority of the members.

(b) HEARINGS AND SESSIONS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before it.

(c) ACCESS TO INFORMATION.—The Commission may secure directly from any Federal agency information necessary to enable it to carry out this Act, if the information may be disclosed under section 552 of title 5, United States Code. Subject to the previous sentence, on the request of the chairperson or vice chairperson of the Commission, the head of such agency shall furnish such information to the Commission.

(d) EXECUTIVE DIRECTOR.—The Commission may appoint an Executive Director from the personnel of any Federal agency to assist the Commission in carrying out the duties of the Commission. Any appointment shall not interrupt or otherwise affect the civil service status or privileges of the employee appointed.

(e) USE OF FACILITIES AND SERVICES.—Upon the request of the Commission, the head of any Federal agency may make available to the Commission any of the facilities and services of such agency.

(f) PERSONNEL FROM OTHER AGENCIES.—On the request of the Commission, the head of any Federal agency may detail any of the personnel of such agency to assist the Commission in carrying out the duties of the Commission. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(g) VOLUNTARY SERVICE.—Notwithstanding section 1342 of title 31, United States Code, the chairperson of the Commission may accept for the Commission voluntary services provided by a member of the Commission.

#### SEC. 306. TERMINATION.

The Commission shall terminate 30 days after the date of the submission of the report of the Commission to Congress.

### TITLE IV—MISCELLANEOUS PROVISIONS

#### SEC. 401. EFFECT ON OTHER LAWS.

(a) FEDERAL AND STATE ANTI-DISCRIMINATION LAWS.—Nothing in this Act or any amendment made by this Act shall be construed to modify or affect any Federal or State law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability.

(b) STATE AND LOCAL LAWS.—Nothing in this Act or any amendment made by this Act shall be construed to supersede any provision of any State and local law that provides greater employee leave rights than the rights established under this Act or any amendment made by this Act.

#### SEC. 402. EFFECT ON EXISTING EMPLOYMENT BENEFITS.

(a) MORE PROTECTIVE.—Nothing in this Act or any amendment made by this Act shall be construed to diminish the obligation of an employer to comply with any collective bargaining agreement or any employment benefit program or plan that provides greater family and medical leave rights to employees than the rights provided under this Act or any amendment made by this Act.

(b) LESS PROTECTIVE.—The rights provided to employees under this Act or any amend-

ment made by this Act shall not be diminished by any collective bargaining agreement or any employment benefit program or plan.

**SEC. 403. ENCOURAGEMENT OF MORE GENEROUS LEAVE POLICIES.**

Nothing in this Act or any amendment made by this Act shall be construed to discourage employers from adopting or retaining leave policies more generous than any policies that comply with the requirements under this Act or any amendment made by this Act.

**SEC. 404. COVERAGE OF THE SENATE.**

(a) COVERAGE.—

(1) APPLICATION.—The rights and protections established under sections 101 through 105 shall apply with respect to a Senate employee and an employing authority of the Senate.

(2) DEFINITIONS.—For purposes of the application described in paragraph (1)—

(A) the term "eligible employee" means a Senate employee; and

(B) the term "employer" means an employing authority of the Senate.

(b) INVESTIGATION AND ADJUDICATION OF CLAIMS.—All claims raised by any individual with respect to Senate employment, pursuant to sections 101 through 105, 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.

(c) RIGHTS OF EMPLOYEES.—The Committee on Rules and Administration shall ensure that Senate employees are informed of their rights under sections 101 through 105.

(d) APPLICABLE REMEDIES.—When assigning remedies to individuals found to have a valid claim under sections 101 through 105, the Select Committee on Ethics, or such other entity as the Senate may designate, should to the extent practicable apply the same remedies applicable to all other employees covered by such sections. Such remedies shall apply exclusively.

(e) EXERCISE OF RULEMAKING POWER.—Notwithstanding any other provision of law, enforcement and adjudication of the rights and protections referred to in subsection (a) shall be within the exclusive jurisdiction of the United States Senate. The provisions of subsections (b), (c), and (d) are enacted by the Senate as an exercise of the rulemaking power of the Senate, with full recognition 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.

**SEC. 405. REGULATIONS.**

The Secretary of Labor shall prescribe such regulations as are necessary to carry out sections 401 through 403 not later than 60 days after the date of the enactment of this Act.

**SEC. 406. EFFECTIVE DATES.**

(a) TITLE III.—Title III shall take effect on the date of the enactment of this Act.

(b) OTHER TITLES.—

(1) IN GENERAL.—Except as provided in paragraph (2), titles I and II and this title shall take effect 6 months after the date of the enactment of this Act.

(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a collective bargaining agreement in effect on the effective date prescribed by paragraph (1), title I shall apply on the earlier of—

(A) the date of the termination of such agreement; or

(B) the date that occurs 12 months after the date of the enactment of this Act.

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

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

The motion to lay on the table was agreed to.

Mr. MITCHELL. Mr. President, the Senate has just acted in decisive fashion on very important legislation dealing with the issue of family and medical leave. Because of the intervening votes, I did not have the opportunity earlier to express my congratulations and gratitude to the distinguished Senator from Connecticut [Mr. DODD] who has been the leader in this effort, Senator BOND of Missouri, and Senator FORD of Kentucky.

I believe this to be very important and meaningful legislation. It passed with a very decisive vote, 65 votes in the affirmative. There were three absences, and all three of those Senators have publicly expressed their support for the legislation. So effectively 68 Senators are supporting this very important bill.

I think all of the American people and particularly American women, whose economic independence will be enhanced by this important legislation, owe a great deal of gratitude to Senators DODD, BOND, and FORD. I commend them for that.

Obviously, passing the Senate is not the same as becoming law. Many long and difficult steps lie ahead. But the first substantial hurdle has been overcome. Very important legislation is now on its way toward what we hope will be enactment and most importantly, the achievement of economic independence for American women.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I thank the majority leader and the minority leader as well. Yesterday was a rather long day in negotiations, I think some 7 hours or so. Actually, it may have been longer. The majority leader may correct me. But it was a long day of trying to work out the unanimous consent which led to the votes that occurred this afternoon, as well as the vote, I gather, next Tuesday on the Thomas nomination.

Mr. President, I have said it already today, but it bears repeating. We would not have achieved the results we did today without the help of an awful lot of people on both sides of the aisle. This was not a partisan battle at all. There were people who differed over the legislation, but the differences were encountered on both sides. There were opponents of the legislation on this side, as obviously there were on the other side of the aisle. But without the efforts of Senator BOND of Missouri, Senator COATS of Indiana, Senator PACKWOOD, going back a long time, an original cosponsor, we would not have been able to achieve the results we did, helping put together the compromise. So I am eternally indebted to them for their tremendous effort.

The majority leader, Mr. President, has said, correctly, we were missing three of our colleagues today who were unavoidably absent from participating in the votes this afternoon: Senators HARKIN, KERREY, and PRYOR. Senators HARKIN and KERREY are cosponsors of the Bond-Coats-Ford substitute, as well as the original Dodd legislation on family medical leave, and Senator PRYOR is a supporter.

Take those 3 votes, add them to the 65 we achieved on the Bond-Coats-Ford substitute, and that is 68 votes. My hope is, Mr. President, that we will be able to encourage President Bush and the administration to step forward and say let us sit down and see if we cannot work out something that the President can support and will sign. I am very anxious for that to occur. Nothing would make me sadder than to have to get into a veto override battle on the floor of the Senate or in the House.

So the offer still stands, Mr. President, even though we achieved an override, if you will, at least by today's vote, apparently an override vote. I hope we do not get to that. I hope we can work out the differences and pass some nonpartisan legislation in the Senate, differences though there be. It was not a partisan vote in that sense.

Again my deep sense of thanks to Senator BOND of Missouri and others on that side as well as on our own side, Mr. President, who made not only that vote possible but I think the quality of the legislation. So I thank them, and I thank the majority leader for his help in this regard.

Mr. MITCHELL. Mr. President, I will be pleased to yield to the Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I join my colleague from Connecticut in expressing our sincerest thanks to the majority leader and minority leader. We had a very long negotiating session. I think we have come to an excellent outcome. We were able to handle a very important piece of legislation and now we will move on tomorrow to another very important matter. I appreciate the people who worked so long and hard to allow us to achieve that.

I add my special thanks to Senator DODD and the other original cosponsors for their strong push behind this legislation. We are deeply appreciative of their willingness to negotiate, to accommodate us. Senator FORD, Senator COATS, and I had concerns and they were able to accommodate us and make this, I think, a much more workable piece of legislation.

I express thanks to the staff of those members. I want to say a special thanks to Julie Dammann and Leanne Jerome of my staff, who worked very hard.

For those who say that this is a question of a veto override, let me empha-

size what Senator DODD has already said. I hope now that we have 68 people in favor of this legislation, either recorded in the vote today or having previously announced their support, we will be able to discuss his with the White House and with the Labor Department to see if there are accommodations that can be made. This is an ongoing process. We want to see the families of America protected when illness or the arrival of a child makes it necessary for a worker to take some time off from a job. I think the family and medical leave protections are extremely important to many families in America who are under great pressure. I am grateful that we had such a strong vote, and I thank those who came along only as a result of the adjustments. We assure them that we want to continue to work with them.

Our objective is to see this measure passed in the House and ultimately signed into law by the President. That I think is not good Democratic or Republican politics. I think it is good policy for the United States. I hope we can see a measure signed with strong bipartisan support and a Republican President's signature on the bill.

I thank my colleagues I yield the floor.

Mr. MITCHELL. Mr. President, I thank my colleagues for their comments and also thank the Senator from Kentucky, who played such a prominent role in bringing this to a successful conclusion and who typically said little publicly but worked a lot on the measure outside the public eye.

We are all grateful to the Senator from Kentucky for his usual hard work and conciliating efforts that made this result possible.

Mr. DODD. Mr. President, if the majority leader will yield, I want to second those comments. This is the steady hand from Kentucky. There have been some very troubled waters over the last 5 years. He has guided this piece of legislation. Without that steady hand, we would not have brought the coalition together.

But I want to also, Mr. President, thank my staff, as well as Senator BOND's staff, and Senator FORD's staff. I will not enumerate all the names of people who were involved in the respective offices in pulling this together, but there was some fine staff work done by people whose names are never heard of in the public eye, who made this possible, working long hours. So I thank Senator BOND for mentioning that as well.

The PRESIDING OFFICER. The majority leader is recognized.

#### ORDER OF PROCEDURE

##### UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that immediately upon disposition of Senate Resolution

186, the Haiti resolution, offered by Senator GRAHAM of Florida and others, the Senate proceed to the immediate consideration of Calendar No. 234, Senate Joint Resolution 110, regarding Zionism; that there be 2 minutes for debate on the resolution under the control of Senator MOYNIHAN, with no amendments in order to the resolution; that when the time is used or yielded back, the Senate without intervening action or debate proceed to vote on passage of the resolution; and further, that it now be in order to ask for the yeas and nays on the resolution.

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

Mr. MITCHELL. Mr. President, I now ask for the yeas and nays on the resolution.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. MITCHELL. Mr. President, I now ask unanimous consent that that vote be a 10-minute vote.

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

Mr. MITCHELL. Mr. President, Senators, therefore, should be aware there will now be two 10-minute votes coming up with 2 minutes for Senator MOYNIHAN between the two votes.

I thank my colleagues.

I yield the floor.

#### SENATE RESOLUTION 186— RELATIVE TO HAITI

The PRESIDING OFFICER. Under the previous order the clerk will report Senate Resolution 186.

The legislative clerk read as follows:

A resolution (S. Res. 186) relating to Haiti.

The Senate proceeded to the consideration of the resolution.

Mr. D'AMATO. Mr. President, I rise today to express my deep concern over the disturbing and dangerous events presently unfolding in Haiti. The constitutional democracy that the Haitian people have enjoyed over the past 7 months has been trampled by the brutal and illegal coup of President Jean-Bertrand Aristide.

Mr. President, when Father Aristide was elected, the Haitian people gained an outspoken reformist and all democratic governments supported the moderation with which he was reforming his country. Today, all that progress has been shattered. The senseless loss of life caused by the coup is deplorable. Some reports indicate well over 100 persons have been killed. Those who are responsible should be held accountable and suffer severe punishment.

While much remains unknown as to who is responsible for these alarming events, there is no doubt that if Haiti is to continue on the path of democracy, President Jean-Bertrand Aristide must be restored to his lawful role as President of Haiti.

Mr. President, it is time that the U.N. Security Council take a decisive and immediate stand condemning this ruthless coup. The United Nations' pernicious habit of turning its head when military rulers oust a democratically elected government of the people is unacceptable. With the tide of democracy sweeping across the globe, the world body can not simply stand by as the colonels govern by the barrel of the gun.

I applaud the Bush administration's decision to immediately suspend all aid and economic assistance to Haiti until the legitimate democratic government is restored, and I stand ready to assist the people of Haiti in their enduring struggle to achieve true and lasting democracy in their nation.

Mr. LEAHY. Mr. President, 4 years ago in Haiti at least 34 people were gunned down at the polls as they tried to elect a president. Last year, despite threats of another bloodbath by the same Duvalierists, the Haitian people again courageously voted and this time, in an election closely monitored by the United Nations and the OAS, overwhelmingly elected a civilian president, a priest whose life had been devoted to Haiti's poor.

For the Haitian people and the world, that day symbolized a rejection of 40 years of dictatorship and greed, and the beginning of a new era of democracy, justice and hope.

As chairman of the Foreign Operations Subcommittee which writes the foreign aid appropriations bill, I have strongly supported U.S. aid to the Aristide government. Last year we provided financial support to register voters and protect the polls, and since then we have provided large amounts of economic aid to help Haiti begin to solve its economic problems and strengthen democracy.

Mr. President, the coup d'etat that has just been perpetrated by the Haitian army is a desperate attempt to reverse the tide of history. It is an attempt that I am confident will ultimately fail. I am confident that this outrageous subversion of democracy, this blatant violation of the will of the Haitian people for the sake of personal privilege and power, will be unequivocally opposed throughout this hemisphere.

All United States aid to Haiti has been stopped. France and Canada have also suspended their aid. I will not agree to the resumption of aid to the Haitian Government until democracy is restored. The OAS is to take this matter up shortly and I urge all its member countries to act forcefully to condemn this illegal act and refuse any recognition of the coup leaders. The Haitian generals must be made to see, as the Soviet coup plotters saw just a little over a month ago, that this kind of usurpation will not be sustained.

Mr. President, for the better part of this century the United States was on

the side of dictatorship in Haiti. That changed dramatically last year, when our Government threw its full weight behind President Aristide. I am pleased that the administration has publicly denounced this coup and reaffirmed its commitment to democracy in Haiti. Ambassador Adams deserves special praise for his role in negotiating for President Aristide's release from custody and safe passage to Venezuela. I urge President Bush, in consultation with the other governments of the hemisphere, to do all that is possible to work to restore to the Haitian people the democracy they have struggled and suffered so long for and so clearly deserve.

The PRESIDING OFFICER. The question occurs on adoption of the resolution.

The yeas and nays have not been ordered.

Mr. MITCHELL. Mr. President, I request 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 resolution.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Iowa [Mr. HARKIN], the Senator from Nebraska [Mr. KERREY], and the Senator from Arkansas [Mr. PRYOR] are necessarily absent.

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

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 217 Leg.]

YEAS—97

Adams	Ford	Mitchell
Akaka	Fowler	Moynihan
Baucus	Garn	Murkowski
Bentsen	Glenn	Nickles
Biden	Gore	Nunn
Bingaman	Gorton	Packwood
Bond	Graham	Pell
Boren	Gramm	Pressler
Bradley	Grassley	Reid
Breaux	Hatch	Riegle
Brown	Hatfield	Robb
Bryan	Heflin	Rockefeller
Bumpers	Helms	Roth
Burdick	Hollings	Rudman
Burns	Inouye	Sanford
Byrd	Jeffords	Sarbanes
Chafee	Johnston	Sasser
Coats	Kassebaum	Seymour
Cochran	Kasten	Shelby
Cohen	Kennedy	Simon
Conrad	Kerry	Simpton
Craig	Kohl	Smith
Cranston	Lautenberg	Specter
D'Amato	Leahy	Stevens
Danforth	Levin	Symms
Daschle	Lieberman	Thurmond
DeConcini	Lott	Wallop
Dixon	Lugar	Warner
Dodd	Mack	Wellstone
Dole	McCain	Wirth
Domenici	McConnell	Wofford
Durenberger	Metzenbaum	
Exon	Mikulski	

NAYS—0  
NOT VOTING—3

Harkin Kerrey Pryor

So the resolution (S. Res. 186) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 186

Whereas the people of Haiti have long suffered under the brutal and arbitrary rule of dictatorship rather than the democratic rule of law;

Whereas in 1986 Haitians from all sectors of society showed great courage in joining together to oust President-for-Life Jean Claude Duvalier;

Whereas an overwhelming majority of Haitians have declared themselves in support of democratic rule by approving a constitution in 1987 establishing a legal framework for the election of a civilian government;

Whereas the 1987 presidential election was cancelled due to widespread violence on the day of election;

Whereas the Haitian people participated in a second internationally supervised election on December 16, 1990, and elected President Jean-Bertrand Aristide by almost 70 percent of the vote in an election that was recognized by international observations as free, fair and open;

Whereas elements of the military on September 30 launched an armed attack against President Aristide and the people of Haiti;

Whereas President Aristide was forced to leave Haiti and a military junta has seized power: Now, therefore, be it

*Resolved*, That it is the sense of the Senate that—

(1) the President should make clear that the United States supports the restoration of the democratically elected government of President Aristide;

(2) all United States assistance to the Haitian Government, economic and military, should remain suspended until democratic government is restored;

(3) the Haitian military should respect the human rights of the Haitian people;

(4) the Organization of American States (OAS) should be commended for vigorously condemning the coup and for its Santiago commitment of June 1991 creating a new automatic mechanism to respond to the interruption of legitimate elected government; and

(5) the international community, particularly the OAS, should take all appropriate action to restore democratic government in Haiti.

The PRESIDING OFFICER. Without objection, the motion to reconsider is laid upon the table.

The Chair recognizes the majority leader.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, pursuant to a prior agreement, momentarily Senator MOYNIHAN will be recognized to address the Senate for 2 minutes, following which there will be a rollcall vote on his resolution regarding Zionism. That will be the last rollcall vote today.

The Senate will be in session tomorrow and Friday, and Monday and Tuesday of next week, prior to the Colum-

bus Day recess. I have been consulting with the distinguished Republican leader and a number of Senators involved in appropriations conference reports, and I hope to have an announcement later this evening on the schedule with respect to votes for the 4 days which I have just described: that is, Thursday, Friday, Monday, and Tuesday.

We are going to try to organize it in a way that, to the extent possible, the conference reports will be adopted by voice vote, and if rollcall votes are required, to stack those on next Tuesday.

That requires the cooperation of several Senators who are involved in the handling of such legislation, and we do not have that understanding completed yet. That is why I am not able to make a statement at this time with respect to Thursday, Friday, Monday, and Tuesday. But I do hope to have that before the Senate completes its business today, and make that announcement for the information of all Senators. And those who are not present, of course, will learn of it through their staffs.

So I thank all Senators for their cooperation. The distinguished Republican leader and I will be meeting shortly in this regard, and I will have an announcement as soon as possible.

RELATIVE TO A REPEAL OF UNITED NATIONS GENERAL ASSEMBLY RESOLUTION 3379

The PRESIDING OFFICER. Under the previous order, the clerk will report Senate Joint Resolution 110.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 110) expressing the sense of the Congress that the United States and the Soviet Union shall lead an effort to promptly repeal United Nations General Assembly Resolution 3379.

The Senate proceeded to consider the joint resolution.

The PRESIDING OFFICER. Under the previous order, the distinguished Senator from New York is recognized for 2 minutes.

Mr. MOYNIHAN. Mr. President, this resolution obviously supports President Bush's fine, exceptionally fine address to the General Assembly on September 23. It supports and expresses, in effect, appreciation to the endorsement of the proposal by the Soviet Foreign Minister, the following day and on this Monday, by the Ukrainian President.

Mr. President, in his recent speech before the General Assembly of the United Nations, President Bush called for the repeal of the infamous resolution equating Zionism with racism. During that historic speech the President said:

U.N.G.A. Resolution 3379, the so-called "Zionism is racism" resolution, mocks this pledge, and the principles upon which the United Nations was founded, and I call now

for its repeal. Zionism is not a policy. It is the idea that led to the creation of a home for the Jewish people, to the state of Israel. And to equate Zionism with the intolerable sin of racism is to twist history and forget the terrible plight of Jews in World War II and indeed throughout history.

To equate Zionism with racism is to reject Israel itself, a member of good standing of the United Nations. This body cannot claim to seek peace and at the same time challenge Israel's right to exist. By repealing this resolution unconditionally, the United Nations will enhance its credibility and serve the cause of peace.

Shortly after the President spoke on September 23, Foreign Minister Pankin of the Soviet Union also called for the repeal of the resolution. This is especially noteworthy because the Soviet Union was the organizer and sponsor of the campaign to adopt Resolution 3379. Foreign Minister Pankin said:

The philosophy of new international solidarity, which is finding its way into practice, signifies a de-ideologization of the United Nations. In renewing our Organization we should once and for all leave behind the legacy of the ice age like the obnoxious resolution equating Zionism with racism.

Perhaps most dramatic of all, on Monday, September 30, Leonid Kravchuk, President of the Ukraine, also addressed the General Assembly. In his address, President Kravchuk implicitly noted the Soviet campaign charging that the Babi Yar massacre was a collaboration of the Gestapo and Zionists. He noted that the Ukraine had been a prime sponsor of the Zionism resolution. I believe that it is worth repeating his remarks on these subject in full.

Precisely half a century ago, on September 30, 1941 loudspeakers had been booming for 48 hours on end in the Ukrainian capital, airing music in a cynical attempt to drown the sound of automatic fire as Nazi troops were wearily shooting the last of the Jewish women, children and old people in Kiev. They were the first to be burned in the mass graves of Babi Yar. Nearly 200,000 others Jews, Ukrainians, Russians and Gypsies shared their lot under the occupation. Our compassionate memory owes tribute to all those innocent victims without distinction. Today we can no longer accept the ideological approaches of the former regime in our country which often ended in neglect for individual rights and the rights of entire peoples. We can accept nothing less than the entire truth about the Babi Yar tragedy where Jews were the most frequent victims of mass executions. The international commemoration of the victims of the tragedy in Babi Yar, held this week in the city of Kiev, serves as yet another reminder of our duty to make sure that genocide never happens again anywhere on earth.

In this connection I would like to stress that nowadays Ukraine has changed more than just its country plate in the UN Assembly Hall. It has made fundamental adjustments in the attitude to the tragic pages of its history and in its approach to a number of world issues. Thus, it would have been impossible for the independent Ukraine to support, let alone co-sponsor, a resolution equating Zionism to racism—a resolution born out of bitter ideological confrontation among the nations of the world. It is time

for the United Nations to shake off the burden of the past.

Last week the executive director of the Conference of Presidents of Major American Jewish Organizations stated:

As the initial author of the resolution, the Soviet Union's repudiation should be a major spur to the effect for its rejection by the entire United Nations.

That is exactly the thrust of this resolution.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that all Senators who wish may add their names before the close of business, and that any Senator voting in the affirmative be considered to have cosponsored.

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

Mr. MOYNIHAN. Mr. President, I yield 30 seconds to my friend and colleague from New York, Mr. D'AMATO.

The PRESIDING OFFICER. The Senator from New York is recognized for 30 seconds.

Mr. D'AMATO. On behalf of Senator DOLE and myself, we are pleased to join in sponsoring this resolution. This is a manner and way in which the United Nations can really further the peace process.

Mr. GRASSLEY. Mr. President, I rise in support of this resolution urging the repeal of the United Nations' outrageous resolution equating Zionism with racism. This resolution has been a stain upon the United Nations for some 16 years and its repeal is long overdue.

I was pleased to hear President Bush, this week at the opening session of the General Assembly, call for the repeal of the Zionism is a racism resolution. As he noted, this resolution calls into question the very existence of Israel. And at a time that the United States is trying to advance the peace process, we should be promoting and facilitating conduct which increases Israel's confidence in the peace process.

Mr. President, the world is a very different place since the time that resolution was adopted, over very strong objections of the United States, I might add. East-West tensions have receded. The United States, allied with many nations, fought a war against aggression, and the United Nations played a constructive role in that effort.

But when it comes to Arab-Israeli tensions, the United Nations, so long as this resolution stays on the books, has no credibility. The United Nations shows itself to be in the rejectionist camp, questioning Israel's very right to exist.

Zionism was an ideal and a political movement. Now it is a reality. In the last 2 years, Israel has welcomed hundreds of thousands of new immigrants, mostly from the Soviet Union, but also from Ethiopia and Latin America. Israel, 43 years after its creation, continues to fulfill its the dreams of Zionism—to provide a homeland for any Jew from anywhere.

Let us lead the way to the repeal of this offensive resolution.

Mr. MOYNIHAN. Mr. President, seeing no further request to speak, I yield back the floor and thank the majority leader and Republican leader.

The PRESIDING OFFICER. There being no further debate, the question is, Shall the joint resolution pass?

Under the previous order, the yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Iowa [Mr. HARKIN], the Senator from Nebraska [Mr. KERREY], and the Senator from Arkansas [Mr. PRYOR] are necessarily absent.

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

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 218 Leg.]

YEAS—97

Adams	Ford	Mitchell
Akaka	Fowler	Moynihan
Baucus	Garn	Murkowski
Bentsen	Glenn	Nickles
Biden	Gore	Nunn
Bingaman	Gorton	Packwood
Bond	Graham	Pell
Boren	Gramm	Pressler
Bradley	Grassley	Reid
Breaux	Hatch	Riegle
Brown	Hatfield	Robb
Bryan	Heflin	Rockefeller
Bumpers	Helms	Roth
Burdick	Hollings	Rudman
Burns	Inouye	Sanford
Byrd	Jeffords	Sarbanes
Chafee	Johnston	Sasser
Coats	Kassebaum	Seymour
Cochran	Kasten	Shelby
Cohen	Kennedy	Simon
Conrad	Kerry	Simpson
Craig	Kohl	Smith
Cranston	Lautenberg	Specter
D'Amato	Leahy	Stevens
Danforth	Levin	Symms
Daschle	Lieberman	Thurmond
DeConcini	Lott	Wallop
Dixon	Lugar	Warner
Dodd	Mack	Wellstone
Dole	McCain	Wirth
Domenici	McConnell	Wofford
Durenberger	Metzenbaum	
Exon	Mikulski	

NAYS—0

NOT VOTING—3

Harkin Kerrey Pryor

So the joint resolution (S.J. Res. 110) was passed.

S.J. RES. 110

Whereas United Nations General Assembly Resolution 3379 (XXX), which equates Zionism with racism—

(a) has been unhelpful in the context of the search for a settlement in the Middle East;

(b) is inconsistent with the Charter of the United Nations;

(c) remains unacceptable as a misrepresentation of Zionism; and

(d) has served to escalate religious animosity and incite anti-Semitism;

Whereas the United States vigorously opposed the adoption of Resolution 3379 and has never acquiesced to its content;

Whereas the Soviet Union vigorously supported the adoption of Resolution 3379 but has now stated that it no longer supports the resolution; and

Whereas the Soviet Union has expressed a desire to participate in the search for a just

and lasting peace in the Middle East and should demonstrate its commitment to peace by working to repeal Resolution 3379. Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States and the Soviet Union should lead an effort to promptly repeal United Nations General Assembly Resolution 3379 (XXX).*

The PRESIDING OFFICER. Without objection, the motion to reconsider is laid upon the table.

Mr. MOYNIHAN. Mr. President, may I note, with the gracious agreement of the Presiding Officer, unanimous consent was obtained that all Senators who voted for the resolution would be considered to have been cosponsors thereof.

The PRESIDING OFFICER. Under the previous agreement, that was agreed to.

Mr. MOYNIHAN. I do thank the Chair.

DEPARTMENTS OF VETERANS AFFAIRS, HOUSING AND URBAN DEVELOPMENT AND SUNDRY INDEPENDENT AGENCIES, COMMISSIONS, CORPORATIONS, AND OFFICES APPROPRIATIONS ACT, FISCAL YEAR 1992—CONFERENCE REPORT

Mr. MITCHELL. Mr. President, I now ask that the Chair lay before the Senate the conference report on H.R. 2519, the Veterans Affairs-HUD appropriations bill for fiscal 1992.

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 amendments of the Senate to the bill (H.R. 2519) making appropriations for the Departments of Veterans Affairs, and Housing and Urban Development, and for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1992, 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 September 28, 1991.)

Ms. MIKULSKI. Mr. President, I ask unanimous consent that Paul Bryant, Tom Spence, Sarah Linstead, and Paul Brubacher be granted unlimited floor privileges during the Senate consideration of this conference report.

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

Ms. MIKULSKI. Mr. President, I urge the adoption of the conference report.

Mr. President, I am proud to bring before this body the conference report to accompany H.R. 2519, the fiscal year 1992 VA, HUD, and independent agen-

cies appropriations bill, and I urge my colleagues to adopt it.

This year's bill has been my most difficult as chair of the VA-HUD Subcommittee. We faced compelling needs from virtually every agency and advocacy group with an interest in this legislation. From our aging veterans who fought to save our freedom, to the pioneers of the new frontiers in space, we had significant causes among which to choose.

The criteria we used to set our course were first, what was in the national interest. Second, had we met our commitments—both past and future: to the heroes of our past wars—or through public investments in the next generation in space, science and the environment. And finally, in housing, had we given the opportunity for those Americans who seek to become middle class.

We had three lists of priorities: What we "must do"; what we "should do"; and what we would "like to do". We have done our best to fund those items on the must do list, and to lesser extent, those on the should do list. But I would be less than honest with my colleagues if I said that this legislation contains everything I would like to do. Whether it is in veterans health care, or housing, or in investments in the future like space or the environment, we simply did not have the funds to address every good idea or intention.

In addition, the subcommittee faces a serious, last-minute problem before conference in housing. For the second time in 3 years, HUD admitted to a \$1.2 billion error in its estimates of section 8 contract renewals, only hours before the Senate went to markup in July. To solve this problem, and avoid putting 24,000 families in the street next year, we had to agree to add an additional \$325 million in section 8 renewals in fiscal year 1992, and provide an advance appropriation of over \$850 million for fiscal year 1993. That is \$325 million that is not available for either new housing initiatives or traditional housing programs.

So these pressures, coupled with the legitimate requests of our colleagues in both bodies, have made for a tight budget which require us to make the hard choices for which our constituents elected us.

I will now outline some of the major aspects of the conference agreement.

DEPARTMENT OF VETERANS AFFAIRS

The conference agreement includes a total of \$32.5 billion for the Department of Veterans Affairs. For medical care, \$13.5 billion is provided, an increase of \$226 million above the President's request and \$1.2 billion above last year's amount.

This includes \$75 million for 1,500 new nurses in VA hospitals, \$500 million for vitally needed medical equipment, \$12 million to institute a quality assurance system in each VA hospital, and \$30

million to treat vets suffering from posttraumatic stress.

A total of \$796 million is included for the Veterans Benefits Administration, including funds above the budget request for 220 staff to reduce the growing backlog of veterans' claims.

For the National Cemetery System, \$67 million is provided—an increase of \$10 million above the President's request—to restore our veterans cemeteries to a level of beauty and dignity befitting those who are buried there.

Finally, more than \$600 million is provided for major and minor construction projects. The conferees agreed to reduce the budget of the VA's Office of Facilities, which runs the construction program, to send a strong message that they need to get the excessive construction cost overruns under control.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

The bill provides a direct appropriation of \$23.8 billion for housing and community development. In addition, the bill uses about \$750 million in carryover funds and a \$1.750 billion savings from the refinancing of elderly and disabled housing projects. This provides for a total housing program level of \$26.3 billion, about \$2 billion, or an 11-percent increase, over last year.

Provided within this amount are funds for three new initiatives: \$1.5 billion for the new HOME Program; over \$600 million for the preservation of housing funded under the old 221 and 236 programs; and \$361 million for the new HOPE Program.

In addition, the bill includes almost \$7.4 billion for section 8 contract renewals, as well as funds for new Indian, elderly, disabled, public, and section 8 housing units. The bill also includes \$3.4 billion for the CDBG Program, \$200 million above last year's level.

In addition, we have included \$450 million for homeless programs. While less than the President's budget request, the level in the conference report for homeless assistance is about 32 percent above last year's appropriation. It was the decision of the conferees, however, to put more funds into permanent housing, rather than simply into homeless assistance.

The conferees have included the language requested by the Office of Management and Budget on the conversion of 202 elderly and handicapped housing projects. While including this language, however, the conferees have added a provision that does not mandate conversion until January 1, 1992. In addition, from January 1, 1992, until April 1, 1992, the conferees have provided the Secretary with the ability to provide a conversion waiver on a case-by-case basis. The conference report also provides language that makes clear that any existing project which converts from the loan to the direct grant program that they will be able to use secondary financing from non-Fed-

eral sources. Finally, converted projects, under the conference report, will guarantee that they will not lose their place in line in the approval process.

#### ENVIRONMENTAL PROTECTION AGENCY

The conference agreement provides \$6.7 billion to the Environmental Protection Agency, an increase of 9 percent over the fiscal year 1991 budget and 7 percent above the President's request.

Included in that is \$2.6 billion for EPA's operating programs: more than \$1 billion for salaries and expenses, sufficient funds to implement the new Clean Air Act amendments; \$323 million for research and development; and about \$570 million for State grants for nonpoint source control, clean lakes, drinking water, hazardous waste, asbestos abatement, and other activities.

The conferees agreed to provide \$1.616 billion for the hazardous substance Superfund to clean up toxic waste sites nationwide. The agreement directs EPA to cut back on contractors' overhead expenses, and reduces the amount of administrative expenses charged to the trust fund, leaving more funds available for direct site clean ups.

Finally, \$2.4 billion is provided for sewage treatment construction grants and the State revolving loan fund program, the highest amount since 1985. It represents an increase of \$500 million above the President and \$300 million above the 1991 level.

#### FEDERAL EMERGENCY MANAGEMENT AGENCY

The bill provides a total appropriation to FEMA of over \$773 million.

Notable differences between the conference agreement and the administration request are:

Rejection of a \$91.25 million budget amendment for disaster relief.

We rejected the budget amendment because the administration didn't designate these funds as emergency in nature, and its source of proposed funding offsets were unacceptable. It's my hope that this impasse over emergency designation will be resolved.

An additional \$34 million for the Emergency Food and Shelter Program, to maintain last year's funding level of \$134 million.

Addition of \$2.26 million to make necessary safety and other building improvements at Emmitsburg, MD.

And an addition of \$3 million for title III community-right-to-know activities.

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

The conferees recommend \$14.3 billion for NASA for 1992. This is an increase of \$452 million, or 3.3 percent over last year. Of this total, \$6.4 billion is for research and development, \$5.2 billion is for space flight, control, and data communications, \$2.2 billion is for research and program management, \$525 million is for construction of facilities, and \$14.6 million is for the inspector general.

The conference report recommends \$6.414 billion for research and development. This is an increase of \$390 million, 6.5 percent, over last year. Included in R&D is \$2.029 billion for the space station *Freedom*, and increase of \$129 million or 6.8 percent over 1991. With this recommendation, the conferees provide the President's full request.

The report provides \$2.667 billion for space science and applications. This is an increase of \$238 million or 9.8 percent over last year. The report recommends: \$151 million for AXAF [X-ray observatory]; \$211 million for CRAF/Cassini [Comet & Saturn]; and \$188 million for EOS plus \$83 million for EOSDIS.

The conferees recommend \$595 million for space transportation. This is \$87 million below 1991, due to reductions in spacelab, upper stages, and the new launch system. Aeronautical research is increased \$62 million to \$574 million, and commercial programs, \$19 million to \$105 million.

The conferees recommend \$5.157 billion for space flight, control, and data communications. This is an increase of \$46 million or 9 percent over 1991. Of this, \$1.1 billion is for shuttle production and capability, \$2.9 billion is for space transportation operations, and \$9 billion is for space and ground communication networks.

The conference report recommends \$525 million for the construction of facilities. This is an increase of \$27 million over 1991.

The conferees recommended \$2.242 billion for research and program management. This is an increase of \$130 million over last year.

The conference agreement includes the adoption of a series of principles with respect to NASA's future budget submissions. It is imperative, in the view of the committees, that NASA and the OMB take them seriously so as to guarantee that our civilian space program will continue to help us prepare for the 21st century in an era of great fiscal constraint.

#### NATIONAL SCIENCE FOUNDATION

The conference agreement provides an appropriation of \$2.6 billion for the National Science Foundation for 1992. This is an increase of \$261 million over last year's appropriation, an increase of 10 percent.

Of this amount, \$1.879 billion has been provided for the research and related activities. This is an increase of \$185 million, or 11 percent over 1991. The agreement recommends additions of \$12.5 million for astronomy, \$7.5 million for Arctic research and logistics, and \$4 million for EPSCoR.

The conferees have added \$75 million to Education and Human Resources bringing the total to \$465 million. This is an increase of 44 percent—signaling the conferees' strong commitment to education activities.

The conference report provides \$33 million for academic research facilities and instrumentation. It recommends a 50-50 split of funds for these two initiatives.

Included in the report are funds for the Antarctic—\$78 million for Antarctic research and \$10 million for logistics. These are to be supplemented by DOD funds for logistics and environmental cleanup activities.

The conferees recommended \$108 million for the salaries and expenses of the Foundation. This is an increase of \$7 million or 7.3 percent over last year. Finally, \$14.6 million is provided for the Office of the Inspector General.

#### FEDERAL DEPOSIT INSURANCE CORPORATION

The bill provides \$15,867,000,000 for the FSLIC resolution fund; \$12,448,000,000 more than the formal budget request. Changes consists of:

Likely cost increases for the year of \$2.473 billion.

Advice of the Chairman FDIC that out-year savings of \$2 billion could be realized with an additional \$10.007 provided in 1992.

Reduction of \$32 million based on identification by the RTC IG of ineligible costs of that amount.

We're providing that extra \$10 billion to try to save the taxpayers some money. Last year, the Congress provided the FSLIC resolution fund an additional \$16 billion to buy out or renegotiate some of these deals at better terms for the Government. The RTC IG confirmed last summer, that \$16 billion would save the taxpayers at least \$500 million, and likely up to \$2 billion.

#### CONCLUSION

Mr. President, in conclusion, I would like to thank the members of my subcommittee, particularly my ranking member, the distinguished Senator from Utah. They have provided me with invaluable support this year. I am indebted to them, and especially Senator GARN, for their cooperation and counsel.

A special thanks also goes to my full committee chairman, Senator ROBERT C. BYRD, and the full committee's ranking member, Senator MARK HATFIELD. No committee in this body could be headed by any better Senators, and the Committee on Appropriations is fortunate to have them both.

I would also like to thank the full committee staff, led by Jim English, Terry Sauvain, and Mary DeWald for the majority, and Keith Kennedy for the minority. Without their help this year, we would have faced an infinitely more difficult task.

I also want to thank my dedicated subcommittee staff. They have worked very hard on this legislation and I am proud of them for what they have been able to help Senator GARN and I accomplish in it. They include on the majority staff: Kevin Kelly, the staff director and majority clerk; Carrie Apostolou, the assistant clerk; Juanita Griffin,

the subcommittee's staff assistant; Dr. Thomas Spence, on detail from the National Science Foundation this year; Paul Bryant, our ace accountant on detail from the General Accounting Office who has helped us wade through both FEMA and our responsibility with America's financial institutions for the last 2 years; and Sarah Linstead on detail from NASA. On the minority side, they include Stephen Kohashi, Donna Pate, and Paul Brubacher.

I urge my colleagues to agree to this conference report as a balanced effort for America's future in a time of great fiscal constraint.

Mr. GARN. Mr. President, as we begin consideration of the conference report on the fiscal year 1992 VA-HUD appropriations bill, I would like to compliment Senator MIKULSKI, chair of our subcommittee, for her hard work and dedication in resolving the significant differences between the House and Senate versions of this measure. This task, and the difficult and complex choices involved, has been compounded by the severe budgetary constraints imposed on discretionary appropriations.

I would note, however, that we can expect these budgetary burdens to grow, if not multiply in severity next year and thereafter, and I am very concerned over the implications of some of the choices made in this bill in terms of how they will aggravate our plight. This is particularly worrisome in the low-outlay housing and community development activities which are being financed through one-time budget authority recapture windfalls. This is enabling us to provide a significantly higher program level than what we will be able to sustain in future years when we must use new budget authority and remain within expected outlay limitations.

I fully recognize the natural reluctance to decline attractive opportunities available now because of what may happen down the road. But I think it is important that we put ourselves, and the public, on notice that this measure probably represents the high-water mark of funding for these programs. And that we must expect reductions in years to come.

When I served as chairman of our subcommittee, I employed the same techniques and schemes to maximize the program levels of activities under our jurisdiction. Frankly, there is no incentive in our appropriations process to exercise restraint. Indeed, there is a real disincentive: failure to use every gimmick available only means that the baseline for your programs in the ensuing year's budget allocation will be less, and that your claim to a more adequate share will be unfairly prejudiced by the lack of restraint by others.

We may have entered into a multiyear budget agreement, but we

still formulate appropriations bills on an annual basis. And we pay little more than lip service to the implications of our actions on future year budgetary limits.

The program levels reflected in the measure before us simply cannot be sustained within any plausible expectation of what will be available next year, whether or not there is any revision of the budget agreement. Indeed, it is not clear that we will even get through the current fiscal year without a political collision over the domestic spending cap. The housing program levels in this measure are based on optimistic cost assumptions and can be provided only if we recover very high rates of unspent prior year budget authority. Moreover, it is an open issue of how we will respond to the shortfall in disaster relief funding, but there is no room left under our spending caps for this obvious need.

During consideration of last year's conference report I analyzed worrisome trends in expansion of programs under our jurisdiction and the rapid escalation of cost in addressing these needs. For example the largest account in the bill, VA medical care, is demanding increases in funding far outstripping any inflation index, and that is before addressing increased service demand resulting from demographics and constraints on the availability of other forms of medical coverage.

Frankly, I was dubious that we would be able to achieve any agreement on an appropriations bill this year given these rapidly escalating demands and the constrained budgetary caps imposed on discretionary spending. To my relief and surprise, Senator MIKULSKI managed to craft a bill which sustains programs that assist veterans, housing needs of the poor, and the environment, while still providing for increased investment in critical science, space and technology activities. Truly, a remarkable feat and I applaud her outstanding performance.

Mr. President, as I noted earlier, there remain unresolved substantial budgetary issues which we will have to address during the course of this fiscal year. For example, we simply do not know what the number and severity of disasters may occur which will require Federal assistance. Nor do we now know whether HUD estimates of program recaptures, housing unit subsidy cost, and subsidy renewals requirements are accurate. Unfortunately, past experience has shown that our projections of cost are usually overly optimistic, requiring supplemental appropriations and there is no room for such additional funding.

It is likely, therefore, that we will revisit some of the recommendations contained in our conference agreement during the course of this fiscal year. In addition, given the difficult and substantial choices confronted by our sub-

committee during the consideration of this bill, many decisions were made which may result in unintended consequences. For example, a very promising commercial development of a pressurized module for the space shuttle, called Spacehab, was cut by over half of the amount requested in the President's budget. Our assumption was that the private debt structure of this program could be revised to maintain this important initiative. Should this not be the case, we will have to consider a reprogramming among the program levels recommended for NASA to sustain this effort. I am aware of similar concerns relating to the effect of other recommendations such as the reductions for the Advanced X-Ray Astrophysics Facility, shuttle structural spares, and the advanced turbopump development. We cannot expect a reduction in the President's request for NASA of \$1.4 billion can be made without pain or sacrifice, but I believe the agency has both the authority and responsibility to review our recommendations and to seek prudent reprogrammings should further analysis warrant such action.

Another significant concern is the assumed shift of funding responsibility for logistical support of the U.S. Antarctic research program from the National Science Foundation to the Department of the Navy in line with the actual operational activities of these two agencies. I understand that OMB has raised questions over the budgetary treatment of this \$75 million realignment, but unless this issue is resolved favorably, we may well have to secure funding on an emergency basis to avoid a catastrophic shutdown of this critical program.

Mr. President, this bill is a tribute to the efforts of the Senator from Maryland. It addresses more adequately the important issues and critical program requirements under our jurisdiction than we could have reasonably expected under the circumstances, and I urge its enactment.

Mr. LAUTENBERG. Mr. President, I rise in support of the fiscal year 1992 VA, HUD, and independent agencies appropriations conference report. I commend the leadership of the subcommittee Chair, Senator MIKULSKI, who put together a good bill, and moved it through conference with the House under difficult constraints.

#### ENVIRONMENTAL PROGRAMS

This bill makes a major financial commitment to the protection of our Nation's environment. I want to highlight aspects of the environmental spending in this bill, as well as projects of special importance in New Jersey which I worked to secure, as a member of the VA HUD and Independence Agencies subcommittee.

Mr. President, I am pleased that total EPA funding in the bill of about \$6.7 billion represents an increase by

over \$450 million above what the President requested, and about \$600 million above last year's level. The bill includes increases for the asbestos program, nonpoint pollution, and Construction Grants. The \$2.4 billion appropriation for the sewage treatment program, a \$300 million increase over last year.

The bill maintains funding for Superfund at last year's level, but includes report language aimed at achieving the actual level of cleanup funding at the level requested by the President.

Particularly in light of recent reports of waste in the Superfund contracting program, the bill has taken a more cautious approach to funding Superfund. The Chair, Senator MIKULSKI, has attempted to target the bill's proposed cuts below the President's budget to those wasteful areas identified in these recent reports.

At my request, the General Accounting Office is examining the question of wasteful contracting practices, and I am hopeful that this independent audit will achieve greater efficiency in the program. The key is to make sure that we are not impeding EPA's ability to move forward with cleanups, and that we are imposing any proposed cuts on those areas of real inefficiency in the program.

I am pleased that the bill includes \$3 million for grants under title III of Superfund Amendments and Reauthorization Act.

Mr. President, the conferees also agreed to include \$500,000 for lake water quality activities at Cranberry Lake, Lake Wawayanda, Lake Marcia, and Sylvan Lake in my State of New Jersey. With this funding, the New Jersey Department of Environmental Protection will be able to perform studies and lake quality restoration work on at least four priority projects in New Jersey. These lakes and many others throughout my State which were once used for recreation are now suffering from the effects of pollution. This money is a step in the right direction toward cleaning up lakes around our State and returning them to their natural condition.

The bill also contains \$1.5 million for the Integrated Pollution Prevention Initiative at the New Jersey Institute of Technology [NJIT].

In its 1987 report, "From Pollution To Prevention: A Progress Report On Waste Reduction," the Office of Technology Assessment found that pollution prevention efforts have proceeded slowly because industry lacks the information about the opportunities and benefits of source reduction. NJIT's proposal will help address the concerns raised in OTA's report.

Source reduction of chemicals, pollutants and wastes provides significant health and environmental benefits, as well as cost savings. NJIT has proposed

a pollution prevention initiative that will bring together academic institutions, industry and the Federal Government in a multidisciplinary program that will seek increased utilization of waste reduction philosophies and techniques in industrial production.

NJIT is well equipped to carry out such an ambitious program. The Institute is home to EPA's Northeast Hazardous Substance Research Center and also houses a Hazardous Substance Management Research Center that has the participation of various academic institutions and 32 industrial members. Furthermore, NJIT has well-established management and public service programs that the school will utilize in conjunction with its technical programs in an effort to produce engineering and managerial professionals who will be able to fully incorporate pollution prevention strategies in the workplace.

Mr. President, I'm very grateful to the Senator MIKULSKI for including language in both the bill and report to stop EPA from any further spending on its proposed Environmental Technology or E-Tech Lab in Edison.

Last year, at my request the subcommittee included language in the fiscal year 1991 VA, HUD and Independent Agencies Appropriations Act that prohibited EPA from spending funds allocated in fiscal year 1988 for the design and renovation of the E-Tech lab. I requested that the subcommittee include this language because EPA had failed to adequately address the environmental concerns of local officials and the community. Furthermore, an informal EPA request for an additional \$8,000,000 for the project raised serious questions about the overall scope and design of the project.

The intent of the language included in last year's act was to prohibit EPA from constructing the E-Tech facility and to see if the Agency could satisfy State and local concerns. However, EPA has done neither, despite the fact that Congress gave the Agency ample time to do so. During the past year opposition to the project has grown and EPA failed to include a request for E-Tech in its fiscal year 1992 budget proposal.

Given EPA's lack of a budget request and its failure to satisfy concerns in New Jersey, I asked Senator MIKULSKI to include language in the subcommittee's bill and report that would permanently halt construction of E-Tech.

To permit E-Tech to go forward, in the face of community opposition, and considering the densely populated nature of the area, makes no sense.

As a coauthor of Superfund Amendments and Reauthorization Act of 1986, I continue to support an effective Federal research effort to find ways to treat hazardous waste. At my request, the Senate Appropriations Committee

urged EPA to put forth alternatives to E-Tech at Edison to promote a vigorous, national program of hazardous waste research. I hope EPA will take the committee's language to heart and come up with a safer alternative to E-Tech in the near future.

The bill before us also includes funding for efforts to control medical waste, which periodically soils the beaches of my State and others, and threatens the health and peace of mind of Americans. The conferees agreed to provide \$1.2 million for grants to States like New Jersey to enforce the Medical Waste Tracking Act. The bill also requires the EPA to allocate sufficient funds within its budget to implement the act on the Federal level.

Mr. President, the bill is an important one for the protection of our Nation's environment and for the cleanup of pollution that scars our landscape and threatens the public health.

#### HOUSING AND COMMUNITY DEVELOPMENT

Mr. President, I want to comment on some items related to housing and community development that are of special interest to me.

First, I am very pleased that the conference report includes \$165 million for the Public and Assisted Housing Drug Elimination Act. This program, which I developed about 3 years ago, provides much-needed assistance to housing authorities, owners of assisted housing, and residents of federally subsidized housing, to fight the plague of drug-related violence in many housing projects.

Mr. President, the residents of public and assisted housing, among the poorest of all Americans, are suffering disproportionately from the dramatic increase in drug-related crime over the past several years. Too many projects have become virtual war zones, controlled by armies of violent, heavily armed drug dealers. With severe violence routine, many residents, particularly young children, are afraid even to leave their apartments at night.

The Public and Assisted Housing Drug Elimination Act is the only Federal program designed specifically to deal with this problem, and is the most effective vehicle for such efforts. Last year, grants were awarded to 349 public housing authorities and 15 Indian housing authorities in 46 States, the District of Columbia and Puerto Rico. A new round of grant awards was announced by HUD earlier this week.

The \$165 million provided in this bill represents the full amount requested by the administration for fiscal year 1992, and virtually the full authorized level of the program. It also includes \$10 million that will be available for grants to owners of assisted housing projects, many of which face the same types of drug problems as those in public housing. Last year, with my support, the Congress expanded this program to include assisted housing.

As I have discussed in past statements, the owners of assisted housing have the primary responsibility for providing safe living conditions. However, many of these owners face an unforeseeable explosion in drug-related crime and lack the resources to respond effectively. Under these circumstances, their residents should not be left at the mercy of violent drug criminals.

The National Affordable Housing Act allows HUD to establish separate selection criteria for consideration of applications from owners of assisted housing. Given the limited funds available, I am hopeful that these selection criteria will help HUD target grants to assisted housing owners who could not otherwise meet their obligation to provide safe housing.

Another housing program in which I have been particularly involved is the HOME Program, which provides support for State and local governments, and nonprofit, community-based groups, for the development of affordable housing. The Community Housing Partnership title of the HOME Program is based on legislation I introduced in the 101st Congress, the Community Housing Partnership Act.

The conference report contains \$1.5 billion for the HOME Program. Although somewhat lower than the \$2 billion approved by the Senate, which I would have preferred, this should go a long way toward getting the program off the ground.

I am also pleased that the bill includes a significant increase for the Community Development Block Grant Program, to \$3.4 billion. The CDBG Program is an essential tool for local governments seeking to meet urgent community development and housing needs. It deserves our strong support.

Mr. President, I also want to note the funding provided in the bill for public housing operating subsidies and modernization. Public housing authorities face enormous problems in their efforts to serve their residents, and to rehabilitate deteriorating projects. The funding provided in the conference report for operating subsidies and modernization is badly needed to better serve those who call public housing home.

Mr. President, I also want to take this opportunity to express my support for funding of the AIDS Housing Opportunities Act, a new program that was included in the omnibus housing bill last year. This program provides special housing assistance for people with AIDS. Under the program, funds are distributed largely to cities and States, which may use the funds for a number of housing services, including rental subsidies, construction of new housing, renovation of existing housing, homeless prevention programs, community residential facilities, information services, and other housing programs.

Funding for the program is important given the severity of the AIDS crisis, and the difficulty that many of those with the disease face in securing housing.

I am pleased that the conference report includes \$500,000 for a housing technology demonstration program that has been developed by the New Jersey Institute of Technology.

Given the severe shortage of affordable housing in much of the country, it is important that technologies be developed to reduce the costs of housing production. Yet presently, there are real disincentives for the home building industry to invest capital in the development of new technological innovations. These innovations typically require many years of work, and the expenditure of large sums to pay for research, development, material testing, and construction of prototypes, code testing and approvals, tooling, manufacturing and marketing. Given the fluctuations in the housing market, it is generally uncertain whether there will be a market after this lengthy process is complete.

A study by the New Jersey Institute of Technology found that there are many new ideas and technologies for improving housing quality and reducing costs that could be developed under the appropriate conditions. NJIT worked with a variety of building industry and State officials, and developed a proposal for a housing technology demonstration park for the design, development, and production of housing built with innovative materials, methods, and components. With the \$500,000 provided in the conference report, this project should provide a useful vehicle to test, demonstrate, and market affordable housing technologies.

The NJIT initiative complements another important initiative on housing technology research that is funded in the bill, the provision for \$1 million for the Research Center of the National Association of Home Builders.

Let me turn now to provisions in the conference report that will have a direct, positive impact on several specific communities in New Jersey.

First, the bill includes \$2.5 million for the St. Joseph's School for the Blind in Jersey City, NY. This is the State's only school for the blind and multidisabled, and serves the needs of approximately 60 students. Over 50 percent of these students are from low-income families who receive public assistance.

Residential students at St. Joseph's are currently housed in old, cramped quarters on the second and third floor of the school. The proposed residential facility will be located off campus, to provide a more mainstreamed environment for the children and will be built on a parcel of land that the city of Jersey City donated to the school. The

city has also proposed a comprehensive redevelopment plan for this section of Jersey City, called the Heights section, which will include a police and fire station, a water company building, a recreation area, and new and renovated housing.

The bill also includes \$100,000 for improvements to the West Side Community Center in Asbury Park, NJ. This is a recreational center open to all community residents that serves as a hub for community activities, such as a summer day camp, drug abuse prevention classes, theater, sports, and child care.

The center has found that many senior citizens residing in the city are eating poorly, and wants to construct a kitchen that would be used to prepare hot meals for the elderly. In addition, the kitchen would be used for a summer box lunch program for youth, which would complement existing summer recreation programs at the center.

I also want to point out an allocation of \$20,000 for a commercial redevelopment feasibility study for Clayton, NJ. Clayton is a small town with low- to middle-income families and many senior citizens on fixed incomes. The town is seeking to bring back its downtown, which has deteriorated, and is hoping to implement a plan to revitalize that area.

The bill also includes \$50,000 for a feasibility study on the creation of a business park in Wildwood, NJ. Wildwood is a municipality that has suffered economically, and there is a real need to revitalize its downtown. This funding could help, by laying the groundwork for a business incubator that could offer reasonably priced space for various uses, such as factory outlet facilities, a vegetable produce center, and a retail outlet for handicapped and special education adults and youth. I am hopeful that the study can be completed for less than the full \$50,000 in which case funds also could be applied to begin preliminary work on the project.

In addition, the bill includes \$80,000 for an initiative to revitalize the central business district in Paulsboro, NJ. This initiative would be part of an effort to improve parking areas, store front facades, and the rehabilitation of a vacant building for senior citizen housing.

I also want to express my support for allocations that are provided in the conference report for Newark, NJ. These include funding for an international trade and convention center, for a literacy training project in public housing projects, and for renovation of storefront facades in the Four Corners area of the city. I also would note the \$200,000 that has been provided for a revitalization initiative in Perth Amboy, NJ.

Mr. President, the New Jersey initiatives on which I have worked are con-

sistent with the goals of Federal community development programs. They are important to the communities involved, and the many low- and moderate-income residents of these communities.

#### SCIENCE FUNDING

Mr. President, the conference report makes important investments in the development of American technology, and the preparation of America's next generation of scientists and innovators. It includes critical funding for the National Science Foundation and NASA, as well as research functions of the EPA, VA and HUD.

I am pleased that an increase in funding is included for two satellite systems—the Earth Observation System [EOS] and Landsat—that will improve the quality of our global climate research program. I was pleased to seek this funding and to work with the Chair on its inclusion in the Senate bill.

EOS is the cornerstone of the U.S. global climate and will provide the scientific community with the necessary data to understand the rate, causes and effects of global climate change, including such effects as climate warming, ozone depletion, deforestation and acid rain. This conference report provides \$271 million for EOS, \$80 million above last year's level. The bill also provides \$2.5 million for long lead parts for Landsat 7, the next stage of the Landsat satellite system, which is also essential for global climate change research and also has national security applications. The Landsat system was used to collect information during Operation Desert Storm. I am proud that scientists and researchers at General Electric facilities in New Jersey are developing these innovative projects.

The bill also includes \$3.1 million for the continued development of the rotary engine for general aviation aircraft, a project being developed in Wood-Ridge, NJ.

Within the appropriation for NSF, the bill also includes \$465 million for the Education and Human Resource activities of NSF, \$143 million over last year's level. The bill specifically includes \$33 million for facilities modernization and instrumentation for our Nation's colleges and universities. The funding levels in the bill will enhance our efforts to prepare teachers of science, to support graduate research, and to upgrade the laboratories where America's scientists work. Our Nation's academic infrastructure is crumbling and the funding of this program takes a small step in rectifying this situation.

Mr. President, America's competitiveness depends on its technological edge. This measure before us makes an important investment in activities designed to keep that edge.

#### VETERANS PROGRAMS

Mr. President, I rise in support of the substantial commitment that is made in the conference agreement for the care of our Nation's veterans. Under tight budget constraints, the conference agreement includes substantial increases to meet the growing needs of those who served our Nation. I commend the Chair of the subcommittee, Senator MIKULSKI, and the ranking minority member, Senator GARN, for their steadfast support of our veterans.

The conference agreement includes significant funding for veterans medical services and programs, as well as for medical research and care, special pay for physicians, dentists and nurses, treatment of posttraumatic stress disorder, and housing for homeless veterans. Specifically, the conference agreement includes \$227 million for VA medical research. It provides \$13.5 billion for medical care. That is \$225 million above the President's request for medical care.

Of particular importance to the veterans of New Jersey, where our hospitals have experienced difficulty attracting skilled medical personnel, the conference agreement also includes an additional \$60 million over the administration's request for special pay for physicians and dentists, an additional \$50 million for special pay for nurses, and an additional \$75 million to hire over 1,500 nurses in areas of greatest need.

The conference agreement also includes \$30 million for posttraumatic stress disorder, \$10 million over the administration's request.

I also note that the report accompanying the Senate version of this bill has included language directing the Veterans Affairs Department to address the significant unmet need for magnetic resonance imaging services in New Jersey. The Senate Appropriations Committee has asked the Department to include an appropriate request in next year's budget to meet this need, and to also provide the committees with a report on this matter.

Mr. President, our military personnel have risked their lives to protect the national security of this country. I'm pleased that the Congress has approved these increases, to help heal the wounds that our veterans still have with them, and to meet their other health care needs. Our veterans deserve no less.

Finally, I want to thank Senators MIKULSKI and GARN for their help on these matters. They have done an excellent job with this bill in most respects, and they deserve a great amount of credit.

#### PRINTING ERROR

Ms. MIKULSKI. Mr. President, I would like to correct a printing error in the statement of the managers on

H.R. 2519, the 1992 VA, HUD, and Independent Agencies Appropriations Act.

On page 24612 of the CONGRESSIONAL RECORD dated September 27, 1991, under amendment No. 35, a special purpose grant provides \$575,000 for emergency construction of water lines in Auburn, MA, to address presently irreversible hazardous contamination of the sole source of water for certain sections of the town. The grant is for the town of Auburn, not Ashburn as printed in the RECORD. There is no Ashburn in Massachusetts.

Mr. President, I have discussed this matter with the minority and they agree that the grant is intended for Auburn, MA. Further, I understand that the House concurs that this was a printing error and was so noted when the conference report was before that body earlier today.

#### NASA ALTERNATE TURBOPUMP DEVELOPMENT COLLOQUY

Mr. HEFLIN. Mr. President, I would like to ask the chairwoman of the subcommittee about the Assured Shuttle Availability Program. I know the chairwoman and the members of her subcommittee are concerned about this program and particularly with the alternate turbopump development [ATP] portion of the program. Conferees have agreed to delete \$40 million from the President's budget request and stated that they "believe that the fuel pump being developed under the ATP program should be terminated."

It has come to our attention that there remain some outstanding technical issues with the current hydrogen fuel pump, even though it has recently been fully certified. While these issues do not appear to be of overwhelming concern, they do suggest that it might be slightly premature to terminate the ATP Fuel Pump Program. In addition, the \$40 million cut envisioned by the subcommittee will be absorbed by \$25 million in cancellation expenses. For approximately \$15 million we can have the insurance necessary for the Assured Shuttle Availability Program. Given these factors, is the chairwoman agreeable to terminating the program only after a study of the program has been conducted and presented at the NASA budget hearings for fiscal year 1993?

Ms. MIKULSKI. This is certainly an issue that NASA will have to address in its program operating plan which is due 30 days following enactment of this bill. NASA should carefully consider the concerns you raise, and we will review their recommendations.

#### USBI WATERJET TECHNOLOGY

Mr. HEFLIN. Mr. President, on past occasions, I have discussed the significant value of spinoff applications developed through our country's space program. I would like to take this opportunity today to mention a spinoff

technology being developed by one of Alabama's premier space companies, USBI, a part of the United Technologies Corp.

USBI is a major contractor on NASA's space shuttle program. They are responsible for refurbishing, integrating, and recovering the non-motor portions of the two solid rocket boosters used on each launch. In the refurbishment process, USBI uses a high pressure waterjet process to remove the old thermal protective ablative [TPA] material from the nosecone, frustum, and aft skirt portions of the solid rocket boosters. USBI developed this automated, robotic high pressure waterjet process to replace the original manual methods employed for removing the material.

As a spinoff application, USBI is using this technology as an alternative for stripping old paint from military and commercial aircraft as well as removing coatings from jet engine parts. The waterjet method is significantly faster than conventional chemical-based techniques, uses only minimal labor and most importantly, virtually eliminates the need for the use and disposal of toxic stripping chemicals. In addition, workers are not exposed to dangerous fumes, need not wear protective clothing, and use no solvents.

The U.S. Air Force was so impressed with the technology that they recently awarded USBI a \$5.9 million Mantech contract—extendable to \$9.6 million—for a large aircraft robotic paint stripping system [LARPS] that uses waterjet technology under robotic control. Further, a special task force of the International Air Transport Association [IATA], studying alternative techniques for paint stripping from aircraft, has endorsed waterjet technology as the most promising of several techniques under review.

The conventional technique for removing paint from aircraft skin is by using methylene chloride, a toxic solvent requiring workers to wear protective latex clothing and breathing apparatus. The conventional technique for removing coatings from aircraft engine parts for refurbishment requires submersion in toxic chemical baths and grit blasting. High pressure waterjet technology uses only water which makes it the most environmentally acceptable technique available today. In addition, waterjet technology is faster, less labor intensive, and does a better job, in many instances prolonging the life of the individual components.

Other applications identified for this spinoff waterjet technology include stripping paint from ships, railcars, and military combat vehicles, such as tanks.

One important result of USBI's analyses so far has been the fact that the cumulative savings in labor, faster throughput time, reduced disposal costs, and the elimination of toxic ma-

terial handling costs are significant enough to pay for the investment in waterjet equipment over a very short time. In other words, waterjet pays for itself.

In summary, a new industry based on a NASA spinoff technology is emerging as the economically sound and environmentally safe technology for stripping paint and coatings from a variety of products, thereby eliminating a major use of toxic chemicals in American industry.

The PRESIDING OFFICER. Is there further debate on the conference report?

The question is on agreeing to the conference report.

The conference report was agreed to. Mr. GARN. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Ms. MIKULSKI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Senate consider and concur in the amendments of the House en bloc, and that the motions to table and the motions to reconsider be agreed to en bloc, with the exception of amendment No. 21.

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

The amendments in disagreement considered and 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. 2519) entitled "An Act making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1992, and for other purposes."

*Resolved*, That the House recede from its disagreement to the amendments of the Senate numbered 6, 10, 14, 28, 29, 30, 34, 49, 53, 71, 73, 74, 75, 76, 78, 80, 81, 85, 89, 92, 98, 106, 123, 124, 131, 139, 142, 147, 148, 153, 159, and 173 to the aforesaid bill, and concur therein.

*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 sum inserted by said amendment, insert "\$413,360,000".

*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 inserted by said amendment, insert "\$3,000,000".

*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 sum inserted by said amendment, insert "\$796,000,000".

*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 inserted by said amendment, insert:

Notwithstanding the funding limitations contained in section 346 of Public Law 100-322 (May 20, 1988), appropriations available to the Department of Veterans Affairs for fiscal year 1992 for the National Cemetery System shall be available for the operation and maintenance of the National Memorial Cemetery of Arizona (formerly the Arizona Veterans Memorial Cemetery): *Provided*, That the provisions of this paragraph regarding the National Memorial Cemetery of Arizona shall be effective until (a) enactment into law of legislation concerning funding for the National Memorial Cemetery of Arizona or (b) November 30, 1991, whichever first occurs.

*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 25 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum inserted by said amendment, insert "\$95,000,000".

*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 inserted by said amendment, insert "\$95,000,000".

*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 inserted by said amendment, insert:

[INCLUDING RESCISSION OF FUNDS]

For assistance under the United States Housing Act of 1937, as amended ("the Act" herein) (42 U.S.C. 1437), not otherwise provided for, \$8,070,201,000, to remain available until expended: *Provided*, That to be added to and merged with the foregoing amounts, there shall be \$2,287,000,000, consisting of \$537,000,000 of budget authority previously made available under this head for nonincremental purposes which remains unreserved at the end of fiscal year 1991; and \$1,750,000,000 of section 8 funds arising from the conversion of the new capital advance program of projects previously reserved under section 202 of the Housing Act of 1959 as it existed before enactment of the Cranston-Gonzalez National Affordable Housing Act: *Provided further*, That, from the foregoing total of \$10,357,201,000, \$227,170,000 shall be for the development or acquisition cost of public housing for Indian families, including amounts for housing under the mutual help homeownership opportunity program under section 202 of the Act (42 U.S.C. 1437bb); \$573,983,000 shall be for the development or acquisition cost of public housing, including \$15,719,158 for a demolition/disposition demonstration program in Saint Louis, Missouri, pursuant to section 513 of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625), and, notwithstanding the 20 per centum limitation under section 5(j)(2) of the Act, of the \$573,983,000 for the development or acquisition of public housing, \$200,000,000 shall be awarded competitively for construction or major reconstruction of obsolete public housing projects, other than for Indian families; *Provided further*, That of the \$10,357,201,000 total under this head, \$2,800,975,000 shall be for modernization of existing public housing projects pursuant to section 14 of the Act (42 U.S.C. 1437i), including funds for the comprehensive testing, abatement, and risk assessment of lead, of which \$25,000,000 shall be for the risk assessment of lead and \$5,000,000 shall be for technical assistance and training under sec-

tion 20 of the Act (42 U.S.C. 1437r), and \$7,437,600 shall be for a demolition/disposition demonstration program in Saint Louis, Missouri, pursuant to section 513 of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625): *Provided further*, That of the \$10,357,201,000 total under this head, \$915,750,000 shall be for the section 8 existing housing certificate program (42 U.S.C. 1437f), including \$50,000,000 for a Foster Child Care demonstration program involving 11 States, \$12,840,790 for a demolition/disposition demonstration program in Saint Louis, Missouri pursuant to section 513 of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625), and \$20,000,000 for a demonstration involving five cities with populations exceeding 400,000 in metropolitan areas with populations exceeding 1,500,000, under which the Secretary shall carry out metropolitan-wide programs, designed to assist families with children to move out of areas with high concentrations of persons living in poverty, through contracts with nonprofit organizations and through annual contributions contracts with public housing agencies for administration of housing assistance payments contracts: *Provided further*, That of the \$10,357,201,000 total provided under this head, \$794,167,000, shall be for the housing voucher program under section 8(o) of the Act (42 U.S.C. 1437f(o)); \$2,300,000,000 shall be for amendments to section 8 contracts other than contracts for projects developed under section 202 of the Housing Act of 1959, as amended, including \$70,000,000 which shall be for rental adjustments resulting from the application of an annual adjustment factor in accordance with section 801 of the Department of Housing and Urban Development Reform Act of 1989 (P.L. 101-235); \$618,462,000 shall be for assistance for State or local units of government, tenant and nonprofit organizations to purchase projects where owners have indicated an intent to prepay mortgages and for assistance to be used as an incentive to prevent prepayment or for vouchers to aid eligible tenants adversely affected by mortgage prepayment, as authorized in the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625), and of the \$618,462,000 made available for such assistance, up to \$25,000,000 shall be for use by nonprofit organizations, pursuant to the Emergency Low Income Housing Preservation Act of 1987, as amended by the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625), and for tenant and community-based nonprofit education, training and capacity building and the development of State and local preservation strategies; \$88,884,000 shall be for section 8 assistance for property disposition; and \$257,000,000 shall be for loan management: *Provided further*, That any amounts of budget authority provided herein that are used for loan management activities under section 8(b)(1) (42 U.S.C. 1437f(b)(1)) shall be obligated for a contract term that is no more than five years: *Provided further*, That those portions of the fees for the costs incurred in administering incremental units assisted in the certificate and housing voucher programs under sections 8(b) and 8(o), respectively, shall be established or increased in accordance with the authorization for such fees in section 8(q) of the Act: *Provided further*, That up to \$167,000,000 of amounts of budget authority (and contract authority) reserved or obligated for the development or acquisition costs of public housing (including public housing for Indian families), for modernization of existing public housing projects (including such projects

for Indian families), and, except as herein provided, for programs under section 8 of the Act (42 U.S.C. 1437f), which are recaptured during fiscal year 1992, shall be rescinded: *Provided further*, That 50 per centum of the amounts of budget authority, or in lieu thereof 50 per centum of the cash amounts associated with such budget authority, that are recaptured from projects described in section 1012(a) of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Public Law 100-628, 102 Stat. 3224, 3268) shall not be rescinded, or in the case of cash, shall not be remitted to the Treasury, and such amounts of budget authority or cash shall be used by State housing finance agencies in accordance with such section: *Provided further*, That of the \$10,357,201,000 total, \$50,000,000 shall be for housing opportunities for persons with AIDS under Title VIII, subtitle D of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625) and \$50,000,000 shall be for grants to States and units of general local government for the abatement of significant lead-based paint and lead dust hazards in low- and moderate-income owner-occupied units and low-income privately-owned rental units: *Provided further*, That such grant funds shall be available only for projects conducted by contractors certified and workers trained through a federally or State-accredited program: *Provided further*, That, to be eligible for such grants, States and units of general local government must demonstrate the capability to identify significant-hazard housing units, to oversee the safe and effective conduct of the abatement, and to assure the future availability of abated units to low- and moderate-income persons; and \$4,200,000 shall be for the housing demonstration under section 304(e)(1) of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625): *Provided further*, That of the \$54,250,000 earmarked in Public Law 101-507 for special purpose grants (104 Stat. 1351, 1357), \$667,000 made available for the city of Chicago to assist the Ashland II Redevelopment Project shall instead be made available for the city of Chicago to assist the Marshway Project: *Provided further*, That notwithstanding the language preceding the first proviso of this paragraph, \$150,000,000 shall be used for special purpose grants in accordance with the terms and conditions specified for such grants in the committee of conference report and statement of managers (H. Rept. 102-226) accompanying this H.R. 2519, including \$500,000 for the city of Kansas City, Kansas to operate a social service center.

Of the \$10,357,201,000 total under this head, \$538,808,000 shall be for capital advances for housing for the elderly as authorized by section 202 of the Housing Act of 1959, as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act (P.L. 101-625); \$451,200,000 shall be for project rental assistance for supportive housing for the elderly under such section 202(c)(2) of the Housing Act of 1959; \$148,700,000 shall be for amendments to rental assistance contracts for projects for the elderly that receive capital advances or projects reserved under section 202 as it existed before enactment of the Cranston-Gonzalez National Affordable Housing Act; and \$16,250,000 shall be for service coordinators pursuant to section 202(g) of the Housing Act of 1959, as amended by section 808 of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625): *Provided*, That to the extent that the funding provided herein for rental assistance contracts for the elderly that receive capital advances is insufficient to match the units pro-

vided through capital advances, funds deemed excess in other section 8 programs may be added to and merged with the rental assistance funding to ensure that sufficient rental assistance units are available.

Of the \$10,357,201,000 total under this head, \$102,860,000 shall be for capital advances for housing for persons with disabilities as authorized by section 811 of the Cranston-Gonzalez National Affordable Housing Act (P.L. 101-625); \$100,159,000 shall be for project rental assistance for persons with disabilities under section 811(b)(2) of the Cranston-Gonzalez National Affordable Housing Act; and \$23,300,000 shall be for amendments to rental assistance contracts for projects for the handicapped that receive capital advances, including projects previously reserved under section 202 of the Housing Act of 1959 as it existed before enactment of the Cranston-Gonzalez National Affordable Housing Act.

The Secretary of Housing and Urban Development shall make a commitment and provide capital advance assistance under section 202 of the Housing Act of 1959, as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act, or section 811 of such Act if the project is for persons with disabilities, for any project for which there is a loan reservation under section 202 of the Housing Act of 1959 as it existed before enactment of the Cranston-Gonzalez National Affordable Housing Act, if the loan has not been executed and recorded, and if the project is making satisfactory progress under 24 CFR section 885.230: *Provided*, That the Secretary shall not make such commitments and provide such capital advances assistance before January 1, 1992: *Provided further*, That the Secretary shall have the discretion until April 1, 1992 not to terminate a project and not to convert a project to capital advance assistance: *Provided further*, That upon converting a project to capital advance assistance, the loan reservation for such project shall be terminated: *Provided further*, That a project not making satisfactory progress under 24 CFR section 885.230 shall not have its loan reservation terminated before January 1, 1992, and the Secretary shall ensure that the processing of all projects through loan execution and recordation or the making of the capital advance is expedited, and that no project being so processed shall have the order in which it is processed arbitrarily changed: *Provided further*, That an owner of a project that is converted pursuant to this paragraph shall be permitted voluntarily to provide funds for capital costs in addition to the capital advance, from debt or other non-Federal sources.

With respect to each project that has a loan reservation terminated pursuant to the immediately foregoing paragraph, the Secretary of Housing and Urban Development shall convert each funding reservation that was made under section 8 of the United States Housing Act of 1937 or section 202(h) of the Housing Act of 1959, before enactment of the Cranston-Gonzalez National Affordable Housing Act, to a commitment for project rental assistance under such section 202 as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act or section 811 of the Act.

*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 36 to the aforesaid bill, and concur therein with an amendment as follows:

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

For assistance under the United States Housing Act of 1937 (42 U.S.C. 1437) not other-

wise provided for, for use in connection with expiring section 8 subsidy contracts, \$7,355,128,000, to remain available until expended: *Provided*, That funds provided under this paragraph may not be obligated for a contract term is less than five years: *Provided further*, That the Secretary may maintain consolidated accounting data for funds disbursed at the Public Housing Agency or Indian Housing Authority or project level for subsidy assistance regardless of the source of the disbursement so as to minimize the administrative burden of multiple accounts.

Further, for the foregoing purposes, \$850,000,000, to become available for obligation on October 1, 1992, and to remain available for obligation until expended.

*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 37 to the aforesaid bill, and concur therein with an amendment as follows:

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

For those projects in the State of Maine, the owners of which have converted their section 23 leased housing contracts (former section 23 of the Act, as amended by section 103(a), Housing and Urban Development Act of 1965, Public Law 89-117, 79 Stat. 451, 455) to section 8, the subsidy provided shall be for a five-year extension of such projects' current housing assistance payments contracts.

*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 40 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert: "*Provided*, That of the funds provided under this heading, \$294,156,000 shall not become available for obligation until September 20, 1992."

*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 58 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert: "*Provided*, That there shall be established, in the Office of the Secretary, an Office of Lead Based Paint Abatement and Poisoning Prevention to be headed by a career Senior Executive Service employee who shall be responsible for all lead-based paint abatement and poisoning prevention activities (including, but not limited to, research, abatement, training regulations and policy development): *Provided further*, That such office shall be allocated a staffing level of 20 staff years."

*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:

Restore the matter stricken by said amendment, amended to read as follows:

Notwithstanding any other provision of law or other requirement, the city of Vallejo, California, is authorized to retain any land disposition proceeds or urban renewal grant funds that remain after the financial close-out of the Marina Vista Urban Renewal Project, and to use such funds in accordance with the requirements of the community development block grant program specified in title I of the Housing and Community Development Act of 1974. The city of Vallejo shall retain such funds in a lump sum and shall be entitled to retain and use, in accordance with this paragraph, all past and future earnings from such funds, including any interest.

Notwithstanding any provision of law or other requirement, the Urban Renewal Authority of the City of Oklahoma City, in the State of Oklahoma, is authorized to retain any land disposition proceeds and other income from the financially closed-out Central Business District Number 1A Urban Renewal Project (OKLA. R-30) and John F. Kennedy Urban Renewal Project (OKLA. R-35) in accordance with the close-out Agreements executed pursuant to 24 CFR 570.804(b)(5) October 16, 1979, and concurred in by the Secretary, which agreements obligated such proceeds to completion of project activities in consideration for the reduction of an approved categorical settlement grant in satisfaction of the repayment requirements of 24 CFR 570.486. The Urban Renewal Authority of the City of Oklahoma City shall retain such proceeds and other income in a lump sum and shall be entitled to retain and use, subject only to the provisions of 24 CFR 570.504(b)(5), such past and future proceeds, including any interest, for the completion of such project activities.

*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 70 to the aforesaid bill, and concur therein with an amendment as follows:

Restore the matter stricken by said amendment, amended to read as follows:

Section 6 of the United States Housing Act of 1937 (42 U.S.C. 1437d) is amended by adding at the end the following new subsection:

"(p) With respect to amounts available for obligation on or after October 1, 1991, the criteria established under section 213(d)(5)(B) of the Housing and Community Development Act of 1974 for any competition for assistance for new construction, acquisition, or acquisition and rehabilitation of public housing shall give preference to applications for housing to be located in a local market area that has an inadequate supply of housing available for use by very low-income families. The Secretary shall establish criteria for determining that the housing supply of a local market area is inadequate, which shall require—

"(1)(A) information regarding housing market conditions showing that the supply of rental housing affordable by very low-income families is inadequate, taking into account vacancy rates in such housing and other market indicators; and

"(B) evidence that significant numbers of families in the local market area holding certificates and vouchers under section 8 are experiencing significant difficulty in leasing housing meeting program and family-size requirements; or

"(2) evidence that the proposed development would provide increased housing opportunities for minorities or address special housing needs."

Section 14(k)(5)(A) of the Housing Act of 1937, as amended, is hereby amended as follows:

By striking in the first sentence thereof the word "initial".

In subsection (i) thereof by substituting the phrase "for each of the preceding three fiscal years" for the phrase "for each of fiscal years of 1989, 1990 and 1991".

Adding a new subsection (iii) which provides: "(iii) In determining whether an agency is 'troubled with respect to the modernization program', the Department shall consider only the agency's ability to carry out that program effectively based upon the agency's capacity to accomplish the physical work: (a) with decent quality; (b) in a timely manner; (c) under competent contract ad-

ministration; and (d) with adequate budget controls. No other criteria shall be applied in the determination."

Section 14(k)(5)(E) of said Act is repealed. No appropriated funds may be used to implement the rule proposed in 56 Federal Register 45814, September 6, 1991 relating to "Low-income Public and Indian Housing—Vacancy Rule" or any revision thereof or any other rule related or similar thereto.

Section 6(j)(1) of the Housing Act of 1937, 42 U.S.C. 1437 d(j)(1), [section 502 (a) of the National Affordable Housing Act] is amended as follows:

(1) by adding at the end of subparagraph (H) the following language: "which shall not exceed the seven factors in the statute, plus an additional five"; and

(2) by adding as subparagraph (I) the following:

(I) "The Secretary shall: (1) administer the system of evaluating public housing agencies flexibly to ensure that such agencies are not penalized as result of circumstances beyond their control; (2) reflect in the weights assigned to the various indicators the differences in the difficulty of managing individual projects that result from their physical condition and their neighborhood environment; and (3) determine a public housing agency's status as 'troubled with respect to the program under section 14' based upon factors solely related to its ability to carry out that program."

*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 72 to the aforesaid bill, and concur therein with an amendment, as follows:

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

The Secretary of Housing and Urban Development shall transfer title to the repossessed property known as the Roosevelt Homes Project (No. 074-84006) located in Davenport, Iowa, to a nonprofit organization. Such property shall be used only for the provision of an integrated program of shelter and social services to the homeless, or for other nonprofit uses, for a period of not less than 20 years following the date of the transfer. Use of the transferred property before the expiration of the 20-year period following the date of the transfer for any purpose other than those described herein shall cause title to revert back to the Secretary of Housing and Urban Development. The nonprofit organization selected by the Department shall have the right house or not use the section 8 certificates attached to the property.

*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 77 to the aforesaid bill, and concur therein with an amendment as follows:

At the end of the matter inserted by said amendment, insert:

Hereafter, until the Department of Housing and Urban Development has adopted regulations specifying the nature and quality of insurance covering the potential personal injury liability exposure of public housing authorities and Indian housing authorities (and their contractors, including architectural and engineering services) as a result of testing and abatement of lead-based paint in federally subsidized public and Indian housing units, said authorities shall be permitted to purchase insurance for such risk, as an allowable expense against amounts available for capital improvements (modernization): *Provided*, That such insurance is competitively selected and that coverage provided under such policies, as certified by the au-

thority, provides reasonable coverage for the risk of liability exposure, taking into consideration the potential liability concerns inherent in the testing and abatement of lead-based paint, and the managerial and quality assurance responsibilities associated with the conduct of such activities.

*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 79 to the aforesaid bill, and concur therein with an amendment as follows:

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

Section 14(a) of the Housing Act of 1937, as amended, (42 U.S.C. 14371(a)) is amended by:

(1) striking "and" at the end of clause "(1)";

(2) adding clauses (3), (4), and (5) as follows:

"(3) to assess the risks of lead-based paint poisoning through the use of professional risk assessments that include dust and soil sampling and laboratory analysis in all projects constructed before 1980 that are, or will be, occupied by families; and

"(4) to take effective interim measures to reduce and contain the risks of lead-based paint poisoning recommended in such professional risk assessments;

"(5) the costs of testing, interim containment, professional risk assessments and abatement of lead are eligible modernization expenses. The costs of professional risk assessment are eligible modernization expenses whether or not they are incurred in connection with insurance and costs for such assessments that were incurred or disbursed in fiscal year 1991 from other accounts shall be paid or reimbursed from modernization funds in fiscal year 1992."

*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 95 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert: "Provided further, That of the amount provided under this heading, up to \$1,000,000 shall be available for the Chemical Safety and Hazard Investigation Board, as authorized by the Clean Air Act Amendments of 1990 and up to the sum of \$17,000,000 shall be for subsidizing loans under the Asbestos School Hazard Abatement Act, and \$2,400,000 shall be for administrative expenses to carry out the loan and grant program.

*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 sum inserted by said amendment, insert "\$1,948,500,000".

*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:

Restore the matter stricken by said amendment, amended to read as follows: "\$340,000,000 shall be for making grants under title II of the Federal Water Pollution Control Act, as amended, to the appropriate instrumentality for the purpose of constructing secondary sewage treatment facilities to serve the following localities, and in the amounts indicated:

*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 112 to the aforesaid bill, and concur therein with an amendment as follows:

Restore the matter stricken by said amendment, amended to read as follows:

Back River Wastewater Treatment Plant, Maryland, \$40,000,000; Boston, Massachusetts, \$100,000,000;

*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 119 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter stricken by said amendment, insert "Provided further, That the U.S. Environmental Protection Agency shall not prohibit the Massachusetts Water Resources Authority (MWRA) from utilizing the most appropriate technology for the treatment, disposal, and or beneficial re-use of sludge, unsold fertilizer pellets, and grit and screenings outside the Commonwealth of Massachusetts through lease, contract, or by other legal means. The EPA may require sufficient backup capacity for the disposal or treatment of sludge in the Commonwealth through ownership, lease, contract, or by other legal means. The MWRA shall not be required to construct a backup landfill of facility if other alternatives approved through EPA NEPA review of MWRA long-term residuals management, are or become available through ownership, lease, contract, or other legal means prior to September 1, 1992, and as long as such alternatives remain available.

"Any facility or technology used by the MWRA shall meet all applicable federal and state environmental requirements. Any facility or technology must be on-line when a contract between the MWRA and NEFCO, which is responsible for the marketing and disposal of sludge, expires in 1995"

*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 matter stricken and inserted by said amendment, insert:

During fiscal year 1992, notwithstanding any other provision of law, average employment in the headquarter's offices of the Environmental Protection Agency shall not exceed: (1) 51 workyears for the Immediate Office of the Administrator, (2) 45 workyears for the Office of Congressional and Legislative Affairs, (3) 77 workyears for the Office of Communications and Public Affairs, (4) 187 workyears for the Office of General Counsel, (5) 61 workyears for the Office of International Activities, (6) 32 workyears for the Office of Federal Activities, (7) 259 workyears for the Office of Policy, Planning, and Evaluation, and (8) 1,386 workyears for the Office of Administration and Resource Management.

*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 122 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert: "The Administrator shall establish, within 60 days of enactment of this Act, a new staff of 5 workyears within the Immediate Office of the Administrator, which shall be responsible for guiding, directing, and mediating all policy activities associated with Pollution Prevention. The Pollution Prevention Policy Council shall be chaired by the Deputy Administrator."

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

In lieu of the matter inserted by said amendment, insert: "Provided, That not-

withstanding any other provision of law, that Office may accept and deposit to this account, during fiscal year 1992, gifts for the purpose of defraying its costs of printing, publishing, and distributing consumer information and educational materials; may expend up to \$1,100,000 of those gifts for those purposes, in addition to amounts otherwise appropriated; and the balance shall remain available for expenditure for such purposes to the extent authorized in subsequent appropriation Acts"

*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 146 to the aforesaid bill, and concur therein with an amendment as follows:

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

During fiscal year 1992, notwithstanding any other provision of law, average employment in the headquarter's offices of the National Aeronautics and Space Administration shall not exceed: (1) 51 staff years for the Office of the Administrator; (2) 117 staff years for the Office of the Comptroller; (3) 56 staff years for the Office of Commercial Programs; (4) 191 staff years for the Office of Headquarters Operations; (5) 30 staff years for the Office of Equal Opportunity Programs; (6) 43 staff years for the Office of the General Counsel; (7) 132 staff years for the Office of Procurement; (8) 4 staff years for the Office of Small and Disadvantaged Business Utilization; (9) 33 staff years for the Office of Legislative Affairs; (10) 520 staff years for the Office of Space Flight, including Level I and Level II Activities for the Space Station; (11) 210 staff years for the Office of Management; (12) 62 staff years for the Office of Space Operations; (13) 64 staff years for the Office of Public Affairs; (14) 183 staff years for the Office of Safety and Mission Quality; (15) 172 staff years for the Office of Aeronautics, Exploration and Technology; (16) 288 staff years for the Office of Space Science and Applications; and (17) 77 staff years for the Office of External Relations.

*Provided*, That the Administrator may reorganize these offices and reallocate the staff years among these offices as long as the aggregate number of staff years at NASA Headquarters does not exceed 2,220 staff years: *Provided further*, That no funds may be used from amounts provided in this or any other Act for details of employees from any organization in the National Aeronautics and Space Administration to any organization included under the budget activity "Research and Program Management," except those details which involve developmental or critical staffing assignments: *Provided further*, That, of the amount provided for "Research and Program Management," up to \$675,722,000 may be transferred to "Research and Development" and "Space Flight, Control and Data Communications," and of this amount such sums as may be necessary are provided for the lease, hire, maintenance and operation of mission management aircraft: *Provided further*, That the funds made available in the preceding proviso may only be used for the purpose of operations of facilities: *Provided further*, That, notwithstanding any provision of this or any other Act, not to exceed an additional \$100,000,000 may be transferred or otherwise made available, using existing or future authority, to the National Aeronautics and Space Administration in fiscal year 1992 from any funds appropriated to the Department of Defense and such funds may only be provided to the "Space flight, control and data communications" appropriation: *Provided further*, That

the limitation in the immediately preceding proviso shall not apply to funds transferred or otherwise made available under existing reimbursement arrangements.

*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 150 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the sum inserted by said amendment, insert "\$1,879,000,000".

*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 151 to the aforesaid bill, and concur therein with an amendment as follows:

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

ACADEMIC RESEARCH FACILITIES AND INSTRUMENTATION

For necessary expenses in carrying out an academic research facilities and instrumentation program pursuant to the purposes of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861-1875), including services as authorized by 5 U.S.C. 3109 and rental of conference rooms in the District of Columbia, \$33,000,000, to remain available until September 30, 1993.

*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 156 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter inserted by said amendment, insert: "Provided further, That up to \$9,000,000 may be transferred to and merged with funds made available under

"United States Antarctic Research Activities": *Provided further*, That notwithstanding section 104 of the National Science Foundation Authorization Act of 1988 (Public Law 100-570), no funds appropriated to the National Science Foundation under this Act may be transferred among appropriations accounts.

*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 matter inserted by said amendment, insert: "Provided, That of the new budget authority provided herein, \$5,000,000 shall be for the purpose of providing local neighborhood revitalization organizations revolving homeownership lending capital, and equity capital for affordable lower-income rental and mutual housing association projects, to remain available until September 30, 1994: *Provided further*, That the \$5,000,000 shall be available for obligation to Neighborhood Reinvestment Corporation in quarterly payments of \$625,000 beginning with September 1 of fiscal year 1992"

*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 164 to the aforesaid bill, and concur therein with an amendment as follows:

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

The Office of Inspector General of the Resolution Trust Corporation shall review by September 30, 1993, each of the agreements described in section 31(A)(b)(11)(B) of the Federal Home Loan Bank Act and determined whether there is any legal basis sufficient for a rescission of the agreement, including but not limited to, fraud, misrepresentation, failure to disclose a material fact, failure to perform under the terms of the agreement, improprieties in the bidding process, failure to comply with any law, rule

or regulation regarding the validity of the agreement, or any other legal basis sufficient for rescission of the agreement. After such review has been completed, and based upon the information available to the Inspector General, the Inspector General shall certify its findings to the Resolution Trust Corporation and to the Congress: *Provided*, That any agreement which has been renegotiated and certified pursuant to section 518(b) of this Act may be excluded from further review under this provision based upon a review by the Inspector General of the appropriate evidence, and a determination that the government has achieved significant and substantial savings as a result of the renegotiation: *Provided further*, That the Inspector General report the basis for the exclusion in writing to Congress prior to any exclusion of further review under this provision.

*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 168 to the aforesaid bill, and concur therein with an amendment as follows:

At the end of the matter inserted by said amendment, insert:

(d) The provisions of this section shall be effective until (1) enactment into law of legislation concerning the price of drugs and biologicals paid by the Department of Veterans Affairs or (2) June 30, 1992, whichever first occurs.

*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 172 to the aforesaid bill, and concur therein with an amendment as follows:

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

SEC. 521. Notwithstanding any provision of this Act, none of the funds appropriated or otherwise made available by this Act or by any other Act may be used to move Federal Housing and Urban Development offices from downtown Jacksonville, Florida, (as defined by the Downtown Development Authority of Jacksonville) or to finance the operation of such Federal Housing and Urban Development offices in any area of Florida other than the downtown area of Jacksonville, Florida (as defined by the Downtown Development Authority of Jacksonville).

*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 174 to the aforesaid bill, and concur therein with an amendment as follows:

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

SEC. 526. ESTABLISHMENT OF REGIONAL OFFICE.—The President may establish within the Environmental Protection Agency an eleventh region, which will be comprised solely of the State of Alaska, and a regional office located therein.

*Resolved*, That the House recede from its disagreement to the amendment of the Senate numbered 175 to the aforesaid bill, and concur therein with an amendment as follows:

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

SEC. 527. EXTENSION OF PERIOD APPLICABLE TO SINGLE FAMILY HOUSING.—(a) IN GENERAL.—Section 21A(c)(2)(B) of the Federal Home Loan Bank Act (12 U.S.C. 1411a(c)(2)(B)) is amended by striking "3-month" each place it appears and inserting "3-month and one week".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to eligible single family properties acquired by the Resolution Trust Corporation on or after the date of enactment of this Act.

AMENDMENT NO. 1250 TO HOUSE AMENDMENT TO SENATE AMENDMENT NO. 21

(Purpose: To assure full and complete compliance by Department of Veterans Affairs laboratories of quality assurance standards mandated by the Public Health Service Act)

Ms. MIKULSKI. 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 Maryland [Ms. MIKULSKI] proposes an amendment numbered 1250 to the amendment of the House to the amendment of the Senate No. 21.

Ms. MIKULSKI. 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 matter proposed by the amendment of the House to the amendment of the Senate numbered 21, insert the following:

SEC. 101. (a) REGULATIONS FOR STANDARDS OF PERFORMANCE IN DEPARTMENT OF VETERANS AFFAIRS LABORATORIES.—(1) Within the 120-day period beginning on the date on which the Secretary of Health and Human Services promulgates final regulations to implement the standards required by section 353 of the Public Health Service Act (42 U.S.C. 263a), the Secretary of Veterans Affairs, in accordance with the Secretary's authority under title 38, United States Code, shall prescribe regulations to assure consistent performance by medical facility laboratories under the jurisdiction of the Secretary of valid and reliable laboratory examinations and other procedures. Such regulations shall be prescribed in consultation with the Secretary of Health and Human Services and shall establish standards equal to that applicable to other medical facility laboratories in accordance with the requirements of section 353(f) of the Public Health Service Act.

(2) Such regulations—  
(A) may include appropriate provisions respecting waivers described in section 353(d) of such Act and accreditations described in section 353(e) of such Act; and

(B) shall include appropriate provisions respecting compliance with such requirements.

(b) REPORT.—Within the 180-day period beginning on the date on which the Secretary of Veterans Affairs prescribes regulations required by subsection (a), the Secretary shall submit to the appropriate Committees of the Congress a report on those regulations.

(c) DEFINITION.—As used in this section, the term "medical facility laboratories" means facilities for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other physical examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

Ms. MIKULSKI. Mr. President, I want to bring to the Senate's attention that the amendment does the following things: No. 1, it clarifies that the clinical lab standards issued by the VA must equal those required under HHS regulations; and No. 2, it tells the VA

Secretary to report on its implementation of these regulations.

I urge its adoption.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 1250 to House amendment to Senate amendment No. 21) was agreed to.

The PRESIDING OFFICER. Without objection, the motion to reconsider is laid on the table.

Ms. MIKULSKI. Mr. President, we are in the closing hours of this Senate's meeting this week. I wanted to just take a few minutes to talk about what we just did. The U.S. Senate has just adopted the VA-HUD and independent agencies bill. I want to thank my ranking minority member for the cooperation he has given me in fashioning legislation that I think will meet the needs of veterans, housing, the environment, as well as our space program.

We had a list of three priorities: what we "must do"; what we "should do"; and what we would "like to do." We have done our best to fund those items on the "must do" list. We got to some of the items on the "should do" list. But I would be less than honest with my colleagues if I said that the legislation contained everything I would "like to do."

Mr. President, there is an enormous challenge facing this country on how we can meet those needs but I believe that veterans, those who find the need for housing, those who wish to protect our environment, those who protected our country, and those who are doing the scientific explorations for our country both as astronauts and those working in laboratories will feel that this subcommittee did its job.

I would like to think my staff for its cooperation, and the cooperation of the ranking minority staff for what we were able to do.

Mr. President, before I yield to the ranking minority member, I must clarify what we have just done however on the amendment in disagreement.

The House offered to the Senate an amendment of disagreement because they believed the VA should be in a position to police themselves on the quality in labs. It was the Senate's thrust that VA should follow explicitly the same rules and regulations of the private sector hospitals. Unfortunately, we got into a very prickly parliamentary situation.

But, Mr. President, I do not want to hold up the VA-HUD bill because of the internal politics of the House of Representatives and the U.S. Senate. A fiscal year has begun, and I believe we needed to get our money out to make sure that our space program was working, that we were going to meet the needs of the homeless, and that we were going to make sure that money

was going into the VA hospitals for those personnel, doctors, and physicians whom I salute.

But I believe that the chairman of the House authorizing committee was misled by the head of the VA medical care system. The gentleman who chairs the VA authorizing committee is indeed an extraordinary person. He was a general in our Armed Forces. He is a war hero. He wants to do best for what is there for the veterans.

But I will tell you the person who chairs the VA medical system wanted VA medical care to be exempted from the clinical laboratory standards that we now intend to hold to the private sector. This is the same medical care operation that presided over the horror stories that we saw at Cleveland Hospital where it resulted in terrible injury, deaths in a Chicago hospital, and in a Boston hospital where female patients were not given the VA mandated Pap smears and mammograms.

I was deeply disappointed at the way the VA bureaucracy tried to manipulate the processes of this institution. I am not going to get into temper-tantrum politics here. Our veterans deserve more than yellow ribbons. This is one Senator that is going to make sure that they get it.

But I will tell you, I pledge to the veterans of the United States of America that I will do all in my power to see to it that the clinical laboratories of the VA are up to the same duty as the men and women of our armed services. And I will have more to say about the VA bureaucracy at another time.

I am sorry we have had to come to a prickly relationship on this. But right now I am proud of the bill. I am willing to do the compromise because I will tell you: I want to make sure that we meet the high tech needs of the United States of America. This bill has done it. I am proud to Chair it.

I look forward to hearing the remarks from our ranking minority member.

Mr. GARN. Mr. President, I ask unanimous consent that the Senate concur in the House amendment as amended.

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

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

#### MORNING BUSINESS

Mr. KERRY. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein.

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

#### THE SITUATION IN HAITI

Mr. KERRY. Mr. President, a little while ago the Senate adopted a resolu-

tion regarding the situation in Haiti by a vote of 97 to 0. It is obviously a broad statement about how we feel about Haiti. I wanted to take a minute if I may to suggest to colleagues and particularly to the administration that a resolution such as we have just agreed to is really only scratching at the surface of what needs to be done with respect to the situation in Haiti.

The U.S. Senate adopting the resolution today is an important statement, but that is all it is. It is a statement. It is not enough. I have heard some people in the public and also some here in the Senate suggest that what has happened in Haiti could conceivably be of little consequence to the United States. They view it as perhaps just another chapter in the sad history of a country that seems to be impossible to govern.

And they may view it as something that is regrettable, but also as something about which there is very little that the United States can really do. So, for many of these people, the passing of the resolution might be the end of the exercise.

I want to respectfully suggest—and I personally believe very deeply—that there is a very different view of the importance of what has happened in Haiti, and I believe that the coup directly threatens very real interests of the United States, not only because United States citizens are there—and that is of concern—but, also, importantly, because of the potential message that this coup sends elsewhere in the hemisphere at a time when most of us have been hoping that democracy is really on its road in this hemisphere.

I particularly think quickly of the message that might be sent up to Guatemala or El Salvador. This coup in Haiti is a body blow to democratic ideals, and to the aspirations of the people of Haiti and, indeed, the people of this hemisphere. The most recent elections were the fairest and the freest in the history of Haiti.

Father Aristide is perhaps the most popular political leader in Haitian history. And unless we take steps to help to ensure—not to ensure on our own, but to help to ensure his return to power, then I am convinced we will encourage every two-bit, would be dictator in the hemisphere to think seriously about the prospect of overturning democracy, thereby, testing our own resolve and our own willingness to back up democratic rhetoric with effective action.

Mr. President, there are both humanitarian and historical reasons why this coup cannot be allowed to prevail. The United States does not have a proud record or a proud history in Haiti. We did not recognize the independence of Haiti for almost 60 years, because we were a slave-holding country, and Haiti was a republic founded by former slaves.

Early in this century, we sent in marines, not to help Haiti, but fundamentally to protect the economic interests of American companies. Later, we learned to live with, and even support, the brutal regimes of "Papa Doc" Duvalier and his notorious son.

In recent years, we have assured the Haitian people that those days are past, and we have told them we are going to do all we can to support real freedom in their country. I think this is a moment of truth for that commitment and, most important, it is a moment of truth for that commitment close to home, not many thousands of miles away in the desert, or even in the Far East.

During the past couple of days, I have heard some people say, "Well, do not worry. The Haitian people will not allow this coup to stand. They are going to take to the streets, and the military will eventually have to give in."

Well, Mr. President, maybe that is correct. I did not know the answer to that. But I think we ought to stop and ask ourselves, if that is true, how many Haitians are going to have to die for that freedom before the freedom is restored? We have to remember that the Haitian people have really paid an extraordinary price of tyranny over and over again with their bodies, blood, and lives. We really cannot, in good conscience, simply sit back and wait for them to take this matter into hand.

So I do not accept the view of some that what is happening in Haiti is simply an internal matter. The survival of democracy is of international concern. We have so stated over and over again. The preservation of human lives is far more important than any international boundary.

I congratulate the administration for terminating aid to Haiti, and for seeking an emergency meeting of the foreign ministers of the OAS. That is a correct step to take, initially, but it is only an initial step. There is more.

I suggest, Mr. President, that first we must see to it that the prohibitions on aid to the new regime are fully enforced and are supported around the world with the same kind of energy that we attempted to do so with respect to Iraq. The sanctions should apply, not only to direct aid, but to trade in weapons, petroleum, vehicles and any other products that have significant military value.

Second, we should take steps to freeze any and all assets belonging to the Government of Haiti that are in the United States, and seek international support to freeze assets that may be located elsewhere around the world. The military should simply not be allowed to plunder the very limited resources of the Haitian people during this interval.

Third, we should consult with Father Aristide who, I understand, will be here

tomorrow for the purpose of developing a plan for further actions leading to his return to power. With his concurrence, and with the example of the Persian Gulf in mind, we should, in fact, make it clear to the military in Haiti that the international community intends to restore democratic rule by any means necessary. That means we should also be willing to consider the use of force, which has been used previously, but this time, similar to the way we did in bringing order out of chaos in Granada, or to arrest General Noriega, or even to remove a dictatorship in Kuwait; that is something that should be considered.

I am not suggesting that it should be used immediately. But clearly, the Government of Haiti—the legitimate government—should know that our country is willing to place that option on the table. And, most important, the military thugs in Haiti should understand the willingness of the world to begin that consideration. Experts will decide precisely exactly when and how force might best be applied. But the message to the coup leaders in Haiti has to be clear, and it has to be decisive: You can give up now, or you can give up later, but you will give up.

Fourth, we ought to support an international response to the coup, not only in the regional forum of the OAS, as the administration has commenced, but in the Security Council of the United Nations, as well.

Finally, Mr. President, I might add that we here in the United States, in the wake of this, ought to really review the events leading up to the coup, and consider whether or not we have experienced one more failure of intelligence, and whether or not there might have been steps that we could have taken prior to this happening in order to prevent it from happening.

In closing, what we did earlier is important, but it is only a first step. It is vital that we have the administration articulate a concerted plan of action aimed at restoring democratic rule in Haiti. If ever a country deserved a chance to build, grow, and prosper, it is Haiti. If ever a people deserve the opportunity to live the freedom they have waited for, it is in Haiti. And if ever a nation deserved help in that effort, considering the other nations that we have helped, which have, frankly, been less deserving because of their less concerted efforts to develop democracy, then that country that deserves the help is Haiti.

This is not an issue that has two sides. And if what is happening in Haiti today is not wrong, then I do not think anything can be judged to be wrong. I think we all understand that, and I hope the President will move with the same authority and with the same skill that he and Secretary Baker did on a number of other issues that have been of equal concern, in order to try to

send this message very firmly and clearly to restore democracy in Haiti.

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. DOLE. 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. DOLE. Mr. President, are we in morning business?

The PRESIDING OFFICER. We are in morning business.

#### SANCTIONS AGAINST SERBIA

Mr. DOLE. Mr. President, I rise today in support of the legislation imposing restrictions on United States assistance to Serbia and imposing a trade embargo against Serbia, introduced by the distinguished Senator from New York [Mr. D'AMATO]. A war has been raging in Croatia since June, when Croatia declared its independence—over 1,000 people have died. And, there are signs that this war could spread to Bosnia-Herzegovina. In the Province of Kosova, a silent war has been underway for almost 3 years. During that time, the 2 million Albanians in Kosova have lived under marital law—they have lost their jobs, their schools, their rights and their lives.

There is no doubt that the hardline President of the Republic of Serbia is responsible for the tragic situation in Kosova and that he is orchestrating the war against Croatia. Our State Department and the European Community have clearly indicated that he is actively supporting and encouraging the use of force in Croatia by Serbian militants and the Yugoslav military.

Mr. President, it is high time that we take the necessary steps to end the inhumane aggression perpetrated by Serbian President Milosevic.

Our Government must get off the fence, and get on the right side—the side of freedom—in Yugoslavia.

America needs to do what is right and to stand on the side of democracy, human rights and self-determination.

And I am here today because I believe that this bill puts us on the right side—and does so not just with words, but with action.

In recent months, we have seen countless pictures of bombed buildings, crying mothers, and families fleeing into bomb shelters.

Last year, I saw that same suffering in the streets of Pristina—I saw the undeniable signs of a police state: People being beaten by police and dragged away to certain persecution in the overflowing prisons of Kosova.

I saw tear gas used against those Albanians whose only crime was waiting outside their offices and apartments to wave at Americans.

And, having seen this brutal reality firsthand and upclose, I returned to the United States and sounded the warning that Milosevic's violent aggression in Kosovo would not only worsen, but would spread to other areas of Yugoslavia—unless the United States and Europe took action.

Few heeded this warning. Some said that communism was dead in Eastern Europe—and that it was only a matter of time before Milosevic and communism were swept away in Yugoslavia.

Those people were wrong. Milosevic has outlasted the rest of the Communists in Eastern Europe. And, despite the collapse of the coup in the Soviet Union, Milosevic still clings on to power as we watch and do nothing.

Milosevic's brand of hardline Communist aggression does not discriminate between Slovenian cities, Croatian ports, Bosnian towns and Hungarian villages. It does not discriminate between barracks, apartment houses, hospitals, elementary schools, and churches. Nor does it discriminate between Slovenian soldiers, Albanian women and Croatian children. All are targets in Milosevic's war. And, all are threatened by his inhumane plan to conquer land and enslave people in the name of a "Greater Serbia."

Milosevic and his allies in the Yugoslav army must be stopped. They can be stopped if the United States steps forward to assume leadership in this crisis which threatens peace and stability in central Europe.

The United States needs to isolate the Government of Serbia the way we isolated Cuba. Senator D'AMATO'S legislation does exactly that.

Mr. President, this bill makes it perfectly clear that there will be no United States assistance and no economic benefits for Serbia until Milosevic stops waging war on Kosovo, on Croatia on Bosnia and on his own people. The U.S. Congress will not accept the use of force to change the internal borders of Yugoslavia or to resolve political differences. Nor will we tolerate the continued and systematic abuse of human rights in Kosovo, Vojvodina or even in Serbia.

Mr. President, this bill moves beyond diplomatic hand-wringing. It takes serious measures and puts the pressure on Milosevic to stop his war against the Albanians, the Croations, the Bosnians, and all other people in Yugoslavia who want freedom and democracy.

Mr. President, I hope that the Senate will act expeditiously on this legislation. Lives are at stake, democracy is at stake and, freedom is at stake.

(Mr. FORD assumed the chair.)

#### FAMILY AND MEDICAL LEAVE ACT

Mr. DOLE. Mr. President, I would just add also, on the family and medi-

cal leave bill that passed, I want to commend all of my colleagues. I think we did work out an agreement where people were able to express themselves.

As I said earlier, I think the bill was slightly improved by the amendment of the Presiding Officer, along with Senator BOND and Senator COATS. But I do not believe that this bill will become law. In fact, I am encouraged that we will have enough votes in the Senate to sustain a veto. I understand the Senate will act first. And unless I have miscounted our unless somebody has a change of heart—unless the bill fails to pass the House; that is something else that could happen, because last year there were 195 votes in the House against the measure. But if it should somehow slip through the Senate, the veto not being sustained, I am certain the House would sustain a veto.

Again, maybe next year or the following year, we can find some way to address this problem without taxing American business and without additional mandates. We have mandates. We have all voted for mandates. I think businessmen and women are telling us now they have had it up to here.

I had a couple of my colleagues before the vote say they will vote to sustain a veto. Those two votes, and I know there are possibly two or three other votes, would certainly be enough to sustain a veto.

Again I commend my colleagues, who were able to dispose of this bill because of cooperation. All sides got together after several hours of discussion yesterday and agreed on a procedure so that there could be a full debate and discussion, and then a final disposition of the measure.

Mr. President, I yield the floor.

#### TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,391st day that Terry Anderson has been held captive in Lebanon.

#### LOAN GUARANTEE LEGISLATION FOR ISRAEL

Mr. DODD. Mr. President, I rise today to offer my strong support for the legislation introduced today by the senior Senator from Hawaii [Mr. INOUE] and the senior Senator from Wisconsin [Mr. KASTEN]. I want to commend them for their dedication to this important issue and their hard work in crafting such a fine piece of legislation.

At the outset, Mr. President, let me make absolutely clear what this program does. Contrary to popular opinion, this is not a cash grant to Israel. Contrary to popular opinion, this is not a direct loan to Israel. All we are doing with this legislation is telling private, commercial lenders around the world

that if they loan money to Israel, we will offer the full faith and credit of the U.S. Government behind those loans.

At its core, Mr. President, this is nothing more than a self-help measure. We are simply letting Israel know that if she can find the creditors, we will guarantee repayment. And I would point out that in all of her 43 years, Mr. President, Israel has never missed a loan payment. If she pays back these loans, the total cost to the U.S. taxpayer will be zero.

Mr. President, the idea of loan guarantees for Israel is one that I have long supported. In fact, it was almost 3 months ago that I stood on this floor and called on the administration to support this program. At the time, I had hoped the administration would see fit to support this program without attempting to link it to the settlements in the occupied territories.

Since then, Mr. President, I have been sorely disappointed, not only with the prime-time television address made by President Bush not too long ago but with all the administration's statements on the issue. The President's strategy is apparent: he clearly seeks to use the bully pulpit of his office to intimidate and manipulate the Government of Israel.

I have no doubt the President is acting with noble intentions in this matter. I know he holds a legitimate desire to bring a peaceful solution to this long-running conflict. But sometimes I wonder if the administration truly appreciates what is at stake here.

The administration seems to believe there is an organic connection between settlements in the occupied territories and humanitarian aid to the refugees. The administration apparently thinks we can end the Arab-Israeli conflict, indeed we can do away with a millennium of cultural animosity, if only we can put a halt to the settlements. The administration has somehow come to the bizarre conclusion that cutting humanitarian assistance for needy refugees is the key to peace.

It is a concept only George Orwell could appreciate. More than that, Mr. President, it is a recipe for failure.

I stood here 3 months ago and said it then, and I will repeat it this morning: if the President really believes the refugees are the key to a geopolitical solution, I would like to see him try to explain it to them.

Seventeen years ago, the Jackson-Vanik amendment to the Trade Act of 1974 called on the Soviet Union to let down her borders and allow her people to emigrate. Seventeen years ago, we made the principle of free emigration, the right of people to live anywhere in the world they choose, one of the cornerstones of our foreign policy.

Now that the barriers to emigration are coming down, during the next 5 years over one million Jews will leave

the former Soviet Union. And most of them, Mr. President, will choose to live in Israel.

I'd like to see how the President would explain to these refugees, the ultimate realization of the Jackson-Vanik dream, that we will link humanitarian aid to the settlement issue. That we will make them pawns in a dispute they did not create and want no part in. That we will hold them hostage to a dispute that runs so deep, Mr. President, that there ancient religion claim the city of Jerusalem as their birthplace.

For decades, Mr. President, these refugees dreamed of the day they could come to Israel, where they could finally enjoy economic and political liberty. What a bitter irony it would be if, after so many years of encouraging that dream, we would cruelly snatch it away. And by denying these refugees the means to acquire the most basic of sustenance, that is exactly what we would be doing. Make no mistake about it. That's what linkage is really about.

Mr. President, I don't like the settlements in the occupied territories any more than anybody in this Chamber. I recognize that these settlements must some day end if there is to be lasting peace in the region. And frankly, I understand the administration's frustration over the issue. Sometimes I wonder if the Shamir government wouldn't make it a lot easier on all of us if it would simply declare a temporary halt to the settlements.

But let's not forget that, as we speak, the Arabs continue to impose a total economic boycott on Israel. And even as we speak, none of the Arab nations besides Egypt has even accepted the right of Israel to live within secure borders. Mr. President, if these are issues for the peace conference, then surely the settlements must be as well. At the very least, we should await the outcome of these face to face negotiations before using the refugees in a deadly game of geopolitical chicken.

Mr. President, it was half a century ago that the Western World shamefully closed her borders to the helpless victims of the murderous Nazi regime. Embodied in the Jackson-Vanik amendment, Mr. President, is a promise. It is a promise that never again will the West stand idly by as an entire society falls victim to brutal genocide. And it is a promise that we will support the right of the Jewish people to make a new home in Israel.

With this loan guarantee program, we take one step further toward fulfilling that promise. And in my view, we take one step further toward bringing true peace to the region. For the sake of humanity, I call on the President to support this legislation.

#### APPOINTMENT BY THE MAJORITY LEADER

The PRESIDING OFFICER. The Chair, on behalf of the majority leader, and in consultation with the Republican leader, pursuant to Public Law 101-557, appoints the Senator from Arkansas [Mr. PRYOR] and the Senator from Florida [Mr. MACK] to the Task Force on Aging Research.

#### APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to 22 U.S.C. 276, as amended, appoints the Senator from Hawaii [Mr. AKAKA] as a member of the Senate delegation to the Fall Interparliamentary Union Meeting, to be held in Santiago, Chile, October 7-12, 1991.

#### AUTHORIZATION FOR CERTAIN PROGRAMS FOR THE CONSERVATION OF STRIPED BASS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 241, H.R. 2387, regarding the conservation of striped bass.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 2387) to authorize appropriations for certain programs for the conservation of striped bass, 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 rise today to discuss legislation to conserve and manage South Carolina's State fish, the striped bass. H.R. 2387, the Striped Bass Act of 1991, authorizes funding through fiscal year 1994 for the Atlantic Striped Bass Conservation Act and for striped bass research under the Anadromous Fish Conservation Act. The bill also extends and strengthens Federal authority to bring states into compliance with interstate efforts to manage the striped bass fishery. Finally, the bill authorizes the Secretaries of Commerce and the Interior to enter into cooperative agreements to improve the effectiveness of management efforts.

Striped bass is a catch prized by both recreational and commercial fishermen all along the Atlantic coast. Like salmon, this fish typically spends most of its adult life in marine waters, returning to fresh waters to spawn. Migrating along our eastern shores from New England to the South Atlantic, stocks of striped bass return each spring to lay their eggs in the rivers and tributaries of the Chesapeake Bay.

In addition, a land-locked population was discovered in the Santee-Cooper Lakes of South Carolina in the midfifties.

The life history of striped bass makes them vulnerable to two human threats—overfishing and coastal pollution. Each year as stripers move along the coast, they swim through an obstacle course of eager recreational and commercial fishermen. Those fish that make it to the Chesapeake then face shrinking and often polluted spawning areas. In 1979, responding to concern over the stock's condition, Congress initiated an Emergency Striped Bass Research Study under the Anadromous Fish Conservation Act. Over the years, the study provided information for managing the striped bass fishery. However, despite management efforts, commercial fishery landings continued to drop. By the mideighties, striped bass seemed well on their way to becoming yet another case study of man's inability to use marine resources wisely.

In 1984, the seriousness of the situation led Congress to enact the Atlantic Striped Bass Conservation Act. This Act called for Federal-State cooperation in implementing and enforcing an interstate fishery management plan for striped bass developed by the Atlantic States Marine Fisheries Commission. Under the act, the interstate plan established guidelines for State regulation of striped bass harvests in coastal waters. State regulatory and enforcement programs then became subject to an annual review by the Commission to determine whether they met the plan guidelines. Finally, those States which failed to comply with the plan faced a Federal moratorium on striped bass fishing in their coastal waters.

Today, as a result of these tough measures, striped bass stocks appear to be recovering. The abundance of young fish is on the increase, and cooperative management among the States is improving. But while recent scientific evidence has created cautious optimism among fishery managers about the future of striped bass, sustained recovery is still far from certain and will require continued State commitments to a conservative management regime.

Looking back over the past decade, the Atlantic Striped Bass Conservation Act and the Anadromous Fish Conservation Act have proven their effectiveness in furthering cooperative management of this complex fishery. Both acts must be extended if we are to ensure that such cooperation continues. Enactment of the Striped Bass Act of 1991 would accomplish that legislative task. Thus, I urge my colleagues to support the bill's passage.

Mr. KERRY. Mr. President, I rise today in support of the Striped Bass Act of 1991.

Striped bass is an important recreational and commercial species for

Massachusetts and other States from Maine to North Carolina. A decade ago, the fishery was estimated to add about \$200 million to the economy in the New England and Mid-Atlantic regions. However, increasingly fishing effort beginning in the 1970's resulted in rapidly declining stocks. Stringent management and conservation efforts now appear to be reversing this decline. It is essential that these efforts continue until the stock is fully restored.

The Atlantic States Marine Fisheries Commission is responsible for developing interstate plans for managing striped bass and other coastal fisheries. The purpose of the Commission is to coordinate State efforts for species that are interjurisdictional, in recognition of the need to manage fish stocks over their full range. The interstate plans provide guidelines for State fishing regulations.

The bill that we are considering today will enhance cooperative efforts to manage striped bass in the Atlantic. It allows the Secretary of Commerce to impose and enforce a moratorium on striped bass fishing in any State in which existing management efforts are insufficient to restore stocks. It also authorizes cooperative agreements between the Commission and the Secretaries of Commerce and Interior. Finally, this legislation authorizes funding that will provide the information that is needed to properly manage this important fishery.

It has been suggested that this cooperative management approach be expanded to other coastal fisheries. The possibility of this is being explored by the Atlantic States Marine Fisheries Commission and we may consider taking future action based on their recommendations.

In addition, I will be working in the future to see that the Commission has the needed resources not only to manage these fisheries resources, but also to assure that State monitoring and enforcement efforts are adequate.

The PRESIDING OFFICER. The bill is deemed read the third time and passed.

Mr. MITCHELL. I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

#### DRUG ABUSE PREVENTION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3259 relating to drug abuse prevention just received from the House.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3259) to authorize appropriations for drug abuse education and preven-

tion programs relating to youth gangs and to runaway and homeless youth, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. Without objection, the bill is deemed read a third time and passed.

The bill (H.R. 3259) was deemed read a third time and passed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

#### 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

##### ENROLLED BILL AND JOINT RESOLUTIONS SIGNED

At 4:06 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bill and joint resolution:

H.R. 2935. An act to designate the building located at 6600 Lorain Avenue in Cleveland, Ohio as the "Patrick J. Patton United States Post Office Building"; and

S.J. Res. 78. Joint resolution to designate the month of November 1991 and 1992 as "National Hospice Month."

The enrolled bill and joint resolution were subsequently signed by the President pro tempore [Mr. BYRD].

At 5:11 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. —. A concurrent resolution directing the Secretary of the Senate to make technical corrections in the enrollment of the bill S. 868.

The message also 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 Senate to the bill (H.R. 2519) making appropriations for the Departments of Veterans Affairs and

Housing and Urban Development, and for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1992, and for other purposes; it recedes from its disagreement to the amendments of the Senate numbered 6, 10, 14, 28, 29, 30, 34, 49, 53, 71, 73, 74, 75, 76, 78, 80, 81, 85, 89, 92, 98, 106, 123, 124, 131, 139, 142, 147, 148, 153, 159, and 173 to the bill; and it recedes from its disagreement to the amendments of the Senate numbered 4, 5, 9, 20, 21, 25, 26, 35, 36, 37, 40, 58, 67, 70, 72, 77, 79, 95, 107, 111, 112, 119, 121, 122, 133, 146, 150, 151, 156, 162, 164, 168, 172, 174, and 175 to the bill, and agrees thereto, each with an amendment, in which it requests the concurrence of the Senate.

The message further announced that the House disagrees to the amendment of the Senate to the bill (H.R. 707) to amend the Commodity Exchange Act to improve the regulation of futures and options traded under rules and regulations of the Commodity Futures Trading Commission; to establish registration standards for all exchange floor traders; to restrict practices which may lead to the abuse of outside customers of the marketplace; to reinforce development of exchange audit trails to better enable the detection and prevention of such practices; to establish higher standards for service on government boards and disciplinary committees of self-regulatory organizations; to enhance the international regulation of futures trading; to regularize the process of authorizing appropriations for the Commodity Futures Trading Commission; and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints the following as managers of the conference on the part of the House:

From the Committee on Agriculture, for consideration of the House bill, and the Senate amendment, and modifications committed to conference: Mr. DE LA GARZA, Mr. ENGLISH, Mr. STAGGERS, Mr. STALLINGS, Mr. NAGLE, Mr. SARPALIUS, Mr. JOHNSON of South Dakota, Mr. HUCKABY, Mr. GLICKMAN, Mr. PENNY, Mr. ESPY, Ms. LONG, Mr. STENHOLM, Mr. TALLON, Mr. COLEMAN of Missouri, Mr. SMITH of Oregon, Mr. GUNDERSON, Mr. COMBEST, Mr. ALLARD, Mr. BARRETT, Mr. NUSSLE, Mr. BOEHNER, and Mr. ROBERTS.

As additional conferees from the Committee on Banking, Finance and Urban Affairs, for consideration of section 263 and title III of the Senate amendment, and modifications committed to conference: Mr. GONZALEZ, Mr. ANNUNZIO, Mr. NEAL of North Carolina, Mr. HUBBARD, Mr. LAFALCE, Ms. OAKAR, Mr. WYLIE, Mr. LEACH, Mr. MCCOLLUM, and Mrs. ROUKEMA.

As additional conferees from the Committee on Energy and Commerce, for consideration of section 263 and

title III of the Senate amendment, and modifications committed to conference: Mr. DINGELL, Mr. MARKEY, Mr. SCHEUER, Mr. SYNAR, Mr. ECKART, Mr. SLATTERY, Mr. LENT, Mr. RINALDO, Mr. MOORHEAD, and Mr. RITTER.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

- H.R. 238. An act for the relief of Craig A. Klein;
- H.R. 454. An act for the relief of Bruce C. Veit;
- H.R. 478. An act for the relief of Norman R. Ricks;
- H.R. 590. An act for the relief of Edgardo, Ismael, Juan Carlos, and Edilliam Cotto Roman;
- H.R. 655. An act for the relief of Juan Luis, Braulio Nestor, and Miosotis Ramirez; and
- H.R. 1279. An act for the relief of Charlotte S. Neal.

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 209. A concurrent resolution congratulating the Government and people of Greece and the municipal government and people of Athens; on the occasion of the 2,500th anniversary of the establishment of democracy in the city of Athens.

The message also announced that pursuant to the authority granted on September 16, 1991, the Speaker makes the following modifications in the appointment of conferees in the conference on the disagreeing votes of the two Houses on the amendments to the Senate to H.R. 2100, to authorize appropriations for fiscal years 1992 and 1993 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 panel from the Committee on Energy and Commerce is also appointed for consideration of section 817 of the House bill, and section 826 of the Senate amendments. Delete section 3134 of the Senate amendments from the appointment.

The panel from the Committee on Foreign Affairs is also appointed for consideration of section 904 of the Senate amendments.

The panel from the Committee on the Judiciary is also appointed for consideration of section 3131(e)(5) of the Senate amendments.

The panel from the Committee on Public Works and Transportation is also appointed for consideration of section 2801(g) of the Senate amendments.

As additional conferees from the Committee on Banking, Finance and Urban Affairs, for consideration of sections 804 and 807 of the Senate amendments, and modifications committed to conference: Mr. CARPER, Mr. LAFALCE, Ms. OAKAR, Mr. VENTO, Mr. KANJORSKI, Mr. RIDGE, Mr. PAXON, and Mr. HANCOCK.

The message further announced that pursuant to the provisions of section 491 of the Higher Education Act, as amended by section 407 of Public Law 99-498, the Speaker reappoints Mr. Joseph L. McCormick of Austin, TX, as a member from private life of the Advisory Committee on Student Financial Assistance on the part of the House.

The message also announced that pursuant to the provisions of section 101(b) of Public Laws 99-500 and 99-501, the Speaker recommends Mr. SISISKY and Mr. ALLARD to the James Madison Memorial Fellowship Foundation on the part of the House.

The message further announced that pursuant to section 2702(a)(1)(B)(ii) of title 44, United States Code, the minority leader appoints Dr. John J. Kornacki of Pekin, IL, as a member from private life of the Advisory Committee on the Records of Congress on the part of the House.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

- H.R. 238. An act for the relief of Craig A. Klein; to the Committee on the Judiciary.
- H.R. 454. An act for the relief of Bruce C. Veit; to the Committee on the Judiciary.
- H.R. 478. An act for the relief of Norman R. Ricks; to the Committee on the Judiciary.
- H.R. 590. An act for the relief of Edgardo, Ismael, Juan Carlos, and Edilliam Cotto Roman; to the Committee on Labor and Human Resources.
- H.R. 655. An act for the relief of Juan Luis, Braulio Nestor, and Miosotis Ramirez; to the Committee on Labor and Human Resources.
- H.R. 1279. An act for the relief of Charlotte S. Neal; to the Committee on Armed Services.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 209. A concurrent resolution congratulating the Government and people of Greece and the municipal government and people of Athens; on the occasion of the 2,500th anniversary of the establishment of democracy in the city of Athens; to the Committee on Foreign Relations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

- By Mr. INOUE, from the Select Committee on Indian Affairs, without amendment: S. 962. A bill to make permanent the legislative reinstatement, following the decision of Duro against Reina (58 U.S.L.W. 4643, May 29, 1990), of the power of Indian tribes to exercise criminal jurisdiction over Indians (Rept. No. 102-168).

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. FORD: S. 1792. A bill directing the Secretary of the Army to develop and implement a plan

for modifying the channel bypass element of the Levisa Fork, Kentucky, for the purpose of water quality improvement in and restoration of Pikeville Lake, Kentucky; to the Committee on Environment and Public Works.

- By Mr. D'AMATO (for himself, Mr. DOLE, Mr. GLENN, Mr. PELL, Mr. GORE, Mr. NICKLES, Mr. PRESSLER, Mr. RIEGLE and Mr. SEYMOUR):

S. 1793. A bill to restrict United States assistance for Serbia or any part of Yugoslavia controlled by Serbia until certain conditions are met, and for other purposes; to the Committee on Foreign Relations.

- By Mr. SANFORD: S. 1794. A bill to suspend for a three-year period the duty on ethyl 2-keto-4-phenylbutanoate, also known as keto ester; to the Committee on Finance.

S. 1795. A bill to continue for a three-year period the suspension of duties on Trifluoroacetyl-L-Lysine-L-Proline in free base and tosyl salt forms, also known as Tfa Lys Pro in free base and tosyl salt forms; to the Committee on Finance.

- S. 1796. A bill to suspend for a three-year period the duty on (S)-1-[N2-(1-carboxy-3-phenylpropyl)-L-lysyl]-L-proline dihydrate, also known as lisinopril; to the Committee on Finance.

- By Mr. DIXON: S. 1797. A bill to suspend temporarily the duty on 3, 4, 4'-trichlorocarbaniide; to the Committee on Finance.

- By Mr. CRANSTON (by request): S. 1798. A bill to amend section 3413 of title 12, United States Code, to add an exception authorizing financial institutions to disclose to the Department of Veterans' Affairs the names and current addresses of their customers who are receiving payments, by direct deposit or Electronic Funds Transfer into their accounts, of compensation, Dependency and Indemnity Compensation or pension benefits under title 38, United States Code; to the Committee on Veterans' Affairs.

- By Mr. LAUTENBERG: S.J. Res. 209. A joint resolution designating the month of March 1992 as "National Computing Education Month"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

- By Mr. SHELBY: S. Con. Res. 67. A concurrent resolution protesting the decision of the Secretary of Health and Human Services to prohibit Federal payments under the medicaid program relating to State medicaid expenditures that are made from revenues derived from provider-specific taxes; to the Committee on Finance.

- By Mr. HATFIELD (for himself and Mr. PACKWOOD): S. Con. Res. 68. A concurrent resolution expressing the sense of the Congress relating to encouraging the use of paid leave by working parents for the purpose of attending parent-teacher conferences; to the Committee on Labor and Human Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

- By Mr. D'AMATO (for himself, Mr. DOLE, Mr. GLENN, Mr. PELL,

Mr. GORE, Mr. NICKLES, and Mr. PRESSLER):

S. 1793. A bill to restrict United States assistance for Serbia or any part of Yugoslavia controlled by Serbia until certain conditions are met, and for other purposes; to the Committee on Foreign Relations.

#### SANCTIONS AGAINST YUGOSLAVIA

• Mr. D'AMATO. Mr. President, I rise today along with Mr. PELL, Mr. DOLE, Mr. GLENN, Mr. NICKLES, Mr. PRESSLER, and Mr. GORE to introduce legislation imposing sweeping United States economic sanctions against Serbia and all parts of Yugoslavia under Serbian control.

The massacre being undertaken by Communist dictator Slobodan Milosevic and Serbian guerrillas against the innocent citizens of Croatia, Slovenia, and Bosnia is unconscionable. And, we all know about the repression of 2 million Albanians in Kosova, who have suffered under martial law for over 2½ years.

Over 1,000 Croatian citizens have been killed. Over 100 Slovenians have been killed. Churches have been bombed. Reports indicate that even chemical weapons have been used on several occasions. Over 100,000 people have been displaced. Mr. President, how long can the United States stand on the sidelines? How long can we watch the killings, the tortures, and the repression of a ruthless dictator's on purge the innocent citizens of Yugoslavia. Milosevic and his killers belong in jail, not in power.

My bill, a bipartisan measure, will send a clear message to the powers that wage war in Yugoslavia: The United States has stepped off the sidelines, Congress has seen enough, we will act and we will act now. We will not close our eyes to the brutal reality of Serbian sponsorship of civil war in Yugoslavia. We will not turn our back on those who seek democracy, freedom, and human rights in Slovenia, Croatia, and Kosova.

Today, Congress puts down its foot. This bill will cut all aid and trade with Serbia and parts of Yugoslavia under Serbian control. We will embargo the Communists until they adhere to the principles of a new world order: Holding free and fair elections, ceasing armed conflict, ending all human rights violations, instituting economic reform, and respect for the internal borders established under the 1974 Yugoslav National Constitution.

As I stand here before you today, at this very moment, the Serbian-controlled Yugoslav Federal Army has broken another cease-fire, their fifth, and vowed to destroy Croatia. Tanks are moving, artillery is flying and once again, innocent people are dying. To just stand by and watch the massacre taking place before our eyes is wrong.

Mr. President, Slobodan Milosevic is the Butcher of Belgrade. The reality is that Yugoslavia is dead. It has reached the point of absolute war. The United States has a moral obligation to do all it can to stop the killing and save the innocent Croatian, Slovenians, and Albanians suffering under the sword of a Communist dictator.

Mr. President, I ask unanimous consent that the text of my bill be printed in its entirety at the conclusion of my remarks.

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

S. 1793

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.*

#### SECTION 1. CONGRESSIONAL FINDINGS.

The Congress makes the following findings:

(1) In 1990, the republics of Croatia, Slovenia, Macedonia, and Bosnia-Herzegovina held free and fair elections.

(2) In 1990, the republics of Serbia and Montenegro held elections which were not free and fair.

(3) 2 million Albanians in the province of Kosovo have been living for more than two and one-half years under a Serbian-imposed martial law. The repressive measures instituted against Albanians in the province of Kosovo include thousands of political arrests, tens of thousands of politically motivated job dismissals, and widespread police violence against ethnic Albanians. The violence includes the excessive use of force by police to disperse peaceful demonstrations and random and unprovoked shootings by police that have resulted in at least 30 deaths and hundreds of injuries.

(4) Since the Declaration of Independence by the Republic of Slovenia on June 25, 1991, more than 100 people have been killed, including civilians, by the Serbian-controlled Yugoslav federal army.

(5) Since the Declaration of Independence by the Republic of Croatia on June 25, 1991, more than 500 people have been killed, including many innocent civilians, by the Serbian-controlled Yugoslav federal army and Serbian guerrillas.

(6) The Serbian-controlled Yugoslav federal army is actively using both ground and air forces in Croatia to attack the citizens that they are constitutionally bound to protect.

(7) Ethnic Hungarians in the province of Vojvodina have suffered egregious human rights violations.

(8) According to an August 31, 1991 Helsinki Watch report, more than 100,000 persons have been displaced by the fighting in Yugoslavia.

(9) Nine journalists have been killed and dozens attacked in Croatia by the Yugoslav federal army and Serbian guerrillas.

(10) According to the August 31, 1991, Helsinki Watch report, prisoners in Serbian and Croatian jails have experienced physical beatings and, in the case of Serbian jails, prisoners have been the victims of other abuses, including electric shock.

(11) The Serbian-controlled Yugoslav army's invasion into Croatia constitutes an illegal effort to alter the borders of Yugoslavia by force.

(12) The leaders of the Serbian republic and the Serbian-controlled Yugoslav army are pressing an unacceptable agenda in an effort to hold onto power and privilege.

(13) Continued violence and unrest in Yugoslavia will jeopardize the stability and security of central Europe.

(14) The majority of citizens in Yugoslavia want peace with self-determination and human rights.

(15) The United States should advance the principles of peace, democracy, human rights, self-determination, respect for existing borders, and respect for international law.

#### SEC. 2. RESTRICTION ON ASSISTANCE FOR SERBIA.

(a) RESTRICTION ON ASSISTANCE.—Unless the conditions of section 6(b) are certified to have been met, no United States assistance (including funds appropriated before the date of enactment of this Act) may be furnished for Serbia or for any part of Yugoslavia controlled by Serbia.

(b) DEFINITION.—For the purposes of this section, the term "United States assistance" means assistance for any kind which is provided by grant, sale, loan, lease, credit, guaranty, or insurance, or by any other means, by any agency or instrumentality of the United States Government to any foreign country, including—

(1) assistance under the Foreign Assistance Act of 1961 (including programs under title IV of chapter 2 of art I of such Act);

(2) sales under title I or III and donations under title II of the Agricultural Trade Development and Assistance Act of 1954 of nonfood commodities;

(3) other financing programs of the Commodity Credit Corporation for export sales of nonfood commodities; and

(4) financing under the Export-Import Bank Act of 1945.

#### SEC. 3. SUSPENSION OF MULTINATIONAL ASSISTANCE.

Unless the conditions of section 6(b) are certified to have been met, the Secretary of the Treasury shall instruct the United States executive directors of the International Monetary Fund, the International Bank for Reconstruction and Development, and the International Development Association to vote against any loan or other utilization of the funds of their respective institutions to or for Serbia or any part of Yugoslavia controlled by Serbia.

#### SEC. 4. SUSPENSION OF AIR TRAVEL.

(a) IN GENERAL.—Unless the conditions of section 6(a) are certified to have been met—

(1) the President shall direct the Secretary of transportation to revoke the right of any air carrier designated by the Government of Yugoslavia under the air transportation agreement between the United States and that country to provide service to Serbia or any part of Yugoslavia controlled by Serbia pursuant to that agreement;

(2) the Secretary of State shall terminate so much of that agreement as relates to Serbia or territory in Yugoslavia controlled by Serbia in accordance with the provisions of that agreement;

(3) upon termination of those provisions, the Secretary of Transportation shall prohibit any aircraft of a foreign air carrier owned, directly or indirectly, by Serbia from engaging in air transportation with respect to the United States; and

(4) The Secretary of Transportation shall provide for such exceptions from the prohibition contained in paragraph (3) as the Secretary considers necessary to provide for emergencies in which the safety of an aircraft or its crew or passengers is threatened.

(b) DEFINITION.—For purposes of this section, the terms "aircraft", "air transportation", and "foreign air carrier" have

meanings given those terms in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301).

#### SEC. 5. TRADE EMBARGO.

Notwithstanding any other provision of law, unless the conditions of section 6(a) are certified to have been met—

(1) the export to Serbia (or any part of Yugoslavia controlled by Serbia) of any goods or technology subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States is hereby prohibited; and

(2) no product, growth, or manufacture of Serbia (or of any part of Yugoslavia controlled by Serbia) may enter the customs territory of the United States.

#### SEC. 6. CONDITIONS.

(a) CONDITIONS ON AIR TRAVEL AND TRADE.—The conditions referred to in sections 4 and 5 are—

(1) that Serbia has ceased its armed conflict with the other ethnic peoples of Yugoslavia; and

(2) that Serbia has agreed to respect the internal borders established under the 1974 Yugoslav Federal Constitution.

(b) CONDITIONS ON ASSISTANCE.—The conditions referred to in sections 2 and 3 are as follows:

(1) that Serbia has ceased its armed conflict with the other ethnic peoples of Yugoslavia;

(2) that Serbia has agreed to respect the internal borders established under the 1974 Yugoslav Federal Constitution;

(3) that Serbia has held free and fair multiparty elections;

(4) that Serbia is not engaged in a pattern of systematic violations of human rights, within the borders of Yugoslavia;

(5) that Serbia is instituting economic reform, based on progress toward a market-oriented economy; and

(c) CERTIFICATION REQUIRED.—Whenever the President determines that the conditions of subsection (a) or (b) have been met, he shall so certify to the Congress.●

● Mr. GLENN. Mr. President, I rise today to voice my grave concern about the continuing crisis in Croatia, as well as to express my profound disappointment that our Government appears content to virtually ignore the deteriorating situation. Many innocent civilians have been attached, killed or wounded, in their homes and village streets, and thousands more have become refugees within their own land. The Yugoslav Federal Army, making a mockery of its allegedly neutral role of separating the warring parties, has openly sided with Serbian nationalists in Croatia.

Clearly, the use of force is not the answer to the apparently impending break up of the Yugoslav federation. Earlier this year I wrote to the President urging that the United States put its full weight behind the EC's oft-frustrated efforts to arrange an effective cease-fire. Unfortunately, to date, the administration appears to be satisfied to sit on the sidelines while the Europeans wrestle with this issue. The world's remaining superpower should not be sitting this one out; the United States should be actively engaged in the search for a solution. One way to do this would be to appoint a high level

U.S. envoy to work with the EC Ministers—to coordinate the use of diplomatic and economic leverage and to signal our commitment to a peaceful negotiated solution. I still think this proposal merits serious consideration by the administration.

Despite the slightly more hopeful prospects for this fifth and latest cease fire, the situation remains tense and the cease-fire extremely tenuous. I fear that the EC effort may yet collapse if it is not immediately and firmly backed up by the international community. The U.N. Security Council was established to provide a collective response to threats to the peace; with the end of the cold war, the Council has actually had some success in this regard. The civil war in Yugoslavia certainly seems a proper issue for Security Council consideration. Very recently the Security Council did take up the question and imposed an arms embargo on Yugoslavia. I welcome this action as well as the strong, albeit belated, condemnation of Serbian aggression by the Secretary of State.

I do not claim to have the answer to the long standing animosities which fuel this crisis; I cannot tell the Serbs and Croats how to sort out their differences. However, I can say that military force is not the way—civil war would be an unmitigated disaster for all the peoples of Yugoslavia and a dangerous precedent for the many other long simmering ethnic conflicts now resurfacing across Eastern Europe and the Soviet Union. As a first step, the fighting in Croatia must stop, not temporarily but fully and permanently. The U.S. must use its diplomatic, political and economic leverage—ideally in coordination with the EC and the United Nations—to back up calls for a lasting cease-fire.

There should be no question that the United States insists on respect for the fundamental human rights of all of Yugoslavia's ethnic groups. This means Albanians in Kosovo, Serbs in Croatia, Hungarians in Vojvodina, etc. However, we cannot countenance a land grab by the government of Serbia and the armed forces under its control designed to create a de facto Greater Serbia. For this reason I will join several of my colleagues in sponsoring legislation to impose economic sanctions on Serbia unless and until it ceases its aggressive military action against neighboring republics.●

● Mr. PELL. Mr. President, I am pleased to join Senators D'AMATO, DOLE, RIEGLE, GLENN, NICKLES, and PRESSLER in introducing legislation that seeks to hold the Serbian government accountable for its egregious actions in Yugoslavia.

Specifically, the bill would impose an embargo on the import of products from Serbia until Serbia has ceased its armed conflict with the other republics of Yugoslavia. It would also restrict

U.S. assistance to Serbia until the President can certify that Serbia has met certain conditions, including that Serbia is not engaged in a pattern of systematic violations of human rights within the borders of Yugoslavia and that it has held free and fair multiparty elections.

In Yugoslavia, the principles of freedom and self-determination are being severely threatened by the ongoing conflict. Long-held ethnic animosities and a dictator's unjust struggle to dominate the entire country have thrown the country into a war that threatens security throughout the region. Serbian republic president Slobodan Milosovic and his band of despots are pressing an unacceptable agenda of creating a greater Serbia at the expense of other republics and ethnic populations.

The Serbian-backed Yugoslav Army and Serbian renegades are waging war against Croatia, where regrettably, according to Croatian sources, approximately 1,000 people have lost their lives since fighting broke out three months ago. Cities rich in history and culture, such as Dubrovnik, are reportedly at risk of being turned to rubble, and the new fear is that the conflict will spread to the Republic of Bosnia-Herzegovina, where the potential for conflagration is extremely high.

As war rages in Croatia, we must not forget the plight of the people in the rest of Yugoslavia, particularly in Kosovo where the Serbian government's repression against the Albanian population is intensifying. Albanian citizens are being deprived of their civil rights, and are subjected to beatings, police violence, arrests, and detentions.

Mr. President, I believe that we who value freedom and self-determination—principles which are so severely at risk in Yugoslavia—must take action to bolster those who share our values. Last week at the United Nations, Secretary of State Baker issued the administration's toughest statement yet on the subject of Yugoslavia, finally coming around to the view which many of us in Congress have held for weeks that:

The Serbian leadership is actively supporting and encouraging the use of force in Croatia by Serbian militants and the Yugoslav military.

The Secretary also asserted that "the apparent objective of the Serbian leadership and the Yugoslav military working in tandem is to create "small Yugoslavia" or "greater Serbia" \* \* \* This new entity would be based on the kind of repression which Serbian authorities have exercised in Kosovo for several years."

I commend Secretary Baker for his strong stance, and agree that the Yugoslav war poses a direct threat to international peace and security. The United Nations Security Council, recogniz-

ing that threat, last week adopted a resolution strongly urging the parties in the conflict in Yugoslavia to observe the EC-brokered cease-fire and to settle the dispute through negotiations. The U.N. resolution also imposes an embargo on all deliveries of weapons and military equipment to Yugoslavia.

Mr. President, I believe that these are steps in the right direction, but the world must do more to focus on the dreadful situation in Yugoslavia. The United States, for its part, must continue to condemn in the strongest manner possible the violence in all of Yugoslavia. I would hope that the U.S. administration would take a more active approach in breaking the cycle of violence gripping Yugoslavia. The legislation that we are introducing today seeks to do just that by ensuring that the United States does not aid—directly through our assistance program or indirectly through trade—the Government of Serbia as long as it continues on its present reckless course.●

By Mr. SANFORD:

S. 1794. A bill to suspend for a three-year period the duty on ethyl 2-keto-4-phenylbutanoate, also known as keto ester; to the Committee on Finance.

SUSPENSION OF DUTY

● Mr. SANFORD. Mr. President, I am introducing a bill to suspend for 3 years the duty on ethyl 2-keto-4-phenylbutanoate, also known as keto ester.

The imported keto ester is not manufactured by any company in the United States, and Merck & Co. must import the material. Keto ester is used to produce the active drugs, enalapril and lisinopril, which are then formulated in Wilson, North Carolina, to their dosage forms, Vasotec and Prinivil.

Vasotec is used both for the treatment of hypertension and for therapy in the management of heart failure. Prinivil is also used in the treatment of hypertension. I urge my colleagues to support a duty suspension for keto ester in order that these products may continue to be manufactured efficiently and cost-effectively.●

By Mr. SANFORD:

S. 1795. A bill to continue for a three year period the suspension of duties on Trifluoroacetyl-L-Lysine-L-Proline in free base and tosyl salt forms, also

\*9902.31.12 3,4,4'-trichlorocarbanilide (provided for in subheading 2924.21.30008)

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.●

By Mr. CRANSTON (by request):

S. 1798. A bill to amend section 3413 of title 12, United States Code, to add an exception authorizing financial institutions to disclose to the Depart-

ment of Veterans Affairs the names and current addresses of their customers who are receiving payments, by direct deposit or Electronic Funds Transfer into their accounts, of compensation, Dependency and Indemnity Compensation or pension benefits under title 38, United States Code; to the Committee on Veterans' Affairs.

SUSPENSION OF DUTY

● Mr. SANFORD. Mr. President, today, I am introducing legislation to suspend for a 3-year period the duty in Trifluoroacetyl-L-Lysine-L-Proline in free base and tosyl salt forms, also known as Tfa Lys Pro in both free base and tosyl salt forms.

Tfa Lys Pro free base and tosyl salt are not manufactured in the United States, and Merck & Co. must import the ingredients which are formulated to dosage form in the company's Wilson, North Carolina plant.

The final product, lisinopril, is a patented drug which is used in the treatment of hypertension and provides economic benefits to society by shortening hospital stays and keeping patients out of the high cost health care system. I ask for my colleagues' support in suspending the duty on Tfa Lys Pro.●

By Mr. SANFORD:

S. 1796. A bill to suspend for a three-year period the duty on (S)-1-[N2-(1-carboxy-3-phenylpropyl)-L-proline dihydrate, also known as lisinopril; to the Committee on Finance.

SUSPENSION OF DUTY

● Mr. SANFORD. Mr. President, I rise today to introduce legislation to suspend for a 3-year period the duty on (S)-1-[N2-(1-carboxy-3-phenylpropyl)-L-proline dihydrate, also known as lisinopril.

Lisinopril is imported from Ireland for manufacturing into final dosage form at Merck and Company's Wilson, North Carolina plant. Merck also manufactured Lisinopril in Puerto Rico, yet the domestically produced material is insufficient to meet the market demand. Merck developed Lisinopril and holds the patent for the product. However, under a special licensing agreement, lisinopril is manufactured by ICI Americas, and ICI manufactures the material in the United Kingdom.

Lisinopril is marketed domestically by Merck as Prinivil and by ICI as Zestril. When combined with hydrochlorothiazide, Lisinopril is marketed as Prinivil by Merck and Zestoretic by ICI. Lisinopril is a patented drug to fight hypertension, and I urge my colleagues to suspend the duty on this product for the next 3 years.●

ment of Veterans Affairs the names and current addresses of their customers who are receiving payments, by direct deposit or Electronic Funds Transfer into their accounts, of compensation, Dependency and Indemnity Compensation or pension benefits under title 38, United States Code; to the Committee on Veterans' Affairs.

By Mr. DIXON:

S. 1797. A bill to suspend temporarily the duty on 3,4,4'-trichlorocarbanilide; to the Committee on Finance.

SUSPENSION OF DUTY

● Mr. DIXON. Mr. President, I am introducing legislation today to temporarily suspend the duty on a chemical, 3,4,4'-trichlorocarbanilide. This bill is simple and noncontroversial. It eliminates the duty on an antibacterial chemical that is not produced in the United States. But is an ingredient in deodorant soaps manufactured in this country.

This bill merely establishes a level playing field for domestic soap producers. Because there are no U.S. producers of trichlorocarbanilide, domestic soap producers must import the antibacterial agent, which carries a duty. As a result, domestic soap is produced at a higher cost than foreign made soap. This puts domestic soap producers at a disadvantage.

The U.S. harmonized tariff system was not created to handicap U.S. producers. Removing this duty would level the playing field for U.S. soap producers, thereby, allowing our companies to compete internationally. It is a reasonable bill.

I understand that the Finance Committee is considering putting together another miscellaneous trade and tariff bill; if this is the case, I strongly believe this provision should be included in that measure.

Mr. President, this is a meritorious bill, and I look forward to working with my colleagues to ensure its prompt enactment.

Mr. President, I ask unanimous consent that a copy of the bill be included at this point in the RECORD.

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

S. 1797

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. TEMPORARY SUSPENSION OF DUTY.

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

Free No change No change On or before 12/31/94.

ACCESS TO ADDRESSES OF BENEFICIARIES BY THE DEPARTMENT OF VETERANS AFFAIRS

● Mr. CRANSTON. Mr. President, as chairman of the Veterans' Affairs Committee, I am today introducing, by request, S. 1798, a bill to amend section 3413 of title 12, United States Code, to authorize financial institutions to disclose to the Department of Veterans Affairs the current addresses of their customers who are receiving payments,

by direct deposit or Electronic Funds Transfer into their accounts, of certain VA benefits. The Secretary of Veterans Affairs submitted this legislation by letter dated June 13, 1991, to the President of the Senate.

My introduction of this measure is in keeping with the policy which I have adopted of generally introducing—so that there will be specific bills to which my colleagues and others may direct their attention and comments—all administration-proposed draft legislation referred to the Veterans' Affairs Committee. Thus, I reserve the right to support or oppose the provisions of, as well as any amendment to, this legislation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD at this point, together with the June 13, 1991, transmittal letter and enclosed section-by-section analysis.

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

S. 1798

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, Section 3413 of the Right to Financial Privacy Act of 1978 (12 U.S.C. §3413) is amended by adding at the end the following new subsection:*

"(p) Disclosure for proper administration of Department of Veterans Affairs' compensation, Dependency and Indemnity Compensation and pension benefit programs under Title 38, United States Code. Nothing in this chapter shall apply to a request for access to, or the disclosure to the Department of Veterans Affairs of, the name and address of a customer, who is or has been receiving payments of compensation, Dependency and Indemnity Compensation, or pension benefits under title 38, United States Code, by means of Government direct deposit or Electronic Funds Transfer into that customer's account at a financial institution, when such disclosure is needed for the purpose of the proper administration of those benefit programs."

#### SECTION-BY-SECTION ANALYSIS

This proposal would amend the Right to Financial Privacy Act of 1978 (RFPFA), 12 U.S.C. §§3401-3422, by adding an exception to section 3413. This specific and limited exception would authorize a financial institution to disclose to the Department of Veterans Affairs (VA) the name and address of a customer who is receiving payments of VA compensation, Dependency and Indemnity Compensation, or pension benefits under title 38, United States Code, but only when such payments are being directly deposited either by Government mailed check or by Electronic Funds Transfer (DD/EFT) into that customer's account at the financial institution, and when the disclosure is needed for the purpose of the proper administration of those benefit programs.

THE SECRETARY OF VETERANS AFFAIRS,  
Washington, DC, June 13, 1991.

HON. DAN QUAYLE,  
President of the Senate,  
Washington, DC.

DEAR MR. PRESIDENT: The enclosed bill and section-by-section analysis are presented for

your consideration as a proposal to assist the Department of Veterans Affairs (VA) in administering our compensation, Dependency and Indemnity Compensation (DIC), and pension programs under title 38, United States Code. We submitted this same legislative proposal in the last session of Congress. The proposal would add a limited exception to the Right to Financial Privacy Act of 1978 (RFPFA); 12 U.S.C. §§3401-3422, to authorize VA to request and obtain from financial institutions the names and current mailing addresses of certain VA beneficiaries who are receiving payments under these VA benefit programs; this would be done only when a current mailing address is unavailable and needed for proper administration of those programs, and when such payments are being deposited directly either by mailed check or by Electronic Funds Transfer (DD/EFT) into beneficiaries' accounts at those financial institutions.

The Treasury Department, Social Security Administration, and Railroad Retirement Board obtained enactment of an RFPFA exception in 1983 to authorize their access to customer names and addresses when necessary to, and solely for the purpose of their proper administration of certain programs. Pub. L. No. 98-21; 12 U.S.C. §3413(k). This proposal would create a similar exception to authorize VA access to the names and addresses of customers, who are also VA direct deposit or DD/EFT compensation, DIC or pension beneficiaries, when needed for the purpose of VA administration of these benefit programs under title 38, United States Code.

The VA presently pays ongoing benefits to over 3.8 million compensation, DIC and pension beneficiaries under title 38, United States Code. VA is successfully encouraging more and more of these beneficiaries to have their payments deposited directly into their accounts at financial institutions by Electronic Funds Transfer (DD/EFT) means. Over 1.5 million of these beneficiaries now receive DD/EFT payments. This method of payment saves time and administrative costs, and provides improved convenience and safety for beneficiaries. However, there are still significant delays and administrative costs which result because a small but constant percentage of DD/EFT payment beneficiaries fail to keep VA advised of changes in their mailing address. In many cases these costs and delays could be avoided if we could get current addresses from the financial institutions. For example, about 5 percent of our recent compensation cost-of-living rate increase notice letters to DD/EFT payment beneficiaries have been returned as undeliverable because the VA does not have a current mailing address for them.

The VA needs current mailing addresses to communicate with beneficiaries from time to time for several reasons. In many cases physical examinations must be accomplished to evaluate the current severity of veterans' disabilities; if we do not have their current mailing address and hence cannot communicate with them, we must suspend their benefit payments. This causes significant VA administrative costs and inconvenience to veterans. We must also be able to advise beneficiaries of any legislative changes affecting their benefits. Moreover, continued entitlement to VA pension and parent's DIC benefits depends upon the amount of income of the beneficiary which he or she must periodically report to VA. Again, if the required VA income reporting forms which we periodically mail to those receiving income-dependent benefits (pension and parents' DIC) are not received, completed, and returned on

time, then we are required to suspend payment of these benefits. Suspension can be particularly inconvenient and costly, for example, to DD/EFT payment beneficiaries who are having payments directly deposited into their checking or savings accounts, and who have come to rely upon these deposits.

Enactment of this proposal would not result in any additional costs. Savings would occur in that undeliverable mail to beneficiaries, suspension of benefits, and the manual effort of searching for addresses would be reduced because of more timely receipt of a current address.

For all the above reasons, we believe that this proposal creating a very limited exception to the RFPFA would improve VA administration of these benefit programs, save administrative costs, and avoid unnecessary delays and inconvenience for many of our beneficiaries.

Thank you for the opportunity to present this legislative proposal for your consideration.

The Office of Management and Budget advises that there is no objection to the submission of this legislation to Congress from the standpoint of the Administration's program.

Sincerely yours,  
EDWARD J. DERWINSKI.●

By Mr. LAUTENBERG:

S.J. Res. 209. Joint resolution to designate March 1992 as "National Computing Education Month" to the Committee on the Judiciary.

#### NATIONAL COMPUTING EDUCATION MONTH

● Mr. LAUTENBERG. Mr. President, I rise today to introduce a joint resolution designating March 1992 as National Computing Education Month. This resolution will encourage young people to train for computer careers. It will also promote awareness of the importance of computer technology in maintaining our Nation's leadership in computer software development.

Today we are faced with a critical shortage of qualified and skilled computing professionals, particularly computer programmers and systems analysts. This shortage has resulted from a decline in students pursuing undergraduate degrees in the information sciences, and a lack of awareness of the career possibilities in the field. Students need to be encouraged to pursue an education in information sciences. They need better information about the opportunities available to them, and the vast demand for these skills in the workplace.

We need a sufficient number of qualified computing scientists to meet our Nation's competitiveness goals, and the needs of the public and private sector for computing services. Government has a role to play in creating public awareness of these issues, and encouraging a sound working partnership between business and academia in meeting the challenges of the 21st century.

As the cofounder and former head of Automatic Data Processing [ADP] now the world's largest computer services company, I have witnessed the astonishing growth of computing technology

from its beginning decades ago. Today, our society depends on computers for a range of tasks, from the college student typing his or her paper with a word processor to a company that relies on computers to craft precision instruments or process thousands of pieces of information in seconds.

America simply must keep pace with other countries in developing sophisticated computing technology, and we must do that with people. People educated and trained in the latest technology. People educated to make the next breakthrough in computing science.

We have the potential. All we need to do is develop it. I hope that National Computing Education Month will help put us on the right path.

Mr. President, I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

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

S.J. RES. 209

Whereas software development productivity must increase to ensure our full use of new computer technology;

Whereas a sufficient number of qualified and talented computing scientists are required to meet not only our Nation's goals but also the needs of the public and private sectors;

Whereas there is mounting evidence that we are approaching a critical shortage of qualified and skilled computing professionals, particularly computer programmers and systems analysts;

Whereas there is a corresponding decline of undergraduate degrees awarded in the last 3 years in computers and information sciences; and

Whereas government must take an active role in creating a public awareness of these issues and encourage a sound and working partnership between business and academia in meeting the challenges of the 21st century; Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That—*

(1) Congress recognizes and supports the leadership position of the United States of America in computer software development;

(2) Congress acknowledges the significant impact that this issue may have if business and government do not make plans to actively encourage our Nation's youth to consider this field for their future careers; and

(3) the month of March 1992 is designated as the "National Computing Education Month" and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such month with appropriate programs, ceremonies, and activities.●

#### ADDITIONAL COSPONSORS

S. 152

At the request of Mr. COATS, the name of the Senator from California [Mr. SEYMOUR] was added as a cosponsor of S. 152, a bill to amend the Internal Revenue Code of 1986 to increase the personal exemption to \$4,000.

S. 447

At the request of Mr. THURMOND, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 447, a bill to recognize the organization known as The Retired Enlisted Association, Incorporated.

S. 448

At the request of Mr. SYMMS, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 448, a bill to amend the Internal Revenue Code of 1986 to allow tax-exempt organizations to establish cash and deferred pension arrangements for their employees.

S. 596

At the request of Mr. MITCHELL, the name of the Senator from Georgia [Mr. FOWLER] was added as a cosponsor of S. 596, 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.

S. 649

At the request of Mr. BREAUX, the name of the Senator from California [Mr. SEYMOUR] was added as a cosponsor of S. 649, a bill to amend the Internal Revenue Code of 1986 to repeal the luxury tax on boats.

S. 701

At the request of Mr. COATS, the name of the Senator from California [Mr. SEYMOUR] was added as a cosponsor of S. 701, a bill to amend the Internal Revenue Code of 1986 to increase the amount of the exemption for dependent children under age 18 to \$3,500, and for other purposes.

S. 709

At the request of Mr. HATCH, the name of the Senator from California [Mr. SEYMOUR] was added as a cosponsor of S. 709, a bill to amend the Internal Revenue Code to allow a deduction for qualified adoption expenses, and for other purposes.

S. 843

At the request of Mr. BREAUX, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 843, a bill to amend title 46, United States Code, to repeal the requirement that the Secretary of Transportation collect a fee or charge for recreational vessels.

S. 914

At the request of Mr. WOFFORD, his name was added as a cosponsor of S. 914, a bill to amend title 5, United States Code, to restore to Federal civilian employees their right to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

S. 962

At the request of Mr. INOUE, the names of the Senator from Arizona

[Mr. MCCAIN], the Senator from Arizona [Mr. DECONCINI], the Senator from Illinois [Mr. SIMON], the Senator from North Dakota [Mr. BURDICK], the Senator from Nevada [Mr. REID], and the Senator from Hawaii [Mr. AKAKA] were added as cosponsors of S. 962, a bill to make permanent the legislative reinstatement, following the decision of Duro against Reina (58 U.S.L.W. 4643, May 29, 1990), of the power of Indian tribes to exercise criminal jurisdiction over Indians.

S. 1257

At the request of Mr. SYMMS, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 1257, a bill to amend the Internal Revenue Code of 1986 with respect to the treatment of certain real estate activities under the limitations on losses from passive activities.

S. 1261

At the request of Mr. DOLE, the names of the Senator from Alabama [Mr. SHELBY], and the Senator from Iowa [Mr. GRASSLEY] were added as cosponsors of S. 1261, a bill to amend the Internal Revenue Code of 1986 to repeal the luxury excise tax.

S. 1357

At the request of Mr. BREAUX, the names of the Senator from Oregon [Mr. HATFIELD] and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of S. 1357, a bill to amend the Internal Revenue Code of 1986 to permanently extend the treatment of certain qualified small issue bonds.

S. 1358

At the request of Mr. GRAHAM, the name of the Senator from Kentucky [Mr. FORD] was added as a cosponsor of S. 1358, a bill to amend chapter 17 of title 38, United States Code, to require the Secretary of Veterans Affairs to conduct a hospice care pilot program and to provide certain hospice care services to terminally ill veterans.

S. 1455

At the request of Mr. GRAHAM, the names of the Senator from Pennsylvania [Mr. WOFFORD], the Senator from New Mexico [Mr. DOMENICI], the Senator from Wyoming [Mr. SIMPSON], and the Senator from Virginia [Mr. ROBB] were added as cosponsors of S. 1455, a bill entitled the "World Cup USA 1994 Commemorative Coin Act."

S. 1563

At the request of Mr. METZENBAUM, his name was added as a cosponsor of S. 1563, a bill to authorize appropriations to carry out the National Sea Grant College Program Act, and for other purposes.

S. 1566

At the request of Mr. PACKWOOD, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 1566, a bill to amend the Internal Revenue Code of 1986 to permit withdrawals without penalty from retirement accounts to purchase first

homes, to pay education and medical expenses, or to meet expenses during periods of unemployment, and for other purposes.

S. 1578

At the request of Mr. THURMOND, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 1578, a bill to recognize and grant a Federal charter to the Military Order of World Wars.

S. 1641

At the request of Mr. BREAUX, the name of the Senator from Florida [Mr. MACK] was added as a cosponsor of S. 1641, a bill to amend section 468A of the Internal Revenue Code of 1986 with respect to deductions for decommissioning costs of nuclear powerplants.

S. 1791

At the request of Mr. DOLE, the names of the Senator from California [Mr. SEYMOUR], the Senator from Missouri [Mr. BOND], the Senator from Missouri [Mr. DANFORTH], the Senator from Utah [Mr. HATCH], and the Senator from Wyoming [Mr. SIMPSON] were added as cosponsors of S. 1791, a bill to provide emergency unemployment compensation, and for other purposes.

SENATE JOINT RESOLUTION 39

At the request of Mr. THURMOND, the name of the Senator from West Virginia [Mr. ROCKEFELLER] was added as a cosponsor of Senate Joint Resolution 39, a joint resolution to designate the month of September 1991, as "National Awareness Month for Children with Cancer."

SENATE JOINT RESOLUTION 110

At the request of Mr. MOYNIHAN, the names of the Senator from Arizona [Mr. MCCAIN], the Senator from Washington [Mr. GORTON], the Senator from Texas [Mr. BENTSEN], the Senator from Montana [Mr. BAUCUS], the Senator from New Mexico [Mr. BINGAMAN], the Senator from Oklahoma [Mr. BOREN], the Senator from Louisiana [Mr. BREAUX], the Senator from Colorado [Mr. BROWN], the Senator from Nevada [Mr. BRYAN], the Senator from Arkansas [Mr. BUMPERS], the Senator from North Dakota [Mr. BURDICK], the Senator from Montana [Mr. BURNS], the Senator from West Virginia [Mr. BYRD], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Maine [Mr. COHEN], the Senator from North Dakota [Mr. CONRAD], the Senator from Idaho [Mr. CRAIG], the Senator from Missouri [Mr. DANFORTH], the Senator from South Dakota [Mr. DASCHLE], the Senator from Connecticut [Mr. DODD], the Senator from New Mexico [Mr. DOMENICI], the Senator from Nebraska [Mr. EXON], the Senator from Kentucky [Mr. FORD], the Senator from Georgia [Mr. FOWLER], the Senator from Utah [Mr. GARN], the Senator from Texas [Mr. GRAMM], the Senator from Utah [Mr. HATCH], the Senator from Oregon [Mr. HATFIELD], the Senator from Alabama [Mr. HEFLIN], the Senator from

North Carolina [Mr. HELMS], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Vermont [Mr. JEFFORDS], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Vermont [Mr. LEAHY], the Senator from Mississippi [Mr. LOTT], the Senator from Indiana [Mr. LUGAR], the Senator from Kentucky [Mr. MCCONNELL], the Senator from Maryland [Ms. MIKULSKI], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Georgia [Mr. NUNN], the Senator from South Dakota [Mr. PRESSLER], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Delaware [Mr. ROTH], the Senator from New Hampshire [Mr. RUDDMAN], the Senator from North Carolina [Mr. SANFORD], the Senator from Tennessee [Mr. SASSER], the Senator from Alabama [Mr. SHELBY], the Senator from Wyoming [Mr. SIMPSON], the Senator from New Hampshire [Mr. SMITH], the Senator from Idaho [Mr. SYMMS], the Senator from South Carolina [Mr. THURMOND], the Senator from Wyoming [Mr. WALLOP], and the Senator from Virginia [Mr. WARNER] were added as cosponsors of Senate Joint Resolution 110, a joint resolution expressing the sense of the Congress that the United States and the Soviet Union should lead an effort to promptly repeal United Nations General Assembly Resolution 3379 (XXX).

SENATE JOINT RESOLUTION 131

At the request of Mr. LUGAR, the name of the Senator from Oregon [Mr. PACKWOOD] was added as a cosponsor of Senate Joint Resolution 131, a joint resolution designating October 1991 as "National Down Syndrome Awareness Month."

SENATE JOINT RESOLUTION 139

At the request of Mr. THURMOND, the names of the Senator from Hawaii [Mr. AKAKA], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Texas [Mr. BENTSEN], the Senator from Illinois [Mr. SIMON], the Senator from Kansas [Mrs. KASSEBAUM], and the Senator from Wyoming [Mr. SIMPSON] were added as cosponsors of Senate Joint Resolution 139, a joint resolution to designate October 1991, as "National Lock-In-Safety Month."

SENATE JOINT RESOLUTION 147

At the request of Mr. LEAHY, the names of the Senator from Missouri [Mr. BOND], the Senator from Montana [Mr. BURNS], the Senator from California [Mr. CRANSTON], the Senator from New Mexico [Mr. DOMENICI], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Nebraska [Mr. EXON], the Senator from Georgia [Mr. FOWLER], the Senator from Iowa [Mr. GRASSLEY], the Senator from Alabama [Mr. HEFLIN], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Michigan [Mr. LEVIN], the Senator from Ohio [Mr. METZENBAUM],

the Senator from Maryland [Ms. MIKULSKI], the Senator from New York [Mr. MOYNIHAN], the Senator from Rhode Island [Mr. PELL], the Senator from Arkansas [Mr. PRYOR], the Senator from Tennessee [Mr. SASSER], and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of Senate Joint Resolution 147, a joint resolution designating October 16, 1991, and October 16, 1992, as "World Food Day."

SENATE JOINT RESOLUTION 188

At the request of Mr. LAUTENBERG, the names of the Senator from Montana [Mr. BAUCUS], the Senator from New Jersey [Mr. BRADLEY], and the Senator from Alaska [Mr. MURKOWSKI] were added as cosponsors of Senate Joint Resolution 188, a joint resolution designating November 1991, as "National Red Ribbon Month."

SENATE JOINT RESOLUTION 193

At the request of Mr. SANFORD, the name of the Senator from Tennessee [Mr. SASSER] was added as a cosponsor of Senate Joint Resolution 193, a joint resolution to establish a commission to commemorate the bicentennial of the establishment of the Democratic Party of the United States.

SENATE JOINT RESOLUTION 202

At the request of Mr. INOUE, the names of the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Alabama [Mr. SHELBY], the Senator from Texas [Mr. GRAMM], and the Senator from Alaska [Mr. MURKOWSKI] were added as cosponsors of Senate Joint Resolution 202, a joint resolution to designate October, 1991, as "Crime Prevention Month."

SENATE JOINT RESOLUTION 208

At the request of Mr. DECONCINI, the name of the Senator from Colorado [Mr. BROWN] was added as a cosponsor of Senate Joint Resolution 208, a joint resolution to designate October 15, 1991, as "Up With People Day."

SENATE RESOLUTION 166

At the request of Mr. COATS, the names of the Senator from Colorado [Mr. BROWN], the Senator from Mississippi [Mr. LOTT], and the Senator from California [Mr. SEYMOUR] were added as cosponsors of Senate Resolution 166, a resolution expressing the sense of the Senate that, in light of current economic conditions, the Federal excise taxes on gasoline and diesel fuel should not be increased.

SENATE RESOLUTION 186

At the request of Mr. GRAHAM, the names of the Senator from Rhode Island [Mr. PELL], the Senator from Indiana [Mr. LUGAR], and the Senator from Arizona [Mr. MCCAIN] were added as cosponsors of Senate Resolution 186, a resolution relative to Haiti.

At the request of Mr. LEVIN, his name was added as a cosponsor of Senate Resolution 186, supra.

SENATE CONCURRENT RESOLUTION 67—RELATING TO STATE MEDICAID EXPENDITURES

Mr. SHELBY submitted the following resolution; which was referred to the Committee on Finance:

S. CON. RES. 66

Protesting the decision of the Secretary of Health and Human Services to prohibit Federal payments under the medicaid program relating to State medicaid expenditures that are made from revenues derived from provider-specific taxes.

Whereas the medicaid program is a State-administered entitlement program under which the Federal Government reimburses States for expenses incurred by the States in providing medical services on behalf of low-income individuals;

Whereas the amount of payment made by the Federal Government to a State under the medicaid program is based on a percentage of the total amount of the State's expenditures under the program;

Whereas in determining the total amount of a State's medicaid expenditures for purposes of calculating the Federal payment to the State, the Secretary of Health and Human Services has historically included State expenditures made from revenues derived from provider-specific taxes assessed on providers of services under the medicaid program;

Whereas the Secretary has issued an interim final rule that, if implemented, would prohibit the inclusion of expenditures made from revenues derived from these taxes in the calculation of State medicaid expenditures, resulting in the suspension of Federal payments under medicaid related to these expenditures for years beginning with 1992;

Whereas it is not appropriate for the Federal Government to take actions that have the effect of preempting the tax decisions of State governments;

Whereas for many States revenues derived from provider-specific taxes represent a significant proportion of medicaid expenditures;

Whereas the Secretary's refusal to treat revenues derived from provider-specific taxes as reimbursable medicaid expenses will result in drastic reductions in Federal payments to States under the medicaid program; and

Whereas these reductions in Federal payments under medicaid will occur at the same time State medicaid expenses are rapidly rising as a result of Federal mandates expanding the population States must serve and the benefits States must provide under the program: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring), That—*

(1) it is the sense of Congress that it is not appropriate for the Federal Government to take actions that have the effect of preempting the tax decisions of State governments; and

(2) Congress protests the decision of the Secretary of Health and Human Services to prohibit Federal payments under the medicaid program relating to State medicaid expenditures that are made from revenues derived from provider-specific taxes, and strongly urges the Secretary to drop the proposed rule implementing the decision.

• Mr. SHELBY. Mr. President, I rise today to introduce a concurrent resolution expressing the sense of the Senate that it is neither appropriate, nor right that the administration take action to

preempt the revenue raising decisions of our State governments.

My legislation was prompted by the September 12, 1991 regulations that appeared in the Federal Register announcing the intention of the Department of Health and Human Services to bar Federal reimbursement to States for any portion of State Medicaid outlays that are funded through voluntary contributions or provider-specific taxes.

What this rule does is effectively prohibit States from meeting the needs of the most medically underserved of their populations. The Medicaid Program assists nearly 27 million poor Americans. Over 50 percent of those recipients are children.

Mr. President, my home State of Alabama stands to lose \$790 million if this proposed rule is implemented. But more shocking than the actual dollar figure lost, is the number of Alabamians—10,000—who will no longer receive health care through my State's Medicaid Program. They are our poor—they are our children—and they are our seniors.

An innovative Alabama Medicaid pharmacy program, which is not a Federal requirement, but which serves to fill a widening gap in our health care network by providing access to prescription drugs, would be eliminated.

At issue, is whether or not the administration has the authority to make tax decisions for State governments. The answer, I believe, is no. Ultimately, the courts may have to decide this issue.

I also question the reasoning behind mandating expansions in the Medicaid Program while at the same time denying States the ability to fund these federally required health services.

Several States are in the same position as Alabama. Those States are: Arkansas, Kentucky, Maine, California, Florida, Georgia, Maryland, Michigan, Mississippi, Missouri, North Carolina, Pennsylvania, South Carolina, Texas, Utah, Illinois, Indiana, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New York, Ohio, Tennessee, Vermont, Washington, and Wisconsin.

I urge my colleagues from these States to stand with me in opposition to this ill-conceived proposal and remain supportive of States' rights to utilize existing financing options to fund this much needed national health care program.

Mr. President, I know that an expanded Medicaid Program is making a difference in my State. It has helped to lower our infant mortality rate. It has helped nearly a quarter of a million people last year in Alabama receive the prescription drugs they need. It has helped provide nursing-home care to people with no resources and nowhere else to turn.

I won't turn my back on this program. For too many years, Alabama

has been struggling to creep out from under the stigma of having the Nation's highest infant mortality rate and some of the most restrictive Medicaid eligibility requirements. Finally, there is hope in Alabama. Our Medicaid Program is expanding and meeting health care needs. Much more remains to be done.

Barring the use of provider-specific taxes to fund our share of the Medicaid Program will push Alabama backwards—a place we cannot afford to go.

I urge my colleagues to join with me as cosponsors of this legislation and to work with me to prevent the finalization of this proposed rule. •

SENATE CONCURRENT RESOLUTION 68—RELATIVE TO USE OF PAID LEAVE TO ATTEND PARENT-TEACHER CONFERENCES

Mr. HATFIELD submitted the following concurrent resolution; which was referred to the Committee on Labor and Human Resources:

S. CON. RES. 68

Whereas in national survey 90 percent of teachers considered the lack of parental support to be a major problem in schools, contrasted with 49 percent reporting alcohol and 54 percent reporting drugs as major problems;

Whereas in a parent-teacher survey involving the ranking of areas of concern related to improving elementary and secondary education, 7 of the 10 highest ranked areas addressed parental involvement;

Whereas a nationwide survey of 1,000 public and private schools found that nearly half of the 24,600 eighth grade students surveyed indicated they rarely discuss school with their parents;

Whereas a survey of eighth graders' parents reveals that only slightly over one-half of such parents have any contact with their children's schools regarding academic performance, and only 35 percent of such parents have any such contact regarding academic programming;

Whereas opportunities for parent-teacher collaboration have diminished in part due to the divorce rate, the percentage of students living in one-parent homes, and the ratio of married mothers working outside the home having doubled since 1965; and

Whereas parent-teacher communication is an important element in the educational progress of American students: Now, therefore, it

*Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that Members of Congress, agencies of the Federal Government, and all employers in the United States should support parent-teacher conferences and should undertake measures to encourage working parents to use paid leave for the purpose of attending parent-teacher conferences.*

• Mr. HATFIELD. Mr. President, I rise today to reaffirm my support for our Nation's education system and its teachers. As we all know, support can take many forms. The Congress usually demonstrates its support of principles and institutions by authorizing costly new programs. The support I introduce today is a strategy for education that

may be the least costly of all and may improve the achievement of the greatest number of students.

In a recent national survey, 90 percent of teachers cited lack of parental support as a serious problem in their school, while only about half named alcohol, drugs, or violence as a problem. Lack of parental support does not necessarily mean apathy toward their children or their schools; it may merely reflect the increased numbers who work full-time. Only 7 percent of American families now fit the family image of the 1950's with the homemaker mother and income-earner father.

Employers therefore have unprecedented control over parental involvement in their children's schooling. The American Electronics Association, for example, can affect over 2½ million workers through its member industries. The AEA recently instituted a campaign to strengthen the involvement of employees in their children's education. Realizing the huge difference between merely permitting and actively encouraging actions, companies joining the campaign agree to emphasize the value of home-school connections and to encourage the use of paid-leave to attend parent-teacher conferences.

My office is the first in the U.S. Senate to join AEA's Get Together for Kids campaign. Although my staff already may use flex time or paid leave time to attend teacher or school-scheduled conferences, I now go a giant step further: Because I consider parental connections with their children's education so crucial, I endorse all opportunities for parent-school dialogues.

I don't mean just teacher-scheduled conferences. A parent facing conditions that necessitate the awareness of or input from their child's teacher should request a meeting. Work hours can be juggled and, if necessary, substitutes can keep the workplace going; but no substitute parents or simulated concern can keep a child's life on track.

Fifteen years ago, my staff was composed primarily of young, single individuals just beginning their careers. Over time, and with some turnover, this cadre of eager young people acquired more than mere Hill experience and some frown wrinkles. They married and began having families. Not long ago, a group of "old-timers" awaiting the start of a staff meeting were overheard discussing serious matters: not the most recent movie they had seen nor the newest after-hours social establishment, but the relative benefits of cloth versus disposable diapers. What a transformation.

My staff can boast of—at this moment—32 children. Six were born within the past year and two more are on the way. With three marriages and eight engagements during the past 6 months, I predict our baby boom will continue. These new lives have changed

the perspectives and personal priorities of my staff. With the responsibilities of parenthood, they have a renewed respect for the importance of a strong family unit and a determination to nurture the children with whom they have been blessed. As the de facto patriarch of the extended "Hatfield Family"—as my staff calls itself—I do what I can to ensure the welfare of each family member. This concern continues and often intensifies throughout the children's elementary and secondary school years. Among the few measures I can take in my other role of employer, I wholeheartedly endorse AEA's campaign.

In the Senate and other office environments, this action may not seem to be significant. However, until we formalize our commitment to parental participation in education, we cannot urge our constituents to take similar actions. I am proud of the fact that Oregon, with over 26 percent of AEA companies joining in the first 6 months of the campaign, leads all other States; the national average is 13 percent. I can now wholeheartedly solicit the remaining AEA membership to join their colleagues—and me—in encouraging their employees to be actively involved in their children's education.

Finally, I urge my own colleagues in the U.S. Senate to join the AEA campaign, clarify their office policy, and encourage their constituents to Get Together for Kids.●

#### AMENDMENTS SUBMITTED

#### FOREIGN RELATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, FISCAL YEAR 1992

#### KASTEN (AND OTHERS) AMENDMENT NO. 1247

(Ordered referred to the Committee on Appropriations.)

Mr. KASTEN (for himself, Mr. INOUE, Mr. D'AMATO, Ms. MIKULSKI, Mr. SPECTER, Mr. LAUTENBERG, Mr. NICKLES, Mr. DECONCINI, Mr. JOHNSTON, Mr. HARKIN, Mr. PACKWOOD, Mr. SHELBY, Mr. MACK, Mr. AKAKA, Mr. BROWN, Mr. RIEGLE, Mr. BOND, Mr. KOHL, Mr. MCCAIN, Mr. WOFFORD, Mr. SEYMOUR, Mr. ADAMS, Mr. HATCH, Mr. BRADLEY, Mr. COHEN, Mr. ROBB, Mr. CRAIG, Mr. BURDICK, Mr. COATS, Mr. SIMON, Mr. BURNS, Mr. GRAHAM, Mr. GRASSLEY, Mr. CONRAD, Mr. PRESSLER, Mr. CRANSTON, Mr. LEVIN, Mr. DODD, Mr. SARBANES, Mr. LIEBERMAN, Mr. GLENN, Mr. FOWLER, Mr. KENNEDY, Mr. EXON, Mr. BIDEN, Mr. HEFLIN, Mr. FORD, Mr. METZENBAUM, Mr. KERRY, Mr. GORE, Mr. WELLSTONE, Mr. WIRTH, Mr. BRYAN, Mr. COCHRAN, Mr. REID, Mr. DIXON, Mr. DASCHLE, Mr. LOTT, Mr. MOYNIHAN, Mr. ROCKEFELLER, Mr. BAUCUS, Mr. MCCON-

NELL, Mr. BUMPERS, Mr. PELL, Mr. HOLLINGS, Mr. DURENBERGER, Mr. MURKOWSKI, Mr. GRAMM, Mr. GORTON, and Mr. DANFORTH) submitted an amendment intended to be proposed by them to the bill (H.R. 2621) making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1992, and for other purposes, as follows:

On page 28, between lines 20 and 21, insert the following:

Title III of chapter 2 of part I of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new section:

"SEC. 226. LOAN GUARANTEE PROGRAM FOR RESETTLEMENT OF REFUGEES IN ISRAEL.—(a)(1) During the period beginning on October 1, 1991, and ending on September 30, 1996, the President shall issue guarantees against losses incurred in connection with loans to Israel for the purpose of providing economic assistance to Israel and the economy of Israel in connection with the extraordinary costs occasioned by Israel's humanitarian undertaking to resettle and absorb Soviet and Ethiopian refugees. The authority of this subsection is in addition to any other authority to issue guarantees for any such purpose.

"(2) The total principal amount of guarantees which may be issued under this subsection in any fiscal year shall not exceed \$2,000,000,000, except that, in the event that less than \$2,000,000,000 of guarantees is issued in any fiscal year, the authority to issue the balance of such guarantees shall be available in any subsequent fiscal year ending on or before September 30, 1996. Each guarantee issued under this section shall guarantee 100 percent of the principal and interest payable on such loans. Loan guarantees shall be made in such increments as the government of Israel may request. The guarantee for each such increment shall be obligated and committed within 30 days of the request therefor, and the issuance of the guarantee for each such increment shall occur within 60 days of such request, unless a later date is selected by the government of Israel.

"(b) The standard terms of any loan or increment guaranteed under this section shall be 30 years, with semiannual payments of interest only over the first 10 years, and with semiannual payments of principal and interest, on a level-payment basis, over the last 20 years thereof, except that the guaranteed loan or any increments issued in a single transaction may include obligations having different maturities, interest rates, and payment terms if the aggregate schedule debt service for all obligations issued in a single transaction equals the debt service for a single loan or increment of like amount having the standard terms described in this sentence. The guarantor shall not have the right to accelerate any guaranteed loan or increment or to pay any amounts in respect of the guarantees issued other than in accordance with the original payment terms of the loan. For purposes of determining the maximum principal amount of any loan or increment to be guaranteed under this section, the principal amount of each such loan or increment shall be—

"(1) in the case of any loan issued on a discount basis, the original issue price (excluding any transaction costs) thereof; or

"(2) in the case of any loan issued on an interest-bearing basis, the stated principal amount thereof.

"(c)(1) Before the issuance of the first guarantee under this section, the Govern-

ment of Israel shall provide the President with written assurances that such loans will be used only for projects or activities in geographic areas which were subject to the administration of the Government of Israel before June 5, 1967, to be stated in the same manner as was provided in the grant agreement with Israel for fiscal year 1991 under chapter 4 of part II of this Act.

"(2) Section 223 shall apply to guarantees issued under subsection (a) in the same manner as such section applies to guarantees issued under section 222, except that subsections (a), (e)(1), (g), and (j) of section 223 shall not apply to such guarantees and except that, to the extent section 223 is inconsistent with the Federal Credit Reform Act of 1990, that Act shall apply. Loans shall be guaranteed under this section without regard to sections 221, 222, and 238(c). Notwithstanding section 223(f), the interest rate for loans guaranteed under this section may include a reasonable fee to cover the costs and fees incurred by the borrower in connection with financing under this section in the event the borrower elects not to finance such costs or fees out of loan principal.

"(3) Notwithstanding any other provision of law, fees charged for the loan guarantee program under this section shall be an aggregate origination fee of \$100,000,000, payable on a pro rata basis as each guarantee for each loan or increment is issued."

The loan guarantees authorized pursuant to section 226 of the Foreign Assistance Act of 1961 (as added by this Act) for fiscal year 1992 and for each of the four succeeding fiscal years shall be made available without need for further appropriations of subsidy cost as the fees required to be paid by the borrower under section 226(c)(3) of the Foreign Assistance Act of 1961 reduce the subsidy cost to zero.

## FAMILY AND MEDICAL LEAVE ACT

### DURENBERGER (AND KASSEBAUM) AMENDMENT NO. 1248

Mr. DURENBERGER for himself and Mrs. KASSEBAUM proposed an amendment to the bill (S. 5) to grant employees family and temporary medical leave under certain circumstances, and for other purposes, as follows:

Strike section 107 of the amendment and insert the following new section:

#### SEC. 107. ENFORCEMENT.

(a) SENSE OF CONGRESS.—It is the sense of Congress that parties with a dispute regarding rights provided under this Act should attempt to resolve the dispute without resort to litigation.

#### (b) ARBITRATION.—

(1) IN GENERAL.—An eligible employee who alleges that an employer has violated a right of the employee provided under this Act shall, in order to enforce the right, submit the dispute to binding arbitration in accordance with this section.

(2) WRITTEN NOTIFICATION.—Not later than 180 days after the date of an alleged violation of the right, the eligible employee shall notify the employer in writing that such alleged violation has occurred.

(3) COMPLAINT.—On submission of the notification described in paragraph (2), the eligible employee or the employer may file a complaint regarding the alleged violation with the Department of Labor. The Secretary shall by regulation specify procedures for filing the complaint.

#### (4) SELECTION OF ARBITRATOR.—

(A) LIST.—Not later than 10 days after receiving such a complaint regarding an eligible employee and an employer, the Secretary shall make available to the employee and employer a list of not fewer than seven arbitrators. Such list shall include, at a minimum, two names provided by the Federal Mediation and Conciliation Service. Each arbitrator on the list shall possess such qualifications as the Secretary shall by regulation specify.

(B) SELECTION.—The eligible employee and employer shall choose a mutually acceptable arbitrator (referred to in this section as the "arbitrator") from the list provided by the Department of Labor. If the employee and employer are unable to agree on an arbitrator, the Secretary shall appoint the arbitrator.

(5) HEARING DATE.—The eligible employee and employer shall schedule a mutually acceptable date to conduct a hearing with the arbitrator under subsection (c), which hearing shall take place not more than 60 days after the date of choosing the arbitrator. The Secretary or the arbitrator may grant an extension of the hearing date for good cause shown.

#### (c) HEARING.—

(1) IN GENERAL.—The arbitrator shall conduct a hearing regarding the complaint submitted under subsection (b)(3) in accordance with the procedures set forth in this subsection.

(2) DISCOVERY.—The eligible employee and employer shall be entitled to make appropriate requests for discovery prior to the hearing. The Secretary shall by regulation specify the appropriate scope for the discovery requests. The ruling of the arbitrator on the discovery requests shall be final, binding, and nonreviewable.

(3) EVIDENCE.—The arbitrator shall preside over the hearing and take into consideration written and oral evidence as presented by the eligible employee and the employer. The arbitrator may utilize the Federal Rules of Evidence as a guideline for determining the admissibility of evidence during the hearing, but the Federal Rules of Evidence shall not be determinative.

(4) DECISION.—The arbitrator shall issue a written decision to the eligible employee and the employer not later than 30 calendar days after the last day of the hearing. The decision shall be final, binding, and nonreviewable, except as provided in this Act.

#### (d) REMEDY.—

##### (1) EQUITABLE RELIEF.—

(A) IN GENERAL.—If an arbitrator determines that an employer has violated any right provided under this Act, the arbitrator may issue an order enjoining the employer from engaging in such conduct, and may order, as appropriate, equitable relief directly attributable to and proximately caused by the violation, including reinstatement or full or partial backpay.

(B) DETERMINATION OF BACKPAY.—Backpay awarded under this subsection shall not accrue from a date more than 2 years prior to the date of filing of written notification to the employer under subsection (b)(2). The arbitrator shall reduce the backpay that an eligible employee would otherwise have recovered by the amount of the interim earnings of the employee or the amounts that the employee could have earned with reasonable diligence.

(2) DAMAGES.—No arbitrator shall issue an order under paragraph (1) awarding punitive damages, or compensatory damages for pain

and suffering, emotional distress, or other injury under the common law.

(3) FEES.—The arbitrator, in the discretion of the arbitrator, may award reasonable attorney's fees and arbitrator fees to a prevailing party in a hearing brought under subsection (c).

#### (e) JUDICIAL REVIEW.—

##### (1) ARBITRATION ORDER.—

(A) IN GENERAL.—An eligible employee or an employer who was a party to an arbitration hearing under subsection (c) may seek vacation, modification, or enforcement of the arbitration order resulting from the hearing in the State or Federal court in which the eligible employee resides or works, or where the employer operates.

(B) APPLICATION.—An application for vacation, modification, or enforcement of such an order shall be filed not later than 90 days after the date of the issuance of the order.

(C) BASIS FOR VACATION OR MODIFICATION.—The court may vacate or modify such an order if the court finds that—

(i) the order was procured by corruption, fraud or other improper means;

(ii) there was evident partiality by the arbitrator;

(iii) the arbitrator exceeded the powers of the arbitrator under this Act; or

(iv) the arbitrator committed a material and manifest error of law.

(D) FEES AND COSTS.—In an action for vacation, modification, or enforcement of an order of an arbitrator under this subsection, the court may award reasonable attorney's fees and court costs to a prevailing party.

(2) OTHER REVIEW.—No person may commence a civil action to enforce a right provided under this Act except—

(A) in accordance with this section; or

(B) in an action brought under the Constitution.

In section 106(c) of the amendment, strike ", or is investigating" and all that follows through "section 107(b)".

In section 108 of the amendment, strike subsection (f).

### HATCH (AND LUGAR) AMENDMENT NO. 1249

Mr. HATCH (for himself and Mr. LUGAR) proposed an amendment to the bill S. 5, supra, as follows:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "American Family Protection Act of 1991".

#### SEC. 2. PURPOSE.

The purpose of this Act is to facilitate stability in United States families by providing reemployment opportunities for eligible individuals who leave employment for legitimate family purposes.

#### SEC. 3. DEFINITIONS.

As used in this Act:

(1) COMMERCE.—The terms "commerce" and "industry or activity affecting commerce" have the meanings given the terms in paragraphs (3) and (1), respectively, of section 120 of the Labor Management Relations Act, 1947 (29 U.S.C. 142 (3) and (1)).

(2) ELIGIBLE INDIVIDUAL.—The term "eligible individual" means an individual who meets the criteria established in paragraphs (1) through (5) of section 4(a).

(3) EMPLOYEE.—The term "employee" has the meaning given the term in section 3(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(e)).

(4) EMPLOYER.—The term "employer" means any person engaged in commerce or in any industry or activity affecting commerce.

(5) IMMEDIATE FAMILY MEMBER.—The term "immediate family member" means—

- (A) a child of a parent;
- (B) a current, legally recognized spouse; or
- (C) a parent.

(6) LEGITIMATE FAMILY PURPOSE.—The term "legitimate family purpose" means a purpose described in paragraph (1)(B), (2), (3) or (4) of section 4(c).

(7) ORIGINAL POSITION.—The term "original position" means the position described in section 4(a)(2).

(8) PARENT.—The term "parent" means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, or a legal guardian.

(9) SECRETARY.—The term "Secretary" means the Secretary of Labor.

(10) SERIOUS HEALTH CONDITION.—The term "serious health condition" means—

- (i) a condition caused by an accident, a disease, or another physical condition that—
  - (1) poses an imminent danger of death; or
  - (ii) requires hospice care or hospitalization for extreme emergency care; or
- (B) a mental or physical condition that requires constant in-home care.

(11) SIMILAR POSITION.—The term "similar position" means a position at the same location as the original position and with like seniority, status, duties, and responsibilities and equivalent pay and benefits.

#### SEC. 4. REEMPLOYMENT RIGHTS FOR ELIGIBLE INDIVIDUALS LEAVING EMPLOYMENT FOR LEGITIMATE FAMILY PURPOSES.

(A) REEMPLOYMENT RIGHTS.—An individual shall be entitled to reemployment as described in subsection (b) if the individual—

(1) was an employee of the employer from whom reemployment is sought for not less than 2,000 hours of continuous employment during the 14-month period preceding the provision of notice under subsection (d);

(2) left a currently held position with the employer for a period of time for a legitimate family purpose, as described in subsection (c);

(3) did not accept intervening employment exceeding 17.5 hours per week with any employer during the period;

(4) has provided the notice and documentation described in subsection (d); and

(5) has applied for reemployment as described in subsection (e).

(b) REEMPLOYMENT.—

(1) AVAILABLE EMPLOYMENT.—Except as provided in subsections (f) through (h), an employer shall restore an eligible individual to employment in the original or a similar position, if available at the time the individual applies for reemployment under subsection (e).

(2) SUBSEQUENTLY AVAILABLE EMPLOYMENT.—

(A) NOTIFICATION BY EMPLOYER TO ELIGIBLE INDIVIDUAL.—Except as provided in subsections (f) through (h), if the original or a similar position is not available when an eligible individual applies for reemployment under subsection (e), an employer shall—

- (i) so notify the individual; and
- (ii) if a similar position becomes available not later than 1 year after the date the individual applies for reemployment under subsection (e), notify the individual of the availability of the position and restore the individual to employment.

(B) MANNER OF NOTIFICATION.—

(1) PROVISION OF ADDRESS BY EMPLOYEE TO ELIGIBLE INDIVIDUAL.—An eligible individual who changes address prior to the date described in subparagraph (A) shall submit the new address to the employer by certified letter.

(ii) DELIVERY OF NOTIFICATION BY EMPLOYER TO ELIGIBLE INDIVIDUAL.—An employer shall

make the notification described in subparagraph (A) by a certified letter delivered to the last address provided to the employer by an eligible individual.

(C) TIMING OF NOTIFICATION.—

(i) IN GENERAL.—Except as provided in clause (ii), an employer shall allow an eligible individual, in order to respond to the notification described in subparagraph (A), not fewer than 15 days after the date that the employer relinquishes formal control of the certified letter described in subparagraph (B)(ii) to the postal service, or other bona fide delivery system.

(ii) ECONOMIC REASONS.—If economic necessity requires an employer to fill a similar position earlier than 15 days after the date described in clause (i), the employer shall—

(1) allow an eligible individual not fewer than 5 days after the date to respond to the notification described in subparagraph (A); and

(II) notify the individual of reasonable time limitations within which the individual must accept the offer contained in the notification and commence performance of the duties of the position.

(D) AVAILABLE ALTERNATIVE EMPLOYMENT.—Notwithstanding any other provision of this section, if the original or a similar position is not available when an eligible individual applies for reemployment under subsection (e), the employer and eligible individual may agree that the eligible individual shall be employed in any available position with different duties or responsibilities, or of lesser seniority, status, benefits, or pay, until the original or similar position becomes available.

(c) PERIOD OF TIME FOR A LEGITIMATE FAMILY PURPOSE.—For the purposes of this section, a period of time for a legitimate family purpose shall include a period of time—

(1) taken by a parent during the period that precedes the birth of a child—

(A) because of a serious health condition or on the advice of a physician; and

(B) for purposes directly related to the birth of the child;

(2) not to exceed 6 years and taken by a parent following the birth of a child for the purpose of caring for and nurturing the child;

(3) taken by a parent following adoption of a child and ending not later than 6 years after the birth of the child; or

(4) not to exceed 2 years and taken by an individual because of a serious health condition of an immediate family member and for the purpose of providing necessary medical and personal care to the family member.

(d) NOTICE AND DOCUMENTATION.—In order to be eligible for reemployment under this section, an individual shall—

(1) provide to the employer a minimum of 30 days written notice that the individual desires, or finds it necessary, to leave the position for a legitimate family purpose, unless under the totality of the circumstances it is impossible for the individual to provide such notice; and

(2) promptly furnish such reasonable documentation as the employer may request of the legitimate family purpose that prompted the provision of notice under paragraph (1), unless under the totality of the circumstances it is impossible for the individual to promptly furnish the documentation.

(e) APPLICATION.—In order to be eligible for reemployment under this section, an individual shall submit a written application to the employer that demonstrates that the individual remains qualified to perform the duties and responsibilities of the original posi-

tion that existed at the time the individual gave the notice described in subsection (d)(1).

(f) PRIOR RIGHT OF REEMPLOYMENT.—If two or more eligible individuals seek to exercise reemployment rights established under this section in conflict, the individual who first made application for reemployment shall have the prior right to be restored to employment. Restoration of an eligible individual to employment shall not otherwise affect the reemployment rights of other eligible individuals wishing to be similarly restored.

(g) EXEMPTION.—An employer shall not be subject to this section with respect to an eligible individual if—

(1) circumstances have so changed, between the time that the employer received the notice described in subsection (d)(1) and the time the individual applies for reemployment under subsection (e), as to make reemployment unreasonable; or

(2) the employer instituted formal or informal disciplinary action against the individual prior to delivery by the individual of the notice described in subsection (d)(1).

(h) WAIVER.—

(1) AVAILABILITY.—Absent coercion by either party, an employer and an employee of the employer may jointly agree, in writing, to—

(A) vary the requirements and conditions of the reemployment rights provided under this section; or

(B) substitute another employment arrangement, or an employment benefit or package of employment benefits, for the reemployment rights provided under this section.

(2) EXPLANATION.—

(A) REQUIREMENT OF RECEIPT.—In order for the agreement described in paragraph (1) to have effect, the employee described in paragraph (1) must receive a written explanation of the rights and remedies provided under this section before signing the agreement and must enter the agreement knowingly.

(B) MODEL EXPLANATION.—The Secretary shall prepare and publish in the Federal Register a model written explanation of the rights and remedies provided under this section. An employer may legibly reproduce the model explanation and generally distribute the explanation annually, or post the explanation permanently in a conspicuous place in the workplace, in order to satisfy the requirement described in subparagraph (A).

#### SEC. 5. ENFORCEMENT.

(a) ENFORCEMENT BY THE SECRETARY.—

(1) CHARGE.—In order to obtain enforcement of section 4, any eligible individual who believes that an employer has failed or has refused to comply with the provisions of such section shall file a charge with the Secretary within 180 days of the failure or refusal. Upon receipt, the Secretary shall investigate the charge to determine if a reasonable basis exists for the charge.

(2) DISMISSAL OF CHARGE.—If the Secretary determines that there is no reasonable basis for the charge, the Secretary shall dismiss the charge and promptly notify the eligible individual and the employer named in the charge of the dismissal.

(3) ISSUANCE OF COMPLIANT.—If the Secretary determines that there is a reasonable basis for the charge, the Secretary shall issue a compliant based upon the charge and shall promptly notify the eligible individual of the issuance.

(4) ACTION.—If the Secretary issues a compliant under paragraph (3), the Secretary shall attempt to resolve the compliant with the employer through an informal con-

ference. If the Secretary is unable to resolve the complaint as a result of such informal conference the Secretary may—

(A) file a civil action in the United States district court for the district in which the eligible individual described in paragraph (1) sought reemployment; or

(B) dismiss the complaint with notice to the individual and the employer named in the charge.

(5) **BURDEN OF PERSUASION.**—In any civil action brought under paragraph (4) with respect to an eligible individual, the Secretary shall have the burden of persuasion that the individual—

(A) has satisfied the requirements in paragraph (1) through (5) of section 4(a); and

(B) is qualified to perform the duties and responsibilities described in section 4(e).

(6) **REMEDY.**—If a court finds, in an action brought under this subsection, that an employer has failed to comply with section 4 with respect to an eligible individual, the court may order the employer to comply with the provisions of such action and to compensate the individual for any loss of wages or benefits caused by the failure of the employer to comply with such action.

(b) **ENFORCEMENT BY AN ELIGIBLE INDIVIDUAL.**—

(1) **ACTION.**—If the Secretary issues a notice of dismissal to an eligible individual under subsection (a)(4)(B), the individual may bring a civil action in the United States district court for the district in which the individual sought reemployment.

(2) **BURDEN OF PERSUASION.**—An eligible individual who brings a civil action under this subsection shall have the burden of persuasion regarding the elements of described in subparagraphs (A) and (B) of subsection (a)(5).

(3) **REMEDY.**—

(A) **COMPLIANCE OR COMPENSATION.**—If a court finds, in an action brought under this subsection, that an employer has failed to comply with section 4, the court may order the employment to comply with the provisions of such section and to compensate the individual for any loss of wages or benefits caused by the failure of the employer to comply with such section.

(B) **ATTORNEY'S FEES.**—A court may award attorney's fees to the prevailing party in an action brought under this subsection, if the court determines that the award is appropriate.

#### SEC. 6. CONSTRUCTION.

The Act shall be construed—

(1) to grant an eligible individual any rights to a position with duties, responsibilities, seniority, status, benefits, or rates of pay beyond the rights possessed by the individual at the time the individual presented a notice to an employer under section 4(d)(1); or

(2) to impose on an employer any nonvoluntary obligation to provide training of any type, or to offer reemployment in any position, or at any other location, than that specifically stated in this Act.

#### DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES, COMMISSIONS, CORPORATIONS, AND OFFICES APPROPRIATIONS ACT, FISCAL YEAR 1992

##### MIKULSKI AMENDMENT NO. 1250

Ms. MIKULSKI proposed an amendment to the amendment of the House to the amendment of the Senate numbered 21 to the bill (H.R. 2519) making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1992, and for other purposes, as follows:

In lieu of the matter proposed by the amendment of the House to the amendment of the Senate numbered 21, insert the following:

**SEC. 101. (a) REGULATIONS FOR STANDARDS OF PERFORMANCE IN DEPARTMENT OF VETERANS AFFAIRS LABORATORIES.**—(1) Within the 120-day period beginning on the date on which the Secretary of Health and Human Services promulgates final regulations to implement the standards required by section 353 of the Public Health Service Act (42 U.S.C. 263a), the Secretary of Veterans Affairs, in accordance with the Secretary's authority under title 38, United States Code, shall prescribe regulations to assure consistent performance by medical facility laboratories under the jurisdiction of the Secretary of valid and reliable laboratory examinations and other procedures. Such regulations shall be prescribed in consultation with the Secretary of Health and Human Services and shall establish standards equal to that applicable to other medical facility laboratories in accordance with the requirements of section 353(f) of the Public Health Service Act.

(2) Such regulations—

(A) may include appropriate provisions respecting waivers described in section 353(d) of such Act and accreditations described in section 353(e) of such Act; and

(B) shall include appropriate provisions respecting compliance with such requirements.

(b) **REPORT.**—Within the 180-day period beginning on the date on which the Secretary of Veterans Affairs prescribes regulations required by subsection (a), the Secretary shall submit to the appropriate Committees of the Congress a report on those regulations.

(c) **DEFINITION.**—As used in this section, the term "medical facility laboratories" means facilities for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other physical examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

#### NOTICES OF HEARINGS

##### SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT

Mr. LEVIN. Mr. President, I wish to announce that the Subcommittee on Oversight of Government Management,

Committee on Governmental Affairs, will hold a hearing on "Buying 'Green': Federal Purchasing Practices and the Environment," on Tuesday, October 8, 1991, at 9:30 a.m., in room 342 of the Dirksen Senate Office Building.

#### AUTHORITY FOR COMMITTEES TO MEET

##### COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, 2 p.m., October 2, 1991, to receive testimony from Elizabeth Moler and Branko Terzic, nominees to be members of the Federal Energy Regulatory Commission.

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

##### SELECT COMMITTEE ON INTELLIGENCE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, October 2, 1991, at 9:30 a.m. to hold confirmation hearings on Robert M. Gates to be Director of Central Intelligence.

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

##### COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be authorized to meet on Tuesday, October 2, at 9:30 a.m., for a hearing on the subject: Government regulation of reproductive hazards.

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

##### COMMITTEE ON FOREIGN RELATIONS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, October 2, at 2 p.m. to hold a hearing on three State Department nominations.

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

##### SUBCOMMITTEE ON SECURITIES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Securities of the Committee on Banking, Housing, and Urban Affairs be allowed to meet during the session of the Senate, Wednesday, October 2, 1991, at 9:30 a.m. to conduct a hearing on S. 1533, the Securities Investor Protection Act of 1991, and other issues relating to the statute of limitations for private lawsuits brought under the Securities Exchange Act of 1934.

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

##### COMMITTEE ON THE JUDICIARY

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to

meet during the session of the Senate on Wednesday, October 2, at 2 p.m. to hold a hearing on the nomination of Barbara A. Caulfield, of California, to be U.S. district judge for the Northern District of California. Ronald E. Longstaff, of Iowa, to be U.S. district judge for the Southern District of Iowa. John W. Longstrum, of Kansas, to be U.S. district judge for the District of Kansas. Terry R. Means, of Texas, to be U.S. district judge for the Northern District of Texas.

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

#### SPECIAL COMMITTEE ON AGING

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Special Committee on Aging, be authorized to meet during the session of the Senate on Wednesday, October 2, at 9:30 a.m. to hold a hearing on "Medicare Fund and Abuse: A Neglected Emergency?"

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

#### COMMITTEE ON FOREIGN RELATIONS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, October 2, at 10 a.m. to hold a hearing on two maritime treaties and a State Department nomination.

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

### ADDITIONAL STATEMENTS

#### BUTTE CELEBRATIONS

• Mr. BAUCUS. Mr. President, I rise today to honor the accomplishments of Butte Celebrations of Butte, MT. This nonprofit, volunteer organization has given the 37,000 citizens of Butte and Silver Bow County 35 years of vibrant, citywide festivities. Few things demonstrate the spirit and vitality of the Butte community like the Independence Day activities, sponsored each year by Butte Celebrations.

Fourth of July parades have been part of Butte's cultural tradition since 1876, when the residents of this young mining town gathered to celebrate our Nation's centennial. During this period, the silver and gold booms fostered great interest in Butte, and the small community grew and diversified. Easterners and immigrants settled here hoping to strike lodes of ore, and created an even richer vein of Butte culture, varied and unified at once, and vested with pride in a young, vigorous America.

As the town's population grew, so did its enthusiasm for community celebrations. The energetic Independence Day celebrations of the early 1900's established Butte as the center of Montana's Fourth of July activity. In 1937, the city of Butte began sponsoring the Independence Day parade, but by 1956,

found financing difficult. Determined to maintain this part of Butte's heritage, several community members formed Butte Celebrations.

Thanks to much hard work and personal dedication, this Independence Day tradition has survived and flourished. Every year, people from all over Montana come to participate in the festivities, not only to commemorate the adoption of the Declaration of Independence, but to celebrate the unique, indomitable spirit of Butte. I congratulate the members of Butte Celebrations for making these spirited events possible. •

#### GWICH'IN PEOPLE OPPOSE ALASKAN OIL DEVELOPMENT

• Mr. WELLSTONE. I want to address a dimension of the national energy strategy that deserves serious attention in this body: The threat to the culture and way of life of the Gwich'in Indians posed by plans to open the Arctic National Wildlife Refuge [ANWR] to oil exploration and development.

I have had the honor of meeting with representatives of the Gwich'in people this past week, and I wish every Senator had been there to hear their story. They are a people who have lived in northeast Alaska and northwestern Canada for thousands of years—perhaps as long as 20,000 years. They are the most northern Indian peoples in the United States today, and there are only about 7,000 remaining people living in 17 small towns and villages in Alaska and the Yukon. They are truly an endangered native people.

The Gwich'in are a caribou people—most of their food comes from caribou hunting, and their entire culture and identity revolves around the caribou. They are as dependent on the caribou as the Plains Indians once were on the buffalo in the lower United States. And to put this question in some historical perspective, I would like to ask my fellow Senators what we would have done a century ago if the remaining chiefs had come to us and pleaded with us to stop the slaughter of buffalo. Would we have done it? If we had it to do over again, would we do it? Would we be willing to protect the buffalo from virtual extinction and prevent the destruction of Indian cultures in the West?

Today, we are faced with a similar question in regard to oil development in ANWR. The Gwich'in tribal leaders are adamantly against oil development on the 1002 Coastal Plain because they are convinced it will destroy the calving grounds of the Porcupine Caribou herd on which their whole way of life depends. The calving grounds are not just economically important to the Gwich'in people—they are sacred. They fear that any disturbance of this sacred area will lead to decline of the caribou

herd and changes in migration patterns that will doom their way of life as well.

Consequently they have filed a lawsuit against the Secretary of the Interior on grounds that oil development in ANWR could deprive them of their inherent right to continue their own way of life, a right recognized by the International Covenant on Civil and Political Rights; and also on grounds that a full environmental impact statement has never been done on the 1002 area. I myself raised the issue of the inadequacy of the old 1002 report during committee markup, but I now realize that the issues go even deeper—they go to the very survival of native peoples threatened by ecological destruction. This is an issue of human rights.

The reply of those who want to develop the Arctic Wilderness no matter what is that enough studies have been done to be confident that development of oilfields does not significantly disrupt caribou migration and calving patterns, and that in fact, the experience of Prudhoe Bay and the Alaskan pipeline is that the caribou herds have multiplied since construction. They point to the growth of the central caribou herd in particular.

The Gwich'in people and others now challenge these claims. It is true that all caribou herds have grown in recent years, but they have observed that only the central herd that is impacted by the Prudhoe Bay developments has sharply declined in the past year or so. Gwich'in hunters have observed many dead and diseased animals, and a clear decline in successful calving this year. They are convinced that the same thing will happen to the Porcupine Herd if they are forced out of the 1002 area into less healthy calving grounds.

We have heard a lot about support for ANWR development by the Eskimos living in the village of Kaktovik on the north coast. Some of them have come down to Washington to testify also. But I have heard from many sources that the people of Kaktovik are, in fact, deeply divided over this, and that many are too intimidated to speak up against tribal leaders. Be that as it may, the Gwich'in people deserve at least an equal voice and they are solidly united against oil development. It is simply not true that the Native peoples support this.

The Gwich'in believe that if their way of life is changed by the oil companies, it can only be for the worse. The alternative to preserving their identity and way of life is a host of social problems that have beset other Indian communities, including alcoholism and welfare dependency. They do not want this—they are fighting for their most fundamental right to exist as an indigenous people who are an integral part of the landscape, of the unique ecology of this region.

We cannot condemn the Gwich'in as a people; we must respect their right to

survival. We cannot ignore their rights the way we did in the last century. We cannot sacrifice them for the greed of a few oil companies or for a few months' supply of oil.

This is one of the reasons I will oppose S. 1220, the so-called National Energy Security Act. I will speak on other reasons to oppose this bill later; but before we even think about other provisions, let us get our values straight. What is it that we as a nation aspire to be? What are our basic values? Have we learned anything in the past 100 years? Or are we doomed to repeat the mistakes of the past? I believe we must listen to what our elder brothers, the Gwich'in, are telling us and find a way to meet our energy needs without destroying this unique community of land, animals, and people.●

#### GREEN COUNTY COURTHOUSE CENTENNIAL

● Mr. KASTEN. Mr. President, I rise today to honor an important anniversary in Wisconsin's Green County. The Green County courthouse in Monroe, WI, is celebrating its centennial this year.

For 100 years, this building has been a witness to the history of Green County—a living symbol of justice and liberty.

Its predecessor, the first courthouse in Green County, burned to the ground in the early 1840's before it could actually be completed—setting the stage for the building of the wonderful edifice that exists today.

This facility was built for \$52,390 by local masons. They used red brick from Maiden Rock, WI, from the basement of the building to its attic. In 1892, a tower clock was added which still graces the building—and the tower itself was reinforced with concrete in 1955.

In the 1980's, the community worked together to achieve the restoration and lighting of the courthouse steeple—showing that the courthouse is still a vitally important element in the public life of the area's residents.

The Green County courthouse is a true monument to the traditions and values of the men and women who built it—and those who carry on in their place. Since 1978, the courthouse has been on the National Register of Historic Places; it will be an important landmark for years to come.

I ask my Senate colleagues to join me in extending our warmest congratulations to all those who have worked hard to celebrate this important centennial—especially county clerk Michael Doyle, Donna Heiser, Mavis Robertson, Marilyn Neuenschwander, Gary Luhman, Steve Elmer, Jan Perry, and John Callahan.

They are keeping the faith with our forebears—and we own them all a vote of thanks.●

#### WILLIAM VON RAAB

● Mr. SIMON. Mr. President, during hearings on BCCI before the Senate Foreign Relations Subcommittee on Terrorism, Narcotics and International Operations, chaired by Senator JOHN KERRY, William von Raab brought up the name of Frank Mankiewicz as having worked for BCCI.

In a telephone conversation with Frank Mankiewicz, I mentioned having heard that, and he said there was absolutely no truth to it, and he had a letter from William von Raab stating that.

I ask to insert the William von Raab letter into the RECORD at this point.

The letter follows:

AUGUST 29, 1991.

Mr. FRANK MANKIEWICZ,  
Washington, DC.

DEAR FRANK: In order to clear matters up, please understand that I do not have any information that Mr. Gray or you spoke to or contacted any official in either our federal government's executive or legislative branch on behalf of BCCI.

Very truly yours,

WILLIAM VON RAAB.●

#### AIDS UPDATE

● Mr. CRANSTON. Mr. President, according to the Centers for Disease Control, as of August 31, 1991, 191,601 Americans have been diagnosed with AIDS; 121,196 Americans have died from AIDS; and 70,405 Americans are currently living with AIDS.

#### AIDS CONFERENCE

The 1992 International AIDS Conference, which had been scheduled for Boston, will be moved to Amsterdam. It is fortunate for hastening an end to this tragic disease that this important world conference will be held. It is unfortunate and embarrassing for the United States that our policy of preventing HIV-infected foreigners from visiting or immigrating to the United States has shut the door on a vital scientific effort. The political wrong-headedness of the Bush administration on the HIV immigration issue has diminished the U.S. contribution to the world effort to conquer AIDS.

#### BELINDA MASON

Mr. President, a member of the National Commission on AIDS, Belinda Mason, died recently. Belinda was a person with AIDS who devoted the last years of her life to serving persons, like herself, who suffered the ravages of AIDS. She acquired AIDS through a blood transfusion. Her reaction to learning that she had AIDS was to pledge what remained of her life to ending discrimination against people with AIDS. She fought for the rights of others. We have much to learn from her selflessness and from her love.●

#### EVALUATION OF EPA TO CABINET LONG OVERDUE

● Mr. WELLSTONE. Mr. President, I am delighted that we finally have an opportunity to elevate the Environmental Protection Agency to full Cabinet status. During my campaign last year, I called for this action as one of the top priorities in my environmental program. I have cosponsored S. 533 to indicate my strong support for this bipartisan legislation, which I believe is long overdue.

EPA was established by Executive order in 1970 and has lacked a statutory charter. In the past it has been too easily subject to political manipulation and attack, especially under the Reagan administration. For this reason alone, we need a permanent and equal seat for our chief environmental office at the Cabinet table.

EPA's functions and responsibilities have grown enormously—from administering four basic statutes 20 years ago, to carrying out some 15 major laws today that cover virtually the whole field of environmental protection. Its operating budget has increased more than tenfold, and compliance costs for EPA regulations are now estimated at nearly \$100 billion annually. In many cases environmental issues cut across administrative jurisdictions and require interdepartmental cooperation. Elevating EPA to Cabinet level will help to give it the stature it needs to ensure Governmentwide attention to and coordination of Federal environmental policies.

In addition, EPA now plays a critical role in global environmental affairs, including the critical negotiations now in progress to achieve an international framework convention on climate change next year. The United States is the only major nation that does not have a Cabinet environment minister or secretary to represent our country in such negotiations. The Secretary of the Environment will be in a stronger position to exert U.S. leadership on this level.

We should be clear, however, that establishing USDE will not guarantee stronger or more effective environmental protection. As with other departments, it will only be as effective as the President and his office allow it to be. I hope there will not be the kind of political interference from the White House that we have recently seen at EPA. The USDE must have the independence and resources to present and analyze environmental data objectively and to act on the best science available. It must have the authority to do the kind of job the American people expect.

I urge my colleagues to join me in passing this landmark environmental legislation.●

### FOR JAILED SCHOLAR, A WIFE'S DARING VOICE ON RIGHTS

● Mr. SIMON. Mr. President, in going through the newspapers that accumulated while I was on an overseas trip as chairman of the African Affairs Subcommittee, I came across the New York Times story of Hou Xiaotian, an incredibly courageous Chinese wife, whose husband is jailed for standing up for freedom at Tiananmen Square.

The government of the People's Republic of China [PRC] should understand that if anything happens to people like Hou Xiaotian, all the Chinese Government does is to create increasing antagonism toward the PRC.

The feeling of sympathy for the people of China, who yearn for freedom and democracy, is very strong in the United States. But that feeling will intensify if tolerance isn't shown for people with the uncommon bravery of Hou Xiaotian.

I insert the article into the RECORD.

The article follows:

[From the New York Times, Aug. 24, 1991]

#### FOR JAILED SCHOLAR, A WIFE'S DARING VOICE ON RIGHTS

(By Sheryl WuDunn)

BEIJING, August 23.—Hou Xiaotian's face brightens with an innocent grin as she weaves her bicycle through the traffic. But her girlish demeanor belies a life these days composed more of tears than smiles, more of prison than family, and of memories of a husband whom she is not scheduled to be reunited with again until the year 2002.

Ms. Hou, 28 years old, has become virtually the only person in Beijing now who dares to speak out for human rights to the foreign press. She assumed the role after her husband, Wang Juntao, was sentenced in February to 13 years in prison for his role in the Tiananmen Square democracy movement.

"Why am I doing this?" she asked. "If I can speak freely, if this can take place in China, then it shows that China is making progress. I am nudging the Government. This is an opportunity and I must not abandon it."

Since April, her husband has been confined alone in a small jail cell where he eats, sleeps, and uses a toilet, Ms. Hou said. A scholar of economics, with a passion for democracy, he can barely read because of the dim light. His family said he suffers from hepatitis B, a potentially fatal ailment of the liver.

#### HUSBAND ON HUNGER STRIKE

Last week, Mr. Wang began a hunger strike as a protest against his treatment and in response to the authorities' decision not to allow Ms. Hou to visit him this month. Normally she is allowed one monthly visit for 30 minutes, but this month the session was cancelled—apparently because the authorities were annoyed at Ms. Hou's contacts with foreign journalists.

For more than a year, Ms. Hou's battle has focused on improving prison conditions for her husband, and she has repeatedly approached various officials in different Government departments to solicit help. She brought cakes and gifts to the prison doorsteps on his birthday, their wedding anniversary and the new year, but both she and her gifts were turned away.

The setbacks, she said, have taken a toll on her emotional and physical health. Ear-

lier this summer, she became weary and severely depressed, crying every day, and she spent more than a month in the hospital.

"They are really villains, trying to exploit the love a woman has for her husband to attain to their means," Ms. Hou said in an appeal printed earlier this year by a human rights organization. The authorities wanted to know what she had told foreign reporters, threatening to reject the presents she had brought for her husband, she said.

#### SERVED 5 MONTHS IN PRISON

"I knew the life inside prisons because I had been inside one, and so I was very concerned about my husband," the appeal continued. "How dare they blackmail me using this relationship and my feelings. They are really not human beings at all."

Ms. Hou was jailed for five months until April 1990 in a jail cell separated from the outside world by eight layers of doors or gates. The authorities charged that she helped her husband attempt to escape the law in the months after the June 1989 crackdown. She insists, however, that she did not help him. But now she suggests that she wished she had.

"I was full of despair and thought I would never come out," Ms. Hou said of her time in prison. "I know what my husband must be going through. He must be losing his respect. I have wronged him. In jail I thought that if I got out, I would help my husband."

Mr. Wang is just as concerned about his wife. When he first decided in July to begin a hunger strike, he told his parents in confidence, but not Ms. Hou, for fear she could not bear the news. After his trial in February, he sent a letter to his lawyers and closed with a request that they look after his wife for him.

#### ALLOWED TO PROVIDE MEDICINE

"Please help me comfort Xiaotian," he urged in the letter, which was later published by newspapers in Hong Kong. "Let her calm down, not to get into any more trouble, not to break any law, especially not to become impolite to those who are handling my case. I still need her to help me in many things on the outside, so she must take care of herself."

For a long time, the authorities denied that Mr. Wang was ill, but finally in June, they admitted to his family that he had hepatitis and allowed them to bring him some medicine.

But the family has not been allowed to give him medicine regularly, and earlier this month the Government denied to a visiting United States Congressional delegation that Mr. Wang was sick. Mr. Wang apparently contracted hepatitis while he was being treated by injection for a toothache during his detention in Qincheng prison, family members said. In April, he was moved to Beijing No. 2 prison, as was another dissident, Chen Ziming, who was also sentenced to 13 years. The two men were detained in 1989, two years before their trial, and this period will count toward their jail terms.

"I speak about the most basic right of man, what God gave man—even though I don't believe in God—and I tell them that you must give back what man is born with," Ms. Hou said. "This is what I fight for."

#### "I CAN BE TAKEN IN ANYTIME"

She talks little about the shortcomings of socialism or of the need for freedom of the press and political reform, and says she believes that this may be one reason why the authorities have been relatively tolerant of her outspokenness. She is still concerned, however, that she could be detained or ar-

rested at any moment, and one stark reminder of the risk came when Zhang Weiguo, a prominent journalist who spoke openly against the political system, was detained for three weeks this summer in Shanghai.

"I've been waiting for them to come get me," she said. "When Zhang Weiguo was detained, it made me realize what a thin tight-rope I am walking on. I can be taken in anytime."

Eased out of her job in an employment center, she has no means of livelihood and no place to live. Instead, Ms. Hou, who has a graduate degree in psychology, moves from place to place, relying on handouts from friends who dare to help her as she continues to fight for her husband so that she can go on with her life.

"What I really want is a family, to be a housewife—a virtuous wife and a good mother," Ms. Hou said. "I want a child, but now I can't have one."\*

#### TRIBUTE TO HINDMAN

● Mr. MCCONNELL. Mr. President, I rise today to make a few comments about Hindman, a small town hidden in the Appalachian Mountains of eastern Kentucky.

Hindman epitomizes the traditions of American small towns. The residents tend to "keep to themselves," and strangers seeing the town for the first time might not understand why the residents are so fond of it. It does not bother the residents that their town is not a main stop for tourists. In fact, they enjoy the peacefulness, and prefer to hold local events for themselves, where they can relax and celebrate the closeness of their town together.

Many people see Hindman as a needy town, and do not realize that charity flows out of Hindman as fast, if not faster, than it flows in. When Hurricane Hugo struck South Carolina, councilwoman Pat Calhoun appealed to the people of Hindman to send necessities to the hurricane-ravaged area. People, even those who really could not afford to, responded with vigor. "In no time \* \* \* people were coming in with truckloads," she said.

Those who do not know the true spirit of Hindman may be surprised at such a response, and may think that Hindman will never have the excitement of a big city.

Mike Mullins, director of the Hindman Settlement School, has a different view of Hindman. He sees great prosperity in the future of the town. He perceives that the town will become one which people will want to visit. State Senator Benny Ray Bailey agrees. He foresees a time when small town workers are linked to large cities by satellites and computers, working with information, not auto parts.

Regardless of where the future of the town lies, it is unlikely that the future will be anything but bright. The people of Hindman have a great sense of pride in their town, one not likely to fade. Residents may leave the town from time to time, but there is that some-

thing special about Hindman which keeps drawing them back.

Because of this, and many other reasons, the residents of Hindman would never consider living anywhere else. It is a special town, linked by bonds which can only be described by the residents.

Mr. President, I would like to insert the following Hindman article from the Louisville Courier-Journal into the RECORD.

The article follows:

HINDMAN: I'VE TRAVELED A BIT YET I KEEP COMING BACK HERE LIKE IRON FILINGS TO A MAGNET

(By C. Ray Hall)

Looking supremely untroubled, the editor of the weekly Troublesome Creek Times stood in the middle of one of Kentucky's narrowest Main Streets. All around Ron Daley swirled the Gingerbread Festival, which he thought up 10 years ago. The sideshows included an albino raccoon, a Schwarzenegger-sized gingerbread man, and carnival games conducted under borrowed funeral-home tents.

Daley, undistracted, spoke with great wonder about his small wonder of an adopted hometown, Hindman.

"For a place this small to have a congressman, Chris Perkins . . . the chairman of the state Democratic party, Grady Stumbo . . . one of the most famous four-year colleges in the country, Alice Lloyd . . . James Still, Kentucky's most famous living writer . . . and Benny Ray Bailey, one of the most effective senators in Frankfort . . ."

He might have added: All this, and Bart Simpson, too.

Tiny Hindman's television station, TV 12, has just signed on to the Fox Network. It isn't every day that an albino raccoon and the Bart Simpson network come to the same town.

So far, however, the icons in Hindman are still the same as ever—preachers, politicians and basketball players. None is bigger than Carl Perkins, whose status stands on a narrow slit of land beside the court house, the right hand forever poised in midair, about to reach out to a constituent. To some folks who find the Perkins legend resistible, the hand out symbolizes a handout.

"Some people act like Carl Perkins reached into his own pocket and gave 'em the welfare money," harrumphs Christopher Columbus Slone, a former magistrate. "We've had a congressman from his town for 42 years, and yet there's no industry. Can you tell me why?"

The facile answer is that, in Kentucky, a town is more enriched by having a governor than a congressman.

But let's let Sen. Benny Ray Bailey, one of the most agile political thinkers in Hindman or anywhere else, field that one.

What is the most important thing you can do when you represent an area where people have trouble getting an education, people have trouble getting food on the table, where people have a devastating disease called black lung? What's the most important thing you can do for those people?" he says, listening, by inference, Perkins' concerns when he was in Congress, 1949-84.

"The second thing is, industry goes where industry wants to go . . . Prior to 10-12 years ago, we had a four- or five- hour trip to get to Lexington. Roads were very bad. The services we provided—of 435 Congressional districts, two in Kentucky ranked 434 and 435—

and people want to know why can't you get industry to locate here?"

Even so, he notes, there are things government could have done, "Eastern Kentucky University should have been in Eastern Kentucky. What kind of difference would it have made in this area if Eastern Kentucky University had actually been located in East Kentucky?"

That sort of thing was left to other means and ends. Alice Lloyd, the emigre from Boston, founded her remarkable college just up the road in Pippa Passes. She was one of a wave of creative, committed educators who came to the mountains just after the turn of the century. Their followers came to be known as "brought-in people."

Bringing in people just isn't always that easy.

"People say, 'Why don't you put a hospital in Knott County?'" Bailey notes. "We had trouble getting a pharmacist to come to Knott County."

There are four doctors, hailing from, as Bailey says, "Knott County, Knott County, Floyd County and Poland. About the same. Similar background, except in Poland they still mine coal. We've quit."

With the coal industry producing ever more coal but ever fewer jobs—people are looking elsewhere. To tourism, for example. A planned lodge 14 miles away at Carr Fork Lake could help. But traditional industry seems a phantom.

"Today in Knott County," Bailey says, "if we had an industry . . . that came to us and said, 'We want to locate here; we need 20 acres of land with utilities,' we don't have it. There are things to do. And the county is moving toward providing those things."

Ah, utilities. A word that, in Hindman, carries as many shades of meaning as an Ibsen play, and just about as much anguish. Everybody has a horror story about the water-and-sewer system: The mayor, Kenneth Blair, a nominal defender of the system, says little good about it, especially when he's sloshing about in a creek at midnight, helping prepare a broken water main. Other detractors have included the Environmental Protection Agency, disgusted customers who drilled their own wells and people who bought \$167,000 worth of bonds to pay for the system. Those folks are still waiting for their payday. "We've been in default 13 years," Blair notes.

To help retire that debt, which mounts by the day, Blair helped push through a local insurance tax this year. "We're not putting it all in the sewer," the mayor says, speaking both literally and figuratively.

Taxes are as popular in Hindman as anywhere, which is to say not at all. Local folks have not rushed to embrace the state's new school-reform act, especially the part that involves taxes. Rather than ante up, Knott County decided to anti up. That, and other intramural scuffles, make the school board meetings one of the county's best sideshows.

"In Knott County, we have a cynicism that compares with what goes on all over America," says Daley, the newspaper editor. "In this area, we've not got what we feel we should have and want to blame somebody."

But then everything in Knott County—as everybody says—is politics. Even the annual Gingerbread Festival, which Daley thought up 10 years ago, takes its name from old-time politicians' practice of handing out gingerbread to voters on the way to the polls. To Knott Countians, politics is like a grisly car wreck: You can't look and you can't look away.

"I've found that even though politics is so pervasive, people don't like it," Daley says.

"They don't want to read about politics. . . . But at the same time, politics is probably the biggest hobby many people have. It's not the majority, but they're the ones who talk the loudest. If you told people they could never talk about politics again, there's a couple hundred of them that would just as soon go off and die."

Says councilwoman Pat Calhoun: "Politics, to me, stinks. I live in one of the most political places that ever was, and I am an elected official. But I have never campaigned. I have never asked anybody to vote for me and I don't ever intend to. They know me and if they want to vote for me, fine. If they don't, fine."

For some folks, politics, isn't a dirty word. Mike Mullins, director of the Hindman Settlement School, says: "I think there are some of us who experienced the '60s in a philosophical way, and who still have a sort of an idealism and still believe that we can make a difference. And we've made a commitment to these hills, to these mountains. We live here, we're trying to raise our children here."

He stays in Knott County not just because of commitment, he says, but comfort. "There's not one red light in Knott County. I like that fact. I've often said when they get a red light, I'm moving out; they're getting too many people here."

Mullins envisions a time when Hindman might become an artsy-craftsy tourist attraction "like L.L. Bean up in Maine, where people would say, 'We need to go there. You can get the best of the best.'"

Bailey, the senator, thinks the future in Knott County will be the same as it is everywhere: People will make a living doing what he calls "massaging information." He foresees a time when workers in Knott County, connected to Chicago or some other place by satellite and computer, work with information, not, say, auto parts.

Either way, it seems unlikely that Hindman will get so crowded that Mullins will have to move. The population is stable. "We lost five or six people in the census between 1980 and 1990," Blair notes.

Some of the staples are going, bit by bit, though. The town looks a lot like it did in the 1950s, but Young's Department Store just closed. The older generation remembers the homey atmosphere of Joe's Place, a restaurant where the teen-aged customers pitched in and helped when things got hectic. There are still some old reminders, with new names: Francis Family Drugs now goes by the name of Napier. (The pineapple milk shakes—thick and slushy and served the old-fashioned way in a glass with a frosty silver cup on the side—are worth a drive to Hindman.) The drug store also carries an astonishing array of potions to keep flies off horses—a tribute to the growing number of horse enthusiasts in the county.

Doubtless there are still some benighted folks—even fellow Kentuckians—who imagine Knott Countians galumph about the hills on horses, barefoot and bereft. James Still, the writer, tells of the well-meaning folks who sent clothes to the Hindman Settlement School that the "needy wouldn't be caught dead wearing." They also sent hundreds of books to the library, only three of which he judged worth keeping.

Charitable urges flow out of Knott County as easily as they flow in, perhaps more so. When Hurricane Hugo wracked South Carolina, councilwoman Pat Calhoun appealed for water, baby food, diapers and other staples for the hurricane victims.

"In no time . . . people were coming in with truckloads," she says. "People really

that could not afford to do. . . . The senior citizens brought quilts—new quilts that you could sell for \$400-600—and sent them to these people. It just gives you a good feeling to know you live among this type of people."

Because of that, and other reasons, a great many people in Hindman blanch at the idea of living anywhere else.

"I don't know of any place that's more exciting to live in the world than right at the forks of Troublesome Creek," Mullins says. "Mr. Still, the writer . . . said one time that Knott County might not be the easiest place to live in, but it's the best place to live."

"Mr. Still" will get the last word here. In his latest book, "The Wolfpen Notebooks," Still explains why he has lived in or around Hindman for the last 60 years.

"It's a rare day when I'm out and about that I fail to hear something linguistically interesting. I go to the post office and I'll hear somebody say something that's of interest to me. That has a lot to do with why I live her. Of course, there are other reasons. I've traveled a bit yet I keep coming back here like iron filings to a magnet. Here we are more conscious of the individual. Everybody is somebody."

Population: Hindman, 900; Knott County, 17,906.

Per capita income: (1988) Knott County, \$8,203, or \$4,539 below the state average.

Knott County jobs: (1988) Mining & quarrying, 1,477; State/local government, 632; Services, 442; Retail/Wholesale, 322; Manufacturing, 29.

Big non-government employers: Alice Lloyd College (Pippa Passes) 115 employees; Casey's IGA, 44; TV Service and United Cable, 30; Thacker-Grigsby Telephone Company, 25.

Education: Knott County Schools, 3,665 students; Knott County Area Vocational Education Center, 235; June Buchanan School, Pippa Passes, 188; Alice Lloyd College, Pippa Passes, 548.

Media: Newspaper: Troublesome Creek Times (weekly). Radio: WKCB-AM (1340) and FM (107.1) contemporary hits. Television: TV-12, local Fox affiliate, plus 27 other cable channels whose offerings include three network stations from Lexington, Ky., and one from Johnson City, Tenn.

Transportation: Air: Nearest facility with regular commercial service, Huntington, W.Va., 114 miles. Rail: None (Nearest facility, Hazard, 20 miles). Water: None. Truck: Seven lines serve Hindman.

Topography: Hindman lies in a narrow valley at the forks of Troublesome Creek, one of several creeks—but no rivers—that run through the mountainous county. Locals point out that Knott is the only Kentucky county untouched by a river.

#### FAMOUS FACTS AND FIGURES

Hindman's Thacker-Grigsby Telephone Company, bought for \$162 in 1919, is one of only three family-owned phone companies in Kentucky. (The others are in Harold and Brandenburg). When Robert Thacker took over the company in 1950, it had 60 customers. Today it has 8,000.

In a state noted for basketball, Knott County is one of the most notable strongholds. The 1928 Carr Creek team played in the national tournament in Chicago. The school's 1956 team, coached by Morton Combs, won the state championship. So did the 1943 Hindman team, coached by Pearl Combs. Both those schools are now part of Knott County Central High.

In 1988, 46 percent of all jobs in Knott County were in coal mining. And 43 percent of all personal income comes from government. That ranks it 12th in the state.

Knott County's Hall of Fame includes the late Congressman Carl Perkins, educator Alice Lloyd and 85-year-old author James Still. The list includes 11 educators, six politicians, three doctors, three writers, three basketball coaches and Bertha Gayheart. "She's just a good Old Regular Baptist lady that attends all the funerals," says Hall of Fame curator Ron Daley. "It's not just for the bigwigs."●

#### HOW VAST THE WASTELAND NOW

● Mr. SIMON. Mr. President, one of the more stimulating people in this country and a public servant in a great many ways over these years is Newton N. Minow, who served as the Chairman of the Federal Communications Commission under John F. Kennedy. I'm proud to have him as a citizen of Illinois, and all of us should be proud to have him as one of America's leaders.

On May 9, 1961, he made a talk about television, calling it a vast wasteland. That speech stimulated a huge amount of discussion and is referred to frequently yet to this day.

Thirty years later, he gave a talk at the Gannett Foundation Media Center at Columbia University, a talk that didn't get as much attention as his vast wasteland speech, but which contains just as much common sense.

At one point in his remarks he says, "I think the most troubling change over the past 30 years is the rise in the quantity and quality of violence on television. In 1961, I worried that my children would not benefit much from television, but in 1991 I worry that my grandchildren will actually be harmed by it."

I mention this because the television industry now has an exemption from the antitrust laws signed into law by the President, for which I had the honor to be the chief sponsor. Both the broadcasting side of television and the cable side of television have had meetings on the question of violence, but I would be fooling my colleagues if I sensed that very much was happening in a positive direction. I hope I am wrong.

We should not have to have the heavy club of government to make sensible changes that would serve the public well. In Newton Minow's speech he quotes Bill Baker, president of Thirteen/WNET, who has been in both commercial and public television, who said: "To aim only at the bottom line is to aim too low. Our country deserves better." I urge television executives to note that.

A point that Newt Minow makes is that public television deserves more support than it now receives. Perhaps I am the only Member of the Senate who does not like the fact that public television has to rely on commercial sponsors in order to survive. That has, in my opinion, had a harmful effect on public television.

Mr. Minow calls on this nation to provide free air time to political can-

didates and parties. The abuses that are taking place because of raising money for television commercials are all too widely known to every Member of the Senate, yet we fail to do anything about it.

There is more good sense in the Newt Minow address, and I urge my colleagues to read it. I ask to insert Newton Minow's address into the RECORD at this point.

The address follows:

#### HOW VAST THE WASTELAND NOW?

(Address by Newton N. Minow)

After finishing that speech to the National Association of Broadcasters (NAB) thirty years ago today, I remained near the podium talking with LeRoy Collins, a former governor of Florida who was serving as NAB president. A man from the audience approached us and said to me, "I didn't particularly like your speech." A few moments later the same man returned with, "The more I thought about it, your speech was really awful." A few minutes later he was back a third time to say, "Mr. Minow, that was the worst speech I ever heard in my whole life!"

Governor Collins gently put his arm around me and said, "Don't let him upset you, Newt. That man has no mind of his own. He just repeats everything he hears."

Thirty years later I still hear about that speech. My daughters threaten to engrave on my tombstone "On to a Vaster Wasteland."

My old law partner, Adlai E. Stevenson, loved to tell a favorite story about the relationship between a fan and a fan dancer: There is really no intent to cover the subject—only to call attention to it. Like a fan dancer, it is not my intent today to cover every part of that speech, but rather to use its anniversary to examine, with thirty years' perspective, what television has been doing to our society and what television can do for our society.

Thirty years cannot be covered fully in thirty minutes, but let us begin by reminding ourselves of the times, circumstances and optimistic spirit of the Kennedy administration in the early '60s. What was broadcasting like at that stage of development?

President Kennedy started off with a dream of a New Frontier, but made a major blunder on April 17, 1961, at the Bay of Pigs. A few weeks later, on May 5, there was a great triumph: the successful launch of the first American to fly in space, Commander Alan Shepard. Commander Shepard returned from his flight to meet President Kennedy and Congress on May 8. On the same day, President Kennedy was to speak to the National Association of Broadcasters and invited me to accompany him when he gave his speech. I was to meet him outside the Oval Office in the morning and to ride with him to the Sheraton Park Hotel.

As I waited there, President Kennedy emerged and said, "Newt, how about taking the Shepards with us to the broadcasters?" Of course, I said, and the president went back into his office to make the arrangements. He returned to say, "It's all set. Now come with me, I want to change my shirt. And what do you think I should say to the broadcasters?"

Although I had known Jack Kennedy before he was president, it was the first time that I was in the bedroom of the president of the United States watching him change shirts and being asked to advise him on what to say. Nervously, I mumbled something

about the difference between the way we handled our space launches compared to the Soviets: that we invited radio and television to cover the events live, not knowing whether success or failure would follow. On the other hand, the Soviets operated behind locked doors. President Kennedy nodded, took no notes, and led me back to his office, where Commander and Mrs. Shepard and Vice President Lyndon Johnson were waiting. We went out to the cars. The vice president and I ended up on the two jump seats in the presidential limousine, with the president and the Shepards in the back seat in an ebullient mood as we rode through Rock Creek Park. After we arrived, President Kennedy gave a graceful, witty, thoughtful talk about the value of an open, free society, exemplified by the live radio and television coverage of Commander Shepard's flight. The broadcasters responded with a standing ovation.

The next day I returned to that same platform for my first speech as chairman of the Federal Communications Commission. Many people think I should have asked President Kennedy to watch me change my shirt and give me advice on my speech because, as you know, the audience did not like what I had to say.

In that speech, I asked the nation's television broadcasters "to sit down in front of your television set when your station goes on the air and stay there without a book, magazine, newspaper, profit-and-loss sheet or rating book to distract you—and keep your eyes glued to that set until the station signs off. I can assure you that you will observe a vast wasteland." \* \* \*

"Is there one person in this room who claims that broadcasting can't do better? \* \* \* Your trust accounting with your beneficiaries is overdue."

That night, at home, there were two phone calls. The first was from President Kennedy's father, Joseph Kennedy. When I heard who was calling I anticipated sharp criticism; instead Ambassador Kennedy said, "Newt, I just finished talking to Jack and I told him your speech was the best one since his inaugural address on January 20th. Keep it up; if anyone gives you any trouble, call me!" The second call was from Edward R. Murrow, then director of the U.S. Information Agency. He said, "You gave the same speech I gave two years ago. Good for you—you'll get a lot of heat and criticism, but don't lose your courage!"

Those two calls gave me the backbone I needed.

What was the situation at the time? In the late '50s, scandals damaged both the FCC and the television industry. President Eisenhower had to replace an FCC chairman who had accepted lavish entertainment by industry licensees. Broadcasters had to explain quiz show and payola scandals in congressional hearings. Television was still new—in its first generation of programming. The word "television" did not yet appear in the Federal Communications Act.

While at the FCC, we followed two fundamental policies: 1) to require that broadcasters serve the public interest as well as their private interest, and 2) to increase choice for the American home viewer. In the long run, we believed that competition was preferable to governmental regulation, especially where a medium of expression was involved. So we worked to open markets to new technologies, to help build a non-commercial television alternative and to provide educational opportunities through television. Satellites, UHF, cable—we encouraged them all.

Today that 1961 speech is remembered for two words—but not the two I intended to be remembered. The words we tried to advance were "public interest." To me, the public interest meant, and still means, that we should constantly ask: What can television do for our country?—for the common good?—for the American people?

Alexis de Tocqueville observed in 1835: "No sooner do you set foot on American soil than you find yourself in a sort of tumult \* \* \* all around you everything is on the move." What would Tocqueville have said about the explosive expansion of telecommunications—particularly the electronic media—during the thirty years between 1961 and 1991?

In 1961 there were 47.2 million television sets in American homes; by 1990 that number had more than tripled, to 172 million. Fewer than 5 percent of the television sets in 1961 were color; in 1990, 98 percent of American homes receive television in color. Cable television, which started by bringing television to people who could not receive signals over the air, now brings even more television to people who already receive it. In 1961, cable television served just over a million homes; now it reaches more than 55 million. Between 1961 and 1991, the number of commercial television stations in America doubled, from 543 to 1,102. Noncommercial—now called public—television stations quintupled from 62 to 350.

Americans spend more time than ever watching television. Since 1961 the U.S. population has risen from 150 million to 245 million, and the amount of time Americans spend watching television has skyrocketed from 2.175 hours a day to a staggering 7.3 hours per day. In 1961, television viewers spent more than 90 percent of their viewing time watching the three commercial networks; today that figure is around 62 percent.

While the U.S. government slipped from a \$3 billion surplus in 1960 to a deficit of more than one hundred sixty-one billion dollars today, total advertising revenues for the television industry rose twentyfold in the same period, from \$1.2 billion to \$24 billion. In 1961 cable advertising revenues were zero; in 1988 cable advertising revenues were \$1.16 billion. And cable subscribers, who paid an average of \$4 per month in 1961, today pay around \$25 for cable service. Cable subscriptions accounted for revenues of \$51 million in 1961; now they amount to almost \$20 billion.

Video revenue in the movie industry, which was zero thirty years ago, is now \$2.9 billion—more than \$700 million larger than current movie theater receipts. VCRs—unavailable commercially in 1961—are now in more than 58 million American homes.

Children today grow up with a remote control clicker, cable and a VCR. Former NBC President Bob Mulholland, who now teaches at Northwestern University's Medill School of Journalism, says that these children don't remember the days when television signals came to the home through the air to an antenna on the roof as God and General Sarnoff intended. My own children used to say, "Is it time for the 'Mickey Mouse Club' yet?" My grandchildren say, "Can I watch the tape of Peter Pan again?"

Today, new program services like CNN, C-SPAN, HBO, Showtime, Disney, Nickelodeon, Discovery, Lifetime, Arts and Entertainment, ESPN, USA, TNT, Black Entertainment TV, Bravo, Cinemax, TBS, Home Shopping, Weather Channel, Univision, CNBC, Galavision, Nashville, MTV, FNN, American Movie Channel—and even more—enter the home by wire for those who can

pay the monthly cable bill. Choice has skyrocketed. The VCR means you can watch a program when you want to see it, not just when the broadcaster puts it on the schedule. If you are a sports fan, a news junkie, a stock market follower, a rock music devotee, a person who speaks Spanish, a nostalgic old-movie buff, a congressional hearing observer, a weather watcher—you now have your own choice. The FCC objective in the early '60s to expand choice has been fulfilled—beyond all expectations.

Yet, to many of us, this enlarged choice is not enough to satisfy the public interest. There are several reasons. Although some viewers have gone from a vast emptiness to a vast fullness, others have been excluded. Choice through cable comes at a price not all can afford, and cable is still not available to the entire nation. (Where I live in Chicago, we did not receive cable service until last year, and of course many parts of New York City and Washington, D.C., do not have cable either.) And as CBS President Howard Stringer said in a speech at the Royal Institution in London last year, "We see a vast media-jaded audience that wanders restlessly from one channel to another in search of that endangered species—originality \* \* \* more choices may not necessarily mean better choices."

One evening as I watched, with my remote control in hand, I flipped through the channels and saw a man loading his gun on one channel, a different man aiming a gun on a second, and another man shooting a gun on a third. And if you don't believe me, try it yourself. Remember Groucho Marx's advice: "Do you believe me or your own eyes?" I think the most troubling change over the past 30 years in the rise in the quantity and quality of violence on television. In 1961 I worried that my children would not benefit much from television but in 1991 I worry that my grandchildren will actually be harmed by it. One recent study shows that by the time a child is 18 he has seen 25,000 murders on television. In 1961 they didn't PG-13 movies, much less NC-17. Now a 6-year-old can watch them on cable.

Can this be changed where television is concerned? My own answer is yes. If we want to, we can provide the American people with a full choice, even if the marketplace does not meet the demands of the public interest. I reject the view of an FCC chairman in the early '80s who said that "a television set is merely a toaster with pictures." I reject this ideological view that the marketplace will regulate itself and that the television marketplace will give us perfection. The absolute free market approach to public good has been gospel in our country in the case of the savings and loan industry, the airline industry, the junk bond financing industry, and in many other spheres of commerce and common interest. If television is to change, the men and women in television will have to make it a leading institution in American life rather than merely a reactive mirror of the lowest common denominator in the marketplace. Based on the last thirty years, the record gives the television marketplace an A+ for technology, but only a C for using that technology to serve human and humane goals.

Bill Baker, president of Thirteen/WNET here in New York (and like me a veteran of both commercial and public television) said it all in two short sentences: "To aim only at the bottom line is to aim too low. Our country deserves better." Felix Rohatyn, a star of the marketplace, was on target when he said, "Though I believe the marketplace

knows best most of the time, I am skeptical that it should always be the ultimate arbiter of economic action, and I am more than willing to interfere with it when it becomes a distorting rather than a benign influence."

In the last thirty years, the television marketplace has become a severely distorting influence in at least four important public areas. We have failed 1) to use television for education; 2) to use television for children; 3) to finance public television properly; and 4) to use television properly in political campaigns.

First, education. Suppose you were asked this multiple-choice question: Which of the following is the most important educational institution in America? (a) Harvard, (b) Yale, (c) Columbia, (d) the University of California, (e) none of the above. The correct answer is e. The most important educational institution in America is television. More people learn more each day, each year, each lifetime from television than from any other source. All of television is education; the question is, what are we teaching and what are we learning? Sometimes, as in the case of the splendid Annenberg/CPB-sponsored educational course on the Constitution (created here at Columbia by Professor Fred Friendly), we see what television can do to stretch the mind and the spirit. In Ken Burns' brilliant programs about the Civil War, millions of Americans learned more about that terrible period in American history than they ever learned in school. We are slowly doing better each year in using television for education, but too much of the time we waste television's potential to teach—and viewers' to learn.

Second, television for children. Bob Keeshan, our Captain Kangaroo for life, has seen how television for children all over the world is designed to be part of the nurturing and educational system. But "in America," he says, "television is not a tool for nurturing. It is a tool for selling." True, there are glorious exceptions like Joan Cooney's work, starting with "Sesame Street." But far too often television fails our children. And it fails them for more hours each day than they spend with a teacher in a classroom.

Competition, it is said, brings out the best in products and the worst in people. In children's television, competition seems to bring out the worst in programs and the worst in children. Children lack purchasing power and voting power, and the television marketplace and the political process have failed them. Cooperation instead of competition—among broadcasters and cable operators—could do wonders for children. Congress last year and the FCC this year have finally started to address these issues, and the attention is long overdue. If they would give the same time and attention to policies for children's television as they give to industry fights about the financial interest and syndication rules, our children would begin to receive the priority concern they deserve.

Third, public television should become just as much a public commitment as our public libraries, hospitals, parks, schools and universities. Yet it is a stepchild, struggling to provide outstanding public service while remaining in the role of a perpetual beggar in the richest country in the world. We have failed to fund a strong independent alternative to commercial television and thus failed, in Larry Grossman's words, to "travel the high road of education, information, culture and the arts."

There are many ways to establish a sound economic base for public broadcasting. For example, Congress could create a spectrum-

use or franchise fee for all commercial broadcast and cable operators to fund public broadcasting on a permanent basis. If this were set in the range of a 2 percent annual fee on broadcasting and cable's \$50 billion total annual revenues, it would produce about \$1 billion a year. Even at that figure, we'd still be behind Japan. If we added \$5 as a tax on the sale of new television sets and VCRs and earmarked the funds to match private contributions to public broadcasting, we could catch up to Japan—which now spends twenty times as much per person for public broadcasting as we do!

Finally, the use of television in political campaigns. Studies of the 1988 campaign show that the average block of uninterrupted speech by a presidential candidate on network newscasts was 9.8 seconds; in 1968 it was 42.3 seconds. As Walter Cronkite observed, this means that "issues can be avoided rather than confronted." And David Halberstam adds, "Once the politicians begin to talk in such brief bites. . . they begin to think in them."

A United States senator must now raise \$12,000 to \$16,000 every week to pay for a political campaign, mostly to buy time for television commercials. A recent United Nations study revealed that only two countries, Norway and Sri Lanka (in addition to the United States) do not provide free airtime to their political parties. If we are to preserve the democratic process without corrupting, unhealthy influences, we must find a bipartisan way to provide free time for our candidates and stop them from getting deeply in hock to special interests in order to pay for television commercials.

More than twenty years ago, I served on a bipartisan commission for the Twentieth Century Fund which recommended the concept of "voters' time" for presidential candidates. Voters' time would be television time purchased with public funds at half the commercial-time rates and given to candidates. In exchange, we would prohibit by law the purchase of time by the candidates. And while we're at it, we should institutionalize the presidential debates—make them real debates by eliminating the panels of journalists. And we should clean up our political campaigns—once and for all.

In these four areas, the television marketplace has not fulfilled our needs and will not do so in the next thirty years. These four needs can be met only if we—as a nation—make the decision that to aim only at the bottom line is to aim too low. If we still believe in the concept of the public interest, we can use television to educate, we can stop shortchanging our children, we can fund public broadcasting properly, and we can provide free television time for our political candidates. My generation began these tasks, and the time has now come to pass the responsibility on to the next generation—the first generation to grow up with television.

What will happen in television in the next thirty years—from now until 2021? As Woody Allen says, "More than any other time in history, mankind faces a crossroads. One path leads to despair and hopelessness. The other to total extinction. Let us pray we have the wisdom to choose correctly."

In the next thirty years, four main forces—globalization, optical fiber, computers and satellite technology will illuminate the crossroads.

Today's able FCC chairman, Al Sikes, is wisely trying to keep public policy in pace with rapidly changing technologies. As Al observes, "Today we can see the new world. . . . in it, tomorrow's communications net-

works will be dramatically improved. Copper and coaxial cables are giving way to glass fibers, and wavelengths are being replaced by digits. . . ."

Well before 2021, I believe there will be convergence of the technologies now used in telephones, computers, publishing, satellites, cable, movie studios and television networks. Already we see tests of optical fiber demonstrating the future. In Montreal tonight, a home viewer watching the hockey game on television can use his remote control to order his own instant replay, order different camera angles—and become his own studio director. In Cerritos, California, a viewer today can participate in an experiment to summon any recorded show at any time, day or night; and he can stop it, rewind it, or fast forward it.

Here in New York City, Time Warner is building a two-way, interactive cable system with 150 channels. People will be able to order any movie or record album ever produced and see and hear it when they themselves want to see and hear it. We see 400- and 500-channel systems on the horizon, fragmenting viewership into smaller and smaller niches, and we need to remember that for all their presumed benefits these developments undermine the simultaneous, shared national experiences that comprise the nation's social glue.

At the Annenberg Washington Program of Northwestern University, we are developing a blueprint for the future of optical fiber. As this new technological world unfolds, the risk remains that we will create information overload without information substance or analysis, of more media with fewer messages, of tiny sound bites without large thoughts, of concentrating on pictures of dead bodies instead of thinking human beings. Henry Thoreau warned us more than 125 years ago: "We are in great haste to construct a magnetic telegraph from Maine to Texas; but Maine and Texas, it may be, have nothing important to communicate."

When we launched the first communications satellite in 1962, we knew it was important—but we had little understanding of its future use. I did tell President Kennedy that the communications satellite was more important than launching a man into space, because the satellite launched an idea, and ideas last longer than human beings. The last thirty years have taught us that satellites have no respect for political boundaries. Satellites cannot be stopped by Berlin Walls, by tanks on Tiananmen Square or by dictators in Baghdad. In Manila, Warsaw and Bucharest, we saw the television station become today's Electronic Bastille.

Thirty years is but a nanosecond in history. If President Kennedy were alive today, he would celebrate his 74th birthday later this month. He would be seven years older than President Bush. He would be astonished by the technological changes of the past thirty years, but he would be confident that the next thirty years will be even more advanced.

Before he was elected president, John F. Kennedy once compared broadcasters and politicians in these words, "Will Gresham's law operate in the broadcasting and political worlds, wherein the bad inevitably drives out the good? Will the politician's desire for reelection—and the broadcaster's desire for ratings—cause both to flatter every public whim and prejudice—to seek the lowest common denominator of appeal—to put public opinion at all times ahead of the public interest? For myself, I reject that view of politics, and I urge you to reject that view of broadcasting."

I went to the FCC because I agreed then and agree now with President Kennedy's philosophy of broadcasting. As I think back about him, and also think of our future, I propose today to the television and cable industries: Join together to produce a unique program to be on all channels that will have enduring importance to history. Seldom in history have we had five living American presidents at the same time: Right now, Presidents Reagan, Carter, Ford and Nixon are with us, in addition to President Bush. You can bring all of them to the Oval Office in the White House to discuss their dreams of America in the 21st century, and you can give every American the opportunity to see and hear this program and to share a vision of our future.

The '60s started with high hopes, confronted tragedy and ended in disillusion. Tragically, our leaders—President John F. Kennedy, Reverend Martin Luther King Jr. and Pope John XXIII, left too soon. We cannot go back in history, but the new generation can draw upon the great creative energy of that era, on its sense of national kinship and purpose, and on its passion and compassion. These qualities have not left us—we have left them, and it is time to return.

As we return, I commend some extraordinary words to the new generation. E.B. White sat in a darkened room in 1938 to see the beginning of television—an experimental electronic box that projected images into the room. Once he saw it, Mr. White wrote: "We shall stand or fall by television—of that I am sure \* \* \* I believe television is going to be the test of the modern world, an that in this new opportunity to see beyond the range of our visions, we shall discover either a new and unbearable disturbance to the general peace, or a saving radiance in the sky."

That radiance falls unevenly today. It is still a dim light in education. It has not fulfilled its potential for children. It has neglected the needs of public television. And in the electoral process it has cast a dark shadow.

This year, television enabled us to see Patriot missiles destroy Scud missiles above the Persian Gulf. Will television in the next thirty years be a Scud or a Patriot? A new generation now has the chance to put the visions back into television, to travel from the wasteland to the promise land, and make television a saving radiance in the sky. ●

#### THE C-17

● Mr. D'AMATO. Mr. President, considering the hurricane of self-congratulation blowing out of Long Beach, you would have thought that the first flight of the McDonnell Douglas C-17 was only a year behind schedule, instead on an actual 19 months late. The publicity whirlwind reached an Orwellian peak when a McDonnell Douglas employee was quoted, unchallenged, as saying that the interminable delays preceding first flight would be justified now by an unusually rapid and successful flight test program, as though the C-17 team was doing us a favor by playing havoc with the aircraft's schedule.

To add a note of sobriety to the giddy goings-on, let me point out two articles that appeared respectively in *Aviation Week & Space Technology* and the *Wall Street Journal*, European edition, on September 23, 1991: "Second C-17 Mis-

sion Cut Short Following Flight Control System Faults" and "McDonnell Douglas Finds Glitch in C-17 Cargo Plane."

I commend these articles to my colleagues, and ask that the full text of both articles be printed in the RECORD immediately after my remarks.

The Articles follow:

[From *Aviation Week & Space Technology*, Sept. 23, 1991]

#### SECOND C-17 MISSION CUT SHORT FOLLOWING FLIGHT CONTROL SYSTEM FAULTS

EDWARDS AFB, CA.—A second C-17 test mission on Sept. 18—expected to last about 4 hr.—was cut to 41 min. when flight control system (FCS) faults appeared. The quadruple-redundant system continued to function, but program officials elected to curtail the flight as a safety precaution.

FCS faults were triggered when the third flight control computer (FCC No. 3) sensed that it was receiving invalid data.

The same FCC was involved in three FCS fault alerts during the first flight, as well. Test force officials said the computer would be replaced.

Although there was no confirmed relationship with FCC No. 3 problems, the No. 2 air data computer was "intermittent" and also will be replaced according to Frank N. Lucero, deputy director of the C-17 Combined Test Force.

The left inboard segment of a leading edge slat failed to deploy fully during the second flight. Douglas engineers were inspecting the slat system late last week to decide what action to take before the third C-17 flight, which was scheduled for Sept. 20.

Landing gear inspections after the transport's first flight determined that the nose gear had not been damaged when it halted during retraction, and no adjustment was made (see p. 18). During the second test mission, first flight conditions were duplicated, but the gear retracted normally, Lucero said.

[From the *Wall Street Journal* (European edition), Sept. 23, 1991]

#### MCDONNELL DOUGLAS FINDS GLITCH IN C-17 CARGO PLANE

(By David J. Jefferson)

NEW YORK.—A week of flight testing has disclosed a problem in the flight-control system of McDonnell Douglas Corp.'s new C-17 air force cargo plane, which finally got off the ground a year late and several million dollars over budget.

But company engineers "have a pretty good idea of what the problem is" and are working to correct it, said Len Impellizzeri, vice president and general manager of the C-17 development program.

The problem, which required resetting the C-17's flight-control computers, was detected during the plane's inaugural flight Sept. 15 from Douglas Aircraft facilities in Long Beach, California to Edwards Air Force Base. The problem reappeared in a second test flight Wednesday but wasn't present in the third flight Friday, a company spokesman said. The problem hasn't grounded the plane because the computer system is "quad redundant," meaning that if a problem is detected in any of the four flight-control and air-data computers in the system, the workload is transferred to the others, Mr. Impellizzeri said.

Despite the glitch, the C-17 performed "just as we expected" in its first three flight tests last week, Mr. Impellizzeri said. Pilots

flew a total of four hours and 16 minutes on three separate missions. On Friday, they documented flight-handling qualities at various altitudes, speeds and configurations and checked out the plane's emergency backup systems.

"The purpose of the flight-test program is to verify the integrity and operating characteristics of the aircraft and correct any problems before the aircraft becomes operational," said Tom Ryan, vice president and general manager of product support for the C-17. A team comprising people from McDonnell Douglas and U.S. air force, army and marine corps personnel will test the cargo plane in some 600 flights over the next two years.

The first C-17 is scheduled to be delivered to the Military Airlift Command in late 1992, with initial operational capability in late 1994. The plane, which is the first four-engine cargo plane featuring a two-member cockpit and an all-digital "fly-by-wire" electric flight-control system, is designed to succeed the Lockheed Corp. C-5A as the U.S. air force's cargo workhorse.

St. Louis-based McDonnell Douglas was allotted \$6.6 billion to develop the plane and manufacture six production aircraft and must pay any expenses over that amount. ●

#### STILL KOWTOWING TO THE CHINESE

● Mr. SIMON. Mr. President, one of the most impressive legislators anywhere in the world is Martin C.M. Lee, who is chairman of the United Democrats of Hong Kong, that colony's largest political party.

The future for freedom in Hong Kong is not as good as it ought to be, in part because Great Britain is not standing up for democracy as fully as British traditions suggest, and in part because the United States seems too eager to please both Great Britain and the People's Republic of China.

I urge my colleagues to read his comments that appeared in the *New York Times* and the *St. Louis Post-Dispatch*, and I ask to insert the article into the RECORD at this point.

The article follows:

[From the *St. Louis Post-Dispatch*, Sept. 6, 1991]

#### STILL KOWTOWING TO THE CHINESE

(By Martin C.M. Lee)

When Prime Minister John Major of Britain arrived in Hong Kong Wednesday after a visit to Beijing, he did not receive a warm welcome.

The people of Hong Kong understand that working relations between Britain and China are vital if the transfer of sovereignty over the territory in 1997 is to proceed smoothly. Yet the Chinese-British relationship amounts to British appeasement of Beijing's demands for control over Hong Kong and to Britain's selling out of the interest of the people of Hong Kong.

The new memorandum of understanding signed on Tuesday by Major and Prime Minister Li Peng of China contrasts sharply with the 1984 joint declaration on Hong Kong that called for democracy and autonomy.

In that declaration, China guaranteed that after 1997 "Hong Kong people would rule Hong Kong" through an elected legislature and enjoy full autonomy except in defense

