SENATE—*Friday, November 19, 1993*

(Legislative day of Tuesday, November 2, 1993)

The Senate met at 9:15 a.m., on the expiration of the recess, and was called to order by the Honorable RUSSELL D. FEINGOLD, a Senator from the State of Wisconsin.

PRAYER

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

Let us pray:

Come unto me, all ye that labour and are heavy laden, and I will give you rest.—Matthew 11:28.

God of our fathers, Father of all peoples, these have been days filled with hard work and long hours. And the Senators' work does not stop when the Senate is in recess or adjournment. Give the Senators wisdom and grace to accomplish the work they have to do, and grant that adjournment will be a profitable time for the Senators themselves, their families, and their constituents at home.

Sovereign Lord, our lives are like an open book to You. Thou knowest us in microscopic detail—past, present, and future. Aware of this, grant us openness to Your love, mercy, and grace, and help us to realize that Thou art not only a God far removed, but a Friend close at hand.

We pray this in His name who is Love Incarnate. 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, November 19, 1993.

To the Senate:

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

ROBERT C. BYRD,
President pro tempore.

Mr. FEINGOLD thereupon assumed the Chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business for not to extend beyond the hour of 9:45 a.m. with Senators permitted to speak therein for not to exceed 5 minutes each, with the time being controlled by the majority leader or his designee.

Mr. REID. Mr. President, I have been designated by the majority leader to handle the morning business time this morning, and I at this time give to myself whatever time I may consume.

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

HEALTH CARE FOR CHILDREN

Mr. REID. Mr. President, 23 years ago, I was elected Lieutenant Governor of the State of Nevada. It was, of course an exciting time in my life. I can remember, though, the first time I was brought back to reality. It was shortly after the Nevada State legislature was convened, and I was the presiding officer of that legislative body. The first day we were in session, a woman came to see me. She proceeded to tell me that if anyone knew she was there, she would get fired. She wanted me to keep in confidence those things that she told me, and I said I would do that.

She came to talk to me about children. She worked for the Nevada State Welfare Department, and she dealt principally with kids. She told me what the State of Nevada did not have is the ability for kids who were on welfare to have their teeth taken care of, and she proceeded to give me the names and histories of children who had rotting teeth, crooked teeth, and how it affected their lives.

Children would talk with their hands over their mouths all the time and, in effect, they became in many instances—especially those she related to me—social outcasts.

What she was asking me to do was to intercede with the Governor and the legislature to allow the State of Nevada to provide dental care for children. I was struck by her sincerity and her cause. As a result of that, I met with the Governor and I met with the State legislative leaders and we were able that year to have the State of Nevada change a long policy and provide dental benefits for children on welfare.

This was extremely important to the State of Nevada. There are people, as a result of the action taken by that legislature, who are now adults, 20 years old, 25 years old, who are leading normal productive lives, as a result of the fact that the State of Nevada allowed those kids to have dental work done for them.

Mr. President, I am pleased to see that President Clinton also recognizes the importance of dental services for our Nation's children. Under the President's health care reform proposal all children under 18 will receive coverage for dental care as part of the guaranteed benefits package. The benefit includes prevention and diagnosis, emergency dental treatment, and treatment of dental disease, all of which are extremely important and, as I outlined before, can mean the difference between a young person having a fulfilled life or one of social problems including staying in the welfare system their whole life, being involved in the criminal justice system and certainly being a burden on the educational system. So it is good that these proposals are part of the President's package.

Proper dental care and prevention is important for our children's health, appearance, and, as I mentioned, self-esteem.

Mr. President, Congress recently designated this Sunday, November 21, as National Children's Day. We have had Father's Day and we have had Mother's Day, but it is only during the past 5 years that we have had National Children's Day.

One of the most important issues facing American children today, however, is health care. In the United States, the greatest country in the history of the world, 12 million Americans under age 21 have absolutely no health insurance. Nine million children, 18 and under, have no coverage and 58 percent of uninsured children are dependents of full-time, full-year workers. Let me repeat that. Fifty-eight percent of uninsured children have parents who work full time.

The current discriminatory and unaffordable system affects children profoundly. President Clinton's proposal for universal coverage and comprehensive benefits adequately provides our children with the security and health care they so desperately need and have needed for a long period of time.

Something like this is long overdue and the longer we debate this issue, the longer we talk about this issue, the more our children will fall between the cracks. We must move forward with

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

health care reform for children. Access to quality care for our children is essential to the fabric and future of our Nation.

In testimony before the Labor and Human Resources Committee, Dr. Howard Pearson, immediate past president of the American Academy of Pediatrics stated:

> The importance of addressing child health issues must not be viewed simply as an act of compassion. Providing children and adolescents access to quality health care, with an emphasis on prevention, is the single most important economic decision that will be made in the health care reform debate.

Dr. Pearson, Mr. President, has hit the nail on the head. What we do not provide our children today we will pay a far greater price for in the future.

A key example of how our system is letting our children down is in the area of immunizations. About half of all 2-year-olds in our country are not adequately protected from wholly preventable diseases, a fact which places this Nation third from the bottom of all countries in this Western Hemisphere.

The President's health care plan aggressively addresses this problem. Under the President's plan, immunizations will be fully covered and included in the benefits package. I say here also, as was said by Dr. Pearson, past president of the American Academy of Pediatrics, this is more than compassion. It is important because it will save this country money and make the United States a more productive country.

Under the President's plan there will be no copayment or deductible for this important preventive service. The President clearly recognizes that $1 invested today in a child's health will save $10 tomorrow on a sick child's medical costs. There cannot be enough emphasis placed on the importance of increased access and affordability of childhood immunizations. Failure to vaccinate children on time was found to be the primary cause of the 1989 measles epidemic, which was an epidemic that afflicted over 55,000 people by 1991, swallowed $160 million in health care costs alone, and claimed the lives of over 100 children under age 5.

The President's health care plan benefits children in other ways as well. One out of four children under age 6 rely upon Medicaid for basic health care benefits, but private physicians are turning these children away because Medicaid underpays a doctor by nearly $40 an individual per visit. Under the Health Security Act proposed by this administration, low-income families will have the same choice of plans as other families in the area. The disincentive for providing care to children on Medicaid will be erased. Low-income children will be able to receive the same treatment and coverage as other children.

The effects of integrating Medicaid into a new health care system will also relieve a great fiscal burden on State governments. By integrating Medicaid, slowing the growth in Medicare, pooling insurance purchasers, and reducing administrative costs, the President's plan will free needed funds in State budgets.

After reform, State dollars that were previously spent on health care can now be spent on education. Our children deserve safe classrooms, more classrooms, learning tools and technology, and a committed and compensated teaching force.

Mr. President, every child deserves a healthy start, but today approximately 15 million women of childbearing age in the United States have no insurance. When they give birth, most arrive at hospitals never having seen a doctor. For every $1 spent on prenatal care, at least $3 is saved in medical costs in the first year alone.

The President's health care plan will provide complete prenatal care to all families. This is significant. Mr. President, the average cost of prenatal care in our country is $400. It is an average. It is more some places, it is less in others. But think how much a premature birth costs. I was recently contacted, visited by two neonatologists from Nevada, and they confirmed what I just stated, that many women, especially teenagers who come to a hospital for delivery, have never seen a physician, and think how much that costs. If we could prevent premature births we would save $1,000 a day minimum for that child. There are many million-dollar premiums—that is the hospital and doctor bills of the first visit cost over $1 million. We simply need to stop that.

The President's plan also provides our Nation's adolescents with access to mental health care services and treatment for drug and alcohol abuse. On public radio today there was an account about the District of Columbia, how during the last 2 years marijuana abuse has gone up among teenagers from 5 percent to almost 50 percent in 2 years. It cannot be denied that our Nation's youth face many challenges today. With violence increasing in our schools, and a quarter of America's teenagers admitting to the use of illegal drugs under the age of 17, and a third of teenagers reported to be binge drinkers of alcohol, it is important we provide these services to our youth. That is, mental health services and treatment for alcohol and drug abuse.

We need to offer them help and extend an opportunity to reach their fullest potential.

That is another reason we should all join to support the administration's health care package. Remember, we are faced every day with lobbyists, lobbying for this special interest and that special interest. Children have no lobbyist, we must speak out for them.

We owe a safe and healthy future to our children. We must ensure that while we continue the debate on health care reform that we do not lose sight of the central issue of reform—health security—security in providing our children with a safe and healthy childhood. Every dollar we invest today to achieve that goal, we will reap at least tenfold in the future.

It is much easier on the wallet and the heart to keep a child well, healthy, and happy.

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

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania is recognized for 10 minutes.

Mr. WOFFORD. I thank the Senator from Nevada.

FACES OF THE HEALTH CARE CRISIS—BLACK LUNG BENEFITS ACT

Mr. WOFFORD. Mr. President, as we wind up this session, we are considering vital legislation like the crime bill, which is crucial to improving the quality of life for families across this country. And it, too, is a health bill in a sense that if you go into an emergency room in a hospital today, you see the victims of violent crime and the cost to our society of violent crime. So action against crime is action for the health of the American people.

But I believe when we come back in January after the crime bill, as I wrote to the President yesterday, the next main order of business in this Congress and our country must be to enact a comprehensive health care reform plan which controls costs and guarantees coverage for every American throughout their lives and regardless of where they live or work, no matter whether they are sick or retired, no matter whether they are children or older Americans.

The debate over the Health Security Act will now proceed—and I believe, be completed—next year. In the meantime, we have to move forward on other pieces of legislation which will address the health care needs of Americans who have especially difficult problems.

For example, earlier this year I came to this floor to introduce legislation to deal with the plight of millions of retirees who face the prospect of losing the health care benefits they worked for and were promised.

I know this morning's focus is on children and, as a cosponsor of the National Children's Day resolution, I believe nothing's more important than ensuring that health care reform meets primary and preventive care needs of American children, so many of whom are today uninsured. But this morning I want to talk about another group—and one person in particular, who embodies the reality of the health care crisis at the other end of the age spectrum. For one of the concerns of children as they grow up is the health care of their parents and their grandparents as they reach the end of their working lives.

The issue of health care reform is often filled with complicated jargon and reams of overwhelming statistics. But behind the numbers, there is a more important bottom line: The cost that our current system is inflicting on millions of families in Pennsylvania and across the country.

For nearly a century, Pennsylvania coal miners provided the fuel that powered our Nation's factories and built our prosperity. Armand Brunozzi, of Jessup, PA, outside of Scranton, worked in the coal mines for nearly 40 years, starting when he was just 14 years old.

In the 1960's, Armand began to experience the symptoms of pneumoconiosis, which afflicts so many former miners after inhaling coal dust day after day, year after year. It is better known as black lung. Armand's father was also a miner, and he died from respiratory problems when Armand was only 4 years old. But there was no universal health insurance to take care of either one of them.

Today, at the age of 78, Armand has a serious respiratory problem. He cannot go for a long walk, especially in a strong wind. In fact, he can only walk for about a half a block before he can hardly breathe. He has trouble climbing steps and coughs and wheezes heavily and frequently.

The Federal Black Lung Program was created in 1969 to compensate miners like Armand Brunozzi, who find themselves severely disabled after years of hard work in dangerous conditions. But the Federal Black Lung Program has become a cumbersome and unresponsive bureaucracy. It does not do enough for the people it was meant to help. Armand Brunozzi is a perfect example.

Armand first filed for Federal black lung benefits in March 1979. That was the beginning of a 14-year legal battle which he is still fighting today. He has yet to see a single dime in benefits.

Twice he filed claims with a local office of the Department of Labor. And twice he was denied. That took 5 years.

Armand then got a hearing before an administrative law judge, but was again denied. Then he appealed to the Department of Labor's Benefits Review Board.

The Board sat on the case for nearly 2 years, asking over and over again for extensions.

Another administrative law judge denied Armand's claim in September of this year. The medical evidence was mixed, they said. Evidence often is. But the bottom line is this: Armand Brunozzi has had trouble breathing for over 25 years. He has offered plenty of medical evidence to prove that his condition is a direct result of years of inhaling coal dust. But Social Security remains his only source of income. He is still waiting for some compensation after nearly a decade and a half of battling the system.

Even if Armand finally wins his case, he may never be compensated as far back as 1979, when he first filed his claim. For years of discomfort, Armand Brunozzi may get nothing.

To help miners like Armand Brunozzi recover the benefits they deserve, I am joining with Senator SIMON and Senator ROBB today to introduce the Black Lung Benefits Restoration Act.

As Armand's case shows, the deck is often stacked against former miners when they file for benefits. The long odds have made it tough for many claimants to find lawyers willing to take their cases. This bill will level the playing field and make the process of applying for benefits simpler and fairer.

The bill also restricts the number of medical opinions that the Government or other defendants can submit as evidence; it helps widows and children collect benefits; and allows victims to refile cases.

In return for four decades of dangerous, back-breaking work, northeastern Pennsylvanians like Armand Brunozzi and southwestern Pennsylvanians like groups I will be speaking to later this morning gathered in Ebensburg and Belle Vernon have been mistreated by the system. These miners, like Armand Brunozzi, deserve the care they need to live a decent life. We owe them that. To those who will argue that we cannot afford to change, the real faces of the health care crisis answer that we cannot afford not to.

I yield the floor.

Mr. DASCHLE addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from South Dakota.

Mr. DASCHLE. Let me commend the distinguished Senator from Pennsylvania for an excellent statement. His commitment to health care is second to none in this Chamber and it was again very indicative this morning.

LET US GIVE EVERY CHILD A HEALTHY START

Mr. DASCHLE. Mr. President, this Sunday America will pay tribute to its children with the observance of National Children's Day.

This day will give us the opportunity to reflect on the importance we place on our young people, who are 33 percent of the population but 100 percent of our future. As we celebrate our children and their potential, let us not forget that too many of them live in poverty, too many of them go hungry every day, and too many lack access to basic health care services that children of all other western nations take for granted.

Indeed, America's enormous strengths and its frustrating weaknesses are nowhere more evident than in the lives of its children.

Many of the problems our youth face are deeply rooted. They will require generations to reverse. Poverty, violence, and the disintegration of the family are not matters that public policies can easily solve in the short run.

The solution to one problem is within our grasp, however. That problem is the lack of access to health care.

Many nations with far fewer resources than the United States have guaranteed all of their citizens, especially their children, access to comprehensive health care services. No other western nation shuts the door on pregnant women in need of prenatal care, erects barriers to children obtaining immunizations, and forces its citizens to wait until they are ill before they can seek care.

America can do better.

THE SOLUTION: HEALTH REFORM

Fortunately, health care reform that brings with it guaranteed coverage of all children is finally within our reach. A growing number of Members of this body are now committed to reforming our country's health care system and ensuring that all Americans have access to a comprehensive set of benefits that will guarantee all of our children a healthy start in life.

They share a common view that any health reform proposal must be grounded in the principles of prevention, health security, and cost control.

Prevention, because it is far less costly and far more humane to prevent illnesses rather than treat them once they occur.

Health security, because only when all Americans have health coverage that can never be taken away, can our families prosper and our children be guaranteed a healthy start in life.

And cost control, because we must slow the growth in health care spending to reverse the erosion in wages and health benefits that hurts our workers and their families.

The Health Security Act introduced by this administration and cosponsored by 31 Senators, furnishes complete prenatal and well-baby care, immunizations, and preventive services, at no cost to the family. Today these services are covered by only about one-third of private insurance plans.

Most importantly, the bill assures our children and their families that their health care can never be taken away, regardless of their health or employment status.

Marian Wright Edelman, the president of the Children's Defense Fund and one of our country's most outspoken advocates for young people, recently noted that:

> Obtaining access to quality health care for all American children and pregnant women is something child advocates have dreamed of and worked toward for decades. Now, at long last, there is a real possibility of making that dream a reality * * * Child advocates must not allow this opportunity to be wasted.

The American Academy of Pediatrics shares Ms. Edelman's view. This week

the academy issued a report card comparing how the major reform plans address children's health. Only the President's proposal showed progress or significant improvement in every category listed, from guaranteeing coverage to all Americans to preserving choice of providers and promoting health lifestyles.

Only the single-payer plan came close to getting the high marks the President's proposal received. Other plans fell disappointingly short on far too many categories important to our Nation's children.

THE PULS FAMILY

As we think about health reform and how it will benefit our Nation's citizens, we should ask ourselves: Who are we really trying to help?

We have all heard the statistics: Over 9 million of our Nation's children have no health insurance, and 500,000 pregnant women lack coverage that entitles them to basic prenatal care services. Tens of millions of families slip in and out of the ranks of the uninsured each year.

But let us not forget that behind each of these statistics is real person or family that has been deeply affected by our health system's failings.

A particular case of a family I met this past weekend in Sioux Falls, SD, comes to my mind. A family whose plight is sadly all too common.

Jean and Greg Puls have a 10-year-old son, Matthew, who has had diabetes since he was four. Matthew had coverage under a policy issued by Mrs. Puls' former employer, Sioux Valley Hospital. The family didn't dare drop this policy, because they feared they would have trouble finding another insurer willing to cover their son. They were right.

Their troubles started when Sioux Valley Hospital switched its health insurer, and the new company agreed to cover Matthew only until the family's health insurance contract expired in early 1994. Fearing any gaps in coverage, the family began a frantic search for an alternative insurance plan.

Company after company refused them coverage because of Matthew's health condition. The Puls watched the rejection letters pile up, feeling more discouraged with each new notice. Mrs. Puls describes this experience as frustrating and discouraging.

With the deadline for their policy's expiration approaching, Mr. and Mrs. Puls finally found a company, based in another State, that would insure Matthew, but only with a waiver specifying that coverage for Matthew's diabetes would not kick in for 1 year. During this year, the family would be financially vulnerable to all expenses associated with his condition—expenses for which coverage is most important.

Mr. and Mrs. Puls also fear what may lie in the policy's fine print, since their old plan had clauses that excluded coverage of necessary items like the syringes and test strips that Matthew must use regularly. And their fear of being without coverage caused them to overlap their two policies, for extra protection. This means they are now paying over $600 per month for duplicative coverage.

The Puls family has little trust in a health care system and an insurance industry that has caused them so much anxiety and frustration. Jean Puls notes that, for all of the money they have put into the health care system, they have not been able to get the simple peace of mind they seek.

We need to reform our health care system so that the energetic and otherwise healthy Matthew Pulses of our country are allowed to achieve their full potential. Matthew and his family do not deserve to be dragged down by a health condition over which they have no control, and a health care system that protects only the healthy.

While we are a country that reveres youth and deeply cares about our children, our actions do not always reflect this commitment to our young ones. We have far too many children afflicted with diseases and disabilities that could easily have been prevented with a simple immunization or basic prenatal care services.

As we collectively reflect on the importance we place on our Nation's children, let us make a commitment to give our youth one of the most important gifts we can promise them—health security.

The President and First Lady have taken the first step by presenting to Congress a plan that will reverse the trends we see now. Let's take the challenge. If we do, our Nation and its children will be the biggest beneficiaries.

NATIONAL CHILDREN'S DAY

Mr. KENNEDY. Mr. President, this Sunday we honor our most precious national resource—our children—with National Children's Day. We do so at a time of great challenge and great hope. Overburdened schools, unsafe streets, and inadequate health care jeopardize the lives and dreams of too many children. But we are also taking important steps to meet these challenges.

Earlier this month, the Senate voted to expand and strengthen immunization programs for children. Congress is now considering important legislation on education reform. The Family and Medical Leave Act, now sighed by President Clinton, enables parents to be at home with children after birth or during a critical illness, without fear of losing their jobs. And most important, Congress is now beginning action on President Clinton's health reform bill; among its most significant provisions are those which will provide comprehensive, basic care for all children.

There is a great deal to be done to protect the lives and futures of our children. Now we have an administration which has made the well-being of children a high priority. I look forward to working with my colleagues and President Clinton to translate our attention on National Children's Day to a year-round commitment.

I ask unanimous consent to include in the RECORD the following remarks printed in the health care policy briefing issue of Roll Call, October 18, 1993:

HEALTH CARE REFORM AND CHILDREN

(By Senator Edward M. Kennedy)

The debate on health care reform now beginning in Congress bears enormous significance for the country's future. The choices we make now have the potential to achieve lasting health security for all Americans, just as Medicare fulfilled that promise for elderly citizens a generation ago. But perhaps no aspect of the coming reform will be more important for our future than the quality of care we provide for children. Every childhood dream and talent that is blighted by needless disease is a tragedy that saps our strength and spirit. Every child that we save today represents new hope for tomorrow.

The current flawed state of care for children is a shocking indictment of the present health care system. A few years ago, a measles epidemic affected 55,000 children, leaving over 130 dead and many others with permanent disabilities. This epidemic didn't have to happen. With adequate immunization, we could have prevented it. But we are lagging far behind where we should be in reaching the goal of comprehensive immunization. The Centers for Disease Control and Prevention estimate that only half of two-year-olds in this country are adequately immunized, with rates as low as 10% in many urban areas. That deplorable situation ranks us behind all but two other countries in the Western hemisphere.

Infant mortality and low birthweight also continue to be serious problems. One of every hundred newborn American children dies in the first year of life, and the infant mortality rate for black children is twice as high. Nineteen other nations do better. One in seven children is born weighing less than 5.5 pounds, with severe consequences for long-term health. We know that adequate prenatal care and well-baby care can cut all these rates dramatically. But 25% of pregnant women do not receive such care.

Adolescent health is another neglected area. The CDC estimate that 2.5 million teenagers contract a sexually transmitted disease each year. Left undetected or untreated, STDs can have long-term effects on fertility and on infants born to infected mothers. Substance abuse among adolescents continues to be a major issue. A quarter of adolescents report they have used illegal drugs by age seventeen; a third of high school seniors admit to being binge drinkers of alcohol. We know how to reduce these numbers substantially—by better preventive care and health education.

In the last two years, we have made progress in meeting some of these challenges. We have expanded prenatal and postnatal health programs through community health centers and home visiting programs. We have improved access to substance abuse programs for pregnant women. Increased bulk purchases of vaccines have ensured more adequate supplies for state and local health departments.

Health promotion and disease prevention make economic sense as well. Each dollar spent on comprehensive maternity care for pregnant women saves three dollars in later health costs. A dollar spent on childhood immunization saves ten dollars. By investing early in children's health, we can save unnecessary pain and suffering, while at the same time saving billions of dollars in health care costs.

Unfortunately, our present patchwork health insurance system has so many holes that it fails to promote prevention and to achieve these savings. In 1991, more than eight million children were not covered by either health insurance or Medicaid. For these children, preventive care is a luxury. Visits to a doctor or nurse are usually delayed until there is a serious problem, and the emergency room is often the only family doctor these children know. The consequences of these delays are costly for the health care system, and often devastating for the children and their families.

Even for families who have insurance, parental unemployment or job changes can lead to gaps in coverage. Children may not receive consistent preventive care during this period, and if a serious illness results, it is often impossible for parents to obtain new insurance.

These problems are not the fault of dedicated medical professionals. The system is the villain. Our challenge is to ensure that all children have access to timely, affordable, and comprehensive care. Fortunately, the health reform plan proposed by President and Mrs. Clinton is well-designed to reach these goals.

By ensuring that all children are covered—without interruption—from the moment of birth, the plan will put an end to the national shame of children without insurance. Parents will no longer worry that the loss of a job will endanger their children's health—let alone their own. Nor will parents of seriously ill children be locked into a job by the fear that if they leave for a better position, their new employer's insurer may refuse them coverage.

By emphasizing preventive care, the benefit package will dramatically improve infant and childhood health. The package covers prenatal care, immunizations, diagnostic tests, regular checkups, vision and hearing tests, and preventive dental care. There is no copayment for these services, so that parents will not hesitate to use them. The plan will also phase in benefits for mental health and substance abuse treatment that will help teenager as well as adults.

By increasing support for community health centers and the National Health Service Corps, the plan will improve access to essential services for children among underserved populations, who are frequently at highest risk.

In other key areas, Congress should continue to work with the Administration to find ways to address some important remaining issues. The benefit package should include an adequate number of clinician visits for preventive health care. To the maximum extent possible, health services should be available to adolescents in the places where they are most likely to use them, especially in their schools. We must pay careful attention to the plan's provision for children with special health care needs, including rehabilitation services and equipment and devices for children who have impaired hearing or speech. Children who now receive these services under Medicaid should not lose them in health reform. Finally, we must be certain that copayments and deductibles do not disadvantage low-income families and children with special health care needs.

Overall, the Administration's plan is an historic opportunity for America's children. If Congress meets its responsibility as effectively as the President and the First Lady have met theirs, the decades-long battle for genuine health reform will finally be won, and this generation of children may well be the greatest beneficiaries of all.

SECURE CHOICE LEGISLATION

Mr. SIMPSON. Mr. President, I rise to cosponsor the secure choice long-term care bill, which was introduced by Senators DOLE and PACKWOOD on October 28, 1993. This bill confronts the challenge of providing long-term care services to our Nation's senior citizens and disabled individuals. It is a thoughtful and comprehensive three-part legislative plan, which tackles the explosive demand for affordable long-term care services. The philosophy behind this legislation is that the Federal Government should limit its role in furnishing long-term care to providing assistance to individuals who have low-incomes and assets either because of their financial situation or because of catastrophic long-term care expenses.

First, the bill provides for nursing home care and expanded home and community-based care for functionally impaired individuals with incomes below the Federal poverty level, $6,970 in 1993, through a new title of the Social Security Act. Long-term care services now provided under Medicaid would be moved to this new title XXI.

Second, Secure Choice creates a public-private partnership to assist Americans with moderate incomes less than 300 percent of the Federal poverty level—about $21,000—to purchase long-term care insurance. This bill would make it more affordable because the Federal and State governments would join together to pay part of the cost of long-term care services when they are needed.

Finally, Secure Choice clarifies that all long-term care services—medical care and personal care—are treated as medical expenses under the tax law. This would allow individuals to take tax deductions for out-of-pocket long-term care expenses and insurance premiums—to the extent they exceed 7.5 percent of adjusted gross income. It further provides that employer-paid long-term care services and insurance would be a tax-free employee benefit. By removing barriers that presently discourage employers from offering long-term care benefits to their employees these reforms will assist in the development of the private long-term care insurance market.

The bill also specifies consumer protection standards for long-term care insurance policies. It would protect consumers by guaranteeing policy renewability and portability, and by requiring policies to meet standards developed by the National Association of Insurance Commissioners. Policies that do not meet these standards would be denied the favorable tax treatment. These standards would protect consumers from unscrupulous sales practices and would enable consumers to get more of their money's worth from the purchase of a long-term care insurance policy.

With the elderly population skyrocketing, the need for long-term care grows, especially, the need for home and community-based care. We must find ways to make long-term care more affordable, and this legislation is a good step in the direction of providing much more affordable long-term care benefits for the elderly and functionally disabled of our country.

TRIBUTE TO JAMES S. FREE

Mr. HEFLIN. Mr. President, earlier this month, I had the opportunity to attend an 85th birthday party for James Stillman Free, a native of Gordo, AL, and, for 33 years, the Washington correspondent for Birmingham News. Jim has enjoyed a rich and colorful career as a journalist and historian, and it was a wonderful experience for his many friends and associate as we gathered with him to celebrate and reflect.

Jim's 33 years as the Birmingham News' Washington correspondent, was the longest tenure for any Washington correspondent for Alabama newspapers. He spent a total of 35 years with that newspaper. He also served as the Washington correspondent for the Chicago Sun, Raliegh News and Observer, and Winston-Salem Journal during the 1940's and 1950's.

His coverage extended from the Great Depression and New Deal; through World War II preparations and his own participation; the McCarthy "Red Scare" era; the civil rights movement; the assassinations of John and Robert Kennedy and Martin Luther King; and all national defense, medical, educational, and environmental issues that affected Alabama. He was an on-the-scenes, eye witness to much of the social change and history of this century.

His many "scoops" included President Truman's 1946 order for the Army to take over strike-threatened railroads, and he led the national press with his stories on the Justice Department's civil rights decisions. Jim filed overseas reports on the 1957 Berlin crisis and NATO operations in the North Sea, Western Europe, and the United Kingdom in 1966. He has served as the historian for the Gridiron Club and was the author of "The First One Hundred Years: A Casual Chronicle of the Gridiron Club." He is also the author of three other books.

It is an understatement to say that Jim Free is a highly regarded and respected figure. He is an all-around great fellow. As one former Member of Congress told me, Jim never tried to purposely hurt anyone through his reporting. His professional ethics dictated that he would let the facts speak for themselves. He never tried to find dirt on every Government official as some reporters today do. He was not a practitioner of "gotcha" journalism.

Jim is a gentleman who possesses all the traits that one would expect to find in a gentleman—civility, an educated mind, sensitivity, courteousness, and a healthy respect for the views of others.

I am proud to congratulate Jim Free on his lifetime of service to the cause of informing citizens about the world around them, and again extend my best wishes to him on the occasion of his recent birthday. I look forward to celebrating many, many more with him in the years to come.

ESTELLE STACY CARRIER

Mr. WALLOP. Mr. President, anyone who has been involved in Republican politics in Wyoming for the last 25 years knew Estelle Stacy Carrier. Estelle was a constant, principled Republican who did not tolerate adventure in the party. She was extremely passionate about the things she stood for. This passion was apparent not only in her service to the State of Wyoming but to America. Her service as vice chairman of the Wyoming Republican State Committee and president of the board of trustees of the Converse County Library, just to name a few of her endeavors, made her well known to many around the State. This same devotion was displayed at the national level where she served as Republican National Committeewoman and was appointed to the U.S. Defense Department's Defense Advisory Committee on Women in the Services. Mrs. Carrier has been listed in "Who's Who in America," and "Who's Who in Politics."

People like Estelle Carrier sustained the tradition of strength and equality that Wyoming was built upon and still stands for. One cannot help but draw a correlation between her and another strong woman in Wyoming history, Nellie Tayloe Ross. Both dedicated their lives to their community and State and became an inspection to all who live in Wyoming. They both forged the future for a proud and hearty breed of Wyoming women.

As a dedicated mother and career women, Estelle Stacy Carrier lived a full life. Her husband John lives in Casper and works as a petroleum geologist. Her son Richard resides in Cheyenne and is the U.S. attorney for Wyoming. Following the death of her first husband, Leonard Stacy, she continued to run an oil and mineral exploration company that they started in 1963 until her death last Sunday.

Estelle was able to touch many people in her life and affect them profoundly. She will be missed and rightly so.

IRRESPONSIBLE CONGRESS? HERE IS TODAY'S BOXSCORE

Mr. HELMS. Mr. President, the Federal debt stood at $4,468,602,585,525.99 as of the close of business yesterday, November 18. Averaged out, every man, woman, and child in America owes a part of this massive debt, and that per capita share is $17,397.10.

CLARIFYING THE WOOL PROVISIONS

Mr. BAUCUS. I want to clarify three issues in regards to the relationship of the wool provisions of the 1994 Agriculture appropriations bill to the wool provisions in S. 1458, which authorized the wool program to continue until December 31, 1995.

First, is the recourse loan created in S. 1458 for the 1994 marketing years intended to operate at no cost to the Government in fiscal year 1994 by means of the Secretary of Agriculture charging participating wool and mohair producers a fee to cover the cost of administering the recourse loans, and requiring repayment of the loans within the same fiscal year that the loan is made?

Mr. LEAHY. The Senator is correct

Mr. BAUCUS. Second, is the purpose of incentive payments paid to wool or mohair producers in the 1994 and 1995 marketing years other than to support the price of wool or mohair?

Mr. LEAHY. The Senator is correct.

Mr. BAUCUS. Third, is the Secretary of Agriculture prohibited from making loans or payments which are not obligated by December 31, 1995, during the 1996 calendar year, but is required to make 1995 marketing year loans or payments already obligated by December 31, 1995, during calendar year 1996?

Mr. LEAHY. The Senator is correct.

WORLD AIDS DAY AT BRYANT COLLEGE

Mr. PELL. Mr. President, I would like to call the attention of the Senate to the efforts of Bryant College in Smithfield, RI, in connection with World AIDS Awareness Day on December 1, 1993.

On that day, Bryant College will have the distinction of being the only site in Rhode Island, and the only college or university in the country, to be designated an official U.S. postal station for the purposes of issuing a special commemorative cancellation of the new AIDS awareness stamp.

For that one day, the Smithfield campus will be designated "Bryant College Station," and the sale of commemorative cachets will serve as a fundraiser for AIDS education programs offered on the Bryant campus, and by Rhode Island Project AIDS. Classes that day will also be devoted to discussion of the medical, social, and financial impacts of the AIDS pandemic.

Bryant College is a leader in AIDS education efforts. The official unveiling of the new AIDS awareness stamp and its accompanying commemorative cancellation will focus attention on the Bryant's efforts to combat the scourge of AIDS and promote preventive measures to avoid exposure to the HIV virus.

Bryant will conduct AIDS education programs for its residence assistants and staff over the next several months to help them answer confidential questions from their peers. Bryant's fraternities and sororities have worked to raise awareness of a number of AIDS-related issues, and are sponsoring speakers and funding programs on the AIDS crisis.

To quote Bryant College President William E. Trueheart,

> AIDS does not discriminate. The HIV virus that causes AIDS can strike anyone, regardless of income, age, gender, race, or sexual orientation. Young people are especially vulnerable, and we need to help them understand that they are at risk, despite their youth, health, and vitality.

President Trueheart's words of warning are confirmed all too alarmingly by figures released by the Centers for Disease Control and Prevention which show that AIDS is the leading cause of death among American men aged 25 to 44, and the fourth leading cause among American women of that same group.

In 1990, CDC analyzed blood samples from 35 universities throughout the country and found that 1 of every 500 students tested positive for HIV, the virus which leads to AIDS. And while CDC cautions that this statistic does not indicate students' chances of being infected with HIV, CDC does warn that the chance of infection depends on their age, sex, and location—and most importantly, on their behavior.

The risk of exposure shows no sign of abating. Yet, as Doris Horridge, a health educator at Bryant, noted, "The risk can be minimized through awareness and education."

Mr. President, Bryant College has been widely recognized as one of the finest business education schools in the United States. The college has built a proud record of educating men and women who have become leaders in the field of business, industry, government, and society. I am very pleased that the school is now undertaking such an aggressive program in student health.

As we prepare to debate the merits of the various health care proposals which are before this Chamber, I would point out that Bryant College's health care system contains many features

that will be critical to include in any national reform plan: it is available to all, at a reasonable cost, and engages in an active program of health education to foster preventive care.

I commend Bryant College for their efforts to raise the issue of AIDS awareness and education to the forefront of their college community's discussion. I urge other institutions of higher education to follow Bryant College's example in protecting the men and women who will lead this country into the next century.

COSPONSORSHIP OF S. 1614, THE BETTER NUTRITION AND HEALTH FOR CHILDREN ACT OF 1993

Mr. DURENBERGER. Mr. President, I rise today to announce my cosponsorship of S. 1614, the Better Nutrition and Health for Children Act of 1993.

S. 1614 was introduced by my distinguished colleague from Vermont, Senator LEAHY, on November 2. This bill amends the Child Nutrition Act of 1966 and the National Lunch Act to promote healthy nutrition for children and authorizes full funding for WIC.

Mr. President, I have always supported responsible legislation that promotes better nutrition and better health for children. The programs targeted for increases by this bill have proven to be successful and worthwhile investments of public funds in dealing with child nutrition.

That is why in my 15 years as a Senator I have consistently supported both programmatic improvements and increased funding levels for these programs, including my cosponsorship earlier this year of the sense-of-the-Senate resolution on the Every Fifth Child Act.

The WIC Program provides nutritious supplemental foods to low-income pregnant, postpartum and breast feeding women, and to children up to age five who are determined to be at nutritional risk. Recipients also receive nutrition education, advice and assistance on the importance of breast feeding, and referrals to the health care system.

The WIC Program also has fiscal benefits. A Department of Agriculture study found that for every dollar invested in WIC up to $4 is saved by the Federal Government.

While I fully and wholeheartedly support these programs, I must also say I have severe concerns about its funding expectations. I believe deficit reduction is just as vital an investment in our children's future as direct program expenditures. So, while I have cosponsored this legislation, I cannot emphasize enough the need to address our growing national debt, as we strive to deliver on the funding expectations of this bill.

I also believe, Mr. President, that we must view expansion of valuable programs like WIC in the larger context of governmental reform and welfare reform.

During this coming year, the Congress will be asked to consider a major initiative from the Clinton administration to create new incentives for able bodied low-income persons to become self-sufficient.

We may also be asked to shift more authority to States and local communities for establishing priorities for spending money now earmarked for dozens of categorical programs that serve families and children.

Both of these initiatives represent opportunities to not only achieve the goals and potential of WIC, but to do so in a more effective and efficient manner.

Overall, Mr. President, I believe that this legislation establishes sensible priorities that will expand the effectiveness of the WIC Program.

I look forward to working with my colleagues on both sides of the aisle to create an environment in which we can work together on these and other pressing human needs in a fiscally responsible manner.

I yield the floor.

AN INTERNATIONAL MORATORIUM ON LANDMINE EXPORTS

Mr. LEAHY. Mr. President, last week I introduced in the United Nations a resolution on behalf of the U.S. Government calling on all countries to agree to an international moratorium on exports of antipersonnel landmines. I am pleased to say that yesterday the resolution was passed by consensus by the U.N. Disarmament Committee. From there it goes to the General Assembly, where I am confident it will also pass by consensus.

This resolution is based on the U.S. moratorium on exports of antipersonnel landmines which became law last year. Two months ago, the Senate unanimously extended the U.S. moratorium for another 3 years. That amendment will become law when the President signs the 1994 Defense authorization bill.

Thanks to the strong support and hard work of Ambassador Madeline Albright, Ambassador Karl F. Inderfurth, and their staffs, over 70 countries cosponsored the U.S. resolution in the United Nations. This resolution, for the first time in history, puts all 184 U.N. member nations on record supporting a global halt to the trade in antipersonnel landmines, which have killed and injured hundreds of thousands of innocent people around the world.

Over 100 million of these weapons are scattered in over 60 countries. A landmine is not itself a weapon of mass destruction, but millions of millions of mines waiting to explode have the same effect over a period of years. I doubt many people realize that more civilians may have been killed or maimed by landmines than all the chemical and biological weapons combined.

Mr. President, there are two challenges ahead. First, is to get rid of the millions of m lying in wait for unsuspecting victims, in many places long after the conflict has ended and the reasons for it have been forgotten. Clearing the mines is an enormously costly, dangerous, and time-consuming task. For $3 you can buy a landmine that will kill or horribly maim a child. Ym a child. Yet to get rid of that one mine in countries like Cambodia or Angola or Bosnia costs upward of $1,000.

Recently, U.N. Undersecretary General for Humanitarian Affairs Jan Eliasson, wrote an article on the scourge of landmines and makes the case for a concerted, international effort to deal with it. I ask unanimous consent that the text of Mr. Eliasson's article be printed in the RECORD at the end of my remarks.

The second challenge is to ensure that the old mines are not replaced with new ones. An international moratorium on exports is an important first step, and yesterday's action in the United Nations is very encouraging. But it is only a first step. Next we must deal with the difficult issues of production, possession and use of landmines. Our own troops have as much to gain from this as the people in the countries where mines are used, and where U.N. and U.S. peacekeeping forces may be sent in the future. According to retired Marine Corps Commandant, Gen. Al Grey, "We kill more Americans with our mines than we do anybody else."

Mr. President, every month thousands of innocent people become the latest victims of landmines. If they are lucky enough to survive, their lives are shattered. We can stop this.

The Congress has made it clear that it wants the United States to be a leader in stopping this senseless slaughter. Last week at the White House I spoke with President Clinton. He shares this goal. So do Vice President GORE and Secretary of State Christoper. People everywhere want this.

Let us work together so that by the end of this decade—by the beginning of the next century—innocent people will no longer have to live in fear of landmines.

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

[From the Herald Tribune, Nov. 4, 1993]

THE LAND-MINE PLAGUE

(By Jan Eliasson)

UNITED NATIONS, NY.—The United Nations General Assembly turned its attention recently to the legacy of death from 100 million land mines sown across the globe. Calling for a report by next year on improving

international mine-clearing efforts, the Assembly formally recognized the need to assist the estimated 62 countries afflicted by this scourge.

Eighty-eight countries co-sponsored a resolution, introduced by the European Community, focusing on the human tragedy caused by the failure to remove mines.

Land mines have turned large areas of the world into a permanent no-man's-land. Most mines lie buried and unmarked, part of a deliberate strategy to terrorize civilians, continuing to kill innocent people long after wars end. (Mines laid in Poland during World War II killed 4,000 people after 1945.)

Many of the world's 19 million refugees and 25 million displaced persons are unable to return home for fear of death or dismemberment by these weapons. In Cambodia, people are still dying because of the 4 million mines left after two decades of civil war. In Angola, fertile lands lie fallow because farmers fear to tread on them. More than 20,000 Angolian amputees—most of them women and children—bear witness to the danger.

Mines continue to be planted all over the world. To slow the proliferation, some manufacturing countries have imposed export bans, and the United States is calling for a worldwide export moratorium. But 35 countries continue to manufacture these indiscriminate weapons—many of which are designed to maim rather than kill.

Little research has been done to develop new technology for mine clearance. Mostly people must still prod the ground, sometimes assisted by dogs sniffing out the explosives, to locate mines; a slow and dangerous process. In Kuwait, where up to 7 million mines were sown during the Gulf War, 84 demining experts were killed or injured while clearing them. At least 30 people have died in UN demining operations in Afghanistan.

A 1980 UN treaty prohibits the use of land mines against civilians, and directs governments to destroy mines after conflicts end. But only 39 countries have ratified the treaty. Many governments are calling for it to include verification measures and a clause to ensure that mines are built to be detectable and easily removed once a war is over.

Most urgent is the need for development of new mine-clearing technology and local training campaigns to detect and disarm mines. The international community must join to bring the plague to an end.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1993

The ACTING PRESIDENT pro tempore. Under the previous order the Senate will now resume consideration of S. 1607 which the clerk will report.

The bill clerk read as follows:

A bill (S. 1607) to control and prevent crime.

POLICING GRANT PROCEDURES

Mr. HOLLINGS. Mr. President I would like to take a few minutes to clarify the application process for the community policing and cops on the beat programs with regard to communities with a population less than 150,000. It is my understanding The Violent Crime Control and Law Enforcement Act of 1993 provides that local governments with a population less than 150,000 must initially submit their application to the State office, as designated in section 507. It is this State office which will perform the initial review.

Mr. BIDEN. Exactly. That is my understanding.

Mr. HATCH. The Senator from South Carolina is correct.

Mr. HOLLINGS. As I understand the bill, this initial review by the State office will proceed pursuant to regulations and criteria specified by the U.S. Attorney General. After this initial review, the State office will submit to the U.S. Attorney General a list of all applications and all supporting materials, in order of their likelihood of achieving the program's goals. I would like to stress that all applications must be forwarded to the Attorney General. The State office is not to determine which communities will receive grants, rather they are to perform only preliminary reviews for the U.S. Attorney General.

In this regard, I want to emphasis the need to institute safeguards which assure that every application and all supporting materials received by the State office are forwarded to the Attorney General. Recently, in my own State of South Carolina, a grant application made pursuant to the Police Hiring Supplement, was lost between the State office and the Department of Justice. It is imperative that the regulations promulgated by the Attorney General institute measures to ensure that this cannot occur.

Mr. BIDEN. I agree with the Senator from South Carolina.

Mr. HOLLINGS. Additionally, it is my understanding that although the State offices may, on a voluntary basis, recommend specific applications which they believe are particularly meritorious, they may not recommend that some applications not be funded.

Mr. BIDEN. The Senator from South Carolina is correct, the State office is required to forward all applications to the Attorney General. The State office does not have authority to pick and choose which applications will be submitted.

Mr. HATCH. That is my understanding.

Mr. HOLLINGS. Once all applications, supporting material, and the State office's list are submitted, then the U.S. Attorney General makes the determination which communities will receive grants. This decision is completely within the discretion of the Attorney General. Having broad latitude, the Attorney General is not bound by the rankings provided by the State office. That is my understanding.

Mr. BIDEN. That is correct.

Mr. HATCH. That is exactly how I understand the procedure to work.

PRISONERS MUST WORK SENSE-OF-THE-SENATE RESOLUTION

Mr. BROWN. Mr. President, I rise to thank my colleague, the Senator from Delaware, for agreeing to accept my sense-of-the-Senate resolution on expanding work opportunities for able-bodied Federal prisoners. I will insert at another point in the RECORD a short statement on this resolution, but for the moment I wanted to propound a question to the Senator.

Mr. BIDEN. I would be pleased to respond to the Senator's question.

Mr. BROWN. I thank the Senator. Is it the intention of the Senator from Delaware to have the Judiciary Committee review the matter of Federal prison inmate employment?

Mr. BIDEN. I would say to the Senator from Colorado that it is this Senator's intention, as chairman of the Judiciary Committee, to review this matter once the Attorney General makes her report to the Congress and to take all necessary and appropriate action at that time.

Mr. BROWN. I thank the Senator and yield the floor.

Mr. BIDEN. Mr. President, I ask unanimous consent that a letter be printed in the RECORD.

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

NATIONAL ORGANIZATION OF BLACK LAW ENFORCEMENT EXECUTIVES,
Alexandria, VA, November 10, 1993.

Senator JOSEPH R. BIDEN, Jr.,
Chairman, U.S. Senate, Committee on the Judiciary, Washington, DC.

DEAR SENATOR BIDEN: On behalf of the membership of NOBLE, I write to commend you for your untiring efforts with respect to the most significant comprehensive anti-crime bill that has ever been considered in the United States.

Furthermore, we urge Congress to include a ban on the manufacture and sale of military-style assault weapons. Candidly, we are puzzled as to why anyone would consider to do otherwise, unless they were directly involved in the manufacturing and/or sale of weapons of that type.

Also, we strongly support the inclusion of boot camps, innovative drug programs, and creative efforts to negate the violent activity of youths.

Keep up the good work and let us know what we can do to assist in getting the crime bill passed now.

Take care and best regards.

Sincerely,

JOSEPH M. WRIGHT,
Executive Director.

Mr. DECONCINI. Mr. President, I rise today to express my support for S. 1607, the Violent Crime Control and Law Enforcement Act of 1993. I look forward to the day this legislation, combined with the crime packages already passed by the House of Representatives, will be signed into law by President Clinton.

I am especially pleased to see some of my proposals contained in the final version of this bill. Included in the crime package will be an amendment

to provide funding for native Americans, an amendment creating a task force to help locate missing and exploited children, a resolution regarding the exemption of Federal law enforcement personnel from budget cuts, and an amendment creating a gang resistance education and training program. I would like to take this opportunity to enter my statements regarding all of the above into the RECORD.

FUNDING FOR NATIVE AMERICANS

Mr. President, I rise with my distinguished colleagues, Senators DASCHLE, REID, INOUYE, and CAMPBELL, to speak on an amendment regarding funding for native Americans that was accepted last week.

As the Senate continues consideration of S. 1607, the Violent Crime Control and Law Enforcement Act of 1993, we will hear numerous proposals, ideas, and solutions, from both sides of the aisle, aimed at fighting the rising tide of crime plaguing our Nation today.

Some of the most important provisions that will be offered would increase the number of police officers on our Nation's street corners and authorize funding for State and local law enforcement to support police, rural anticrime efforts, and drug treatment in the criminal justice system.

But I want to take this opportunity to turn the focus of these efforts in a different direction. While crime in our inner cities and other communities is a familiar sight to us all, not so visible is the plight of the equally crime-ridden Indian reservations.

The need for more law enforcement personnel and funding in Indian country is desperate and immediate. Due to the geographic size of many reservations, it is difficult, if not impossible, for tribal police officers to effectively combat crime.

For example, the Navajo Nation—land comparable in size to the State of West Virginia—has only 337 commissioned Navajo tribal police officers and 28 criminal investigators to cover the entire area.

For many tribes, the situation is even more dangerous. Three years ago, in my home State of Arizona, two of the smallest Indian tribes in my State faced a similar dilemma. Two reservations, located next to each other and spanning 1.1 million acres with a combined population of 2,200, shared one law enforcement agent. This agent worked around the clock, 24 hours a day, 7 days a week, until we could finally get the tribe a portion of money to hire a second officer.

Mr. President, this is appalling. Because of these shortages, tribal law enforcement agents have no choice but to put crime prevention on Indian land secondary to responding to everyday calls for service. And, preventive law enforcement on most Indian lands by the Bureau of Indian Affairs and tribal police officers is non-existent.

The incidents and types of crimes that occur in Indian country are not unique. Nor is having an insufficient number of law enforcement personnel. But what is unique are some of the obstacles that stand in the way of Indian tribes' easy access to Federal funds for law enforcement purposes. Our amendment that was accepted last week will begin to eliminate some of these obstacles.

For example, if an Indian tribe wished to submit a grant application to apply for funds under the "Cops on the Beat" provision of S. 1607, the application would need to be submitted through a State office. State review would be required even though Indian tribes are distinct sovereign governments and are not part of any State governmental system or subject to State authority.

Our amendment would allow for Indian tribes to apply directly to the Attorney General for funding.

A second obstacle that may prevent Indian tribes from receiving the funding they deserve is the inability of tribes to meet the matching requirements required by most Federal funding programs.

Practically all funding for law enforcement programs on Indian lands comes from congressional appropriations to the Department of the Interior. As a result, Indian tribes have little—if any—non-Federal sources of funds with which they can meet matching requirements.

Our amendment would provide Indian tribes with the same abilities to meet matching requirements as the District of Columbia now possesses. The District of Columbia can use funds appropriated by Congress for law enforcement purposes to provide the non-Federal share of the cost of certain programs or projects. Indian tribes should be accorded this same privilege.

Mr. President, the extraordinary need for more law enforcement personnel in Indian country is clear. I would like to commend President Zah, leader of the Navajo Nation, in his efforts to make Congress aware of the dire situation that exists in Indian country today. It is imperative that obstacles to funding be removed and that any application for funding from an Indian tribe for law enforcement purposes be given the utmost consideration.

Mr. President, I would also like to mention that I am a cosponsor of an amendment of my distinguished colleague and friend, Senator INOUYE, chairman of the Indian Affairs Committee, which was also accepted last week.

Senator INOUYE'S amendment takes the provisions of our amendment and applies them across the board to ensure that native Americans benefit from these provisions to the highest degree. I am glad that Senator INOUYE and I were able to work together to coordinate our joint efforts for native Americans.

The adoption of these amendments will ensure that the Violent Crime Control and Law Enforcement Act of 1993 will be as effective a tool to Indian nations in combating crime as it will be in fighting crime nationwide, and I thank my colleagues for their support.

INTRODUCTION OF THE "MISSING AND EXPLOITED CHILDREN TASK FORCE ACT OF 1993"

Mr. President, on September 30, 1993, around 10:30 at night, 12-year-old Polly Klaas and two of her girlfriends had just settled down for a late night card game at a spur-of-the-moment Friday night slumber party. Not more than an hour later, Polly's mother was awakened by one of the girls who stood by her bedside, wide-eyed and terrified, and related a story of how a man, armed with a knife, had broken into the Petaluma, CA home, forced the girls to lie on the bed, covered their heads with pillowcases, tied their wrists behind their backs, and then fled the house with Polly. Only a month before, on the other side of the country in a small town in New York, another 12-year-old girl disappeared while biking the mile-long trip between her home and the church where her father is pastor. Police found Sara Anne Wood's pink-and-white mountain bike abandoned in a nearby ditch, along with some papers she had been carrying.

Polly Klaas and Sara Anne Wood are just two of the estimated 4,600 children abducted each year by nonfamily members. Neither of the girls was more than a mile away from their small-town homes when the abductions occurred, and, in both instances, the small communities from which they came mobilized immediately to assist local law enforcement in the investigations. Merchants from both areas immediately donated space and resources including phones, fax machines, copy machines, and supplies, while townspeople from all over took vacation time to donate endless hours stuffing envelopes, making phone calls, posting signs, and knocking on doors, In spite of these efforts, helpful leads in both cases have been few and far between, and resources and manpower are slowly diminishing.

Mr. President, the victimization of children in our Nation has reached epidemic and terrifying proportions. Recent Department of Justice figures show that in 1988, 4,600 children were abducted by nonfamily members, 450,700 ran away, and over 354,000 were abducted by family members. It is painfully clear that the time has come to increase and unite our efforts to solve and prevent such savage crimes against our children. I rise today to introduce a bill that will assist in the resolution of such crimes against our Nation's children and, ultimately, aid in the prevention of future and repeated crimes. The Missing and Exploited Children Task Force Act of 1993

would create a team of active Federal agents who would work with the National Center for Missing and Exploited Children [NCMEC] in assisting State and local law enforcement agents in their most difficult missing and exploited child cases.

The task force would be headed by a representative from the Federal Bureau of Investigation and would be comprised of two representatives from each of the following Federal agencies: The Federal Bureau of Investigation, the Secret Service, the Bureau of Alcohol, Tobacco, and Firearms, the U.S. Customs Service, the Postal Inspection Service, the U.S. Marshals Service, and the Drug Enforcement Administration.

Each participating agency would nominate agents who possess some area of specialized expertise, including behavioral sciences, crimes against children, sex offenses, forensics, international investigative experience, and other areas that would be particular value to investigations of this nature. Each member would serve a 1-year term, with an option to extend for a year, and would be compensated by their respective agencies. Most importantly, task force members would retain full authority, be on active duty status, and retain access to appropriate data bases.

Precedent for the implementation of such a program—where Federal investigators and other law enforcement agents are assigned for a period of time to other agencies and offices in order to lend their support and expertise—has been established in other successful programs. One example is the Organized Crime Drug Enforcement Task Force [OCDETF] Program, established in 1983. The OCDETF Program consists of a nationwide structure of 13 regional task forces which utilize the combined resources and expertise of its member Federal agencies in cooperation with State and local investigators and prosecutors to target and destroy major narcotic trafficking and money laundering organizations. Since its implementation, the program has experienced immense success. Through their comprehensive and orchestrated attack on crime, the task forces have been successful in initiating 5,101 investigations, which resulted in 13,995 indictments and an 84.6 percent conviction rate.

Another program, Project Alert, which Senator ALFONSE D'AMATO, Treasury Secretary Nicholas Brady, Representative Matthew Rinaldo, and I helped develop in June 1992, enlists retired law enforcement officials from around the country to help police officers investigate some of their toughest missing children cases and bridge the gap between the NCMEC and police departments. Project Alert volunteers are certified through the NCMEC and have been extremely valuable in assisting active law officers in evaluating leads, investigating long-standing, unsolved cases, promoting community awareness and prevention programs, and using the latest in scientific technology to help track the swelling ranks of missing children. Members of the Missing and Exploited Children Task Force would have similar responsibilities.

Task force members would use their expertise, data access, and official authority to work on cases chosen and updated by NCMEC as their most difficult cases. Members would also be available to go on location to assist local or State investigators, but only after a full prior consultation with the lead investigator on the case, local, State, or Federal in no instance would task force members attempt to takeover an investigation, nor would they be allowed to agree to do so if faced with such an offer.

If such a task force had been in place at the times of the Klaas and Wood abductions, members would have been immediately assigned to begin assisting the NCMEC and local law enforcement agents in both Petaluma and in Litchfield, NY. Task force members—such as the FBI, the Secret Service, and the Drug Enforcement Administration—would have been able to use their extensive databanks to pool information on missing persons, disturbed people, and convicted criminals—information that may not be so readily available to State or local law enforcement personnel. Once leads were found, the authorities of the U.S. Marshals Service may come into play, and if the Postal Service is used in any manner, Postal Inspection Service agents would have immediate access to a myriad of resources.

It is this sort of collaborative effort that would make such a task force invaluable and indispensable in the fight against the victimization and exploitation of our Nation's children. While local and State law enforcement agencies are to be commended for their efforts in such cases, missing children investigations would benefit highly from a coordinated law enforcement effort. By supplementing our Nation's 17,000 police departments—a majority of which have 10 or fewer officers—with task force members and resources, we can unite our Nation's best in the fight against such reprehensible crimes and increase the chances of our Nation's missing children being returned to their homes and families.

GREAT PROGRAM

Mr. President, every law enforcement, education, and social agency in the Government is scrambling to find ways to address the ever-growing problem of violence among this country's young people. We all realize that there is no single answer or magic formula to cure this dilemma.

One solution that is working as a preventive measure is the Gang Resistance Education and Training Program—known as the GREAT Program. I highly endorse and support this program as a way to educate schoolchildren encouraging them to repudiate the negative aspects of gangs.

In 1991, the Bureau of Alcohol, Tobacco and Firearms [ATF] and the local law enforcement officers in Phoenix, AZ, began a pilot program as an educational, school-based gang prevention effort. The GREAT Program is designed to help seventh-graders set goals for themselves, resist peer pressure, learn to resolve conflict without violence, and understand how gangs and youth violence impact the quality of their lives.

For the GREAT Program in fiscal year 1993, ATF entered into cooperative agreements with police department in the Phoenix and Albuquerque metropolitan areas, as well as the State of Hawaii. Funding to educate the local police officers and support the agreements was provided by the Federal Government. In total, 99 police officers in those areas received training, and over 100,000 schoolchildren were exposed to the program.

Other police departments have started implementing the GREAT Program without funding. ATF has supported these efforts with training programs for a total of approximately 300 police officers from nonfunded cities.

The successes of the GREAT Program are not just measured in numbers, The Arizona State University recently completed its evaluation of the program. This evaluation produced several findings showing that methods used in the GREAT Program are highly effective in teaching children responsibility, and giving them the life alternatives and law enforcement role models needed to deter their participation in gang violence.

The successes of the GREAT Program lead me to recommend its expansion into a nationwide program to prevent gang violence. I recommend that the top 80 highest-crime metropolitan areas in this country be included in this program. I recommend that the Federal Government assist these cities through training of their police officers and through funding of their efforts. This is time and money well-spent for our children of today and the future of this country.

The amendment I am offering to this bill, along with my colleague from Missouri, Mr. BOND, would authorize no less than 50 additional GREAT projects to be funded around the country. This would bring to 58 the total number of GREAT instruction projects available in communities selected by the Director of ATF because of the high prevalence of gang activity. The amendment requires the Secretary of the Treasury to provide up to $800,000 per project, subject to appropriations, to be allocated 50–50 between the Federal sponsoring agency and the State and local

law enforcement and prevention organizations. The amendment authorizes $40 million a year and 225 full-time equivalent positions for this purpose.

This amendment also authorizes $30 million and 300 full-time equivalent positions for the Bureau of Alcohol, Tobacco and Firearms for expanding investigations into juvenile and gang criminal violations involving firearms and for enhanced firearms tracing and compliance activities. Finally, the amendment authorizes $6 million a year for the U.S. Secret Service for enhancing its investigations in counterfeit, fraud, and other illegal activities.

I urge the adoption of this amendment.

SENSE-OF-THE-SENATE RESOLUTION ON FEDERAL LAW ENFORCEMENT PERSONNEL

Mr. President, we are losing control of our streets and our neighborhoods to gangs, drugs, and violent crime. Americans should not have to tolerate a level of violence 5 times that of Canada and 10 times that of England. Americans should not have to tolerate a murder rate, which—if unabated—will see 100,000 Americans murdered in the next 4 years.

I think it is encouraging that our political leaders are beginning to understand that the crime problem in this country needs to be addressed.

President Clinton has mandated a reduction in the Federal work force of 252,000 positions over the next 5 years. These actions dovetailed into the National Performance Review recommendations to reinvent Government. I applaud these initiatives as I believe the Federal Government has an obligation to make sacrifices, streamline its operations to make it easier for the public to deal with the Government, and reduce the Government's costs of doing business. However, what these initiatives fail to recognize is the burden they are placing on law enforcement and the criminal justice system as a whole.

These executive actions contradict the President's plan to put 100,000 more police officers on the beat and the authorizations we have included in this crime bill. I don't know how we can look the American public in the eye and say we are serious about reducing crime and drug trafficking in this country and then turn around and cut the very agencies who are charged with carrying out these responsibilities. It just doesn't make sense.

I see no way that we can dedicate $22 billion to Federal grant programs, law enforcement, regional prisons, and boot camps, without making a conscious policy decision to exempt law enforcement from personnel cuts. There is no way that I know of to effectively implement anticrime programs without people.

For this reason, I am proposing a sense of the Senate resolution which calls upon the President to exempt Federal law enforcement personnel from executive actions mandating reductions in the Federal work force and I urge its adoption.

SENSE-OF-THE-SENATE RESOLUTION THAT ABLE-BODIED CONVICTED FELONS IN THE FEDERAL PRISON SYSTEM WORK

Mr. KENNEDY. Mr. President, the managers' package of amendments includes a sense-of-the-Senate resolution offered by Senator BROWN to express the Senate's concern that all able-bodied prisoners in the Federal prison system should work. I commend my colleague for addressing the problems of prison overcrowding and idleness by encouraging the work programs of the Federal Prison Industries and other systems. But the resolution does not take into proper account the concerns of business and labor. We must accomplish these goals in ways that do not mean that private sector businesses will lose their contracts and free working men and women will lose their jobs.

The national unemployment rate is 6.9 percent. The expansion of prison labor should not contribute to that unemployment. The Federal Prison Industries must address the real concerns involved in any program expansion. That means intensive consultation with the Departments of Labor and Commerce, and with the Small Business Administration. It means serious and careful consideration of the interests of private business and free labor, so that expansion of the Federal Prison Industry Program will not cause the unemployment in the private sector. Without careful oversight of the activities of prison industries, prison workers will replace free workers.

Last month, a small furniture manufacturer testified before the Senate Labor and Human Resources Committee. He said that in November 1992, he had submitted a bid, along with 22 other furniture manufacturers, to provide dormitory furniture to Michigan State University for 1,600 rooms. He made the low bid—of the private sector companies. But he was underbid by Michigan State prison industries by 20 percent. As a result, the employer laid off more than half of his 65 employees.

Several years ago, the Federal Prison Industries sought to produce leather footwear for the Army at wages of approximately $1 per hour. It claimed that since footwear was no longer a significant domestic industry, the prison industry would not be competing with the private sector. We all know that a reduced but viable domestic leather footware industry continues to exist. A coalition of business and labor unions worked together to stop this effort, and it was stopped. But as this case and other cases indicate, Federal Prison Industries sometimes overreaches in its efforts to secure work for prison inmates, and enters into unfair competition with the private sector.

The recent 1993 summit on Federal industries addressed some of these issues—but its findings and recommendations were frequently disputed by a number of participants. No consensus was reached, so substantial additional work on this issue is needed.

Any report produced as a result of this provision on the expansion of Federal prison work must address the current marketing practices of Federal Prison Industries and ensure that any expansion of the programs is carefully assessed. I look forward to working with my colleagues to achieve a fair resolution of these complex issues.

Mr. THURMOND. Mr. President, I rise today in support of final passage of the Violent Crime Control and Law Enforcement Act of 1993. Working with our colleagues on the other side of the aisle in a bipartisan spirit, we have produced an anticrime bill worthy of the American people.

Central to this proposal is extensive funding for putting additional police officers on the streets to protect the law-abiding citizens from the violent criminal. Also, we have authorized $6 billion for construction of regional prisons and for the maintenance and operation of State prisons.

The Senate has moved decisively to hold the violent offender accountable for his actions. This legislation provides mandatory minimum sentences for drug felons and violent criminals who use firearms and mandatory minimum sentences for selling drugs to minors. Additionally, we provide life imprisonment for three time violent offenders and drug traffickers.

Our distinguished Senate Republican leader, Senator DOLE, offered an amendment which I cosponsored to extend Federal law to gang violence. This amendment, which was adopted, authorizes additional funding for prosecution of cases involving criminal street gangs. This provision also makes it a Federal crime to recruit juveniles into a gang.

Mr. President, there are many provisions in this bill which I believe will provide valuable assistance to law enforcement in their efforts to keep our communities and neighborhoods safe from violent crime.

While I do not agree with every item contained in this legislation, overall it is a significant step to address the growing crisis of violence across this Nation. We have worked together and this proposal contains many provisions to reduce crime, including enforceable death penalties, drug treatment and prevention programs, grants to public schools for safety measures, rural crime task forces and prohibition on transfering firearms to juveniles.

Mr. President, there is no room for retreat in our fight against the violent predators who prey on the law-abiding citizens. This legislation will provide law enforcement additional resources to allow them to do their job and I support its adoption.

Mr. HATFIELD. Mr. President, few things are more certain than the need for this Nation to come to grips with the violent crime problem that is suffocating our citizenry. The crime bill before us today contains many worthy provisions which resulted from the hard work of the chairman, ranking member, and other members of the Judiciary Committee. I support the Violence Against Women Act now included in this bill, which enhances penalties and authorizes resources to improve the safety of women. I am also pleased that the Senate agreed to include the Domestic Violence Community Initiative Act of 1933 which I introduced last month. This act attempts to disrupt the cycles of abuse in the home by creating a coordinated community-based response to domestic violence. And, I am gratified that this bill includes a program called Safe Return designed to assist local law enforcement authorities in locating victims of Alzheimer's disease who have wandered from home.

But, I must emphasize that I have serious concerns about the course the Senate is choosing to take with this bill. In my view it relies too heavily on shallow symbols like the death penalty which only serve to further pummel the battered fabric of our decreasingly civilized society while focusing the debate away from the real issues at stake.

As the bill managers noted last week, the Federal Government can only aim to influence a small portion of the crime in America. Many penalties in this bill would apply only to the 1 percent of crimes which fall into Federal jurisdiction. In this way, many proposals in this bill are mostly symbolic. This dangerous trend focuses the debate away from the real problems facing neighborhoods all across this country.

Using symbols to fight crime can be dangerous in another way. Researchers have documented over 400 cases of people wrongly convicted of capital offenses in the United States, with 23 of these actually executed. Such a gruesomely barbaric proposition is so abhorrent to us that we do not like to admit that it is even possible. Yet, it is possible. It is utterly reprehensible. And, worst of all, this mistake cannot be corrected.

This bill takes an extremely misguided step by creating almost 50 additional capital offenses. Many times have I noted the immorality I find in the notion of a government that kills for revenge. But, in very practical terms: there is no logical reason for the death penalty. State-sponsored executions have never been shown to have a deterrent effect, and they cost us more money to administer than life in prison without parole. Why do we keep pretending that the emperor is wearing clothes here? To continue this charade of State-sponsored killing when most industrialized nations in the world recognize the futile brutality of it is a true travesty of justice. It is plain wrong.

Earlier, I expressed my concern about creating a crime trust fund that has no outside source of funding, puts programs on automatic pilot, and endangers other priorities of domestic spending. Of course all of us support wise expenditures for criminal justice programs. But, new funds for police, just as new death penalties, will do little by themselves to fight crime in this country of 250 million people because by the time these tools are applied it is already too late. As Camus wrote:

> Society proceeds sovereignly to eliminate the evil ones from her midst as if she were virtue itself. Like an honorable man killing his wayward son and remarking: "Really, I didn't know what to do with him."

Once again, we are focusing on the wrong end of the problem. By the time a child is old enough to wield a gun and shoot someone over a vial of crack or over a pair of basketball shoes, we have already lost them. The death penalty will not outweigh their concern about the bullets of a rival gang member. They are not going to stop and think about the death penalty any more than they stop and think about spending their prime of life going nowhere in a crowded Federal prison like the one I visited last week in Sheridan, OR.

If we are going to face the realities of neighborhood crime, we are going to have to quit clinging to symbolic gestures and admit the frightening truth that there is only so much the Government can do with penalties and prisons. More importantly, the Federal Government may not possess the tools needed to address the real cause of crime in society: namely, the erosion of our moral fiber. Large sums of money and penalties affecting small numbers of offenders will not halt the deterioration of a society that not only tolerates but embraces violence in all of its forms.

We may need more police on the streets at this time. But, how did we get here? We haven't been taking them off the streets in most places. We just have more criminals. That face should not surprise us because we are breeding criminals—criminals that start as lookouts or couriers at age 8, criminals without families, criminals without an education, criminals without moral foundation, and criminals without remorse—but, criminals with Uzis, with expensive cars, and with cellular phones and pagers for instant accessibility at anytime.

Of course we should focus on supporting strong law and order; we should firmly prosecute wrongdoers and help build the necessary prison space to hold them. But, we can not take on those daunting tasks at the expense of trying to stop the cycle of despair. The only way to cut away at this monstrous vine is to attack it at its roots. We can keep building jails, and we will keep filing them up. We can shrug our shoulders and call it a deterrence or detention or incarceration problem. And, we could keep throwing billions at this problem for the rest of our lives. But, where would that leave us? Perhaps with more people wasting away in prisons. But, it would not leave us with more people who have a family structure, a decent public education, a well-paying job, and a moral direction to their life.

I live right across the street from the Nation's Capitol Building. But, I know I cannot safely take a stroll at night in my neighborhood. I know that people are mugged and raped and killed within blocks of this Chamber. These are not isolated incidents; these are regular events. We hear the sirens every night.

As Americans, we zealously protect our rights and freedoms. But, I begin to wonder what type of freedom we want in this country. Freedom to bombard our children with violent television images? Freedom to idolize movie stars who die of drug overdoses of rap singers who degrade women and glorify cop killing? This does not stir me with patriotism. And, freedom to peer through the bar covered windows of our self-imposed prisons in urban neighborhoods offers little solace.

The responsibility belongs to each of us, individually, to stand up for the values that have been the bedrock of this Nation and have seen it through all of its crises for over two centuries. We can no longer tolerate dehumanization in our communities. We have a tradition of rising to all challenges. And, confronting the crisis of spirit which underlies the horrible violence in our society may be our biggest challenge yet.

Mr. CHAFEE. Mr. President, when the Senate began consideration of the crime bill, I announced my intention to offer an amendment to ban the possession of firearms by persons who are subject to certain restraining orders. I am pleased that my amendment was accepted, and is part of the crime bill package that the Senate will approve today.

Under current Federal law, certain persons are banned from possessing a firearm. These "prohibited persons" include convicted felons; drug addicts; illegal aliens; those who have been found mentally incompetent; those who have been dishonorably discharged from the Armed Forces; and those who have renounced their U.S. citizenship.

My amendment adds to this category those individuals who are subject to a court restraining order for harassing, stalking, threatening, or engaging in other such conduct; and whom the court has deemed a credible threat to another person's safety.

There have been far, far too many dreadful cases in which innocent people—and usually they are women—have

been wounded or killed by a former boyfriend or girlfriend, partner, or other intimate using a gun—despite the fact that the attacker was subject to a restraining order.

All of us were shocked and saddened by the terrible death of young Kristin Lardner, who was shot in Boston last year by an ex-boyfriend against whom a permanent restraining order had been issued 2 weeks earlier. Ms. Lardner, just 21 years old, had received the restraining order against Michael Cartier on May 19, and a friend said "she felt very relieved that she had [it]." Another friend said she was "the most optimistic and happiest she'd been in months." But in the late afternoon of May 30, as she returned to her workplace to meet a friend, she was shot from behind by Cartier, and died instantly. This bright, intelligent young woman—killed by a man who had been stalking her for weeks, and who had been found to be a danger to her by a court. Apparently he had bought the murder weapon—a Colt .38—for $750 about 2 weeks before the murder.

As horrible and dreadful as Ms. Lardner's death is, even more appalling is the fact that Ms. Lardner's case is not unique. Just 3 weeks ago, on October 19, 25-year-old Kimberly Globis of Chicago was shot and killed by her former boyfriend, against whom a restraining order was pending. Ms. Globis applied for and received a court order of protection against him in August, after he entered her apartment with a knife and after she filed two battery complaints against him. She was due in court the day after she was shot to seek an extension of the order.

In my State of Rhode Island, all of us were horrified by the shooting death of 30-year-old Marie Willis, of Middletown, earlier this year. Mrs. Willis was living in South Carolina with her husband, an enlisted man at Myrtle Beach Air Force Base. She left him and returned to Rhode Island with her 6-year-old son after her husband repeatedly abused her—abuse that included twice choking her in front of her son, and burning her legs with a propane torch. At the urging of the Bristol police, Mrs. Willis obtained a restraining order against her husband.

On January 3, Marie Willis flew to Myrtle Beach to testify at a military evidentiary hearing for a possible court-martial of her husband. At 8:15 a.m. on January 4, Senior Airman Willis walked into the hearing with a 9-millimeter pistol and opened fire. Mrs. Willis was hit twice in the head and once in the chest; she was pronounced dead at the hospital at 11:30 a.m.

Bristol police described this as "a tragedy that never should have happened." At the funeral, Marie Willis' family said "words cannot express or describes the amount of grief we feel for the loss of our only daughter and sister, Mary Ann Raffa Willis." What a terrible loss for her family and her young son.

The deaths of these women are tragedies. And it is particularly tragic that in each of these situations, the woman knew that she was in danger of physical attack and had sought legal protection in the form of a restraining order. Yet they remained vulnerable.

I might note that it is not easy for women to receive a restraining order. Many women file for a restraining order as a last resort, when there seems to be no other way to ensure their safety. In part this may be a result of the distinctive nature of these disputes: these emotionally charged situations often involve two people who were intimately related and whose relationship has ended or is in the process of ending. Or they may involve an individual obsessed with another person, be they a friend, an acquaintence or a stranger.

Moreover, the very nature of the conduct—following, harassing, threatening—does not automatically result in a restraining order. This is because an action that is quite alarming still may not be illegal; in fact, it may be constitutionally protected action. That means that women must suffer distressing or even frightening treatment that cannot be legally prevented until it crosses the line into harmful conduct. Even after a court restraining order is issued, this may still be the case: the courts and law enforcement agencies often cannot act until the harasser violates the restraining order by attacking the woman—and then, especially when a gun is involved, it may be too late. What a terrible catch-22.

It is that situation—where there is a restraining order in force against someone who poses a clear threat—that my amendment is intended to address. Restraining orders are issued for the express reason that a woman sincerely believes—and a court agrees— that she is in imminent danger of being harmed, attacked or killed. It therefore is nothing short of insanity for Federal law to allow such dangerous persons to possess a gun. And it has lead to the senseless and horrible deaths of many, many young women in this country.

My amendment is simple and straightforward. It would ensure that a person whom the court says is a threat may not have a gun during the time that he or she is subject to the restraining order.

For those who may argue that a harasser will simply use another weapon, I would say first of all that that is a ludicrous rationale for arguing in favor of allowing the potential attacker to have a gun.

Second, consider this: Guns are just about the must lethal and efficient weapon around. In fact, studies of weapons involvement and injury outcomes in family or other intimate assaults show that chances of being killed if a gun is involved are 12 times greater than if another weapon is involved.

Moreover, a gun can be fired from far away, with some anonymity, and without much visual warning. A knife or other weapon requires that the attacker actually approach the victim, which may mean the intended victim has a chance to recognize the attacker and react.

There simply is no rational reason whatsoever to allow persons who have been deemed a clear and present danger to another person, usually a woman, to have a gun. None at all. Hence my amendment.

My amendment by itself cannot solve the problem of stalking or harassment, nor provide an obsolute guarantee of a woman's safety. But it will remove weapons that are extremely lethal from the reach of these dangerous persons, and give law enforcement one more tool to combat this terrible problem. And it will give women some assurances that the law will provide some definite protection—and that the law takes their safety and well-being seriously.

I thank the managers of the bill for their support of this amendment.

Mr. DURENBERGER. Mr. President, I have watched a number of my colleagues come to the Senate floor over the past several days to decry the problem of crime in America. I share their frustration. I do not believe there is a household in America that has not been touched in some way by the consequence of violent behavior and by crime.

It's not new. It has grown substantially in one generation. We're aware of it as brothers, sisters, parents, partners, neighbors, news definers, and representatives.

We want desperately to tell the American people that the U.S. Congress is doing something about crime. So the Senate is considering a piece of legislation called the crime bill. But I am afraid we are trying to sell our constituents a political placebo, not a cure for crime.

We see senseless acts of violence. The temptation is to react with anger. We have to get tougher on crime, it is said. Build more prisons. Toughen sentences. Federalize crimes. Have more death penalties. Or maybe it would be enough just to put more police on the streets.

My quarrel with this whole line of reasoning is that it fails to address the problem at its most basic level. To use an analogy from health care, it's like saying we could cure disease if only we had enough hospital beds.

And make no mistake—crime as a disease of the social organism is not that different from a disease of the human body.

In an even more literal sense, violence in America is a public health crisis—just as certainly as the AIDS epidemic. The second leading cause of

death among American young people is homicide. For young black males, it is the leading cause of death.

We will not be able to deal with crime and violence effectively until we consider strategies to prevent crime in terms of America's public health.

I have a deep conviction that matters of public health are dealt with most effectively at the local level—in States, cities, and communities—where the people closest to the problem are able to tailor the solutions.

This conviction comes from serving and observing the people of my home State. Minnesota has a long tradition of finding innovative solutions to problems. The area of criminal justice and crime prevention is no exception.

First, there is a recognition in my State that an investment in crime prevention strategies is more effective than incarceration as a crime-fighting tool. In a 1991 poll of Minnesota residents, 80 percent responded that education, job training, and community programs were the best investments to reduce crime. Sixteen percent chose prisons.

Among industrialized nations, the United States ranks first in the rate of incarceration—and first in the percentage of children living below the poverty line. Can this be a coincidence?

Is it a coincidence that participants in preschool programs like Head Start are 40 percent less likely to be arrested as teenagers?

Or that participants in the Job Corps are one-third less likely to be arrested in the year following their Job Corps experience?

Minnesota has discovered that a wise investment in children, youth and family yields higher returns than spending on prison beds. Minnesota ranks high in graduation rates and high in overall child well-being—but low in violent crime. In fact, of the States with a major metropolitan area—and 60 percent of Minnesotans live in the Minneapolis/St. Paul metropolitan area—only Wisconsin ranks lower in the rate of violent crime. At the same time, States which have responded to crime by investing most heavily in prisons are the States with the greatest increase in violent crime over the past 12 years.

The creativity of Minnesotans on this issue is far from exhausted. There is a growing movement in Minnesota toward a concept called Restorative Justice.

Restorative Justice is a framework for looking at the criminal justice system in a different way. It focuses on injuries to the victim and the community as well as punishment of the offender. In my view, all three should be included in the response to crime.

The outcome of a criminal case, therefore, is measured not solely by how much punishment was inflicted, but by how much reparation has been made to the victim and the community. In order to restore wholeness, the offender must accept responsibility for the harm and must take action to repair it.

The community must support the process of healing for the victim, and enable the offender to repair the harm. And the role of government is to ensure community safety and protect individual rights during the process of restoration.

In this model, the importance of the victim is elevated. Restoration of the victim—and the offender's acceptance of responsibility—are higher priorities than punishment of the offender. Restorative justice involves the entire community in holding the offender accountable, in acknowledging community responsibility for the social conditions which affect the offender's behavior, and in starting the healing process.

The Minnesota Citizens' Council on Crime and Justice has been a leader in advocating principles of restorative justice. As a result, our criminal justice system has become a model for States across America. Our State prison system has been reserved for violent offenders who are a danger to the community. Nonviolent offenders are eligible for intermediate sanctions that are less costly, more effective at reducing recidivism, and more beneficial to the victim and community.

Promoting innovative State and local solutions like those that are working in Minnesota by adapting them to every community via categorical programs is not the best Federal role in reducing the problem of crime. National mandatory sentencing rules don't work any better to cure or deter locally experienced criminal activity. But there are important national strategies that could help in more effective ways. The bill does contain some provisions that work thoughtfully to that end.

I am especially pleased that the bill contains that Jacob Wetterling Crimes Against Children Act, a piece of legislation that I first introduced in 1991. I believe the Wetterling bill will help communities break the vicious cycle of child sexual victimization, by requiring people who are convicted of sex offenses against children—and these offenders are a group especially prone to recidivism—to register with law enforcement agencies every time they change address, for a period of 10 years after their release.

I am also grateful for the adoption of an amendment I proposed to prevent children from becoming the indirect victims of their parent's crime. This amendment is based on a bill I introduced earlier this year—the Family Unity Demonstration Project Act—which would authorize demonstration projects that would allow nonviolent incarcerated mothers to serve their sentences in supervised community programs with their children.

These programs will provide the children with pediatric care and an environment supervised by child development specialists. The offending parent will participate in parenting classes, substance abuse treatment, support groups and individual counseling, as well as educational and vocational training.

This amendment is a serious solution to a serious problem. Children who are separated from incarcerated parents have a high risk of developing social and emotional problems, of dropping out of school—and of becoming criminals themselves. These demonstration projects will minimize the trauma to children—and place them in a stable, caring, healthy environment.

In addition to being a more cost-effective alternative to incarceration, these supervised programs produce results. According to testimony presented to the Judiciary Committee, the participants are much less likely to repeat their crimes and more likely to emerge from the program as better parents and productive members of society.

Make no mistake about it, the bottom line on crime prevention is predictable consequences. And let me be absolutely clear on this point. People should be required to pay for their crimes. Communities have to protect themselves from threats to their safety.

That's why I believe in a strong and well-trained law enforcement community. But I also believe that the general tone of the debate on this bill has cheated the American people out of equally real and equally important solutions to crime.

Mr. President, I ask unanimous consent that a Washington Post article from this morning be printed in the RECORD at the conclusion of my remarks, describing Supreme Court Justice Harry A. Blackmun's recent reevaluation of whether the death penalty can actually be constitutionally imposed.

The PRESIDING OFFICER. Without objection, it is so ordered. (See exhibit 1.)

Mr. DURENBERGER. Nowhere has the tone of the debate on this bill gotten more carried away than on the whole question of the death penalty. There is no evidence that the death penalty is a deterrent to crime—yet this bill began by expanding the Federal death penalty to nearly 50 offenses and the list kept growing.

Similarly, there is no evidence that increasing the rate of incarceration decreases violent crime. In fact, an unbiased look at our current system of incarceration would indicate that prisons accomplish little more than teach less experienced criminals to become more proficient criminals.

On this bill, we have been out to prove that we are tough on crime. Any

amendment that sounds tough on crime has been likely to pass—by a wide margin, and without any thoughtful debate. It somehow makes us feel better, but it is a terrible way to legislate.

I am particularly disturbed the way we frantically moved to federalize crimes on this bill. My good friend Judge Paul Magnuson, a distinguished Federal judge, pointed out to me that he has tried 33 jury trials so far this year, and only two of them were civil cases. And he believes his caseload is an exception because many judges have probably handled no civil cases.

The point is, of course, that as we load up the Federal courts with more and more criminal matters, we are approaching the point where we do not have a civil judiciary in this country.

We have hundreds of State court judges in Minnesota and only five Federal judges. Shouldn't we be leaving a few crimes for our State judiciary system to handle?

And let me point out another portion of this bill that I believe was ill conceived. One night during debate on a crime bill authorizing $12 billion in Federal expenditures, we created a $22 billion trust fund for crime that will require corresponding cuts in our discretionary spending caps over the next 5 years.

I applaud that we are trying to find ways to pay for our legislation. But I cannot endorse this course as responsible or effective.

The trust fund is supposed to be financed by implementing a provision of the administration's "reinventing government" proposal that imposes caps on the Federal work force. Unfortunately, CBO has estimated that "reinventing government" scheme will save much less money than the administration had estimated. OMB had claimed that the entire proposal would save $9.1 billion over 5 years, but the CBO estimates that only $305 million will be saved.

It wasn't wise to adopt this kind of funding mechanism, late at night, without the benefit of any hearings. It is clearly possible that we will be diverting dollars into the trust fund that might be more effectively spent in discretionary programs like Headstart and job training that do a better job at preventing crime. Over the next 5 years, those proven programs will have to compete for a smaller pot of money because we fell all over ourselves one night to show our commitment to the problem of crime.

To conclude, then, Mr. President, it looks to me like this bill is coming up with a lot of wrong answers. And it has been my experience over nearly six decades that when you consistently get wrong answers, it's a sign that you are probably asking the wrong questions.

In this case, we are looking to Members of Congress to do things that the average American citizen can do much better than a politician: Love and support our children. Look out for our neighbors, and care about what happens to their kids. Take an interest in our community.

Congress can provide some leadership and resources, but we can't legislate that sense of community.

So what are we left with? Every year, the crime bill becomes a competition to see who can talk the toughest on crime. But often, the most courageous voices are not the ones appealing to our lust for vengeance.

Rather, the voice of courage is the one that finds the answer not in a Federal crime bill—but in ourselves. Our communities. Our families. And our own creativity.

Our best hope—and the proper focus of our efforts in Washington—lies in enabling communities to develop creative strategies to present and respond to crime. The death penalty—to take the most egregious example—is not a creative strategy. It is not even an effective strategy. In fact, it would not be an exaggeration to call it a demagogic strategy.

To illustrate the environment of the debate on this bill, a colleague suggested jokingly that he had an amendment to require severing hands from thieves.

I will vote against this bill because it is a wrong-headed approach. Let us find the courage to look for what works. Not what works in focus groups, not what works in poll numbers—but in plain facts and in the truth that is written in our hearts. Until we find the courage to do this, I think the prudent course would be to rely on the communities across this country that are taking the lead.

Perhaps—if those in Minnesota and elsewhere continue to lead—someday the men and women of this Chamber will follow.

EXHIBIT 1

[From the Washington Post, Nov. 19, 1993]

BLACKMUN REEVALUATING HIS DEATH PENALTY STAND

Supreme Court Justice Harry A. Blackmun is reevaluating his views on capital punishment and is no longer "certain at all that the death penalty can be constitutionally imposed," he told ABC's "Nightline" last night.

Blackmun's reconsideration of the death penalty would not produce a change in the law; the majority of justices, including Blackmun, has since 1976 voted to uphold it with no sign of reversal. But it is unusual for justices to voice their views about issues in public interviews.

"I'm not sure the death penalty as administered is fairly administered," Blackmun said. "I think it comes close to violating the Equal Protection Claus of the Constitution. . . . I haven't taken that position yet, but I'm getting close to it," he said, according to a transcript of the interview that was taped in advanced.

Blackmun, 85, said he is particularly concerned about studies suggesting that blacks disproportionately suffer from application of the death penalty. There are "disturbing statistics that come in when one considers race. . . . And, of course, some people can rationalize that to their satisfaction. But there it stands, and I'm bothered by it. I don't like death penalty cases," he said.

"I cringe every time we get them, and in some states particularly Texas, they're moving along so that in some weeks we have more than one."

Asked if he thought innocent people were executed, Blackmun responded: "Yes." Asked how he could live with that belief, he said: "Well, you stay awake, there's no doubt about it, but there's just not much you can do except make a noise about it probably.

"On the other hand, I can understand and sympathize completely with the victims, if they have survived, or with the victim's family and the anguish that they have gone through. And I can understand why our legislator at the state level and the Congress on occasion have imposed the death penalty."

Over the past two decades, only Justice William J. Brennan Jr., now retired, and the late Justice Thurgood Marshall have voted to strike down capital punishment as a violation of the Eighth Amendment's ban on cruel and unusual punishment.

Blackmun said he never agreed with Marshall and Brennan, because the Fifth Amendment specifically makes reference to capital crimes, thus in his view giving sanction in the Bill of Rights to the death penalty. "But it always bothers me," he said. "These cases are wretched."

Mr. KENNEDY. Mr. President, I intend to vote for final passage of this measure, because it contains major steps forward in the fight against crime: a ban on semiautomatic assault weapons, new Federal support for community policing, the creation of a far-reaching Police Corps, efforts to deal more effectively with domestic violence and violence against women, and a welcome emphasis on drug treatment for nonviolent criminals.

I am also pleased that the bill now includes a reauthorization of the Community Development Corporation program. Economic development is the first line of defense against crime.

On the other hand, there are aspects of the bill that deeply trouble me. It would effectively override States' laws by extending the Federal death penalty to homicides in all 50 States. It would create new mandatory minimum sentencing laws, and limit due process in deportation cases. These are tough sounding policies, but they will do nothing to prevent crime and make our streets safer.

We will have an opportunity in conference to address the ill-advised aspects of this bill, while strengthening the provisions that will really promote public safety. I intend to do all I can to see that this outcome is achieved.

Our current anticrime strategy is characterized by the same excessive emphasis on incarceration that marred the war on crime in the 1980's and that clearly has not worked. During the last decade, the Nation's prison population more than doubled. The total number of Americans in jails and prisons now

exceeds 1 million, and the United States has surpassed South Africa and the former Soviet Union in the rate at which we incarcerate our citizens.

It is not the case that our prisons are bulging at the seams with violent criminals. In 1991, the National Council on Crime and Delinquency found that less than 20 percent of the State prison inmates had been convicted of violent crimes. Fifty-three percent were sent to prison for minor theft or drug crimes. At the same time, studies show that over 70 percent of defendants in some jurisdictions test positive for drugs after their arrest.

So we have unwittingly adopted a national policy of packing prisons to the rafters with nonviolent drug addicts, many of whom had no access to drug treatment in the community. This policy is not only expensive and ineffective—it actually jeopardizes public safety. To make room for the surge of nonviolent prisoners, some States have cut sentences served by murderers, rapists and robbers by as much as 40 percent. As a result, the rate of violent crime continues to rise, especially among juveniles.

Lengthy incarceration should continue to be the sanction for violent career criminals. But for many other offenders, there are less expensive, more constructive approaches. Prisons are a scarce and costly resource. While it may be necessary to devote a portion of the $22 billion trust fund to prison construction, we cannot spend our way out of a crime wave with bricks and mortar. Prison cells must be used in a way that reflects a rational set of priorities in an effective battle against crime.

If we really want to be tough on crime, we will do what it takes to prevent crimes before they occur, instead of just ratcheting up punishment for the few criminals who are caught. That means getting guns off the street, putting more police on the street, and getting drug addicts into treatment. Those three goals will do more to promote public safety than all the death penalty laws we can possibly pass.

The crime bill before us today makes progress on all three fronts. First, it contains serious restrictions on the manufacture, sale, transfer and possession of assault weapons.

The causes of crime are complex, but there is no doubt that the easy availability of firearms contributes to the mounting toll of death and injury. And no weapons bear more responsibility for the continuing carnage than military-style assault weapons.

These weapons have no legitimate sporting purpose. They are instruments specifically designed to kill other human beings with speed and efficiency. They have their place in the Armed Forces and on the battlefield, but they have no place in schoolyards, on the streets of our cities, or in our towns, and neighborhoods. The assault weapons ban is a genuine breakthrough in the war on crime, and it should have been enacted long ago.

Community policing is another major crime fighting tool. It was pioneered by Lee Brown, who is now serving as Director of National Drug Control Policy. This innovative strategy has led to measurable declines in crime rates in Houston, New York and other cities in which it has been used. Boston's new police commissioner, William Bratton, has brought community policing to his department, and the early results are encouraging.

Community policing means more than just more police. It means officers walking the beat and having a stake in the neighborhoods they patrol. It means asking the police to recognize the early warning signs of crime, and encouraging them to take steps before a crime is committed, before an arrest is necessary.

This bill contains $8.9 billion for community policing over the next 5 years, and it will be money well spent on crime prevention.

One of the most important features of the community policing initiative is the creation of the police corps. Under this program, which is modeled after successful public service scholarship programs like the National Health Service Corps, participants will receive Federal aid to attend college, in exchange for a pledge to spend 4 years as a police officer after graduation. The plan will expand educational opportunities for disadvantaged youth and add thousands of well-qualified, well-trained young men and women to the ranks of overburdened local police.

The third worthwhile initiative in this bill is the new emphasis on reducing violence against women. The act offers a comprehensive approach including new Federal offenses, a new civil cause of action for victims and increased funding for prevention and victims' services. I am pleased that the bill includes funding for a national, toll-free domestic violence hotline, an idea that started in Massachusetts.

The fourth major crime prevention initiative in the pending bill is a requirement that Federal prisoners receive drug treatment if they need it, and support for State programs in this area.

As chairman of the Senate Labor and Human Resources Committee, which has jurisdiction over the Federal effort to support and improve drug treatment, I have heard firsthand from the foremost treatment professionals in the country. The evidence is clear: treatment works.

Like many medical interventions, drug treatment is not a panacea and does not have a 100-percent success rate. But treatment is especially useful in the criminal justice system. Two-thirds of drug addicts who complete a therapeutic community program in prison remain drug-free and arrest-free for at least 3 years. But if addicts get out of prison without undergoing treatment, two out of every three will commit new crimes and be back in prison within 3 years.

It is disappointing that this bill does not pledge more Federal support for community-based drug treatment, so that we can treat more addicts before they are ever arrested. It will be a strange irony if the only way an addict can get off a waiting list and into treatment is by committing a crime. This is one of the flaws in the bill that must be addressed in conference.

There are other problems in the bill. The Senate's bold actions to prevent crime through gun control, community policing, the police corps, and drug treatment have not been matched by a willingness to face reality in other areas.

I oppose the wholesale expansion of the death penalty contained in this bill. It is wrong for the Federal Government to impose this penalty, let alone do so in a way that tramples federalism by imposing it on States like Massachusetts that have refused to enact it.

The Nation's history is replete with instances in which innocent persons have been put to death because of mistaken or perjured testimony. The death penalty also carries a shameful legacy of racial discrimination that this bill does not address.

And there is no convincing evidence that the death penalty deters crime. In general, States that authorize capital punishment have higher murder rates than those that do not. If anything, Government sanctioned killing actually fosters the culture of violence that plagues our society.

Another unwise and unfortunate feature of the legislation is its expansion of mandatory minimum sentencing. The Senate is simply ignoring the growing outcry against mandatory sentencing from judges, prosecutors, including the Attorney General, and defense lawyers. These laws do not mandate punishment at all—they just shift the key decision from judges to prosecutors, who determine what offenses will be charged and what plea bargain will be accepted.

These cases are clogging our courts and prisons with small-time, nonviolent defendants serving 10- or 20-year sentences. Meanwhile, many dangerous, career criminals serve less time.

There is a better way, and in fact Congress found it 10 years ago. In the Sentencing Reform Act of 1984, we abolished parole, established the U.S. Sentencing Commission, and created a strict guideline system for Federal sentencing.

The guidelines provide an appropriate degree of uniformity and toughness. They also give judges the tools

they need to avoid injustice and disparity, subject to appellate review.

Now that we have an effective guideline system, mandatory sentencing laws are unnecessary and counterproductive.

Our head-in-the-sand unwillingness to abandon these self-defeating laws—and our foolish expansion of them in each new crime bill—are making judges ask whether the memory of Congress is so short that we have forgotten the system we created in 1984.

At a recent conference, Chief Justice Rehnquist pointed out that mandatory minimum sentences "frustrate the careful calibration of sentences, from one end of the spectrum to the other, that the guidelines were intended to accomplish." And no one thinks Chief Justice Rehnquist is soft on crime.

Several weeks ago, Senators SIMON, THURMOND, SIMPSON, LEAHY, and I introduced a bill to create a so-called safety valve exemption from mandatory sentencing for low-level drug offenders. Even this minimal improvement has not survived consideration of the bill in a meaningful form. This is another matter we must address in conference.

The bill is also a radical departure from traditional allocations of responsibility for enforcing criminal laws. By creating Federal jurisdiction over every crime committed with a gun, this bill abandons basic principles of federalism. It requires States to substantially revise their criminal laws and enact mandatory sentencing laws as a condition of Federal aid.

These presumptuous and unjustifiable assertions of Federal power are as unwise as they are unworkable. The Federal Government's power to print money does not give it the expertise or the legitimacy to rewrite the criminal codes of the 50 States.

There are many other objectionable provisions in this bill. I voted against, and I continue to oppose, the provision to try 13-year-old children as adults in Federal courts.

I oppose the immigration provisions of the bill that establish secret administrative tribunals to deport aliens suspected of terrorist offenses. And while I strongly support the Violence Against Women Act included in the bill, I regret that it was amended in a closed door agreement to provide criminal penalties for transmission of the AIDS virus, and to expand AIDS testing based on irrational fears.

We all agree that inaction is unacceptable in the face of the epidemic of violent crime plaguing the country, and so this bill must move forward. The worthwhile proposals in this bill should be strengthened in conference, and the bad provisions dropped. I look forward to the conference, and to enacting a bill that will make the Federal Government a constructive partner with States and local governments in a war we have to win—the war on crime and violence in our society.

Mr. LEVIN. Mr. President, it does not take someone on Capitol Hill to explain to people throughout the country what crime is and the effect it is having on the daily lives of millions of Americans. They know it can make their elderly parents prisoners in their own homes, make their young children victims in their own schools, and make themselves casualties in their own neighborhoods. They know that crime is all too likely to be something that happens not only to someone else, but also that can happen to themselves and their loved ones.

The bill we are passing today is not a cure-all. It cannot replace a stable family life. It does not deal with the poverty of material goods or the poverty of the spirit which foster crime. It can assist State and local governments, but it cannot replace them in their primary role on the frontlines in the battle against crime.

But, within those limits, the bill before us includes some provisions that can make a meaningful difference in preventing and punishing criminal activity.

First and foremost is the authorization and actual Federal funding to assist local communities in putting more police on the streets. It has been proven that increasing the number of police on the streets reduces crime. By increasing police visibility in communities, this bill does more than send the signal that we want to take our neighborhoods back. It increases the tools to do it.

Second, the bill includes an assault rifle provision, which restricts the manufacture, transfer, and possession of certain semiautomatic assault weapons by specifying 19 weapons that would be restricted along with other weapons which meet specified characteristics. At the same time, the amendment makes clear that it does not place restrictions on the firearms that are used for hunting and sporting purposes.

I was pleased to work with Senator FEINSTEIN in getting this provision included through a floor amendment. It is critical component of this crime bill. Any legislation worthy of the title "crime bill" must have this provision in it that allows us to stand with our police in the all too real battle that they face every day on the streets. We have not successfully defused the nuclear arms race with the former Soviet Union only to lose it in the streets of our cities and towns.

Third, this bill contains initiatives to reduce gang violence through increasing penalties and through grants to encourage young people to direct their energies to alternative associations and activities. It also takes steps to improve the safety in our schools so that students can concentrate on learning for the next century instead of worrying about the violence in the next hallway.

Fourth, this bill includes a provision to stop the illegal use of ephedrine tables in the production of methcathinone, commonly referred to as CAT. CAT is a highly addictive drug and is a more potent stimulant than cocaine. Its use is growing at an alarming rate across the Upper Peninsula of my home State of Michigan and threatens to spread to other areas of the country as well. I have introduced a freestanding bill embodying the substance of this provision.

Fifth, the bill also includes an amendment that I offered requesting that the FBI report to the Congress by June 1994 regarding how it can accelerate and improve automatic fingerprint systems at the State and Federal level in order to use fingerprints found at the scene of a crime to identify more criminal suspects more quickly and effectively. I believe that improving the technology in this area may offer significant promise in preventing crimes because it could make it more likely that the criminal who commits one crime will be apprehended before he or she can commit too many more.

Sixth, I am pleased that the crime bill recognizes the important role that boot camp prisons can play in the corrections system. The bill adds two major opportunities for Federal funding of State boot camp prisons. I have been an early supporter of boot camp prisons because they offer an innovative approach to punishing, young nonviolent offenders. These facilities offer a tough program that teaches discipline and responsibility as well as keeps young offenders away from hardened career criminals. The bill before us includes an amendment that I offered with Senator COATS to improve the Boot Camp Grant Program by ensuring that States offer appropriate postincarceration programs to make sure that the lessons of boot camp stick.

As a consistent opponent of the death penalty, I wish this bill did not contain the new provisions to impose the death penalty. As I indicated when I offered the amendment to replace the death penalty provisions with life in prison without the possibility of release, I oppose the death penalty because the irreversibility of the death penalty is inconsistent with the possibilities of error in the criminal justice system. Each year that we have debated this issue has added to the list of cases in which individuals who had been put on death row were later released because the evidence would no longer support their conviction. The death penalty doesn't deter crime. In fact of the 14 States with the highest murder rates, 13 have the death penalty and 1 State does not have the death penalty.

Mr. President, since on balance, I believe this bill will improve our capacity to fight crime and merits our support, I will vote for it.

Mr. CHAFEE. Mr. President, today I will be voting in favor of S. 1607, the crime bill. In many ways it is a good bill and it incorporates a number of provisions which I support.

First of all, the bill includes an amendment to Federal firearms law that I authored. My amendment ensures that those persons who are subject to a restraining order for conduct such as stalking and harassing, and whom the court has deemed to be a threat to another person, are prohibited from possessing or buying a firearm. It makes no sense whatsoever for these dangerous persons to have a gun; and I am pleased my amendment was adopted.

The bill also contains a number of other measures of which I am a strong supporter, and indeed a cosponsor. It includes the Violence Against Women Act, which I believe represents a good first step toward curtailing the terrible violence and fear that women endure every day.

It includes the Feinstein assault weapons ban amendment, which bans these lethal military-style weapons, which in my view have no place in a civilized society. And it includes the Kohl amendment, a commonsense measure to keep handguns out of the hands of children and teens.

The bill also provides funds to help local law enforcement agencies put more police on the streets and to establish alternative incarceration facilities for first-time nonviolent offenders.

I must say, however, that I vote for this bill with some real reservations. It authorizes the spending of billions of dollars to be drawn from savings which we have not yet achieved. Furthermore, I am deeply concerned about amendments, adopted during the course of the debate, which are intended to curb various violent crimes simply by federalizing them. This seems to me to be an extremely unwise course to take and I hope that these amendments will be removed from the bill in conference.

As an opponent of the death penalty, I also am troubled by the vast expansion of Federal death penalty in this bill. About five dozen existing and new Federal crimes specified in the bill, now will be punishable by death.

And finally, I am concerned about the continued use of mandatory minimum sentences. These laws may sound tough on crime, but they tie the hands of our judges; waste the scarce resources of our court systems; and overcrowd our jails, often forcing the release of far more dangerous criminals. Moreover, they can result in punishment which is grossly disproportionate to the crime. Consider this example: a man could receive a mandatory 10-year sentence without parole for growing marijuana for his own use. Yet another man apprehended for selling heroin—albeit in a much smaller quantity—would draw only a 3-year sentence.

In sum, I will be voting for the crime bill this morning, but with the reservations noted above.

Mr. PELL. Mr. President, today the Senate has reached agreement on a comprehensive crime bill for the first time in over 8 years. It could not come at a better time and indeed, is long overdue. The levels of crime and violence in this country are staggering and the stories of tragedy that take place daily in our streets and neighborhoods are appalling and demand attention. With this bill, we will take a meaningful and serious step forward in the fight against crime and while issues that have been left out of this bill must also be addressed, I applaud what is accomplished here. I would add that Senator BIDEN did a brilliant job of managing it.

In particular, I was very pleased that the bill contains funds which can be used for an innovative alternative incarceration program for juveniles developed by Chief Judge Jeremiah Jeremiah of the Family Court of Rhode Island and JOIN, a collaboration of local public and private agencies. This program, which combines the rigors of the Outward Bound Program with extended supervision and proven rehabilitation techniques, and which is much less costly than incarceration, would be available for young, first-time offenders. Its goal is to provide a rehabilitative alternative to prison life, which all too often simply creates career criminals out of our wayward youth. We need programs like this so that we can provide such opportunity to delinquent youths who can be reformed. After working with the Judiciary Committee, I entered into a colloquy with the chairman, Senator BIDEN, to secure the availability of funds distributed to States under the boot camp and drug court portions of this bill for this program. As a result, Rhode Island will have the resources to implement this creative proposal. At the conculsion of my remarks, and per my colloquy with Senator BIDEN, I will submit materials relating to this program for the RECORD.

With regard to the broader provisions of this legislation, I am pleased that this bill commits sufficient resources to place up to 100,000 additional police officers on our streets. Studies have shown that the presence of officers on the beat reduces crime in troubled neighborhoods. Crime is prevented and the crime that does occur stands a better chance of being prosecuted and punished. Moreover, local jurisdictions are currently strapped for the money to keep adequate personnel on their payrolls and this will provide a big boost to make sure we have the police protection we need.

I am also pleased that the bill contains the Violence Against Women Act of which I was an original cosponsor. This provision represents the first time that a comprehensive effort has been made on the Federal level to address the growing problem of domestic violence and crimes against women. Too often, such violence has been either ignored or trivialized and it is time that we do something to recognize and act to eliminate it.

I was also pleased that two amendments, which I cosponsored, to prohibit the possession of firearms by minors and to ban the manufacture and sale of assault weapons in the United States were included in this bill. While we will address further the issue of gun control at a later date, I believe that these measures are important steps forward in the effort to get some kind of control over the weapons which proliferate in our society.

I am also pleased that we are including funds for innovative drug court programs which stress followup supervision and rehabilitation for young, first-time, nonviolent drug offenders. The bill also contains money to support safe schools programs so that anticrime, safety, and drug prevention efforts will restore some sanity in our schools. And as I have indicated, I am pleased that the bill includes money for boot camp programs which offer alternative means of incarceration with the aim of providing an environment which aims to provide discipline and structure that prisoners may take with them after they leave. These measures focus on prevention and rehabilitation and will assist in the crime fight. I must state that I wish there were more provisions of a similar nature in the bill, but these are good, innovative beginnings.

There are things about the bill, however, that I do find disturbing and were it not for the inevitability of their inclusion and the countervailing good done by the rest of the bill, I would be inclined to oppose this measure. Two of them are particularly troubling. First is the drastic expansion of the death penalty contained within this bill. I am opposed to the death penalty, do not believe it serves as a deterrent, and regret that this country continues to endorse it as a means of punishment. While punishment must be sure, swift, and commensurate with the crime—including life imprisonment without parole—the death penalty is irreversible and, I believe, should not be part of our criminal justice system.

The second area of concern, and one which I addressed earlier, was my discomfort with the extreme focus on committing billions and billions of dollars to prison construction and the housing of ever-increasing numbers of criminals while failing to consider

using some of those resources for prevention efforts aimed at the root causes of crime. By providing education, opportunity, and alleviating poverty, we will go a long way toward preventing crime from happening in the first place. It seems to me that prior to expending such exhorbitant sums of money to house and guard criminals, we should dedicate some of those resources in effort to prevent criminal behavior in the first place.

But ultimately, the good of this bill outweighs the bad and given the pervasive and unavoidable reality of crime in this country we must act to stem the violence. I believe that this bill will begin that process and I commend the leadership and the Judiciary Committee for their excellent work. With this and other subsequent crime measures, such as the Brady bill, we in the Senate are facing up to our responsibility to really do something about crime and I look forward to continuing this work.

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

[From the Family Court State of Rhode Island and Providence Plantations for the U.S. Justice Department, September 30, 1993]

PROPOSAL FROM JOIN (JUVENILE OFFENDERS; INTERVENTION AND NEW ALTERNATIVES)

1. SUMMARY

Herein follows a collaborative, government and private sector, series of creative strategies dealing with juvenile delinquency in the State of Rhode Island. The proposal will involve three inter-related subdivisions aimed at Rhode Island black, Hispanic, white and Southeast Asian gangs.

The subdivisions include (a) a caseworker and outreach program aimed primarily at intensive follow-up of offenders and closely maintaining their behavior contracts; (b) innovative programs especially involving the schools, police, and family court for status and first offenders; (c) an alternative for the Rhode Island Training School.

The program will involve 60 individuals, especially high risk youth under 17 years of age, active in the streets and in crime in Rhode Island; the program includes 20 serious voluntary status offenders, and 40 adjudicated delinquent individuals who will be given the opportunity to choose under court mandate this program. These individuals, court mandated felons, would return to the Training School if they break their contract.

This is a comprehensive, collaborative, multi-ethnic group proposal from Rhode Island under the leadership of the Rhode Island Family Court and may serve as a model for other cities and states searching for ways to deal with gangs and juvenile delinquent. Generally the ethnic background of the participants will be multi-racial.

The major focus of this program will be to enhance inter-ethnic respect and cooperation. For instance, the staff will train together and meet regularly. So too the participants will have an opportunity to deal with their own racial rivalries and build a team cooperative commitment.

The projects theoretical model will depend heavily upon the Outward Bound experience, involving Outward Bound experts with a long history in the treatment of status and adjudicated felons. The staff, the serious second or third-time offenders, and the adjudicated delinquents all will be involved in the Outward Bound experience.

The innovation here involves a very close relationship with the indigenous case managers and Outward Bound experts, and the Family Court and members of JOIN, the police school and community.

JOIN may form a 501–C–3 status, to serve as fiscal agent.

The Outward Bound program which will be subcontracted originates from Thompson Island in Boston Harbor. Peter Willauer, an early Outward Bound founder with extensive experience throughout the entire east coast, treating status and adjudicated felons will be the overall Outward Bound coordinator. He has assembled a team of Outward Bound staff that will combine the Outward Bound philosophy of self-discovery by stretching limits and by building trust and cooperation while developing compassion. Outward Bound will have a consultative staff team involving many of the founders of Outward Bound.

The intensive aftercare in Providence will be significantly important and continue for a minimum of at least a year, depending upon court mandate. This is an holistic model in that the Providence case manager staff will often be visiting the Outward Bound experience and the enrolled individuals, and the Outward Bound staff will often be in Rhode Island visiting particular participants, either before or after the actual Outward Bound experience.

Finally, it cannot be said enough that the success of this program depends upon the interaction and cooperation of the Family Court with private agencies and the Outward Bound program. Of course this includes an ongoing cooperative relationship with the staff of the state Training School.

FAMILY COURT OF THE
STATE OF RHODE ISLAND,
Providence, RI, September 29, 1993.

Hon. JANET RENO,
Attorney General, Department of Justice, Washington, DC.

DEAR ATTORNEY GENERAL RENO: Attached is a proposal that was developed through a collaborative effort by private and public agencies and the Rhode Island Family Court. This pilot project has been developed to provide a comprehensive treatment program that meets the needs of status offenders and adjudicated juvenile offenders.

The Rhode Island juvenile justice system is struggling to provide the juveniles referred to the Family Court with meaningful sanctions and alternatives to incarceration.

Unfortunately, the state does not have all the necessary treatment slots available to meet the needs of these young offenders. This proposal will provide the juvenile justice system with an appropriate rehabilitative option.

I appreciate your consideration of this proposal, and I strongly encourage you to support this effort. The implementation of this proposal will provide juvenile offenders with an appropriate alternative to help them bring about change in their lives.

Sincerely yours,

JEREMIAH S. JEREMIAH, Jr.,
Chief Judge.

THOMPSON ISLAND,
OUTWARD BOUND EDUCATION CENTER,
Boston, MA, September 28, 1993.

Judge JEREMIAH S. JEREMIAH, Jr.,
Chief Judge, Family Court of Rhode Island, Providence, RI.

DEAR JUDGE JEREMIAH: Thompson Island Outward Bound Education Center is pleased to support the effort your group has undertaken to develop alternatives to the Training School program for male delinquents and provide interventions for male status offenders involved with the Family Court of Rhode Island.

We expect great success for the programs you are proposing based on the Outward Bound model which has been proven to reduce recidivism in a cost effective manner.

I look forward to continued cooperation with your Juvenile Offenders program.

Kindest personal regards,

PETER O. WILLAUER,
President.

Mr. SIMON. Mr. President, I want to address two aspects of S. 1607, the Violent Crime Control and Law Enforcement Act of 1993. Title X of S. 1607 includes the DNA Identification Act of 1993, a provision I authored to encourage the use and databanking of forensic DNA tests.

In 1989, I held the first ever congressional hearings on forensic DNA tests. The testimony received at that hearing convinced me of the scientific soundness of these tests and their immense crime-fighting potential. The DNA Identification Act passed the Senate twice last Congress as part of anticrime legislation. This provision is strongly supported by the FBI and the Illinois State Police.

As included in S. 1607, the DNA Identification Act directs the Director of the FBI to appoint an advisory board on DNA quality assurance methods and, after taking its recommendations into account, to issue quality assurance standards including standards for proficiency testing of forensic laboratories and analysts. The bill specifies that the advisory board shall include as members, scientists from State, local, and private forensic laboratories appointed from among nominations proposed by the head of the National Academy of Sciences.

Private sector representation on the advisory board was added in recognition of the fact that a growing number of for-profit laboratories have entered the field of forensic DNA analysis. This was done with some hesitation, however, because of the legitimate concerns about the potential for ethical and conflict of interest problems which would arise from the presence of a board member who has a financial interest, or whose employer has a financial interest, in a particular DNA analysis method, protocol or product. This concern, of course, is not limited to board members from the private sector.

Consequently, in making appointments to the advisory board on DNA quality assurance methods, it is my expectation that the Director of the FBI

will adhere strictly to all applicable conflict of interest and ethics laws. In particular, the FBI Director must take appropriate steps to ensure that no member of the board has a commercial or proprietary interest in matters addressed by the board. This may require the Director to obtain disclosure statements from board nominees. A review of any potential conflict of interest or ethical questions should be conducted with the assistance of the Bureau's Legal Counsel Division, with the Director retaining final authority over appointments to the board.

Mr. President, the development of quality assurance methods and standards is critical to the performance of high quality forensic DNA analysis. According to a 1990 Office of Technology Report, "setting standards for forensic DNA analysis is the most urgent policy issue and needs to be resolved without further delay." I wanted to take a moment to address this issue because of the importance of the task facing the DNA advisory board and the necessity that any decisions it makes are free from even the appearance of a conflict of interest.

Finally Mr. President, the DNA Identification Act also directs the National Institute of Justice to study the feasibility of establishing and, if appropriate, to undertake to establish, a blind external proficiency testing program. It is the intent that any blind external proficiency testing program established through the National Institute of Justice would become self-sustaining, through fees paid by public and private laboratories participating in the program. It is not the intent to require participation in such a blind, external proficiency testing program by State, local and private laboratories—participation would be voluntary for such laboratories. Furthermore, State and local laboratories receiving grants under the bill and any laboratory which submits data to the national DNA index would not be required by this legislation to participate in any blind, external proficiency testing program. It is expected that most laboratories would voluntarily choose to participate in such a program. That decision, however, remains outside of the scope of this legislation.

Mr. President, I want to commend the chairman of the Senate Judiciary Committee, Senator BIDEN, for his extraordinary efforts these past few weeks in bringing the crime bill to a final vote. He has been forced to walk through a minefield, artfully moving between controversies from gun control to habeas corpus reform. He has shown once again that few, if any, Members of this body can match his breadth of knowledge about crime and violence in America.

Having said that, I must admit that I do not find this vote to be an easy one. On one hand, there is much in this bill that I believe in strongly.

The bill includes many provisions that I have sponsored, including legislation that would impose tough new restrictions on gun dealers, another that would require during testing of all Federal prisoners, a measure that would permit the Government to more easily trace drug money, and a grant program to evaluate whether alternative programs for nonviolent offenders would help reduce recidivism and save money.

Moreover, the bill includes other provisions that I have long supported, such as the Violence Against Women Act. It includes funds for 100,000 additional police on the streets of our Nation, which will surely help in the fight against street crime across America. It provides grants for certain innovative enforcement projects—such as a drug court for nonviolent substance abusers and a boot camp program for young offenders. And, the bill enacts long overdue gun control provisions, such as a ban on assault weapons.

And yet. And yet, I am troubled by the package that lies before the Senate today. I am troubled because, in too many ways, this package represents an approach to crime control that I sincerely believe is misguided and ineffective. In large measure, this package rests on the seductive belief that we can fight crime simply by passing tougher and tougher sentencing laws.

What have we done?

First, we have passed 50 new death penalties to show that we will be ruthless with murderers and drug dealers. I have spoken out in the past about my opposition to the death penalty. But even supporters of the death penalty must recognize that these 50 new death provisions represent little more than posturing. Studies show that, in general, the death penalty has negligible, if any, deterrence effect. At the Federal level, the death penalty will assuredly have no more than symbolic value, since the provisions will apply only to an exceedingly small number of offenders.

And the symbol that we have conveyed is one of ruthlessness. In our rush to be tough, we have pushed aside meaningful habeas corpus reform, increasing the risk that a tragic error will occur. I am troubled deeply that our desire for revenge is not matched by our desire for justice.

Second, I am troubled by the extraordinary funds we have authorized for new regional prisons. Over $3 billion, Mr. President. In 1970, we had 134 people per 100,000 in our prisons and jails. Last year, we had over 500 per 100,000. Is Washington, DC, safer as a result? Is Chicago safer? New York? Los Angeles? As our prison rates have mushroomed, so have violent crime rates, increasing by over 75 percent during the past decade.

It is a fantasy to think that the regional prisons will relieve prison overcrowding in our State systems. The strict truth in sentencing provisions that the States will be forced to accept in order to use the regional prisons will likely increase prison populations far beyond the 25,000 additional beds promised in this proposal.

Indeed, the best and most cost-effective way to reduce overcrowding in the State systems is to become smarter about the way we use our scarce prison resources. For the past 10 years, we have wasted prison space on an increasing number of nonviolent offenders. Between 1980 and 1990, the number of offenders sentenced to prison for drug crimes increased from 9,000 per year to 108,000, rising from 7 to 32 percent of all prison admissions. At the same time, the percentage of admissions for violent offenses fell from 48 to 32 percent.

We are not going to reduce overcrowding by building regional prisons. We will do it only by being smarter about the way we spend our prison resources.

In the long run, violent crime will fall only when we begin to bring some semblance of hope and opportunity to our inner cities. To that worthy objective, this crime bill offers crumbs. Indeed, by carving out a separate trust fund for these prison building measures, we have guaranteed that future cuts in discretionary spending will be taken out of programs like education grants and Head Start. In a very real sense, then, we have begun the process of turning our schools into prisons.

Third, I am troubled by the Senate's rush to federalize crimes that historically have been prosecuted as State offenses. One notable provision in the crime bill, for example, provides that any crime committed with a weapon is now a Federal offense. The chairman of the Judiciary Committee observed last week that this could potentially reach hundreds of thousands of firearm offenses now treated in State courts. Another provision will criminalize certain gang crimes, such as murder, robbery and arson.

No one has made a persuasive case for why these cases should come before a Federal court. I fear that in our desire to sound tough on crime we will simply overwhelm the Federal system with cases that are more appropriately—and more commonly—heard in State court. I fear that we will spend enormous sums of taxpayer dollars in the hope of appearing tough on crime regardless of the effectiveness of these policies.

Finally, I am troubled by our preference for punishment over prevention in dealing with illegal immigration. Amidst the current fervor over immigration, we have threatened to deny local and State governments help in crime prevention if they do not identify and locate undocumented aliens. Rather than force school teachers, public health nurses, and even playground directors to turn over the names of

people suspected of being undocumented aliens to the Immigration and Naturalization Service, I believe that we should more effectively enforce our immigration laws at the border and find ways to reduce illegal immigration altogether.

Another unwise provision would impose jail sentences of up to 4 years on people who enter the United States after they have been deported on the grounds of overstaying their visa or illegally getting married. It also authorizes additional penalties upon a finding that an individual is an "aggravated alien felon," a finding that may be based on the existence of a criminal conviction in a foreign country as far back as fifteen years ago.

With my colleagues on the Immigration Subcommittee, I have worked to address immigration enforcement issues. It is my hope that the objectionable provisions can be dropped from this bill, studied and modified by subcommittee members and other interested Senators and added to comprehensive asylum reform legislation that would have bipartisan, bicameral and administration support.

Mr. President, I believe that we can do better. The public is rightfully fearful about crime. They sense that the fabric of their community is frayed and insecure. But I am afraid that our response to those fears has been ill-considered and precipitous.

We will not cultivate individuals who value justice, if we continue to sanction the death penalty without just procedures. We will not reduce violent crime in our communities, if we continue to waste prison space on nonviolent offenders serving long mandatory minimum sentences. We will not stop the use of guns in our streets, if we do not take further steps to limit the sale of firearms and counter the despair that ravages our youth.

Someday I hope we will have another debate about crime. A debate about the need to match punishment with prevention, retribution with justice. That day, clearly, has not yet come.

I will cast my vote against S. 1607.

Mr. DOLE. Mr. President, one of the most accurate reflections of our society and our culture is the newspaper.

Open up any newspaper, on any day, in any city, and crime is there—in our neighborhoods, on our streets, even in our schools. And crime is not just a problem limited to our cities and our suburbs. It's a rural problem as well. In Wichita, KS, for example, the number of drive-by shootings—one of the most cowardly and vicious of all crimes—is at an all-time high.

Mr. President, this bill will obviously not end crime in America. It will not stop the bleeding on our streets, but it is a much needed bandage, a tourniquet, some short-term relief to help restore order to our streets and communities.

It is fitting that this bill has been drafted—and will pass—on a bipartisan basis. Although we have our differences, crime prevention should not be a partisan issue: a mugger does not ask you if you are a Democrat or a Republican before he sticks a gun in your ribs.

From day one, Republicans have insisted that any anticrime bill we pass must be fully paid for. Security has a price and it is a price we at least attempt to pay by establishing a violent crime reduction trust fund. In the months ahead, we will see whether we live up to the trust fund commitment.

Like President Clinton, Republicans also believe that more cops on the street means more security in our neighborhoods.

That is why the Neighborhood Security Act, introduced by Senate Republicans last August, proposed to put more police on the streets through a Community Policing Program, a Troops-to-Cop Program, and the Police Corps. And that is why we support the adoption of these programs as part of the bipartisan anticrime package.

I am also pleased that the package contains the Republican truth-in-sentencing proposal, which would encourage each of the States to adopt laws requiring that their most violent criminals serve at least 85 percent of their prison sentences.

All too often, vicious criminals enter our criminal justice system, only to slide through its revolving doors—legally, and with tragic consequences.

It is no secret that a criminal kept behind bars will not terrorize a single—not one—law-abiding citizen. So, it is my hope that the Republican truth-in-sentencing plan will take off at the State level, for this is one area where the States should follow the Federal Government's lead.

In addition, I am pleased that many of the proposals originally introduced in the Women's Equal Opportunity Act of 1991, and earlier this year, in the Sexual Assault Prevention Act of 1993, have become part of this package.

These proposals include doubling the maximum penalties for recidivist sex offenders; authorizing the HIV-testing of sex offenders and disclosing the results of these tests to the victims; amending the Federal rules of evidence to allow the admissibility of similar past offenses in sexual assault and child molestation cases; and the establishment of a 12-member National Commission on Violence Against Women.

The package also includes additional funding for important programs designed to prevent, and provide assistance to the victims of, sexual assaults and domestic violence.

And, Mr. President, I would like to acknowledge the leadership of both Senator BIDEN and Senator HATCH in giving the issue of violence against women the national attention it deserves.

The bipartisan package contains other important provisions—a Federal antigang statute crafted by myself, Senator HATCH, and Senator BROWN; the death penalty for drug kingpins, sponsored by my colleague from New York Senator D'AMATO; the three-time loser provision offered by my colleague from Mississippi, Senator LOTT; Senator DOMENICI's amendment on afterschool mentoring programs; and, of course, the amendment offered by my distinguished colleague from Iowa, Senator GRASSLEY, that ultimately forced the Justice Department to reverse its position on the enforcement of our child pornography laws.

These proposals are important steps in the right direction. They can make a difference.

But, Mr. President, when all is said and done, the most effective deterrent to crime is not police or a prison cell, but a strong family and the values that strong families transmit to their children.

Values count. Character counts. Families count. And they count far more—and are far more effective—in reducing and stopping crime than any law enforcement proposal Congress can devise.

This is our next and more difficult challenge—as illegitimacy rates reach historic highs, Government at all levels must focus not only on building prisons, but also on developing sensible strategies to build—and rebuild—families. In too many of our communities, the two-parent family is the tragic exception, rather than the rule—and the result has been a generation of children without families and without values.

If we want to go to the root causes of crime, we need to go to the deepest root of all—the family.

Finally, Mr. President, I want to commend my distinguished colleagues, Senator HATCH and Senator BIDEN, for their hard work and perseverance in managing this bill.

There are few Senators who are more committed to effective and tough law enforcement than my friend and colleague from Utah, Senator HATCH. With the passage of today's anticrime package, America owes him a debt of gratitude.

The ACTING PRESIDENT pro tempore. Under the previous order the Senate will proceed to the immediate consideration of H.R. 3355. The clerk will report.

The bill clerk read as follows:

A bill (H.R. 3355) to amend the Omnibus Crime Control and Safe Streets Act of 1968 to allow grants to increase police presence, to expand and improve cooperative efforts between law enforcement agencies and members of the community to address crime and disorder problems, and otherwise to enhance public safety.

The ACTING PRESIDENT pro tempore. Under the previous order, all

after the enacting clause is stricken and the text of S. 1607, as amended, is inserted in lieu thereof.

The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

Mr. BIDEN. Mr. President, I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The ACTING PRESIDENT pro tempore. The bill having been read the third time, the question is on passage of the bill as amended.

The clerk will call the roll.

The bill clerk will call the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. DORGAN], is necessarily absent.

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

The result was announced, yeas 95, nays 4, as follows:

[Rollcall Vote No. 384 Leg.]

YEAS—95

Akaka	Feinstein	McConnell
Baucus	Ford	Metzenbaum
Bennett	Glenn	Mikulski
Biden	Gorton	Mitchell
Bingaman	Graham	Moseley-Braun
Bond	Gramm	Moynihan
Boren	Grassley	Murkowski
Boxer	Gregg	Murray
Bradley	Harkin	Nickles
Breaux	Hatch	Nunn
Brown	Heflin	Packwood
Bryan	Helms	Pell
Bumpers	Hollings	Pressler
Burns	Hutchison	Pryor
Byrd	Inouye	Reid
Campbell	Jeffords	Riegle
Chafee	Johnston	Robb
Coats	Kassebaum	Rockefeller
Cochran	Kempthorne	Roth
Cohen	Kennedy	Sarbanes
Conrad	Kerrey	Sasser
Coverdell	Kerry	Shelby
Craig	Kohl	Simpson
D'Amato	Lautenberg	Smith
Danforth	Leahy	Specter
Daschle	Levin	Stevens
DeConcini	Lieberman	Thurmond
Dodd	Lott	Wallop
Dole	Lugar	Warner
Domenici	Mack	Wellstone
Exon	Mathews	Wofford
Faircloth	McCain	

NAYS—4

Durenberger	Hatfield
Feingold	Simon

NOT VOTING—1

Dorgan

The bill (H.R. 3355), as amended, was passed.

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

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

The motion to lay on the table is agreed to.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senate will insist on its amendments, request a conference with the House on the disagreeing votes, and the Chair is authorized to appoint conferees on the part of the Senate.

The Senator from Delaware.

Mr. BIDEN. Mr. President, I ask unanimous consent that S. 1607 be indefinitely postponed.

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

Mr. BIDEN. Mr. President, let me thank Senator HATCH particularly. This piece of legislation started off—and I will be very blunt about it—in an atmosphere of partisanship in that I just wrote a crime bill and I did not consult with my Republican friends in any way because, quite frankly, in my view they had filibustered the last crime bill for 2 years.

I figured that there was no way we could get to the end point. There was no desire to cooperate. But as we introduced the Biden bill, endorsed by the President, and we started this process, we found there was a great deal more cooperation.

So I would like to ask unanimous consent now that on the underlying bill that we passed, the lead sponsor listed as myself, the Biden bill and others, I would like to list as the Biden-Hatch bill, if we can.

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

COMMENDATION OF THE STAFF

Mr. BIDEN. Mr. President, I would also like to—I know we always go through this, and the public listens to this and probably thinks this is all perfunctory.

I want to talk 3 brief minutes to thank the staff who worked on this bill. Even those who have observed this gigantic bill as it was wended its way through here—I think appreciate may be the wrong word—understand this was an incredibly time-consuming, complicated process.

So I want to start off by thanking first and foremost the chief counsel of the Judiciary Committee, Cynthia Hogan, who has been the mastermind behind all of this. I cannot thank her enough, and to be very blunt about it, I do not think that the Senate could thank her enough. For all those who voted for this bill, they got a chance to do it because of Cynthia Hogan.

Also, I would like to thank, with the permission of the majority leader, John Hilley. John Hilley is the best I have ever worked with. Were it not for leadership coming out of the majority leader's office——

The PRESIDING OFFICER. Would the Senator from Delaware please withhold? The Senate is not in order. Those who have business other than that currently before the Senate, please move to the Cloakroom.

The Senator from Delaware.

Mr. BIDEN. Mr. President, I also want to thank, as I am sure Senator HATCH will—and this may hurt his reputation—Mark Disler, who is Senator HATCH's chief of staff; and Manus Cooney, who I worked with when he ran the similar operation for Senator THURMOND. Both these men are bright, tough, and absolutely, totally, completely honorable. I have never once had a discussion—there have been some very difficult discussions that we have had on this bill, that I have not been able to walk away from the conversation knowing what they told me would precisely happen. For that I thank them.

I also want to thank Sharon Prost, Ed Whelan, and Victor Cabral of Senator HATCH's staff.

I want to thank Anita Jensen, who is the majority leader's staff person who handles criminal justice issues, and many other issues. I think that her reputation has been damaged because she has been with our staff so much lately they think she works with me. I wish she did. She is absolutely first-rate.

I would like to thank the entire floor staff for helping me bumble through the parliamentary snags that I know a lot less about than I do about the criminal justice system.

Also, Jim English of the Appropriations Committee, and Dorothy Seder. Again, they probably thought she was on my staff. She sat here on the floor the entire time these last so many days until 12, 1 and 2 at night.

Also Larry Stein, of the Budget Committee and Bill Dauster of the Budget Committee.

Last, but not least, my staff: Chris Putala, who has worked with the police organizations; Demetra Lambros, a woman who has come on in the last 8 months in this office, and probably will not regret if she never, ever sees a crime bill again—all the work she has put in—for years; and Cathy Russell, who has had the dubious and difficult job of having to satisfy, I think, something on the order of 45 Senators by getting their amendments negotiated and in the managers' package, a job you would not wish on anyone, but a job that I would give to her again because I know no one else could do it.

James Cooper, who is a first-rate lawyer, who has handled a major portion of this; and Tracey Doherty, a young woman not even out of law school yet. She is going full time to George Washington University. She is working full time on the committee staff. She is one of 12 children, an incredible kid—incredible woman. She is not a kid any more. She is so young, and I want to thank her.

Also Lisa Monaco, Dave Long, Nancy Solomon, and John Earnhardt of my staff.

Last, but not least, I want to thank the majority leader for his graciousness and being willing to let me take another massive bill to the floor, not knowing where in God's name it was likely to go.

Mr. President, I ask unanimous consent that the Senate amendment to H.R. 3355 be printed as passed by the Senate.

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

Mr. BIDEN. I yield the floor. I thank the Chair.

Ms. MOSELEY-BRAUN. Today, Mr. President, the Senate has passed a crime bill that, for the first time in years, has a very real chance of becoming law. This could not occur at a better time. As we have heard over and over again during the past 3 weeks, violent crime is simply out of control. Each day in America a violent crime occurs every 22 seconds. That includes one murder every 22 minutes, one rape very 5 minutes and one aggravated assault every 28 seconds.

Fifty-nine percent of city residents and 57 percent of suburban residents fear becoming a victim of a crime. Sixty percent of all Americans limit the places they travel alone. We are in danger of becoming a society of victims.

But I truly believe that the crime bill passed today will make a very real difference in the daily lives of all Americans. This bill will put 100,000 additional police on the streets and build more prisons for hard-core criminals. It will establish boot camps for first time offenders and expand treatment for drug addicted prisoners.

In addition, this bill will increase penalties for a number of offenses, ranging from hate crimes to arson. Finally, the bill signals the Senate's intention to get serious about gun violence, by banning both the possession of handguns by minors and the manufacture and the sale of deadly semiautomatic weapons.

I would like to take this time to pay tribute to the chairman of the Judiciary Committee, Senator BIDEN. It is largely through the efforts of the Senator from Delaware that we have a crime bill at all. I want to thank him today for his steadfastness and his dedication in ensuring that this bill passed the Senate.

I am also pleased that I was able to make a contribution to the crime bill, by offering a number of amendments to deal with the most disturbing trend in America's crime wave, the rise in violent juvenile crime.

Almost 2 weeks ago the Senate adopted—by a vote of 64 to 23—an amendment I offered, directing U.S. Attorneys to try juveniles 13 years and above who commit a murder, attempt a murder or use a firearm in the commission of a violent crime as adults. I would like to take this moment to briefly discuss what this amendment does and doesn't do.

This amendment was not intended to abolish the juvenile justice system. As a matter of fact the first juvenile court was started in my home State, in Cook County, IL, in 1899. I am proud that it was my home State that saw a need for a separate court system to function as a surrogate parent for wayward youth. I am proud that my State sparked a revolution that quickly spread throughout the country, forcing States to focus individualized attention on the needs of each child, to spare children the trauma of contact with the criminal justice system and to avoid stigmatizing a child by branding him or her a criminal.

At the same time, I believe we must realize that the nature of the Juvenile criminal is changing. In 1903—or even as recently as 1963—a youth in the juvenile justice system was most likely charged with shoplifting, truancy, simple assault or burglary. However, in 1993 that crime can just as easily be aggravated assault, forcible rape or even murder. The fact of the matter is that there is a small but rapidly increasing group of violent juvenile offenders who arm themselves with handguns, sawed-off shotguns or semiautomatic weapons and roam the streets with absolutely no respect for human life. The juvenile justice system simply was not created for this growing population of youths committing adult crimes. It is those juveniles—and those juveniles only—that my proposal was intended to address. But that amendment was just one small part of a larger package I offered to extend a helping hand to those youngsters and their families who are in need of assistance. We must never forget that it is always better to prevent a crime than to punish a criminal. For that reason, I proposed an amendment specifying that 20 percent of juvenile drug trafficking and gang prevention grants must be used to provide parenting classes to high risk families and nonviolent dispute resolution to junior high and high school students. These classes can teach our children a very important lesson, one that is all too often lacking among today's youth—that every dispute need not be settled with a gun.

However, we must also recognize that the schools—or the Government or society—can go only so far in teaching children to avoid a life of crime and violence. Juvenile violence has not reached epidemic levels simply because the schools are not doing their job. Juvenile violence has reached epidemic levels because parents have failed in their basic duties to supervise their children, and to teach them right from wrong.

Along with my distinguished colleague from Arizona, Senator MCCAIN, I proposed an amendment to the crime bill that will impose civil fines or community service on the parents of juveniles who commit Federal crimes. The purpose of this amendment is simple—to make parents accept greater responsibility for the actions of their children.

Of course, no parent can control every action of his or her child, and at times, even children of the best parents will make mistakes. But parenting requires more than merely feeding or clothing your children. We can no longer allow parents to distance themselves from responsibility for their minor children who terrorize entire communities. I firmly believe that if the Government is going to be successful in the fight against juvenile crime, it must have the aid of the Nation's parents. My amendment is designed to give parents an added incentive to exercise proper control and supervision over their minor children.

Another critical step in controlling youth violence is getting guns out of the hands of our 17-year-olds, our 16-years-olds, and yes even our 12 and 13-year-olds. The fact of the matter is that, today, our Nation's schools are looking less and less like halls of learning and more and more like armed camps. We cannot expect our children to learn or thrive in that environment.

I am proud to have been a cosponsor of Senator KOHL's legislation to ban the transfer or possession of a handgun by a minor. I worked with Senator KOHL to strengthen this ban, by including an enhanced penalty for adults who provide a firearm to a juvenile to be used in a crime. We can no longer afford to be lenient on adults who are arming our children, cynically using them as mules and lookouts to earn their drug money. This legislation sends a very important message. If you are a kid with a gun, or you give a kid a gun, you will be punished.

Finally, because of the strong evidence that minority youth receive disparate treatment in many juvenile justice systems across the country, I have sponsored a provision to allow the Attorney General to intervene where a pattern and practice of discriminatory treatment of can be shown. Unfortunately, in many jurisdictions, blacks are much more likely than whites to be referred to court, formally charged, and institutionalized in the juvenile justice system. While whites account for 70 percent of juvenile arrests nationwide, they make up only 35 percent of youth in custody. Blacks account for only 25 percent of juvenile arrests, yet account for 44 percent of the youth in custody. This provision provides a method for the Attorney General to ensure that, to the extent that this crime bill causes more youth to come into contact with the juvenile justice system, it will affect all youth equally, and not discriminate on the basis of race.

I would also like to speak about an amendment I cosponsored with two of my colleagues, Senator DURENBERGER of Minnesota and my Senior Senator from Illinois, Senator SIMON. This provision incorporated within the crime bill will establish five demonstration

projects—four at the State level and one at the Federal level—where nonviolent female offenders can reside with their young children. In these centers, women can not only bond with their young children and keep their families together, but they can receive parenting classes, drug treatment, job training and other educational opportunities.

By allowing nonviolent offenders to live in the community with their children, we can help maintain more stability than if the mother and the child were separated. This serves two very important purposes. First, by allowing the mother to form strong bonds and attachments with her child, we can give the mother a strong incentive to go straight, and help make it less likely that she will become a repeat offender. And second, we can prevent the child from being shuffled endlessly through the foster and group home system that we all know creates so many problems for young children.

The majority of women prisoners are nonviolent offenders, jailed for property or drug crimes. These women can serve their time in the community, alongside their children, without posing any risk to society. I do not mean to say that these women should not pay for their crimes—of course they should. But why should their innocent children also be made to suffer, particularly when keeping a family intact can give a solid foundation for a happy and productive life.

Two other amendments which I have proposed and have been included in the manager's package also merit a brief mention here. The first bill will provide assistance to States to increase the level of access to the justice system for witnesses, victims, and ordinary citizens, by establishing decentralized court facilities in individual neighborhoods. Simple common sense tells us that residents will take a much more active role in the justice system when the local courthouse is across the street, not across town. The second amendment provides that any study of the role of race in a State's criminal justice system will expressly consider the role that race plays in the jury selection process.

Before I conclude, I would like to speak for a moment on one provision I was not able to place in the crime bill, expressing the sense of Congress that all incarcerated juveniles should receive education at least equivalent to the standards of the local school district. According to the Department of Justice, only 55 percent of all juveniles in detention facilities receive an adequate education. That means 45 percent of all incarcerated juveniles—slightly less than half—are not receiving an adequate education.

We cannot afford to give up on a child merely because he or she has had a brush with the law. If we truly want these young people to have a chance at reforming themselves, we must provide them with a quality education. Individuals who do not receive a quality education are much more likely to return to the juvenile justice system, or to be committed to adult prisons later in life. When the Senate returns next year I intend to call for hearings on this problem, with the help of Senator KOHL, who chairs the Judiciary Committee's Subcommittee on Juvenile Justice. We must act quickly to correct this deficiency, before an entire generation of incarcerated youth is wasted.

In closing, I would like to once again commend Senator BIDEN for his leadership in this area. The time has come for us to reclaim our streets. I believe the crime bill passed today represents a significant step in that effort, and I am proud to have played a part in enacting this legislation.

BRADY HANDGUN VIOLENCE PREVENTION ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of S. 414, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 414) to amend title 18, United States Code, to require a waiting period before the purchase of a handgun.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, parliamentary inquiry: Am I correct in my understanding that, pursuant to the previous order, it is now appropriate for me to offer an amendment in the nature of a substitute in my behalf and that of Senator DOLE?

The PRESIDING OFFICER. The majority leader is correct.

AMENDMENT NO. 1218

(Purpose: Substitute amendment)

Mr. MITCHELL. Accordingly, Mr. President, I offer an amendment in the nature of a substitute for myself and for Senator DOLE.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], for himself and Mr. DOLE, proposes an amendment numbered 1218.

Mr. MITCHELL. 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. MITCHELL. Mr. President, I have just presented, and there is now before the Senate, an amendment in the nature of a substitute which was offered by myself and Senator DOLE.

This is the culmination of several days of negotiation and discussion, and represents the best way that we could devise to bring this matter before the Senate and to a conclusion.

At the outset, I want to make it very clear that when I agreed to cosponsor this compromise, I fully reserved my right to vote to eliminate two new provisions in this compromise with which I wholly disagree.

The provisions are those which preempt State and local laws, and the so-called sunsetting provision. I agreed to go forward in this way, reserving my right to work to eliminate those two provisions in the interest of moving the Brady bill through the Senate at this time.

Mr. President, as attempts were made over the past several days to reach agreement on a procedure by which the Senate could debate the Brady bill, it became clear that unless some mechanism were found to move forward on a bipartisan basis at least procedurally, it would not have been possible to complete the Brady bill this year.

It was, therefore, a choice between seeking some form of compromise, or not completing action on the Brady bill in any form this year.

Rather than allow yet another year to elapse without Senate action on the Brady bill, I agreed to join, Senator DOLE in fashioning this means of moving the Brady bill to the Senate floor so that the areas in which there are irreconcilable differences between us can be determined, as they should be in a democracy, by a vote.

Therefore, I will move to strike from this substitute the preemption language which is now in the substitute.

The agreement under which we will debate the bill provides that a later motion to strike or amend the so-called sunsetting language is also in order, and I intend to vote for that effort as well.

Mr. President, the agreement provides that if either or both of these efforts to eliminate these provisions are successful—in other words, if we strike the preemption of State laws, or if we strike the sunsetting language, or if we strike both—then we will face a filibuster by our Republican colleagues. They have made it clear that if we succeed in eliminating either of these provisions, they will filibuster this bill. And, therefore, we will need to have 60 votes to end the filibuster to pass the bill and send it to the House.

Mr. President, I will shortly move to strike the language which would preempt State laws, and I would like to address myself to that subject now. The underlying Brady bill, without the preemption language and without the automatic cutoff date, is one of the best known and most broadly supported pieces of anticrime and antiviolence legislation in this country. Public opinion polls find that 92

percent of Americans favor a required 5-day waiting period so that purchasers of handguns may undergo a background check; 68 percent of members of the National Rifle Association favor passage of the Brady bill requiring a waiting period and a background check; 84 percent of all gun owners favor the Brady proposal to require a waiting period and a background check.

Let me repeat those figures for the benefit of the Senate. Polls show that 92 percent of all Americans, 84 percent of all gun owners, and 68 percent of National Rifle Association members favor the waiting period for the purchase of handguns.

Public opinion polls have consistently shown that among gun owners and non-gun owners alike across the entire country, in every State, substantial majorities of Americans agree that keeping handguns out of the hands of convicted felons is something that makes sense and should be done. Disagreement over reaching that goal was, for many years, stalled as two alternatives were presented, which some claimed were mutually incompatible. The first was to demand a waiting period for prospective handgun purchases. The second was to institute an instant check system of buyers to weed out convicted felons and others not eligible to own firearms.

But in 1991, the Senate demonstrated, by a large margin, that these two alternatives were not mutually incompatible. A bipartisan group of Senators, including the leadership and colleagues with strongly held views on both sides of the issue, developed a measure which would have achieved both goals more certainly and more quickly than either side had so far done alone. The result was a 1991 Senate version of the Brady bill, sponsored by myself, Senator DOLE, Senator METZENBAUM, and Senator KOHL. Senator METZENBAUM has been the leader of this effort for years and was the prime author of that amendment, and Senator KOHL was one of the most valuable contributing members to that process.

That 1991 compromise demonstrated its broad appeal when 67 Members of the Senate, on a bipartisan basis, voted for it. Its premise was simple. There would be a waiting period of 5 business days during which police would check existing records to determine if a buyer was ineligible to purchase a handgun; specifically, if the buyer was a convicted felon.

Simultaneously, a carefully drawn timetable and a system of grants to States would enable the Attorney General to move the States toward a fully automated criminal record system, accessible on a national basis. When that national instant check system was on line, the waiting period would no longer be necessary and would be terminated.

69-059 O—97 Vol. 139 (Pt. 21) 34

The 1991 Senate compromise Brady bill contained incentives and penalties designed to move both the National Government and the States to reach this goal in a timely and realistic and achievable way. It protected the rights of buyers wrongly denied the right to purchase. It was not an unfunded mandate on the States, since it authorized funds for the upgrading of criminal records and, most important, it contained achievable and reasonable standards to judge when a background check system was so reliable that a waiting period was no longer necessary.

It is my judgment, despite what we now have as new objections to that bill, that very broad and substantial areas of agreement still exist. Americans still support the idea of keeping handguns out of the hands of felons. So does every Member of the Senate. A majority of Americans supports the idea of a waiting period to allow a background check as a reasonable way to achieve that goal. So does a majority of the Senate. An overwhelming majority of Americans is angry at the escalating gun violence in our society. So are Senators.

So, despite the new provisions which have been put in this package, the basis for compromise and reaching a favorable result remains strong. But there can be no compromise on the question of preempting State laws. There was no preemption of State law in the 1991 bill, for which 67 Senators voted. There should be no preemption of State law in this bill either.

I ask those Senators who voted in 1991—the 67—for a bill without preemption, why do they now feel it is necessary to include a provision that is to back off from the position taken then? The provision which I will move to strike provides that, notwithstanding any provision in the law of any State or political subdivision—and that means every city, every town, every county, every unincorporated district in America; anyone who has chosen to require a local waiting period for handgun purchases or other weapons purchases—that the Federal law will supersede all of those laws as soon as some version of a national instant check system is in place.

The language in this package further provides that no State, no city, no town—no one—is permitted, even if they want to, to reinstate such a requirement until at least a year has gone by.

I want my colleagues, every Member of this Senate, to be very clear about the meaning of this provision. It means that, notwithstanding what your State legislature may have found to be appropriate for your home State, notwithstanding what the citizens of your States and cities may have decided about the conduct of their affairs, this provision says their views do not matter; their decisions do not count. It is hard to imagine a more inappropriate inversion of the proper role of the State and Federal Governments.

Supreme Court rulings as recently as 1983 have refused to overturn local ordinances directed at firearms and the public safety. Despite what may be the wishes of some Members of the Senate, the Supreme Court has implicitly said that it is the business of local residents, if they choose to do so, to regulate local commerce in firearms.

Mr. President, let us not be mistaken about this. The target of this provision is clear. It is States like California, which have chosen to adopt and preserve a waiting period for gun purchases. It is cities like Atlanta, GA, which has adopted a handgun purchase waiting period.

Proponents of this provision are asking the Senators from Georgia to tell the people of Atlanta that how they want to regulate their own affairs does not matter. They are asking the Senators from Alabama to tell their State residents that they do not have a right to make decisions about their own actions. And they are asking the Senators from Florida to tell every Florida citizen who voted for the handgun waiting period referendum in December 1990 that their votes do not count.

The people of Florida—and that is a State with an instant check system that has been held up as a national model—nonetheless, in 1990, by voter referendum, chose to amend their State's constitution and add a waiting period to the instant check. The people of Florida changed their constitution by a vote of the people of Florida, and this preemption language now would override Florida's constitution and the clearly expressed will of the people of Florida.

I cannot believe the Senator from Florida would vote for that or would say to the people of his own State: What you want to do does not matter even in a referendum of all of the voters of the State, even when you amended your constitution.

The preemption language of this bill is squarely directed at the citizens of about 20 States. A majority of those States disagree with those who want this preemption provision, and those States include Connecticut, Oregon, Delaware, Florida, Hawaii, Iowa, Illinois, Indiana, Massachusetts, Maryland, Minnesota, Missouri, Nebraska, North Carolina, New Jersey, New York, Pennsylvania, South Dakota, Tennessee, and Washington. Every one of those States has chosen to implement some form of purchase delay for some class of firearm. The proponents of this preemption provision are saying that what the people of those States want to do in their own business, in their own commerce, does not matter.

Are Senators from these States going to say to their own constituents: You

do not know what you are doing; you do not know what is good for yourself; we know here, and we are going to override anything you decide to do?

Further, Mr. President, incredibly enough, this provision says that the State legislatures of those 20 States can come back into session at least a year or more from now and rewrite the State laws that they never wanted to repeal in the first place.

Talk about unfunded mandates. Adoption of this preemption provision would mean that we are not only directing what local laws a State can pass, we are telling them when they can do it.

Can anybody here remember that? Not only are we dictating to States about what they can and cannot pass, we are telling them when they can do it.

The States which have chosen to apply laws to the commerce on firearms within borders run the gamut. They are urban and rural. They are Eastern and Northern. They are in the heartland and the Deep South. They are representative of every region of America. And their citizens have chosen on their own to implement some form of waiting for guns, handguns, and in some cases for all gun sales.

Mr. President, this preemption language ought to be stricken from the bill. I will move to strike it, and I urge my colleagues to support the motion to strike.

The people of the States have a right to decide for themselves what to do in this area. Many of them have chosen to do so. Others have chosen not to do so. Let us let permit the States to exercise their judgment when they choose to do so.

Mr. President, I reserve the remainder of my time, and I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, first let me express my appreciation on behalf of all of those concerned in passing the Brady bill to the leader because the leader has been resolute, not alone in this session but in previous sessions as well, in providing the helpfulness in order to bring about the passage of the Brady bill. Time and time again it is he and his staff that have walked into the breach in order to keep this issue alive and it is he who has been a real force to bring us to the point that we are at today.

Mr. President, before I address myself to the substance of the Brady bill, I will take a short moment to comment on the procedural situation we have agreed to today.

We have taken some unusual steps to que up the series of votes we will soon take—steps well worth taking in an effort to bring debate on this important matter to a close before we recess.

The chairman of the Judiciary Committee has been also extremely helpful staying here late hours into the night working as hard as anybody could possibly work in order to bring us to this point today in his support for the Brady bill. So I publicly acknowledge the help and the assistance that both the leader and the chairman of the Judiciary Committee have given us during the most fractious moments of these negotiations.

But quite often in the U.S. Senate when we conclude a measure we at that point arise and indicate our appreciation to the staff that had been involved. The staff of Senator MITCHELL and Senator BIDEN have indeed been extremely helpful but no single individual has worked harder to bring us to this point that we are at at this moment than my administrative assistant Joe Johnson, who is seated beside me. The night before last he was in the meetings until 4:30 in the morning, last night until 2:30 in the morning. I only say publicly to his wife my apologies, but I think in the long run you would agree that his efforts have been in the country's interest and I know how supportive you have been of him, and I am very grateful to him and the country owes him a great debt of gratitude.

At times, these talks were as difficult and tortured as any attempt at a Bosnian cease-fire. And while the Republican leader and I will cross swords shortly on two of the provisions of this substitute, it is safe to say we would not be in a position to pass this bill today if he did not want to allow it, and I am appreciative of that.

And even though the procedure today might seem a bit confusing—the drill is really very simple if you support the Brady bill—vote with the leader on a motion to strike the preemption provision, vote to strike the sunset provisions of the Dole substitute, and vote to invoke cloture on the bill. Three votes, and at the conclusion of those three votes, the President will take pen in hand and make the Brady bill the law of the land, because I do not anticipate any problem in the conference with the House on this subject.

Let us talk about the substance of why we are here and why we need the Brady bill. Mr. President, over 177,000 handgun deaths ago, I first introduced the Brady bill in the Senate—that was 6 years ago, on February 4, 1987.

It was about that time that Jim Brady and his wife Sarah—Jim who had paid with such a high price at the time during the Reagan administration when he himself was personally shot—came forward to provide the leadership to pass what we now call the Brady bill.

There are few bills in the Congress that have the names of a particular individual or individuals. When they do have such names usually they are the name of some Senator or some Congressperson, but in this instance these two individuals have given of so much of their time and effort and dedication in order to get the American people aware of what the issues are about and the need to pass the Brady bill.

I for one speak for all Americans when I say we express our gratitude and appreciation to both Sarah and Jim Brady. Without you we would not be where we are today. This is the fourth consecutive Congress in which we have debated this bill. In 1987, there were a limited number of original cosponsors. Some have claimed that there were no original cosponsors, and I am not sure of that fact.

Today, 31 Senators have joined as cosponsors of this bill. In the last Congress, 67 Senators voted in favor of the Brady bill. And now, in this Congress, the House has already passed the Brady bill.

Every year in this country, over 24,000 people are killed with handguns. That means that about 65 people are killed with handguns per day, or almost 3 per hour. Every year, handguns are involved in an average of 9,200 murders; 12,100 rapes; 210,000 robberies; and 407,600 assaults. Thousands more are killed in handgun suicides. Some of these tragedies could have been prevented if a waiting period had been in effect. And that is all we are saying. We are not claiming that all of them would have been eliminated, but a substantial number of them would not have occurred had there been a waiting period in effect.

Some people's lives would have been saved if Americans would be willing just to wait a few day to get a gun. As Senator MITCHELL has already pointed out the overwhelming majority of Americans, the overwhelming majority of Americans, are willing to wait, and the overwhelming majority of gun owners in this country are willing to wait. The Brady bill would do nothing more than that, provide for a national 5 business day waiting period prior to the sale of a handgun, during which time local law enforcement would be required to conduct a background check on the potential purchaser.

This waiting period requirement would be removed once a computerized nationwide instant background check systems is operational.

I think the American public is fed up with the refusal of the NRA and some Members of Congress to finally give the people the bill they have demanded for years. As previously stated, polls show that nearly 95 percent of the American people support the Brady bill. Eighty-seven percent of gun owners support it. Every single major law enforcement organization in the country supports it.

Dozens of leading labor, medical, religious, civil rights, and civic groups support the Brady bill.

Four former Presidents—Presidents Reagan, Carter, Ford, and Nixon—support it. And President Clinton certainly supports it in the strongest possible way.

I can think of no other piece of legislation that enjoys such support from such a broad cross-section of the American public. The broad and always growing support for the Brady bill should come as no surprise. Very simply, it is sensible public policy. It is absolutely incredible that we have had such a hard time over the years trying to make someone wait a few days to get a deadly weapon so that the police could make sure he or she is not a dangerous criminal.

Finally, we have a President who is not afraid of the NRA. Finally, we have a President who has said to Congress: "If you send me the Brady bill, I'll sign it."

We have a President who calls a press conference in his office, with Jim and Sarah Brady and the chairman of the Judiciary Committee and I and a few others, to indicate how strongly he feels about the need to pass the Brady bill. This is a President who says, "I want the Brady bill. Send it to me." I believe we should do exactly that and do it as quickly as possible. We cannot prolong the waiting period for this legislation any more. Somewhere, somehow, at some time, someone's life depends on it.

I know that by now many of you are familiar with the Brady bill. Some of you may be less familiar. Let me take a few moments to explain exactly what the Brady bill would do.

When the Brady bill is the law of the land, if an individual wishes to buy a handgun, he or she merely walks into a gun store, picks out the gun, and shows a photo ID with the person's name, address, and date of birth. The buyer then is asked to fill out a form stating whether he or she falls under any one of the categories that would, under current Federal law, prohibit possession of a firearm, such as felons.

The purchaser signs this form and leaves the store without a handgun. The dealer then sends the form to the local police. The police then have 5 business days to perform a background check on the purchaser. In that time, the police must check criminal records to see if the purchaser has a felony record. If, after 5 business days, a gun dealer has received no information from law enforcement which indicates that the sale would be illegal under Federal, State, or local law, then the transaction may go through. If the police can conduct this background check in less than 5 business days, then the sale can go through sooner.

If the police find that the purchaser lied on the form and is in fact prohibited from possessing a firearm, they would so notify the gun dealer. The dealer would then be prohibited from selling a handgun to the would-be purchaser.

The Brady bill applies only to handgun sales by licensed dealers to nondealers. It would not affect secondary transfers. In addition, the Brady bill does not apply in States that require their own background checks.

And that has to do with the preemption issue that we are talking about on a Mitchell amendment knocking out the preemption issue.

I also want to make clear that the Brady bill waiting period does not apply in situations involving a known threat to personal safety. Should an individual require access to a handgun because of a threat to his life or the life of a member of his household, he may obtain a statement from local law enforcement that would exempt him from the waiting period.

What the Brady bill will do is help reduce handgun violence. It will stop thousands of illegal handgun purchases.

No one argues that a national waiting period will stop all criminals determined to get a handgun, just as America's drug laws don't stop all drugs, but stronger laws will put a significant obstacle in the criminal's path to the tools of his trade. Enactment of the Brady bill will go far in stemming the flow of guns into the black market.

The NRA claims that there is no evidence of this, that there is no evidence to show that the Brady bill will keep guns out of the hands of criminals. As usual, the truth is just the opposite.

Law enforcement officials from across the Nation report that felons and other prohibited persons are caught by the thousands in States which currently have waiting periods and/or background checks.

For example, California has a 15-day waiting period that has prevented 5,859 illegal firearm sales during 1991 and 5,763 during 1992. Those stopped from buying guns since 1991 include 71 murderers; 14 kidnapers; 203 rapists; 141 under restraining order for domestic violence; 884 burglars and robbers; 1,283 convicted of dangerous drug offenses; 5,772 convicted of assault, and 537 juveniles.

A lot of numbers, a lot of mumbo jumbo, but, in fact, reality is it stopped a lot of people who have criminal records from getting guns and probably keeping them from causing more harm and more deaths in our society.

New Jersey has required a background check for handgun purchases for more than 20 years. According to the New Jersey State Police, more than 10,000 convicted felons have been caught trying to buy handguns.

Maryland has had a 7-day waiting period since 1966. In 1990, more than 750 prohibited persons were caught trying to buy handguns.

So the Brady bill will help reduce gun violence in this country. It is the least we can do. If you cannot do it for yourself, do it for your children and your grandchildren, who would live in a little safer world with the Brady bill as a part of our national laws.

Mr. President, I yield the floor.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

AMENDMENT NO. 1219 TO AMENDMENT NO. 1218

Mr. MITCHELL. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL] proposes an amendment numbered 1219 to amendment No. 1218.

On page 15, strike lines 4 through 18.

The PRESIDING OFFICER. Who yields time?

The Senator from Idaho.

Mr. CRAIG. Mr. President, I yield myself such time as I might consume.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, we are engaging in a very important debate this morning and into the afternoon of the final days of this session of the U.S. Congress. It is an important debate but it is not an unfamiliar debate to most Senators and certainly to any citizens of our country who may be listening or watching.

The Brady bill itself, by name, as most people understand it today, is reasonably well understood. And, as you have heard this morning from the Senator from Ohio and the Senator from Maine, most people say, when asked, "Do you support the Brady bill?", and the answer is "Yes."

But it is interesting to me that to be able to even get to the floor to pass or to become close to being able to pass a Brady-like bill, the majority leader and the minority leader had to largely rewrite the entire bill.

I say that because S. 414, which the Senator from Ohio on many occasions has introduced, really is a shell. It is a shell that has created a political image that largely will not serve what most Americans believes the Brady bill might accomplish. I think all of us have tremendous respect for Sarah and Jim Brady and all that they have been involved in and all that has brought them to this debate and what they have done nationwide to raise the consciousness of Americans as it relates to violence and criminal activity in this country. But I think it would be a tremendous disappointment, in passing legislation and creating an illusion that somehow Americans were going to be safer tomorrow, if the President were allowed to sign a Brady bill that really did nothing but create a 5-day waiting period.

So, through the course of the debate this morning, I will, I believe, provide

ample information that is factual, that certainly can be backed up, that would demonstrate that unless you go after a thorough background check, that unless you go after the knowledge of who is buying the weapon, that you really have accomplished nothing and that the streets of America will not be any safer.

Senator KOHL, who is on the floor, and I joined in what I believe was a very historic effort over the course of the last several days to put meaningful law in place to deter criminal activity. We were able to do that in a variety of ways, but one of the most significant and one of the ones that is bothering Americans today is the fact that juveniles are gaining phenomenal access to firearms and in so doing—I think I have used the quote and Senator KOHL has used the quote that over 200,000 handguns a day come into the public schools of this country. And we know that is wrong. But tragically enough the debate over the next couple of hours would have done and would do nothing, if it became law, to deter that, because most of those young people are buying guns illegally off the streets and out of the trunks of cars that are on the streets of America. I say that because it is a fact. It is a documentable statistic.

We will use a lot of statistics today. Certainly my colleagues have already engaged in that gamesmanship—and it is appropriate. But, doggone it, if we are going to tell the American people that we are treading on their constitutional right, we ought to do it in a way that in fact works, that is real, that makes sense. We have historically taken away rights of American citizens under the Constitution. We can do that. But we must be awfully careful in doing it. And, when we do, clearly the majority of the American people must respond by saying it was worthwhile; you have done it because it was worthwhile and it worked.

S. 414 will not work. The reason it will not work is because it does not even require—oh, it speaks to a background check, but it knows under the 10th amendment of the Constitution it cannot force it. It can bring about a waiting period of 5 days. But attorney after attorney who at least we think know something about our Constitution and State law and Federal law have said you can say you can do it, but—even the Senator from Maine said today that court decision after court decision has said you cannot tell local communities and States to do something from the Federal level.

So the alternative, the Dole-Mitchell gun control measure—because it is a form of control but it is really a background check—says to States that, if you are willing to engage in this, we will help you. We will work with you and pay you to bring about an instantaneous record check that will produce what we need. It will produce the background information on the person who is out there to purchase a handgun through legal means, an understanding of whether he or she is a felon or not. And that is what Americans want. That is what this argument is all about.

Fear of violent crime is rising in this country; 57 percent of our American citizens are now concerned about becoming a victim of crime. Americans do not believe, though, that guns are the major cause of crime. Yet, day after day as we debate gun issues on the floor of the United States Senate, somehow we always get to that point where it is the gun that creates the crime or that causes the crime.

Americans know better than that. They say that erosion in moral values create 59 percent of our crime rate, that economic conditions create another 15 percent of our crime rate, and then, when asked about solutions, they say that 7 percent of our crime rate is a result of guns.

What are they saying is the most effective solution? The Brady bill is not at the top of the list. What is at the top of the list are prevention programs and education. What is also at the top of the list is what we have been doing for the last several days here, putting tougher penalties into the prosecution of that law and the enforcement of that law.

Just a few minutes ago we did pass a historic crime bill. There is tough language in it—three times up, three strikeouts and you are out as a citizen. You are out as a citizen if three times you become a felon.

That is tough and that is what the American citizens are saying really brings about quality crime control of the kind that we want. Teaching values, believe it or not, is 16 percent. Gun control—that is what we are talking about today—the American citizens when polled as recently as 6 months ago said, well, that is about 9 percent. It might work. But only 9 percent of them believe that it would work.

So when anyone stands on the floor and says that S. 414 will work and the streets of America will be safer, the American public does not believe it. That is why we are not even going to debate that one today. Yet it has tied us up year after year. Yet we know and the American people know it will not work because it does not require a background check, it plays games with a waiting period, it does some other things, but it is a political shell.

What will work? Let us talk for a moment about what will work. Will the Mitchell-Dole or the Dole-Mitchell substitute amendment 1218 work? It has a 5-day waiting period for the purchase of a handgun after the 90 days from its enactment. States with instant check systems are exempt. Does it preempt States? Yes, it does. But those who have instant checks it does not.

It is also interesting, when you hear this strong argument about preemption that the Senator from Maine made, why, he says, it wipes out State law. What about those States who have no waiting period? It preempts their choice not to have it. In other words, it forces them to have a waiting period just as much as it forces those who do have a waiting period to conform to a 5-day period. It cannot be good for one and bad for the other. You cannot play the preemption game for just some without admitting that, when you put in a mandatory Federal 5-day Federal waiting period on those States that do not have it, that is a preemption of State law, because we must assume—and I think properly so—the State legislatures have already considered the idea of a waiting period in almost all of our States, and many have said no—while others have said yes.

What we do by preemption is exactly what the Brady bill proponents have argued for years now—a uniform Federal law or a uniform law. So I am a little confused by the Senator from Maine and the Senator from Ohio when they talk about how terrible a preemptive clause is in the substitute when in fact for a good number of years they have said uniformity is the key.

We all know we live in or around the District of Columbia, and part of the frustration in the movement of guns in a city that has some of the strongest gun control language in the Nation is—and we have heard it said—"Well, they come in from Virginia, and if we had the same laws in Virginia that we had in Washington, DC, it would be different." Or, "They come in from Maryland." In other words, there is no uniformity within the area in which the crime rate is the highest in the Nation.

So I think we better be awfully careful when we are talking about preemption this morning, that we are contradicting ourselves because, as I mentioned, the argument by the Brady bill proponents for years has been standardization, uniformity. Those were key. That is what the substitute offers: The building of uniformity as we move toward what will accomplish keeping handguns out of the possession of criminals, and that is an instantaneous background check.

Let me walk with you for a few moments down through what the Dole-Mitchell substitute should be able to accomplish.

As I mentioned, there is a 5-day waiting period. But that begins to short-circuit very quickly when States develop a master name list and move toward an instant background check, so that we can bring up nationwide a computerized system so that truly we can get at those who are acquiring guns through a gun store as felons in an illegal way.

Twenty-four months after the enactment, or whenever the computer system contains State records covering 80

percent of the U.S. population and violent crimes with 70 percent accuracy of case disposition within the last 5 years, when their records are up and doing that, they are exempt from this law; they are on their own; they are doing the instant background check. They are bringing that kind of thing on line.

Instant check preempts State and local waiting periods, as we have mentioned, except waiting periods that are enacted 12 months later. In other words, to create the uniformity that the Senator from Ohio has always talked about, we are saying we will bring up the instant check and we are preempting State law, but after the period of time that you have seen it working, if it does not work, you have the right to go back and reinstate a waiting period.

We have worked hard at trying to create the uniformity that we want so that we have a nationwide grid of informational flow that really will be able to check whether a person who is acquiring a gun is in-State, where he or she ought to be, and whether they are a felon or not, whether they comply with what constitutes legal in relation to acquiring a handgun.

The Attorney General will review the statutes and criminal records of the States and set a timetable for each State to provide the records to the national system. That is Attorney General Reno we are talking about. Why is this possible to do? Because for the last 5 years, the Congress of the United States has put Federal tax dollars to building a unified informational system.

The Brady bill, as was mentioned, S. 414, creates a mandate but does not put any money with it. It says to the States, "You do it." But it also is saying, when it says you do it, it says you pull law enforcement officers off the streets and send them to their desks to devise the computer system and to go through the current informational systems to bring up a master name list.

What we are saying is, no, you do not have to do that. It is very important we say that. We just said we are going to put 100,000 new law enforcement officers on the streets when we voted for the crime bill. Senator METZENBAUM, by his bill, would say: Take them off the streets and put them at the desks to do these informational checks. We are saying, no, we are going to give you, provide for you $200 million in grants to States to update your criminal records, to bring them up to standard, to fit into the instant check, to do the kinds of things that are necessary.

It is a mandate with money, and that is the way mandates ought to be if we collectively believe that this is for the general good of our country. State and local law enforcement grants may be cut because of the failure of a State to establish a timetable within the necessary period of time. If instant check is not operating within 24 months, the Justice Department may then administer funds by a reduction of 5 percent, and after 36 months, a reduction of 10 percent.

The reason this timetable is put in place is that we are pushing States toward bringing the instant check up because this bill has a 5-year sunset provision in it, as does the House version of Brady. In other words, we are saying after 5 years, it goes away. But what we are doing is putting money and the force of law in a cooperative effort with State and local law enforcement agencies to bring about what we want, and that is the ability, in an instant way, to find out whether that person who is attempting to acquire a handgun has a record, a felonious record.

Americans do not believe gun control measures to be effective in the battle against crime. Eighty-two percent believe a waiting period will only affect law-abiding citizens and that criminals will still be able to purchase guns. The American people are a bright lot. They do not read the polls. They have a gut instinct, and their gut instincts are accurate.

Here is a statistic to tell you how accurate it is; 86 to 90 percent of people in our prisons today serving time, felonious records, admit that they do not acquire or did not acquire their handguns legally. Is it not interesting that criminals do not walk boldly through the light of day into a gun shop and say, "I want to buy a firearm"? The reason they do not is because of current systems that cause some effort at a background check and, most important, criminals just simply do not play by the rules. I think that is how you define criminal: Somebody who breaks the law. So he or she goes to the streets of America or to the back alleys where there remain an abundant supply of handguns and other forms of firearms, and that is where they buy them.

So American citizens say, "Well, yes, we do support Brady, but it won't work. You have to do some other things."

What they do support is a screening mechanism, an instant background check that says: Identify us; do not prohibit us, do not restrict us, but identify those who are attempting to acquire firearms to see whether they, in fact, have a record.

I believe that is the substance of the debate. There will be ample opportunity to discuss other issues as we work this debate today. But what I do believe is important is to try to understand what we want to accomplish versus what is the politically popular thing to do. So if you decide to vote to strike State preemption today, you are deciding to vote against uniformity. You are saying to those who have waiting periods, you can keep them. And you are saying to those who said, "We do not want a waiting period," but you have to have one.

So I hope if anyone comes to the floor to use their arguments again, they need to be a little broader in their explanation.

What we are saying in a State preemptive clause is uniformity, and we are setting in motion a very strict and exacting timetable to move us toward an instant background check.

All 50 States and the District of Columbia have established central repositories for their local and State criminal records. That started happening 5 years ago when we put money behind the ability of States, along with the FBI, to begin to clean up their record systems. In all those States, criminal justice agencies are required to report arrests and the disposition of the data to a central repository for all serious offenses.

Mr. President, 45 million individuals are on the criminal history files now; 60 percent of the records are automated; 47 States and the District of Columbia have some automation already up right now.

Why am I giving you these statistics? Because they are important to understand when we argue instant background check and the ability to bring it on line in a reasonably short period of time by the establishment of a master name index.

How many of you—probably all of us—have pulled out your credit card and watched that clerk run it through the machine and almost instantly your credit history is before them in the form of saying you are qualified or you do not qualify for the amount of the purchase. That is computerism today. That is modern society. What we are saying is that in nearly that form, within 24 months, with the money we have provided, it is reasonable to assume, based on where we are today and with the 5 years of effort that have already been underway and the money the Federal Government has put behind it already, it is possible to have that kind of, or nearly that kind of automated screening system for the average citizen, and the substitute provides that.

The Dole-Mitchell substitute recognizes the importance of that. S. 414 does not. It does it in a way that, as I mentioned, offers the carrot and offers the stick and moves us clearly as a nation in a direction of uniformity for the purpose of building that kind of an informational base so that we can truly screen out those citizens attempting to acquire their handguns who might have a record or who might attempt to use that gun for illegal purposes.

There are a good many others who are here to debate this important issue. It is an important issue. None of us make lightly of it. It is clearly our responsibility to attempt to create a

safer society. None of us deny that. But it is also our responsibility to do it in a way that is not illusionary but that works, that the citizens say, "That's working. Congress, you did a good job. There are fewer crimes being committed today. There is less violence in America. And Congress and U.S. Senate, you were able to do that without treading all over the rights we hold dear, these constitutionally important rights that say we can be what we are and we can do certain things."

One of those happens to be the second amendment. And while I stand on this floor and defend it, I also recognize that we are smart enough, we are good enough, we are far enough along in the world of automation and information that we do not have to tread on rights anymore to be able to create a background check system to allow our citizens the security of understanding that fewer criminals might be unable to get handguns.

I reserve the remainder of my time.

Mr. KOHL addressed the Chair.

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

Mr. METZENBAUM. I yield the Senator from Wisconsin 5 minutes.

Mr. KOHL. I thank the Senator from Ohio.

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

Mr. KOHL. Mr. President, I rise today to urge my colleagues to strike the language of Senator DOLE's substitute that would preempt State waiting periods. Simply put, I believe that preemption would in fact turn the Brady bill upside down. Let me tell you why.

The Dole language would preempt at least 25 existing State waiting periods. It would shatter, for example, the 15-day waiting period in California which has helped stop 16,000 illegal gun purchases since January of 1991. It would demolish the 20-year-old waiting period in New Jersey which has helped stop 18,000 illegal gun purchases. And it would destroy the 2-day handgun waiting period and background check in my own State of Wisconsin, which has prevented more than 500 convicted felons from buying guns over the last 2 years.

Wisconsin's legislature enacted a waiting period in 1986, long before it established a background check for handgun purchases, because it knew that cooling off periods indeed help save lives. Congress should not strike down this crucial Wisconsin law.

No one is more sensitive to the evils of Federal preemption than my good friend, Senator ALAN SIMPSON of Wyoming. Let me tell you what he said about preemption during our last Brady bill debate just 2 years ago:

> The Federal Government should never preempt State laws without strong and compelling reasons to do so. When we preempt, we wipe out a State law—erase it—nullify it. We substitute our judgment for the decisions made by the duly elected representatives of State government. When we preempt, we are, indeed, big brother. Only in most rare and extreme circumstances should we exercise that awesome Federal power over the States.

Senator SIMPSON and I may disagree over the merits of this Brady bill, but I believe he is right on point when he says we should not substitute our beliefs for those of our colleagues in the States.

Finally, Mr. President, thus far Senate debate on crime policy has been the embodiment of bipartisan cooperation. We ought to make sure it stays that way. I know there are good things in the Dole modification to Brady, and I am certain that we can accept some of the provisions of his proposal. But Jim Brady would not stand behind this attempt to preempt State laws. He would repudiate it because, if the Dole language remains, this will not be a Brady bill anymore. Instead, in my opinion, it would be anti-Brady bill.

I urge my colleagues to support this amendment to strike the Dole preemption language.

I thank the Chair. I yield the floor.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I yield to the Republican leader such time as he may need.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. DOLE. Mr. President, I thank my colleague.

Mr. President, this is a very important debate. Many of us know what gunshots will do to a person. I had intended to offer an amendment to the crime bill which would have dealt with a number of real problems, what I call access to firearms. In fact, I think we want to keep in mind this is a very broad amendment. It is not limited to preemption or sunsetting. There are a lot of features in this substitute that are very good.

Had we offered this to the crime bill, it would have been subject to amendments that included bans of certain types of firearms, restrictions on obtaining ammunition, requirements of securing liability insurance, on and on and on.

I believe it is time to separate fact from hysteria and do something about the real problem of firearms—keeping the wrong people from getting access to them.

So I wish to say just a word about the amendment that was adopted on so-called assault weapons, the Feinstein amendment, before moving ahead.

For the first point I am going to make, let us separate all firearms into two categories: Those that fire a stream of bullets when the trigger is pulled and those which fire only once per trigger pull.

There is a lot of confusion about this on this Senate floor.

The first category are called automatics or machine guns. We began regulating them in 1939. Then since that time there is no evidence that even one legally owned machine gun has been used in the commission of a crime.

Let me repeat that so we can discuss facts. Since 1939, no legally owned machine gun has been used in a crime.

But that was not good enough for some, so in 1986 we banned the future manufacture of these firearms that were not and still are not being used in crimes. Then we patted ourselves on the back for that stroke of genius. We banned guns not being used in crimes. "Boy, wasn't that a great thing we did."

Some have begun to call firearms in the second group, those which fire only one shot when the trigger is pulled, automatic weapons—they are not automatic weapons, but that does not make any difference; Members do not make any distinction. So there is a lot of hysteria out there—or machine guns or machine pistols. Well, they are not automatic or machine anything, but they are used in crime and we need to find some way to reduce the chance that they will be.

Now, one line of thinking is that we can somehow wrongly label a firearm in group two, we can somehow ban it and end crime in America.

Unfortunately, injecting falsehoods only guarantee failed results. We can ban all the group 2 guns we want and new ones will appear. That approach is quite simply again a dog chasing its tail. There are other ideas, like "Let them keep their guns, we'll ban the bullets." Mr. President, maybe we should go ahead and debate the real issue. We ought to repeal the second amendment that has been referred to by my colleague from Idaho. Let us have that debate, and get it behind us once and for all. The last time I checked, the second amendment is still part of the Constitution. So like it or not, there are going to be guns around. There are going to be guns around.

But we still have the problem of guns being used in crime. We still have to find some way to address that problem not with hysteria but with a reasoned approach that addresses reality.

We have heard a lot about something called the Brady bill. I know Jim Brady. He is an outstanding person. I knew him when he worked for the distinguished Senator from Delaware [Mr. ROTH]. I knew him when he worked for President Reagan in the communications office.

Some really believe that passing the Brady bill, whatever is in it, is going to end crime because it has the name "Brady" on it. There are two problems with that line of thinking.

First, it is not exactly clear what the Brady bill is. I doubt if anybody here can—well, maybe a few could.

Second, whatever it is, it is not going to end the use of guns in crime.

We have had a lot of changes in Brady bills over the years. They have gotten better. The first one was nothing more than a Federal waiting period prior to the purchase of a handgun, but, unfortunately, a waiting period in itself does not do anything.

I was opposed to the first Brady bill because I genuinely believe it is better to do nothing than to do something that will have no useful impact and no useful effect. To the contrary, with the Drug Enforcement Education Control Act of 1986, Congressman BILL MCCOLLUM and I added an amendment calling on the Department of Justice to begin gathering information to assemble a nationwide computer background check on potential firearm purchasers. We have been at that now since 1986. It has been discussed at length by the distinguished Senator from Idaho [Mr. CRAIG].

Ever since that time, I have insisted the first step in corralling gun violence is to enforce a law we already have on the books, the 1968 Gun Control Act. That law was passed in response to America's outrage at gun violence in the deaths of Bobby Kennedy and Martin Luther King, Jr. Unfortunately, the key provision in that law has remained virtually unenforced; the provision that prohibits criminals from buying firearms.

In most of America today, a convicted felon can walk into a gun store, check a box on a paper form saying he is not a felon and walk out with a gun. Mr. President, man first walked on the moon a year after the 1968 Gun Control Act became law. Yet, 25 years after the law was passed the key provision remains unenforced and violence committed by those who misuse firearms has become rampant. That must change, and our priorities must change.

In 1991, I sponsored a plan that eventually became known as the Brady bill.

An amendment was offered with the distinguished majority leader just as we have done today. Today, we have just two differences. In all of this legislation in the entire package, we have just two, I think, differences. In all of this legislation in the entire package, we have just two, I think, differences that ought to be worked out so everybody could support this legislation—only two differences, minor differences. We made exceptions to the so-called preemptive statute.

But in any event, in 1991, we sponsored this bill but instead of a simple waiting period, it called for a nationwide computer file of convicted felons and others who cannot legally obtain firearms. Further, it required that once operational, that file had to be checked before the purchase of any handgun would be allowed.

Now it is applied to all firearms, any gun—any gun. If you go in to buy any kind of a gun, you put your little card in there, and if its says "tilt," just like your credit card would say "tilt," you do not get any credit, you do not get any gun. That is the instant check. That is the check we ought to have. Finally, prior to the system becoming operational there would be a Federal, 5 business day waiting period, but the Federal waiting period and all other State and local waiting periods would be eliminated once the background check system started operating.

So, that too was called the Brady bill. The first part of the amendment I am now offering is also called the Brady bill. I have not sought the support or endorsement of Jim Brady.

But I think he would be happy at least for the first part of it, I think with most of it, except one little area called preemption. I think the rest of it is not objectionable to anybody. I would like to support whatever the name of this bill is. If we can prevail on preemption and sunsetting, there will be a big, big vote for this bill. It will send a much stronger message than might be sent otherwise.

So what we have done today, working with the majority leader and other Senators who are on the floor today on both sides of the aisle, we have tried to craft a bill where we could bring in some new measures, new provisions, and still have a strong gun bill.

So this amendment preserves the structure in the Brady bill I offered last year. It also requires the Justice Department to work with the States to update criminal records.

In fact, it is going to provide $200 million to do that. We had $100 million in the bill. The distinguished Senator from Kentucky [Mr. FORD] said it ought to be increased. So we raised it to $200 million. So we have the money in the bill.

It requires the Justice Department to work with other Federal agencies to update records for illegal aliens, those dishonorably discharged from the military, Federal felons, and all others who have given up their right to own a handgun. There are six or seven categories, and maybe eight now.

It then requires an instantaneous computer background check prior to the purchase of a handgun.

During the estimated 24 months of record collection, there would be a 5-business day waiting period. However, once the instant check was up and running, the Federal waiting period and all State and local waiting periods would be preempted. It is very similar to the provisions of lasts year's Brady bill which eventually passed this body overwhelmingly.

The most divisive remaining issue on the Brady bill is whether to preempt State and local waiting periods. But, it should not be divisive at all. The backers of the other Brady bill have already agreed that once a computer check is in place, no waiting period is necessary. And, if any State has an instant check system, it needs no waiting period. So, if we pass a law that requires a computer check for every handgun purchase, regardless of location, why would we need a waiting period in some areas of the country and not the others? The fact is, waiting periods do not work, they don't accomplish anything. So why should not we put that issue behind us, and join together and pass this commonsense piece of legislation.

I think this is the point that I do not want people to overlook, my colleagues to overlook. We significantly reduced the preemption in this amendment. People should take a look at it. So it includes only waiting periods.

I met with Congressman SCHUMER in the cloakroom the other night to see if we could not work out something in conference yet this year. We would like to see it done this year before we leave here tomorrow or Monday.

So we were out there just visiting. How can we do this? How can we put this together? We have reasonable people on both sides of the aisle. This cuts across party lines, philosophy or anything else.

He told me that it was not only the waiting periods that take time. He mentioned fingerprinting, licenses, permits, safety courses, a whole list of things that are exempt from the waiting period. They are not preempted.

So the States can still do those things. State and local governments are free to impose new waiting periods. Also, after the interest check goes on line, which we think would take about a year, if the States want to go back, reimpose the waiting periods, they certainly have that right.

So we have tried to change it in every way to satisfy the opposition. We recognize that States have rights. We recognize that other communities have rights.

Mr. President, I hope the people will read the language carefully because we have sought to address the primary concerns that have been expressed.

We hope that the amendment to strike "preemption" fails. We hope the amendment to strike "sunsetting" fails. If that is the case, under the agreement, the bill is agreed to, and it goes to conference, we could complete action before we leave late tonight or tomorrow.

Let me tell you what else is in this substitute offered by the majority leader and myself. The Brady bill was drafted in this amendment, if we are still calling it the Brady bill. It has gone far beyond the original Brady bill—the Federal waiting period. It is going to help reduce some access to handguns by those who want handguns

for criminal purposes. But most violent offenders do not obtain handguns in retail establishments. If you want a gun and you are going to commit a crime, or if you are a criminal to start with and have repeated offenses, you are not going to worry about what is legal or illegal. You will find a way to complete your task.

So we have added a number of other provisions to this amendment which recognize other avenues by which handguns find their way onto the streets and are involved in crime.

First, current law requires that if a gun dealer sells more than one handgun to an individual in any 5-day period, notification must be sent to the Bureau of Alcohol, Tobacco and Firearms. The problem we have is that these postcard notifications are filed away in shoe boxes at a warehouse in some out-of-the-way location—they are not used for anything other than an occasional after-the-crime review.

The amendment I am offering changes that. It proposes adding the requirement that State and local police departments be notified. It also requires that no record can be kept at the State and local police departments, which eliminates the concern that this would be back door gun registration.

There is a growing business in black market gun sales. It works in various ways—using straw man purchasers, using counterfeit or deceptive driver's licenses, and on and on—but, to be profitable, it always involves multiple sales.

This provision—which is a new provision and one you ought to look at carefully—would allow police to get a better handle on the individual who buys four or five handguns this week and sells them on the street for an inflated price, and then buys eight handguns next week and sells them on the street for an inflated price. Someone ought to knock on the door of that fellow and ask him if he is a legitimate collector or a trafficker.

Let me say clearly that there is nothing wrong with multiple handgun purchases. It is legal, proper. and should be allowed to continue. It is the illegal activity of reselling the handguns to those bent on the improper use of handguns we must stamp out.

The amendment includes a section on updating Federal firearm licenses—so-called FFL's—and related materials. A number were included in the Simon-Bennett amendment and have been deleted from this amendment.

To address the real problem of gun theft, the first part of the title includes several provisions concerning the theft of firearms which are not contained in current law. The first relates to a requirement in current law that dealers and manufacturers must notify interstate carriers when packages contain firearms. This has led to the carriers requiring that the packages contain labels and tags to clearly identify that firearms are inside. Well, if you ever wanted an invitation to somebody, just put on there "firearms inside." If you are a thief and you want to steal some firearms, you have the box already marked for you. And you guessed it—these packages have been disappearing in ever-increasing numbers. The amendment prohibits these labeling requirements, since it is already against the law to send loaded firearms, and the only real effect of the labels is to invite theft.

Second, it requires a "paper trail" when firearms are sent by carrier. Regardless of industry, most businesses require paper trails on important documents. It seems reasonable to us to require that the same be done on firearms. At least then, we would know if these firearms are stolen and know when they enter the black market.

Third, BATF interprets a part of the current law to require dealers from different States to use common carriers in all sales. The amendment allows the direct, face-to-face transfer of firearms when dealers are from different States. This would reduce the chance of theft while the firearm is in the possession of the carrier.

Fourth, current law prohibits the knowing sale or transfer of stolen firearms. The law does not prohibit stealing the firearms from a dealer or a manufacturer in the first place. This amendment changes that and establishes the penalty for theft from gun stores at 10 years in prison, $10,000, or both. These are all very good provisions, all part of this bill. Call them what you will. Call it the Brady bill, or call it modified Brady bill.

I almost cannot believe it, but there are criminals out there, who rob gun stores. They do not burglarize, but commit armed robbery. I cannot think of a more violent criminal. Obviously, the clerk in the gun store has a high probability of being armed; yet, these criminals shoot their way through the theft knowing in advance that this violence will occur. For those criminals and those stealing firearms in a riot, the penalty is 30 years, and life with no parole if the crime results in a loss of life.

Finally, this part of the FFL title explicitly allows States to prosecute—under State laws—these same violations, which we think is satisfactory.

The next part of the FFL title eliminates the current distinction between pawnbrokers and dealers and raises the fees to $200 for the initial application and $90 for renewal.

The following section will reduce the number of individuals who need FFL's by updating the definitions for "antique firearms." Current law exempts these individuals from needing a dealer's license, and this amendment moves the date forward in the definition of these guns.

In an effort to ensure that dealers follow all of the rules and fully assist the BATF in our efforts to reduce firearms falling into the wrong hands, BATF is required to send the new regulations to all FFL's. The cost of this provision is offset by the new higher fees.

Mr. President, the original amendment ordinary by myself and the majority leader also included a youth handgun safety provision, a concept originated by the Arizona Governor, Fife Symington. That part was similar in nature to the Kohl juvenile handgun amendment. It is a good amendment, and I congratulate the Senator from Wisconsin for adding that to the crime bill. We think it ought to be in this bill because this bill is going to pass, we hope, today and become law this year. But it is in the crime bill, and I think it will stay there.

Mr. President, finally I say this: We should move this debate forward in a nonpartisan way. Gun violence is calling out for realistic answers. They do not separate Republicans from Democrats when somebody is out there with a gun firing away at somebody. They do not ask your party affiliation—well, Maybe in some rare case they might. They do not ask if you are an independent, or a Republican or a Democrat. This is not partisan issue. It seems to me that we can take a big constructive step forward.

Up front, I will say that some may want to make a issue over State and local waiting periods. I do not think they should. The waiting period concept has already been abandoned in other Brady bills. We ought to allow that issue to pass and get on with addressing the real problems.

I am going to speak a little later on preemption, specifically, and sunsetting. The House has adopted a sunsetting provision, and we have cleaned it up a little. We thought it lacked something. I do not think that is a big issue in the Senate. I do not think there is much question about what will happen on the sunsetting. I think it is going to pass.

On preemption, take a careful look at the amendment. Do not look at the newspapers, take a look at the amendment, and take a look at the summary and the analysis of the bill, which should be on everybody's desk. If you do not have the amendment, take a look at all of the exemptions we have offered. Try to make it acceptable.

We believe that if we can come together sometime today, we can pass a bill out of this Chamber, maybe by a unanimous vote, 99 to 0, or 100 to 0. To me, that would be the strongest signal we can send as we wrap up the Congress—that we came together on a bill that everybody supports—almost everybody. Maybe some would not vote for it, but almost everybody supports it. I think it would and should have the

support of the Bradys, who have done good work. But we would like to have them just take a look and give a little bit, just give a half inch, and there would not be any debate on this floor—except the debate we are having now, which is constructive. We would not debate sunsetting and preemption. We should not be debating those issues. I hope when the time comes, my colleagues will not strike preemption from the bill offered by myself and the distinguished majority leader and will not strike sunsetting.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. WELLSTONE. Mr. President, I say to the Senator from Ohio that I know the Senator from Nevada wants to speak. I will try to do it in 3 minutes.

Mr. METZENBAUM. Mr. President, I yield 3 minutes to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. President, I rise to support the Mitchell amendment, which opposes the Federal preemption, for several reasons.

First of all, I support the Mitchell amendment and a strong Brady bill out of deep respect for Sarah and Jim Brady and all they have done.

Second of all, I support the Mitchell amendment because handguns were used to murder 13,220 people in our country, the United States of America, in 1992, and we ought to make this as strong a bill as possible.

Third of all, I rise to support the Mitchell amendment because when I talk to law enforcement people in my State and when I talk to law enforcement people in the United States of America across the board, there is a strong consensus to pass as strong a Brady bill as possible. It is not the be-all or end-all, but all law enforcement people tell us they need it as a tool to fight crime and make our streets safer. I think we have to respect that judgment.

I rise to support the Mitchell amendment and a strong Brady bill because we passed on the floor of the Senate the other night important legislation that deals with domestic violence, that says when there is a history of a conviction within a family because of violence against a spouse or a child, that person cannot own or obtain a gun. There is no way we can protect women and children unless we have the Brady bill to enforce this. For many, many women the difference between being a battered woman and a dead woman is a gun.

Finally, I rise to support this amendment because in my State of Minnesota we have a 7-day waiting period, and it has worked well. We went through the sharp debate in the 1970's, but since about 1976 we have had essentially the Brady bill—7 days. You can talk to sportsmen, you can talk to owners of gun shops, you can talk to people in Minnesota. They will tell you it worked well because it enabled us to do the check on people with a history of violence.

I support the Mitchell amendment. I think it is vital that we pass the Brady bill intact. People in the country have responded for it, and we should respond.

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

Mr. REID. Mr. President, I ask the Senator from Ohio to yield me 6 minutes.

Mr. METZENBAUM. I yield the Senator from Nevada 6 minutes.

The PRESIDING OFFICER. The Senator from Nevada is recognized for 6 minutes.

Mr. REID. Mr. President, I never visited with Jim or Sarah Brady or even talked to them on the telephone.

For many years the National Rifle Association has exerted a significant political influence in the State of Nevada, and I say that in a positive sense. I have supported the NRA in my 11 years in Congress without exception.

But there comes a time when a person's conscience will not let him walk that plank anymore. Today, I am announcing that I am not going to walk the plank on the Brady legislation that is now before the Senate.

I voted with the NRA in this matter previously, and at that time the NRA indicated to me and another Senator that the vote was appropriate. We later learned that whoever we talked with was speaking without authority.

Mr. President, in 1969, when I was a freshman legislator in the Nevada State legislature, I introduced legislation that created a waiting period in the largest county in Nevada, Clark County, where Las Vegas is located. I introduced that legislation on behalf of the Clark County Sheriff Department. That legislation passed. Clark County has had for 25 years a waiting period for the purchase of a handgun.

The main reason I introduced that legislation was to provide a cooling-off period to prevent people from buying a gun in the heat of passion and using it improperly. It was not just to stop those with criminal records, even though that was a reason, or to stop those who had mental problems from purchasing a handgun.

As I indicated, my legislation 25 years ago was supported by the largest police organization in the State of Nevada, the Clark County Sheriff Department. They still support legislation dealing with the cooling-off period for the purchase of handguns. To vote to preempt this law in Nevada would, to me, be irrational. To vote against a waiting period would be irresponsible and contrary to my previous record and contrary to my belief.

The last time this legislation was before this Senate, there was a debate. I did not participate in that debate. The people, as I have stated, in the largest county in Nevada have lived with a waiting period for 25 years, and it has worked quite well. This has not affected the sale of handguns.

Even Ronald Reagan supports this legislation. I also support this legislation. I will today vote with the majority leader in this instance. I will vote to invoke cloture. I will vote against State preemption. I will vote for the laws for State control after the sunset period takes place. This is done by me with a great deal of thought. It is something that is very difficult for me to do, but I feel that it is the right thing to do. Whatever political consequences flow from this, I am willing to accept them.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM. Mr. President, first, I congratulate the Senator from Nevada for the statement. It took a lot of courage. It was a very difficult one to make. I think all of us in public life owe a great deal of gratitude to the Senator.

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

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

Mr. MATHEWS. Mr. President over the past few legislative sessions our colleagues have proposed and passed a flurry of measures intended to drive crime—especially gun-related crime—from the fears of Americans. Many times over those days, our debate has centered upon one issue: How to keep guns out of the hands of felons.

Before us now is a measure that turns its whole intent to that purpose: S. 414, the Brady bill. This bill takes two long overdue and highly deserving steps. It requires a 5-day waiting period in which law enforcement officers can conduct background checks to identify felons and prevent them from purchasing handguns.

And it provides grants with which States can upgrade and computerize record systems to make a point-of-sale determination more effective and more immediate. Under the guidance of the Attorney General, this computerized confirmation system would produce a nationwide system for preventing handgun purchases by felons.

Mr. President, this bill is important, vitally necessary, and vastly popular among the majority of the American people. That's why we must not agree to language in this bill that would sterilize its effectiveness. The bill as presented calls for sunset provisions that would terminate the bill's waiting period requirement after 5 years regardless of whether the national confirmation system is operational.

Also, it calls for a preemption provision that would make Federal standards supersede State standards, even when State standards are more stringent. Mr. President, adopting these provisions would negate everything this bill can accomplish.

This bill would require each State's computerized system to contain the disposition of 80 percent of arrests made during the preceding 5 years. We must not include an unrealistic sunset provision in this measure because it is a virtual certainty that all 50 States cannot meet that requirement by 5 years from now.

At present, only 11 States meet the minimum requirement of the national system. Only four States regularly computerize the name of a felony arrest within a week of the arrest. Only 11 States computerize felony arrests within 2 weeks. In many States, it takes a year or more to enter felony arrest information.

Like many States, Tennessee has a backlog in recording specific data about violent crimes. The reasons are common. Like New York and Illinois, we have small, sparsely populated counties and large metropolitan areas. They have very different capacities for keeping prompt track of violent crimes. Tennessee is eager to get a statewide felon-check system up and running to meet the requirements of this bill.

But having the necessary hardware and software won't speed the process. Helpful as the grant provisions will be, grants will not buy our way to a satisfactory solution. Getting an adequate system in place will take long, grueling data entry by hand to get current information into the system.

Yet a restrictive sunset provision disregards the burden of compliance. It says, "No matter if the system isn't ready. Five years from now the waiting period expires." And if at the end of 5 years the system isn't up to speed, felons will be buying guns and using them on the street before the system even records they were arrested.

The original bill contained a provision for the 5-day waiting period to fade once the computerized system is adequately operating. But everything the Brady bill accomplishes will be voided if we banish the waiting period before the computerized system meets its potential.

The most effective way to prevent that from happening is to maintain the one method that will screen out ineligible handgun buyers—the waiting period that gives local officials time to conduct a check. The importance of local officials enforcing local laws is also the reason why we must exclude a preemption provision from this measure. I believe it is entirely appropriate for Federal legislation to set minimum standards. It does so in countless matters affecting every aspect of our national life.

But it is not acceptable for the Federal Government to set a maximum allowable standard when local citizens want higher standards.

In effect, that's a Federal preemption provision added in this bill would do. My home State of Tennessee is an excellent example. We were the first State in the Union to pass a waiting period for the purchase of handguns. We established a 3-day waiting period back in 1959 and our current 15-day waiting period became law in 1961.

Citizens in many States don't share the emphasis we've placed, and the Brady bill would bring them to a higher plateau. But the people of Tennessee have set a standard more stringent that theirs and a standard more stringent than the Brady bill. It's a standard we've honored for 30 years. Along with citizens in many States, the people of Tennessee have chosen to be leaders in handgun restraint.

It's not right when the Federal Government effectively revokes Tennesseans demand for a higher degree of accountability and control in the sale of handguns.

Mr. President, the arguments in favor of the Brady bill are clear, and Americans know it. Nationwide polls repeatedly show that 90 percent and more of Americans favor 5-day waiting periods for checks of handgun buyers. The arguments against provisions that make this bill rickety are equally clear.

There's no point in mandating a computerized felon identification system if we abort that system before it can work. There's no merit in forcing local citizens defining their interests to accept less stringent standards.

If we do our job, the Brady bill will do its job. Let's pass S. 414 and turn aside sunset provisions and preemption clauses that weaken it.

I thank the Chair.

Mr. President, I rise this morning to ask that in the process of setting a minimum standard, that this body not also set a maximum standard.

My home State of Tennessee, I believe the RECORD will show, was the first State in the Union to adopt a waiting period for the purchase of handguns.

In the year 1959, our State adopted a 3-day waiting period, and this served us for a couple of years until the lawmakers of our State decided that perhaps that was too short, and at that period of time we increased that 3-day period to a 15-day waiting period. For the last 35 years our State has chosen to maintain this period of time, and it has served the citizens of our State well.

The preemption amendment that is before us is going to say to Tennesseans, "You cannot have that type of waiting period. Your program that has been effective in selecting sales of handguns is going to be decreased. Instead of your being able to effectively control this measure, we are going to pull it down to 5 days, and in addition to that, if you do not get your record—you have 24 months to get your records in order and then we are going to start cutting out even more."

Mr. President, in all the Federal programs with which I am familiar, in none of the others have we set maximum standards. I think we as the Federal Government have a duty, a responsibility, to set minimum standards for the performance of services in this country. We have done that in areas such as the underground petroleum storage tank; we have done that in clean water, in ADA; we have done it in EPA and any number of services. But to the best of my knowledge we have never said to a State, "You cannot get above mediocrity. You cannot move higher than the lowest standard in this country."

Mr. President, I will support the Brady bill as it was introduced. I will resist with every ounce that I have these two amendments, the preemption and the other one.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM. Mr. President, I yield 5 minutes to the Senator from California.

The PRESIDING OFFICER (Mr. MATHEWS). The Chair recognizes Senator FEINSTEIN from California.

Mrs. FEINSTEIN. I also thank Senator METZENBAUM very much for his generosity in yielding me time. Thank you, Mr. President.

Mr. President, I rise to support the Brady bill and to oppose any "poison pill" provisions, or any other measure, that would diminish its effectiveness. Mr. President, I come from a State, California, which already has a 15-day waiting period for the purchase of a handgun. There are those who would say that the Brady bill will not work. To determine whether they are correct, all one need do is examine the experience of States that have waiting periods. All we need ask is whether a waiting period keeps guns out of the hands of the criminals? Out of the hands of juveniles? And out of the hands of people with a history of mental incapacity?

Mr. President, I want to present the truly impressive results from one State, California. The chart beside me has been prepared by the State's Department of Justice.

It reflects these facts: Between January 1991 and September 1993, California's 15-day waiting period kept "handguns" out of the hands of 8,060 people previously convicted of assault or homicide. It kept handguns out of the hands of 1,859 people convicted of drug offenses; 1,752 people convicted of theft, burglary, robbery or who had prior weapons offenses; 827 people with records of mental disorder or mental

illness; 720 minors; and 618 persons convicted of kidnaping, sex crimes or who had restraining orders entered against them. And it has kept handguns out of the hands of 2,584 people convicted of having made other illegal purchases.

Mr. President, I ask unanimous consent that a table listing this data be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mrs. FEINSTEIN. Mr. President, I would submit that the data summarized in this chart makes a myth of the suggestion that handgun purchase waiting periods do not work. A 15-day waiting period in the largest State in the Union kept guns out of the hands of some 16,420 criminals in just 33 months. These are not my figures. These are not the Senate figures. These are the figures from the California Department of Justice. They are accurate, and they are persuasive.

Make no mistake. The crime rate in California is unacceptably high. I would like to see it go down. What these statistics prove, however, is that it could have been much worse.

Mr. President, I would just like to say this. The people of America, in overwhelming numbers, want both Houses of Congress to take action that keeps weapons out of the hands of those who are most apt to commit crimes. I believe, as many Americans do, that if you are a law-abiding, stable citizen you should be able to purchase legally a handgun, rifle, or shotgun.

But present law does not facilitate the adequate screening of gun purchasers. Adoption of a national minimum waiting period can, has, and will do just that. In California, a waiting period of 5 days successfully kept more than 16,000 unstable people who committed murder, assault, robbery, kidnaping, sex crimes, and other felonies from buying handguns.

Of course, California is not alone in its experience with a successful waiting period.

New Jersey's 20-year-old waiting period law has thwarted more than 10,000 attempted handgun purchases by criminals.

Atlanta's 15-day waiting period and related checks stop almost 5 percent of all handgun sales attempted there each year.

Maryland's 7-day waiting period bars roughly 4 percent of all sales every year. In 1990, that meant that 750 persons who should not have had—or were already legally barred from owning—a firearm were appropriately prevented from getting one.

Illinois, Nebraska, and Oregon report similar experience with their respective waiting period laws.

I am opposed to any amendment today that weakens the Brady bill or prevents States from adopting stronger provisions.

California's attorney general wrote to me just 10 days ago that my State's 15-day waiting period has: "Been responsible for keeping guns out of the hands of 350 persons with severe mental health problems. During the same period, it also has denied these deadly weapons to over 2,200 persons who have been convicted of violent misdemeanors and over 210 persons who were already forbidden firearms possession by domestic violence restraining orders."

The House resisted efforts to encumber the Brady bill with a preemption clause. I feel very strongly that the Senate has the opportunity and the responsibility to do the same.

I am also opposed to prematurely phasing out the 5-day waiting period required by the Brady bill.

It just is not realistic to expect that a national instant check system will be ready in 5 years. Only 15 States today have fully automated criminal record histories, just 11 have fully automated master name indexes and only 30 identify which criminals in their databases are felons.

As Attorney General Reno recently wrote to Congressman SCHUMER:

* * * It is an absolute certainty that a national instant check system is more than five years away from becoming operational because enormous tasks remain.

Why should Congress deliberately create a gap in the protection provided to the public by a reasonable handgun purchase waiting period?

There is absolutely no reason to tolerate that risk and, therefore, absolutely no reason not to strike the sunset provision of this bill.

Second, I am not at all convinced that an instant check system is an acceptable substitute for a reasonable waiting period.

An instant check system, once up and running, will give gun sellers access to computerized State and Federal criminal history records. It would not, however, provide access to other information routinely checked by State law enforcement authorities, such as: "Noncomputerized files; local arrest information not yet entered into State or Federal databases; noncriminal records, like the mental health data that in California has barred more than 800 handgun sales since January 1991; and fingerprint data—automated and not."

The bottom line on sunsetting is simply this. If the American people could cast a vote in the Senate they would not accept any law engineered to permit more felons and mentally unstable people to readily obtain handguns.

That is what the arbitrary sunset clause in this bill will do. The Senate should vote to strike it.

Passage of the Brady bill—an undiluted Brady bill—is years overdue.

The American people have said so loudly and clearly.

A 5-day waiting period for the purchase of handguns has the unqualified support of 92 percent of the American public, and 84 percent of gun owners according to a March 1993 CNN/USA Today poll.

The Brady bill also is backed by every major national law enforcement organization.

Fraternal Order of Police; National Association of Police Organizations; National Sheriffs Association; National Association of Black Law Enforcement Executives; Police Executive Research Forum; International Association of Chiefs of Police; The Police Foundation; and Federal Law Enforcement Officers' Association.

They are joined by:

Five former Presidents; Six former Attorneys General; the National PTA; American Association of Retired Persons; the NAACP; National Organization for Women; American Medical Association; American Nurses Association; and the American Academy of Pediatrics, which notes that one in six pediatricians has treated a child for gun-related injuries.

Religious groups, such as:

The American Jewish Congress;

United Methodist Church;

U.S. Catholic Conference; and

Southern Christian Leadership Conference also overwhelmingly support a strong Brady Bill

The Children's Defense Fund, the National League of Cities, Urban League, and the U.S. Conference of Mayors also support the Brady bill.

The Brady bill's time has come. The Senate should have the wisdom and the grace, indeed has the responsibility, to enact the strongest and most effective version of it possible.

I strongly urge my colleagues not only to support the bill itself, but to vote with me to strike what the attorney general of California so accurately called the poison pill amendments with which it has been burdened.

EXHIBIT 1

TABLE 1. ILLEGAL GUN PURCHASES STOPPED BY CALIFORNIA'S 15-DAY WAITING PERIOD (JANUARY 1991 THROUGH SEPTEMBER 1993)

Prior conviction	Purchases denied
Assault/homicide	8,060
Drug offense	1,859
Theft, burglary, robbery, weapons offense	1,752
Mental disorder/illness	827
Under age 21	720
Kidnaping, sex crime, subject to restraining order	618
All other violations	2,584
Total	16,420

Source: California Department of Justice.

The PRESIDING OFFICER. Who yields time?

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I yield 3 minutes to the Senator from Alaska

The PRESIDING OFFICER. The Senator from Alaska [Mr. STEVENS], is recognized.

Mr. STEVENS. Mr. President, as a former California resident, I have listened with interest to my good friend from California, and I find it interesting that there is still this concept of support for waiting periods. California's homicide rate went up 132 percent despite the waiting period in California law.

What we have been talking about now for some time is to have the information generated from a national system that would eliminate the need for waiting periods, would have instant background checks, and could have additional information that would even keep guns from people who otherwise should not have them beyond some of the restrictions that are even in the California law.

I find no incidents that increasing the waiting period in California decreased the crime rate. That is really the basic problem here.

But what is more deep seated in those of us who believe in the second amendment, is the feeling that what people are doing with this bill is, they are not really interested in the waiting period, they are building up a Government base of the information necessary to determine who owns guns in this country. An armed citizenry, people who have the ability to defend themselves, are not going to become an oppressed citizenry. That has been our basic assumption throughout this whole concept.

There is really no great correlation between gun ownership and crime. There is a correlation between criminal possession of guns and crime. And that is what we have been trying to do. We have been trying to make certain that there is a system that will give us the information on those who seek to acquire guns.

I would say that the concept of such an information base has been supported. Two years ago, I stood out here and offered an amendment quite similar to that now offered by the Senator from Maine and the Senator from Kansas, our two leaders. It was defeated.

The real problem we have now is that there are provisions in this bill that has been introduced by the two leaders, both the sunset provision and the preemption provision. Clearly those of us who do not believe in waiting periods at all, we do not believe in it for the reason they do not accomplish anything. What accomplishes something is giving information to the person who has the gun and the ability to sell it as to whether the person who wants to buy it ought to be able to buy a gun.

Now, the waiting period is not going to give them any more information, but the new system will.

I hope Members will keep in mind that without the sunset provision and without the preemption provision, this is a bad bill. Clearly, it is a bad bill and ought not to even be considered for a final vote. And I say that advisedly.

I am going to withhold my final support for this bill to see what it looks like after a series of amendments that are being offered here now.

But, clearly, if there is a mood here in the Senate to try to get a compromise that might work, the sunset provision and the preemption provision must stay in the bill.

The PRESIDING OFFICER. Who yields time?

Mr. MITCHELL. Mr. President, I ask unanimous consent that 15 minutes of time on the pending amendment be under Senator LEAHY's control and that such time be available to Senator LEAHY, notwithstanding the pendency of the amendment.

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

Mr. MITCHELL. Mr. President, I have discussed this with the distinguished Senator from Idaho. All this means is that even though this time was not used on the amendment—we have been taking time off the bill—it will be available after the amendment is disposed of. It does not add to the time. It simply means the time will be used in a properly allocated manner.

Mr. CRAIG. I have no objection.

The PRESIDING OFFICER. Who yields time?

Mr. CRAIG. Mr. President, as debate has progresses this morning, I think it becomes quite obvious that there are some very real and different distinctions between what we attempt to accomplish here today, between those who will still argue that a waiting period has some value versus those of us who recognize that what is important is making sure that those who acquire firearms are legitimate and legal and that we would propound to devise as quickly as possible an instant background check that would provide that flow of information.

Why do we do that? You have heard the Senator from California speak to a waiting period in her State and a frustration that what we would do today might cause some limits to the State of California.

Yet, what is very interesting in that argument is that if we have a waiting period, which is an artificial barrier, versus an instant background check which seeks to sort out the individuals, here is what happens. I reference a quote from USA Today, Los Angeles. We all remember those horrendous riots they had out there and the great damage they did, the number of lives that were lost, the looting that went on and the destruction of private property. Let me read from that article.

> Many hundreds of people, alarmed by law enforcement's inability to control chaos, took up weapons throughout the riot. Police were grateful. "You get a guy standing over you with a gun and you are not going to loot his property."

That is a quote from one of the police—George Wright, Sergeant, Los Angeles police.

> The rush to weapons began almost immediately after the riot's first vivid images went out across television in the Los Angeles area. Shopkeepers said some gun buyers were lifelong gun control advocates running to buy an item they thought they would never need, only to find out that the legislation that requires Californians to wait 15 days had blocked them from acquiring a firearm to protect themselves or their property.

What happened at that point though, and I found it was interesting, because in the State of California that waiting period does not affect antique weapons, they bought older weapons so they could have a firearm.

Why do I make that point? I make that point to argue that waiting periods have never served the purpose. They are obsolete in all arguments. What we are attempting to do is what the American people want us to do, and that is to keep firearms out of the hands of criminals and in the hands of law-abiding citizens who know how to use them properly.

Why should we do that? Here is a reason we should do it. Gary Kleck, who is a known criminologist from Florida State University who, by the way, is no gun-toting criminologist, who believes in forms of gun control, has looked at this objectively. Here is what he said.

He estimates there were about 645,000 defensive uses of handguns against persons per year, excluding police and military uses. Kleck said that the use of long guns also was a part of that, in the protection.

But the point he is making is that adding it together, Kleck estimates that guns of all types are used for defensive purposes about a million times a year. That is called folks protecting themselves, protecting their property, stopping a perpetrator of crime as that person enters their property or might attempt to take their life. That is what we are saying. And that guns of all types are used substantially, more often defensively than criminally.

Kleck estimates that annually, gun wielding civilians, in defense or some other legal, justified cause, kill between 1,500 and 2,800 felons a year. Not innocent people, but felons who are attempting to do that individual wrong. And 2½ to 7 times as many criminals are shot by police. You see, there is a legitimate use of weapons in this society. Law enforcement does break down, and we know that.

We also have citizens arming themselves at an extremely high rate today and finding ways to train so they can understand the responsible and effective use of firearms. Kleck estimatcs there are 7,800 to 16,000 responsible uses a year. That is what the second amendment is all about.

So we ought not be limiting the responsible use. We ought to be going at the criminal. And the substitute to the Brady bill, offered by the Republican leader and the Democratic leader here in the Senate, does just that. It creates

a mechanism that moves us very rapidly in that direction. And I will tell my colleagues, if preemption stays in to create uniformity and if sunset stays in, we have a bill.

We have the potential of doing good here today. And if it is out, then this bill will probably fail and that would be a tragedy, at a time when we are now nearly ready to bring instant background check on line and we can create this kind of uniformity to do the responsible screening that I think all of us would expect, and certainly the American people want.

The PRESIDING OFFICER. Who yields time? The Senator from Ohio.

Mr. METZENBAUM. Mr. President, the preemption provision is totally unacceptable. A preemption feature failed in the House and if it were adopted, it would effectively destroy the Brady Bill and the States' efforts to combat gun violence.

This provision would have the national instant check system preempt State regulation of handgun purchases.

For a very good reason, the Brady bill would not preempt State laws that would supplement the instant check system. When the national instant check systems is established, it only will be able to check computerized criminal history files at the State and Federal levels.

It will not check noncomputerized criminal history files kept by the State, which local background checks can search.

The national system also will not check noncriminal records such as mental health records, which can be checked by local authorities.

And the national system will not check fingerprint identification, which is only possible through local background checks.

It may be amazing to many Americans to know that there is no way of having a national fingerprint check system in place.

Even if this provision only preempted State and local waiting periods, rather than all types of handgun regulations, it would still abolish laws in 25 States.

It would wipe out a waiting period by any State or locality no matter how severe the crime problems may be in that State or locality. It would wipe out State or local background checks designed to stop the sale of guns to noncriminals who are prohibited under Federal or State law from purchasing a gun, including drug addicts, illegal aliens, the mentally defective, spouse abusers, and minors using false identification. And it would wipe out some gun licensing requirements that seek to screen out felons through fingerprint identification.

So an instant check system is a valuable law enforcement tool, but it is no substitute for local background checks. A national instant check system will never have access to as much information as is available to local law enforcement officials. Supplemental State and local regulation is necessary to establish a fully effective nationwide means of reducing gun violence. This amendment would deal a major blow to the States.

Madam President, how much time does the Senator from Ohio have remaining on the amendment?

The PRESIDING OFFICER (Mrs. BOXER). There is no time on the amendment; there is 22 minutes and 52 seconds on the bill.

Mr. METZENBAUM. No time on the amendment?

The PRESIDING OFFICER. That is correct. The Senator is correct. There is no time left on the amendment on either side. The Senator has 22 minutes left on the bill. The Senator from Idaho has 32 minutes left on the bill.

Mr. BUMPERS. Parliamentary inquiry, Madam President?

The PRESIDING OFFICER. The Senator will state his inquiry.

Mr. BUMPERS. Under the unanimous consent agreement, would the Senator from Ohio be allowed to yield time off his second amendment before it is presented?

The PRESIDING OFFICER. That would require unanimous consent.

Mr. STEVENS. You can use the bill.

Mrs. KASSEBAUM addressed the Chair.

Mr. METZENBAUM. I yield 5 minutes to the Senator from Kansas.

Mrs. KASSEBAUM. Madam President, I would like to state a few points I think are particularly important. There is no one on this Senate floor who would think that a 5-day waiting period for the purchase of handguns will stop all violent crime. On the other hand, I think we all recognize that crime is a complex problem and has to be approached from many different angles.

We have just passed this morning a tough crime bill which I strongly supported. More money for prisons, more money for community police, tougher enforcement of laws, tougher sentencing.

It seems to me that this 5-day waiting period for the purchase of handguns, until instant check is nationally available, is a complement to that tough crime bill we just passed this morning. They are not mutually exclusive. They address the same subject but from different angles. What the Brady bill attempts to do and what we would hope that it would do is to keep guns out of the hands of criminals.

For the life of me, I cannot understand why this does not make good sense. I cannot understand why we would not believe this was a very small, tiny step to take as one component of addressing a problem, escalating violent crime. This is not a camel's nose under the tent, and I am amazed at the argument of those who would like to see preemption of State and local law, something that we have always tried to protect here with great caution. Preemption is not an answer to what I think should be a very strong and clear vote in support of a 5-day waiting period for the purchase of handguns.

Mr. President, I rise today to speak in support of the legislation commonly known as the Brady bill.

As we all know, the purpose of the Brady bill is to give law enforcement officials an opportunity to check whether or not a person attempting to buy a handgun is mentally ill, a convicted felon, or a minor. While purchases by such persons are already prohibited under Federal law, there is no enforcement mechanism.

The Brady bill would remedy this situation by establishing a 5-day waiting period during which time a background check on the handgun purchaser would be conducted. Persons who require access to a handgun because of a threat to their life or the life of a member of their household may be exempted from the waiting period by local law enforcement officials. The 5-day waiting period will sunset once the nationwide instant felon identification system becomes operational and is used by dealers. Individual States can be exempted from Brady prior to completion of the nationwide system by establishing their own instant check or permit-to-purchase system.

The Brady bill is not an unreasonable restriction on the ability of law abiding citizens to obtain firearms. The law would only apply to handgun purchases, therefore persons wishing to buy shotguns and rifles would not be affected by its provisions. For those who need a handgun immediately for personal safety reasons, the law provides an exemption. Requiring others to wait 5-days for their handgun so that we can help prevent incidents such as the August shooting at the Federal building in Topeka does not seem an undue burden. In that incident, a felon purchased several handguns at a retail store the day before he entered the Federal courthouse and killed a guard.

Over the years, many constituents have stated that a waiting period and background check will not keep all criminals from obtaining handguns, and therefore no such legislation should be enacted. I reject this argument, just as I reject the argument that, if drug users are able to buy drugs illegally, we should make drugs legal. No law is going to be completely effective. However, if passage of the Brady bill prevents even one death, I believe it is worthwhile.

I have also heard from a number of constituents who say that the answer to violent crime is tougher law enforcement, not gun legislation. I strongly agree that law enforcement is important, and I supported virtually every

get tough amendment offered to the crime bill. But I have never viewed law enforcement and the Brady bill as mutually exclusive.

Crime is a complex problem, and it must be attacked from a number of different directions. That is why I believe the Brady bill should be enacted in addition to, not instead of, other law enforcement measures.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BUMPERS. Will the Senator from Ohio yield me 5 minutes?

Mr. METZENBAUM. I think I only have about 22 minutes.

Mr. BUMPERS. I will try to cut it down.

Mr. METZENBAUM. Three minutes?

Mr. BUMPERS. Three minutes.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Madam President, I have not customarily engaged in the debate over this amendment. I voted for it. I voted to eliminate assault weapons, and I intend to keep doing it until both of these times are secure and placed in law.

I must say that in my mind, I find it difficult to believe that we have to debate something like the Brady bill. I find it even more incredulous that we have to debate a preemption clause. We have granted California the right to have stricter environmental standards than we have; we grant all kinds of States' rights to States to have almost anything, if it is more stringent than the Federal standard. And yet, when it comes to guns, solely because of the National Rifle Association, and solely because the people around here are scared to death of that organization, we have to debate this issue while the American people cry out for some sane, rational resolution of violence in this country. The Brady bill can hardly be considered a panacea. People asked me on the street: "Do you really think that bill is going to be effective?" "I don't know what you mean by 'effective.' If it will save one life, it is worth all the time we have spent on it."

To suggest, as the National Rifle Association has, that this is another "nose under the tent" to keep guns out of the hands of people who want to protect their families, is the same debate that took place when I first came here. At that time the debate was: "All you poor little hunters out there are going to get your rifles and shotguns taken away from you." Now 19 years later, we have 200 million handguns floating around the country, and they are saying, "Don't let them take your right to protect your family away from you."

The truth of the matter is, it is those very families that are most in danger when a lunatic can walk into a gun shop and say, "No, I'm not a felon; where do I sign?" He can be 30 minutes out of any prison in Arkansas.

I never will forget when I was Governor, we had an escapee from one of our mental hospitals. He stole a car, drove 1 hour north of Little Rock, AR, walked in, bought one of the most lethal weapons that could be bought and 1 hour later, three people in Harrison, AR, were dead in a random killing.

The PRESIDING OFFICER. The Senator's 3 minutes has expired.

Mr. BUMPERS. I regret my time is up, Madam President. I will just close by saying that I cannot envision anybody not voting for the Mitchell proposal to strike the preemption clause in this bill.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. CRAIG. Madam President, we have just heard a very passionate plea from the Senator from Arkansas, and I think all of us are tremendously concerned that we see crime rampant on the streets of America today; that American citizens are frightened and frustrated because the law enforcement community seems unable to respond in a way that the average citizen wants them to and expects them to keep their property, their life, and their families safe.

Does a waiting period create safety? The answer in all those States that have them in which all of the crime rates are going up at astronomical rates says no, it does not work. Again, it creates that illusion, if you will, that there is some level of safety out there.

What does work is the crime bill we just passed, real teeth, real law which says criminals will be treated this way and they will not be back on the streets of America. But it is also true that what will work is a mechanism, a method by which we can detect those criminals who are using the legal avenues to acquire a handgun or a weapon, and that is the instant background check. That is how you do it.

They are doing it in the State of Virginia with reasonable success now in a new system that is coming up to speed. They are doing it in the State of Delaware and in a lot of other States. They are bringing their records up to speed today so they can make those kinds of informational decisions and fill in the background.

That is what the substitute is all about. It says there is a timeframe—5 years—in which we will have a 5-day waiting period, but we are going to create uniformity. We are going to say that during that period of time, all States will be alike.

Let me tell you, putting in the preemption clause says to California, we are going to bring you down a little, but it says to my State of Idaho, we are going to reinstate something on you; we are going to bring you up to a 5-day waiting period. I do not like that. I have never supported waiting periods because I read the facts and the facts say: "Don't do it because it doesn't work."

But what I am willing to do, during this hiatus in which we put together and force with $200 million to bring this informational service up, that we will create equity across the board and uniformity. That is important because that is what the Brady advocates have been saying for a decade: Give us uniformity in the law. And now that we argue uniformity, they say, "Oh, no, don't do that, we can't do that, that is unfair, that is preempting State authority."

What about the State that said no waiting period and we are just putting one on them? What does that do to State authority? I do not like it either, but I think we have a common mind here and the common mind is to get the gun out of the hand of the criminal. That is what the substitute will do with preemption in it and with the sunset in it.

Mr. BUMPERS. Will the Senator yield for a question?

Mr. CRAIG. Only briefly.

Mr. BUMPERS. It will be very brief. I understand the argument the Senator closed with that if a State normally has something less than the Federal standards, we do not permit that; we preempt it. But it is only when there is a common purpose and a national goal and it is for the benefit of the public that we do that. There are instances where we allow the States to continue with something—we grandfather States in all the time—where the national purpose is thwarted. It is really not a question but an observation.

Mr. CRAIG. The Senator from Arkansas is absolutely right. We do it both ways. We also say to States you cannot do things, as often as we say you can do that at that level or more. So we do it both ways.

This time we are saying that for the good of what we are attempting to accomplish here—and that is a national informational network—uniformity is extremely valuable and we make that choice.

Mr. BUMPERS. If I may make one other observation—

Mr. CRAIG. Only on the time of the Senator from Ohio.

Mr. BUMPERS. Will the Senator from Ohio yield me 30 seconds?

Mr. METZENBAUM. Yes.

Mr. BUMPERS. Many of the letters I receive point to the murder rate in Washington, DC, which has one of the highest murder rates in America. That point taken alone is legitimate.

It just so happens that the District of Columbia is surrounded by States, most notably Virginia, which has some of the most lax gun laws in the United States, and you only have to drive 5 minutes to get there. That is one of the most important reasons to do this on a national basis.

The PRESIDING OFFICER (Mrs. MURRAY). Who yields time?

Mrs. BOXER. I wonder if the Senator from Ohio will yield me 1 or 2 minutes?

Mr. METZENBAUM. I yield the Senator from California 2 minutes.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Madam President, I want to thank the Senator for his continued leadership on this issue. I know it was lonely for him for quite a while, but he has some good company.

I just want to say to my colleagues that the idea that we would preempt a longer waiting period makes me outraged.

Mr. President, I wish to tell you that in the State of California we have seen death from people who have no right to have firearms, who walked into restaurants, who walked into post offices, who walked into children's areas in schools, law offices. My son lost his best friend. And what you are saying to me is that California should go from 15 days to a 5-day waiting period so it puts more pressure on; they might miss someone and some crazy lunatic can get a gun in that 10 days that you are taking away from my State.

For the NRA to shout and say the background checks do not work, we know in California they work. From January 1991 through September 1993, California's waiting period stopped 7,000 convicted felons and 7,000 people convicted of misdemeanors from purchasing guns. Maybe the Senator from Idaho does not know that.

From January 1991 to September 1993, 16,000 illegal gun purchases were stopped by California's 15-day waiting period, and over 8,000 of those denials were due to homicide convictions, 2,000 because of drug convictions, 2,000 due to theft, burglary, robbery, and weapons offense convictions, 1,000 due to mental illness, another 720 were under age, and 618 kidnapping.

The PRESIDING OFFICER. The Senator's time has expired.

Mrs. BOXER. I ask for 20 additional seconds.

Mr. METZENBAUM. I yield the Senator 20 seconds.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. In summary, the idea that we would stop the States from adding a longer waiting period is an absolute outrage, and we will have blood on our hands if we do not support the Senator from Ohio and the Senator from Maine.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. CRAIG. Madam President, I note the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. BOXER). Without objection, it is so ordered.

Mr. CRAIG. Madam President, as we continue the debate on this important legislation, I think there is something that has to be understood about the unanimous consent agreement that was brought about by our leadership.

We are, in a few moments, going to have a motion to strike preemption, and I would certainly hope that as key to this legislation we are able to keep in preemption. But if it fails or if we are not able to keep the sunset provision in, there will be a cloture vote, and I hope that we can retain that. That cloture vote will happen sometime following those motions to strike. That would then move us, if we can deny cloture, to another cloture vote sometime late this evening.

What the unanimous consent agreement that put this together is silent to is what happens to the bill after the second cloture if we are able to block the cloture effort. What I would like, and what I think most of us would like to see happen is that we set in motion an additional negotiation to resolve this issue. Certainly this is not now tied to the crime bill. It was the option of the Republican leader to do that. He chose not to do that in cooperation with the majority leader and the Senator from Ohio, that this be a free-standing piece of legislation so that it can go to conference with the House because I think all of us are extremely concerned that we get at the criminal and that law-abiding citizens not be prohibited in their right to exercise their constitutional right and to be able to do so in a way that is unfettered by some extraneous law, for example, like a waiting period.

That is what we are trying to accomplish today, and I hope we can get that done. Certainly the debate is valid, but we all know that if we strive for uniformity and we force those issues and we put some money behind the mandate—and we have, $200 million to go out to States under a formula to allow them to bring up their systems. The Senator from Ohio knows, and we have worked cooperatively on this; we both supported legislation over the past 5 years, we have put over $20 million already into the refinement and the modernizing of these records.

So when he suggests that is somewhere off in the undeterminable future, everyone who is dealing with it down at the FBI and everyone across the States dealing with it says if we put our minds to it within at least 24 months we can have pretty much running across the Nation the kind of informational service that brings about the instant background check which I think all of us would like to see, because we have already heard the facts on the waiting period.

In every State that has had them, whether they have had them for 5 years or 10 years, all crime rates are going up. Crimes in which a handgun, an illegal handgun is used, are going up.

Why, if we are sitting here debating a waiting period as the most fundamental and important thing to deter crime in our Nation, is it not working?

The reason it is not working is because they cannot effectively check the background of these individuals. Tragically enough, the gentleman who fired the shot that hit Jim Brady, which has started all of this in motion—it has been argued if we just had a background check, we could have caught him.

No, we could not have because he was in and out of one address or another. Yes, he had a Texas driver's license. He bought the gun in Dallas, but he was living in Lubbock.

No, it would not have caught him. That is a false argument. But what we have found, if he had a criminal record, there would have been a quality background check.

We even add in this bill those who have mental conditions, that have been so adjudicated, become part of the national recordkeeping system. That is what is extremely valuable about this process. That is why we need uniformity which is created by State preemption, why we need the sunset provision to force our FBI and the Attorney General, the Justice Department to bring all these on board and to work with our States to create this kind of informational flow. We have States that are doing it now because they put their mind to it and it worked.

That is what this is all about. It is not about waiting period, and it should not be about waiting period. But if that becomes the debate and if State preemption goes down and sunset goes down, then I think we have effectively lost the opportunity to create a measure to take criminals with illegal guns off the streets.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM. Madam President, I yield the Senator from Rhode Island 2 minutes.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized for 2 minutes.

Mr. CHAFEE. I thank the Chair. I thank the managers of the bill.

I find this preemption very confusing. Maybe the Senator from Idaho would give me a hand here.

As I understand it, in the State of Rhode Island where we now have a waiting period of 7 days which applies to all guns, not just to handguns, this preemption clause, as I understand it, would not only wipe out the 7-day period that we have but would also wipe

out the provisions that apply to other than handguns. Am I correct in that? In other words, our provision of 7 days applies to all guns. Now if you preempt from the Brady bill, if that goes into effect, we would be cut down not only to 5 days, but it would eliminate the waiting period for all guns except for handguns. Am I correct in that?

Mr. CRAIG. The bill reads only in the case of handguns. And it also goes on to avoid, and expressly states, that any other processes that States have put in place, like fingerprinting or tests or any of that, are not preempted.

Mr. CHAFEE. So as I understand it, what you are telling me——

Mr. CRAIG. It would be from 7 to 5 in your case.

Mr. CHAFEE. The Senator is saying there could be a 7-day waiting period for rifles?

Mr. CRAIG. As I read the legislation.

Mr. CHAFEE. But we have chosen in our State to have 7 days waiting for handguns. Why should we not be able to do that? Why is Big Brother in Washington, DC, telling us we cannot have the longer period?

Mr. CRAIG. I think the Senator, and I, and others have always been engaged in trying to decide how we create uniformity when we have a national situation on our hands——

The PRESIDING OFFICER. The Senator's 2 minutes have expired.

Mr. CHAFEE. Let me just say—if I could have 30 seconds, Madam President; I know we are short of time here—that I find it distressing that here in Washington, DC, we are telling my State, which chooses to have a 7-day waiting period, carefully considered by the legislature, that is what they want, and yet here we are saying, oh, no, you cannot have that. You can only have 5 days. I do not see that it is necessary in the interest of national unity to cut back Rhode Island's waiting period.

So I am not in favor of that provision and will vote contrary to it.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM. Madam President, I suggest the absence of a quorum and ask that the time be charged equally to both sides.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. METZENBAUM. Madam President, I yield the Senator from Washington 3 minutes.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Thank you, Madam President.

Madam President, I rise in support of S. 414, the Brady bill, and the Mitchell amendment that is in front of us. For more than a week, the opponents of this commonsense measure have tried to delay it.

I had planned to be in Seattle yesterday to welcome President Clinton to the Asian Pacific Economic Cooperation Council meeting—a historic trade meeting with 15 heads of Asian nations. But I stayed here because of the Brady bill. All day yesterday, we were promised the bill would come up. We waited late into the evening. I am glad we can finally have a full and open debate on why we need this bill.

We need this bill because every 14 minutes, someone in this Nation dies from a gunshot wound.

We need this bill because every single day, 14 children are killed with guns, and more than a quarter million of them take guns to school each day.

We need this bill because there are already 71 million handguns in this country.

We need this bill because gun violence, especially among our Nation's youth, is out of control.

We need to restore some sanity to our society. We need to stop settling disputes with guns instead of dialog.

We need to start talking about the responsibility of owning a gun, not just the constitutional right to own one.

Gun violence is also costing our health care system at least $3 billion a year. At Harborview Hospital in Seattle, both the number of gunshot victims and the cost of treating them have doubled in the last 7 years. Every one of us pays the cost of gun violence through higher taxes, increased insurance fees, or in money not spent on other health care needs. Taxpayers should not have to subsidize 80 percent of the health care costs of gun violence.

That is the point of the Brady bill. Like a similar law in my State of Washington, the Brady bill requires a mandatory, 5-day waiting period and background check for anyone seeking to buy a handgun in this country. It will provide funds to law enforcement agencies to perform these checks.

Alone, the Brady bill will not stop the violence. But it is an important step. It requires a cooling-off period so that someone in a rage cannot get immediate gratification by buying a gun. What we really need is a nationwide ceasefire, but at least the Brady bill will give us a national cooling-off period.

Like everyone I know, I want to be able to go home and say to my own family—the world is a safer place.

The Brady bill, together with Senator FEINSTEIN's ban on assault weapons and Senator KOHL's ban on the possession of guns by children under 18 years old, are steps in making some headway against gun violence in this Nation. We still have a long way to go, but these first steps are critical.

The PRESIDING OFFICER. Who yields time?

Mr. MITCHELL. Madam President, I have discussed the matter with the distinguished managers and with the minority leader staff. I believe that we are at the point where we can proceed, or just about at the point where we can proceed, to a vote on this matter.

So for the information of Senators and their offices, this vote will occur at 12:45. Indeed, Madam President, I now ask unanimous consent that a vote on the Mitchell amendment occur at 12:45.

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

Mr. MITCHELL. Madam President, have the yeas and nays been ordered?

The PRESIDING OFFICER. They have not been ordered.

Mr. MITCHELL. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. MITCHELL. So we will now await if any Senator wishes to comment during this period. The vote will begin at 12:45. For the moment, I suggest the absence of the quorum, the time to run against each side.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STEVENS. 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. STEVENS. Madam President, I wonder if the Senator from Idaho will yield me some time.

Mr. CRAIG. Madam President, I yield such time as he may need to the Senator from Alaska.

Mr. STEVENS. Madam President, I mentioned an amendment that I offered in a previous Congress, and I think it is important to note that this is an amendment offered by both leaders trying to find some way to meet the objectives of those who want a waiting period and those of us who want an instant check.

It does appear to me that there may be some misunderstanding. If the sunset provision and the preemption provision stay in the bill, those of us who have opposed this bill because of the failure to have the support necessary to create the national instantaneous check provision—that will provide us the ability for a gun dealer to literally be able to check the background of the person that seeks to buy a gun instantly, eliminating the need for a waiting period—have agreed to the waiting period in order to get this bill to conference. I think people ought to keep in mind that the bill still has to go to conference and will be substantially reviewed in conference. But we

are looking to get the bill to conference.

The two provisions to get it to conference are the sunset and preemption provisions. If the people who have been talking about delay and opposition want to try to work out a fair compromise between the House and Senate and all of us on this and satisfy the demand for this kind of a concept, then they should support getting the bill to conference. I hear people say "they take out the two provisions that have led us to the point where we have agreed to go to conference and still they want to force us to conference." I think everyone ought to be fully aware—and if I can count—this bill is not going to go to conference if sunset or preemption come out. If they stay in, we are willing to go to conference and try to work out a bill that will meet the objectives of those who sought a waiting period under the Brady concept and a national instant check concept, such as I introduced with the assistance of the NRA in drafting it 2 years ago, and such as my colleague from Idaho has done this year. Is that not correct?

Mr. CRAIG. That is correct.

Madam President, I yield myself 1 minute.

Let me repeat again what the Senator from Alaska, [Mr. STEVENS], has just said that is very important. If we are to in fact build an instant check system and a national informational system to be able to screen citizens who attempt to buy firearms—in this case handguns—and if the preemption motion to strike is successful, we have started a very long process that ultimately will defeat this legislation. If preemption stays in, and if the sunset clause stays in, we move this legislation to conference with the House, and we will have a bill that produces that instant background check and that national informational service that all of us are seeking. That is what this argument is all about. As the majority leader said to me a few moments ago, we can oftentimes agree 99 percent or 98 percent on public policy, and it is the 1 or 2 percent that makes the difference.

Madam President, it is the 1 or 2 percent in this instance that may kill this bill if everyone votes for a motion to strike.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. MITCHELL. Madam President, I ask unanimous consent to be able to proceed for 1 minute.

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

Mr. MITCHELL. I merely point out that 2 years ago we went through a similar process. Senator DOLE and I had long negotiations, and we reached a compromise. It did not include preemption, and 67 Senators voted for it; 67 Senators voted for a compromise that did not include preemption.

What has occurred in the intervening time to cause those Senators now to insist that preemption be in the bill? No objective criteria, no facts—merely a change as a result of pressure being put on.

So I say that if a Senator voted for this bill without preemption in 1991, that Senator should be consistent and vote for this bill without preemption in 1993.

I yield the remainder of my time.

Mr. BIDEN. Mr. President, I want to clarify a point that was raised earlier in this debate by Senator MITCHELL. States such as Delaware, which already have an instant background check system in place, are exempt from the national waiting period and will not be affected by preemption.

Mr. SIMPSON. Mr. President, this is an issue filled with passion. Many of us know Jim Brady personally. He is a bright, fine, sensitive man who has suffered a great tragedy. His recovery has been near miraculous.

We have also come to admire his wife, Sarah Brady as one of the most diligent, sincere and articulate advocates of any legislation. She and Jim are delightful people and lovely friends. I commend them both for their many talents—particularly in the legislative arena.

We genuinely disagree on whether this bill will accomplish what the sponsors say it will; but we do communicate in a most cooperative manner. That is often too rare in this town with folks who disagree on controversial issues.

I rise in support of the substitute legislation offered by our distinguished Republican leader.

I am very much aware of how the great majority of my constituents—who also happen to be very sincere and sensible gunowners, feel about the bill offered by Senator METZENBAUM. They are just as concerned as most Americans about preventing felons from being able to purchase handguns over the counter.

Most gunowners who I know are good, honest, and thoughtful people. I believe they would eagerly support a Brady bill if it accomplished what our leader's would do: It would create a system of instant background checks and provide the financial assistance to the States to do exactly that. Anything less is simply another unfunded mandate that we have all harshly criticized these past few weeks.

Without that assistance, many States will be unable to adequately update their record systems in order to comply with any background check: whether the State is given 5 days or 5 weeks.

This substitute would have the effect of temporarily preempting some laws which require longer waiting periods. However, once a national instant check system is on line, all waiting periods will be lifted.

I believe that if the Federal Government is going to enact a uniform law in this area, then it should truly be uniform.

But this is not preemption in the way we commonly use that term. This provision will allow States to come back—if they wish—after the bill is enacted and adopt longer waiting periods. They can do that under this bill.

This legislation simply affords an opportunity for the States—all of the States—to examine the true effectiveness of this waiting period and compare it with the instant check system to see which works better.

It is my hunch that those few States which currently have longer waiting periods will realize that an instant check system will be more effective in identifying felons who are trying to purchase handguns—if the infrastructure is there in the first place. If a State or locality wants to enact longer waiting periods afterwards, they will be able to subsequently enact them.

In addition, it is important to recognize that it is only a waiting period that would be temporarily lifted under the terms of this legislation.

If any State wants to enact other procedures which delay the purchase of a handgun, such as fingerprinting, permitting, licensing, and the like, those States can do that, as they have done traditionally, and those procedures are not affected one bit by this substitute.

So, Mr. President, this is not a preemption in the sense that the Federal Government is permanently and completely taking away the jurisdiction over the matter completely away from the States.

Instead, this substitute simply tells the States to pause and consider whether this might not work out better for you. If not, the States will be able to extend their period.

In the meantime, we provide the financial assistance to allow the States to establish fair and reasonable systems to conduct instant background checks.

What is equally important, Mr. President, is that we will be complying with the goal that our distinguished chairman of the Judiciary Committee suggested yesterday: "Truth in legislating."

I strongly urge my colleagues to join with us to adopt the Dole substitute.

The PRESIDING OFFICER. Under the previous order, the question occurs on amendment No. 1219 offered by the majority leader.

The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. DORGAN], is necessarily absent.

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

The result was announced—yeas 54, nays 45, as follows:

[Rollcall Vote No. 385 Leg.]

YEAS—54

Akaka	Glenn	Mikulski
Biden	Graham	Mitchell
Bingaman	Harkin	Moseley-Braun
Boren	Hatfield	Moynihan
Boxer	Inouye	Murray
Bradley	Jeffords	Nunn
Bryan	Kassebaum	Pell
Bumpers	Kennedy	Pryor
Byrd	Kerrey	Reid
Chafee	Kerry	Riegle
Danforth	Kohl	Robb
Daschle	Lautenberg	Rockefeller
DeConcini	Leahy	Sarbanes
Dodd	Levin	Sasser
Durenberger	Lieberman	Simon
Exon	Lugar	Warner
Feingold	Mathews	Wellstone
Feinstein	Metzenbaum	Wofford

NAYS—45

Baucus	Domenici	Mack
Bennett	Faircloth	McCain
Bond	Ford	McConnell
Breaux	Gorton	Murkowski
Brown	Gramm	Nickles
Burns	Grassley	Packwood
Campbell	Gregg	Pressler
Coats	Hatch	Roth
Cochran	Heflin	Shelby
Cohen	Helms	Simpson
Conrad	Hollings	Smith
Coverdell	Hutchison	Specter
Craig	Johnston	Stevens
D'Amato	Kempthorne	Thurmond
Dole	Lott	Wallop

NOT VOTING—1

Dorgan

So the amendment (No. 1219) was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. HOLLINGS). The Senator from Ohio is recognized.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1220

(Purpose: To strike the sunset provision)

Mr. METZENBAUM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM], for himself and Mr. KOHL, proposes an amendment numbered 1220.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 2, lines 10 through 12, strike "either on the day before the date that is 60 months after such date of enactment or".

On page 2, lines 14 and 15, strike "whichever occurs earlier,".

Mr. METZENBAUM. Mr. President, the amendment I just sent to the desk on behalf of myself and Senator KOHL would, if adopted, strike a major blow against the Brady bill.

This provision would prematurely sunset the waiting period and background check provisions of the Brady bill, which would result—which would result—in people being killed by persons who would have been denied a handgun.

The Brady bill that I have introduced in this Congress itself contains a sunset for this waiting period, which would be phased out as soon as a nationwide instant felon identification system becomes operational. The Attorney General is directed to review each State's criminal recordkeeping system and to establish a timetable for each State to link those records with the national system.

The Attorney General would certify that the national system is operational as soon as, but not before, the system is ready and the States are in compliance with their timetables. At that point, the national system goes into effect and the waiting period is superseded for all States that are in compliance with their timetables. For States not in compliance with their timetables, the waiting period would continue to apply until they achieve compliance.

Under the Brady bill, the earliest possible time that the national system could go into effect is 30 months after enactment. But it actually will take much longer than that because most States are way behind in their criminal recordkeeping. The best estimates are that the national system will not be ready for at least 5 years, and it may be much longer than that.

But this provision would prematurely sunset the waiting period after 5 years and automatically switch to the national system regardless of whether the national system was ready or not.

The premature sunset would cripple the effectiveness of the Brady bill. What would happen is that people would start relying on a national instant check system without regard to the adequacy of State criminal record reporting. We would have a bogus national instant check system that would instantly check nothing. Thousands of felons and other prohibited purchasers would continue to elude detection and purchase guns.

It makes no sense to rely on an instant check system that is not reliable. We cannot let the waiting period and background check sunset until the instant check system is ready. It is as simply as that.

I urge all friends of the Brady bill to reject this provision and strike it from the bill. On behalf of Sarah and Jim Brady, I urge you to strike the automatic sunset.

More important than Sarah and Jim Brady, on behalf of your children and your grandchildren, I urge you to strike the sunset. It is the right thing to do.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. I yield the Republican leader as much time as he may desire.

Mr. DOLE. Mr. President, I almost cannot believe we are having a debate on this matter. Let me set the stage. All parties supposedly agreed that we would have a computer check of all potential purchasers of firearms beginning 24 months after enactment of this bill. However, that date could be delayed if the criminal records for States covering at least 80 percent of the U.S. population, representing at least 80 percent of the reported violent crime were not at least 70 percent accurate.

That goal is within reach. We can, especially with the $200 million provided for State record upgrades, meet that goal. However, I know first hand that, for reasons I have never been able to determine, the U.S. Department of Justice has resisted checking criminal convictions of potential purchasers.

We already have, today, the computerized records of over 18 million offenders—it is in one place, it is called the felon identification in firearms sales [FIFS] file in the FBI's NCIC computer system. I have repeated several things today, but this really bears repeating. We have the criminal files on over 18 million people—many of whom are already prohibited from buying firearms. But we are not checking, we are delaying.

To get this compromise, we had to agree not to begin checking whether these 18 million were buying firearms for at least 24 months. That is right—today we could be checking on whether these 18 million individuals were buying firearms, but the other side says "no" we must have at least 24 months for a waiting period. So, the criminals walk in, buy guns, and we wait, and the American people wait.

We already agreed to wait 24 months—24 months in which we could be stopping the sale of firearms to criminals. But to wait more is unconscionable. What those on the other side are for is to just wait and wait and wait—never act—just wait.

In the negotiations on this compromise, they proposed inserting language they admitted would force us to wait at least 5 years. Why? We can check now. We can check on 70 percent of the population, representing 70 percent of reported violent crime with 70

percent accuracy. Asking us to wait at all seems unbelievable, but we agreed so we can get to the check, get to keeping guns away from criminals as fast as possible.

Let me be as clear as I know how. Those voting to extend the wait, those favoring no check just wait, are voting to keep the computer records locked away from the public being preyed upon. We know who most of the violent offenders are, we have their names in the computer today, we have the potential to stop them from getting guns now. Do not make us wait any longer than 24 months.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM. I yield to the Senator from Arkansas 4 minutes.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Mr. President, back in August a poll was conducted by Time and CNN. That poll indicated that some 92 percent of the American people at this time in our country "support a 5-day waiting period." A CNN/USA Today poll conducted during the month of March this year found that 84 percent of the gun owners of America support a 7-day waiting period before a purchase of a pistol can take place.

A poll recently conducted by L.H. Research, Inc., found that 68 percent of the NRA respondents—those who belong to the National Rifle Association—supported a 7-day waiting period before a pistol can be bought.

I think this speaks for itself.

Mr. President, I think today we have a critical decision to make because I think we can stand here all day and all night, all weekend and all next week, if necessary, and talk about the need or the lack of need for some form of sanity to be breathed into our gun purchasing in America. I am willing to have that debate.

I do not think that there is one Member of the U.S. Senate who today wants to take away the guns of sportsmen or hunters. I do not think that there is one Member of the U.S. Senate today—this Senator, of course, included—who desires to take away the right of any American to protect themselves.

But the time has come for us to talk some sense about gun ownership and the ability for anyone at any time, with no checks and no system, to walk in and purchase guns, especially handguns.

Just the other day in the mail, I received this little publication, this little poster: "Citizens of Arkansas, U.S. Senator David Pryor wants to take away your guns. Vote against him at the next election."

There it is. I do not know who put that out, but it is said it was done by a hunting club. Senator PRYOR does not want to take away the gun of any legitimate hunter. He does not want to disarm any citizen who is there to protect himself. This poster is 100 percent wrong—make no mistake about it.

We have a rare opportunity right now to take out of this legislation this sunset provision which would be extremely detrimental to the final passage of this gun legislation—the Brady bill—that we are now supporting.

Let's be clear about this vote. This is a vote for the Fraternal Order of Police; the National Association of Police Organizations; the National Sheriffs Association; the National Organization of Black Law Enforcement Executives; the Police Executive Research Forum; the International Association of Chiefs of Police; the Major City Chiefs of Police Organization; the Police Foundation; and the Federal Law Enforcement Officers Association.

Let us not be sidetracked. Let us vote to remove this 5-year sunset from this proposal that is today before the U.S. Senate. This 5-year sunset in the bill simply means criminals will be allowed to buy handguns 5 years from now. This is not progress. I support the amendment to strike the sunset provision.

Mr. President, I yield the floor and I yield back the remainder of my time to the distinguished Senator from Ohio.

The PRESIDING OFFICER. Who yields time? The Senator from Idaho.

Mr. CRAIG. Mr. President, I just heard the Republican leader make what I think is a statement that has to be repeated: Why take away this sunset provision? This is the stick. This says to States: "Here is the money, get in line."

Why are we denying to move this issue forward with some rapidness and some force? The FBI is sitting downtown right now with 18 million names in a computer, and what we are saying by this amendment is do not use it. I thought we wanted to get the guns out of the hands of criminals instead of play political games about a waiting period. That is what we are talking about.

This is not an impossible goal. Just a couple of years ago, the State of Virginia went on line with an instant background check. It cost them $310,000 to bring it up, and they are up and running today and they are able to screen nearly instantly the background of an individual who walks into a gun shop and says, "I want to buy that pistol." That is what this debate is all about. Anything that deters us from moving a national detection system of the kind we are talking about is beyond me, unless you are just hung up on a debate that has gone on way too long about an issue that does not make a lot of sense anymore.

Purchasers complete the purchaser's section of the Virginia firearms transaction form; consent to a criminal history record check; provide at least two forms of ID, and the process begins to work. Nonresidents of Virginia must request the check in writing. The Department of State Police notifies the dealer within 10 days for the nonresidents, but the dealer on the instant background check for the residents begins to move directly. If the ID's match, however, the computer responds, the sale goes forward. If they do not, the sale does not go forward. That is in the State of Virginia. It is working.

The State of Florida has a similar kind of thing. They can do an approval in 3 to 5 minutes to know whether that person has a felonious record or not. Are we just wanting States to amble along and the Attorney General just to kind of plod along here, all in the name of a waiting period and all in the name of a Brady bill? Or do we really want it in the name of keeping criminals with guns off the streets and pushing the mandate with the money to all of these States to assist them in the law enforcement communities of those States to get their records up to speed?

The State of Florida did it; the State of Virginia did it; the State of Delaware has done it. Dealers call an 800 number that provides the purchaser the demographics. The State bureau then checks all the criminal files. The purchaser is denied if he has been convicted of a felony or a drug or assault misdemeanor. That is all done in a very short period of time in the State of Delaware. They are doing it.

In the State of Illinois, the dealers are required to call the State police for the approval of a firearms sale on a 900 number. It costs $2 and it lasts about 52 seconds on the average. That is really getting to the root cause of our problem and yet, the Senator from Ohio, by his amendment, says no, let us just kind of move it along, just a little bit. Let us not put teeth in it, let us not enforce it, let us not bring this together.

We now have ample information based on what I mentioned some time back in the earlier debate that the $20 million we started spending in 1988 has produced a record system across this country, it has helped law enforcement, it has helped the FBI, and we moved a long way along.

As I said, all 50 States and the District of Columbia have established a central repository as a result of that effort. Forty-nine million individual criminal history files are now up, but the key to this that a lot of people do not understand as to why we can move it quickly and why we ought to force quick movement—how many of you remember some years ago going into a store using your credit card and they picked that booklet out from under the cash register and flipped through those names, those lists to see if you were on the list? That was before they had their computer systems up to where they could do it instantly. They wanted to see if you were a violator and they flipped through the list.

You call that a master name index, but it was a check. What we are talking about being able to do almost instantaneously is building and producing that master name index list, the equivalent to flipping through that little book on credit card violations.

That can be done within 24 months. That way then those checking the background have the name and then they can revert to the record if that name comes up. Until all of the records are fed into the system, with the money we are providing in this legislation, we have the ability to move quickly.

So anybody who argues that it cannot be done is not arguing fact because there is now clear evidence the material is there, the information is there. The FBI is ready to do it. What we need to say is do it, not wait and wait again and wait a little more.

I agree with the Senator from Ohio, Sarah and Jim Brady need the satisfaction of us moving quickly so that they know they will have been part of making the streets of America safer not because we restricted law-abiding citizens from their rights but because we took the guns out of the hands of criminals.

The PRESIDING OFFICER. Who yields time?

Mr. KOHL addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from Wisconsin?

Mr. METZENBAUM. Mr. President, I yield to the Senator from Wisconsin 4 minutes.

Mr. KOHL. I thank the Senator very much.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KOHL. Mr. President, I rise today to urge my colleagues to vote for the amendment which is on the floor.

Our amendment would strike the provision in the Dole substitute that automatically sunsets the waiting period after 5 years, regardless of the status of the instant check system.

Mr. President, the waiting period, as envisioned by the authors of the Brady compromise, is a core component of the Brady bill. Americans of widely divergent backgrounds have embraced the waiting period in the Brady bill, and so have I. Let me tell you why.

First, I believe a reasonable waiting period of 5 business days will help reduce crimes of passion and other impulse killings. Do not just take my word for it. Many, many people agree. Former Presidents Nixon, Ford, Carter, and Reagan have endorsed this legislation, every major business organization has backed it, and over 80 percent of gun owners across the country support it.

Mr. President, even the NRA once recognized the value of waiting periods. In 1976, a publication by the NRA entitled "On Firearms Control" stated the following:

> A waiting period could help in reducing crimes of passion and in preventing people with criminal records or dangerous mental illness from acquiring weapons.

NRA was right then, and I believe it is wrong now.

Second, as a practical matter, we need a waiting period until an accurate instant check system is established on a national basis. Because if criminal records are not fully computerized, police will therefore not be able to perform a reliable immediate background check.

The Dole language, however, would sunset the waiting period in 5 years, whether or not we have developed an accurate instant check system. That does not make sense, and I believe it would undermine a key premise of the original Brady bill compromise.

Let me point out, Mr. President, that the newest Dole substitute already lowers the standards under which the waiting period would end and the instant check system would go into effect. By my count, the minority leader has tried to terminate waiting periods by sunsetting them, by preempting them, and by plunging the standards under which they would expire.

What then does his support for the Brady bill mean?

Third, the Dole language would leave us with a bill that does not meet the expectations of the American people. Polls and surveys consistently indicate that a majority of the American people believe that the Brady bill contains a waiting period for handgun purchases. In fact, a recent Time/CNN poll found that 92 percent of Americans support a 5-day waiting period. Let me assure my colleagues that the American public would not approve of a watered-down bill that terminates the waiting period before the instant check system is up and running. In fact, I believe the American people will someday come back with a vengeance if we lose on this amendment. They will demand a waiting period on handguns that is permanent, uniform, and very long.

Mr. President, we all know that the House has passed its version of the Brady bill and that the House-approved measure contains a 5-year automatic sunset provision. I am sure—and it is only natural—that many Members of this body feel we should just go along with this amendment to put a quick end to this whole debate.

However, we should not. The Senate should not slavishly follow the whims of the House.

The waiting period is a fundamental part of this legislation. It allows us to phase in the instant check system; it allows for a cooling off period; and perhaps most importantly, it is what an overwhelming majority of the American people expect to be part of this legislation.

I, therefore, urge my colleagues to strike the provision that would sunset the waiting period.

I thank the Senator. I yield the floor.

The PRESIDING OFFICER. Who yields time?

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

Mr. LAUTENBERG. I thank the Senator from Ohio.

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

Mr. LAUTENBERG. I thank the Chair.

I rise as an original cosponsor of the Brady bill to express my strong support for the original bill and for the amendment to eliminate the sunsetting of the waiting period.

Now, last year handguns were used—last year—to murder over 13,000 people in this country. I think it is an outrage, and I think it is time to fight back. That is what the American public wants from us.

Mr. President, waiting periods cannot eliminate all handgun violence, but they can help prevent the purchase of guns by people acting in the heat of passion or in the depths of depression. We should have a permanent waiting period. And I urge my colleagues to support the Metzenbaum amendment.

While I have the opportunity, Mr. President, I also want to point out that there is a weakness in even the strongest version of the Brady bill.

The Brady bill is intended to keep guns out of the hands of felons. But while felons generally are prohibited from owning guns, there is a loophole—a loophole that would not be closed by the Brady bill.

If the felon's criminal record has been expunged, or his basic civil rights have been restored under State law—that is, rights like the right to vote, the right to hold public office, and the right to sit on a jury—then the conviction is wiped out and all Federal firearm rights are restored automatically.

Now some of my colleagues may think that's OK, and that even convicted violent felons should be able to get their guns back if they are reformed. But even for those inclined to be lenient with convicted murderers, rapists, and the like there is a problem.

The problem is that many states now expunge the records or restore the civil rights of convicted felons in an automatic fashion. Sometimes this happens immediately after the felon serves his or her sentence. Sometimes, the felon must wait a few years. But too often, there is no individualized determination that a given criminal has reformed.

As a result of this loophole, which was added with little debate in 1986, even dangerous criminals convicted of violent felonies can legally obtain firearms. And that will still be true even if the Brady bill is enacted.

Mr. President, according to the Justice Department, of State prisoners released from prison in 1983, 62.5 percent

were rearrested within only 3 years. Knowing that, how many Americans would want convicted violent felons carrying firearms around their neighborhood?

This guns for felons loophole also is creating a major obstacle for law enforcement. ATF officials report that many hardened criminals are escaping prosecution under the Armed Career Criminal Act, which prescribes stiff penalties for repeat offenders, because the criminals' prior convictions automatically have been nullified by State law.

The presidents of the Fraternal Order of Police, the National Association of Police Organizations, and the International Brotherhood of Police Officers also have written that the loophole is having terrible results around the country, and rearming people with long criminal records.

Mr. President, I have worked hard in an effort to offer an amendment to the crime bill and the Brady bill to close this guns for felons loophole. Unfortunately, there are those among us who apparently want to keep the loophole open, and I have been told that even offering such an amendment would interfere with efforts to pass both the crime bill and the Brady bill. I think that is unfortunate, but there's no way I want to risk passage of either bill.

In any case, Mr. President, I wanted to bring this loophole to my colleagues' attention, and I hope we can close it before long.

But the most important point to make today is that we should support the strongest Brady bill possible.

And, in particular, we should reject the proposal to sunset the waiting period prematurely. Too many gun crimes are committed by people in the throws of passion. A cooling off period is critically important.

I have a report that we have all probably seen: In 1990, handguns killed 22 people in Great Britain, 13 in Sweden, 91 in Switzerland; in Japan, almost two-thirds our size, 87 people were killed; but in the United States, 10,500 people in 1990 were murdered with handguns. In light of these figures, how can any of my colleagues object to the adoption of a waiting period to provide a cooling off period and to provide an opportunity to ensure that a prospective buyer is not a convicted felon, or someone else who should not have a gun?

And, incidentally, how can we have a law on the books that requires the Bureau of Alcohol, Tobacco and Firearms to go out and spend thousands of dollars searching backgrounds so that they can give some poor felon his gun? That is another loophole we ought to close. Senator SIMON and I have succeeded in blocking the use of appropriated funds for this purpose in fiscal year 1994. But we ought to end that program permanently.

Mr. President, some of the arguments we have heard for sunsetting the waiting period prematurely are really silly. I am especially skeptical of arguments that we should just have blind faith in the instant check system.

Mr. President, I come from the computer business. Everybody here knows about that. I hear about this wonderful system that is set up in Virginia, and I give Virginia credit for trying to deal with it. But I also know that it has been common for gunrunners to go to Virginia and buy a carload of weapons, and then take them to New York and New Jersey or other States around the country.

When I was in the computer business, we had thousands of people working on keeping the records up to date every minute. But we knew very well that there was a chance of error, even though it was reduced, because that was the principal nature of our business.

How many people ever had a false vehicle registration attributed, or received a ticket or a summons that did not belong to them, or received a bill from the tax collector that was not theirs?

It is a constant problem with our technological society. And this again, Mr. President, comes from someone who has the reputation for having been a founder of the computer service industry. My name is not in a hall of fame that excites people, but it is in the Information Processing Hall of Fame in Dallas, TX. I happen to be a member. My distinguished colleague from New Jersey is a member of the Basketball Hall of Fame and that gets a lot of attention. But New Jersey has two Members in the Hall of Fame, Mr. President.

The fact is, I know something about recordkeeping. That company I started provides 14 million people a week their paychecks, 14 million each and every week. So when I hear about how good these instant checks are going to be and how you will be able to pull up somebody's character, somebody's background before you give them a weapon of destruction that could wipe out a life—well, I think it is silly.

What we ought to do is establish an instant check system and then evaluate how it works. If it is really working well; maybe the proponents of the sunset provision would have a stronger argument, though I still believe there is value in maintaining a cooling off period. But at the least, we should keep a waiting period until then, to let every criminal, every felon know that we are serious about checking their background.

In New Jersey, there have been thousands of gun permits denied because when checking the background of applicants we found out that they were convicted felons, or they were not stable people, and they did not deserve to have a gun.

No one wants to take away the weapons from the sportsman or the hunter or those people who can, I assume, wait 5 days—5 days—to get their mitts on a gun. I do not understand what the rush is, I must tell you. But I come perhaps from a different part of the country, from New Jersey, where we have had more than enough gun violence in our society.

So, Mr. President, I wish to commend the Senator from Ohio. We are grateful to him for his diligence about so many things, his ever watchful eye. We are going to miss him when he retires at the end of this session.

The PRESIDING OFFICER (Mr. LIEBERMAN). The time allocated to the Senator has expired.

The PRESIDING OFFICER. Who yields time?

Mr. COCHRAN. Mr. President, I inquire how much time remains on this side of the issue?

The PRESIDING OFFICER. Nineteen minutes 15 seconds.

Mr. COCHRAN. On the other side?

The PRESIDING OFFICER. Twelve minutes 26 seconds.

Mr. COCHRAN. Mr. President, with the authority of the manager on this side, I yield myself such time as I may consume.

Mr. President, not having participated in the debate on this specific issue until now, I am reluctant to discuss all the reasons why we oppose the amendment of the Senator from Ohio for fear I will retrace ground that has already been covered. But let me make a few points even at the risk of saying some things that might already have been said.

The Senate seems to agree that there ought to be identity and background checks of those purchasing firearms from dealers. The argument is over whether or not we are going to do it as quickly as possible with an instant or nearly instant check to see if the person seeking to buy the gun is obviously dangerous to the community, mentally imbalanced, or has had a record of violence. We all support the notion that a background check is important to undertake.

But this issue raises a different question. Do we put pressure from the Federal level on developing the data base and the technology and the capability to make that check as quickly as possible? That is what this issue is about. On this side of the issue, we say, "yes." We support putting the force of a deadline, the force of Federal incentives and encouragement behind the effort to develop and use the modern technology we have, the record base that has been accumulated in the States and at the local level and at the FBI. By doing that, we can do a better job of finding out, who is dangerous, and who should not be able to buy a gun, because these individuals would be prohibited persons under the terms of existing law that

was passed back in 1968. The Gun Control Act of 1968 suggested that there are persons who ought to be prohibited by law, and are, in fact, from buying guns at retail outlets. Inquiries ought to be made under the intent of this law.

So, what we are saying is not that we have to get ourselves locked in forever to a waiting period of any particular duration. We are referring now, of course, to the 5-day waiting period under the so-called Brady version.

I hope the Senate will look at the amendment and decide that we do not want to back away from the commitment to force local jurisdictions and the Federal authorities at will to do everything necessary to have the capacity to do instant or nearly instant background checks. It seems to me that everybody ought to agree that that is a worthy goal. That is the purpose of the provision in the bill.

I know that it is not persuasive evidence, necessarily, just because the House has agreed to it. But because the other body supports it and included it in this bill, this provision would be a part of the law if it remains in the Senate bill.

But this amendment seeks to take it out. The Senator from Ohio is saying "no" to the pressure and the incentives that are included in this bill.

The substitute offered by the leadership, Senators MITCHELL and DOLE, give the States resources to do this job; $200 million for records improvement is included in the Mitchell-Dole substitute. This is just another point of pressure and an incentive necessary to have the threat of sunset hanging over the process.

I hope that if other Senators want to express themselves on the subject of the Metzenbaum amendment, they will let us know. I do not know how many speakers the other side may have or whether we are compelled to try to use all the time allocated under the agreement. But until other Senators express their interest in speaking on the issue, Mr. President, I will reserve the remainder of our time.

The PRESIDING OFFICER. Who yields time? The Senator from Ohio has spoken 32 minutes and 26 seconds, the Senator from Idaho, 13 minutes 52 seconds.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that a quorum call be entered and the time be charged against both sides.

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

The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. METZENBAUM. Mr. President, there may be some who are not clear as to what this amendment does. Let me spell it out as clearly as I can.

If the sunset provision is adopted, there will be a felon 5 years from now who could get a gun that he would not have gotten if the Brady waiting period and background check were still in effect. He will kill someone, maybe more than one, maybe some tourists, maybe a child.

When you make this vote, just remember, what we are talking about is having in effect this whole provision with respect to checking for 5 years and then for some reason eliminate it. Well, if we can live with it for 5 years, if it does not work, we can come back and change the law. But my opinion is it will work. My opinion is it is the right way to go, but if it does not work, we will come back here and change it. Why should we provide for a sunset provision for it automatically to go out of effect? I just believe if we can live with it for 5 years, we can live with it for far longer than that. If not, the Members of Congress are certainly in a position to change the law at that time. But to have an automatic sunset on a provision of this kind, in my opinion, is absurd, and I hope the Members of this body will see fit to adopt the amendment that Senator KOHL and I have sent to the desk.

Mr. COCHRAN. Mr. President, I yield 5 minutes to the distinguished Senator from Alaska [Mr. STEVENS].

Mr. STEVENS. Mr. President, Virginia has a back-check system, and it is working. As a matter of fact, they are exempted from the bill because it works.

We find a situation that there are some people here that believe in a waiting period. They do not want a check; they want a waiting period because they want to amass a whole array of information about gun owners. And over a period of time, if the waiting period stays in place, there would be a whole array of information about gun purchasers that is not required under the 1968 law.

What we are seeing here now—and my friend from Ohio demonstrates it—is a commitment that we put up $200 million and put into effect an instant check, and after it is working the waiting period ends. Mind you, the sunset is unnecessary if the system works, right? But the system only works if the money is provided and if the people in the administration make it work. It has already been made to work in Virginia, and it can work nationally. But some people in this administration do not believe in that system.

This sunset is there as a trigger stating: Get this system up and make it work within 5 years, or else take down the waiting period and stop this rhetoric. We do not believe waiting periods keep guns from criminals. We believe instant checks will keep guns from criminals. We do not believe waiting periods decrease crime, and we can show that is the case. We believe instant checks decrease crime, and we can show that is the case.

The people who want to take out this sunset want to defeat this bill. That is all there is to it. They do not believe in an instant check. Otherwise, they would not be against a sunset. The Senator from Ohio says, why do we have to have this sunset? It is to test the bona fides of the people trying to work out a compromise.

My amendment, 2 years ago, did not have any waiting period. It had an instant check. Now we have a temporary waiting period which comes down when the instant check works. It is erased automatically.

Suppose the administration will not put it into effect; suppose they will not spend the money; they will not make it work. It works in every store. You just put a credit card in and dial a few numbers and, guess what? Out comes the information about a individual. It is as simple as ABC to have an instant check. It depends upon the people enforcing this law, and they can make it work. It works in Virginia and it will work nationally if they will spend the money. If they want to keep up this business about a waiting period and keep the waiting period in effect forever, they will not make it work. That is the simple answer. The Senator from Ohio wants to know why the sunset is in there. It is to make you keep your word.

Mr. METZENBAUM. Will the Senator yield for a question?

Mr. STEVENS. Certainly.

Mr. METZENBAUM. I want to be clear as to the position of the Senator from Alaska. When he first spoke on the floor, he talked about the preemption provision and this provision that I am attempting to knock out as being important to remain in the bill. My question to you is: If the preemption provision was eliminated, do I understand the Senator to say if the amendment of the Senator from Ohio is not adopted, he intends to vote for cloture.

Mr. STEVENS. If I did not make myself clear, let me make it plain: No, that is not the case. I still will not support the bill, but I hope that the Senate might reconsider its position on preemption before the day is over. The people who want to get this bill to conference, and to have the House and Senate—remember, there are different points of view in the House. We are willing to take this bill to conference with sunset and preemption. I think the Senate, in its wisdom, may reconsider preemption.

The PRESIDING OFFICER. Who yields time.

Mr. COCHRAN. Mr. President, may I inquire how much time remains on both sides.

The PRESIDING OFFICER. The time controlled by the Senator from Idaho is

8 minutes 53 seconds. The time controlled by the Senator from Ohio is 9 minutes 13 seconds.

Mr. COCHRAN. I thank the Chair.

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

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

The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. SMITH. Mr. President, I rise in opposition to the underlying legislation—S. 414, Senator METZENBAUM's Brady bill.

Mr. President, the Senate just passed a major, comprehensive crime bill that includes highly significant—indeed, historic—steps in the right direction. Our crime bill includes stronger, tougher mandatory minimum sentences for violent criminals who commit crimes with guns. The Senate-passed crime bill also provides a strong incentive to the States to adopt the same approach by providing new Federal regional prisons to which States that adopt truth-in-sentencing and tough sentences for violent crimes can send their prisoners.

In view of the fact that we just passed that tough crime bill, Mr. President, I find it a bit ironic that the Senate would immediately take a step backward by turning to the consideration of a gun control bill that takes exactly the wrong approach to the crime problem.

With all due respect to my colleagues on the other side of this issue, the basic premise of the Brady bill is fundamentally flawed. That premise is that criminals who want to buy guns with which to commit crimes are going to line up at their local gun stores, dutifully comply with the identification requirements of the Brady bill, and then wait patiently for 5 business days before they can go back and pick up their guns.

But criminals do not buy guns that way now, Mr. President, and they certainly will not buy them that way if the Brady bill becomes law. No, Mr. President, by and large, criminals buy their guns on the black market and they steal them.

What the Brady bill really would do, Mr. President, is to force millions of law-abiding Americans to go through a bureaucratic hassle and then wait for 5 business days to get their guns. Many of these Americans, Mr. President, may well be harmed by this waiting period because they may have an urgent need for a gun to protect themselves against an immediate threat.

Mr. President, I want no part of the Brady bill charade. It is about time that the Congress fully realized what the American people, in their wisdom, already know. We need to control crime by cracking down on criminals, not guns.

Criminals commit crimes, Mr. President. Guns do not commit crimes. It is the criminal intent of the criminal who uses the gun that causes the crime.

Mr. President, because roughly 80 percent of all illegally used firearms are acquired illegally, gun control legislation will do little—if anything—to curb the incidence of violent crime on America's streets. That reality is illustrated even more clearly by the fact that virtually every jurisdiction that has enacted or extended a waiting period for a firearm purchase—including States such as Connecticut, California, and Washington—has witnessed an increase in violent crime substantially exceeding the national average.

So if the waiting period approach works, Mr. President, why has it not worked in Indiana, California, Minnesota, New York, and Connecticut—all of which have waiting periods? For the period between 1967 and 1989, these waiting period States all witnessed homicide increases exceeding the national average. In Indiana, homicide rates rose 70 percent; in California, they rose 82 percent, in Minnesota, homicide rates were up 56 percent; in Connecticut, they rose 146 percent; and in New York, the Citadel of the gun control States, the homicide rate rose 131 percent.

Mr. President, let us consider the homicide rates over the same period in States with no waiting periods. In Alaska, the homicide rate dropped 16 percent. In Nevada, they were down 24 percent. Prior to the adoption of its waiting period, Delaware's homicide rates dropped 35 percent. Vermont's rate was down 39 percent and Idaho's rate dropped 40 percent.

Violent crime statistics, Mr. President, tell the same story. States with waiting periods have experienced vast increases in violent crime compared to States without them. In New Jersey, violent crime rose 223 percent between 1967 and 1989. In Massachusetts, 429 percent. And in Connecticut, the rate of violent crime soared 434 percent.

To put it simply, Mr. President, waiting periods do not work.

Worse than that, however, Mr. President, waiting periods may well be more dangerous to the law-abiding public than they are helpful. An exhaustive study by David B. Kopel published by the Independence Institute of Denver, CO, illustrates this point. Mr. Kopel's study shows that complying with bureaucratically cumbersome waiting period law requirements actually distract law enforcement officials from what ought to be their real focus—catching criminals and getting them off the streets.

Let me quote briefly from the Independence Institute's introduction to Mr. Kopel's study:

> A waiting period has strong initial appeal. The tradeoffs appear positive: relatively small costs in exchange for significant gains in public safety. But an exhaustive study of the issue by attorney and gun control expert David Kopel concludes that this perception is misleading. When all the evidence is dispassionately weighed, all the consequences traced, Kopel finds that there is a very real possibility that waiting periods threaten public safety. The reason: law enforcement resources diverted and law-abiding citizens disarmed.

In conclusion, Mr. President, let us show the American people that the Congress has gotten the message that it is time to crack down on criminals, not guns, by rejecting the misguided Brady bill.

Mr. METZENBAUM. Mr. President, with the understanding that the manager of the other side is prepared to yield back his time, I am to prepared to do the same.

Mr. COCHRAN. We are happy to yield back our time on the amendment.

Mr. METZENBAUM. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second.

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Ohio.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. FORD. I announce that the senator from North Dakota [Mr. DORGAN] is necessarily absent.

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

The result was announced—yeas 43, nays 56, as follows:

[Rollcall Vote No. 386 Leg.]

YEAS—43

Akaka	Harkin	Mitchell
Biden	Hatfield	Moseley-Braun
Boxer	Inouye	Moynihan
Bradley	Jeffords	Murray
Bumpers	Kassebaum	Pell
Byrd	Kennedy	Pryor
Chafee	Kerrey	Reid
Danforth	Kerry	Riegle
Daschle	Kohl	Robb
Dodd	Lautenberg	Rockefeller
Durenberger	Levin	Sarbanes
Feingold	Lieberman	Simon
Feinstein	Mathews	Wellstone
Glenn	Metzenbaum	
Graham	Mikulski	

NAYS—56

Baucus	Conrad	Gregg
Bennett	Coverdell	Hatch
Bingaman	Craig	Heflin
Bond	D'Amato	Helms
Boren	DeConcini	Hollings
Breaux	Dole	Hutchison
Brown	Domenici	Johnston
Bryan	Exon	Kempthorne
Burns	Faircloth	Leahy
Campbell	Ford	Lott
Coats	Gorton	Lugar
Cochran	Gramm	Mack
Cohen	Grassley	McCain

McConnell	Roth	Stevens
Murkowski	Sasser	Thurmond
Nickles	Shelby	Wallop
Nunn	Simpson	Warner
Packwood	Smith	Wofford
Pressler	Specter	

NOT VOTING—1

Dorgan

So the amendment (No. 1220) was rejected.

Mr. DOLE. 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.

The PRESIDING OFFICER. The Senate is advised that the time remaining on the bill: 14½ minutes controlled by Senator CRAIG, 2 minutes controlled by Senator METZENBAUM, and Senator LEAHY has 15 minutes reserved by unanimous consent.

The Senator from Ohio.

CLOTURE MOTION

Mr. METZENBAUM. Mr. President, I send a cloture motion to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the Mitchell-Dole substitute amendment to S. 414, the Brady Bill:

Joe Biden, Dianne Feinstein, Christopher Dodd, George Mitchell, Harlan Mathews, Barbara Boxer, Edward Kennedy, Frank R. Lautenberg, Carl Levin, Howard Metzenbaum, Herb Kohl, Bill Bradley, John Glenn, Claiborne Pell, J. Lieberman, Patty Murray.

The PRESIDING OFFICER. Under the previous order there is now 30 minutes equally divided on the motion to invoke cloture.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum with the time to be equally divided.

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

The bill 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.

Mr. LEAHY. Mr. President, I want to note my support for the Violent Crime and Law Enforcement Act for 1993. I voted for this because we need to take strong steps to address the violence that plagues our country. I want to compliment Senator BIDEN for his impressive and tireless work. He moved the crime bill with great dispatch. That is obvious when the Senate voted with such bipartisan support for it. This bill does many, many good things. It is going to put 100,000 police on the streets. It includes my computer abuse bill. It includes innovative programs like drug court, boot camps, the Police Corps, the Violence Against Women Act. That is an essential piece of legislation. And one of the most important provisions for my State is the title on rural crime.

I commend Senator BIDEN for including this provision in his bill which I have cosponsored in the past. I commend Senator HATCH for his fine amendment which would increase funding for rural law enforcement. Well before Senator HATCH and I held a field hearing on rural crime in Montpelier VT, his dedication and leadership in this area was unquestionable.

I should note we always focus, and the press always focuses, on the crime in our cities. But crime is rising faster in rural America than anywhere else in this country. Those of us who live in rural America are justly concerned. The $10 million grant program for rural States that I sponsored to develop cooperative projects will please prosecutors, victim advocates and others. It is very, very important.

My amendment creates a program to fund rural domestic violence and child abuse enforcement.

This amendment establishes a grant program for rural States to develop cooperative projects between police, prosecutors, victim advocates, and other related parties such as counselors or relevant State agencies to investigate, prosecute and treat child abuse and domestic violence.

These funds can also be dedicated to developing community-based strategies to prevent family violence and educate the public about its causes, results and cures.

The police components of these projects can be funded by the authorized grant money or by the community policing funds.

These are just a few of the many worthwhile provisions this crime bill includes.

There are some provisions in this bill that were added to show how tough we could be on crime. I think they were unnecessary.

I do not speak to this from some abstract perspective. I spent nearly a decade as a prosecutor. I am one of the few people in this Chamber who has actually prosecuted murder cases. I am one of the few people in this Chamber who has actually prosecuted armed robberies, assaults, rapes, and child abuse. I probably am one of the few people in this Chamber who have had attempts made on his life because of his role as prosecutor.

Provisions in this bill would impose a Federal death penalty for virtually any homicide committed with a firearm. For a State which does not have a death penalty, like mine, that means we here in the Senate said: Goodbye with your legislature, goodbye with your laws; we have just overridden your State.

Some of these who have voted for that provision speak strongly of their conservative nature and their protection of individual States' rights. But they ignored it in that regard. They also ignored it when they made burglary to gas station stickups Federal offenses, even though the States always handled this. They overrode the States again.

As a former prosecutor, it troubles me. We need Federal law enforcement to do what it alone can do: Prosecute large-scale interstate and international drug trafficking, complex white collar crime, racketeering and money laundering, take on organized crime, and savings and loan crime. Let the local authorities do the rest.

I will vote for this bill because, on balance, it contains many, many more good provisions than bad.

This is a bill in process. I think it is a good start. As one who will be a conferee on it, I hope to make it better. I am voting to move this significant legislation forward so we can take the strong steps needed to make our cities and towns safe.

Let me say a few more words about gun control. As I spoke about my experience as a prosecutor before, I also speak from my experience as a gun owner. I own a lot of guns. I own handguns and long guns, semiautomatics, and single actions. I have fired virtually every type of weapon that we have heard described on this floor.

I have owned guns since I was about 12 or 13 years old. I was a champion shooter in college. In fact, it helped put me through college, and I am proud of that.

I have been skeptical about the practical effect of gun control measures that we debate in the Senate on reducing violent crime. That is not a fashionable, politically correct position. But it is what I think. I am one of the relatively few Democrats who does not support the Brady bill.

I feel very much for those who are concerned about the terrible crime on our streets. But let us face it, as a matter of policy, Brady is a symbol.

There is no waiting period, as we know, for criminals. In this city which has the toughest gun control laws, I believe, in the country, every one of us could walk out of here dressed in any type of clothes we want, with enough money in our hand, and buy handguns. We know we could do it. We would not buy them legally, but we could do it.

When Brady is signed into law, as we know it will be, criminals will still have ready access to handguns. They will get friends who have no criminal record to buy guns for them in gun stores, they will buy them out of the trunk of a car or from the guy on the

street corner. Let us not kid ourselves, there will be no wait and therefore no background check, for the criminal who wants a gun.

So I do not think that the waiting period portion of the Brady bill will really do anything.

The Brady bill also requires the creation of a national system of instant background checks. Let me say that I am not thrilled about this either. I am concerned about giving every gun dealer in the country access to people's private lives. Doing a background check on a person purchasing a handgun is appropriate. My concerns are that access to the background check system may be abused and not limited to these purposes.

Or somebody is a neighbor and says, "I really don't care too much for those people who moved down the street. Check them out for me." I find that a little bit unsettling.

I also have concerns about the costs to the States. My State is not a wealthy State. We have a lot of gunowners in my State. We also have the second lowest crime rate, I should point out, in the country. Let me emphasize that. We have probably the highest percentage of gunowners, but the second lowest crime rate in the country. I wonder how many Vermonters there are who feel as I do, that they would like to see their money going into cleaning up Lake Champlain, improving their schools or whatever.

I want to be very clear. I do not doubt the significance of the symbolism. I said the other day on this floor, as we were having one of our late-night sessions, that we necessarily had to have because of the press of business, a lot of us leave here at midnight or 1 o'clock in the morning and we go right down these well-lit steps surrounded by armed police officers, get into our car, lock the doors, drive like a bat out of hell and get out of here. None of us are willing to walk 4 or 5 blocks if our car is parked there. Sometimes we might ask ourselves why we are willing to let our staff do that. We should be concerned about that. So people are concerned about their safety. They do not want to have armed fortresses as our cities have become.

I do not question the motivation of those who want to give a symbol of hope, but if we are going to expend this kind of energy and effort, why not have substance instead of symbolism?

I will vote, obviously, against this symbol. I will vote against the Brady bill. I will not vote for a filibuster. Instead, I will vote for cloture because we ought to have a chance to vote up or down on the merits of this legislation. This issue has been fully debated. There is not a person in this Chamber who does not know how he or she is going to vote. We ought to vote, but let us not slap ourselves on the back and say we have done something wonderful to stop crime, because we have not. The Brady bill will pass, but we will have passed a symbol. We will not have passed anything substantive to stop crime.

I want to mention the Feinstein-DeConcini assault weapon amendment. It is a measure that goes beyond symbolism. A semiautomatic, incidentally, is not a machinegun. I own a lot of semiautomatics; I do not own a machinegun. A semiautomatic is a lot different than that. People use it for everything from skeet shooting to hunting.

There are other weapons, however, whose only purpose is for killing people: the Street Sweeper, for instance. There is no need whatsoever for any individual to own a weapon like that. These are weapons that have no place outside of a target range or a battlefield. Those kinds of things should be kept out of an individual's hands. It is not going to trample the rights of law-abiding gunowners who spend their whole lives around guns but never would even dream of pointing one at a human being.

I was speaking to a policeman here in DC the other day. He said, "You know, when I am out on the street in my uniform, I draw a lot of attention. Usually I don't mind it; it is part of the job. But sometimes it is scary to stand out like that. That is why I think you guys should do something about these kind of weapons."

I agree. We do need to reduce the firepower on our streets, firepower too often used by kids out of control, kids who make the sorry results of their crimes so tragic and lethal, kids with too easy access to too much firepower. I thank the good Lord that this is a problem that has not afflicted Vermont the way it has other parts of the country. But everyday people in our cities—rich people, poor people, old, young, famous and unknown—walk in fear. And we cannot ignore that.

One subject I know about and feel comfortable with from a lifetime of experience is guns. Some will say they have a right to have whatever gun they want as a matter of absolute principle. I do not agree. Our country faces a terrible crime problem. The carnage in our cities has made them fortresses of fear. We as Vermonters cannot just stand by pretending it is not our problem.

Incidentally, it is not a position I would have taken 19 years ago when I came to the Senate. But ours is a different country than it was 19 years ago. That is why I supported the Feinstein-DeConcini amendment. It is not going to solve all violent crime but it will make people's lives safer.

That is also why I oppose the Brady bill. It is a symbol, a misguided message that will not make people's lives safer even though it will make some of us feel happier in passing it.

Mr. President, do I have time remaining of my 15 minutes?

The PRESIDING OFFICER. Three minutes remaining.

Mr. LEAHY. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. I yield myself such time as I might consume.

Mr. President, we now have a cloture motion filed at the desk. Of course, this is to force the whole of the issue on this very important debate. I appreciate the experiences of my colleague from Vermont and his observations, but I think it is important to say in my relationship with owning guns and with the gun community and those who strongly believe in our second amendment rights, that in all of those instances, with all of those people and with a vast majority of the American citizenry, there is one thing that we all agree on, and that is that criminals ought not have guns, convicted felons, and that we really need to work to try to devise a reasonable system that provides us with a quick check.

We are in the days of computers. We are in the days in which we can retrieve information instantaneously if it is put together in a coordinated way. That is, frankly, what this legislation is really about now. We have debated Brady for years. As many have said, it went from a waiting period, but that really broke down because crime kept moving on and criminals kept getting guns and they were able to slide through waiting periods. But, of course, we know nearly 90 percent of them do not wait, they just go to the street and buy one; that it was really inflicting upon the private law-abiding citizen a new law, a new regulation that was stylistic, if you will, or symbolic, but it did not work.

Finally, as this issue has evolved, now we are down to really putting it in action. By that I mean putting the money and the mandate and the technology together to do a background check.

I know that my colleague from Vermont worries about the building of those kinds of records—privacy and all of that type of thing—and yet we say very quickly in all of this that those records will not stand. It is a matter of law that they should not stand once the background check is done, so that there not be a fear that somebody were compiling a master list of guns and gunowners. That is not the intent and the law clearly understands that.

As proposed, the intent here is to find out who is legally eligible to own a gun and who is not. It is amazing that we would argue in effort to deny the technology that is now available, and that could more than likely be brought up to speed within 12 to 24 months. We denied sunset just a moment ago, and the reason we denied it

is because that is the club tied with the money and the mandate that forced the States to work together to come into compliance.

The Senator from Vermont talked about a concern for cost for a small State like Vermont, not much larger or smaller than a State like Idaho. What I would say to the Senator from Vermont, we are handing your law enforcement community the money to put their records together in a systematic way with the Department of Justice to have that system. That is the importance of bringing this together.

But what is the cloture all about? It is important for Senators to understand that if we could bring preemption back to this bill we would be off to conference right now, we would be moving for final passage on an instant background check Brady bill with all of the provisions in it that we have all talked about and that ultimately this legislation has evolved to over the last 5 to 6 years.

But the reason we are at cloture now is because some of us say you have to put it all together. Let us quit the PC stuff, the politically correct symbolism, that has become so embodied in this legislation. Let us get down to doing what Americans want done, and that is putting a system together that produces that check. Why? Because 90 percent of American citizens—90 percent—believe they have the right to own a gun; 76 percent believe that the Constitution guarantees that right; 57 percent believe that the Brady bill contains a background check, and we know it does not. You cannot trample on 10th amendment rights unless you handle them appropriately; and 43 percent say, "Well, it will not work."

That is why we are here. That is why this issue is very important, and that is why cloture says let us come to terms. Let us come to terms by putting preemption back in this legislation, by bringing all of this together in a narrow timeframe—5 years—when all States are uniform, when we have the background check.

That is a tough call for me, Mr. President, because I would argue States rights. But I also know this as an overpowering national issue. Instead of sending out the mandate without the money, I am one of those who says if you are going to require the mandate, put the money with it. Work with the States, cooperate with the States. They want this kind of informational background. They want to use it for their purposes. They want a comprehensive, criminal, instant, informational retrieval system. They want a master name list. They are all working for it now, and many States are very nearly there.

So what we are saying by this legislation and what the Republican leader, when he worked with the majority leader to craft this legislation, was insistent upon is that we quit playing the political game, that we quit, year after year, coming to the floor and talking in great round terms about our concerns and what ought to be and what ought not to be. But let us, in a very sensible and practical way, provide an informational system that protects constitutional rights of the law-abiding citizen and says to the person with a felonious record or a person who has an adjudicated mental record, that guns are off limits to you, and we have the mechanism by which to assure that.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Idaho has 6½ minutes remaining.

Mr. BUMPERS. Does the Senator from Idaho yield the floor?

Mr. CRAIG. Yes, I yield the floor.

The PRESIDING OFFICER. The time is controlled by the Senator from Ohio and the Senator from Idaho.

Mr. METZENBAUM. The Senator from Ohio has 15 minutes?

The PRESIDING OFFICER. The Senator from Ohio has 14 minutes.

Mr. METZENBAUM. I do not know where I used one. I will not argue about it. I yield 4 minutes to the Senator from Arkansas.

Mr. BUMPERS. Mr. President, first of all, why are we debating a cloture motion? For one thing, we just got through voting by a pretty good majority not to preempt cities, counties and States who have laws on the sale of weapons that are more stringent than the Brady bill. If Little Rock, AR, had a 7-day waiting period, it is preempted because the Brady bill is 5 days.

Think about that. Think about a filibuster being conducted on this floor saying the people of Arkansas do not have the right to do what they want to do in order to try to curb crime—a filibuster to stop a minuscule effort to stop violence, or at least make some impact on the violent nature of this Nation.

Not one nation on Earth, not a Third World, first world or any other world, would even think about allowing people to buy weapons the way we do in this country. So what do you think has happened? Of roughly 170 nations on Earth, who do you think is No. 1 in crime? That is right, the good old U.S. of A. Stand up at the Fourth of July picnic and talk about what a great patriot you are and then tell them what has happened in this country just in the past 20 years—200 million handguns floating around.

They say it is too late now; the cow is out of the barn.

People in the inner cities of this country are as frightened as the citizens of Sarajevo. They would not dare walk alone in certain areas of Washington, DC. They cannot go to the grocery store after the Sun sets, and we cannot even pass a little amendment that said you must wait 5 days to buy a handgun.

I used to practice law in a small town. I had people walk in my office and say, "I am going to get him before the Sun goes down," because of an insult that had passed within the past 30 minutes. Give them 5 days and they would forget what was even said.

After 5 years of debate, those who filibuster this bill say, we want that guy to be able to buy a gun in the heat of passion. You read every day, every single day, where somebody is mad so he went and bought a gun and killed somebody, all within an hour or two. The people who filibuster this bill say that is just fine.

Dwight Eisenhower said that the people of this Nation are going to demand peace one of these days, and when they do the politicians better get out of the way and let them have it.

The American people are demanding a stop to the violence, and do you know who is thwarting the will of the American people? The U.S. Senate. It has become so gross I can hardly talk about it. Every law enforcement organization in America favors the Brady bill. I see those signs and bumper stickers which read, "Support Your Local Sheriff." What a joke. The Senate is not supporting the local sheriff. It is not supporting the local police. It is not supporting the people who go out and bare their chests to these guys in the inner cities. It is not just the inner cities. It is rural America, too.

One of these days people are going to say we want the violence stopped, and they are going to turn a lot of people out, and you better get out of the way and let the American people have peace.

We are not talking about legitimate hunting weapons. I am a hunter. I have a shotgun. That is not what we are talking about. We have never talked about those types of weapons. That has been a diversion, a distraction designed to keep the Senate from addressing the real problem.

We are trying to talk about sense, sanity, and civilized conduct. Surely to God there are enough men and women in the Senate to do their duty in voting for cloture and letting the Brady bill pass.

Surely to God we can get cloture on a very simple, minimal requirement at a time when the biggest cause of death among black males in this country between 18 and 34 years of age is murder.

Think of it. We have rapidly become the most uncivilized nation on Earth, and you cannot stop it in the Senate. Why? Because they are scared to death of the National Rifle Association. Just call it what it is.

Surely to God the Members of the Senate are ready to stand up and do their duty.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BUMPERS. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM. Mr. President, I yield myself 4 minutes.

Mr. President, it is a rather sad commentary, and I do not know whether I feel anger or I have a tear in my heart because here we are in a country where the American people say the most significant, the most challenging problem in our country is crime, and we in the Senate are using the right to filibuster to keep this from being voted on up or down. What a sad commentary that is, that there are some in this body who would use the right to speak and debate and not actually do that but just stall, in order to keep Members of this body from having a chance to vote on the Brady bill.

What are we really talking about? What kind of a body are we? We talk about passing a major crime bill to do something about crime, and then when it comes to getting guns out of the hands of kids and out of the hands of criminals, out of the hands of crazies, we are not willing to step up and vote no. We want to filibuster. We want the right to debate and debate and debate and talk.

I probably have been a party to that on occasion, but never against something as absurd as this. Here there is an effort by the Members of this body, by Sarah and Jim Brady, by decent people all over the country, some of whom have paid with their lives. This young lady, Michelle, who lost her husband rather recently, lobbying in the Halls of Congress. What a beautiful human being; what courage she has trying to say we need the Brady bill.

Yesterday, I had in my office a gentleman who came all the way from Japan with I think 1.7 million signatures because his son, who did not speak English that well and was studying in this country, went to the door—was not involved in doing anything—walked away from the door when the man did not answer, saw somebody finally, came back to the door. It was Halloween night. He came back—saw him—came back to the door, and the individual took his gun and shot him and killed him.

This Mr. Hatori, who was in my office, was saying he could not understand—and I cannot understand, the rest of the civilized world cannot understand—what is wrong with the U.S. Senate that they are not willing to vote up or down on the question of a 5-day waiting period.

What a tragedy. What a travesty it is. We ought to have the courage of our convictions. But no. We are worried about the NRA; the NRA will not like us.

I noticed in the morning paper just today, about how one of the big gun manufacturers is out urging their people, urging their customers, urging the gun sellers to help the NRA get more members. Is that not a wonderful thing? A large gun manufacturer, out using tax-deductible dollars for the purpose of urging people to join the NRA.

I think it is a challenge to us here today. I think it is a question of whether we have the courage to stand up to the NRA and to say to them: We are going to pass in this Congress the Brady bill, a bill to make a major step forward in controlling the number of guns in the streets of America.

I hope that this issue will not be lost by reason of the fact we do not have 60 votes.

I yield the floor.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. Mr. President, I am not sure who controls the time.

Mr. METZENBAUM. I do. I yield the Senator 5 minutes.

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

Mr. BIDEN. Mr. President, there used to be an expression related to age and attitude. They say someone is awfully long in the tooth. Well, this issue is long in the tooth. We have been banging this around for the last several years. We have been banging it around almost since President Reagan was shot.

On this issue, the Brady bill, those being in opposition to the Brady bill—notwithstanding the fact that a majority of the Members of the U.S. Senate and a clear majority of the House of Representatives support the Brady bill—for a year and a half have prevented us from passing a crime bill.

So obviously, there are those who oppose the Brady bill, who feel very, very strongly about it, strong to the point that it took us 2 years to get a crime bill, a bipartisan crime bill, I might add. Once the Brady bill was not in the crime bill, the world changed. We passed a crime bill, a gigantic crime bill.

The reason I bother to mention that is that as a matter of fact one of my colleagues today, who is one of the major architects of the crime bill, pointed out today that we had no crime bill; and an opponent of the Brady bill pointed out today in the press that there was no crime bill for all this time because of Brady. But with Brady out of this, we could now have a crime bill.

The point I am trying to make is the toll that is exacted for not allowing the U.S. Congress to work its will, the entirety of the Congress. By the way, although we stop action here in the Senate, we should put this in perspective. This is a filibuster not in terms of the Senate acting, a filibuster in terms of the Congress acting, in terms of the President being able to act; the effect of this—everyone knows the outcome if we are allowed to vote, if we are allowed to get a vote.

Now we have to go through—and I acknowledge that my Republican friends have yielded part of their rights, which would be they could have stopped us from having this cloture vote for 2 days instead of allowing it to come within several hours.

But that really begs the question. By whatever name one calls it, this is a filibuster. The only time we need 60 votes is when there is a filibuster, requiring a supermajority.

My colleagues on the other side, and the NRA—and I make a distinction "and the NRA"— my colleagues on the other side and the NRA have basically said, well, we can accept the Brady bill if two things happen. One, if we have a sunset provision in the Brady bill relative to the time that a waiting period would be in effect, prior to, or all the checking coming on line.

The second is they said we want to be able to preempt our States, and tell our States what they can and cannot do relative to the waiting period. They won on one of those issues.

The Brady folks, like me, do not like the sunset provision. We do not like the preemption provision. They like preemption; they like sunset. They won one of the two. But we are getting down to the point of, well, if I cannot win both, I am taking my ball and going home. The fact of the matter is, they won one of the two.

Ordinarily, the way this body works is it is a matter of compromise. There is now a bill before us that the pro-Brady supporters would have accepted a month ago, would have accepted 2 months ago, would have accepted 5 months ago. Because it has sunset in it, we do not want that. But we lost. We lost straight up and down. It lost in the House. Preemption lost in the Senate; it lost in the House.

So what we have here is a bill that is a compromise. But apparently it is not pure enough still and the NRA is telling Democratic Members, that I know of, and I suspect telling Republican Members: You cannot vote for this.

This is a filibuster, clear and simple. We have to break the filibuster. We need 60 votes. If we do not get 60 votes, the Nation, the House of Representatives, the President, all of whom support this, and a majority of Senators, are denied the right to do something about handguns, felons, and waiting periods.

I sincerely hope we will move to bring an end to the debate on this issue with 60 votes.

The PRESIDING OFFICER. The Senator's time has expired. All time has expired on the debate controlled by Senator METZENBAUM. The Senator from Idaho is recognized for 6½ minutes.

Mr. METZENBAUM. Mr. President, the Chair told me that I had 14 minutes. I gave 5 minutes to the Senator from Arkansas; 4 minutes for himself and 5 minutes——

The PRESIDING OFFICER. Five to the Senator——

Mr. METZENBAUM. I guess that is right. I think the addition is right.

[Laughter.]

Mr. CRAIG. I yield 5 minutes to the minority leader.

Mr. DOLE. Mr. President, I would be happy to yield 2 of those minutes to the Senator from Wisconsin.

Mr. KOHL. I thank the minority leader very much.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for 2 minutes.

Mr. KOHL. Mr. President, I want to make clear what we are doing here. We are now trying to get 60 votes to go to a Brady bill, which consists of a background check on firearms and a 5-year waiting period which we will then sunset.

I daresay if you put this to the American people, you could get probably 95 percent, 90 percent, of the people who want to see that sort of a Brady bill enacted.

I cannot imagine that the U.S. Senate, faced with this sort of a proposition, would turn it down. It seems to me that if we turn that down, every one of us needs to go back and explain that to the people in our home States; I do not care if you are from Wisconsin, Kansas, California, or wherever. It is almost inexplicable to try to make the American people understand why we turned down a Brady bill which sets up a background check on all firearms, and a temporary—to be sunsetted in 5 years—waiting period on the purchase of a handgun.

That is the proposition before us. I think all 100 Senators have to make a pretty strong decision on this. I cannot imagine us not getting 60 votes, Mr. President.

I think we ought to get 80 or 90 votes on this sort of compromise. I am looking forward to the vote.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas, the Republican leader, is recognized.

Mr. DOLE. Mr. President, I have listened to the debate carefully, because I would like to vote for this legislation. In fact, I do not know why we had the first two votes. This bill would have been out of here an hour or two ago, with a 99–0 vote, had we not had the two votes on preemption and sunset. Sunsetting is still in the bill. Preemption should be in the bill. We have modified it and taken care of some of the concerns.

As I indicated, one of our colleagues from the House raised this with me the other night in the Cloakroom. We tried to take care of those concerns when it comes to licensing, construction, checking someone's mental health, and a number of things that actually delay. We thought we would take care of that. So we did that. We also provide that once the computer check is on line, you can go back and reenact waiting periods if States still desire to do that.

It seems to me that we provided the agreement. And had this amendment not been stricken—the other amendment—under the UC we entered into, the bill would have been agreed to, and we would have been out of here. If cloture is not obtained, there is a good chance between now and 11 o'clock—the time of the next cloture vote—that this very, very small difference can be resolved. I think it could be with the Senator from Ohio in 5, 10, 15, 30, 40 minutes. I do not want to leave the impression that you have to get cloture or this bill is dead. That is up to the majority. There is still one other cloture vote at 11 o'clock or, hopefully, earlier.

In the meantime, we are prepared to discuss, have dialog, whatever, to see if there is any way we can reach any agreement. The bottom line is that this is a good piece of legislation. It would be better with preemption in it. So I urge my colleagues not to invoke cloture, give us an opportunity to pass a strong bill.

A lot of things in this particular so-called Brady bill—and it is a much modified Brady bill, but keep in mind the original Brady bill was nothing but a Federal waiting period. That has been changed in 1991 and changed again today. There are a number of provisions that were not in the Brady bill in 1991 that are in the bill today. It is much stronger legislation. We ought to leave the preemption in, go to conference, work it out and get it back here late tonight, or early tomorrow, so we can have action on this bill before Congress adjourns.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho has 2½ minutes remaining.

Mr. CRAIG. Mr. President, let me compliment the Republican leader for the time and effort he has put into getting an instantaneous background check out to the American people. He has persisted over the last several years and has forced a lot of different interest groups to come to terms over a very important issue. We are here debating in a very substantive way a very important piece of legislation today, because of the leadership of Senator DOLE, who has said this is an important issue, but it is not so important that we ought to trample on the rights of citizens.

So let us do it in a way that does not destroy those rights but goes after the criminals. Let us make sure that States have adequate resources by which to implement this, and let us force the States to do it. He is absolutely right that this bill would have passed a few moments ago and would have been off to conference if we had been able to hold preemption in there. That is an important part of the enforcement mechanism that brings States on line with an instantaneous background check.

In other words, like he said a few moments ago, let us quit waiting and waiting and waiting. Let us vote the cloture down; let us get preemption back in and move this legislation to conference.

Mr. MITCHELL. Mr. President, I am going to address the subject on my leader time. I am aware that the time on this side has expired.

Mr. President, and Members of the Senate, the U.S. Senate finds itself, unfortunately, in a familiar position. According to the public opinion polls, 92 percent of the American people favor the Brady bill; 84 percent of those Americans who own guns favor the Brady bill; 68 percent of the members of the National Rifle Association favor the Brady bill; the President of the United States favors the Brady bill; a majority of the House of Representatives favors the Brady bill; a majority of the U.S. Senate favors the Brady bill; yet, we cannot even vote on the Brady bill because the rules of the Senate permit a minority, using the filibuster to delay and prevent action, from voting on something that 92 percent of the American people favor. That is where we find ourselves.

We have just heard the suggestion made that why do we not pass it with preemption? The House of Representatives debated preemption and voted it down. The Senate debated preemption and voted it down. Now our colleagues say "let us put preemption in." What kind of democracy is that? We debated it, we voted, and we rejected it—both the House and the Senate. Now our colleagues say, "but it has to be in the bill."

Is there any American civics course, or is there any school in America that says when you have a debate and you vote, the losers win? The answer is no, that is not democracy. Only in the U.S. Senate would such a fantastic suggestion be possible, let alone be accepted—that after you just lost, you say that the price is that I must prevail. The fact of the matter is this really ought not to be controversial.

In 1991, 67 Senators voted for this bill without preemption. What has happened to those Senators between then and now that they suddenly say that preemption must be in the bill? What has caused them to change their minds, to reverse their position? We have not heard an explanation of that; not a single word has been said. No response to the question has been made. There is no reason.

It is an effort to kill the bill. That is what the preemption is. Everybody on this floor knows that. This is an effort to do by indirection that which cannot be done directly, because 92 percent of the American people feel the other way, because 84 percent of gun owners feel the other way, because 68 percent of the members of the NRA feel the other way, because a majority of the

House of Representatives feels the other way, because a majority of the Senate feels the other way. The only way they can defeat it is to use the rules of the Senate which, in effect, give the minority power to prevent action on legislation. And so here we are again on an issue in which there is majority support in the Senate, in the House, and overwhelming majority support among the American people; and we cannot act because Republican Senators are once again filibustering. That is where we are. Let no American misunderstand the result. If this bill dies, it dies because of the Republican Senators' filibuster.

I hope it will not die. We have come a long way. We have worked out a lot of differences. We have reached agreement on a lot of provisions. But there cannot be any inclusion of preemption in this final bill.

I must say, Mr. President, I have never been more astonished when I saw some of the great States rights speechmakers here voting for preemption, Senators who time after time—and I am not going to embarrass them before the Senate. But I have prepared a long group of excerpts from the CONGRESSIONAL RECORD of some of our colleagues on the other side about States rights. I am not going to identify anyone by name but, my gosh, these are dramatic reasons.

I cannot support this because it is the Federal Government telling the States what to do.

States ought to be left to determine what is best for them.

It is offensive to the States.

It ought to be offensive to those of us who really believe in the principles of Federalism.

There are page after page after page after page of States rights quotations by Senators who then voted to preempt States rights. They have one set of principles on guns and one set of principles on everything else. It is selective States rights.

Well, we all know what the story is. Everybody here knows what the story is. This is an effort to kill the bill, and it is going to be up to Senators here today to decide whether we are going to pass a bill or whether we are going to kill a bill. And the cloture vote will determine that.

Mr. President, I urge my colleagues for once let us stand up and do what we know to be right, what the overwhelming majority of the American people want, what the House has voted by a majority, and what the majority of this body wants.

There is no doubt about it. There is no dispute about it. The American people want it. The House wants it. The Senate wants it by majority, but the minority is preventing it from happening because of the filibuster.

Let us for once do the right thing, and let us vote cloture. Let us end this filibuster. Let us pass this bill, and let us take this small step to protect Americans from the random violence which now so dangerously and in such deadly fashion affects our streets and cities.

Mr. President, I yield the floor.

Mr. KOHL. Mr. President, let me tell you about four Milwaukee teenagers—two of them 13-year-old girls—who were executed in a gangland style killing last winter. When you hear their story, you may understand why I support the Brady bill and other reasonable restrictions on firearms.

Last December these two girls and their 14-year-old girl friend went over to a young man named Frank Cook's apartment for a party. One of the girls—they were not yet old enough to be called young women—was dating Mr. Cook. Simply put, they went to the wrong place at the wrong time. Frank was a 17-year-old drug dealer who was using an apartment as his drug house. He was in competition with a rival drug gang, one of whose members lived next door. The leader of the rival gang was a man named Elliot House.

On December 19, House decided to brutally eliminate his competition and cover up unrelated gambling losses. So that evening he and his companions, including an associate named Emmett Ezra White, killed Frank Cook. They used an AK–47, a Tech 9, an additional semiautomatic, and a handgun. Tragically, they also killed the three girls: Ayshia Lewis, age 13; Patricia Simmons, age 13; and Kizzy Holt, age 14. There was no evidence that any of the girls was involved with illegal drugs.

At the time of their death, the girls were playing Nintendo and eating pizza. The four kids were shot at least 27 times, mostly in the back. When she sentenced White to four consecutive life terms, Circuit Court Judge Janine Geske stated:

Those young girls were ordered to the floor face down, and we've heard testimony during the trial how the two girls huddled together like frightened lambs. They were so close together that ultimately when they were shot, the quarter that was in the clothing of one of the girls embedded itself in the neck of one of the other girls.

Mr. President, it is difficult to fathom what kind of twisted minds could gun down these young people. But it is also difficult to fathom what kind of government could fail to enact a simple piece of legislation that calls for a waiting period on handguns and a background check on firearms.

We all know that there is no panacea for this senseless violence. And we all know that nothing that we can do here will ever make the families of these slain children whole again. We need tougher laws, more cops on the beat, more certainty of punishment and more hope where there is now only hopelessness. The crime bill that we just passed will only begin to address these problems.

But there is one more crucial step we can take to reduce at least some of this carnage. We can enact the Brady bill. It is supported by 90 percent of the American people and it will not infringe on anyone's constitutional rights. It will not infringe on the law-abiding rights of hunters.

Mr. President, more than 2½ years ago the majority leader, Senator AL GORE, and I took the original Brady bill and combined it with the best elements of the so-called instant check system proposed by the NRA. In brief, our compromise measure had three major components: Mandatory background checks on all firearms purchases; a uniform 5 business-day waiting period for handgun buys that would remain in effect until an accurate instant check system was in place; and $100 million for States to upgrade their computerized criminal history records. Our approach enjoyed broad support: It was endorsed by both HOWARD METZENBAUM, who has led the fight for Brady since its original introduction, as well as by the distinguished minority leader. The amendment, which passed the Senate by a substantial 67 to 32 margin, forms the basis of the proposal we are debating today.

Yet, Mr. President, during the 2½ years since we failed to move the Brady bill beyond the Senate, firearms violence has continued to rage in our communities and on our streets. According to Dr. Robert Froehlke of the Center for Disease Control in Atlanta, "In some areas of the country it is now more likely for a black male to die from homicide than it was for a U.S. soldier to be killed in Vietnam."

Indeed, it may actually be more dangerous to live in a major American city than to serve your country in a foreign war. Fewer than 85,000 Americans were killed in Vietnam and Korea combined, but more than 150,000 Americans have been killed by firearms since the Brady bill was introduced in 1987. And while fewer than 300 Americans died during the Persian Gulf conflict, more than twice that many Wisconsinites were killed by firearms over the past 7 years. That is not just disturbing, Mr. President, it is unacceptable.

Of course, this is not a perfect piece of legislation: It is a compromise. In an ideal world, the Brady bill before us would have a permanent waiting period, which I believe is critical to giving people consumed by violent passion time to cool off. Wisconsin, which has a 2-day waiting period and background check on pistols, has prevented more than 500 convicted felons from buying handguns in the past 2 years. Even the NRA once believed that waiting periods have value. In a 1976 publication entitled "On Firearms Control," the NRA stated:

A waiting period could help in reducing crimes of passion and in preventing people with criminal records or dangerous mental illness from acquiring weapons.

But I am absolutely convinced that the bill before us today represents the

best deal we could make to get the votes we need. And I believe that when the American people realize that the waiting period will expire in several years, they will urge us to enact one that is permanent, uniform, and lengthy.

Mr. President, in the past 2 years I have made more than a dozen floor statements on the Brady bill; I have talked about the Brady bill in many meetings in Wisconsin; I have sat through countless hours of strategy meetings on this legislation. But I am tired of talking about the Brady bill; we need to enact it this year.

I believe that this Congress will enact the Brady bill. We will enact the Brady bill because, by an overwhelming majority, the American people now recognize that the need for it has never been so compelling and that the consequences created by its absence have never been so destructive.

Enacting the Brady bill will help save lives. And, hopefully, it will help restore the American people's faith in their Government. I urge my colleagues to support the cloture motion.

CLOTURE MOTION

The ACTING PRESIDENT pro tempore. Under the previous order, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the Mitchell-Dole substitute amendment to S. 414, the Brady bill:

Joe Biden, Dianne Feinstein, Christopher Dodd, George Mitchell, Harlan Mathews, Barbara Boxer, Edward Kennedy, Frank R. Lautenberg, Carl Levin, Howard Metzenbaum, Herb Kohl, Bill Bradley, John Glenn, Claiborne Pell, J. Lieberman, Patty Murray.

CALL OF THE ROLL

The ACTING PRESIDENT pro tempore. By unanimous consent, the quorum call has been waived.

VOTE

The ACTING PRESIDENT pro tempore. The question is, Is it the sense of the Senate that debate on the Mitchell-Dole substitute amendment, as amended, S. 414, the Brady bill, shall be brought to a close. The yeas and nays are mandatory under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. DORGAN] is necessarily absent.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 57, nays 42, as follows:

[Rollcall Vote No. 387 Leg.]

YEAS—57

Akaka	Ford	Mikulski
Baucus	Glenn	Mitchell
Biden	Gorton	Moseley-Braun
Bingaman	Graham	Moynihan
Boren	Harkin	Murray
Boxer	Hatfield	Nunn
Bradley	Inouye	Pell
Bumpers	Jeffords	Pryor
Byrd	Kassebaum	Reid
Chafee	Kennedy	Riegle
Conrad	Kerrey	Robb
Danforth	Kerry	Rockefeller
Daschle	Kohl	Roth
DeConcini	Lautenberg	Sarbanes
Dodd	Leahy	Sasser
Durenberger	Levin	Simon
Exon	Lieberman	Warner
Feingold	Mathews	Wellstone
Feinstein	Metzenbaum	Wofford

NAYS—42

Bennett	Domenici	Mack
Bond	Faircloth	McCain
Breaux	Gramm	McConnell
Brown	Grassley	Murkowski
Bryan	Gregg	Nickles
Burns	Hatch	Packwood
Campbell	Heflin	Pressler
Coats	Helms	Shelby
Cochran	Hollings	Simpson
Cohen	Hutchison	Smith
Coverdell	Johnston	Specter
Craig	Kempthorne	Stevens
D'Amato	Lott	Thurmond
Dole	Lugar	Wallop

NOT VOTING—1

Dorgan

The ACTING PRESIDENT pro tempore. On this vote, the yeas are 57, the nays are 42.

Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The majority leader.

Mr. MITCHELL. May we have order, Mr. President?

The ACTING PRESIDENT pro tempore. The Senate will be in order.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that, notwithstanding the provisions of rule XXII, the Senate proceed to executive session to consider the nomination of Janet Napolitano to be U.S. attorney for the District of Arizona (Ex. Cal. 387); that the majority leader is authorized to file a cloture motion on the nomination; that there be 20 minutes, equally divided and controlled in the usual form, between the chairman and ranking member of the Committee on the Judiciary, or their designees; that following the conclusion or yielding back of time, the Senate, without any intervening action, vote on the cloture motion; that if cloture is invoked, the Senate, without any intervening action, proceed to vote on the nomination; that, if confirmed, the President be informed of the Senate's action; and that the Senate return to legislative session.

Mr. LOTT. Mr. President, I object.

The ACTING PRESIDENT pro tempore. The Senator from Mississippi objects.

Mr. MITCHELL. Mr. President, I had been advised by our colleagues this had been cleared on the Republican side.

Mr. LOTT. Will the distinguished majority leader yield for a question? Is it the intent of the majority leader that, if this unanimous-consent request is agreed to, that he would go to this nomination immediately, there would only be 20 minutes of debate, and then a final vote? Exactly what is the process that the leader is recommending here, that he is asking for?

Mr. MITCHELL. First, this is the product of lengthy negotiations and discussions between the leadership on both sides. This is one of some number of nominations to which there have been objections made by some Senators. We want to try to proceed to it. We have been unable to do so.

So, this is an agreement under which we will proceed to it, debate for 20 minutes, and then have a cloture vote. If cloture is invoked, we approve the nomination. If it is not invoked, then we would proceed back to NAFTA.

If we are not able to do that, then obviously under the rules I could move to proceed, file the cloture motion, and it would then ripen in the second legislative day from now and we would proceed in accordance with the rules.

Mr. LOTT. Is it the majority leader's intent to do the same thing with the nomination for the NLRB, Gould?

Mr. MITCHELL. I have made no decision in that regard.

Mr. LOTT. You have made no decision in that regard?

Mr. MITCHELL. I have not, either to do it or not to do it. We have discussed the matter, have discussed it both with the Republican leader and with Senators who support that nomination.

I have not made any decision as of now.

Mr. LOTT. If the majority leader will yield further, the majority leader is saying he has discussed this with the Republican leader, but that there has been no discussion or agreement with regard to Gould? It has only been with regard to this particular one?

Mr. MITCHELL. That is correct.

Mr. LOTT. Mr. President, if it is still in order, I withdraw my objection on this particular unanimous consent.

The ACTING PRESIDENT pro tempore. Is there any other objection? Without objection, it is so ordered.

EXECUTIVE SESSION

NOMINATION OF JANET ANN NAPOLITANO, OF ARIZONA, TO BE U.S. ATTORNEY FOR THE DISTRICT OF ARIZONA

The bill clerk read the nomination of Janet Ann Napolitano, of Arizona, to

be United States Attorney for the District of Arizona.

The ACTING PRESIDENT pro tempore. The majority leader.

CLOTURE MOTION

Mr. MITCHELL. Mr. President, I send a cloture motion to the desk.

The ACTING PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on Executive Calendar No. 387, the nomination of Janet Ann Napolitano to be U.S. attorney for the District of Arizona.

Wendell Ford, Paul Wellstone, Tom Harkin, Paul Simon, Edward Kennedy, Pat Leahy, Jay Rockefeller, Jeff Bingaman, David Pryor, Patty Murray, Dianne Feinstein, Howard Metzenbaum, Dennis DeConcini, Harris Wofford, John F. Kerry, Carl Levin.

The ACTING PRESIDENT pro tempore. The Senator from Delaware.

Mr. BIDEN. Parliamentary inquiry, how much time does the Senator from Delaware control?

The ACTING PRESIDENT pro tempore. The Senator controls 10 minutes.

Mr. BIDEN. Mr. President, I will yield and designate the Senator from Arizona as the person to control the time.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. DECONCINI. Mr. President, I rise to urge the Senate to break the logjam on the nomination of Janet Napolitano to be U.S. attorney for the District of Arizona. This nomination means a great deal to my State. She has been in office since July 4th as acting U.S. attorney and the legal profession and law enforcement officials of my State have given her performance outstanding reviews.

It also means a great deal to me personally. I have known this young lawyer for 10 years. She is a competent, capable, strong lawyer, who understands the need to prosecute and the need to defend people's rights as defendants.

She has tried cases and she is ready for this confirmation and this full-fledged U.S. attorneyship. I recommend Janet to President Clinton. Without a single reservation, the President sent her up here as a nominee of the administration approved by the Justice Department in July. In September, she was voted by the committee favorably 12 to 6 and now it is before us.

The Senate has been prevented from acting upon her nomination until today for really only one reason: Janet's choice of clients. She played a minor role—and I stress minor role—in the legal representation of Prof. Anita Hill before the Senate Judiciary Committee. Had she not helped in that representation, the Senate would have confirmed her without a doubt. She has been unjustly accused, in my judgment, of interfering, and perhaps being part of perjury as to the corroborating witness with the Anita Hill complaint against Clarence Thomas which involved, as we all remember, alleged sexual harassment.

Janet would like to explain what happened, but she cannot. Over 90 questions were submitted to her by the Judiciary Committee members. She answered all of the questions that she could answer. However, Mrs. Hoerchner, who was the corroborating witness who came forward for Anita Hill, has invoked the attorney-client privilege, and Janet is bound by this privilege not to disclose what went on between them.

To me and to many others, it is clear that the privilege is here. I have been a practicing lawyer; I have exercised that privilege. And I believe that it is asking too much of this nominee to compel her to disregard the obligation that she has to this client and to come forward with information that I do not think would be detrimental at all and then have her be subject to disbarment by the profession of which she is a member.

She is responsive and she wants to be the U.S. attorney. She is not hiding anything from this committee. Everyone here knows that she has acted appropriately in respecting the attorney-client privilege.

I ask unanimous consent that backup material from a number of academicians and legal writings, which demonstrate why this privilege is and should be in force here, be submitted for the RECORD.

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

CONFIRMATION OF JANET NAPOLITANO TO BE U.S. ATTORNEY FOR THE DISTRICT OF ARIZONA

(List of the items to be included in the RECORD.)

1. Questions submitted to Janet Napolitano by Senators Simpson and Thurmond and Janet Napolitano's answers.

2. A letter from Mr. Ronald R. Allen, Jr., Attorney for Judge Hoerchner in which Judge Hoerchner refuses to waive her Attorney-Client privilege.

3. A letter from Professor Geoffrey C. Hazard, Jr. of Yale Law School dated September 28, 1993.

4. A letter from Professor Geoffrey C. Hazard, Jr. of Yale Law School dated September 29, 1993.

5. A letter from Professor Stephen Gillers of New York University School of Law dated September 30, 1993.

6. A letter from the present and four most recent presidents of the Arizona State Bar Association dated October 19, 1993.

7. An article by Anthony Lewis "Merchants of Hate," New York Times, 11/08/93.

8. An article from Arizona Republic "What's that we smell? Politics?" 10/29/93.

9. An article from The Atlanta-Journal Constitution "Haunted by the ghost of Hill-Thomas, 9/26/93.

10. Letters of support from constituents.

ANSWERS OF JANET NAPOLITANO TO QUESTIONS SUBMITTED BY SENATORS SIMPSON AND THURMOND

It is my response to questions submitted by Senators Simpson and Thurmond in connection with my nomination to the United States Attorney for the District of Arizona.

Three preliminary observations, amplified in the answers following, may be helpful: These questions relate to the appearance of Professor Anita Hill before the Senate Judiciary Committee in October 1991. Professor Hill retained my then partner John Frank to represent her in the matter, and I assisted Mr. Frank in that representation. My discrete responsibility was to work with corroborating witnesses Professor Hill invited to testify in support of her position. I was not involved in the preparation or presentation of Professor Hill's own testimony. Several of the questions asked of me therefore relate to portions of that event with which I had no connection, and I therefore cannot respond; these are specifically noted in the answers given.

Second, Judge Susan Hoerchner was one of the corroborating witnesses presented by Professor Hill, and I worked with her. Accordingly, I am precluded by the attorney-client privilege from relating the conversation with Judge Hoerchner about which the questions inquire. The persons present were Judge Hoerchner, the witness; Ron Allen, her attorney; and I as Prof. Hill's attorney. The privilege is Judge Hoerchner's, and she has not released me to divulge the conversation. This is an illustration of the existence of the privilege in the case of "pooled-information"; as set forth in the current draft of the American Law Institute's Restatement of the Law Governing Lawyers, §126, where "two or more clients represented by separate lawyers share a common interest in a matter, the communications of each separately represented client" are privileged. For the same effect, see the Uniform Rules of Evidence, Rule 502(b)(3). Illustrative cases are *Hunydee* v. *United States*, 355 F.2d 183, 185 (9th Cir. 1965); *Continental Oil Co.* v. *United States*, 330 F.2d 347 (9th Cir. 1984); and *In re Grand Jury Subpoena Duces Tecum Dated November 16, 1974*, 406 F. Supp. 381, 388–89 (S.D.N.Y. 1975). The question then arises as to the meaning of "common interest." 2 Weinstein, Evidence §503(b)[06] says that in light of the phrase common interest, "the privilege [is] to be broadly construed in multiparty situations," and that only if the interests "of the parties are totally antagonistic will the privilege be denied"; and see numerous cases there cited. The privilege applies "whenever the communication was made in order to facilitate the rendition of legal services to each of the clients involved in the conference." Professor Wigmore, 8 Wigmore Evidence, 560 (McNaughton Revision), says that at least since 1833 "it has never since been doubted to be the law," that "communications made in seeking legal advice for any purpose were within the principle of the privilege." (Emphasis in original.)

Third, I respectfully suggest that there is no charge in an answer of Judge Hoerchner as is suggested. The issue, as I understand it, is whether I instructed a witness to change her answer as to the date of a telephone call during a break in the Senate staff interview. In fact, Judge Hoerchner did not change her

answer to the matter of the date of the telephone call. She did not remember the exact date. She was essentially asked this question five times prior to the answer under challenge. The first time she said she could only "guess at the time." The second time she said that she could not say just when the conversation took occurred. The third, she said she was not absolutely certain about the date. The fourth, she said, "I really don't know if it was '81 versus another time." The fifth, she was asked whether the conversation was prior to September of 1981 and she responded,"Yes, if my memory is . . ." and trailed off. Some pages after the alleged coaching, she was asked about the date and said, "I don't know for sure." She repeated that same answer at a later time. In short, the alleged change of answer never took place.

QUESTIONS SUBMITTED BY SENS. SIMPSON AND THURMOND

Representation

1. (a) Did you serve as legal counsel to any person in connection with the accusations or charges that were the subject of the Thomas-Hill hearings? If so, for whom did you serve?

Answer: Yes, I served as counsel for Professor Anita Hill and as incident to that representation served as counsel to various witnesses.

(b) When did you agree to serve as counsel for such person?

Answer: October 9, 1991.

(c) Was your retention as counsel reflected in any engagement letter or other writing? If so, please provide a copy of such writing with your written response to these questions.

Answer: No, there was no written engagement letter or other writing.

(d) Who paid your fees or expenses regarding any such representation?

Answer: The expenses were borne by myself pro bono, and there were no fees.

(e) What was the nature of your engagement?

Answer: The nature of our engagement for Anita Hill was to assist her in appearing before the Senate Judiciary Committee. My specific responsibility was to work with witnesses Horechner, Carr and Wells in connection with their appearances on Prof. Hill's behalf.

(f) Over what period of time were you retained?

Answer: I was retained on October 9, 1991 and my representation essentially ended on October 13, 1991. After the Committee hearing ended, I provided some assistance to Professor Hill in connection with having her travel expenses reimbursed by the Committee.

2. (a) In addition to yourself, who served as counsel or advisor to Prof. Hill or any of her corroborating witnesses? By whom were they retained? What was the nature of their engagement? Over what period of time were they retained?

Answer: Prof. Anita Hill retained my senior partner, John P. Frank, in connection with her appearance before the Committee. His charges were similarly voluntary and pro bono for the same period of time. Other persons served as counsel to Prof. Hill, including Professor Charles Ogletree of the Harvard Law School, Professor Emma Jordan and Professor Sue Deller Ross. The arrangements made with Professor Ogletree and the others are unknown by me.

In connection with my specific responsibility, I worked with Mr. Ron Allen, who was counsel to Susan Hoerchner. Mr. John Carr was represented by one his law partners. Ms. Ellen Wells had no separate representation. I do not know what the arrangement for Carr's partner and Mr. Allen were. Witnesses Carr, Wells and Hoerchner coordinated their appearances through me. Witness Joe Paul was separately subpoenaed by the Committee. I have had no communications with Mr. Paul—before, during or after the hearing—and I do not know what his counsel arrangements were.

(b) Was there any agreement among such counsel? If so, please provide a copy of such agreement with your responses to these questions. If not, or if you do not have a copy, please summarize the terms of any such agreement.

Answer: There was no written agreement among counsel.

(c) Who served as lead counsel to Prof. Hill?

Answer: Mr. Frank and Professor Ogletree were her lead counsel.

3. (a) What were your responsibilities in connection with the Thomas-Hill hearings?

Answer: My principal responsibility was working with the corroborating witnesses offered by Prof. Hill who appeared on Sunday afternoon, October 13. These witnesses were Hoerchner, Carr and Wells. I also assembled character witnesses to be able to testify in Professor Hill's behalf.

(b) Were you assigned the responsibility of handling procedural matters with the Judiciary Committee?

Answer: Yes. I worked with Committee staff on scheduling, making people available for interviews, and handling other administrative matters as staff requested.

(c) What was the nature of your assignment?

Answer: See answer to 3(a).

(d) Who assigned these matters to you?

Answer: Mr. Frank assigned me all my duties in connection with this matter.

The Hoerchner interview

4. On October 1, 1991, lawyers for the Senate Judiciary Committee conducted an interview with Judge Susan Hoerchner. You were present for this interview as counsel for Anita Hill. During this interview, Judge Hoerchner related a telephone call she received from Anita Hill in which Hill allegedly complained of sexual harassment by Clarence Thomas. Judge Hoerchner recalled that this telephone call had occurred "sometime before September 1981"; that it was "at a time when we spoke fairly regularly by telephone"; and that "she told me she was undergoing sexual harassment at work by her boss."

When questioned further as to how she placed the date, Hoerchner said she remembered the call as having taken place in Washington, and she moved to California in September 1981.

In a prior call to a Committee investigator, Hoerchner had placed the time of the call as the "spring of 1981;" six months before Hill went to work for Thomas.

What follows is the on-the-record exchange between Hoerchner and committee lawyers during the final round of questioning about the date of the call:

Q. And, in an attempt to pin down the date a little more specifically as to your first phone conversation about the sexual harassment issue in 1981, the year you mentioned, you said the first time you moved out of Washington was September of 1981, is that correct?

A. Right.

Q. Okay. Were you living in Washington at the time you two had this phone conversation?

A. Yes.

Q. When she told you?

A. Yes.

Q. So it was prior to September of 1981?

A. Oh, I see what you are saying.

Q. I am just trying for the benefit of everybody to get to the truth, to pin down the—

A. I think I was. Yes, I'm sorry. That isn't something I can . . .

Q. Okay.

A. I was living in Washington prior to that time. I'm not sure that was the time of the phone call, but I really think it was.

Q. Okay. You were or were not living in Washington when you think you had this—do you think you were living in Washington or not?

A. I think I was.

Q. So that would make it prior to September of 1981.

A. Yes, if my memory is . . .

Preface

As a preface to answering this set of questions, I would respectfully point out that the quoted excerpt implies that I interrupted the witness. In fact, Judge Hoerchner was interrupted by Mr. Wooten, Mr. Schwartz made a comment, and then Mr. Wooten spoke again. Only at that point did I request that we take a break. The transcript of the staff interviews reflects this sequence of events and is attached as Exhibit A. With that background, I answered the questions set forth:

(a) At this point of Hoerchner's testimony, you interrupted her and stated, "Can I meet with the witness? Can we talk for just a minute?" To whom were you directing these requests? To Committee staff? To Hoerchner's counsel, Ronald Allen, who was present during the interview? To both?

Answer: At that point of the Hoerchner testimony, and contrary to the assumption in the question, I did not interrupt her. When, a little later, I asked whether I could "meet with the witness," I was addressing my question to the lawyers for the Committee generally.

(b) For what purpose did you seek to interrupt Hoerchner?

Answer? I did not "seek to interrupt Hoerchner," There was no question before Judge Hoerchner when I made my request. I requested a break in order to talk to Judge Hoerchner and Mr. Allen.

(c) What precisely did you tell Hoerchner when you spoke with her off-the-record? Did you discuss the timing of Hill's call to Hoerchner? Did you discuss where Hoerchner was living at the time? Did you at any time suggest that Hoerchner change her answer to the Committee lawyers?

Answer: I may not reveal the substance of my conversation with Judge Hoerchner and Mr. Allen. As Professor Hill's counsel in the interview, I am precluded under the joint counsel theory of the attorney-client privilege from revealing the substance of this conversation. I have been guided by the American Law Institute's Restatement of Law Governing Lawyers, T.D. No. 2, §126. This provision provides that "if two or more clients represented by separate lawyers share a common interest in a matter, the communications of each separately represented client are privileged as against the third person." The Rules of Evidence also embrace this principle. "A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications . . . by him . . . to a lawyer . . . representing another party . . . concerning a matter of common interest." Unif. Rules of Evid., Rule 502(b)(3).

I have asked Judge Hoerchner to be relieved of the privilege, but have been refused.

The communication itself was a verbal conversation that took place in the hall outside the room where the interview was held on the afternoon of October 10, 1991.

(d) What follows is the exchange between Hoerchner and Committee lawyers after you spoke off-the-record with Hoerchner:

Q. When you had the initial phone conversation with Anita Hill and she spoke for the first time about sexual harassment, do you recall where you were living—what city?

A. I don't know for sure.

After your off-the-record conversation with Hoerchner, Hoerchner was considerably less certain about the timing of the call of where she was living at the time.

(i) Was Judge Hoerchner's testimony before the Committee sworn to under oath?

Answer: Yes. However, I would note that the transcript cited above is incomplete. The actual "exchange between Hoerchner and Committee lawyers after my conversation with Judge Hoerchner" is found in the interview transcript at page 24. It is apparent from the transcript that Judge Hoerchner's immediate response was on a wholly different topic.

Respectfully, I do not believe that, after the break, Judge Hoerchner was "considerably less certain about the timing of the call." The fact is that she had been asked the same or similar question some five times previously in the course of the examination and had exhibited great uncertainty throughout. At page 4, she said she had "only been able to guess at the time." At page 8, she said that "I can't say that I did not speak to Anita after September, 1981." At page 11, asked if she was "absolutely certain" about the date, she said, "No, I'm not." At page 12, she said, "I really don't know if it was 1981 versus another time." At page 23, asked if the conversation was "prior to September of 1981," she said, "Yes, if my memory is . . . ." After my discussion with her, asked the date, at page 25, she said, "I don't know for sure" and she repeated this at page 31. At no point during the questioning was she able to date with conviction or precision a telephone call which had occurred ten years earlier.

(ii) Prior to and during Hoerchner's testimony before the Judiciary Committee, did you have any discussions with Hoerchner or her representatives about the timing of Hill's call?

Answer: See below.

(c) Did you discuss where she was living at the time?

Answer: See below.

(d) What precisely was discussed?

Answer: This group of questions relates to Judge Hoerchner's sworn testimony before the Judiciary Committee. The Judiciary Committee testimony was under oath. I did have at least one discussion with Judge Hoerchner after the interview and prior to her Committee appearance. The conversation took place in a room in the Capitol and, to the best of my recollection, was on Saturday, October 12, 1991. The contents of the conversation are covered by the attorney-client privilege. I have asked Judge Hoerchner to waive the privilege, but she has declined to do so.

5. Turning to the issue of Hill's alleged corroborating witnesses, prior to your off-the-record discussion with Hoerchner at the interview, Hoerchner had this exchange with Committee lawyers:

Q. Did she ever relay to you that you were the only person who knew about these allegations of these problems she was having at work?

A. I think she told me that more recently.

* * * * *

Q. I should have asked you this earlier, and I apologize. You said, going back to the you were the only person—Anita Hill told you you were the only person who knew about the allegations of sexual harassment, and you said that she reiterated that recently to you. Was this in one of those phone conversations?

A. No. She never told me until recently.

Q. That you were the only person that knew.

A. Right.

Q. When did she tell you that?

A. It may have been around the time that she wanted to know if I would talk to the FBI.

Q. So we're talking the last couple of weeks of September?

A. Very recent, yes.

After your off-the-record conversation referred to above, Hoerchner spontaneously made the following statement:

A. Okay. I recently came to the conclusion that I was the only one that she had told at the time. And I believe that the basis for the conclusion was that I was told by the FBI agent who interviewed me that there were only three names on—either in the affidavit or stemming from her FBI interview, I am not sure which, I think the affidavit and that my name was the only one she had listed as a corroborating witness.

During your off-the-record discussion with Hoerchner, what discussions did you have about the corroborating witness issue? Did you discuss with Hoerchner any statement by Hill that Hoerchner would not be the sole corroborating witness on the sexual harassment charge? If so, why? Did you suggest to Hoerchner that she change or in any way modify her testimony about this issue? If so, why?

Answer: This question returns to the staff interview. Again, the attorney-client privilege bars me from relating any conversation I had with the witness. See answer to Question 4(c).

6. During the Hoerchner interview, you stated that you appeared as counsel for Hill. That previous Thursday, you were present at the meeting held by Hill strategists at the Pepper, Hamilton law firm. At that meeting, Prof. Hill's written statement regarding her sexual harassment charge was prepared. That statement contains a representation that Thomas first began harassing Hill with unwanted advances on or about late December or early January. The morning of the Hoerchner interview, Hill testified before the Committee and again placed the first episode of Thomas's harassment during this time frame.

During the Hoerchner interview, Hoerchner variously stated that the call from Hill regarding sexual harassment occurred in the Spring of 1981 or September of 1981. Either date, of course, is inaccurate because it places the call from Hill about the alleged sexual harassment months before Hill herself claimed the harassment first occurred.

(a) Did you know Hoerchner's statements regarding the timing of the call to be inconsistent with Hill's account? If so, how did you learn that these statements were inconsistent? When did you first learn that these statements were inconsistent?

Answer: As a preface to my answer, I would note that I was not present in the meeting at Pepper, Hamilton which is referred to, nor did I work on Professor Hill's statement. At some point in the course of the representation, I heard or read Professor Hill's statement. I do not recall knowing or believing there was any inconsistency as is suggested. As I have stated, I always understood Judge Hoerchner to be very uncertain about the timing of the telephone call in question.

(b) As an attorney subject to the Professional Code of Responsibility, were you under an ethical obligation to inform the Committee of the "erroneous" statements made by Hoerchner?

Answer: The question assumes an erroneous statement and I do not believe that there was one. Judge Hoerchner said as many times as she could, and in as many ways as she could, that she was uncertain of the date.

(c) Did you willfully mislead the Committee by permitting a misplaced reliance on the veracity of statements made by Hoerchner which you knew or should of known to be false?

Answer: No. Moreover, the question assumes that there were false statements by Judge Hoerchner. I am not aware of anything of the sort.

7. Do you now have or have you ever had a copy of the Hoerchner interview transcript? If so, when did you first receive a copy? Who supplied it to you? Do you have copies of any other "Committee confidential" materials, including, for example, FBI reports? Did you furnish a copy of the transcript or any portion thereof to others? If so, who?

Answer: Yes, I have a copy of the transcript of the Senate staff interview of Judge Hoerchner. I received a copy of this transcript only after publication of The Real Anita Hill by David Brock which quotes from the transcript and an editorial in The Washington Times which did the same. I received the transcript from Mr. Ron Allen. (There is no "confidential" stamp or other indicator of confidentiality on the copy I received.) In short, I did not have a copy of the transcript until it was already being quoted in the media, I did not obtain it from the Committee, and nothing on the transcript itself would suggest that anything in it was confidential. I have furnished a copy of the interview transcript to Senator DeConcini's staff. I also have shown it to my secretary, my father, and to two local journalists who asked specific questions about the transcript after reading Mr. Brock's book. As far as I am aware, I have no other "Committee confidential" material.

Napolitano's relationship to and association with Hill

8. (a) Did you give Professor Hill, or others associated with or supporting Prof. Hill, any advice with respect to the issue of Prof. Hill's separation from the law firm of Wald, Harkrader?

Answer: No, I did not give any advice relating to Professor Hill's separation from Wald, Harkrader.

(b) Was this issue ever discussed in your presence in the preparation sessions, or elsewhere, and if so, what was discussed and who was present?

Answer: This issue was not discussed in my presence.

9. Did you at any point contact any member or members of the news media regarding Prof. Hill's testimony or allegations, and if so, which news organizations or individuals did you contact? Describe the discussions between you and representatives of the news organizations with whom you spoke, Within Ms. Hill's team of advisors, who was responsible for press contacts?

Answer: I did not contact the media. Ms. Wendy Sherman was in charge of press relations during the hearing.

69-059 O—97 Vol. 139 (Pt. 21) 35

10. (a) Did you have prior knowledge of Prof. Hill's decision to take a polygraph examination?

Answer: Yes, Mr. Frank told me about the prospective Hill polygraph.

(b) Did you offer advice on this decision?

Answer: No, I did not offer any advice on the polygraph test.

(c) How many polygraph examinations did Prof. Hill take in connection with her appearance before the Committee and accusations against Clarence Thomas?

Answer: So far as I know, there was only the one polygraph test.

11. (a) Were you present for, or did you take part in, discussions of Prof. Hill's interview with the FBI?

Answer: No, I was not present and did not take part in any discussion or any interview Professor Hill may have had with the FBI.

(b) What issues were discussed in this context?

Answer: I do not know.

(c) What advice did you give, if any?

Answer: I gave no advice.

12. Prior to, during and after the Judiciary Committee hearings, what discussions have you had with Prof. Hill relating to the hearings, her relationship to Clarence Thomas or the allegations that were the subject of her Committee testimony?

Answer: The few conversations I had with Professor Hill are covered by the attorney-client privilege; and, therefore, I am precluded from answering these questions.

13. In meetings at which you and Prof. Hill, any of Ms. Hill's corroborating witnesses or any counsel or advisors to Prof. Hill or any such witnesses were present,

(a) which issues were raised by you, Ms. Hill or any such advisors, counsels or witnesses?

(b) what advice did you or any such advisors, counsels or witnesses provide?

Answer: If the questions are meant to ask whether there was any meeting of Professor Hill and her advisors at which I was present and participated, there were no such meetings; there was a social moment at the end of the hearings at which I had my picture taken with Professor Hill along with all of the other advisors who were available. If the questions are meant to reveal discussions or advice given in meetings with the corroborating witness, the privilege has been asserted and I am bound by the privilege.

14. (a) Did you assist in the drafting of Prof. Hill's testimony, or make any suggestions about the content of such testimony?

Answer: No, I did not assist in drafting Prof. Hill's testimony.

(b) Who prepared Anita Hill's written testimony?

Answer: To the best of my knowledge, the testimony was principally prepared by Prof. Hill herself with the assistance of Mr. Frank, Prof. Ogletree, Prof. Jordan and Prof. Ross.

(c) Who reviewed the written testimony prior to its delivery to the Committee?

Answer: I do not know.

15. Did you assist in the drafting of the statement for any individual who testified on behalf of Prof. Hill, or make any suggestions as to the content of such drafts? What suggestions did you make?

Answer: As described earlier, in my representation of Prof. Hill I worked with witnesses Hoerchner, Wells and Carr. Any written statements of Carr, Wells or Hoerchner were prepared by them independently. I do not recall if I performed any editing or proofreading function, except that I did review Ms. Well's statement before she testified. Any advice I may have given to them is subject to the attorney-client privilege and I am bound by the privilege.

16. Did you talk with any of Prof. Hill's supporting witnesses, including but not limited to, Carr, Wells, and Paul? To the best of your recollection what did you say? What did the witnesses say?

Answer: No other supporting witnesses appeared, except for those listed in Question 15. I spoke with Mr. Carr once on the telephone and arranged for him to be telephonically interviewed. I met at least once with Ms. Wells.

17. Did you at any time discuss with Prof. Hill or her representatives whether graphic details of statements allegedly made to her by Clarence Thomas should be provided to the Committee? With whom did you have these discussions?

Answer: No; as previously noted, I was not involved in Prof. Hill's preparation.

18. Was Prof. Hill offered any advice about the content of her testimony before the Senate Judiciary Committee? Did you or anyone else recommend responses to possible questions from Committee members? Was Prof. Hill's testimony guided in any other way by those present?

Answer: I do not know. I believe Prof. Hill's statement was prepared on the day before her appearance. However, I did not participate in that activity and, thus, I do not know the answers to these questions.

19. During the hearings, Prof. Hill's employment and medical records were at issue.

(a) Did you attend or participate in discussions concerning Hill's employment and medical records?

(b) Did you ever examine such records?

(c) Did you talk with anyone who was aware of the content of such records?

(d) Do you know where such records were located?

(e) Did you know or do you now know, who was custodian of such records?

Answer: The answer is "no" as to all points concerning Prof. Hill's medical and employment records, with the exception that I did speak with Mr. Frank who may have been aware of the content of such records.

20. Who paid for Prof. Hill's family to attend the Judiciary Committee hearings?

Answer: I do not know who paid for Prof. Hill's family to attend the hearing.

21. During the first morning of her testimony, Prof. Hill testified that staff members advised her that Judge Thomas would withdraw his nomination if she came forward with her allegations. That afternoon, she changed her testimony and denied she believed Thomas would withdraw.

(a) What discussions did you have with Prof. Hill, or any of her other advisors or counsel, between Ms. Hill's morning statement to the Committee and her differing afternoon testimony?

Answer. None.

(b) What was the rationale for this change in testimony?

Answer: I have no knowledge about this subject.

22. During the hearings, the following exchange occurred:

Sen. Spector: Professor Hill, did you know that as an Attorney, you could have stayed on at the Department of Education?

Prof. Hill: No, I did not know at the time.

Sen. Spector: Did you make an inquiry of his successor, Mr. Singleton, as to what your status would be?

Prof. Hill: No, I did not. I'm not even sure I knew who his successor was at the time.

Despite Prof. Hill's above statements under oath, it is a fact that Schedule A employees at the Executive Branch are protected from discharge simply because their present supervisor leaves his or her position.

During this time, the affidavit of Mr. Singleton had been submitted to the Judiciary Committee, contradicting Prof. Hill on both points: that she knew what Schedule A status meant, and that she did talk to Singleton about her status.

(a) Were you aware of the Singleton affidavit when Prof. Hill made this statement?

Answer: No, I was not aware of the Singleton affidavit.

(b) If you were, what actions did you take to resolve this apparent inconsistency in Prof. Hill's testimony?

Answer: Not applicable.

23. During the hearings, copies were introduced from then EEOC Chairman Thomas' phone logs showing ten phone messages that Prof. Hill left for Thomas between 1983 and 1991. Prof. Hill stated that these calls were made in a "professional context . . . . None of them were personal in nature." When attempting to account for the more personal messages (i.e. "Wanted to congratulate on marriage."), Prof. Hill stated:

"I knew his secretary, Diane Holt. We had worked together at EEOC and Education. There were occasions on which I spoke to her, and on some of those occasions, undoubtedly, I passed on some casual comment to then Chairman Thomas . . . ."

When Diane Holt later testified, she had this to say about Prof. Hill's above statements:

"That is not true. Had Anita Hill called me and even asked that I pass along a hello to Judge Thomas, I would have done just that, but it would not have been an official message on the phone log."

(a) When did you hear Ms. Holt's testimony on this point?

(b) What steps did you take to determine the veracity of Prof. Hill's testimony?

(c) Did you continue to advise Prof. Hill on the phone log matter without determining the accuracy of Ms. Holt's testimony?

(d) How did you resolve the inconsistencies of Prof. Hill's and Ms. Holt's testimony?

Answer: I am not sure that I ever heard Ms. Holt's testimony on this point. In any event, I had no role in advising Professor Hill on this subject.

24. The newly published book, The Real Anita Hill, by David Brock, calls into serious question a number of allegations made by Anita Hill during the Judiciary Committee hearings, including:

Prof. Hill's allegation that she was sexually harassed by Judge Thomas,

Prof. Hill's allegations that she left the law firm of Wald, Harkrader voluntarily,

Prof. Hill's allegation that Judge Thomas made to her specific references regarding pornography and explicit sexual comments.

(a) Did you, prior to, during, or subsequent to the time you advised Prof. Hill, make any efforts to verify the truth of these and other allegations made by Prof. Hill?

(b) If you failed to verify these allegations prior to or during the Judiciary Committee hearings, do you believe, in retrospect, that it was appropriate for you to elicit unverified testimony before a Committee of the United States Senate?

Answer: As previously stated, in our representation of Professor Hill, I had no role in working with Professor Hill on any of the foregoing subjects.

25. On Monday, September 23, 1991, a Judiciary Committee investigator received over the Committee's telecopy machine a four-page type-written statement, dated and

signed by Anita Hill regarding charges of sexual harassment against Clarence Thomas. Two days later, Hill refiled the statement, to correct certain grammatical errors and misspellings.

Do you know who leaked to the media either or both of Hill's written statements? If so, who?

Answer: I have no knowledge of any aspect of this statement or the questions.

Dated this 23rd day of September, 1993.

JANET A. NAPOLITANO.

RONALD R. ALLEN, Jr.,
ATTORNEY AT LAW,
New York, NY, October 8, 1993.

Janet Napolitano, Esq.,
U.S. Attorney, Phoenix, AZ.

DEAR MS. NAPOLITANO: I confirm that, as I informed you some time ago, my client, Judge Susan Hoerchner, has instructed me to advise you that she has not waived and does not intend to waive the attorney-client privilege attaching to her brief working relationship with you during the Thomas confirmation hearings.

It is Judge Hoerchner's strong belief that the attorney-client privilege is so fundamental to the American judicial system that it is inconceivable that any client would be asked to waive it as an implicit condition of your confirmation in the position for which you have been nominated, for which you are so well qualified, and in which I understand you have already been admirably functioning. Similarly incomprehensible is the apparent innuendo that you suborned perjury, or indeed that your conduct during the Thomas confirmation hearings in any way fell short of the highest ethical and professional standards. Any suggestion to the contrary is manifest political opportunism. In the present context, your steadfast assertion of the attorney-client privilege provides additional demonstration, if any were necessary, that you do not and will not waiver from the most stringent ethical imperatives.

Sincerely yours,

RONALD R. ALLEN, Jr.

YALE LAW SCHOOL,
New Haven, CT, September 28, 1993.

Hon. DENNIS DECONCINI,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR DECONCINI: Responding to your request, I herewith submit an opinion concerning the ethical propriety of the conduct of Attorney Janet Napolitano in the witness interview that was conducted of Ms. Hoerchner on October 13, 1991, in connection with the hearings on the confirmation of Justice Thomas.

1. I disclose that I am personally acquainted with Ms. Napolitano and with John Frank, also of Phoenix, and that both of them are members of the American Law Institute, of which I am Director. I believe you are aware that I have previously rendered opinions on various matters of judicial and lawyer ethics in connection with appointments to the federal bench. I provided an opinion on behalf of (now) Justice Thomas concerning a question of his conduct while a judge in the Court of Appeals. I also provided a character reference statement on behalf of Anita Hill in the confirmation proceedings.

I have been an expert witness concerning professional ethics of judges and lawyers in various civil, disciplinary and criminal matters throughout the country. A copy of my professional vita is enclosed.

2. In my opinion, nothing in the record indicates any impropriety on the part of Attorney Napolitano in the conversation she had with Ms. Hoerchner about which question has been raised. Furthermore, it is my opinion that the content of the communications involved are covered by Ms. Hoerchner's attorney-client privilege, which I understand Ms. Hoerchner has not waived. In such a situation it is legally impermissible for Attorney Napolitano to disclose the communications involved.

3. In reaching my opinion I have reviewed the account of the incident that has been given in an article entitled "Who is Janet Napolitano? By David Brock in the October 1993 issue of The American Spectator, and the transcript of the interview of Ms. Hoerchner that is in question. In addition, I am informed and have assumed as a fact that Ms. Hoerchner was at the time represented by Attorney Allen; that Attorney Napolitano was representing Professor Anita Hill; that these representations involved a matter of interest to both Ms. Hoerchner and Professor Hill, specifically Ms. Hoerchner's recollection of and testimony about an earlier conversation with Professor Hill; and that Ms. Hoerchner has invoked and continues to assert her attorney-client privilege with respect to that matter.

4. There are two questions presented:

First, was unethical conduct involved in Attorney Napolitano's conferring with Ms. Hoerchner during the course of the interview of Ms. Hoerchner that was being conducted by the staff attorneys of the Senate Committee which was addressing the appointment of (now) Justice Thomas?

Second, was unethical conduct involved in Attorney Napolitano's refusal to respond to questions concerning the conversation she had with Ms. Hoerchner?

In my opinion, there was no unethical conduct in either respect.

6. Concerning Attorney Napolitano's conference with Ms. Hoerchner during the interview, it is necessary to compare the transcript of the interview, as recorded by verbatim stenography at the time, with the account that has been given by Mr. Brock.

The specific subject of Ms. Hoerchner's testimony was the date of the conversation, some ten years previously, that Ms. Hoerchner testified to having had with Ms. Hill.

(a) The transcript indicates as follows:

(1) Ms. Hoerchner stated that her conversation with Ms. Hill occurred at a point in time that Ms. Hoerchner identified. However, responding to probe questions, Ms. Hoerchner several times stated she was unsure of the date. She then stated that she remembered the conversation as having occurred while Ms. Hoerchner was living in Washington, before she moved to California. She was then asked to correlate the time when she was living in Washington with the time of the conversation with Ms. Hill.

(2) In response, Ms. Hoerchner expressed recognition that, if the conversation occurred while she was living in Washington, then it could not have occurred at the time she had initially remembered. At this point Attorney Napolitano asked in the presence of staff counsel "Can I meet with the witness? Can we talk for just a minute?" Staff counsel agreed that this might be done.

A confidential conversation off the record then ensued between Ms. Hoerchner, her counsel Attorney Allen and Attorney Napolitano, Ms. Hill's counsel. The transcript notes:

"[Off the record.]"

The transcript then resumes:

"Mr. Wooten: I would like to say for the record that we took a break so the Judge (i.e., Ms. Hoerchner) could confer with her lawyers or representatives."

"Now we are back on the record."

This is the usual denotation where such a conversation is held between counsel and a witness.

(3) The interrogation of Ms. Hoerchner then resumed. However, the subject of this resumed testimony is not the date of the conversation with Ms. Hill that had previously been referenced. Instead, the subject was whether Ms. Hoerchner had had more than one conversation with Ms. Hill and what information Ms. Hoerchner had given to the FBI in the Bureau's investigation of the Hill account.

(4) Later in Ms. Hoerchner's testimony the questioning returned to Ms. Hoerchner's recollection of the date of the conversation. In response to probe questions, she several times reiterated that she was unsure of the date, and unsure whether the conversation with Ms. Hill had occurred while Ms. Hoerchner was still living in Washington.

(b) The account by Mr. Brock compresses the sequence by omitting several lines of the transcript. The compression implies that Ms. Hoerchner changed her testimony and that she did so as a result of coaching by Attorney Napolitano. The transcript read in full sequence does not support this implication, nor does it reveal a "Napolitano gap" as Mr. Brock suggested.

7. Off-the-record-Conference. The transcript discloses that the witness, Ms. Hoerchner, had acknowledged uncertainty as to the date of her conversation with Ms. Hill, and had recognized that her previous dating of it was erroneous if the conversation had occurred while Ms. Hoerchner was still living in Washington. It was at this point that Attorney Napolitano asked that a private conference be permitted with the witness, with the witness's counsel Mr. Allen.

8. In my opinion, requesting a private conference with a witness in such circumstances is entirely proper and is universally recognized as such. Witnesses often are uncertain or confused as to details concerning date, time, place, persons present, and sequence of events. As a consequence, they may give answers that seem correct to them but which are inconsistent with objectively verifiable facts or inconsistent with other parts of their testimony.

It is a proper function for counsel to help the witness avoid giving inaccurate testimony. Doing so is especially appropriated where a matter of crucial detail is involved, as was involved in Ms. Hoerchner's testimony. I have read hundreds of depositions by very competent counsel and have observed many instances of such practice. Training in trial advocacy, both in law school and in continuing legal education, is to the same effect. Indeed, in some circumstances it would be a dereliction of professional duty if counsel did not interject in such a way.

Counsel's advice properly will be to the effect that the witness should acknowledge that she cannot precisely remember, if that is the situation. There is no indication that Attorney Napolitano's advice was otherwise, certainly none that she coached the witness to give a recollection that the witness did not have.

9. The fact that Attorney Allen was present, representing Ms. Hoerchner, does not signify that it was officious or improper for Attorney Napolitano to suggest the private conversation with the witness. Attorney Allen and Attorney Napolitano were conducting their respective representations in a matter in which their clients had a common interest. The transcript does not indicate one way or the other, but it may have

been that the Attorneys Allen and Napolitano nodded or otherwise silently communicated with each other before Ms. Napolitano spoke. In any event, where lawyers are engaged in such a matter of common interest, it is proper for either of them to undertake a procedural initiative such as asking for a consultation off the record.

10. Attorney-Client Privilege. Attorney Napolitano was representing her client, Ms. Hill, in a matter of common interest in cooperation with an attorney for another client, Mr. Allen on behalf of Ms. Hoerchner. The conversation off the record was among Ms. Hoerchner, her attorney Mr. Allen, and Ms. Napolitano as Ms. Hill's attorney. In such circumstances, the attorney-client privilege protecting Ms. Hoerchner governs not only her attorney, Mr. Allen, but the other attorney made privy to the discussion of the matter of common interest, Attorney Napolitano.

11. Under the attorney-client privilege and related duty of confidentiality, Mr. Allen is prohibited from disclosing the content of the communication with Ms. Hoerchner, unless Ms. Hoerchner waives the privilege. Because the matter involved one of common interest among clients whose lawyers were cooperating with each other, Attorney Napolitano is also prohibited from disclosing the communication unless Ms. Hoerchner waives the privilege. In my opinion, therefore, it is not improper or unethical for Attorney Napolitano to refuse to disclose the off-the-record conversation with Ms. Hoerchner. To the contrary, it would be a breach of her professional duty if she were to do so.

Sincerely,

GEOFFREY C. HAZARD, Jr.

YALE LAW SCHOOL,
New Haven, CT, September 29, 1993.

Hon. DENNIS DECONCINI,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR DECONCINI: This supplements my opinion of September 28, 1993, further addressing the issue of attorney-client privilege. It is my opinion that the communication between Ms. Hoerchner and Attorney Napolitano is covered by the attorney-client, although that Attorney Napolitano represented Ms. Hill while Ms. Hoerchner was represented by Attorney Ron Allen. The application of the attorney-client privilege to the communication between Ms. Hoerchner and Attorney Napolitano follows from the "pooled information" or "common interest" rule. This rule is commonly called the "joint defense" rule because it most often has application among defendants cooperating in a case in which they are joint defendants.

The rule is stated in Restatement of the Law Governing Lawyers, Tentative Draft No. 2 (April 1, 1989), published by the American Law Institute. This Draft has been approved by the Institute. Section 126 states as follows:

If two or more clients represented by separate lawyers share a common interest in a matter, the communications of each separately represented client * * *

Are privileged as against a third person, and any such client may assert the privilege, if the communication is made in confidence between such a client * * * and another commonly interested client or such a client's * * * lawyer * * *.

Comment *c* to §126 states:

This Section is not limited to sharing information during pending litigation. Sharing might occur with respect to any matter of common interest about which clients consult lawyers for legal assistance, including prelitigation consulting or legal assistance that does not contemplate litigation, such as for document preparation or legal advice.

Comment *e* to §126 states:

The interests of the separately represented clients need not be entirely congruent to qualify as common interest * * * Pool participants will commonly have conflicts of interest between themselves. The presence of conflicts does not deny them the opportunity to share confidential information concerning their common interests.

In accord concerning the common interest rule are: Revised Uniform Rules of Evidence Rule 502(b)(3) (1974); Proposed Federal Rules of Evidence Rule 503(b)(3) (1973); e.g., *Hunydee* v. *United States*, 355 F.2d 183 (9th Cir. 1965) (criminal case); *Eisenberg* v. *Gagnon*, 766 F.2d 770 (3d Cir. 1985) (civil case).

I trust this makes clear the basis of my opinion.

Sincerely,

GEOFFREY C. HAZARD, Jr.

NEW YORK UNIVERSITY,
SCHOOL OF LAW,
New York, NY, September 30, 1993.

Hon. DENNIS DECONCINI,
U.S. Senate, Washington, DC.

DEAR SENATOR: I respond to your facsimile inquiry of yesterday:

First. Janet Napolitano has properly asserted the attorney client privilege for the conversation she had with Judge Hoerchner while representing Professor Hill. The privilege applies because Judge Hoerchner and Professor Hill had a common interest. Because of this privilege, Ms. Napolitano could not properly reveal communications with Judge Hoerchner without Judge Hoerchner's permission. Further, Ms. Napolitano could properly, and would in fact have to, decline to reveal the conversation even if subpoenaed to do so.

Second. The communications are, in addition to being privileged under the law of evidence, also ethically protected as confidential information of Ms. Napolitano's client, Professor Hill, under the rules governing the conduct of lawyers. See Rule 1.6, ABA Model Rules of Professional Conduct. Information is confidential under this rule whatever its source. This additional (ethical) protection means that even if Judge Hoerchner had waived the privilege, Ms. Napolitano could not voluntarily reveal communications with Judge Hoerchner without Professor Hill's consent.

Third. You ask if Ms. Napolitano's statements to Judge Hoerchner are privileged. The answer is yes if they constitute legal advice or tend directly or indirectly to reveal the substance of what Judge Hoerchner said to Ms. Napolitano. In re Sealed Case, 737 F.2d 94, 99 (D.C. Cir. 1984). Given the context, this test is easily applied. I can't imagine how the subject of the conversation could be other than legal advice or how inferences from Ms. Napolitano's statements could fail, directly or indirectly, to reveal what Judge Hoerchner said to her.

Credentials. I am professor of law at New York University Law School. Among other subjects, I have taught legal ethics and evidence since 1978. Both subjects address the issues you pose. I have written widely for the legal and popular press and for law journals in the area of legal ethics. I am author of a widely used casebook on legal ethics, now in its third edition, entitled Regulation of Lawyers: Problems of Law and Ethics (1992).

I hope I have answered your questions.

Sincerely,

STEPHEN GILLERS.

OCTOBER 19, 1993.

Hon. DENNIS DECONCINI,
U.S. Senate, Hart Senate Office Building, Washington, DC.

Hon. JOHN MCCAIN,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATORS DECONCINI AND MCCAIN: We are the present and four most recent past presidents of the Arizona State Bar Association. We write as individuals to ask you to do all you can to speed along the confirmation of Janet Napolitano as U.S. Attorney.

We all personally know Ms. Napolitano. She is an attorney of great ability and a person of impeccable integrity. We are dismayed that she is being subjected to criticism for not waiving the attorney-client privilege in connection with a conversation she had on behalf of her client at a hearing with Senate staff members two years ago. Such a charge goes to the heart of the ethical code attorneys are sworn by law to uphold.

It is of the utmost importance that clients be able to speak to their attorneys in confidence. Like the doctor's privilege and the priest's privilege, lawyers are under the strictest ethical obligation to protect those confidences. In this particular case, Ms. Napolitano, representing one client, had a conversation with a client of a second attorney in that second attorney's presence, on a matter of common interest to both clients. The law is absolutely clear that in such a situation Ms. Napolitano is obligated to respect that confidential communication. She would violate the canons of ethics of the Arizona State Bar if she did not do so. This is fully set out in the opinion of Professor Geoffrey Hazard, the country's foremost expert in matters of this kind, which we attach.

This is an attack on Ms. Napolitano for abiding by the law and by our state's ethics. A lawyer violating those canons can lose his or her license to practice law in our state. It is disgraceful when a lawyer is attacked for doing her professional duty. Certainly as a Senator we know that you are anxious to support attorneys upholding the ethical code designed to protect the public.

Please do all you can to end this matter quickly with the speedy confirmation of Ms. Napolitano.

Yours very truly,

Sarah B. Simmons, Brown & Bain, P.A., One South Church, 19th Floor, Tucson, Arizona, 85702-2265, President, Arizona State Bar.

Robert E. Schmitt, Murphy, Lutey, Schmitt & Beck, 117 East Gurley, 3rd Floor, Prescott, Arizona, 85302-0591, AZ State Bar President 92-93.

Roxana C. Bacon, Bryan Cave, 2800 N. Central, #2100, Phoenix, Arizona, 85004-1019, AZ State Bar President 91-92.

Frederick M. Aspey, Aspey, Watkins & Diesel, 123 North San Francisco, Flagstaff, AZ, 86001-5231, AZ State Bar President 90-91.

Tom Karas, 101 N. First Ave., #2470, Phoenix, Arizona, 85003-1918, AZ State Bar President 89-90.

[From the New York Times, Monday, Nov. 8, 1993]

(By Anthony Lewis)

MERCHANTS OF HATE

BOSTON.—If you wonder how low the politics of hate and revenge can get in Washington, listen to this story.

Janet Napolitano, a leading Arizona lawyer, has been nominated by President Clinton as U.S. Attorney for that state. She is a

Democrat but has supported both parties. She once worked for Senator Pete Domenici, Republican of New Mexico, and he is for her.

Ms. Napolitano's nomination was approved by the Senate Judiciary Committee. But a floor vote is being blocked by right-wing Republicans. Why? Because Ms. Napolitano was one of the lawyers for Anita Hill in the hearings in which she confronted Justice Clarence Thomas.

The attack on Ms. Napolitano is led by a journalist who wrote a book attacking Professor Hill, David Brock. The American Spectator, which printed Mr. Brock's first smear of Professor Hill as "a bit nutty and a bit slutty," printed a Brock article on Ms. Napolitano last month.

The new Brock article centers on the same claim that was a principal basis of his attack of Professor Hill. This is that Judge Susan Hoerchner, a friend who testified that Professor Hill had told her of Justice Thomas's sexual advances, first said the conversation occurred at a time before Ms. Hill worked for Mr. Thomas—and then, warned by a lawyer, said she could not remember when it was. The lawyer was Ms. Napolitano.

Mr. Brock prints what he says is the relevant part of an interview of Judge Hoerchner by Senate Judiciary staff members. In it she says "I think" the conversation took place before she left Washington in September 1981.

The quoted transcript has her saying "Yes, if my memory is—" when Mr. Brock writes: "At that point, Napolitano interrupted," asking to speak with the witness. After their brief off-the-record talk, he says, Judge Hoerchner changed her story and said she could not remember the date.

The Brock charge falls away on examination. It is in fact based on misrepresentations.

1. The interview transcript did not end where Mr. Brock says "Napolitano interrupted." A staff member interrupted and said he wanted to be sure everyone could ask questions. Only after several staff comments, with no question pending, did Ms. Napolitano say she would like to talk with Judge Hoerchner.

2. When Judge Hoerchner said later that she could not remember the date of the conversation, that was not new. Five times before the break in testimony she had said she could not remember or could only guess at the date—which was hardly surprising for a telephone conversation 10 years earlier.

On the basis of the Brock attack, Republican Senators Alan Simpson and Strom Thurmond sent 91 written questions to Ms. Napolitano, some of them implying illegal conduct on her part. Her answers satisfied most members of the Judiciary Committee that the charges were empty.

But Ms. Napolitano would not answer questions about what she and Judge Hoerchner discussed during that break, because it was a conversation protected by the lawyer-client privilege. Now right-wing Republicans are demanding that she violate legal ethics and disclose it.

The present and four most recent past presidents of the Arizona Bar, in a letter supporting Ms. Napolitano as a "person of impeccable integrity," said they were "dismayed" at the demand. They wrote:

"This is an attack on Ms. Napolitano for abiding by the law and by our state's ethics. A lawyer violating those canons can lose his or her license to practice law in our state. It is disgraceful when a lawyer is attacked for doing her professional duty."

In attacking Ms. Napolitano, David Brock has abandoned the pretense that he is an impartial investigative reporter. He is a hatchet man of the far-out right, trying to rescue the shattered credibility of his Hill book.

Senators can delay action on Janet Napolitano because of the current perversion of Senate rules, under which one or two members can block a nomination by threatening a filibuster. Thanksgiving and the end of the session are near.

But it is not clear why senators on the right would want to bring the Thomas-Hill conflict back to public attention. Do they really want to reopen the question of Justice Thomas's truthfulness?

[From the Arizona Republic, Oct. 29, 1993]

WHAT'S THAT WE SMELL? POLITICS?

That odor wafting over the delayed Janet Napolitano confirmation as U.S. attorney for Arizona is the smell of politics from the hands of senators seeking retribution for old partisan pains.

Let's clear the air. Janet Napolitano will be confirmed on merit, and rightfully so.

The political dillydallying over her confirmation is simple retaliation by some Republican senators for the hardball politics Democrats played during the Anita Hill-Clarence Thomas hearings. Democrats who played then shouldn't be surprised nor raise outrage at the retaliation; that's the way they play the game, too. But remember, despite the noise, that Napolitano's professional qualifications are not suspect.

Janet Napolitano, a faithful Democrat and a fine lawyer, was part of the team of attorneys who advised Anita Hill and her supporters two years ago during the confirmation hearings for Supreme Court Justice Thomas. Hill's account of being sexually harassed by Thomas while his employee riveted the nation and spotlighted the political gamesmanship that takes place in Senate hearing rooms. Americans were enthralled, but not necessarily impressed.

Many members of the Senate Judiciary Committee holding up a floor vote on the Napolitano confirmation suffered through the trying Hill-Thomas debacle, which gave more delight to Democrats in one weekend than in all the Reagan-Bush years. Those senators also remembered the Democrat hands that played in the defeat of Robert Bork's nomination to the Supreme Court. Because this is a political process, there was no question that Napolitano's nomination would be given scrutiny. What goes around, comes around. Fair enough for a while; now it's time to move on. Janet Napolitano didn't invent the Anita Hill affair; she shouldn't be the scapegoat.

Critics claim that Napolitano coached Judge Susan Hoerchner of California to change her testimony during fact-finding questioning by Senate staffers. Others read transcripts of the informal session quite differently. The implication is that Napolitano acted unethically. But some legal ethicists say Napolitano cannot answer the questions without violating attorney-client confidentiality rules. Senate Judiciary Committee members Alan Simpson and Strom Thurmond, both supporters of Thomas' nomination, asked Napolitano to answer 91 written questions about her role on the Hill legal team and about her off-the-record conversations with Hoerchner. She reportedly answered all she could without violating attorney-client privilege.

Seeing the Simpson-Thurmond nitpicking for what it is, the Judiciary Committee voted for confirmation on a 12–6 count. With a Democratic majority in the Senate and a few Republicans already committed to confirmation, the only question that remains is when Napolitano will be confirmed.

In recommending Napolitano's confirmation, Arizona Supreme Court Justice James Moeller said here work is "uniformly very, very good. She is an effective and principled litigator. Never have I heard a lawyer or judge in this community question her ethics or integrity. On that score she enjoys an absolutely unblemished record."

Arizona and the nation deserve the crack federal prosecutor that Janet Napolitano gives every indication of being. The Republicans have delivered their political retribution for the Hill affair. The political game is over. There is no valid reason to hold up this presidential appointment.

[From the Atlanta Journal-Constitution, Sept. 26,. 1993]

HAUNTED BY THE GHOST OF HILL-THOMAS

In the latest bit of backlash related to the Anita Hill-Clarence Thomas affair, Sen. Alan Simpson of Wyoming is once again displaying his true colors. Apparently he has subscribed to the notion that Hill's harassment charges against the Supreme court nominee were part of a grand feminist conspiracy, as set forth in a recently released book, "The Real Anita Hill: The Untold Story."

Central to that conspiracy is one Janet Napolitano, President Clinton's nominee for U.S. attorney for Arizona. Napolitano was one of a handful of lawyers who advised Hill during the grueling confirmation hearings.

The senator is now charging that Napolitano may have coached Hill's star witness into perjuring herself to shore up this imagined feminist plot. To drag out, what should be a swift, sure confirmation, Simpson is demanding that the nominee respond to nearly 100 questions—many of which he knows she can't answer without violating attorney-client privilege.

The charges are particularly reprehensible given the cast of characters making them. This is not about Napolitano's ethics or qualifications. This is about politics.

The book about Hill, much heralded by staunch conservatives, is hardly a piece of objective journalism. Author David Brock describes himself as an "investigative reporter" with no preconceived notions, but his credentials speak otherwise. A fellow with the right-wing Heritage Foundation, Brock once described Hill as "a little nutty and a little slutty" in an article predating his book.

The witness Napolitano purportedly coached during the 1991 hearings was Susan Hoerchner, a California judge and friend of Hill's who provided the strongest testimony in support of Hill's charges. She testified that Hill had confided in her about the harassment as early as spring of 1981. But that was before Hill had even begun working for Thomas.

After a brief recess, urged by Napolitano, Hoerchner returned to the stand and said she didn't remember the exact date. That does not suggest Napolitano did anything inappropriate.

Napolitano is eminently qualified for this job—described by colleagues as a "workhorse" with "a tremendous grasp of the law." This scurrilous attack against her is as much against her role as a Democratic party activist as her role in the Hill-Thomas affair. She should be confirmed and permitted to get on with her job.

DAUGHTON HAWKINS BROCKELMAN
GUINAN & PATTERSON,
Phoenix, AZ, September 22, 1992.

Hon. DENNIS DECONCINI,
U.S. Senate,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR DECONCINI: I am delighted to write in support of the nomination of Janet Napolitano to be the next United States Attorney for the District of Arizona and to add my voice to those urging the Committee on the Judiciary to send her name on to the full Senate for prompt confirmation.

From 1977 to 1980, I had the honor and pleasure to serve in the position to which Janet has been nominated. Although the office was somewhat smaller then, the caseload was much the same: major crimes in Indian Country, narcotics, major fraud, public corruption, and related matters. Janet has all the skills to lead a major metropolitan U.S. Attorney's office: solid judgement, sharp intellect, and an impeccable sense of ethics. She is, in my opinion, extremely well qualified to hold this position.

Janet has been a partner at the law firm of Lewis & Roca, a very prominent Phoenix firm, whose ranks over the years have included some of Arizona's most respected and able lawyers. Its founder Orme Lewis served in the Eisenhower administration and was an active practitioner well into his 80's. Its former members serve as distinguished judges and a number of its present members have served in the past in public service for state and federal administrations of both parties. Lewis & Roca is a remarkable training ground and we are fortunate indeed to have such a fine lawyer to serve in this important position.

I would be pleased to answer any question that you or any member of the Committee might have and I thank you for the opportunity to speak to the nomination of this very able and talented lawyer.

Sincerely,

MICHAEL D. HAWKINS.

SUPREME COURT,
STATE OF ARIZONA,
Phoenix, AZ, September 29, 1993.

Hon. JOSEPH BIDEN,
Chairman, Senate Judiciary Committee, Russell Senate Office Building, Washington, DC.

DEAR SENATOR BIDEN: I understand the Judiciary Committee will shortly consider the President's nomination of Ms. Janet Napolitano to be United States Attorney for Arizona. I write to express my opinion that she is an outstanding choice for this extremely important position. I have been trial and appellate judge in Phoenix, where Ms. Napolitano practices, for most, if not all, of her professional career. Because her practice includes much litigation and, in particular, appellate litigation, I have had many occasions to observe and review her work, both in the courtroom and by way of written briefs and memoranda. Her work is uniformly very, very good. She is an effective and principled litigator. Never have I heard a lawyer or judge in this community question her ethics or integrity. On that score, she enjoys an absolutely unblemished record.

Ms. Napolitano will be a very able United States Attorney and will serve the people with distinction. I am pleased to recommend her confirmation. I might add that my reasons for making this recommendation are entirely professional, not political: I am a lifelong Republican.

I thank you for your consideration of this letter.

Yours truly,

JAMES MOELLER,
Vice Chief Justice.

LAW OFFICES OF
WILLIAM C. SMITHERMAN, P.C.
Tucson, AZ, October 19, 1993.

Hon. DENNIS DECONCINI,
Hon. JOHN MCCAIN,
U.S. Senate, Washington, DC.

DEAR DENNIS AND JOHN: Please let me add my voice to those who support the confirmation of Janet Napolitano as United States Attorney for Arizona, a position I was honored to hold from 1972 to 1977.

As a former U.S. Attorney it is extremely important to have people of known integrity and ability in this critical, high profile law enforcement position. I know Janet Napolitano and know that she possesses the requisite character and ability to discharge the responsibilities of this great office. She is already doing a great job.

I recommend her to you for confirmation and I do so without any reservation whatsoever.

Sincerely.

WILLIAM C. SMITHERMAN,
President-Elect, National Association of Former United States Attorneys.

THE NAVAJO NATION,
Window Rock, AZ, October 12, 1993.

Senator DENNIS DECONCINI,
Senate Hart Office Building, Washington, DC.

DEAR SENATOR DECONCINI: I am writing to you as President of the Navajo Nation to give my unqualified support for the Administration's nominee for U.S. Attorney for Arizona, Ms. Janet Napolitano. I believe Ms. Napolitano, with her accomplishments and qualifications, will raise the level of service provided to Arizona by the Office of the U.S. Attorney. Ms. Napolitano has indicated that she will make it a priority to address the many problems and concerns of the Navajo Nation and people, and of Native Americans in Arizona.

I and members of my staff have met with Ms. Napolitano on several occasions and have all come away with the impression that she is unusually capable and wants to do the right thing. We are impressed also that she listens carefully and hears what we say. She is a person who understands not just narrow legal issues, but the political and human dimensions of a problem as well.

We support Ms. Napolitano's nomination because we believe she will bring a new level of competence, experience, activism and compassion for our problems. Thank you for your consideration of this recommendation.

Sincerely,

PETERSON ZAH,
President.

OCTOBER 19, 1993.

Hon. DENNIS DECONCINI,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR DECONCINI: As I told you in our telephone conversation yesterday, I am writing to you on behalf of Janet Napolitano. Although I do not know Janet well, nor do I know the specifics of her representation of Ms. Hill, I do know that she is well regarded in the legal community in Arizona for her intellect and dedication.

As a former United States Attorney for this District, I also tell you that it is important for the sake of continuity that this vital position be filled as soon as possible. Without a strong United States Attorney to maintain leadership within the federal system, problems are not resolved quickly or easily. I urge you and your colleagues to act expeditiously. Her nomination merits and necessitates prompt review.

Sincerely,

LINDA A. AKERS.

JONES, SKELTON & HOCHULI,
ATTORNEYS AT LAW,
Phoenix, AZ, October 5, 1993.

Hon. JOHN MCCAIN,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR MCCAIN: I am writing you this letter to urge you to vote in favor of Janet A. Napolitano as the next United States Attorney for Arizona. I have known Janet from her days as a lawyer with Lewis & Roca. I found her to be extremely capable, knowledgeable and above reproach in her work with that firm.

When Janet's name was submitted to President Clinton by Senator Dennis DeConcini, I called Janet and met her for lunch. I was deeply impressed by her sincerity and commitment towards the job of United States Attorney. Having served in that position from 1981 to 1985, I would be the first person to speak out against a nominee if I felt that a nominee lacked either the talent, skills or ethics to successfully perform that important position. I have explicit trust in Janet's ethics and integrity. I am convinced that she will devote her full time and effort to that job.

I am happy to see that Senator DeConcini not only nominated a woman to that position but selected someone who is bright, highly respected, and articulate. I am distressed that an author of a book on the "Clarence Thomas" hearings could do such a number on her and win any kind of following. Anybody who knows Janet Napolitano would know that she would never, in a thousand years, counsel a witness to give false testimony or to fabricate evidence.

I have heard that Senator Alan Simpson of Wyoming may put the nomination on "hold." I would urge you to talk to Senator Simpson and encourage him to refrain from such an action. The U.S. Attorney's office in Arizona needs a Presidentially confirmed U.S. Attorney. To drag this process on is not only unfair to Janet but is also unfair to the many good people who work in that office. The vast majority of these federal attorneys were hired by myself, Steve McNamee and Linda Akers.

I believe Janet Napolitano will make an outstanding United States Attorney and will prove to be one of the brightest and best ever to serve in that position. If I can answer any questions or provide you any further insight, please don't hesitate to give me a call.

Very truly yours,

A. MELVIN MCDONALD,
For the Firm.

Mr. DECONCINI. Mr. President, I think it is sad that we cannot get this approved by the normal process. I respect everybody's right. There is opposition, and perhaps it is political and perhaps it is not. But I can tell you the people of Arizona do not want political gridlock. The People of Arizona—both Republicans and Democrats—want this particular nominee to be confirmed.

Part of the package that I have just submitted shows Republican judges writing to the U.S. Senate Judiciary Committee supporting her nomination.

The Arizona Republic, a very conservative Republican newspaper, urged the Senate to confirm Janet Napolitano. Let me read what that newspaper said:

The Republicans have delivered their political retribution for the Hill Affair. The political game is over. There is no valid reason to hold up this Presidential appointment.

I want to thank the distinguished senior Senator on the Judiciary Committee, Mr. THURMOND, for pulling his hoe, and the Senator from Mississippi for withdrawing his objection to this unanimous consent request. Janet Napolitano has been strongly endorsed by each Arizona U.S. attorney over the past 20 years, appointed by both parties—Bush, Reagan, Carter, and Ford. She also has been warmly endorsed by the ranking Republican on the Arizona State Supreme Court. So that is no reason why this professional lawyer should not be confirmed. I hope the body will do so and vote cloture in about 15 minutes.

Mr. President, how much time do I have remaining?

The ACTING PRESIDENT pro tempore. Four minutes 46 seconds.

Mr. DECONCINI. I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. DECONCINI. Mr. President, I suggest the absence of a quorum and ask unanimous consent the time not be taken out of the two sides.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Who yields time?

Ms. MIKULSKI. Mr. President, I was about to propound a unanimous-consent request.

I ask unanimous consent that I be able to speak against the NAFTA agreement at this particular time.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. FORD. Mr. President, I reserve the right to object, and I will not. We are within just a very few minutes of having a cloture vote on this nomination. Can the Senator withhold until we get through or——

Ms. MIKULSKI. I have obligations that will take me off the floor.

Mr. FORD. I am trying to expedite this.

Ms. MIKULSKI. Originally, the Senator from Alaska was going to yield me time when we were parachuted in by this nomination.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. STEVENS. Mr. President, I am happy to yield to the Senator from Maryland 15 minutes of the time that is allocated to this Senator on the NAFTA bill, if it is appropriate for her to use it at this time.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. DECONCINI addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. DECONCINI. Mr. President, I told the Senator from Maryland I would not object. I do not want to change my mind and will not, but I have been advised by the leadership they want the clock to run and get on with this cloture vote.

I wonder if the Senator from Maryland will withhold to see if we can possibly get the other side to come forward and yield back the remainder of time, which I am prepared to do for the proponents of this nomation. If the Senator will withhold for a moment while I attempt——

Ms. MIKULSKI. I understand that. I realize I am parachuting in on this conversation. Another obligation takes me off the floor at 4. I am prepared to speak for only 10 minutes while the Senator is trying to track the other person down. Otherwise, we have an empty quorum call.

Mr. DECONCINI. I will not object.

The ACTING PRESIDENT pro tempore. Is there objection? If not, the Senator from Maryland is recognized.

NORTH AMERICAN FREE-TRADE AGREEMENT IMPLEMENTATION ACT

Ms. MIKULSKI. Mr. President, I thank my colleague for the courtesy.

This is an exceptionally difficult decision for me.

As I have listened to the debate on the North American Free-Trade Agreement, I have heard some of my colleagues talk with great confidence and certainty—on both sides.

I have read so much, and listened so carefully, and thought so hard about this issue, that I am prepared to argue passionately—both for and against NAFTA.

It is an exceptionally difficult decision.

On every major vote I have cast in the U.S. Senate, I have reflected upon my core values and my basic mission as a U.S. Senator.

My entire life has been devoted to: saving jobs, saving neighborhoods, and saving lives.

I am a blue-collar Senator. I have lived most of my life in my blue-collar neighborhood. My mom and dad owned a grocery store. When the workers at Bethlehem Steel went on strike, my dad gave them credit. My career in public service is one of deep commitment to working-class people.

The hard-working, middle-class people of the First Councilmanic District of Baltimore sent me to represent them in city hall because they believed I would fight to meet their day-to-day needs.

Then they sent me on to the House of Representatives—and the people of Maryland entrusted me with this seat in the Senate, entrusted me to look out for them. To look out for their jobs, and to get Maryland ready for the future.

My core values have remained the same since I began my fight to save my neighborhood and entered public life. And today, I find my core values are in conflict.

I have spoken on this floor many times about jobs today—and jobs tomorrow.

Jobs today—and jobs tomorrow.

And I have spoken up for working people. Let us be clear—as they listen to the debate over NAFTA, they wonder who is speaking for them.

I find that in this debate, there has been no real acknowledgment of what working people face.

In the last decade, working people in America have faced a loss of jobs, lower wages, a reduced standard of living, and a shrinking manufacturing base.

Working people have played by the rules, raised their families, gone to church—they hear that they are disposable. They are being told that their contributions do not matter, that they are obsolescent.

I bridle and bristle at the way people who have joined trade unions have been maligned in this debate. For many of them, the trade union movement has been their key to a better standard of living for themselves and their families.

These working people feel a loss of hope. They feel that no one is listening to their concerns and taking them seriously. They fear they have no place to go, and that nobody really wants them.

And this NAFTA debate has struck a chord with America's angry working class. Taking a stand against NAFTA has become a magnet for their very valid fears.

American workers fear they are losing ground that will never be regained. Workers know they are thought of as economic units, just like component parts in the production line—not as men and women who have families, pay taxes, contribute to the United Way, and are called on to fight and die in America's military engagements.

When they hear the word "efficiency," they know it is a code word for layoffs.

When they hear "got to be competitive," that means they are forced to give wage concessions or cuts in health benefits or pension security.

What do they want?

Respect for who they are and what they contribute to the economy and to the community.

They want income for the work they do so they can be middle class, buy a

home, help their kids get an education, and buy food and clothing for the family.

And they want to be part of America's future.

They want to be included, not excluded.

I know their fears personally. I have seen the loss of manufacturing jobs in Maryland.

When I was a young girl, I spent a summer working in a canning factory in my own neighborhood. Next door was another factory where they made the cans.

I saw that factory move from my neighborhood in Baltimore to the Eastern Shore. Now they have left there as well.

It is the same story for Bethlehem Steel. I have watched the decline of the once-robust shipbuilding industry. And General Motors, which once employed tens of thousands of moms and dads who earned a decent wage.

I am concerned not only about a loss of jobs, and the wage levels here in the United States. I am also concerned about a loss of national sovereignty. Where decisions and disputes affecting people's daily lives are taken out of a framework in which corporations are held responsible for their deeds and actions—and instead, turned over to transnational organizations made up of unelected, unaccountable technocrats.

A big brother, who is big but no brother.

When we set up these tri-partite, multinational structures, accountable to no one, where is the concept of civic duty?

Where is due process?

Where is the rule of law?

How do we hold corporate citizens responsible for their actions?

I am disappointed in this trade agreement. I think we should have had so much more. We need a strategy to create good jobs for American workers.

The President cut a deal with everybody, but not the American worker.

He cut deals with sugar, with tomatoes, with peanuts—how about let's cut a deal with the American worker? Not a protectionist deal, but a real job creation plan.

We should have had "NAFTA-plus."

NAFTA-plus a manufacturing strategy. NAFTA-plus a strategy to create new products that we can export around the world.

The old ways are not working. The world is changing, and we need to get America and Maryland ready for the 21st century.

Some may say: That is your responsibility, Senator. You were elected to come up with those ideas. Well, I have been a leader, fighting to develop the core technologies of the future, which will lead to new ideas and new products—investments that will create jobs today and jobs tomorrow.

Jobs—in aerospace and high-speed ground transportation. Jobs—in environmental cleanup technologies and telecommunications.

I call upon the President to develop a job creation strategy. There is going to be a NAFTA. This trade agreement is going to pass. Now it is time to add the second part.

It is time for NAFTA-plus.

The President should have provided that leadership. That is what Presidents are for.

We still need NAFTA-plus: a strategy that generates not only more jobs, but jobs that generate an American standard of living as we have come to experience it and expect it.

The President must convene an initiative to develop a real policy to save jobs and generate new opportunities—to bring us together, not to use rhetoric that divides us. We need leadership and strategy to develop a real manufacturing agenda.

We need more than a common market, we need a common purpose. Not only profits for a few—but prosperity for all. And not only new markets abroad—but new opportunities here, in manufacturing, engineering, science and technology. We need a community of common interests—and not name calling about special interests.

A new century is coming. A new economy is about to be born. I do not want America to be left behind.

Without a job-creation strategy, I am not satisfied with this trade agreement. I cannot vote for it, when I know it will give the American worker no confidence in the future.

I believe this trade agreement will pass, but I believe it is not adequate. We are going to have NAFTA, but I am casting a protest vote for what should have been. We should have had NAFTA-plus.

So I vote "no" on NAFTA—and "yes" for the American worker.

I yield the floor and I thank my colleagues for their cooperation.

Mr. LOTT and Mr. EXON addressed the Chair.

The PRESIDING OFFICER. Who yields time?

The Senator from Mississippi.

NOMINATION OF JANET ANN NAPOLITANO, OF ARIZONA, TO BE U.S. ATTORNEY FOR THE DISTRICT OF ARIZONA

The Senate resumed consideration of the nomination.

Mr. LOTT. Mr. President, as we consider voting on the nomination of Janet Napolitano to be U.S. attorney for Arizona, there are some things we need to consider this afternoon. Since we have had the break from when the Senator from Arizona spoke in her behalf—we had some comment on NAFTA—I do want to clear up the point now that we are back on this nomination that was pending. We are only limited to 20 minutes, I believe, in total, on this discussion before we go to a cloture vote.

Mr. President, if I could then go forward on this particular nomination, confirming Ms. Napolitano would set a disturbing precedent, and that is why I reserved the right to object a few moments ago, because I think that we need to consider very carefully what we are doing.

I do not know that much about this nominee, and I am not passing judgment at this time on her qualifications. If the Senator from Arizona says she is qualified, I accept that. But there was a disturbing series of events in the committee I think we need to talk about.

If she is confirmed, we will set a new standard for nominations and for every other nominee of this type and we will be shirking our responsibility in the Senate to fulfill a constitutional duty of advise and consent. A "yea" vote today says that we, the Senate, do not need to have all of the information relevant to a nominee's fitness. We, the Senate, do not have to use all due diligence. A "yea" vote would take an eraser I believe to article II, section 2 of the Constitution.

We do not know all that we need to know about this particular nominee. If the information that was sought by members of the Judiciary Committee could be provided, then I think there would be no problem with this nomination moving forward. It is not about politics. This is about duty.

Ms. Napolitano has stonewalled the committee and, therefore, this Chamber by refusing to answer pertinent questions about her role in the Justice Clarence Thomas confirmation hearings. Some of my colleagues are willing to abdicate this precious charge of advise and consent of the Constitution, and I think that that would be a mistake. So let me take just a moment to explain why I have these reservations.

As counsel to Ms. Anita Hill during the Thomas hearings, she also advised, informally as I understand it, Judge Susan Hoerchner, who testified that she had heard Ms. Hill say things about Justice Thomas.

To make a long story short, it seems that after Ms. Hoerchner said with certainty certain things, after a talk with Ms. Napolitano out of the room, Ms. Hoerchner seemed to have amnesia or forgot the exact details of what she had been saying earlier, that she was so certain about.

Subsequent evidence points to the possibility that Ms. Hoerchner perjured herself and that Ms. Napolitano might have been involved in advising her about what she said when she came back in.

I am not alleging at all that that is the case. I am saying the committee needs to know what happened. What is used here by Ms. Napolitano is the attorney-client privilege as her reason

for stonewalling. She was not Ms. Hoerchner's counsel. She has cited what has been referred to, I guess, as a pool privilege requirement that she is forced to use to get around telling exactly what happened.

I do not want to dwell on the particulars. But I think it is just enough to say that such an attorney-client privilege would not necessarily exist since Ms. Hoerchner was not Ms. Napolitano's client. Therefore, she should have answered the questions that were asked by a number of the members of the Judiciary Committee.

Besides all of this, Ms. Napolitano has been allowed to thwart the will of the legislature by just saying she was not going to do it and get away with it.

I ask unanimous consent that a hearing transcript be printed in the RECORD, pages 377 to 393 of the nomination hearings of Justice Rehnquist, dated July 29, 30, 31, and August 1, 1986.

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

STATEMENT OF JOHN R. BOLTON, ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGISLATIVE AFFAIRS, U.S. DEPARTMENT OF JUSTICE

Mr. BOLTON. Yes. Thank you, Mr. Chairman.

I regret that, due to the shortness of time, I do not have prepared remarks, but I do have a few things I would like to say. Earlier today, reference was made to a memorandum from the President to the heads of executive departments and agencies, dated November 4, 1982. I would just like to begin by reading one sentence from that memorandum. I quote from the President:

"The Supreme Court has held that the executive branch may occasionally find it necessary and proper to preserve the confidentiality of national security secrets, deliberative communications that form a part of the decisionmaking process, for other information important to the discharge of the executive branch's constitutional responsibilities."

Mr. Chairman, there has been a long history in this country, dating back to President Washington, of the importance of preserving the confidentiality of executive branch deliberations. By analogy, the judicial branch of Government preserves the confidentiality of the internal deliberations of our courts; Members of Congress preserve the confidentiality of their communications with their staffs. And, for the same reason, going to the fundamental basis of our Government, the executive branch must also have confidentiality in communication among top advisors to Cabinet heads and to the President.

There is no doubt, Mr. Chairman, of the importance of securing candid advice to ensure the proper functioning of the executive branch. If I could, to demonstrate the importance of this, I would like to read brief excerpts from two Supreme Court opinions. The first is the opinion of the Court in *Nixon* v. *Administrator of General Services*. I might say that the language I am quoting from is from Justice Brennan. I quote Justice Brennan who, in turn, quotes from the Solicitor General.

Justice Brennan said, "Nevertheless, we think that the Solicitor General states the sounder view and we adopt it." Justice Brennan quoting now from the Solicitor General: "This Court held in *United States* v. *Nixon* that the privilege is necessary to provide the confidentiality required for the President's conduct of office. Unless he can give his advisors some assurance of confidentiality, a President could not expect to receive the full and frank submissions of fact and opinions upon which effective discharge of his duties depends. The confidentiality necessary to this exchange cannot be measured by the few months or years between the submission of the information and the end of the President's tenure. The privilege is not for the benefit of the President as an individual, but for the benefit of the Republic. Therefore, the privilege survives the individual President's tenure.

Now, the reasons for the privilege, the Court said in United States against Nixon, are plain—and I quote now from the opinion in that case.

"Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interest, to the detriment of the decisionmaking process."

Let quote further from that opinion, if I may, Mr. Chairman. "A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions, and to do so in a way many would be unwilling to express except privately."

Mr. Chairman, executive privilege is claimed only after the most searching scrutiny. Not all documents qualify and, indeed, as I mentioned earlier today in response to the request from three Democratic Senators, certain documents were produced to the committee from the Office of Legal Counsel, that in our legal judgment would not qualify.

However, following the procedures laid out in the President's memorandum, from which I have quoted previously, I have been advised by the counsel to the President, Peter Wallison, on the advise of the Attorney General, the Assistant Attorney General for the Office of Legal Counsel, and the Counsel to the President, that the President has authorized me to assert executive privilege with respect to the confidential memoranda, opinions, and other deliberative materials from the files of the Office of Legal Counsel from 1969 to 1971.

That concludes any remarks, Mr. Chairman.

The CHAIRMAN. That's it. Thank you very much.

Senator HEFLIN. Mr. Chairman.

The CHAIRMAN. Any questions?

Senator HEFLIN. Yes, Mr. Chairman. I think this witness is subject to being examined. In the normal course of events, I'm not sure how an executive privilege is entered, as to whether or not it is entered by an emissary like Mr. Bolton or, on the other hand, whether it comes through a written document or how.

I am not conversant with all of this information, as are several others, such as Senator Biden, the minority leader. Rather than delay it right now, I would suggest that we go to other witnesses and that Mr. Bolton be reserved. I understand that Senator Biden is on his way here, and when he arrives, if he has questions that he wishes to direct to Mr. Bolton, he would have that right. I think the courtesy is his and it is his right.

I would think, therefore, rather than delay, that we could go to some of the other witnesses and reserve Mr. Bolton's cross-examination until Senator Biden arrives. As I understand it, he is on his way.

Senator SIMON. Mr. Chairman.

The CHAIRMAN. The distinguished Senator from Illinois.

Senator SIMON. I am obtaining materials, from the House Judiciary Committee, which contain many internal documents of the kind we're talking about, and not from an administration of some years ago but from the current administration. I had just a few of those reproduced here.

Here is a memo from Laurel Pike Melson, attorney-advisor; she is with the Office of Legal Counsel, and it's to Theodore P. Olson, Assistant Attorney General in the Office of Legal Counsel. It's dated December 6, 1982.

Here is another memorandum to Theodore Olson, within the Department. Here is a memorandum for the Attorney General from the Legal Counsel, dated May 30, 1984. Here is a memorandum from Legal Counsel to the Assistant Attorney General for Legislative Affairs.

There are half-a-dozen more here that I have had my staff xerox. It is fairly clear that executive privilege and a willingness to turn over documents has been part of the history of this administration and is in line with the President's memorandum of November 4, 1982.

In that memorandum, incidentally, the President says "Executive privilege will be asserted only in the most compelling circumstances."

I don't know that we have such compelling circumstances right now, and clearly, what we are being told is appreciably different from the earlier pattern of this administration. I would hope that Mr. Bolton would take this message back to the Attorney General. If some of the documents really are, for some reason, very sensitive, that would be a good reason to use executive privilege. But it just sounds like we're being denied material that we ought to have. I hope that Mr. Bolton and the Justice Department will reconsider.

Mr. BOLTON. Mr. Chairman, might I respond to the Senator's remarks?

The CHAIRMAN. Senator Simon, I'm somewhat constrained because of the possibility of litigation still involving the documents to which you referred. But I can say that there is one clear distinction between the case to which you're referring and the present case, and that is that in that matter the President determined to waive executive privilege; in this instance he has determined to assert it.

Senator SIMON. I understand that the President is asserting it here. I guess I would urge you to think that over carefully. I would like to know a good, solid reason why in this instance executive privilege is being asserted.

Mr. BOLTON. Senator, as I testified earlier today, and as I tried to indicate in my remarks this evening, the nature of the Office of Legal Counsel in the Department of Justice, together with the Office of the Solicitor General of the Department of Justice, is really unique within the executive branch and our system of justice.

Because of the critical legal advisory role that those offices play for the Attorney General, the President's principal legal advisor, and the importance and the complexity and the sensitivity of the issues with which they deal, to open the files of those offices and reveal the documents, even under guarded circumstances, would gravely risk impairing and perhaps destroying the ability of those offices to provide the critical legal advice that the President and the Attorney General require to fulfill their constitutional mandate, to take care that the laws be faithfully executed.

Senator SIMON. We are not talking about today—and these documents, a whole host of them, are from this administration. We are talking about a decade-and-a-half ago.

If nothing else, can you provide an index or a list of the items you're withholding?

Mr. BOLTON. Senator, at this point, I would have to say that I believe the answer to that is "no", but I will certainly take that question under advisement.

The CHAIRMAN. I would like to say that in the President's order of November 4, 1982, certain procedures were outlined there. It provides that congressional requests for information shall be complied with, unless—and this is important—unless it is determined that compliance raises a substantial question of executive privilege. A substantial question of executive privilege exists if disclosure of the information requested might significantly impair the national security—that's not the case here, but the next two are important—the deliberate processes of the executive branch, or other aspects of the performance of the executive branch's constitutional duties.

So, even if executive privilege was not claimed here, I feel that under the President's order here that the ruling as previously made was correct. But executive privilege has been claimed here and, as far as I'm concerned, that ends it.

If you wish to furnish other information or requests, we'll be glad for you to do it.

Mr. BOLTON. Mr. Chairman, if I could just make the record clear, parts or all of the documents in question fall under all three heads of the sentence which you read, and which I read earlier.

The CHAIRMAN. Are there any further comments?

The distinguished Senator from Massachusetts.

Senator KENNEDY. Mr. Chairman, I don't think one can reach any other opinion but that the administration is stonewalling on this.

Mr. BOLTON. Excuse me, Senator——

Senator KENNEDY. You'll have an opportunity to respond.

The administration is stonewalling on these requests. During the course of these hearings we have made requests with regard to memoranda on civil rights and civil liberties. I was on this panel at another time when we had this nominee for Justice on the Supreme Court. We were unable to get information at that time, and after the hearings were closed, we found out the allegations of intimidation of blacks and Hispanic voters down in the Southwest and we had to go back over that now many years later to get the direct response from the individuals who have, in many instances, sworn affidavits stating that this was the case.

We had difficulty in getting information back the last time, and then during the course of the deliberations of the Senate we find the memoranda allegedly written by Mr. Rehnquist, that indicated full support for *Plessy* v. *Ferguson*, that Mr. Rehnquist in testifying here says was to be presented for Mr. Robert Jackson, a distinguished jurist, whose closest confidants and people that know him consider it a sham and a disgrace.

We didn't have an opportunity at that last hearing to get information on this. We had to inquire some years later. Then, we hear Mr. Rehnquist say "Well, that's many years ago. I can't answer."

This is on the eve of Watergate, these activities. I was on this committee when Sam Ervin conducted the hearing about illegal wiretapping, where press men and women were being wiretapped in this country; loyal American citizens were being wiretapped. I was on this committee when we took remedial action with legislation to deal with that issue. I was on this committee when we were having mass demonstrations and we had proposals by the administration about mass arrests, involving first amendment rights, the right of petitioning their government, the right of free speech, the right of dissent.

There have been allegations and charges that Mr. Rehnquist was providing the legal guidance and advice on issues that affected the first amendment, basic rights and liberties of individuals. That s an issue before our panel. It doesn't involve the security of the United States; it involves the security of the rights of the first amendment to the American people, and the most important right is the first amendment to the Constitution. That's what we're talking about.

This is the eve of Watergate, where we have the various plans and programs that provided the "plumber" plan that this committee was familiar with, the Houston plan, about how they were going to subvert individual rights and liberties, when we were having the CIA spying on American citizens.

I think we do a disservice to Mr. Rehnquist if he wrote a memorandum saying the first amendment rights were involved with these individuals, and the members of the administration ought to be restrained and respect those rights, and we don't see it. I think that would be enormously valuable.

There is only one other conclusion you could reach, and that is that kind of protection was not evident in the kind of memoranda that Mr. Rehnquist wrote.

In *Laird* v. *Tatum*, involved the use of military personnel to provide surveillance. To read Mr. Rehnquist's exchange with Sam Ervin on that, talking about whether there was a justifiable issue or not and indicating there wasn't, and then casually referring to that exchange in his memorandum opinion as a discussion of Constitutional law, when he issued his decision on that case, the effect of which was to deny discovery opportunities on governmental activities about which he was allegedly involved in advising the Justice Department.

I daresay, if we got discovery during that period of time, we may not have had a Watergate. We may not have had a Watergate, because those activities were being undertaken during that period of time.

So, it begins to tie up, Mr. Rehnquist. He indicated that he didn't think those individuals, those protesters, had a right, and then when he got to Court, which at the time this case was coming to Court, he cast the deciding vote. That delayed the opportunity for a full examination of the activities of the administration during that period of time. He was legal counsel guiding the Attorney General on first amendment rights, civil rights and civil liberties, what had to be respected and what didn't. It's all becoming very clear now.

I daresay, if you can find the justification under national security, under President Reagan's guidelines to withhold these documents you're a much better lawyer than anyone that I can possibly imagine.

I would just conclude with this, Mr. Chairman. Under President Reagan's order, congressional requests for information shall be complied with as promptly and as fully as possible, unless it is determined that compliance raises substantial questions of executive privilege. A substantial question of executive privilege exists if disclosure of the information requested might significantly impair the national security. That's the first line, national security, including the conduct of foreign relations. The deliberative branch of the executive branch, or other aspects of performance.

Mr. BOLTON. Mr. Chairman, could I respond to Senator Kennedy?

The CHAIRMAN. Yes; you may respond.

Mr. BOLTON. Very briefly, Mr. Chairman.

Senator Kennedy, you correctly stated that you were a member of the committee in 1971 when Justice Rehnquist was the nominee to be Associate Justice, and came before the Senate.

Our records indicate that, in 1971, no requests were made for any documents from the Office of Legal Counsel.

Senator KENNEDY. That's not the question. We asked for additional kinds of information, which this committee was not permitted to have until after the Committee had finished with the witness and had no opportunity to examine further.

What we are basically talking about is information. We are talking about information, and you've got it and you're giving it.

Mr. BOLTON. Mr. Chairman—

Senator KENNEDY. That's the question. You've got it and you're not giving it, and it's involved with the questions that I asked about civil rights, with respect to civil rights and civil liberties, at a time when those fundamental values were probably threatened in our society as at any time in recent history. Mr. Rehnquist wrote memoranda concerning these issues.

I think the American people, in whatever concerns they might have, would feel an enormous sense of relief to know that he was in the vanguard for protecting those rights and liberties. I think they're entitled to that kind of assurance.

But your response is "Oh, no, no, no, no, no, no. We won't be able to get qualified people that will ever come down and work in our office again, because someone might release a memo." That is hogwash. That's hogwash. And President Reagan must understand it with his document on it.

Mr. BOLTON. Mr. Chairman, may I respond to that, too, please?

The CHAIRMAN. Yes; you may respond.

Mr. BOLTON. Let me say first, Senator Kennedy, that the subject matter of any of the documents that are withheld is not the reason for the withholding. The reason for the withholding is a principle, in my view, at least as important as the first amendment that you mentioned. That principle is the separation of powers. It is critical to the survival of the constitutional system that the Framers created that the branches operate with sufficient independence that they can fulfill their constitutional responsibilities.

Just as the Congress has constitutional responsibilities, just as the Judiciary has constitutional responsibilities, so too does the executive branch. I quoted from a Supreme Court opinion before you arrive which recognized the critical importance of candor, and of the need for an executive privilege.

Senator KENNEDY. Finally, in response to your earlier comment about information not being provided by the Office of Legal Counsel, Mr. Rehnquist was queried by Senator Bayh on just about all of these areas. His answer at that time was attorney-client relationship. But he didn't indicate that he was bothered by it, but when the time came again, when we asked the Justice Department to waive that particular issue, the answer was no. So, we were denied it then and we found the information that came out afterward.

We're being denied it tonight. And it isn't the committee. It's the American people. You're not saying it to Senator Thurmond, you're not saying it to me, not saying it to any of these Members. You're telling the American people that at the time of greatest threat of individual rights and liberties and the civil rights of the American people, he wrote about these matters and expressed his view on those different questions, umpteen years ago, that they have no right to have the opportunity to view those materials—not national security, not dealing with nuclear weapons, not dealing with submarine capability. We're talking about questions of mass arrests; we're talking about surveillance of American citizens; we're talking about wiretapping; we're talking about rights of privacy; we're talking about the civil liberties of the American people.

And your answer is "no way" to the Judiciary Committee, "no way" to the American people. That's your answer.

Mr. BOLTON. With all due respect, Senator Kennedy, I don't think that's my answer. My answer is that the separation of powers——

Senator KENNEDY. Provide the information, then.

Mr. BOLTON [continuing]. On which the American people rely for the proper functioning of their Government dictates this result.

I might say, also, that the questions that were put to the Justice before he was excused were not questions that went to the substance of the deliberations; as has been held in any number of court cases concerning the attorney-client privilege, it is permissible to ascertain whether the communication was made, but it is not permissible to ascertain the substance of the communication.

The CHAIRMAN. The distinguished Senator from Utah.

Senator HATCH. Mr. Chairman, this has gone on more than enough. If you stop and look at it, the fact of the matter is you are not talking about the whole Department of Justice. You're talking about the Office of Legal Counsel.

In spite of all the bald assertions that Senator Kennedy has made here tonight about all of this stuff that you would find if you could get into these records, the fact of the matter is that he doesn't know what you would find. That is what you call a fishing expedition. Almost any court of law would be concerned about fishing expeditions under almost any set of circumstances.

The reason there is a desire to have a fishing expedition—and I think it is exemplified every time somebody on the other side gets excited about an issue like this—is that it is a Watergate issue. Let us be honest about it. The reason they are so excited about fishing here is because they really do not have anything to stop this nominee. And they have not been able to show anything to stop this nominee. And their assertions that he is an extremist have not been proven thus far, nor will they be proven. In fact, if anything, their assertions are extreme. That has been proven by the Justice who has sat here and tolerated the kind of abuse that he has taken from time to time.

It doesn't take any intelligence to understand that when you are talking about the Office of Legal Counsel, you are talking about the personal law firm of the President. You are talking about people who have to give very considered legal recommendations on all kinds of issues that involve confidential informants, national security issues, and all kinds of issues that require confidentiality.

Furthermore, your position on the separation of powers, being an important part of the Constitution is well taken. I have to agree with you, especially when the President asserts executive privilege, another right he has under the Constitution.

But you are right, Mr. Bolton. The separation of powers doctrine is an important doctrine. You cannot be bullied by political talk here from the Judiciary Committee, no matter how important the Senator may be, no matter what bald assertions he makes, no matter how long he has been here, and no matter how much they forgot to ask for these materials back in 1971.

But now they want them, after the man has served 15 solid years on the Supreme Court. Two hundred opinions have been gone through by the Bar Association. Sixty-five practicing lawyers, 180 judges, including State Supreme Court Justices from the various States, and 50 law deans and professors were interviewed. We have questioned the nominee for almost 3 days now. And we are going to hear from the other side on the ballot issue. We have FBI reports. We have a wealth of documents coming out of our ears. We have articles, we have memoranda. We are going to listen, I suppose, to more than 60 witnesses, an additional 10 that the other side has demanded. And now they are coming in here and asserting Watergate.

Let us be honest about it. Some of the best and some of the worst "fishermen" in the world are on this committee. You make the choice which ones are the worst.

Senator SIMON. Would my colleague yield?

Senator HATCH. Yes; I would be happy to yield. I think he has made a set of very good constitutional points. I believe that it is time for us to realize that there may be some merit in what he is saying.

Senator SIMON. On the question of separation on powers, here I have four documents, rather substantial books, which contain all kinds of memoranda between people within the Department of Justice——

Senator HATCH. And given to other agencies.

Senator SIMON [continuing]. Legislative Counsel to the President and so forth, of this administration.

Senator HATCH. That is right.

Senator SIMON. And they turned those over to the House Judiciary Committee. Now we're asking for documents of 15, 16, 17 years ago, and all of a sudden there is a separation of powers problem.

Senator HATCH. Only because the President did not assert executive privilege. Had he asserted it, they would not have given those documents. Now, let us be honest about it. He is asserting it here. He has a right to and every reason to.

You are not talking about anybody. You are talking about a sitting Supreme Court Justice. You do not have to treat him like a tin can you can kick all over the street.

Senator SIMON. We're not talking——

Senator HATCH. We're not talking about you, Senator Simon. I do not think you are.

Senator SIMON. You were here when Justice Rehnquist said he had no objection to us receiving these documents.

Senator HATCH. He is not the one that determines that. He is not the President of the United States.

The Chairman. But the Attorney General didn't as a matter of principle.

Senator HATCH. That is right. He stated the principle.

Senator SIMON. A principle selectively applied?

Senator BIDEN. Would the gentleman yield?

Senator HATCH. That is a right the President has under the Constitution.

Senator BIDEN. Sure he does. But the Office of—the opinion of the Office of Legal Counsel are, in fact, released——

Mr. BOLTON. Certain opinions are released.

Senator BIDEN. Certain opinions are released, that's a right you make the judgment opinions, right? As to whether or not they in fact—for example, the fellow or woman who wrote the opinion, the memorandum opinions for Assistant Attorney General in the Criminal Division of Immigration and National Security, eluding inspection is a criminal offense is in venture, that person, the mere fact that that memo, which was written for the Attorney General, and he or she did not know it was going to be released, the fact that it's not released—it was John M. Harmon, Assistant Attorney General, Office of Legal Counsel—that's not likely to keep him from working for the office that you, without consulting him, released the memo, is it?

Mr. BOLTON. Quite the contrary, Senator. There are certain memorandum prepared by the Office of Legal Counsel with the full intention prepared by the Office of Legal Counsel with the full intention that they be published in books such as——

Senator BIDEN. Yeah; all of them, every one in here?

Mr. BOLTON. No; that's exactly the point.

Senator BIDEN. So, what you do, you go through and you make a judgment based upon what can be released and can't be released, or should not be released, right?

Mr. BOLTON. No. sir, there are certain documents, as I mentioned earlier today, that are prepared by the Office of Legal Counsel and in some cases signed by the Attorney General and in some cases signed by the Assistant Attorney General for that office, that are intended as guidance for all or other parts of the executive branch, and for the public at large.

Senator BIDEN. Are they the only ones that are released?

Mr. BOLTON. They are the only ones published in volumes such as the one you're holding.

Senator BIDEN. They're the only ones published?

Mr. BOLTON. That's correct.

Senator BIDEN. So, there is no guidance for the Attorney General coming from Mr. Rehnquist at the time that all these phenomenal things were going on that Senator Kennedy spoke to that wouldn't, in fact, warrant being seen now? I mean, is it going to that wouldn't, in fact, warrant being seen now? I mean, is it going to keep somebody from not working for the government because they're released now?

Mr. Bolton. I believe, as I quoted from Justice Brennan's opinion a little bit earlier—and perhaps I could quote from it again since you arrived after that.

Senator BIDEN. Sure.

Mr. BOLTON. This is Justice Brennan, quoting and adopting the views of the Solicitor General in the case of *Nixon* v. *Administrator of General Services*:

"The confidentiality necessary to this exchange cannot be measured by the few months or years between the submission of the information and the end of the President's tenure. The privilege is not for the benefit of the President but for the benefit of the Republic. Therefore, the privilege survives the individual President's tenure."

Senator BIDEN. I don't disagree with that. All I'm trying to figure out here is this. It seems to me we could settle this real easily.

Why don't you all go down, make up a list of all the memoranda that are involved. Go down and look at the memoranda. If you conclude that each memorandum would, in fact, if released, do what Justice Brennan is worried about, then tell us. If not, if they're like many of these memoranda that are in here which, in fact, are pretty straightforward, and would not only be something bad to be released—for example, you already sent us one. You sent a memorandum that, ironically, was written by Justice Rehnquist to the President, defining the executive privilege. You sent us that one up.

Mr. BOLTON. That legal advice had already been made public, as I understand it.

Senator BIDEN. Oh, that's the reason. I got it.

So, that whoever made it public before—I mean, why can't you use the same test that was used before? I mean, can't you just go through them and figure out whether or not they really are—I mean, why are you doing this so that now you're going to have people saying "well, I don't know if I can vote this . . ." Why can't we just go in the back room—I'm serious; I'm not being smart—sit down and go through them.

Senator Hatch and I could sit down with you, and you say: "Look, I can't show you this one; I can show you this one. I can't show you this one, but I can show you this one." That's what we have always done before. But you're making this blanket exception.

Mr. BOLTON. Senator, each of the documents that was produced or withheld was subject to exactly the kind of consideration that you've just asked for.

Senator BIDEN. You went through every document?

Mr. BOLTON. I didn't personally. They were gone through by attorneys within the Department of Justice.

Senator BIDEN. I see. And every single thing that William Rehnquist wrote at that time falls into this category?

Mr. BOLTON. No; all of those things that were responsive to the request in the letter of July 24th—

Senator BIDEN. Everything that had to do with civil rights, every memorandum he ever wrote on civil rights——

The CHAIRMAN. Senator, we've got to get on with it.

Senator BIDEN. I know we do.

The CHAIRMAN. We've got 40-odd witnesses here. Let's get through with this thing.

Senator BIDEN. Can you tell us how many there were? You know, you acknowledged it's OK to ask for—that the separation of powers, in fact, when you cited the analogy of the attorney-client privilege, you said you can have permission to ask if communications were made but not what the communication was.

Can we ask you how many communications were made?

Mr. BOLTON. Senator Simon made a similar request before. I told him my view at this point was that the tentative answer to that would be "no," but we would take that under advisement.

Senator BIDEN. I just think you all are making a big mistake, I really do.

Mr. BOLTON. Senator, could I respond to that, because——

Senator HATCH. Mr. Chairman, may I ask a question?

The CHAIRMAN. Yes.

Senator HATCH. let me ask you one question.

Has this committee ever received any documents upon request from the Office of Legal Counsel of this nature before?

Mr. BOLTON. To my knowledge, Senator Hatch, this committee has never received any internal deliberative OLC memoranda before.

Senator BIDEN. Have we ever asked for any?

Senator HATCH. Excuse me——

Mr. BOLTON. The committee did not for certain on Justice Rehnquist's first confirmation hearing in 1971, and not that I know of before.

Senator BIDEN. We're asking now.

Senator HATCH. Let me finish, if I could.

Mr. Bolton, as I understand it, throughout the history of the committee we have asked for various documents and we have received documents from other parts of the Justice Department, but we have really either never asked for them or we certainly haven't ever gotten them from the Office of Legal Counsel?

Mr. BOLTON. I believe that's correct.

Senator HATCH. And that is why you are taking this principle position?

The CHAIRMAN. Let's move on. The decision has been made. If you wish to take it up, let us know tomorrow. We're going to move on with these witnesses now.

Senator METZENBAUM. Mr. Chairman, I haven't had an opportunity to be heard, and I came over especially. I left the floor because I was very disturbed, because to me, the whole issue concerning Justice Rehnquist has become one of credibility and integrity, and he's not a party to this particular decision.

Mr. BOLTON. That's correct.

Senator METZENBAUM. I do not lay this on him, but the fact is, what we have now is a deliberate coverup. Simply stated, it's a coverup. You, Mr. Bolton, may try to give it a higher profile, that it has to do with the separation of powers, but that just doesn't fly. Because the President of the United States specifically said that Congress could have the information.

You came here this morning saying we couldn't have the information. And then somebody said to you, that's not true unless you invoke executive privilege. So, you ran back to the office. Somebody decided to invoke executive privilege. That didn't make it right, because we're entitled to know what the facts are.

Now, let me ask you, Mr. Bolton, who decided to submit this matter to the President?

Mr. BOLTON. It was the recommendation of Mr. Cooper, myself, the Attorney General, and the Counsel to the President.

Senator METZENBAUM. Then it was all of you, a group of you, that made the recommendation; is that right?

Mr. BOLTON. You could call it that.

Senator METZENBAUM. But it included the Attorney General?

Mr. BOLTON. I wouldn't put myself on the same plane with the Attorney General. I was——

Senator METZENBAUM. I'm not concerned about that. But it included the Attorney General?

Mr. BOLTON. That's correct.

Senator METZENBAUM. Now, what I don't understand ties in with things that my colleagues have said, and that is, what is so secret? Why are you unwilling to make this information available? If there were an issue of separation of powers, then the President wouldn't have issued his memorandum of November 4, 1982, which spelled out a procedure and said: "Give the information to Congress."

What is there in these documents that you don't want us to——

The CHAIRMAN. He said "unless," and then he set out——

Senator METZENBAUM. That's right. But none of those three things are covered.

The CHAIRMAN. Oh, yes.

Senator METZENBAUM. Mr. Chairman, I didn't interrupt you. If you please, if you please, I didn't interrupt you.

The CHAIRMAN. Go ahead.

Senator METZENBAUM. All right. Thank you.

There is certainly no national security issue. There is certainly nothing about the deliberative processes of the executive branch, because this is a matter of 15 years ago. I can't have anything to do about those deliberative processes, or other aspects of the performance of the executive branch's constitutional duties. I see no way that those can be involved.

So then you drop down in this particular memorandum to the point of the Department having the right to ask the President to do it, and the President invokes executive privilege. Nobody denies the fact he has the right to do it—I don't deny the fact; others on the committee may. But he has the right to do it.

But I question the judgment, I question the propriety of doing it. I question whether it should be done when we have before us the confirmation of a Chief Justice who himself says let the information be made available. "I don't object to it."

Mr. Chairman, I believe that what you have here is a situation where you have drawn a blanket over a part of the Chief Justice's background, in a period of time that was extremely important, as spelled out by Senator Kennedy. What concerns me is why he would do this. What logical reason?

Separation of powers does not fly, Mr. Bolton. You can hang it on that, but it does not fly, since the President's memorandum very carefully takes care of that.

The CHAIRMAN. Where is this?

Senator METZENBAUM. Where is what?

Mr. BOLTON. Mr. Chairman, could I respond, if Senator Metzenbaum has concluded? Could I respond?

The CHAIRMAN. Yes, you may respond.

Mr. BOLTON. The claim of executive privilege here is based on all three of the heads that are listed in the sentence from the President's memorandum that you referred to.

And I would say in response to your comments, and to a remark that Senator Biden made, that "a lot of people may not understand this." A lot of people may not understand it, and I wish that the appreciation of the importance of separation of powers and the proper role of the three branches was more generally known.

Senator METZENBAUM. But it is not separation of powers.

Mr. BOLTON. It is, Senator, with all due respect.

Senator METZENBAUM. Because the President has specifically said we may have the information unless you invoke Executive privilege and you people told him to invoke it. So, there was no separation of powers issue until you told him to invoke it.

Mr. BOLTON. I do not quite follow that, Senator.

The CHAIRMAN. Go ahead. You have a right to finish your statement.

Senator METZENBAUM. But I do. I do follow it.

Mr. BOLTON. The President has made a determination based on the recommendations that I noted before, that release of these documents would impair the internal deliberative functions of the Government.

And even though it was some time ago, as I quoted earlier from Justice Brennan, not known as an extreme conservative, and his adoption of the Solicitor General's brief in Nixon against Administrator of General Services, the privilege survives the tenure of any one President because—and I will quote again: "The privilege is not for the benefit of the President as an individual, but for the benefit of the Republic."

Senator METZENBAUM. Mr. Bolton, did you give us the memos, the private memos of Brad Reynolds when he was up for confirmation?

Mr. BOLTON. I was not at the Department at that time. My understanding is that memoranda from the files of the Civil Rights Division were provided to the committee, but I would stress that there is a difference between the work of the litigating divisions of the Department—although in some cases, a claim of Executive privilege would be appropriate there—and the Office of Legal Counsel and the Solicitor General's Office which perform core functions of advising the Attorney General, the President's chief legal adviser.

And I might note that, as I understand it, during the confirmation hearings of Charles Freed to be Solicitor General, the committee requested documents from the Office of the Solicitor General, and the request was declined.

Senator METZENBAUM. Mr. Bolton, did you give Office of Legal Counsel memos to the House?

Mr. BOLTON. As I indicated earlier to Senator Simon who asked a similar question, and let me repeat what I said there, because there is still the potential for litigation arising out of that matter, I am constrained in what I can say.

But one critical difference between that situation and the present situation is——

Senator METZENBAUM. Well, just answer yes or no. Did you or didn't you?

Mr. BOLTON [continuing]. Is that in that situation, the President determined to waive Executive privilege. Here, he has determined to assert it.

Senator METZENBAUM. But you did give the memos to the House?

Mr. BOLTON. Such documents were produced. That is correct.

The CHAIRMAN. Anything else now? We have got to get onto these witnesses. I want to say this: this is not the first time Executive privilege has been claimed. In 1961 and 1962, I spearheaded an investigation concerning the merging of the military.

I requested memorandums and documents, and everything from the Defense Department, from Secretary McNamara. He would not furnish them. And finally we kept on and on, and then the vice president was sent down to the hearing to announce that he claims Executive privilege.

This is no more of a Watergate or a coverup than I caught back during the Kennedy administration. They denied me the documents I wanted at that time. They claimed they had the reason for it, national security, and so forth. Anyway, that was it.

So this situation today is no worse than it was then. They have a right to exercise Executive privilege, and I did not contend further because I knew they had that right.

Now you have exercised executive privilege here on behalf of the Attorney General and the President, and that ends it. If you want to furnish anything else tomorrow or later, you can do it, but so far as I am concerned, that ends it, and we are now going into the witnesses, and you are now excused.

Senator KENNEDY. If the Chair would—since there was some reference to a previous administration, if I could just have maybe 1 minute on that.

The CHAIRMAN. I will be glad to——

Senator KENNEDY. If it was wrong then, it does not make it right now. There were wrong things that—mistakes made during that time, and it does not make them right now.

Now I understand, that under the Executive order, to comply with it, the document has to be referenced, the date has to be referenced. The author has to be referenced and the recipient has to be referenced, in order to comply with the law. And——

The CHAIRMAN. I thought I should have had them then, but under the authority now——

Senator KENNEDY. Well, I am just asking whether that has been complied with now, from the Office of Legal Counsel.

The CHAIRMAN. I think——

Senator KENNEDY. Those are the requirements under law now——

The CHAIRMAN. I think they have got grounds here to claim——

Senator KENNEDY [continuing]. And I want to know if those have been complied with.

The CHAIRMAN [continuing]. If they want to. In fact——

Senator KENNEDY. I am asking a question. Can I get the answer?

The CHAIRMAN. In fact we could even——

Senator KENNEDY. You can give me the answer. Otherwise we will sing a song here——

The CHAIRMAN. Do you want to answer his question?

Senator KENNEDY. I do not think there have been, and that is why we are getting a little committee filibuster.

Senator HATCH. Look at that smile on Senator Kennedy's face.

The CHAIRMAN. Well, at any rate, even if he had not claimed Executive privilege, I think the committee had the right to act on the second and third reasons here, to waive exceptions.

Senator KENNEDY. Well, have they got the document date, author and recipient? Have you complied with that part of the law?

Mr. BOLTON. Excuse me, Senator Kennedy. From what portion of the memorandum?

Senator KENNEDY. To use the Executive privilege, under existing judicial precedents, you have to name the document, the date, the author, and the recipient. Those are required now under the current judicial holdings for the exercise of Executive privilege, and I am asking whether that aspect of the law has been complied with by the administration.

Mr. BOLTON. Well, I believe what you are referring to is if there is anything further to be done with it. There is certainly no requirement, at this juncture, that such a tabulation be prepared.

Senator KENNEDY. I believe once, if you are going to use Executive privilege for any particular document, those requirements have to be met. So I would hope that you would, because there is going to be obvious efforts to obtain them.

Mr. BOLTON. I would say again, Senator, I do not believe there is any specific requirement at this point.

The CHAIRMAN. In 1961, they were not referenced then. The military was muzzled. They could not talk against communism, make public speeches, and I objected to it because they were muzzled. I tried to get some documents and they——

Senator KENNEDY. I thought we were going onto the other witnesses.

The CHAIRMAN. Let me get through. And no numbers were given. No numbers were given, no reference was given——

Senator KENNEDY. That is a long time ago.

The CHAIRMAN. And I was just in a—that is right, a long time ago.

Senator KENNEDY. That is a long time ago.

Mr. BOLTON. I am with you, Mr. Chairman.

The CHAIRMAN. At any rate, this situation here is not half as bad as that. Now we are going to the witnesses. We are going to the witnesses now.

Now the following people have submitted statements to save time: Donald Baldwin, executive director, National Law Enforcement Council. Paul M. Weyrich, Free Congress, Research and Education Foundation. Patrick V. McGooghan, the Institute for Government and Politics. The Honorable Phil Neal, Neal, Gover & Eisenberg; Mr. Gerhardt Casper, office of the dean, University of Chicago, Law School; Honorable Charles S. Rhein, past president, American Bar Association. Gerald P. Regard, president, Family Research Council. William French Smith, former Attorney General. All in support of Mr. Rehnquist.

To save time, we are just going to put them in the record.

Mr. LOTT. Mr. President, in the past, a number of Senators have risen in the Judiciary Committee and here on the floor and really complained about previous administrations not providing all the information that was required. I remember in particular there was a situation with Justice Rehnquist where his confirmation was held up because I believe Executive privilege was asked for by the administration, and the committee said we are not going to let this nomination go forward until we get all of the information. It was held up.

That is what we should do here. We should hold this nomination up until we find out exactly what happened in these negotiations and those discussions outside the room. Once that is done, then I think we can take up the nomination and vote, having full faith that we took every effort to find out the details of what transpired.

Mr. President, I see that there are members of the Judiciary Committee here on the floor that can perhaps give some more detail on what happened. I would be glad at this time to yield the floor so that they may speak.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. SIMPSON. Mr. President, while the majority leader is here, I might make a request, if I could, for an additional 10 minutes. I am perfectly aware of how unattractive that is to most of us. But I originally had requested that I be consulted before this came forward. I was not given that privilege.

It is not the leader's fault, but nevertheless—I would like to have 10 or 15 minutes of remarks. I ask unanimous consent for the additional 10 minutes so I might discuss this, because certainly the consultation was not honored.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. MITCHELL. Mr. President, I am sorry that the consultation fell through. Of course, we just dealt with the leader's office.

But I have no objection. Might the Senator agree that Senator DECONCINI would have an equal amount of additional time, if he chooses to do so?

Mr. SIMPSON. I can assure you I think that is acceptable.

Mr. MITCHELL. Mr. President, I make the request.

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

The Senator from Wyoming, Mr. SIMPSON, is recognized.

Mr. SIMPSON. Mr. President, I thank the majority leader for his sense of fairness, which is always evidenced. I admire him, and I have told him that many times.

Mr. President, this is one that perhaps I should not enter into, but I cannot resist because it is so blatant and so strange. Janet Napolitano, who has been nominated by this administration to be the U.S. attorney for Arizona, has declined to answer certain questions which Senator STROM THURMOND and I submitted to her during the Judiciary Committee's review of the nomination.

She was present when the committee staff interviewed one Susan Hoerchner, a person involved in the Clarence Thomas hearings who Anita Hill initially identified—please hear this—as the only person, the only person, she had ever told about the alleged sexual harassment. Remember, too, in your review that Anita Hill never alleged sexual harassment to the Judiciary Committee. That seems to have been forgotten in the revision of history in the current day. But she never alleged that Clarence Thomas had been guilty of sexual harassment, never: Not in the FBI report, not in her first statement, not in her revised statement.

She wanted the committee to look at his behavior, to be aware of his behavior. Then she refused to give the committee her name; she refused to have her name submitted to the accused. And the chairman, being a fair and remarkable man, said, "We do not do business that way."

Then, through the media—and we all know the story—her story was presented when a member of the media called her and said, "Everybody knows about this. Are you going to say it, or shall we say it?"

So she said it for herself, and she said, "This is devastating for me." And it has proven so; just as devastating for her, Anita Hill, as it was devastating for Clarence Thomas.

That all happened while I was observing. And a most fascinating part of the process was the witness, Susan Hoerchner, who had her own attorney—get this—present at the committee interview. Ms. Napolitano was also present and introduced herself on the record as the attorney for Anita Hill; nothing more.

During the interview, Hoerchner related that she recalled Hill telephoning her in September 1981 to say she was being sexually harassed by her boss. Hill did not go to work for Thomas until September 1981. Hill had already testified that the harassment had occurred 2 or 3 months after she took the job with Clarence Thomas. Thus, according to Hoerchner's recollection, it could not have been Clarence Thomas who Hill spoke of in the September telephone conversation.

So Hoerchner then also told the Senate investigators—this is all in the transcript—that Hill had related to her recently that Hoerchner was the only person she had told about the harassment.

At this point, Napolitano interrupted the interview to ask if she could speak privately to Hoerchner. There was then a break in the interview—this is all in the transcript—while Napolitano took Hoerchner into the hall to speak to her. Hoerchner came back and testified that she could not remember for sure when the telephone conversation with Hill did take place. She corrected herself to say it was the FBI agents who interviewed her who made her think that she was the only person that Anita Hill had told about the alleged harassment.

Those changes in Hoerchner's testimony after her private conversation with Napolitano in the hall I think raises a valid question of what Napolitano told Hoerchner in that conversation.

For example, did Napolitano tell her that Hill, in her testimony to the Judiciary Committee earlier in that day, had stated that the alleged harassment had occurred months after the date Hoerchner had suggested? Did Napolitano tell Hoerchner that her testimony contradicted Hill's testimony that morning that she had told three persons instead of one about the alleged harassment?

So Senator THURMOND and I submitted questions to Napolitano asking what she said to Hoerchner when she took her into the hall to speak to her privately and confidentially, and Napolitano has refused to answer claiming the attorney-client privilege.

Napolitano was not Hoerchner's attorney. So no attorney-client privilege relationship existed between them. There was no lawsuit involved, no litigation. So there was no common defense which Hill and Hoerchner can claim.

So the common interest or the pooled information exception did not exist in this case. Further, the attorney-client privilege exists to protect confidential communications from the client to the attorney, or to protect communications from the attorney which could disclose confidential matters told to the attorney by the client.

If Hoerchner was seeking legal advice, then she would have sought it from her own attorney, who was present at the time.

Additionally, since it was Napolitano who interrupted the interview and sought to speak with Hoerchner, one can only conclude that in reality, Ms. Napolitano is seeking to protect Ms. Napolitano, not Hoerchner. All we want Napolitano to answer is this question, which she has refused: What did you say to Susan Hoerchner when you took her out into the hall? We do not want to know what Hoerchner said to Napolitano. In fact, we do not even know if she said anything to Napolitano. What we wanted and needed to know, before confirming her as the chief Federal prosecutor in the State of Arizona, is whether she did indeed instruct Hoerchner to alter her testimony to Senate investigators.

Instead, she refuses to answer, using what I believe is a bogus claim of privilege, since she was not the attorney of Susan Hoerchner. I will not support the confirmation of a nominee who is not forthcoming, one who would hinder rather than facilitate the committee's efforts to carry out its confirmation duties.

I might also note that in the 10 years since her graduation from law school, Ms. Napolitano has had virtually no criminal justice experience. She has said that .5 percent of her practice—half of 1 percent of her practice—has involved criminal matters, and I predict she will have a very difficult time as a Federal prosecutor if she takes this extraordinary broad and loose view of the attorney-client privilege. Criminal defendants will use it against her. I believe that they can read the transcripts. I think she is going to find her work to be very difficult. It is very unfortunate to see a person who will be the chief legal officer—and I am fascinated as to her rationale as to why she would not respond—using some kind of pooled information doctrine when it obviously does not apply.

So I am sure there will be some dazzling explanations on Ms. Napolitano's behalf as to how good she is. I do not know about that. All I know is that she pulled a woman out into the hallway and said something to her and then exerted the privilege, and there was no purpose in that, unless she was rehabilitating her testimony, which seems to be the case in reviewing the record. Very interesting. That is why I will vote against her. I am not up to filibustering. I have never said that. I am up to a little honesty and openness about a concept used in litigation and used between the attorney and the client. This is absurd.

Mr. DECONCINI addressed the Chair.

The PRESIDING OFFICER (Mr. ROBB). The Senator from Arizona is recognized.

Mr. DECONCINI. Mr. President, just for clarification purposes, and then I will yield to the Senator from California, let me explain. Janet Napolitano was one of several lawyers representing

Anita Hill. Judge Hoerchner was a corroborating witness for Anita Hill, who was represented by Mr. Allen. During the conversation that is in question here, attorney Napolitano represented her client in a matter of common interest, in cooperation with an attorney for another client—here, Mr. Allen, who represents Ms. Hoerchner. The conversation, off the record, was among Ms. Hoerchner, her attorney, Mr. Allen, and Ms. Napolitano, the attorney for Ms. Hill.

What does all that mean? Well, according to the leading authority on legal ethics, Prof. Geoffrey Hazard of Yale Law School, along with the American Law Institute's Restatement of the Law Governing Lawyers:

"In such circumstances, the attorney-client privilege protecting Ms. Hoerchner governs not only her attorney, Mr. Allen, but the other attorney made privy to the discussion of the matter of common interest," meaning and stating "Attorney Napolitano."

So if this nominee came forward and disclosed what this conversation was, she is violating the code of ethics and would be subject to disbarment in the State of Arizona. As a result, Janet Napolitano is in a no-win situation. She has asked Ms. Hoerchner if she would waive her privilege but Ms. Hoerchner has elected not to, and there is a letter in the RECORD stating her reasons for doing so.

So Ms. Napolitano was willing to come forward and explain everything. But she cannot. Is she to be punished because she represented Anita Hill? Is she to be punished because she does not want to violate her legal code of responsibility and disclose this privileged conversation? I do not think she should.

I do not think the Judiciary Committee has the right to force her. They cannot force her. She has been cooperative and has gone so far as to ask the person who has the privilege—in this case, Judge Hoerchner—if she would waive this privilege, but Judge Hoerchner has declined. It is clear that the attorney-client privilege is here.

I yield 2 minutes to the Senator from California.

Mrs. BOXER. I thank the Senator for yielding. The Senator from Wyoming says, "I do not know how good this woman is," and I think it is important to look at her qualifications: Phi Beta Kappa, Truman scholar, clerk to the Ninth Circuit Court, partner in a law firm. If the Senator wants more, I could read that she has been warmly endorsed by all of the Arizona U.S. attorneys for the past 20 years, appointed by both parties, and the last U.S. district court judge appointee of President Bush is among them. She was warmly endorsed by the ranking Republican on the State supreme court. The five most recent Presidents of the Arizona State Bar have warmly endorsed Ms. Napolitano and strongly commend her for meeting the ethical requirements of the attorney-client privilege. The Arizona Republic and the Atlanta Constitution have editorialized strongly in her favor.

I have to say, Mr. President, that I am very sad to see this campaign—if I can call it that—against a most qualified nominee for U.S. attorney. There is no real issue against Ms. Napolitano. We have the transcripts here that show this whole business of an interruption. That is based on a false transcript. We have a transcript here. We have the highest experts saying this woman is quite ethical.

I am very distressed that there are some in this Chamber who cannot seem to put behind them the Thomas-Hill hearings. Let us heal this Chamber. When are we going to put that behind us? We have a qualified woman here. She is probably more qualified than many who have come before her. The Senator from Arizona feels she would be excellent.

I just have to say what is really going on here is not about this interruption, because that has all been cleared up on the record. She has been cleared. What it is about is that there are some people who cannot put the Thomas-Hill hearings behind them. Yes, she was one of the lawyers for Prof. Anita Hill. Guess what? That is not a crime. Let us come together and vote for this nominee.

I yield the floor.

The PRESIDING OFFICER. All time yielded to the Senator has expired.

Who yields time?

Mr. DECONCINI. Mr. President, I yield 2 minutes to the Senator from Illinois.

Ms. MOSELEY-BRAUN. Mr. President, I will pick up where my distinguished colleague from California left off to say that this is an issue that should have died a simple death and, instead, the issue is continuing to rattle along and to bedevil all of us in this Chamber.

Actually, I would not be in this Chamber were it not in part for this issue. Frankly, it was the conduct of the Senate committee in the Thomas-Hill hearings that alerted America and suggested to a lot of people out there that there ought to be women elected to this body. I, along with a group of other women, were elected for the first time. It was a sea change in American politics coming from that one incident. Why this is being dragged out like this is a mystery to me. It makes no sense to continue to pick apart all of the discrete incidents and occurrences associated with those hearings and continue to air that laundry, if you will, before the world every time a new aspect of it arises.

That is precisely what is involved here. There are people who are upset and angry at the way this nominee conducted and comported herself in connection with her representation of a witness at the hearing. It is just that simple. Out of that disapproval of her conduct—coming out of that activity—her nomination as a U.S. attorney for Arizona is being held up.

I think it is unfair, wrong, and, quite frankly, I think the objection to her nomination underscores the need for some consciousness raising on the entire issue of what is and is not permissible conduct.

I was taken by another irony, in addition to the fact that I am standing here speaking on behalf of a woman who came out of a hearing—that had the hearing not happened, I might not be here. There is another irony, and that is the letter speaking to the propriety of Ms. Napolitano's conduct that comes from one Geoffrey C. Hazard, the sterling professor of law at Yale Law School.

He also was and is the director of the American Law Institute. Professor Hazard says in 25 words or less that what she did was ethical and in keeping with the representation, the highest conduct and standard of conduct for attorneys representing their clients.

But even more to the point, I was struck by the fact Professor Hazard was a professor of mine at the law school in Chicago years ago. I do not know Ms. Napolitano, but I do know Professor Hazard. He is a man of sterling integrity and of the highest caliber intellect. He is probably one of the smartest lawyers in this country. For him to have opined that in this situation there was no violation of any legal rules, there was no violation of any legal ethics and activities, Ms. Napolitano was fully in keeping with the highest standards of practice seems to me to tell or should tell someone something.

What it tells us is that there is no rationale, no good reason to hold up this nomination, and that the efforts to hold up this nomination are predicated in a longstanding crunch from 1½ years ago that just will not go away.

I will conclude my remarks by saying I hope that the Members of this Chamber will put a stake through the heart of those hearings once and for all and end this chapter in our history by approving this nominee.

The PRESIDING OFFICER. The time allotted to the Senator from Illinois has expired.

Who yields time?

Mr. SIMPSON addressed the Chair.

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

Mr. SIMPSON. What is the situation with regard to time?

The PRESIDING OFFICER. The Senator from Wyoming controls 4 minutes and 27 seconds; the Senator from Arizona controls 5 minutes and 41 seconds.

Mr. SIMPSON. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator's time is reserved.

Who yields time?

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

Mr. SIMPSON. Is the Senator waiving the remainder of his time?

Mr. DECONCINI. I am prepared to yield it back, if the Senator wants to yield it back. I am prepared to proceed.

Mr. SIMPSON. I reserve my time, and if we go to a quorum call, we then delay.

Let the record be absolutely clear I want my colleagues from Illinois and California, if I might have their attention——

The PRESIDING OFFICER. The Senator from Wyoming [Mr. SIMPSON] is recognized on his time.

Mr. SIMPSON. For a point of parliamentary privilege, this Senator is not involved in placing a hold on the nomination of this nominee. I have never done that. I said I would not filibuster. I want the record to be absolutely clear. All I said was I wanted a consultation before it came forward so we could have a proper time agreement which might have been another 20 minutes on either side. I want the record to be absolutely certain that this Senator was not involved in delaying tactics in any sense.

Mr. DECONCINI. Will the Senator yield on my time?

The PRESIDING OFFICER. The Senator from Arizona [Mr. DECONCINI].

Mr. DECONCINI. I concur in the remarks by Senator SIMPSON. He has never indicated and, quite to the contrary, has indicated from the very beginning that he would not hold up this nomination. Though he felt strongly about her, he would present some facts as he sees them and make a case and vote against her. That is very accurate.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming [Mr. SIMPSON].

Mr. SIMPSON. Let me say I am very pleased to work with these new Members. These two fine Members are on committees on which I serve—Judiciary with Senator MOSELEY-BRAUN, and the Environment and Public Works with Senator BOXER. They are a great addition. They bring great energy, spirit, and intellect to this place. I am fascinated when I hear about washing old laundry on this. When the 2-year anniversary came, I was interviewed by 100 people hoping they could find out things during the second anniversary.

I said, "Why do you not all go home?" They did not go home. This is not about laundry. She did not answer my questions and she used a privilege that does not exist in this instance, because she was not that person's attorney. To me that brings into question her knowledge of the law. I think nominees must be required to cooperate with the Senate in its constitutional duty to investigate a nominee's qualifications for high office. The question here is: Should the Senate confirm nominees who refuse to provide information requested by the Judiciary Committee.

Some nominees in recent memory were required to supply 30 boxes of materials to emphasize the type of inquiry that some nominees were required to respond to. So that is where I am coming from.

Thank you.

Ms. MOSELEY-BRAUN. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Who yields time?

Ms. MOSELEY-BRAUN. Is the Senator not aware that Attorney Napolitano was acting in the capacity of counsel to Ms. Hill at the time of these occurrences?

Mr. SIMPSON. I would respectfully say to my colleague from Illinois that she was representing Anita Hill, indeed, but she was not representing Ms. Hoerchner, because Ms. Hoerchner had an attorney of her own and this is not a phony transcript. This is a complete transcript of an interview which is not sworn to but nevertheless has never been objected to and was recorded.

Ms. MOSELEY-BRAUN. Then I would bring the Senator's attention to Professor Hazard's letter of September 28 where he talks specifically about the attorney-client privilege, and he says on page 7.

> Attorney Napolitano was representing her client, Ms. Hill, in a matter of common interest in cooperation with an attorney for another client, Mr. Allen on behalf of Ms. Hoerchner. The conversation off the record was among Ms. Hoerchner, her attorney Mr. Allen, and Ms. Napolitano as Ms. Hill's attorney. In such circumstances, the attorney-client privilege protecting Ms. Hoerchner governs not only her attorney, Mr. Allen, but the other attorney made privy to the discussion of the matter of common interest, Attorney Napolitano.

That is kind of a black book law to my colleague, and I know he delves into these matters, but that is and always has been the interpretation of the operation of the privilege in these circumstances.

So to suggest that somehow Attorney Napolitano was acting outside of the authority and the responsibility that her status as Ms. Hill's attorney gave her in this situation I think again obscures the point of her responsibilities as counsel to Ms. Hill in connection with matters of common interest with Ms. Hoerchner.

Mr. SIMPSON. Mr. President, let me say it would be——

The PRESIDING OFFICER. The time controlled by the Senator from Wyoming has expired.

Mr. SIMPSON. Could I have an additional minute?

Mr. DECONCINI. How much time does the Senator have?

The PRESIDING OFFICER. The Senator has 5 minutes and 17 seconds.

Mr. DECONCINI. Mr. President, I yield 2 minutes to the Senator.

The PRESIDING OFFICER. The Senator from Wyoming is recognized for up to 2 minutes on time chargeable to the Senator from Arizona.

Mr. SIMPSON. I thank the Senator very much for his courtesies.

It would be hazardous to challenge Professor Hazard, but I will, and I certainly will, because there was no lawsuit involved here. No litigation was involved in this situation.

So there was no common defense which Hill or Hoerchner could claim, so the common interest, or the pooled information exception, does not exist in this case. We do not want to know what Ms. Hoerchner said. I want to know what Ms. Napolitano said, and that has nothing to do with the claimed privilege because they were not in the attorney-client relationship, and there was no litigation involved so no common interest, no common defense, and no pooled information exception.

Ms. MOSELEY-BRAUN. Mr. President, will the Senator yield?

Mr. DECONCINI. Mr. President, if I could, I will yield time in a moment.

The PRESIDING OFFICER. The Senator from Arizona [Mr. DECONCINI].

Mr. DECONCINI. Mr. President, I have to beg to differ with my friend from Wyoming because, according to the people who write ethics, who write evidence rules—and one is "Weinstein on Evidence"—it says clearly the privilege between attorney and client apply not only to the actual litigation but to "whenever the communication was made in order to facilitate the rendition of legal services to each of the clients involved in conference." That is exactly what we are talking about.

Ms. Napolitano was there with Ms. Hoerchner's lawyer, Mr. Allen, as the Senator from Illinois just read in Professor Hazard's letter. That is what happened. A privileged conversation took place. And now, Janet Napolitano is being asked to dissolve that privilege, which she cannot do. To me, there is no question that the privilege is there, although some will disagree, and I respect that, but I believe it is overwhelmingly clear.

I am glad to yield a minute to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois [Ms. MOSELEY-BRAUN] is recognized for up to 1 minute.

Ms. MOSELEY-BRAUN. I thank the Senator from Arizona very much. He took the words out of my mouth and made exactly the point I wanted to make.

I know the Senator from Wyoming is aware that the attorney-client privilege does not necessarily require litigation to be ongoing. The privilege attaches to the relationship, not necessarily to the forum.

But, be that as it may, I want to say in closing—because I really had not intended for this to become this kind of colloquy—one of the lovely things about this institution is that individuals can object to a nomination for a good reason, a bad reason, or no reason at all.

If the Senator were to suggest that the reason for holding up or for objecting to this nomination was a good reason, then I submit to him Dr. Hazard's analysis of the law, and suggest that maybe perhaps on the law it is not really a good reason. We, obviously, are entitled to disagree with one another on the law.

But here I think the law is pretty clear. What Ms. Napolitano did as an attorney was in keeping with not just the law but with the ethics of the profession.

The second point, however, is with regard to no reason at all. If the Senator wants to object to her confirmation for no reason at all, it certainly is obviously his right or anyone else's right.

But let us be clear. The objection to this nomination is not made for bad reasons. It is the bad reasons that worry me and for which I have taken the floor to suggest that perhaps it is time we put the Anita Hill-Clarence Thomas hearings behind us.

Mr. DECONCINI. Mr. President, how much time does the Senator from Arizona control?

The PRESIDING OFFICER. The Senator from Arizona controls 1 minute and 32 seconds.

Mr. DECONCINI. Mr. President, I yield the remaining time to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico is recognized for the remaining time.

Mr. BINGAMAN. Mr. President, I thank the Senator from Arizona very much.

Mr. President, I wish to just speak briefly, because I know the nominee. I compliment the Senator from Arizona for the excellent recommendation that he made to the President in this case, and I compliment the President for indicating his desire to go forward with this nomination.

Janet Napolitano is someone who grew up in New Mexico. Her father is the retiring dean of our medical school; an extremely respected family in our State.

She is one of the real bright stars that we like to look as coming up in the legal profession around this country. She has practiced law with great distinction in Phoenix, AZ. I know many of the attorneys who have practiced with her and they are extremely respectful of her capability.

I think this is an excellent nomination. I urge my colleagues to support her.

CLOTURE MOTION

The PRESIDING OFFICER. All time having been yielded back or expired, under the previous order, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on Executive Calendar No. 387, the nomination of Janet Ann Napolitano to be U.S. attorney for the District of Arizona:

Wendell Ford, Paul Wellstone, Tom Harkin, Paul Simon, Edward Kennedy, Pat Leahy, Jay Rockefeller, Jeff Bingaman, David Pryor, Patty Murray, Dianne Feinstein, Howard M. Metzenbaum, Dennis DeConcini, Harris Wofford, John F. Kerry, Carl Levin.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the quorum call has been waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the nomination of Janet Ann Napolitano of Arizona, to be U.S. attorney for the District of Arizona, shall be brought to a close? The yeas and nays are required. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. DORGAN] is necessarily absent.

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

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

The yeas and nays resulted—yeas 72, nays 26, as follows:

The result was announced—yeas 72, nays 26, as follows:

[Rollcall Vote No. 388 Ex.]

YEAS—72

Akaka	Feingold	Metzenbaum
Baucus	Feinstein	Mikulski
Biden	Ford	Mitchell
Bingaman	Glenn	Moseley-Braun
Bond	Graham	Moynihan
Boren	Harkin	Murray
Boxer	Hatfield	Nunn
Bradley	Heflin	Pell
Breaux	Hollings	Pryor
Bryan	Inouye	Reid
Bumpers	Jeffords	Riegle
Burns	Johnston	Robb
Byrd	Kassebaum	Rockefeller
Campbell	Kennedy	Roth
Chafee	Kerrey	Sarbanes
Cohen	Kerry	Sasser
Conrad	Kohl	Shelby
D'Amato	Lautenberg	Simon
Daschle	Leahy	Specter
DeConcini	Levin	Stevens
Dodd	Lieberman	Thurmond
Domenici	Lugar	Warner
Durenberger	Mathews	Wellstone
Exon	McCain	Wofford

NAYS—26

Bennett	Gorton	Mack
Brown	Gramm	McConnell
Coats	Grassley	Murkowski
Cochran	Gregg	Nickles
Coverdell	Hatch	Pressler
Craig	Helms	Simpson
Danforth	Hutchison	Smith
Dole	Kempthorne	Wallop
Faircloth	Lott	

NOT VOTING—2

Dorgan Packwood

The PRESIDING OFFICER. On this vote, the yeas are 72, the nays are 26. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Janet Ann Napolitano, of Arizona, to be U.S. attorney for the District of Arizona?

So the nomination was confirmed.

Mr. GLENN. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

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

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

UNANIMOUS-CONSENT AGREEMENT—H.R. 3450

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of the North American Free-Trade Agreement legislation, H.R. 3450, with the following Senators controlling time: Senator BAUCUS controlling the time for the Democratic proponents; Senator MOYNIHAN controlling the time for the Democratic opponents; Senator STEVENS controlling the time for the Republican opponents; Senator PACKWOOD controlling the time for the Republican proponents; and that the bill be returned to the calendar today at such time as decided by the majority leader, after consultation with the Republican leader.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. Reserving the right to object. Can we find out how much time is left? Eight hours is left? Will there be adequate time for people on all sides?

Mr. MITCHELL. We are working to try to accommodate the Senator.

The PRESIDING OFFICER. Is there objection?

Mr. COATS. Reserving the right to object. I am trying to get some idea for the timing on the votes this evening, particularly on the NAFTA vote. I do not know how much time is left. I would like to speak on that, but if all time is used on this, I would like to inquire of the majority leader whether

we will still be voting on that issue this evening and roughly when?

Mr. MITCHELL. Mr. President, I made no decision in that regard and will not do so until I consult further with the Republican leader and the managers of the bill.

The PRESIDING OFFICER. Is there objection to the unanimous consent request propounded by the majority leader? Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I thank my colleagues. If I could say further to the Senator from Indiana that as soon as I make a decision, I will announce it so that all Senators will be aware of it. It depends upon several factors, including how much more time is used this evening which, of course, means how much time is left when we conclude debate on it this evening, and a couple of other measures that we have been discussing. So there has been no decision as yet. I will discuss it in great detail with the Republican leader.

NORTH AMERICAN FREE-TRADE AGREEMENT IMPLEMENTATION ACT

The PRESIDING OFFICER. Under the previous order, the clerk will report the pending business.

The assistant legislative clerk read as follows:

A bill (H.R. 3450) to implement the North American Free-Trade Agreement.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. Who yields time? The Chair recognizes the Senator from Alaska.

Mr. STEVENS. Mr. President, I yield myself 30 minutes and I will state to Senators, if I understand the procedure correctly, there should be a vote as to what I am going to propose sometime between 6 and 6:30.

The PRESIDING OFFICER. The Senator is recognized for up to 30 minutes.

Mr. STEVENS. Mr. President, I am normally in favor of free trade, and I try to support free trade concepts.

Article II, section 2, clause 2 of the Constitution grants to the Senate the responsibility to review and "advise and consent" to treaties negotiated by the President. Nevertheless, there has been a recent growth in the use of Executive agreements instead of treaties with regard to international agreements. There is no question that this trend has diluted the Senate's constitutionally granted power to advise and consent on such international agreements.

Although the President has some discretion to choose the instrument that he will use to enter into an international agreement, he must respect the confines of the instrument he chooses. I believe the Constitution refers to treaties, to compacts and to agreements as some of the choices the President has. But, I believe that there are some parameters on any President in choosing the instrument that he is going to use for international accords.

This administration's submission of side accords—agreements that are not trade agreements—in the NAFTA implementing legislation oversteps the authority of the President.

Never before has Congress passed a "nontrade" executive agreement under the fast-track procedure. When the fast-track procedure was granted by the Congress to the President, it was never contemplated, and I challenge anyone to find anywhere in any of the reports or in the laws that it was contemplated, that additional nontrade executive agreements could be included in the legislation that approves trade agreements under the fast-track concept.

I believe that the President should be required to submit implementing legislation for the side accords to the Congress which would be subject to amendment by Members of Congress.

I wish to call this to the attention of the Senate. In a few moments I will offer an amendment that will trigger a procedure that we have discussed with the Parliamentarian.

(Mrs. FEINSTEIN assumed the chair.)

Mr. STEVENS. Let me call to the attention of the Senate the fact that NAFTA with the side accords creates a series of new bureaucracies. These were listed in an article that appeared in the Washington Times on November 16, and included a chart prepared by the Competitive Enterprise Institute which listed the number of new bureaucracies created by the side accords. I have seen the list in several other places but for convenience we use the list included in that article.

The first is the North American Free-Trade Commission which has 24 subbureaucracies. The side accords also create the North American Development Bank, the Border Environment Cooperation Commission, the Commission for Environmental Cooperation, which has a series of subcommittees or panels: Council, Secretariat, Joint and Public Advisory Committee, Arbitral Panels, National Advisory Committees, Governmental Committees, and ad hoc committees. There is a Commission for Labor Cooperation, Ministerial Council, International Coordinating Secretariat, National Administrative Offices, Evaluation Committees of Experts, Arbitration Panels again, and a whole series of additional separate items.

Of the 19 items listed on this chart, all except the North American Free-Trade Commission are created by separate agreements that are incorporated in this legislation. These are new bureaucracies. One, as I said, is the North American Development Bank. It was negotiated after the other side accords were completed, as was the Border Environment Cooperation Commission.

What concerns me about these commissions is they create high-level staff positions that will be filled by individuals that are not appointed with the advise and consent of the Senate. Although the U.S. representative or the environment and labor councils will be filled by a cabinet-level official, there are many other powerful staff positions such as the Secretariat that will be appointed without congressional approval. Except for the council representative, none of them will be submitted to the Senate for confirmation. All of them will be appointed without congressional approval.

The Secretariat has authority to investigate a wide range of issues that could have a significant impact on individual States, and that is why I am here today.

I believe that the Congress has a role to play in the creation of new international bodies. I would liken this to the Law-of-the-Sea Treaty. The concepts that are created by these two side agreements are very much like the Law-of-the-Sea Treaty. They are so similar that I believe the side accords should have been negotiated as a treaty and presented to the Senate as such. They instead come to us as side agreements. But, they are not trade agreements.

Now, Madam President, I am one who lived through the Depression days. I have heard a lot of people talk here today and yesterday about their personal experiences with regard to trade and the role that it played just prior to the depression.

Nevertheless, I believe Congress has made a great mistake in this trade agreement to begin with by ignoring the viewpoints that have been expressed by working people throughout the country. In their effort to balance those interests, I believe, the administration has created a situation where—and this is not a political comment, it is just a fact—in seeking to augment new points of view, rushed ahead and created two additional agreements for the purpose of addressing some of those concerns. The result was the additional side accords—executive agreements that should not be in this bill.

Parliamentary inquiry: Has this bill been designated as a revenue measure?

The PRESIDING OFFICER. The bill has been considered on the assumption that it is a revenue measure.

Mr. STEVENS. I believe that the Senate should be aware that under the Constitution there is no question that article I, section 7 provides Members of the Senate the right to offer amendments to revenue bills.

Article 1, section 7:

All bills for raising Revenues shall originate in the House of Representatives, but the Senate may propose or concur with Amendments as on other Bills.

Now, just as a side reference, listen to that—"as on other bills." I have presumed now for 25 years that I have the right to offer an amendment to any bill, right? We sometimes limit that right to offer amendments. We designate that we can consent to it, but we enter into consent agreements. In this instance, we set up a procedure that I think has ignored this Constitutional right, and I wish to now trigger this concept.

AMENDMENT NO. 1221

(Purpose: To strike Subtitle D, Implementation of NAFTA Supplemental Agreements, from the North American Free Trade Agreement Implementation Act)

Mr. STEVENS. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will read the amendment.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS] proposes an amendment numbered 1221.

Beginning on page 282, line 11, strike all through line 4 on page 300.

Mr. STEVENS. Madam President, I would ask, is this amendment in order?

The PRESIDING OFFICER. The Chair holds that the amendment is not in order under fast-track legislation 19 U.S.C. 2191(d).

Mr. STEVENS. Madam President, I appeal the ruling of the Chair.

Mr. MOYNIHAN. I ask for the yeas and nays.

The PRESIDING OFFICER. Under the fast-track debate, there will be 1 hour evenly divided.

Mr. STEVENS. Madam President, it is my understanding that a half-hour will be under my control as the proponent. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. STEVENS. Will the manager of the bill on the other side be in charge of other 30 minutes?

The PRESIDING OFFICER. That is correct.

Mr. STEVENS. Madam President, I wish to point out once again I believe that as Members of the Senate, we have at the very least, a constitutional right to offer amendments to revenue bills. The ruling of the Chair has just denied me that right after stating that NAFTA is a revenue measure. Clearly, article 1, section 7 of the Constitution gives me the right to propose amendments. The Senate has the right to propose and concur with amendments "as on other bills." The measure before this body is a revenue bill, and should be amendable. I think the Senate must carefully consider this issue. We must consider the very vast precedent that is involved in the procedure that has been followed by this administration. The administration has included in the implementing language of the NAFTA, language to authorize its additional executive agreements.

I do not criticize them for attempting to achieve their goal, but let us look at how we got where we are now.

The 1974 Trade Act sets up the fast-track procedure. It specifically defines the parameters of any legislation to implement a trade agreement under that fast-track procedure established in this act. It states specifically in section 151(b)(1) that the term "implementing bill" means only a bill of either House of Congress which is introduced, et cetera, for the purpose of carrying out approval of a trade agreement. It can only contain: "(A) a provision approving such trade agreement or agreements, (B) a provision approving the statement of administrative action (if any) proposed to implement such trade agreement or agreements, and, (C) if changes in existing laws or new statutory authority is required to implement such trade agreement or agreements, provisions, necessary or appropriate to implement such trade agreement or agreements, either appealing or amending existing law or providing new statutory authority."

Madam President, there is no question that the ruling of the Chair based on the fast-track procedure has prohibited me from offering an amendment to a revenue bill, and has violated my constitutional rights as a Senator from Alaska to offer an amendment to a revenue bill.

It does not seem fair that there can be a procedure in American democracy that would deny a duly elected person the right to try and change a bill—particularly a bill of this type which does not comply with the law.

The side accords included in this legislation were negotiated too late. They were concluded too late for the President to submit them under the fast-track procedure.

Under the 1988 Trade Act, Public Law 100-418, section 1102(c), Congress granted President Bush the authority to "enter into bilateral trade agreements with foreign countries that provide for the elimination or the reduction of any duty imposed by the United States." The authority to negotiate the trade agreement was granted under the fast-track procedures of section 151 of the Trade Act of 1974. Fast-track authority expired on June 1, 1991, but the President had the right to request an extension until May 31, 1993. The extension would be automatically granted unless either House of Congress adopted a resolution of disapproval. Neither House passed one, and the authority was extended until June 1, 1993.

On August 13, 1993, after the expiration of the fast-track authority, the administration announced the completion of two supplemental accords, one on the environment and the other on labor. Let me repeat. The side accords were negotiated 2½ months after the authority for negotiations under fast track had expired.

My second point is that the side accords are not trade agreements. But they are being included in this legislation. My amendment seeks to knock them out. They should not be here. They are not subject to consideration under the fast-track procedure.

In a letter dated October 7, 1993, Trade Ambassador Mickey Kantor told Congressman BILL ARCHER that the environmental and labor side accords were not trade agreements negotiated pursuant to the fast-track procedures, and, therefore, Congress would not be asked to approve the supplemental accords pursuant to the fast track. At the Senate Commerce Committee hearing on October 21, I asked Ambassador Kantor the same question. The reply was a slightly different answer. Ambassador Kantor told me that the implementing legislation for the side accords would be included in the implementing legislation transmitted to Congress because the administration viewed it as "necessary and appropriate" to implement trade agreements.

Madam President, this is where they get the "necessary and appropriate." They get it from section 151(b)(1)(C) of the Trade Act of 1974. But the administration is misreading this section. The "necessary and appropriate" language is only involved if changes in existing law or new statutory authority are required to implement such trade agreements.

There is no authority whatsoever in the law to include separate executive agreements in this legislation. And they should not be here. The Chair, by denying me the right to offer an amendment to delete them, has denied my constitutional rights and is permitting the administration to pursue an authority which is illegal. There is no legal authority for these side agreements to be before the Congress under the fast-track procedures.

I ask the Members of the Senate to think about what we are doing. I asked one of them in one of my conversations, Are there no parameters if this precedence is established on a President in the future? For instance, could the President have put his economic package in this bill? Does it just take a simple majority to rule what is lawful? Can we let a President, in effect, amend a 1974 law in order to get two executive agreements negotiated after the time for the fast track was expired and not within the statutory authority, and bring before us two agreements that in effect deny any Member of the Congress the right to amend them to protect their constituencies?

I go back to my original comment about a treaty. If it were a treaty, we could put a reservation on it. We could offer some understanding as to what it meant. The administration recognizes these are not trade provisions—they have publicly stated so. The side accords are not trade agreements; they are executive agreements.

Since they are not trade provisions, they cannot be "necessary and appropriate" as required under the law to bring about changes in the law or new statutory authority. The Senate should realize that there is no reason to include under fast-track consideration additional material that any President wants to send up here.

We provided the fast-track procedure for a purpose—to allow the President to successfully negotiate trade agreements with other countries. The only thing that can be included in this bill being considered under the fast-track procedure is a change that is necessary to existing law, or to add to new statutory authority, to accommodate this new trade agreement. Nothing else can be included.

Let me go back again. Nothing else because the law clearly says that the bill can contain only—only these three provisions listed in section 151(b) in order to consider under fast track.

The Chair has ruled in effect that the fast track applies to agreements negotiated after the trade agreement negotiating period expired and which are not necessary to bring about changes in the law, as noted by the 1974 act.

Nothing in NAFTA requires the implementation of those side accords. The side accords should and must be submitted to Congress under separate legislation which would be subject to hearings.

Let me go back, lastly, and then I will take questions if anyone wants to inquire of me as to what I am doing.

Look at this provision. We are now asking this legislation to implement all of those new bureaucracies to fund them. There have not been any hearings held as to whether the side agreements fell within the fast-track authority. There has been no participation in the creation of the new bureaucracies. Once more, these are trilateral commissions that are not within the control of the Congress from now on because they have been recognized by this legislation as side agreements. We cannot amend them. You cannot pass a law in here to change a trade agreement once it has been approved under the fast-track procedure.

They have the same status, Madam President, as a treaty. But there is the catch-22. How does the Senator from a State like mine—and I have here a whole series of items from my State where my State believes that we will suffer under NAFTA—address these concerns. I might add that there is more under the side agreements that we object to than under NAFTA. How can we possibly deal with those organizations? How can we have any impact on what authority is created and the scope of the recommendations they can make in Canada and Mexico as to our policy? That is an executive action by the President—there is no legislative involvement whatsoever.

I hope, that someone out there—I do not have the ability to do it—someone has the ability to challenge this law in court if my appeal to the Chair is not heard.

Madam President, it is a difficult thing to try and stop or slow down this super express consideration of NAFTA. It has an enormous freight behind it, as we all know, and it is carrying along two extra cars. This law, the 1974 Trade Act, says what can be in the NAFTA implementing legislation. The legislation can only contain specific provisions to be eligible for fast-track consideration. Yet, the fast-track authority is what the Chair has just used to rule my amendment out of order.

I am not normally in company with some of the people who agree with me on this point, Madam President. But I would like to ask to be placed in the RECORD at this time the material prepared by Public Citizen which takes the position that without congressional approval key provisions of the NAFTA supplemental agreements are constitutionally unenforceable. I ask unanimous consent that this be printed in the RECORD.

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

[From Public Citizen, Nov. 19, 1993]

WITHOUT CONGRESSIONAL APPROVAL KEY PROVISIONS OF THE NAFTA SUPPLEMENTAL AGREEMENTS ARE CONSTITUTIONALLY UNENFORCEABLE

Pursuant to a campaign promise, the Clinton Administration negotiated supplemental North American Agreements on Environmental and Labor Cooperation. However, for political reasons, the President has not included a provision approving these agreements in the NAFTA implementing legislation.

More specifically, the supplemental agreements were concluded too late to be submitted under fast-track authority, which accelerates congressional consideration, limits congressional hearings and debate, and, most importantly, prohibits congressional amendments to the agreements and its implementing legislation. Fast-track authority expired for all trade agreements (other than the Uruguay Round of the General Agreement on Tariffs and Trade) not entered into by June 1, 1993. As a result, if the supplemental agreements were submitted to Congress, they (and their implementing legislation) could be amended. Political deadlock might result, since many conservative lawmakers believe the supplemental agreements go too far, while some liberal legislators believe they don't go far enough.[1]

The NAFTA Implementing Legislation Does Not Approve the Supplemental Agreements.

To avert such a showdown, NAFTA's implementing legislation does not contain a clause approving the supplemental agreements. The first, subsection of the NAFTA implementing legislation, entitled "Approval of Agreement and Statement of Administrative Action," provides that "the Congress approves" the NAFTA and the statement of administrative action submitted along with it. §101(a). Indeed, the Trade Act require that implementing legislation submitted under fast-track rules must contain a provision approving the underlying trade agreements. 19 U.S.C. §2191(b)(1)(A). The approval section make no mention of the supplemental agreements.

The first reference to the supplemental agreements is in the next section, entitled "Conditions for Entry into Force of the Agreement." "Entry into force" is a term of art that is the final act of making the trade agreement effective as an international obligation, and it is normally under taken by the President through an exchange of notes with other heads of state. It occurs after the President signs (or enters into) the agreement, and after Congress approves it. The NAFTA implementing bill allows the President to exchange notes with Canada or Mexico providing for NAFTA's entry into force "at such time as" that country provides for the entry into force of the supplemental agreements. §101(b)(2). This legal jargon means that the two agreements must become effective together; both are conditions for the other to become effective.

The entry into force subsection says nothing about how the supplemental agreements are to become effective with respect to the United States. This silence, coupled with the omission of the supplemental agreements from the approval section, presume that the President has the authority to sign and proclaim the effectiveness of the supplemental agreements without congressional action.

What the entry into force subsection does is link NAFTA and the supplemental agreements at the outset. As the Administration reluctantly conceded to the Washington Post (Oct. 29), any NAFTA country may withdraw legally from the supplemental agreements without that action affecting its status under NAFTA. To assuage its critics, the Administration indicated that it would withdraw from NAFTA with respect to any country that withdraws from the supplemental agreements. House Doc. 103–159, at 456 (Nov. 4, 1993). However, that statement is not enforceable against this Administration, let alone future ones. Rather, it is simply the Administration's intent at this time when it is trying to garner political support for NAFTA.

Elsewhere, the implementing bill has a subtitle on "Implementation of NAFTA Supplemental Agreements," but that subtitle does not contain a provision approving the supplemental agreements. Instead it authorizes: (1) the United States to participate in the Commissions on Environmental and Labor Cooperation in accordance with the supplemental agreements; and (2) the appropriation of $2 million for the Commission for Labor Cooperation and $5 million for the Commission for Environmental Cooperation for each of fiscal years 1994 and 1995. §§531 & 532.

The Commissions are but one component of the supplemental agreements, set forth in part three of each agreement. The countries' obligations to maintain strong environmental and labor laws and enforcement activities are set forth in part two and exist independently of the Commissions, cooperation commitments are in part four, and most importantly, the dispute resolution systems, including its authorization of trade sanctions, are set forth in part five. Statutory authorization for the United States to participate in the Commissions cannot be considered congressional approval of the supplemental agreements, particularly where that authorization is in a bill that approves other international agreement, but not these.

Footnotes at end of article.

Key Aspects of the Supplemental Agreements are Constitutionally Unenforceable Without Congressional Approval.

The United States can enter into treaties, which require ratification by two-thirds of the Senate, international agreements that require approval by simple majorities of both Houses of Congress, or executive agreements that may unilaterally be put into force by the President. The latter category is typically reserved for agreements concerning matters that are within the President's constitutional powers, such as recognition of foreign countries, receiving ambassadors, and enforcing U.S. law.

In contrast, where an international agreement involves matters within Congress' constitutional powers, makes commitments affecting the nation as a whole, or affects state laws, congressional approval is required. Whether that approval is a thorny issue that turns largely on whether powers specifically delegated to Congress as a whole are at stake. Thus, trade agreements must be approved by Congress as a whole because they regulate foreign commerce, a power constitutionally assigned to the entire Congress.

Because of the complex issues surrounding the proper treatment of an international agreement, federal regulations require federal agencies to consult with and obtain the legal opinion of the State Department's Legal Advisor to determine the proper status of particular international agreements. 22 C.F.R. §181.3–.4. In contravention of these regulations and routine practice, no such legal memorandum was prepared on the supplemental agreements. Instead, it appears that political considerations caused the Administration to sidestep both the legal analysis and the appropriate approval channels.

President Clinton's decision not to submit the supplemental agreements for congressional approval calls their constitutionality and enforceability into question. Simply stated, the President does not have the unilateral power under the U.S. Constitution to obligate the United States (or the states) to modify NAFTA or to pass laws. What this means is that the provisions of the supplemental agreements that have been touted as affording significant environmental or worker protection are without any legal effect.

1. THE TRADE SANCTIONS PROVISIONS

The arbitration process for deciding whether a NAFTA country is failing to effectively enforce its environmental laws has been touted as the most unprecedented and important tool of the environmental supplemental agreement to ensure effective enforcement of domestic environmental laws. Indeed, in October 1992, then-Governor Clinton promised that the Commission would have "the power to provide remedies, including money damages and legal power to stop pollution" and "substantial powers and resources to prevent and clean up water pollution." The U.S. Trade Representative's Report on Environmental Issues claims that "[t]he Environmental Agreement establishes a dispute settlement mechanism to ensure that the parties effectively enforce their environmental laws."

Under the environmental supplemental agreement, if an arbitral panel decides that a NAFTA country has a persistent pattern of failing to effectively enforce its environmental law to companies or sectors involved in North American trade, and the offending country does not correct the problem, the panel may assess monetary penalties to be used by the Commission to enhance the environment or environmental protection in the offending country. If the country does not pay the penalties within 180 days, then the other countries may impose trade sanctions by suspending NAFTA benefits in an amount equivalent to the assessment. The labor supplemental agreement has a similar arbitration process for labor law enforcement.

The real teeth behind this process is the trade sanctions authorization. However, the trade sanctions are not a valid United States obligation without congressional approval. The current statutory authority under which the President may negotiate trade agreements carefully preserves Congress' power to approve such agreements. Therefore, the President may not unilaterally agree to the trade sanctions provisions of the supplemental agreements.

The trade sanctions are flawed in another respect as well. NAFTA provides that, in the event of inconsistencies between NAFTA and other agreements between the parties, NAFTA prevails "except as otherwise provided in this Agreement." Article 103(2). The supplemental agreements' trade sanctions provisions authorize a party to suspend NAFTA benefits. That action is inevitably inconsistent with NAFTA, and thus is impermissible unless NAFTA authorizes it.

In the absence of a provision in the NAFTA implementing bill approving the supplemental agreements, those agreements cannot be considered an extension of the NAFTA itself. The fact that a country may withdraw from the supplemental agreement while retaining NAFTA benefits confirms that the supplemental agreements are not part of the NAFTA.

As a result, the United States cannot impose trade sanctions to enforce an arbitral panel decision against another NAFTA country without being in violation of NAFTA. The other country could then challenge the trade sanctions under NAFTA's dispute settlement process, which could result in retaliatory sanctions being imposed under NAFTA.[2]

It is hard to imagine that Canada and Mexico would permit the supplemental agreements to enter into force if the United States cannot uphold its end of the bargain. After all, when Canada refused to be bound by the supplemental agreements' trade sanctions provisions, the negotiations stalled until Canada agreed to give arbitral panel decisions domestic legal effect. If the trade sanctions provisions are inapplicable to the United States, for lack of congressional approval, Mexico cannot be expected to tolerate being the only country subject to such sanctions.

2. THE OBLIGATIONS TO MAINTAIN STRONG DOMESTIC ENVIRONMENTAL AND LABOR LAWS

The supplemental agreements obligate the NAFTA countries to ensure that their laws (and those of the states) provide high levels of environmental and labor protection, that people with legally recognized interests have access to administrative and judicial proceedings that are not unnecessarily complicated or unreasonably delayed or costly for enforcement of those laws and for private remedies, such as money damages, and that environmental and labor laws are effectively enforced.

The President has the constitutional authority to unilaterally promise to ensure effective enforcement of federal environmental and labor laws, because he has the constitutional responsibility to "take care that the laws be faithfully executed."

The President has no analogous power with respect to state enforcement of state laws. To the contrary, our system of federalism ensures that states have full control over such matters. Therefore, the President cannot (even with congressional approval) bind the states to abide by any particular level of enforcement of their own laws.

Nor can the President create a binding obligation on the U.S. Congress or state legislatures to pass environmental or labor laws of any sort, let alone that provide a specified level of protection. Under the U.S. Constitution, it is the Congress that has the power to enact legislation, and the President's power is limited to recommending legislation and vetoing bills. And the Constitution reserves to the states the power to pass their own laws, unless federal law preempts them from doing so.

This extends, of course, to laws granting citizens access to the courts. If U.S. or state laws preclude private damages actions or call for unnecessarily complicated enforcement proceedings, the President cannot unilaterally eliminate those statutory provisions. Congress or state legislatures must do that.

Furthermore, if it is the U.S. judicial system that makes environmental and labor enforcement proceedings unduly complicated, costly or slow, the President has no power to compel the Judiciary, an independent branch of government, to change its practices.

Therefore, the President's refusal to write congressional approval of the supplemental agreements into NAFTA's implementing legislation essentially eviscerate the supplemental agreements.

Section 301 Does Not Save the Supplemental Agreements' Trade Sanctions Provisions.

When these constitutional issues have been raised, they have been met with varied responses, most likely because of the failure to prepare a reasoned legal analysis divorced from politics. Some have argued that the NAFTA implementing legislation does approve the supplemental agreements in the entry into force subsection. That and other claims that such approval is written into the NAFTA implementing bill are discussed above.

Others have contended that congressional approval of the supplemental agreements' trade sanctions provisions is unnecessary because Section 301 of the Trade Acts authorizes such sanctions. This argument is erroneous. Section 301 does not save the trade sanctions provisions for four reasons.

First, Section 301 is directed at actions that are inconsistent with international trade agreements and that restrict United States commerce. The supplemental agreements cannot be considered trade agreements because they are directed to each NAFTA country's domestic environmental and labor laws and enforcement activities. The core "trade" provisions of these agreements consist of their authorization of trade sanctions to enforce an arbitral panel determination that a country has failed to enforce effectively its domestic environmental laws. Those provisions alone do not convert an environmental agreement into a trade agreement. Indeed, if they did, then the supplemental agreements would need congressional approval as trade agreements, since, under the Trade Acts, Congress has retained authority to approve nontariff trade agreements negotiated by the Executive Branch.

Second, since the supplemental agreements are not valid trade agreements, Section 301 could authorize their trade sanctions on Mexico and Canada for failing to enforce their environmental laws. But if that is the case, then the supplemental agreements add nothing to the U.S. arsenal.

Third, the supplemental agreements authorized trade sanctions based on the finding of an arbitral panel. In contrast, Section 301 authorizes sanctions only after the U.S. Trade Representative consults with its advisory committees, publishes a notice in the Federal Register, conducts an investigation, and consults with the foreign country. Section 301 is, therefore, not a simple substitute for congressional approval of the supplemental agreements themselves.

Finally, reliance on Section 301 does not overcome NAFTA Article 103 which spells out that NAFTA prevails over inconsistent provisions of other international agreements except as otherwise provided in NAFTA. In order for the supplemental agreements' trade sanctions provisions (which allow NAFTA benefits to be suspended) to prevail over NAFTA, the supplemental agreements must be a part of NAFTA. They obviously are not so incorporated since the NAFTA implementing legislation does not even approve the supplemental agreements, and it leaves countries free to withdraw from the supplemental agreements without withdrawing from NAFTA.

CONCLUSION

The only logical conclusion is that Congress must approve the supplemental agreements in the NAFTA implementing legislation for them to have any teeth. Certainly, this would have been the prudent way to proceed. Politics appears to have stood in the way of prudence and may render the supplemental agreements a paper tiger.

FOOTNOTES

[1]It is possible that the President did not believe the supplemental agreements would be entitled to fast-track consideration in any event because they are not trade agreements in the ordinary sense.

[2]The supplemental agreements also require the NAFTA countries to cooperate on environmental matters related to trade, to exchange information about such matters, and to consult about any disputes that arise. None of these provisions create constitutional problems, as the President can commit the United States to such dealings with other nations.

Mr. STEVENS. Madam President, I close by asking the Senate to think about the precedent we are setting here. We are setting a precedent—at the request of the Executive—giving the Executive broad, broad authority to negotiate nontrade agreements under protections of the fast track procedure.

As I remember my constitutional history, the Framers of our Constitution had deep fears of a runaway Executive, an Executive that might go off and make agreements with foreign nationals, foreign governments, contrary to the best interests of our people. The Framers required that the treaties that we entered into, treaties that would commit us abroad, be submitted to the Senate for approval and gave us the authority to require two-thirds of us to agree before they would go into effect.

Now, a bare majority will put this agreement into effect, and it will carry with it those two special cars that are chock full of trouble, just chock full of trouble, for a lot of small States.

I believe we have the right to be heard. We have the right to offer amendments, and I believe by denying me that right today, the Senate will err. I reserve the remainder of my time.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, I yield myself 10 minutes.

Madam President, I strongly resist the amendment offered by the Senator from Alaska. First, because the ruling of the Chair is correct. This amendment is out of order.

The fast-track statute which we are offering this under is very clear: Amendments under this proceeding are not in order. The Chair is correct. Therefore, the Chair should be affirmed.

More importantly, Madam President, make no mistake about it, this is a killer amendment. If this amendment is successful, if the Chair is overruled, this amendment will kill NAFTA. Deader than a door nail. NAFTA is dead if this amendment passes. Because if this amendment passes, then any amendment is in order. If any amendment to NAFTA is in order, one can conjure up a whole multitude of possible amendments that would be irresistible, that will bring NAFTA down immediately.

If the Senate can offer amendments, then what happens? The House can offer amendments, any amendment, any subject to protect any interest group.

We all know about the contentious debate over NAFTA. We all know that NAFTA is negotiated to try to balance out interests in the country's national best interest. That is the effect of NAFTA. That is the intent of the President's negotiations.

That is the intent of the President's negotiations. We know that is out the window. It is gone and over. This amendment kills NAFTA. This is a killer amendment. In fact, Madam President, this is a serial killer amendment, because it kills fast track; it kills America's ability to negotiate any trade agreement whatsoever. It means the Uruguay round is dead. It is deader than a doornail if this amendment passes because it is subject to amendment, and we can guess all possible kinds of amendments that would come up in that context.

If this ruling is overturned, no country will begin to contemplate negotiating a trade agreement with a U.S. President. Why? Because that country would know that Congress can amend it with impunity, and probably would. French negotiators would have no incentive whatsoever to negotiate with the President with respect to reaching agreement on cultural provisions, on TV programs and films; nor would the Japanese on rice, or any country on any trade matter.

So this is a serial killer amendment. It will kill NAFTA today. It will kill GATT next month. And it will kill every other trade agreement we can imagine.

Madam President, the Senator heard the language that said necessary and appropriate provisions can be included in implementing language. Why are these side agreements necessary and appropriate? Very simply, because the world is getting smaller. There is a convergence of trade and environmental matters. They are more and more intertwined. The preamble to the NAFTA even specifically refers to a necessity of sustainable development, environmental protection, and labor provisions.

Logically, it is certainly appropriate, without even reaching the question of whether it is necessary—and I think it is necessary—to include provisions with respect to environmental and labor matters. In this modern world, if we do not have these provisions, we are giving other countries a subsidy which is a trade barrier, and that subsidy is, for example, the country of Mexico's failure to enforce environmental statutes. That lets polluters cut costs at our expense. That gives them a pollution subsidy because they do not have to live up to the same environmental standards that otherwise they would. All subsidies are trade barriers.

The Senator from Alaska is raising the constitutional question of article I, section 5. That is very simple. Sure, revenue bills begin in the House and come over here. But the provision in the Constitution says we "may" amend; it does not say we have to. It says we may as we get the bills. The Senator is clear and, sure, we limit ourselves around here with consent agreements. The House of Representatives does it with rules. We have all kinds of limitations on our ability to amend. Those are our own rules. We decide what we want to do. The Constitution does not say we must amend. It says we may amend. We, by our rules, may decide under certain circumstances that we do not want to amend.

These agreements are integral parts of NAFTA. President Clinton was opposed to NAFTA in his campaign until they got side agreements. I will vote against NAFTA if we have no side agreements. They are an integral part of this. Ambassador Kantor says the side agreements and NAFTA are "joined at the hip."

Mr. STEVENS. Will the Senator answer a question? I will be happy to use my time.

Mr. BAUCUS. Yes.

Mr. STEVENS. Does the Senator from Montana believe that these side accords are trade agreements?

Mr. BAUCUS. If I might answer that question, the Constitution is very clear. The President has broad executive authority to conclude agreements with other countries. The Constitution is also clear that in those instances where an executive agreement requires changes in legislation, Congress must act on the legislation and agree or not.

Mr. STEVENS. My question is: Are these side accords trade agreements? Do you agree with Ambassador Kantor that they are not trade agreements?

Mr. BAUCUS. These side agreements are part and parcel of NAFTA, because the NAFTA implementing language directly refers to them. In fact, the Senator must essentially agree to that point, because he is asking to strike provisions in NAFTA that refer to the side agreements.

Mr. STEVENS. That is not true. I am trying to strike from the legislation that would approve NAFTA, two side accords that are not necessary and that were negotiated after the fast-track expired.

The side accords were negotiated after the fast-track authority expired. Does the Senator believe that a President can keep negotiating and get additional side accords, additional agreements, and submit them under the fast-track after the time for the negotiation has expired? The President notified us that the trade agreement had been completed. After that notification was received, these side accords were negotiated. They were negotiated after this trade agreement was negotiated. That was after the fast-track authority had expired.

What authority gives the President of the United States the right to include the side accords. The Senator from Montana says anything that is "necessary and appropriate", as determined according to the President. The law says: Only if a change in existing law or new statutory authority is required to implement trade agreements can anything that is "necessary and appropriate" be included. I want to know by what authority does the Congress or the President include under this fast-track procedure the two side accords that were negotiated after the trade agreement time expired, and that the administration admits are not trade agreements.

Mr. BAUCUS. I will respond on the Senator's time. The President has authority to execute agreements, and in this case the fast-track statutory authority gives the President the ability to negotiate agreements and provisions appropriate to trade laws. That is what we are doing here.

Mr. STEVENS. Show that to me.

Mr. BAUCUS. That is what we are doing here.

Mr. STEVENS. I ask the Senator from Montana, show me that authority? The authority was delegated to the President under the 1974 act, and I have it.

Mr. BAUCUS. It is right there.

Mr. STEVENS. Show me where it says that.

Mr. BAUCUS. "That is appropriate," the third line from the bottom says.

Mr. STEVENS. It says "if" changes in the existing law are required, necessary or appropriate items to implement such trade agreements, either repealing or amending existing laws providing new statutory authority can be obtained.

Where does it say you can put new executive agreements in this bill? The bill can contain only these items.

Mr. BAUCUS. That is clear in what the Senator has showed the Senate. It is clear that the Senate has authority to vote on and enact recommendations by the President of the United States that are contained in the NAFTA and in implementing language, including the side agreements.

The Senator also said there were no hearings. That is not true. This Senator held several hearings on the side agreements in the Environment and Public Works Committee. There were hearings on both sides of the aisle on the provisions.

Mr. STEVENS. I apologize. Did the Senator hold the hearings to authorize the creation of what we are going to authorize by law?

Mr. BAUCUS. The Senator held hearings to find out the content.

Mr. STEVENS. Absolutely. The Senator from Montana was relying on an executive agreement to create new entities of the U.S. Federal Government. That is wrong.

The PRESIDING OFFICER. Does the Senator from Montana yield the floor?

Mr. BAUCUS. May I inquire of the Chair? How much time did I utilize?

The PRESIDING OFFICER. The Senator used 9 minutes and 37 seconds.

Mr. BAUCUS. I will finish the 23 seconds and state that this is a killer amendment. It is equally clear there will be no more negotiating trade agreements if this amendment passes. And it is equally clear the side agreements are fully appropriate. There is no question about it.

In my judgment, the Senator is frustrated as all of us are that we cannot come up with our own personal trade agreements, but we cannot because we are a legislative body.

We are trying to come up with an agreement that serves the national public interest. An agreement with another country, to the mutual best interests of both countries. There is going to be give and take, and this is a process that is going to be necessary because we are not a parliamentary form of government. We are a constitutional form of government, with the separation of powers between the legislative and executive branches, unlike other countries we do negotiations with. That is why the amendment must be defeated.

The PRESIDING OFFICER. Who yields time?

Mr. DANFORTH. The Senator from Montana has consumed all the time in opposition. That is my understanding.

The PRESIDING OFFICER. The Senator is correct.

Mr. DANFORTH. Could I have 3 minutes?

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Madam President, I rise in opposition to the challenge raised by the Senator from Alaska.

Yesterday, I stated my opposition to the North American Free-Trade Agreement. I laid out in some detail the reasons for that opposition. Nevertheless, I strongly oppose the Senator from Alaska's appeal from the rule of the Chair. For this represents a challenge not only to the NAFTA, but to the entire process developed for considering this and any other trade agreements—including the Uruguay round of the General Agreement on Tariffs and Trade, the deadline for which is less than 1 month away.

Should the Senator from Alaska prevail, it will mean not only the downfall of this NAFTA. It will threaten our future consideration of a Uruguay round agreement. Senator STEVENS' position is nothing less than a frontal attack on the entire fast-track process. A process that has been in place for the past two decades. With roots that date even further back.

I take this opportunity to remind my colleagues why we adopted fast-track procedures for major trade agreements. There is one reason, and it is a compelling one: Without the fast track, countries will not negotiate with us.

Our fast-track procedures really stem from the Reciprocal Trade Agreements Act of 1934. The 1934 Act responded to President Roosevelt's request for authority to negotiate and implement reciprocal trade agreements to clean up after the wreckage of the Smoot-Hawley Tariff Act of 1930.

That infamous act, in which the Congress set more than 20,000 tariff levels, item-by-item, resulted in an average U.S. tariff rate of 52.8 percent. By the end of 1931, 26 countries had retaliated.

The Congress soon realized that Smoot-Hawley was not the course to follow. Congress gave the President broad advance authority to negotiate and conclude reciprocal tariff agreements with foreign countries, without further congressional interference. That authority was extended in 1937, 1940, 1943, 1945, 1948, 1951, 1953, 1955, and again in 1958.

Then came the Kennedy round of GATT negotiations. In the Trade Expansion Act of 1962, Congress again gave the President tariff-cutting authority. But by that time, it had become apparent that, as tariffs were being reduced, other types of trade barriers were being erected.

And that set the stage for a confrontation between the Congress and the White House. The argument was that nontariff barriers fell outside the powers enumerated in the Constitution for the Congress. During the Kennedy round negotiations, the administration argued that trade agreements could be

negotiated under the President's foreign affairs power without submitting the agreement to Congress for approval.

Congress fought back. The Congress refused to make the legislative changes that were necessary to implement one key aspect of the agreement, and enacted a bill to block the administration from implementing another. These actions destroyed the credibility of our negotiators. For 6 years, our trading partners refused to return to the negotiating table. Nontariff barriers continued to impede our exports. And we looked for a way back to the table.

The solution was the fast track as we know it today. It was first enacted in 1974, and it has served us well since. It was used in considering the Tokyo round agreements in 1979. And the United States-Israel Free-Trade Agreement in 1985. And the United States-Canada Free-Trade Agreement in 1988. And now the NAFTA. And these are the procedures that we will follow when we consider the Uruguay round agreements—unless, of course, we kill that opportunity today. For let us not be under any illusions: That is precisely what we will be doing if we vote to find the Senator's appeal well taken.

We will be overturning a decision that this body made just 4 months ago—our decision to extend the fast-track procedures to the Uruguay round results. That decision was by a vote of 76 to 16. An overwhelming vote. A strong bipartisan vote to keep the fast-track procedures in place for the Uruguay round.

Therefore, the Senator from Alaska's challenge should be opposed not only by supporters of the NAFTA—of which I am not one—but also by any Senator who supports the process that we extended by that overwhelming vote only 4 months ago.

I urge my colleagues to oppose this appeal from the rule of the Chair.

Mr. SASSER. Madam President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. SASSER. Is there time remaining to the Democratic opponents to the agreement?

The PRESIDING OFFICER. Yes, there is.

Mr. SASSER. May I inquire of the Chair how much time is remaining?

The PRESIDING OFFICER. There are 19 minutes and 20 seconds remaining.

Mr. RIEGLE. Madam President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. RIEGLE. Am I correct in assuming that if the challenge by the Senator from Alaska [Mr. STEVENS] is upheld then that means there will be a second vote on the substance of the deletion he is speaking about? In other words, if the Chair is overruled that would be the first vote and there would, in fact, be a second vote on the issue that in fact he is raising? Am I correct in that?

The PRESIDING OFFICER. A vote could occur.

Mr. RIEGLE. Thank you.

Mr. BAUCUS. Madam President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BAUCUS. Would it be appropriate under the rules and could a Senator ask for unanimous consent to take more time off of the total time for the bill and allocate it to time on this amendment? I think there are Senators who wish to speak on this amendment even though that time would be subtracted.

The PRESIDING OFFICER. That is authorized under the statute. The Senator from Montana should understand it does not take unanimous consent.

Mr. BAUCUS. Might I ask if we reach an agreement where the total time on the amendment by the Senator from Alaska is not 1 hour but 2 hours?

Mr. STEVENS. Madam President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. STEVENS. Is it not so a Senator who controls time may allocate it any time during consideration of NAFTA? This time we are using now is coming off the NAFTA 20 hours. If the Senator controls any time he may allocate. This Senator controls some time. I am happy to allocate time to anyone who wants to support my position.

The PRESIDING OFFICER. There is 1 hour allocated on the appeal. However, additional time may be added to that from the bill's time.

Mr. STEVENS. Without consent?

The PRESIDING OFFICER. Without consent.

The Senator from Missouri.

Mr. DANFORTH. Madam President, I yield myself such time as I might consume from the bill.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. DANFORTH. Madam President, I will not take long. I really wanted to simply raise one point in answer to the Senator from Alaska. I think that Senator BAUCUS has pretty well stated the case on the effect that this would have both on NAFTA and on fast track authority in general. But I want to get to the legal argument that is raised by the Senator from Alaska and particularly his interpretation of the Constitution. The Senator from Alaska points to article I, section 7, clause 1 of the Constitution. That clause states that all bills for raising revenue shall originate in the House of Representatives but the Senate may propose or concur with amendments as on other bills.

The Senator from Alaska has asked the Chair whether this is a revenue bill. The Chair has said yes, it is a revenue bill. The Senator from Alaska then concludes that this particular phrase, "the Senate may propose or concur with amendments as on other bills," confers on the Senator from Alaska an individual right as a Senator to offer an amendment because this is a revenue bill. That is not this Senator's construction of the meaning of that phrase.

The phrase does not say any Senator may offer an amendment. The phrase says that the Senate may propose or concur with amendments as on other bills.

That means that the Senate determines how it functions with respect to amendments. The Senate has already determined this. There is legislation enacted in 1974 and that legislation sets out the terms under which trade agreements and trade legislation pursuant to those agreements come to the floor of the House and to the floor of the Senate.

The fast track legislation provides that they come as the Chair has ruled—without the ability to amend on the floor.

If it were not so there would not be any trade agreements. That is why in 1974 we passed this legislation. If we open up legislation relating to trade agreements on the floor of the Senate to amendments that is the end of it. So that is why that we have this provision of the law. But the Constitution relates to the Senate. It does not relate to individual Senators. It does not confer a right on individual Senators. It says in effect that the Senate can determine its own rules. The Constitution says expressly that the Senate can determine its own rules, and pursuant to that constitutional authority the 1974 legislation was enacted.

A comparable provision relates to the Budget Act, and in the Budget Act there are restrictions on what can be done on the floor of the Senate by individual Senators on legislation which is clearly revenue legislation.

When budget reconciliation is before us, for example, a Senator would be out of order, as this Senator understands it, if the Senator were to stand on the floor of the Senate and send an amendment to the desk and the amendment would provide for a tax cut without any offset. The Senator would just believe that there shall be a tax cut. The Senator would say, well, I am exercising my constitutional right to send this amendment to a revenue bill to the Chair, to the desk to be reported, and he would be ruled out of order. If it were not so, budget reconciliation could not operate. If it were not so with respect to trade legislation, trade legislation could not function.

So the Senate can establish rules. Congress can establish legislation which governs the way we, as a Senate, function.

It does not confer a right on an individual Senator. There is no right of an individual Senator to offer an amendment to a revenue bill. It is nowhere found in the Constitution of the United States. That is the sole point that I want to make.

Again, though, I would like to simply reiterate that if the Senator from Alaska is correct and if we can start offering amendments pertaining to revenue as a matter of right as individual Senators, then goodbye fast track. I mean, that really would be a blockbuster of a precedent as far as the U.S. Senate is concerned. Goodbye any trade agreements. Goodbye fast track legislation. Goodbye the possibility of negotiating the Uruguay round or anything else.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Madam President, I think my friend from Missouri ought to read the Constitution again, because it says that the Senate may propose or concur with amendments.

If he is correct in his interpretation, it means the whole Senate would have to agree to an amendment before it could even be proposed.

Individual Senators propose amendments, and I am not permitted to propose mine today.

Further, he says we passed this 1974 law. There it is. Does the Senate understand English?

Why is it that the American people are losing their confidence in this process that some of us have dedicated a substantial portion of our lives to? It is because they do not believe us anymore? We pass laws and then we say they do not mean what they say.

Anyone that can read and interpret will tell you that there is nothing in section 151(b)(1)(C) that says any President of the United States may put a side agreement in this legislation. The law says only a bill which contains the three features I listed can be considered under fast track. Nothing in any one of those features refers to a side agreement of any kind.

Further, we give the President the authority to have a specific period within which to negotiate trade agreements. He was negotiating. The time ran out. He had the right to extend it. He did extend it. The time ran out. He said, "I have concluded a trade agreement." Then, after the trade agreement time had expired—the new President negotiated three, but I am only objecting to two in this—side accords. Then they tried to say that is all right. He is the President of the United States and he ought to be able to do anything he wants to do, right? He ought to be able to come up here and put in this legislation language to approve his Executive agreements because they are necessary and appropriate.

Look at that section that says he can do whatever is necessary and appropriate. Where does it say he can put in side agreements that were negotiated after the time had expired? Even a trade agreement that expired after that time could not and should not be considered under the fast track.

These are separate Executive side accords. They are not trade agreements.

Somehow people say, "Oh, but the Congress set rules and we form rules. There is the rule."

I challenge the Senator from Missouri, you tell me where there is anything in the law that refers to agreements that are not trade agreements that are subject to the fast track.

The PRESIDING OFFICER. This is a question to the Senator from Missouri. Does the Senator wish to respond?

Mr. DANFORTH. Yes. Madam President.

Again, yielding myself time from the bill, clearly in the 1974 legislation, as is printed on the board that is held up by the Senator from Alaska, the legislation expressly contemplates that in implementing legislation, the Congress of the United States may go beyond the four corners of the trade agreement.

The section that is held up by the Senator from Alaska says, "if changes in existing law or new statutory authority is required to implement such trade agreements," and so on. So, clearly, it contemplates that in the legislation that is brought to the Congress, brought to the floor of the Senate, there will be something more than just the terms of the agreement that has been worked out by the President and whatever other Government the President is negotiating with. Changes in existing law, new statutory authority, in addition to the terms of agreement, are expressly provided for.

Now, then, the question is, is this additional statutory language necessary or—a disjunctive—is it appropriate?

Mr. STEVENS. Changes in existing law.

Mr. DANFORTH. Now, just a minute.

Who determines whether it is appropriate? Who determines whether it is necessary or appropriate? The Congress of the United States determines whether it is necessary or appropriate.

The legislation is before us. The legislation that was dealt with in the Ways and Means Committee and the Finance Committee and on the floor of the House and the Senate. Ultimately, when we vote on this, we will determine whether it is necessary or appropriate. We either ratify it or we do not. That is what we are in the business of doing.

But it is clear on the face of the statute that it is expressly contemplated that additional statutory language, additional statutory authority can be added by the Congress.

The question of whether or not it is necessary or appropriate does not rise to a constitutional principle. This is not a constitutional point of order that is being raised about whether or not particular language is appropriate or is not appropriate.

That is a matter of the judgment of Members of the Senate, and that is what we will be voting on.

Mr. STEVENS. Madam President, I think I asked the Senator from Missouri a question.

Again, I respectfully tell my friend to read subsection (b)(1)(C) of section 151. It refers to changes in existing law or new statutory authority to implement such trade agreement or trade agreements.

Mr. DANFORTH. That is correct.

Mr. STEVENS. Now, this is not statutory authority. We are including by reference two agreements that were negotiated that create a series of bureaucracies for the Federal Government that are not trade agreements. By admission of the trade negotiator, they are not trade agreements. They are not necessary to implement trade agreements. They are not statutory legislation that is necessary.

That legislation in here is to incorporate by reference two things that are not trade agreements. And they are not necessary to implement trade agreements.

Let me tell my friend, I urge him to look at the 1974 report of the committee that dealt with this. It is Senate report language. It specifically calls this the definition section. It says: "A bill implementing a nontariff barrier agreement would contain a provision approving the trade agreement or trade agreements to be implemented, a provision approving a statement of administrative action, including any rules or regulations necessary to implement the agreement or agreements, if there be any such administrative action, and, if changes in existing law or if new statutory law would be required," to implement the trade agreements, then you would have a provision either repealing or amending existing law.

Now, what the section I am trying to delete does is it incorporates by reference two nontrade agreements that are not statutory law, and that are not either to repeal existing law or to put in effect a new provision.

Finally, let me say this—and I know others want to speak—under the Budget Act, a motion to strike is always in order. Under this, it is not.

I am making a motion to strike a provision which should not be in this bill. There is no provision in the Budget Act that is similar to this provision. The Senator said that under the Budget Act we gave away our authority to offer amendments, and this is similar to the Budget Act.

That is not so. My amendment is in effect a motion to strike, and I have been denied the ability to even do that.

Suppose my amendment passes—suppose subsection D of the bill comes out?

Suppose the Senate comes to its senses and says we do not want to allow the President the authority to include the side accords in the NAFTA. Suppose we just take it out, and the bill goes back to the House. Some people might vote against the NAFTA bill without it in. I agree with that. Some people might vote for it. But at least it would still be up to the Congress to decide whether to implement NAFTA.

It should not be permissible to include and implement two nontrade agreements in this fashion. That to me is wrong.

Mr. RIEGLE. Will the Senator yield for a question before he yields his time? I, first of all, want to say I agree with the Senator from Alaska, with his basic point. I think he is right about the technical flaw here and that you should, in fact, have the right to come in and address these individual issues that fall outside the scope of the treaty. I am wondering if the Senator from Alaska is aware, just to help make his point, there is another provision in here that provides $10 million for a trade center to be placed in the State of Texas. It cannot go any other place. It has to go in the State of Texas. It had nothing to do with the negotiations with Canada or Mexico.

This came at the very tail end when there was an effort being made to line up support in the House. Lo and behold, one of the items that got tucked in was a specific, $10 million item to finance a trade center that has to go in the State of Texas.

I would assert that for the very arguments the Senator from Alaska has made—that has nothing to do with this trade agreement, it has nothing to do with implementing it—there ought to be an ability to offer an amendment to knock it out. In fact I am drafting such an amendment because I think it ought to be knocked out. We are talking about saving money and this is a piece of pork that is tucked in here having to do with getting votes, not anything to do with the treaty.

It, in my view, illustrates the Senator's point. My question to him—I do not know if the Senator is aware of that particular item—but if he prevails on his basic challenge here of the ability to amend, would we then in turn be able to take and knock something like that out of here as not having anything to do with the treaty, per se?

Mr. STEVENS. Madam President, I believe the Senator from Michigan makes the right point. I believe at any time the Senate finds included in legislation that has been accorded a fast-track, provisions that are not within the scope of the basic authorization—that have not been negotiated within a time limit set and are not necessary either to repeal existing law or to add new statutory law—the Senate ought to have the right by motion of a Senator to strike that provision. The side accords are not within the fast-track. The Senator is absolutely right.

There are several other provisions that should also be struck. I do have some other amendments, but I am not going to offer them for obvious reasons. But there are other provisions in here that are similarly disqualified because they are not within the fast-track authority. They are not trade amendment required provisions. Clearly, section 151, was very specific. It was to limit the implementing bill under fast-track to simplify the approval of the trade agreement that has been brought before us. Other items such as authorizing appropriations to carry out the untrade related provisions ought not to be in the fast-track.

Mr. RIEGLE. Right.

Mr. STEVENS. I think it is wrong.

The test is whether it is necessary to implement the trade agreement. That is a judgmental factor. But who makes the judgment? Only the President?

Madam President, are we going to allow this country to come to the point that only the President makes decisions as to what is necessary and appropriate in dealing with authorizations to spend taxpayers' money, to hire people?

Are these people hired? Are they going to be Federal civil servants? Are they going to have the right to retirement? Do they get leave? Are they covered by medical insurance? By what law?

They were hired pursuant to an executive agreement, and the executive agreement is incorporated by reference here as though it was legislation. I do not think that is proper, I agree.

Mr. RIEGLE. I thank the Senator.

Mr. STEVENS. If no one else seeks time—I see my friend from New York would like some time.

I yield 10 minutes to the Senator from New York.

The PRESIDING OFFICER. Since the Senator from Alaska controls 6 minutes on the appeal——

Mr. STEVENS. That is from the bill.

The PRESIDING OFFICER. The Senator has that right. The Senator from New York is recognized for 10 minutes.

Mr. D'AMATO. Madam President, I join with my colleague, Senator STEVENS. He has pointed out some areas we need to look at. To put it quite candidly, these side agreements have polluted this pact. It has polluted it with a system which is one that is beyond the control and even the advice and consent of the Senate. And it is one that sets up a bureaucracy with extraordinary power.

I understand reasonable people can disagree, as it relates to NAFTA. I also understand the geopolitical significance and how, very validly, those who support it can say it would be a terrible blow to the psychology of all of our friends and neighbors, from Mexico throughout Latin South America. But when, as a result of the side agreements and the agreement itself, we find the ability to determine our own destiny as it relates to the law and its interpretation is given to one of these bureaucracies, I wonder what support the American people would really have for this.

Here is the North American Free Trade Commission, one of the commissions Senator STEVENS talks about, with 24 subbureaucracies. They are going to make the determinations as it relates to disputes. Who appoints this commission? How does the membership operate?

I do not want to offend our neighbors to the south but they have historically had a system that has been less than we would accept in our judicial system. There are some who would say it is outright corrupt. We are going to have representatives on this commission that comes from basically a system that has been corrupted. They are going to be making life and death decisions.

While I am concerned about the taking of jobs or the loss of jobs that has been well expounded upon by so many who feel it will be cheaper to do business and therefore they will move their manufacturing operations—while that may be a legitimate concern I will tell you what concerns me, and I have not heard anyone talk about it, is the issue of circumvention. I have seen this vividly. I have seen the Japanese—and I say the Japanese in particular—circumvent our laws, lose case after case after case, and continue to circumvent. And we have had a difficult, if not impossible, time stopping that in many cases. And we have lacked the courage to stand up.

We have had IBM and other international companies intervene to keep this body from seeing to it that there were laws that would prohibit the circumvention, fair laws. I remember being on this floor for some 15 hours over the case of Smith Corona, which was forced to move a good part of its manufacturing facility to Mexico.

They said we will stay if you stop the circumvention. They brought eight trade cases against the Japanese, they won every single case, and the Japanese continued the circumvention.

Let me say this. It is obvious to this Senator that the Japanese and others—but the Japanese in particular—are going to open up their plants as launching pads, not to sell to Mexico but to sell to the real market here in the United States. I want to know who is going to prohibit that? Who is going to stop the circumvention? Do we really believe that this trade commission is going to do it? Do we really believe that the Mexicans are not going to be totally sympathetic to the plants that are employing people and the fact that predatory pricing and dumping and circumvention of legitimate laws that we

have with our trading partners in other areas of the region are going to be adhered to? Do we really believe that suddenly, because we entered into an agreement, NAFTA, they are now going to adhere to the integrity of law enforcement?

They have not done it heretofore. They have not done it as it relates to drugs, or quality of life issues, or the environment. Their court system is corrupt. Now we are going to add to that another corrupting system, the influence peddling of those who come, and the Japanese in particular, and we have seen it. Some are going to accuse me and say, "Oh, you should not be saying these things." We see it every day. We saw how a truck becomes a car to escape the tariff, and they have done it. Our own citizens were too willing, our own Secretary of the Treasury was too willing to accommodate them.

If we have a difficult time enforcing our laws, how are we going to depend on this trade commission, with the tremendous influences and with billions of dollars being invested in Mexico? And they will be. And make no mistake about it, they are not going to be looking to build products to ship them to Mexico. They are going to be looking to build products to ship them into the marketplace, the real marketplace, which is the United States.

Madam President, I hope I am wrong. I absolutely hope I am wrong. I hope that 4 years from now, 5 years from now people can say, "Alfonse, you were wrong, you were unduly concerned." But I do not think that the leopard changes his spots. The Japanese and their predatory pricing practices, their circumvention of laws is legendary and well documented. We are just opening up a gaping hole for them to do to us in a manner in which we have little, if any, control.

What are we going to do once this commission starts ruling against us, when they begin to say, "Well, the content provisions are satisfied"? Who do we appeal to? I would like to know. What do our legislators say? Are we going to go back and declare this null and void? What court will review this commission's findings? What does the President say and what happens when we have plants and equipment and people, working men and women in my State and other places losing their jobs, and who do we appeal to?

I suggest, if you are going to build something on a corrupt forum—and that is what we have there, a corrupt judiciary, a corrupt forum—we have an open invitation for those who will seek by power of their influence in dollars to see that that forum rules in their favor.

So I will just simply suggest this legislation, although well intended—although there may be people who can make very strong arguments for fair and free trade—it has to be based on principles that we know that the agreements will be adhered to and that we have an enforcement mechanism that is one that is above reproach. We certainly do not have that in this agreement.

For that and other reasons, I will vote against NAFTA. I do not believe that it is good for the people I represent. I hope my fears and my concerns turn out not to be well founded. I hope that I do not have to take to this floor 2 years from now or 3 years from now and point out the kinds of violations that will be censored by this commission with no court to appeal to, with no recourse for our people. Then we will sit back and say, "Oh, what a terrible mistake we made."

I thank the Senator from Alaska. I say he has risen to address something that is technical, but he is absolutely right and he has a right to move to strike these. The fact of the matter is, we are so heck-bent on pushing this through that we violate the rules and regulations to accommodate this. He has had the good sense and courage to stand up and call it to everyone's attention.

I yield the floor.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER (Mr. CONRAD). The Senator from Alaska.

Mr. STEVENS. Mr. President, I previously put into the RECORD, with the approval of the Chair, the memorandum prepared by Public Citizen, which I believe was sent to every Member of the Senate. Let me read from page 3 of that briefly.

I take this off the bill, if I may, please?

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

Mr. STEVENS. Mr. President, this is a memorandum prepared by Public Citizen:

Key aspects of the supplemental agreements are constitutionally unenforceable without congressional approval.

The United States can enter into treaties, which require ratification by two-thirds of the Senate, international agreements that require approval by simple majorities of both Houses of the Congress, or executive agreements that may unilaterally be put into force by the President. The latter category is typically reserved for agreements concerning matters that are within the President's constitutional powers, such as recognition of foreign countries, receiving Ambassadors, and enforcing United States law.

In contrast, where an international agreement involves matters within Congress' constitutional powers, makes commitments affecting the Nation as a whole, or affects State laws, congressional approval is required. Whether that approval must take the form of Senate ratification or congressional approval is a thorny issue that turns largely on whether powers specifically delegated to Congress as a whole are at stake. Thus, trade agreements must be approved by the Congress as a whole because they regulate foreign commerce, a power constitutionally assigned to the entire Congress. Because of the complex issues surrounding the proper treatment of an international agreement—

And I call the attention of the managers of the bill to this—

Federal regulations require Federal agencies to consult with and obtain the legal opinion of the State Department's Legal Advisor to determine the proper status of particular international agreements.

That is 22 Code of Federal Regulations, section 181.3–.4.

In contravention of these regulations and routine practice, no such legal memorandum was prepared on the supplemental agreements—

These are the supplemental agreements we are talking about in this bill.

Instead, it appears that political considerations caused the administration to sidestep both the legal analysis and the appropriate approval channels. President Clinton's decisions not to submit the supplemental agreements for congressional approval calls their constitutionality and enforceability into question. Simply stated, the President does not have the unilateral power under the United States Constitution to obligate the United States or the States to modify NAFTA or to pass laws. What this means is that the provisions of the supplemental agreements that have been touted as according significant environmental and worker protection are without any legal effect.

There are many people voting for NAFTA because they think they do have legal effect. I believe a duly constituted court of the United States at some time is going to declare that these are not agreements that are within the President's power to put into effect through this mechanism. I hope that we have really set forth in the RECORD sufficient reason for others to examine these agreements and to take steps to prevent this erosion of the duly constitutional channels for approval of the creation of new Federal agencies, the erosion of the controls that were established by the checks and balances of our Constitution.

Furthermore, I have another reason to have considered this. Recall that Alaska is the only State in the Union that is prohibited from exporting its major resource. We cannot export the oil that is produced in Alaska. That is prohibited by both an amendment to the Alaska Pipeline Act, which was presented by then Senator Mondale, and it is also prohibited by the Export Administration Act. It is an absolute ban on our exporting into world commerce the oil that is produced in our State that is transported through the trans-Alaska pipeline.

That export ban increases transportation costs. Our oil is consumed down the west coast; 77 percent of it is consumed on the west coast of the United States. The balance goes by tanker through the Panama Canal pipeline, comes up the east coast, and some of it goes to the Caribbean centers.

The vast and voracious market for oil in the Pacific rim is not even allowed to be involved. As a consequence,

the domestic production of oil in the western part of the United States has almost been eliminated. We have lost most of our stripper wells. We have lost about 3 million barrels a day, just slightly more than what Alaska produces and sends into that region.

There has been no incentive to discover new oil in the western part of the United States because Alaska's oil is confined to that area. Instead of it seeking its natural market in the Pacific rim where it is close by transportation and given an inducement to restore the oil industry of the Western States, we have been prohibited by Congress from doing so. People here talk about free trade. How did you vote on the Alaska pipeline amendments? How did you vote on the ban that prohibits our State from exporting oil? Instead, it probably can go into Mexico under this free-trade agreement. Now, I know that remains to be seen but we will know it some time in the future.

The goal of NAFTA as I understand it is to create new and more efficient markets, through a reduction of trade barriers. In our State, trade barriers are the very thing that has put a damper on exploring for oil out of the North Slope. We have 13 sedimentary basins in Alaska. Only two have been explored. Why? Why find new oil that is confined to be transported down to the south 48 and cannot enter the world oil markets? Instead, do you know where they are drilling? Mexico.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. CHAFEE. Might I have 10 minutes?

Mr. DANFORTH. Mr. President, I yield from the bill 10 minutes to the Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. CHAFEE. Mr. President, first, I would like to point out, if I might, to the Senator from Alaska, when he referred to NAFTA proceeding on a super express, I point out that the negotiations on NAFTA started in September 1990. So this has been a 3-year process. I do not think it is quite fair to label it a super express.

Mr. STEVENS. Will the Senator yield for a moment?

Mr. CHAFEE. Sure.

Mr. STEVENS. This bill was not even before the Senate before we used up half of the 10 hours that we are allotted under the bill. I am talking about super express right here in the Senate.

Mr. CHAFEE. As you know, Mr. President, there are 20 hours and I suspect by the time we are through, we are going to consume a good portion of that 20 hours.

Mr. President, I would just like to make, if I may, a few points.

First—and I am solely talking about the side agreements—I think the impression has been given that the side agreements are being approved by Congress. These are not agreements that Congress must approve. They are not the same as trade agreements which are considered under fast track. The President can enter into these side agreements without approval. These are the types of agreements that the Executive of the United States can enter into, and he enters into such numerous Executive agreements every year. So that is the first point. The side agreements are not before us.

If you look at this legislation, the side agreements are not in it.

The next point. What Congress has to do is to implement certain U.S. obligations under the side agreements, and that is done under this bill.

Now, you might say what right have we to do that? What right have we to implement certain obligations under the side agreements, which, as I would point out now to the Senator from Alaska, are not even in the legislation before us—the side agreements.

Now, what is done here is to implement certain obligations under the side agreements, and that is done under what are considered the necessary and appropriate powers to implement the overall NAFTA package.

Who decides what is necessary and appropriate? We do. If we do not think they are necessary and appropriate, then we reject the whole bill before us this evening. That is one reason individuals can reject the whole bill. We have the right to do that.

The side agreements are linked to NAFTA in one simple respect: They will enter into force together. As I say, the side agreements are not even in this NAFTA we are considering before us. However, they will go into effect at the same time the overall agreement will. And the three NAFTA parties—Canada, the United States, and Mexico—will not put the overall agreement into force without the side agreements, nor the side agreements without NAFTA.

In conclusion, Mr. President, I would like to make the final point which the distinguished Senator from Montana and the others speaking this evening have made. If we can amend this agreement, then fast track is done. We might as well just forget fast track as far as it applies to the General Agreement on Tariffs and Trade and other trade agreements that we apply fast track to in the future.

So, Mr. President, tonight the Senator from Alaska is, to me, making a very dangerous, if you would, proposal; that is, that the whole fast-track procedure will be undermined.

Mr. DODD. Will my colleague yield on that point?

Mr. CHAFEE. Yes, I would.

Mr. DODD. I think the whole point of this debate is fast-track procedure. If I may, what my colleague from Rhode Island is saying is that the more appropriate time for this discussion, putting aside the specifics of an agreement, was when this body considered the fast track legislation. If you do not like a fast-track approach—and there are many who do not and there are some legitimate questions about fast track—the time and the place to raise the issue was when we adopted the fast track for this agreement. Once you have accepted that procedure, then, in effect, you have bought into exactly what is occurring here tonight with these particular side agreements. Is that not correct?

Mr. CHAFEE. That is absolutely correct. I might say that is not unique, for this body to deprive itself of the right to make amendments. The Senator from Alaska says in certain instances he has a constitutional right to make an amendment, but we give that right up. What is the whole base closure procedure about? We cannot amend the base closure package. Those are the rules we operate under. It is yes or no. That is the way it is with fast track. We, in approving fast track, have said to ourselves we in Congress are not the kind of people to deal with trade agreements if we can amend them.

Mr. DODD. Will my colleague yield further?

Mr. CHAFEE. Because every nation negotiating with the United States of America would say beware, do not agree on anything because that is just the starting point. Wait until Congress gets its hands on that agreement.

So at the urging of our Special Trade Representatives, our Presidents, our Secretaries of State, Secretaries of Commerce, we over many, many years in this body have agreed to the fast-track procedure so that meaningful trade agreements that involve literally hundreds, scores of nations—indeed, I think in the GATT instance it is something close to 160 nations—can enter into negotiations with the U.S. representatives with confidence that whatever is agreed to is going to be it, yes or no, but it is not going to be whittled away by Members of Congress, U.S. Senators and Representatives.

Mr. DODD. I thank my colleague.

Mr. STEVENS and Mr. DODD addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. STEVENS. Mr. President, I yield myself 5 minutes, if I can, and I will be happy to yield to my friend from Connecticut. I wish to reply to my good friend here from Rhode Island, if I may.

The PRESIDING OFFICER. The Senator from Alaska [Mr. STEVENS] is recognized.

Mr. STEVENS. Off the bill, please.

My friend and I are of the same generation. We are the Lindbergh generation, literally, and we use "we" too often. "We," he says, have given away our rights. That law was passed in 1974. How many of us were here in 1974? Can

one Congress bind a subsequent Congress 29 years later? Are you saying those who were here 29 years ago gave away rights of new Senators here to represent a State? What am I hearing? I do not believe my ears.

I wonder if people have read the bill. The section I am trying to eliminate says, "Subtitle D, Implementation of NAFTA"—NAFTA—"Supplemental Agreements." And yet the testimony of the administration is they are not part of NAFTA; they are not trade agreements.

"Agreements Relating to Labor and Environment." What do we do? We start first off, we authorize money to be appropriated to such agencies the President may designate, $20 million for a commission we had nothing to do with. The Senator just said it is not created by law. It is inferred that the President's authority to negotiate those agreements gave him the authority to create new functions of Government, new trilateral functions of Government, paid for by the taxpayers of the United States.

If you go through it, it has the "Agreement on Environmental Cooperation." It gives again $5 million to go ahead with that. And it talks about the "Agreement on Border and Environmental Operation Commission," again, that is $5 million to go ahead with it; "North American Development Bank and related provisions." We obligate the United States to participate in a new bank with taxpayers' money with no authority of the Congress.

Let me repeat that, a bank, the North American Development Bank. But, as the Senator from Rhode Island says, it is not in this bill.

What is in the bill is legislation that has nothing to do with NAFTA. It implements two side agreements that were negotiated after negotiating time for trade agreements expired.

But what are we doing? We may subscribe on behalf of the United States to 150,000 shares of the capital stock of the bank. I cannot believe it. That bank was created by an Executive agreement with no authority of anybody, and we are to approve it, approve money to put it up. I just do not understand it.

"Exemption from securities laws for certain securities issued by the Bank." They are exempt from the laws that apply to everybody else. You just go buy 150,000 shares. It does not say how much you can pay for them but that is another matter.

"Community Adjustment Investment Program." The President can enter into another agreement now. This time we authorize him to enter into an agreement with a bank that he created.

I tell you, I do not think people are reading this bill. I am just trying to do what anyone would do that has read this bill. If this were a budget act, I would make a point of order it should not be in this bill. I would offer a motion to strike and my motion would not be ruled out of order by the Chair. That is all there is to it.

There are only 16 Senators here today who were Members of this body in 1974. Let me repeat that, 16 Senators voted on the 1974 bill, and my friend from Rhode Island says we waived our rights. As a matter of fact, I voted against the 1988 trade bill which granted the President the authority to negotiate NAFTA under the fast track.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. CHAFEE. If I might have 1 minute.

The PRESIDING OFFICER. Who yields time?

Mr. CHAFEE. One minute.

Mr. DANFORTH. One minute.

Mr. CHAFEE. I previously said there are 160 nations involved with GATT. It has been pointed out I was wrong. There are 108 nations. Still, it is a lot of nations.

Second, the Senator from Alaska has vigorously stated that we did not give up any of our rights. The fact is we authorized the fast track. If I might have the attention of the Senator from Alaska, because he was quite concerned about this matter, we authorized fast track in 1988. We authorized fast track in 1988. Everybody was here then; nearly everybody—1988. That was 4 years ago. And we extended it in May 1991. That is not back in 1974. And we extended it for GATT in June 1993.

So this idea that somehow we are being hornswoggled by a whole series of votes that were taken years before anybody came to the Senate, a bunch of decrepit Senators are the only ones that can remember that, is not quite true.

We authorized fast track in 1988. We extended it in May 1991. We extended it for GATT in June 1993. That is quite recent, I would say.

Several Senators addressed the Chair.

Mr. MOYNIHAN. Mr. President, I yield 4 minutes to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. I thank the distinguished chairman, Mr. President, and the Senator from Alaska.

I just happened in on the comments made by the distinguished colleague from Rhode Island, that the constitutional point of order made by the distinguished Senator from Alaska, was dangerous. I just had to get out of my chair, because I strongly disagree.

It is not the Constitution that is dangerous, it is this fast track procedure. The fact of the matter is everyone knows in their own hearts and minds that this fast track thing is a political fix. What happens, is that the President calls over and says he is about to get an agreement with a particular country or group of countries and asks the Congress to support him and give him a vote of confidence and vote for a procedure that limits our ability to amend or even discuss his agreement. And he asks us to do this before we have even seen it. And we all say, well, we don't question the fact that you are doing what is in the best interests of the country, so yes, we will go along with fast track.

Then, when the time comes to debate it, the right time to raise that point of order—oh, no, you do not have any time. They come under your nose with a watch. And they say, Wait a minute. I have to catch a plane. How much longer are you going to talk?

So the whole thing is arranged. The bottom line question is whether or not under the Constitution we can delegate this to the Executive or really, more specifically, whether we can amend the Constitution with a simple bill. The Constitution says we can amend any bill. This fast-track legislation is one.

In his Farewell Address George Washington said, "If, in the opinion of the people, the distribution or modification of the constitutional powers, be, in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument for good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance, in permanent evil, any partial or transient benefit.

Now, Mr. President, can this Congress amend the Constitution, in the one instance, if they think it be the instrument of good to facilitate an agreement or treaty with one nation, or 108 or 138? I do not think so.

I hope the Senate will join in with the Senator from Alaska on his appeal of the ruling of the Chair, because though it might have been in this particular instance the instrument of the good, article I, section 8 of the United States Constitution says the Congress—not the President, not the Supreme Court, not the Secretary of State, not the Executive—"the Congress shall regulate foreign commerce."

Senators should ask themselves if we can go so far in fast track as to eliminate our constitutionally mandated duty to regulate foreign commerce and eliminate our ability to amend a bill that is before us.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HOLLINGS. It would seem like we would have that right.

I thank the distinguished chairman of the Finance Committee.

Mr. BAUCUS. Mr. President, I think we are about ready to vote and are fairly close to a vote.

It is important for Senators to realize once again that if this amendment passes, it is the end of NAFTA, it is the end of any trade agreement that this country can reach with any country. It will be the end of the Uruguay round, because if this amendment passes, there will be other amendments, and we can all conjure up a multitude of different kinds of ideas, different amendments that come before this body that would drag down NAFTA. Then we would have to have a conference with the House. The House would then, too, reconsider NAFTA. A whole host of possible amendments. It would be all over, the end of NAFTA.

In addition, Mr. President, it would mean the end of the Uruguay round. France, Japan, Canada, no country would negotiate with the United States in the Uruguay round because they could not trust the President to be able to carry and deliver the Congress because once the President went to Congress with an agreement, any Member of Congress would stand up and offer any amendment under the sun. That would be the end of it.

So this is not only a killer amendment, Mr. President. This is a serial killer amendment. This kills any potential trade agreement. It is all over. And if we worried about abdicating our national responsibility by killing NAFTA, if we pass this amendment, we are abdicating it all. We are saying to all countries, forget it, the United States is not a player. The United States is not going to enter into trade agreements in this new world, new global economy, and where we are also interrelated environmentally, labor provisions, and what not.

So I strongly urge Senators to vote to sustain the appeal of the ruling of the Chair.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Republican leader.

Mr. DOLE. Mr. President, do we have time?

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. I will take time off Senator PACKWOOD's time.

I will just take a minute or two.

The PRESIDING OFFICER. The Republican leader, Senator DOLE.

Mr. DOLE. Mr. President, first, let me indicate that the Senator from Alaska is one of the most resourceful Members I have ever known in the U.S. Senate. I have listened in my office to much of his debate. He has given us this information in policy and other meetings on our side of the aisle. I think he makes probably a pretty good case.

But the question is whether or not we are going to pass NAFTA, the North American Free-Trade Agreement. As much as I respect my friend from Alaska, it seems to me if we vote against the Chair's ruling, it is a vote to kill NAFTA. If that is what the Members want to do, there is certainly an opportunity to do it.

I think it is going to be very difficult, if you support the amendment, to say you are for NAFTA. That is the only point I make. I want the NAFTA to pass.

I understand Senator STEVENS' concern for the side agreements. I think it is a bad idea. It did not get the President anything; did not get him much labor support; did not get him much environmental support. But the side agreements were made.

It seems to me that we have now decided how we are going to treat trade agreements. I hope we can defeat the amendment and move on with the debate. I understand the Senator from Alaska is willing to yield some of his time to the majority leader and have a vote on final passage sometime by 9 or 10 o'clock this evening.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, first, I have discussed the allocation of time with the Senator from Alaska, the Senate Republican leader.

The PRESIDING OFFICER. Will the majority leader yield so we might ascertain where the time he uses will be coming from?

Mr. BAUCUS. Mr. President, I yield 5 minutes to the majority leader.

Mr. MITCHELL. Mr. President, I have discussed this with the Senator from Alaska and the minority leader, and they have graciously agreed to a reallocation of time under which 90 minutes of the time remaining under Senator STEVENS' control would be transferred to the control of Senator MOYNIHAN. That would not change the overall amount of time on the bill, but would merely change the allocation and would reflect the difference in the numbers on the two sides and give more Senators an opportunity to speak on the bill.

I ask unanimous consent that such reallocation occur.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. MITCHELL. I thank the Senator from Alaska, for his graciousness and I thank the minority leader as well.

Mr. President, I, too, will speak briefly with respect to the amendment. I really cannot say any more than to associate myself with the remarks of the Republican leader.

The Senator from Alaska is extremely resourceful, one of the most effective Members of this Senate, and he is also a good friend; I have great respect for him. I simply say that whatever the intention of this amendment, there is no doubt about what the effect will be if this amendment is adopted. There will not be a North American Free-Trade Agreement approved.

Therefore, for that and a variety of other reasons, I hope that the Senate will reject this amendment. I hope that Senators who support the North American Free-Trade Agreement will see it in that light. As the minority leader has just stated, you really cannot say you are for the agreement and then vote for an amendment that will kill the agreement. I limit my comments to that.

There are a whole variety of other reasons why I believe the amendment should not be approved, but they have been debated at length skillfully by the Senators from Montana, Missouri, Rhode Island, and others, and I know that perhaps the person most significantly affected by this is the chairman of the Finance Committee, who I know will say a few words about it now.

Therefore, I conclude by simply urging all Senators to join in support of the North American Free-Trade Agreement and in opposition to this amendment.

I yield the floor.

Mr. STEVENS. While the leader is here, several people have asked about an agreement and when to vote. I will be happy to discuss that with the leader and the chairman of the Finance Committee and the Senator from Montana.

Mr. MITCHELL. I will make the following suggestion, if agreeable to them; that the Senator from New York, the distinguished chairman of the Finance Committee, be recognized to speak, and that upon the conclusion of his remarks, the Senate vote on the pending measure.

Mr. STEVENS. Could I have 2 minutes to close?

Mr. MITCHELL. Certainly.

How much time does the Senator from New York need?

Mr. MOYNIHAN. Three minutes.

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

Mr. MOYNIHAN. Mr. President, I rise simply to speak from a longer perspective. We have at issue here a mode of reaching trade agreements which was begun in 1934 in the Reciprocal Trade Agreements Act of that year, in the aftermath of the disaster of the Smoot-Hawley Tariff Act. That act, in which we added 20,000 individual tariff increases on this floor, brought us to a 60 percent tariff rate, and brought the world and our own Nation's economy into ruin. In the aftermath, we said we cannot do it that way.

We proceeded happily in tariff negotiations through the Kennedy Round, which began in 1962 under the Trade Expansion Act of that year. The Kennedy round, signed June 30, 1967, contained provisions dealing with nontariff items. Increasingly, trade negotiators have found that not tariffs, but quotas and subsidies and such like, restrictions on who may conduct what kind of business, are the most important aspects of world trade. When the

Administration addressed several of ours in the Kennedy round, Congress refused to abide by them. Our trading partners then refused to negotiate further.

In 1974, accordingly, we adopted the fast-track procedure that we are under tonight. We did so in clear conformity with article I, section 5, clause 2 of the Constitution, which provides that each House may determine the rules of its proceedings.

As much as I share the concerns which the Senator from Alaska so ably set forth, I say do not put our whole trading negotiating position in the world in jeopardy. The Uruguay round of the General Agreement on Tariffs and Trade is to be concluded on December 15, scarcely a month away. Seven years in the making.

If it is thought in these final hours in Geneva that agreements reached with the U.S. Representatives of the President, who negotiate, will not be kept by the Congress, which legislates, we will not have a Uruguay round, and a moment of potentially great advantage to the world, and most particularly to our Nation, will have been lost on a procedural vote, on an issue which we can return to next year. If the Senator from Alaska wishes the Committee on Finance to address it, we will do so. I urge us to oppose this measure.

The PRESIDING OFFICER. Who yields time?

Mr. STEVENS. I ask the Senator from Montana if he would like some time? I will take 2 minutes to close.

Mr. BAUCUS. I yield——

Mr. STEVENS. I have time.

Mr. President, I will take 2 minutes. I say to the Senate that I am saddened in many ways. I only seek to delete extraneous material from a bill that was designed to approve a trade agreement. I hope that perhaps I have been able to put a mark on the wall. I thank the Senator from New York for his commitment that the Finance Committee will review the fast-track procedure in the 1974 Trade Act. We ought to have the right to exclude extraneous matters from these bills, matters that really are not required by the trade agreement.

I agree we may have to have some sort of fast-track procedures considering trade bills, but only to the extent that it is absolutely required. Trade agreements are extraordinary. They are not designed for treaties. That is why we have a fast track.

Mr. President, the law we passed in 1974 was clear. The fast track was permissible, and the bill that prevents the fast-track approval for the trade agreement designated what could be in it. We are ignoring that. How do we expect judges to really interpret the laws we write if we are unwilling to abide by them ourselves? How do we expect "John Q. Citizen" to really respect and adhere to the laws we help pass if we are unwilling to adhere to them ourselves?

I think an arbitrary procedure in a bill passed in 1974, when only 16 of the Senators here were present, should not be binding on this Senate to the extent that it prohibits us from deleting from a bill extraneous matters which are not trade agreements, which were not negotiated within the timeframe we gave the President to negotiate trade agreements and which, by definition, are executive agreements which create 34 new entities of Government that will cost the taxpayers in this country thousands and millions of dollars to come.

I think it is wrong. I urge the Senate to overrule the Chair. I thank the leaders for their cooperation. I am prepared to yield the remainder of my time. Is the Senator from Montana prepared to yield his?

Mr. BAUCUS. Yes.

Mr. STEVENS. Mr. President, I ask for the yeas and nays on my appeal of the ruling of the Chair.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. STEVENS. Mr. President, I suggest the absence of a quorum, temporarily, for a minute, the time being charged against the time I have on the bill.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STEVENS. 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. STEVENS. Mr. President, there has been discussion as to why I have proceeded in this fashion and I would like to explain.

It was possible for us to have a vote on the constitutional question, which I have avoided. I have avoided it particularly for the reason that the Senator from New York has just indicated. He is willing, as the chairman of the Finance Committee, to explore with us issues I have raised today regarding the fast-track procedure of the 1974 Trade Act.

I did not want to set a precedent which would bind future Senates to an issue which I think we ought not to bind ourselves to now. We ought to try to amend this law and make it effective rather than establish a precedent other Senates might later not want and find it hard to undo.

We are merely appealing the ruling of the Chair that denies me the right to offer my amendment. We are not voting on the constitutional question. I thank the Senator from Connecticut for mentioning that to me.

I assure the Senate that I, too, respect the historic traditions of our body. I would not want to establish that precedent in this matter. I do not think it would be right. I do think we ought to correct the law, and my friend from New York is in a position to help us do so.

The PRESIDING OFFICER. All time has been yielded back.

Mr. STEVENS. Mr. President, again 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. STEVENS. 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. STEVENS. Mr. President, may I yield just 2 minutes to my friend from South Carolina so he can make his point in the RECORD that we have been discussing.

The PRESIDING OFFICER. The Senator has that right.

The Senator from South Carolina is recognized.

Mr. HOLLINGS. Mr. President, I thank the distinguished Senator from Alaska.

Each one has his or her reasons and rationale for their vote. My reason is fundamental. I do not think you can amend the Constitution by a simple act of Congress.

Under the Constitution we have a right to amend this bill, any bill. I feel very strongly that that is constitutionally provided. I think fast track is an attempt to amend the Constitution to disallow any amending of this particular agreement or treaty.

While he describes his vote in the appeal of the Chair not a constitutional question, I describe mine as very fundamentally constitutional.

I thank the distinguished Senator.

The PRESIDING OFFICER. The question is, Shall the decision of the Chair that the amendment offered by the Senator from Alaska [Mr. STEVENS] is prohibited under section 151 of the Trade Act of 1974, 19 U.S.C. 2191(d), stand as the judgment of the Senate.

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 North Dakota [Mr. DORGAN] is necessarily absent.

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

The result was announced—yeas 73, nays 26, as follows:

[Rollcall Vote No. 389 Leg.]

YEAS—73

Akaka	Boxer	Byrd
Baucus	Bradley	Campbell
Bennett	Breaux	Chafee
Bingaman	Brown	Coats
Bond	Bryan	Cochran
Boren	Bumpers	Conrad

Coverdell	Jeffords	Murray
Danforth	Johnston	Nickles
Daschle	Kassebaum	Nunn
DeConcini	Kennedy	Packwood
Dodd	Kerrey	Pell
Dole	Kerry	Pryor
Domenici	Kohl	Reid
Durenberger	Lautenberg	Robb
Feinstein	Leahy	Rockefeller
Ford	Lieberman	Roth
Gorton	Lugar	Sarbanes
Graham	Mack	Sasser
Gramm	Mathews	Simon
Grassley	McCain	Simpson
Gregg	McConnell	Thurmond
Harkin	Mikulski	Wallop
Hatch	Mitchell	Wofford
Hatfield	Moseley-Braun	
Hutchison	Moynihan	

NAYS—26

Biden	Heflin	Pressler
Burns	Helms	Riegle
Cohen	Hollings	Shelby
Craig	Inouye	Smith
D'Amato	Kempthorne	Specter
Exon	Levin	Stevens
Faircloth	Lott	Warner
Feingold	Metzenbaum	Wellstone
Glenn	Murkowski	

NOT VOTING—1

Dorgan

So the ruling of the Chair was sustained as the judgment of the Senate.

The PRESIDING OFFICER (Mr. LEAHY). The Senator from Alaska.

Mr. STEVENS. Mr. President, that was not an unanticipated result, but in view of it I shall not pursue the other amendments and points of order I had in mind concerning this bill.

I do want to thank my able assistants, Christine Ciccone, from the Rules Committee, my Legislative Director, Earl Comstock, and my administrative assistant and chief of staff, Lisa Sutherland.

I do thank the Senators for their cooperation. I look forward to working with the Members of the Senate to change the basic 1974 trade law. We should have the same rights to strike extraneous material and materials not absolutely essential to the trade agreements from any fast track consideration.

We have already yielded the time.

The PRESIDING OFFICER. Who yields time? The Senator from Montana.

Mr. BAUCUS. Mr. President, I yield 22 minutes to the Senator from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey is recognized for 22 minutes.

Mr. MITCHELL. Will the Senator yield for a moment?

Mr. BRADLEY. I am pleased to yield to the majority leader.

The PRESIDING OFFICER. The Senator from New Jersey has yielded to the Senator from Maine, the majority leader.

Mr. MITCHELL. Mr. President, I want this off my leader time and not off the time of the Senator.

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

Mr. MITCHELL. Mr. President, I say to the Members of the Senate, it is my intention that the Senate will now continue in debate on the North American Free-Trade Agreement until 11 p.m. this evening. At that time, by a prior order, the Senate will vote again on cloture on the Brady bill.

I do not anticipate any votes between now and 11 p.m., and if something occurs that I do not now anticipate, we will attempt to give Senators plenty of notice for Senators to return. But there will be a vote at 11 p.m. on cloture on the Brady bill.

Between now and then, I will meet with the distinguished minority leader and others involved in this and other pending measures, and have an announcement with respect to the schedule thereafter, both the NAFTA and the other matters that we hope to resolve.

Several Senators addressed the Chair.

Mr. STEVENS. Will the majority leader yield?

Mr. MITCHELL. Certainly.

Mr. STEVENS. In view of the fact we have transferred an hour and a half of the time allocated to this side of the aisle to the distinguished chairman of the Finance Committee, would it be possible now to agree that the time remaining for the minority be consolidated between the pros and cons? That way we will not have to keep two people here to allocate time. I would like to consolidate the remaining time for the Republican side of the aisle for the remainder of this bill.

Mr. MITCHELL. I have no objection.

Mr. STEVENS. I ask unanimous consent that now be done.

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

Mr. MITCHELL. Will the Senator from Alaska, if I could have his attention—when he says consolidated, consolidated in whom?

Mr. STEVENS. It is in Mr. PACKWOOD's—the minority leader.

Mr. MITCHELL. You are relinquishing your time to Senator PACKWOOD or his designee.

Mr. STEVENS. I am saying it is all one pot, subject to the control of our leader.

Mr. WARNER. Will the majority leader yield for a question?

Mr. METZENBAUM. May I address the leader, please?

The PRESIDING OFFICER. The Senator from Virginia will withhold for just a moment. Could we have order? The Senator from Virginia was seeking recognition to ask the Senator from Maine a question.

Mr. WARNER. I ask the distinguished leader, my understanding is the conference report on Senate intelligence authorization has either been acted upon or will be very shortly by the House.

Could the distinguished leader advise the Senate as to his intentions with respect to that piece of important legislation?

Mr. MITCHELL. It is my intention to proceed to that measure. I have not yet been able to get it cleared, but I am working on it, and I hope to be able to get that clearance in the near future. That is one of many matters we have been working on.

Mr. WARNER. I thank the distinguished leader.

Mr. METZENBAUM. Mr. President, I just want to say to the leader, as manager of the Brady bill, I have long felt around here that having votes at 11 o'clock at night has a certain amount of absurdity to it.

From my standpoint, I would have no objection if the leader wanted to put that vote over to tomorrow morning. I see no particular reason why we have to vote at 11, or that there is anything particularly symbolic or important about doing it.

If you wanted to do it at 10 o'clock in the morning?

Mr. MITCHELL. Mr. President, the timing of the second cloture vote was a disputed and negotiated feature of the agreement that was reached yesterday.

Whatever my personal disposition is, I am unable to do that at this time. I would have to consult further with the minority leader in that regard.

Mr. METZENBAUM. I am aware of that, but several of the Members have asked me why do we have to vote at 11 o'clock at night. It was my understanding the minority leader had indicated his desire to have that second vote at that time.

Mr. MITCHELL. That is correct.

Mr. METZENBAUM. So to be very clear about it, I have no objection to doing it, whatever time you want tomorrow.

Mr. MITCHELL. I will raise that with the minority leader. But may I suggest to you in a generic answer to the inquiry why we have to vote at 11? So that we can leave before Thanksgiving.

Mr. METZENBAUM. I did not know that was generic, but I will accept it.

Mr. MITCHELL. I thank my colleagues and the Senator from New Jersey for his courtesy.

NORTH AMERICAN FREE-TRADE AGREEMENT IMPLEMENTATION ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senator from New Jersey is recognized for 22 minutes.

Mr. SARBANES. Mr. President, I would like to engage the Senator very briefly in a colloquy.

Mr. BRADLEY. I will be pleased to engage the distinguished Senator from Maryland in a colloquy but not on my time.

Mr. MOYNIHAN. If the Senator from Maryland will restrain himself, others Members will appreciate it.

Mr. SARBANES. I thank my colleague.

Yesterday, Mr. President, the Senator from New Jersey took the floor after I spoke with respect to some of the points that I had made in my presentation. I did not have a chance at that time to respond. I would like to do so now.

In his statement, the Senator from New Jersey said in response to some of the points that I had made: "The number that is frequently thrown around"—this is for the wage gap between the United States and Mexico—"ranges from 7 to 1 to 10 to 1. I think it is important for us to focus on what some of the real facts are as it relates to the issue of wages." That is the Senator from New Jersey speaking.

He then proceeded to make several points designed to counter the statement I had made earlier. One, that the compensation ratio is 3 to 1, not 7 to 1; two, that the low average productivity in Mexico is what matters, not the productivity of its export sector; and three, that the jobs that will be lost are low-tech jobs.

I submit that all three of these assertions are in error, and I would like very quickly to state why. I regret that I did not have the opportunity yesterday to make this brief statement.

In quoting from William Orme, "Continental Shift: Free Trade in the New North America," which I understand was the text the Senator from New Jersey was using on the floor, he quoted the following passage:

> The 10-to-1 ratio cited by Perot and others faithfully does reflect the pay differences between border assembly plants of, say, General Motors and General Electric, two of the biggest maquiladora employers, and between those factories and their unionized factories in the United States.
>
> Some of these operations are directly equivalent in terms of job description and productivity, and the comparison, therefore, is apt.

To the credit of the Senator from New Jersey, he did quote the above section of that study which made, in effect, the very point I was asserting on the wage gap—that in these border assembly plants, both GM and GE, you had a 10-to-1 wage gap ratio.

However later in his statement he quoted BLS compensation data, which are the figures I had used indicating a 7-to-1 compensation ratio, and then said:

> But the figures understate real wages—real wages in Mexico. Most of the typical Mexican industrial payroll goes toward fringe benefits such as subsidized food, transportation, and even housing, plus mandatory profit sharing and a required Christmas bonus equal to an additional month's pay. Mexican workers also get double pay for overtime, a minimum of 20 days paid vacation per year, and for women 12 weeks paid maternity leave. According to one analysis of this full picture, the benefit package given to Mexican industrial workers equals a startling 62 percent of base pay compared with 8 percent for American wage earners.
>
> With all these factors added in, some companies with manufacturing on both sides of the border contend the real wage differential is more like 3 to 1, with the gap closing all the time.

We had been using the 7-to-1 figure from the BLS compensation data. It was then asserted by the Senator from New Jersey that this comparison omits all of these items that have just been listed and that the inclusion of those items would, in fact, lower the wage gap from 7 to 1 to 3 to 1. As I understand it—I do not have the exact text of the Senator before me—I think he then went on to say that 3 to 1 is 3 to 1 and it is closing. It certainly is not, he said, 7 to 1.

We have checked this, and it is our understanding that the BLS data on Mexican compensation, which provided the 7-to-1 wage gap figure I had been using already included all of the items listed by the Senator from New Jersey—food, transportation, housing, profit sharing, Christmas bonus, overtime, vacation, and maternity leave.

In fact, the BLS description of what is included in the compensation figure either explicitly identifies some of these items—profit sharing, bonus, overtime, vacations—or tells us that they are included in the terms pay in-kind—food, transportation, housing or legally required benefit plans, and maternity leave.

It is the BLS' analysis that the wage gap ratio is 7 to 1 and that this factors in all of the numerous items I mentioned above. In other words the items were already counted in arriving at the 7 to 1 wage gap rather than being left out as the Senator from New Jersey assumed in asserting a 3-to-1 gap.

Also, we were told by the Senator from New Jersey that Mexican industrial workers have a benefit package equaling 62 percent of base pay compared to only 8 percent for American wage earners. That very low figure for the U.S. benefit package did not sound right to me on the face of it, but I did not have the figures in front of me at the time. We have since checked that, and the nonwage compensation in the United States is not 8 percent of base pay but, according to the BLS, 39.5 percent of base pay, not quite at the Mexican level but significantly greater than the figure put forth by the Senator from New Jersey.

But the 7-to-1 ratio, which I and others have used to make the argument that facilities might well be located in Mexico to take advantage of this wage gap given Mexican productivity at 80 to 100 percent of U.S. levels, in fact, include the items that the Senator from New Jersey cited.

Furthermore, the Senator also made reference to low average productivity in Mexico. Of course, the salient issue is what the productivity is in the export sector. I am trying very hard to compare apples and apples and not apples with oranges. I appreciate and understand that it is not helpful to the debate to engage in a comparison of apples and oranges.

I have been focusing on Mexico's export sector, which is what we are really talking about in terms of their productivity and the possible impact of NAFTA. Average productivity in Mexico is, of course, lower than the productivity in the export sector, but it is the productivity in the export sector that constitutes the challenge that we have been talking about with respect to the location of production facilities.

Finally, the Senator said that "a proponent of the NAFTA has to face up to and admit the loss of low-tech manufacturing." However, two industries with some of the heaviest investment in Mexico for export back to the United States are auto and electronics, neither of which are low technology. I think this is a very important point.

I thank the Senator for yielding. I have wanted since yesterday to put this correction in the RECORD.

Mr. BRADLEY. On the Senator's time, may I respond before I start to use my time?

Mr. SARBANES. Certainly.

Mr. BRADLEY. I thank the distinguished Senator for his comments on remarks that I made yesterday. As always, the distinguished Senator from Maryland is extremely precise. However, I think there probably is some slight continued disagreement on what the BLS figures actually show.

It is my understanding that in terms of subsidized food, transportation and housing, it is not included in the BLS numbers. Profit sharing, overtime, and vacation is included in the BLS numbers.

I would also say to the distinguished Senator that I think the argument about whether it is a 7-to-1 wage ratio or 3-to-1 wage ratio ignores something else I said yesterday, which was if you were talking about purchasing power parity, that the ratio would be close to 2.5 to 1, and I would simply suggest that once you get into the numbers there is a degree of complexity here that is obvious.

I think that the important thing for the argument I was trying to make—and I think that I can carry the argument forward even given the Senator's suggestions and comments—is that the direction of wages in Mexico is to higher wages.

In 1987, the ratio was 13 to 1. Taking the Senator's own comments and giving him not the 3 to 1 that I am suggesting it is but the 7 to 1, it is now 7 to 1, and the probability is that with the North American Free-Trade Agreement, by the time it is fully implemented, it will be 3 to 1.

The point is the direction of wages in Mexico is up, and I believe that indicates a significant problem with the argument that low wages are sucking all of the jobs to Mexico.

69-059 O—97 Vol. 139 (Pt. 21) 36

I would further point out that a lot of the objections, or a lot of the heat with regard to low wages focuses on the maquiladora program. The maquiladora program only has 450,000 workers but less than half of those workers are American companies. A very large percentage are Japanese companies. Less than half are American companies. Indeed, many of the American companies have gone down and would take two maquiladora workers in Mexico to replace one American worker, and in some cases they are not taking jobs from the United States because they are new industries, they are new components there in terms of CD's and personal computers.

So I would make the argument that to focus only on the maquiladora program and analogizing from that to the rest of Mexico is probably not the wisest way to go. In fact, the only study that I have actually seen done on the jobs that moved from the United States to Mexico, that had been tracked, showed that over I think it was a 10- to 15-year period 96,000 jobs. That is about a range of, what, 6,000 to 10,000 jobs, 12,000 jobs a year, in an economy that has 100 million jobs.

So I would say to the distinguished Senator from Maryland that if I gave him the points that he has made, the direction of the argument would still be the same. That is that it is not a major giant sucking sound to the south pulled by low wages, particularly when you add to that the lower productivity, and when you add to that the absence of infrastructure, and when you add to that the record since 1987 when the new economic policy was fully in place where real wages have increased by about 28 percent.

Mr. SARBANES. Mr. President, just to close this out.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. I am interested; the Senator uses 1987 as a base year, which was, of course, a low point for wages in Mexico.

What had happened is that the wage gap had been less than 13 to 1 earlier. However, you had a deterioration of the wage situation in Mexico which brought it down as low as 13 to 1. Subsequently, you have had some recovery which has brought the wage ratio back up to 7 to 1.

So the Senator has used in effect a depression, or recession year in Mexico, which resulted from a significant deterioration in Mexican wages, to use as his comparison. He then asserted that the recovery since the recession year, which brought wages back to a 7-to-1 ratio, represents a trend.

I think it is very important that this be understood. The improvement from 13 to 1 to 7 to 1 really represents a recovery from the trough year which resulted after a significant deterioration in the Mexican economy and the wage situation.

I am quite certain that if I had used the 1987 base year to assert a 13-to-1 gap, the distinguished Senator from New Jersey would have said, should not do that because I would be picking the worst year in terms of the Mexican economy and the Mexican wage situation, and therefore it would be an inappropriate year on which to base a comparison.

Now, second, on the point of the 7-to-1 ratio in the BLS compensation data, what the Senator said yesterday was that this figure underrepresented Mexican wages because it did not include subsidized food, transportation, housing, mandatory profit sharing, a Christmas bonus equal to an additional month's pay, double pay for overtime, a minimum of 20 weeks' paid vacation per year and, for women, 12 weeks paid maternity leave. He then said, if we added in all of these factors, that the differential would be 3 to 1 and not 7 to 1.

I wish to very strongly make the point that this in fact, is not the case. I have here the BLS hourly compensation costs for workers in manufacturing industries in Mexico where the BLS says:

> Average hourly earnings include pay for time worked, basic time and piece rates plus overtime premiums, shift differentials, and other work-related bonuses and premiums, pay for time not worked, holidays, vacations and other leave, and social and cost of living allowances.
>
> Furthermore, "additional compensation" refers to all employees and includes seasonal bonuses, end-of-year and vacation bonuses—

The Senator made a big thing yesterday of this bonus at the end of the year—

> End of year and vacation bonuses, profit-sharing bonuses, the cost of pay in kind, and employer expenditures for legally required contractual private benefit rights.

We asked the BLS the meaning of "cost of pay in kind," and they informed us that it includes food and transportation. All of these items that the Senator asserted yesterday were not being reflected in the 7-to-1 ratio, in fact, are reflected in it. They were included by the BLS in the course of making this comparison and did, in fact, give us the 7-to-1 wage gap between United States wages and Mexican wages that we have been using.

Mr. BRADLEY. I thank the Senator very much for his inquiry of the BLS and for their detailed explanation, particularly of what "in kind" is because there is no document that they submit to you, that can you find that "in kind" means housing, transportation, and food. This was I assume, something obtained in the discussion.

But the point here that I would like to make—and I take the Senator's point—I would like to just respond to why 1987; 1987 was not selected because that was the lowest of the low. I was not looking for the lowest possible number; 1987 was selected because that is when the policy of Mexico began to change. That is when they began to get out from under the IMF. The IMF was imposing a very rigid straitjacket on Mexico—valuation, balanced budgets, borrowing more from banks so they could pay interest to banks. And it was in 1987 that the policy began to change, began to change from a weak peso to a strong peso; began to move toward greater privatization in the State sector, and began to drop the overall tariffs; 1987 was selected because that was the time that the policy began to change, the result of which was the improvement from a 13-to-1 ratio, to a 7-to-1 ratio.

Mr. SARBANES. Mr. President, let me make this final point. According to the BLS the hourly compensation costs in 1987 were the lowest of any of the years from 1975 through 1992. That was the lowest year. It was higher in previous years, and then higher in subsequent years. And the Senator picked the trough year in order to make the comparison. The Senator from New Jersey asserts it was because of a change in policy. In fact, the earlier years had higher figures. Some had higher figures than now is the case. So the Senator from New Jersey picked the very bottom, trough year as the basis for his assertion that Mexican wages are on an upward trend.

Mr. BRADLEY. I think we can close this argument out. I would simply reassert that 1987 was a trough. But the reason it was a trough was important. Indeed, you had higher numbers earlier. You had higher numbers when petrodollars were flowing, and when banks were flowing money into Mexico, you had higher numbers. But the reality is the banks ultimately had Mexico under a thumb, and that is why these plummeted in the mid-1980's. That was the point I was trying to make. As the distinguished Senator from Maryland knows, he and I are about the only ones in this body who had any interest in the debt question.

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Mr. President, I want to say that I believe that the opposition to NAFTA is truly responding to the legitimate frustrations and fears and worries of millions of Americans. I just believe NAFTA is the wrong target for those angers and frustrations and, indeed, it has become a lightning rod for those angers and frustrations.

Mr. President, no consideration of NAFTA is possible until you begin to see what our predicament is. I think we are in the midst of four economic transformations:

The end of the cold war, the economic effect of which is to drop the number working in the defense sector from 7.2 million to 4.2 million.

Two, the gigantic national debt that went up to about $4 trillion in 12 years,

the result of which was to turn the real estate boom into a real estate depression.

Three, the knowledge revolution. The introduction of the computer into the work force had a profound effect in reducing the number of people working. Steelworkers in 1979 were about 721,000. This year they are 374,000.

And four, the explosion of markets in the world. Three billion more people in the world markets today, 1 billion more workers producing tradeable goods competing with our workers. Indeed, in the last 20 years 60 percent of the garment industry, largely because of that competition, has gone to Asia.

Mr. President, a lot of people have lost a lot of jobs and are continuing to lose jobs because of these four economic transformations. I believe it is important that we are sensitive to their needs. I believe organized labor is responding to their needs. And in the tradition of those of us who believe the trade union movement has played an enormously important role in our country and in the world, I believe we should come together and assure those working Americans who have lost their jobs and those who will lose their jobs from these transformations will have adequate health care, lifetime education, and pension security.

But, Mr. President, to defeat NAFTA solves none of these problems. To defeat NAFTA solves none of these problems. Passing NAFTA is a part of an overall solution. Why do I say that? Because export growth in jobs is absolutely essential. From 1983 to 1989, export jobs in the United States went from 3.8 million to 6 million. In my State of New Jersey, they went from 133,000 to 199,000 in just 6 years. That is the only force that is creating jobs—export jobs. The rest are being lost from the end of the cold war, the giant debt, the computer revolution, and increasing competition.

Mr. President, what NAFTA does is generate export jobs. Over a 10-year period it eliminates tariff and nontariff barriers in manufacturing. Over a 15-year period it eliminates tariff and nontariff barriers in agriculture. It locks Mexico into the free market reforms that were initiated in the 1980's, and it gives the United States access to a market of 90 million people on a preferential basis.

Mr. President, one of the overlooked aspects of this is that Mexican economy is 23 percent manufacturing, 60 percent services. American companies are already in Mexico in manufacturing because that is the only way we could sell anything in Mexico, by getting access. We had to build it there because they had such high tariff and nontariff barriers.

But even then our services providers were denied access to the Mexican market. And the reason that is relevant, Mr. President, is that the number of people working in the United States in services in the last 20 years has skyrocketed, and the number of people working in manufacturing has plummeted. In 1952, 34 million people were working in manufacturing; today 17 million people. In 1952, 59 million people were working in services; today 79 million people. The reality is we are opening up the Mexican market precisely in the sector in which we have the largest number of people working.

Let us just go down the list of where some of these jobs are going to come from:

Autos: 60,000 autos exported in Mexico in the first year of NAFTA back up to 10,000, 10- to 15,000 jobs according to the Department of Commerce.

Agriculture: Corn growers in Illinois, Iowa, and Indiana, producing 150 bushels an acre will be competing with corn growers in Mexico who produce at 35 to 40 bushels an acre. No contest. One company, ADM, says 9,500 additional jobs will be created as a result of this.

Textiles: as I say, 60 percent of the garment industry left and went to Asia. They did not go to Mexico. They went to Asia. If 10 percent of that production came back to Mexico, it would generate about 1 billion yards of demand for textiles, and create about 100,000 jobs in the textile sector, which is a higher wage sector than the garment sector.

Heavy equipment: Caterpillar sold 5 tractors in Mexico in 1987; now it sells 1,000 tractors and its sales are increasing every year by leaps and bounds. In 1991, General Electric had sales in Mexico of $1.45 billion, three times the amount that it exports back to the United States.

Mr. President, there are real jobs in the service sector, 60 percent of the Mexican economy, 79 percent of the American employment.

Construction: Ryland Homes says it is going to get a part of President Salinas' program to build 320,000 homes in Mexico. American architects and engineers and plasterers and American steel and sheetrock and windows will be needed in Mexico.

Transportation: Union Pacific & Burlington Northern predict an increase in business 15 percent annually in traffic between Mexico and the United States. There is an old saying in Mexico. Back in the early 20th century, one leader in Mexico said "Between the United States and Mexico should not be the sound of a locomotive, but the sound of a desert." That was the kind of suspicion. That is changing. Union Pacific & Burlington will be connecting our countries.

Oil and gas: For the first time we will be able to get in; Dresser Industries, Solar Turbines, big and large companies.

Intellectual property for the first time is protected; 75 percent of the worldwide share of computer software is the United States. One company, Microsoft, increased sales in Mexico 100 percent in 1992 and 200 percent in 1993.

Pharmaceuticals. One company in my State says with the NAFTA, they will increase employment by 800 jobs. In film distribution, a major growth industry, there is no parallel in the world to the United States industry; it is finally protected and able to sell into Mexico.

Lennox China. They predict that in 4 years there will be a dramatic increase.

Insurance in Mexico is growing at 20 percent a year; 3 percent a year in the United States. The average Mexican spends $30 for insurance; the average American spends $1,950. That is a major growth market.

Finance. Beneficial Finance tells me—a New Jersey company—5 years after NAFTA is in effect, they will have opened 50 offices in Mexico and each will support a job in New Jersey at $40,000 to $50,000 a job.

Environmental technology. Companies like Brown and Caldwell in California will be cleaning up the environment, creating jobs in the United States. M&M Mars in New Jersey sales will go from $30 to $200 million.

Mr. President, what about the jobs and small business?

Mr. President, I will submit for the RECORD, and I ask unanimous consent to have printed in the RECORD, a list of 30 different small businesses in the State of New Jersey that deal with earrings, printing inks, paint tools, pressure valves, and vents that see Mexico as a major market.

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

NEW JERSEY COMPANIES PARTICIPATING IN NAFTA PRESS CONFERENCE

Company, location, and products

Ace Printing; Springfield, NJ; commercial printing.

Alcan Aluminum; Union, NJ; non-ferrous mettalic powders and pigmants.

Cavanagh; printing inds.

American Cynamid; Bound Brook, NJ; industrial chem's, pesticides.

Att/Bell Labs; Murray Hill, NJ; telephone circuit sys, r&d.

Bag Packaging; Roselle, NJ; bags, plastic sheeting.

Biach Industries Inc.; Cranford, NJ; tensioning eqp, hydro pmps.

Cooperheat Inc.; Piscataway, NJ; heat treating equip.

Croll-Reynolds Co.; Westfield, NJ; pollution control eqp.

Degussa Corp.; Ridgefield Pk, NJ; chem's, precious met's catalysts.

Dock Resins; Linden, NJ; specialty chemicals.

Fluets Corp.; Hillside, NJ; machine parts, lab equipment.

Fluoramics Inc.; Mahwah, NJ; switches and lubricants.

Gemco; Camden, NJ; pharmaceutical machinery.

Girard Equipment; Rahway, NJ; pressure relief vents, valves.

Harris Corporation; Somerville, NJ; semiconductors.

Haarmann & Riemer Corp.; Springfield, NJ; flavors & fragrances.
Hayward Pool Products, Inc.; Elizabeth, NJ; swimming pool & spa equip.
Henry Heide Corp.; New Brunswick, NJ; non-chocolate candy.
Hexacon Electric Co.; Roselle Pk, NJ; hand soldering equip.
Hillside Spinning & Stamping Co.; Union, NJ; consumer/commercial bakeware.
IKG Industries; Clark, NJ; steel and aluminum bar grating.
Lafollette Vineyard/Winery; Belle Mead, NJ; vineyard/winery.
Lermer Packaging Corp; Garwood, NJ; plastic vials, jars, & closures.
Lincoln Mold & Die Corp.; Roselle, NJ; molds for closures.
Lors Machinery; Union, NJ; resistance welders.
Mentor Graphics Corp.; Warren, NJ; software.
Merck; Whitehouse Sta., NJ; pharmaceuticals.
Dyna-Lite Inc.; Hillside, NJ; strobe lghts, electronic flashes.
Electrocatalytic Inc.; Union, NJ; electrochlorinating machinery.
Emcore; Somerset, NJ; crystal production machinery.
Fanwood Chemical; Fanwood, NJ; chemical marketing.
Red Devil Inc.; Union, NJ; hand tools, painting tools, caulking.
Reheis Inc.; Berkeley Heights, NJ; materials for pharmaceuticals.
Rose Art Industries; Orange, NJ; chalk, crayons, paint sets.
The Schundler Company; Metuchen, NJ; perilite & vermiculite.
Seagrave Coatings Corp.; Carlstadt, NJ; arcrylic, urethane, epoxy.
Sealed Air Corp.; Totowa, NJ; plastic foamed pkgs, cushioned envelopes and meat absorbent pads.
S.S. White Technologies, Inc.; Piscataway, NJ; flexible shafts.
Union Carbide; Bound Brook, NJ; plastic resins, solvents.
Van Leer Chocolate; Jersey City, NJ; chocolate candy.
Vanton Pump & Equipment; Hillside, NJ; rotary pumps & steel castings.
Walden Farms; Linden, NJ; salad dressings.
Micron Powder Systems; Summit, NJ; pulverizing and mixing mach.
Milton Can Co.; Elizabeth, NJ; metal cans and pails.
National Starch & Chemical Co.; Bridgewater, NJ; adhesive, starches, resins.
The Newark Group, Inc.; Cranford, NJ; paperboard.
QEI Inc.; Springfield, NJ; automation equipment.

Mr. BRADLEY. The point is that we are going to export a lot to Mexico. It is going to generate jobs in the United States. But is the corollary true? Does every import take an American job? No; that is not true. Look at one of our major imports from Mexico, oil, at 750,000 barrels of oil a day, the fourth largest supplier in the world. That counts as imports. Does that take U.S. jobs? No. It is necessary to create jobs in the United States.

One of the unlooked-at aspects of this agreement is that under NAFTA there will be more investment in oil development in Mexico. I pose the question: Would you rather be more dependent on oil from Mexico or from the Persian Gulf? Under NAFTA, you will get the opportunity to be more dependent on Mexico.

We have some people opposing the agreement saying, "You are not going to sell a lot in Mexico; they are poor people."

The statistics: Mexicans purchase $458 per capita of American goods. More than any country in Europe and more than Japan. Aha, the opponents say. "What about the maquiladoras, send it down, send it back?" OK, take them out of the equation—$353 per person. That's still higher than the average European and almost as high as Japan at $395 per person.

The reality is that Mexico is the second largest manufacturing market for our goods, and it is the third largest farm market for our goods. There are 750,000 cars sold in Mexico every year—750,000 cars. People say Mexicans are all so poor. My question to you then is: Who is buying the 750,000 cars, projected to be one million by the end of the decade? Exports in the first year after NAFTA will be 60,000 into Mexico. At the end of the decade, it is expected to be 400,000 into Mexico.

Mr. President, regarding the Perot picture of Mexico—that shack with all of the poor people—I do not deny there are poor people, but there is also a middle class there. Some of the people in this body who make the assertion to the contrary, I would ask you to drive around Mexico City, Monterey, Pueblo, Guadalajara, Chihuahua, or Leon and look at the places—good houses, good cars. They take their kids to Disney World, and they send their kids to college. They eat well. They have good furniture in their homes.

The reality is that one-fifth of the Mexican population earns three-fifths of the income—not a good distribution of income, but we do not have much to brag about in this country either. But who can deny it is a market? There are 20 million people in the Mexican middle class. It is ready to buy American goods today.

Mr. President, the reality is that Mexico looks more like Texas than it does Guatemala. The reality is that $7 out of every $10 people in Mexico spend on imports, they buy from the United States. They are virtually dependent on the United States for machinery, staple foods, consumer goods, civil engineering, software, pharmaceuticals, on and on. And within 15 years, we will be interdependent, and that middle class will not be 20 million, but 50 million, and we will be selling them goods made by American workers that are earning higher wages, because exports pay higher wages than other jobs in this country.

Look at what happened in Europe when Spain, Portugal, and Greece came into the Common Market. Everybody's wages went up. Everybody's wages went up in Spain, Portugal, and the rest of Europe. That is what will happen. It will be a win-win situation. So this agreement makes economic sense, and it also makes, in my view, political sense.

I am not going to make excuses for the failures of the Mexican Government or for their failures on human rights. They have to understand that you cannot be called a great nation unless you are a democracy.

The next challenge for the next great Mexican leader is to bring fully representative democracy and competitive elections to the country of Mexico. The next great President will do for the political structure of Mexico what Carlos Salinas has done for the economic structure of Mexico. But that notwithstanding, is it better for us to be engaged or to run away? I say it is better to be engaged.

The labor side agreements give us ways to highlight the abuses. We retain the rights for 301 action if worker rights are grossly violated. We have an opportunity to begin to put pressure on Mexico to achieve these changes.

Will Mexico be less democratic with the NAFTA defeated? You bet it will be. With NAFTA, we will be able to move more quickly in the area.

For some on this floor who have stood to oppose the agreement, I cannot help but think back to the mid-1980's when the international banks had Mexico under their thumb. I would have liked to have seen from some of those who are opponents of NAFTA here as vigorous an effort focusing on the abuses of capital as has been made in defending the rights of labor. The reality is that Mexico will benefit politically from this, and we will benefit as Mexico benefits.

In terms of social policy, I do not need to say any more than that half of the population is under the age of 19. Does anybody think that with a million people entering the work force every year in the United States that if there are no jobs in Mexico, they are going to head north? Of course they are, when Carlos Salinas decides to end the old commune farms. If you do not have vegetable and fruit farms in Mexico that export to the United States and you do not have light industry, is there any doubt where Mexicans are going to head? They are going to head north in massive numbers.

Mr. President, I believe NAFTA provides an example of how you lead in a post-cold-war world. Where else in the world is there a large population with lower wages and average skills next to a place with higher wages, higher skills? Well, I would say it is Eastern Europe. Look how the Europeans are handling this.

They are putting up walls and not taking anything in. They are going to end up with a wave of illegal emigration. We have an opportunity to show

how you lead in a post-cold-war world, by reaching out—and that is why this is a historic moment—and why this is parallel to the purchase of Louisiana by Thomas Jefferson, or to the purchase of Alaska by Seward and Johnston, or to Harry Truman's decision to say, "We are not going to retreat to isolation, but we are going to reach out to the rest of the world."

So, Mr. President, I believe that this makes economic sense, it makes political sense, it makes social sense. It allows us to lead in a new way in a post-cold-war world. But I must say there is another reason that I feel a particular conviction about this treaty.

Some people have said NAFTA is the most important thing that happened to Mexico since the revolution. I agree with that. Other people say, look, the difference between Mexico and the United States is the difference between 18th century England and 15th century Spain. To a certain extent I agree with that, although Mexico has its own unique culture.

To me this agreement is as if two brothers had been estranged for many years and under the NAFTA have a chance to come back to the same table and share sustenance and talk about a common future.

I believe that a common destiny will be forged from this moment in ways that we cannot even conceive, and I believe it will enrich our culture and our society. That is why I think it is so terribly important that we pass the North American Free-Trade Agreement.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. CHAFEE. Mr. President, are you going to alternate back and forth?

The PRESIDING OFFICER. If we could have order.

The Senators from Montana, New York, and Rhode Island control the time.

I ask who yields time?

Mr. CHAFEE. Mr. President, I would like to yield time to the Senator from Washington.

The PRESIDING OFFICER. How much time?

Mr. CHAFEE. Twenty minutes.

Mr. MOYNIHAN. Mr. President, could I have a supplement to that, to yield 10 minutes, or such time as he may require, to the Senator from Nebraska following the Senator from Washington?

Does the Senator from Michigan wish time?

Mr. LEVIN. I would appreciate 15 minutes.

Mr. MOYNIHAN. I then yield 15 minutes to the Senator from Michigan to follow the Senator from Nebraska.

The PRESIDING OFFICER. If the Senator from New York will withhold, the Chair has requested who is going to yield time. The Chair will recognize Senators to whom time has been yielded.

The Senator from Montana also, I believe, would yield time. Is that correct?

Mr. BAUCUS. Mr. President, there are three managers, if you will, at this point.

The PRESIDING OFFICER. And the Chair is trying to recognize all three managers first.

Mr. BAUCUS. Mr. President, I would suggest that we arrange the next three anyway who may speak.

I might suggest the Senator from Washington speak next; following the Senator from Washington, the Senator from Nebraska; following the Senator from Nebraska, the Senator from Connecticut.

Mr. LEVIN. Could we add a fourth and get the Senator from Michigan as well?

Mr. CHAFEE. What I wish to do is make sure we do go back and forth to the extent possible. I do not have others here on the floor at this time but they might show up. So I hate to allot the time too far in advance.

Mr. MOYNIHAN. Will the Senator from Michigan be next?

The PRESIDING OFFICER. If the Senator will withhold a moment, the Senator from Rhode Island was the first of the managers to seek recognition. I do want to accommodate that. The Senator from New York sought recognition and the Senator from Montana has.

The Chair is in somewhat of a unique situation in which it finds it wants to accommodate all three managers the best way we can.

Mr. BAUCUS. Mr. President, who has the floor?

The PRESIDING OFFICER. The Senator from Rhode Island has the floor.

Mr. CHAFEE. I yield 20 minutes to the Senator from Washington.

Mr. BAUCUS. Mr. President, if I might ask the Senator to yield, I suggest to the Senator that we attempt to formulate a consent agreement to line up the next several Senators so they can plan accordingly.

Mr. President, I ask unanimous consent that following the time allocated to the Senator from Washington, the Senator from Nebraska then be recognized to speak; following the Senator from Nebraska, the Senator from Connecticut be recognized to speak for 12 minutes.

Might I ask if there are other Senators who now seek recognition?

Mr. CHAFEE. Mr. President, I am agreeable to that except if someone comes to the floor on our side I would like to be able to put them in.

Mr. LEVIN. I agree with that. If the Senator lists me after Senator DODD, I would be happy, and if a Republican comes in after Senator DODD I will be happy to have that Senator recognized.

Mr. MOYNIHAN. And 15 minutes to the Senator from Michigan.

Mr. EXON. Mr. President, with all due respect, there have been Senators waiting, and I recognize the priority and the pride of the Republican manager. I think it is not very good taste, however, frankly, I say to my friend from Rhode Island, to allow someone on that side where you have Senators waiting and have 8 or 10 over here.

If the Senator thinks that is fair, I do not. I have been patient since 1 o'clock this morning and I will be patient for another 20 minutes, I guess.

The PRESIDING OFFICER. If the Senator from Nebraska will withhold, the time still has to be yielded by the three managers who are the Senators from New York, Montana, and Rhode Island. The Senator from Rhode Island has the floor. The unanimous consent is being propounded.

Mr. BAUCUS. Mr. President, if I might continue. I suggest the unanimous consent request provide that following the Senators from Washington, Nebraska, and Connecticut that the next time would be allotted to a Senator from the Republican side; if no Senator appears to take that time following that period, that the Senator from Michigan be recognized.

Mr. MOYNIHAN. For 15 minutes.

Mr. BAUCUS. For that time.

Mr. CHAFEE. And if I could have another slot, in case someone showed up.

Mr. BAUCUS. Then recognize the Senator from Florida for 10 minutes. And that would be the request.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? The Chair hears none.

Without objection, it is so ordered.

Mr. CHAFEE. Mr. President, could I just ask for a slot under that unanimous consent request, following the Senator from Michigan, that if there is an opening before the Senator from Michigan, if someone shows up, and then following the Senator from Michigan if there could be another slot for someone from this side if there is one?

I thank the Chair.

The PRESIDING OFFICER. As complicated as it may sound, as unique as it may sound, that is the Chair's understanding.

The Senator from Washington is recognized for 20 minutes yielded by the Senator from Rhode Island.

Mr. GORTON. Mr. President, in a few short hours the U.S. Senate will ratify the North American Free-Trade Agreement by a decisive margin. After this cause's hard-earned triumph in the House of Representatives, the Senate's action will bring to a successful conclusion a project begun by President Bush in 1990 and promoted by President Clinton this year. Our approval may well turn out to be the most significant vote cast during this Congress.

Certainly, some of the pact's importance derives from its positive impact on Mexican-American relations, and on the economies of the United States,

Canada, and Mexico. More importantly, the pact will supply bargaining power and strength to President Clinton in his attempt to conclude a successful worldwide market opening through the General Agreement on Tariffs and Trade, and further to open the economies of the Pacific rim nations through the Asia-Pacific Economic Cooperation Forum this weekend in Seattle. But in my opinion, the principal reason this vote is so pivotal to the United States is that it reaffirms a traditional American optimism about our confidence, our competitiveness, and our primacy among the nations of the world.

As this debate began early this year, it was conducted as a relatively low-key discussion of the economic benefits of lower trade barriers between the United States and Mexico. In spite of all the overheated rhetoric, it is now even more clear than it was in January that a successful North American Free-Trade Agreement will result in a net increase in good jobs in the United States and in Mexico, and thus will be of economic benefit to employers, employees, and consumers in both nations. This is the invariable result of trade liberalization among all nations since the end of World War II.

NAFTA's opponents have based their opposition on a flawed premise, the proposition that the United States cannot compete successfully with producers in a nation whose wages are dramatically—in this case seven times—lower than our own, and that we therefore must impose high barriers to prevent the destruction of our own producers. This age-old fallacy of equating low wages with competitiveness would lead inevitably to the conclusion that Bangladesh will soon become the world's industrial powerhouse.

To the contrary, the United States has always traded successfully with Mexico and other low wage nations, because our workers and employers are the most productive on Earth. As Mexico began to lower its trade barriers in 1987, the United States turned $5 billion a year trade deficit with Mexico—mostly from oil imports—into a $5 billion trade surplus. Wages in the United States seven times as large as those in Mexico were overcome by the fact that American workers are more than seven times as productive. As a result, we are already competing successfully in Mexico in spite of the fact that their tariffs are still 2½ times greater than our own.

Mr. President, a simple illustration of the fallacies of the Perot set of ideas: If this normal piece of stationery represents the economy of the United States, then this piece represents the economy of Mexico—one-twentieth the size of that of the United States. And yet the opponents say that if we remove the tiny 2 or 3 percent tariff separating these two economies, this little economy will consume this great economy.

Mr. President, give me a break. It will never happen.

Now, there is a more sophisticated group of NAFTA opponents who have argued that the Mexican Government will not allow its workers' wages to rise with their productivity and that they are, therefore, the true protectors of Mexican employees. They demand guarantees of wage increases from the Mexican Government. But they are unintentionally asking for the very government controls that brought the Mexican economy to the verge of collapse in the early eighties. The real saving grace of NAFTA for Mexican workers is that it ensures the continuation of the market reforms that have already begun to increase their wages. When a true free market economy swells those wages further, as history shows to be inevitable, the Mexican worker will develop a buying power that will translate into more United States exports. In the past 20 years, every 1-percent increase in the Mexican GNP has brought a 1-percent increase in its imports. The United States will be the largest beneficiary of that increase in the future as it has been in the past.

A perfect example of the advantages of NAFTA can be found in Washington State. ConAgra, an agribusiness operating across the entire food chain, asserts that if NAFTA is rejected the chances of its moving operations into Mexico will increase. In the past 2 years, ConAgra's exports to Mexico have grown by 80 percent, now totaling $260 million. These exports, however, are still hindered by tariffs as high as 20 percent. To realize the full potential of the growing Mexican market, ConAgra must avoid that tariff—which under a failed NAFTA will mean moving operations into Mexico. Under a ratified NAFTA, the tariffs will be phased out, and ConAgra can follow its preference of expanding its operations in the United States. With NAFTA, ConAgra predicts* that its exports to Mexico will double in 5 years.

If we multiply the number of examples like this, and subtract job losses in industries which will face successful Mexican competition—all, of course, to the benefit of our consumers—the United States can probably expect a net increase of between 100,000 and 500,000 jobs in the next 5 years. Such a gain for our economy is a real one, but it is certainly dwarfed by the millions of jobs both created and displaced by the normal dynamics of a vibrant and growing American economy. So a concentration solely on bilateral trade figures misses even more important arguments in favor of NAFTA.

Of course, Mexico will also benefit from NAFTA, finding large new markets in the United States for those products which it can efficiently and effectively produce and export. As Mexicans benefit, both as producers and consumers, they will successfully demand political and environmental reforms impossible to impose upon a poverty stricken country. At the same time, more of them will decide that they can succeed by staying at home in a culture in which they have grown and prospered, and the pressures of illegal immigration into the United States will at least be lessened. It should be obvious to everyone, though ignored by many of NAFTA's opponents, that Mexico will continue to be our southern neighbor, and that a growing and prosperous Mexico is a far better neighbor than would be an embittered and poverty stricken one.

As important as our trade relationship with Mexico is, it is dwarfed by our interest in a freer and more open worldwide trading regime. As I speak, President Clinton is in Seattle at the Asia-Pacific Economic Cooperation Forum. His goal there is to encourage the reduction of barriers imposed against American exports by many of our Pacific rim trading partners, developed and developing alike. The President's bargaining strength will be shattered by a rejection of NAFTA; it is greatly enhanced by NAFTA's success, a demonstration that the United States continues to believe in the virtues of free trade. Perhaps the APEC countries will react by beginning a process of negotiating a free trade agreement with the entire Pacific rim, the consummation of which would be immensely advantageous to the United States, as well as to its partners.

At the same time, the APEC conference is simply a lead-in to the last, vital month of negotiations in Geneva for a new General Agreement on Tariffs and Trade. A successful conclusion of the GATT Uruguay round is likely to increase our international trade by at least $35 billion a year and to represent a resounding defeat of the forces of protection which now seem so ascendent in France and a number of other members of the European Community. Success with the GATT is not assured by the passage of NAFTA, but it will almost certainly be made impossible by its defeat.

It is for these reasons that I am so gratified by the almost unanimous support of the North American Free-Trade Agreement on the part of my colleagues in the Washington State congressional delegation. Each of them is aware of the vital role that international trade plays in the economy of our State and almost all of them have contributed to the success of the North American Free-Trade Agreement: Speaker FOLEY, who garnered more than the necessary support without the help of most of the House Democratic leadership; Representatives SWIFT, DICKS, and MCDERMOTT, for respectfully disagreeing with constituents with whom they have worked closely over the years; Representative INSLEE

for offering his early and effective leadership on this issue; and Representatives CANTWELL and KREIDLER, who ignored threats that this vote would cost them in their newly acquired constituencies. Each voted his or her conscience, and put the good of this Nation before political expediency. I also want to thank Representative DUNN, for once again making the right decision, and for being a part of a strong Republican reaffirmation of free trade. On Wednesday night our delegation made a showing worthy of the State we represent.

Important as international trade is to our Nation, however, the debate over the ratification of the North American Free-Trade Agreement would not have found its pivotal position in the first year of the Clinton administration on the basis of import and export statistics alone. Perhaps because it has triggered the first full-scale debate on free trade in the Nation and the Congress for decades, perhaps because of the unique nature of the coalitions on both sides of the issue, perhaps because it marks the first instance in decades in which a President has been opposed by most of his own party and saved by his political rivals, this has been a debate about more than trade. The key fault lines have divided those optimistic about the future of the United States, from those who see only peril in our economic future.

The pessimists believe that, whatever our past competitive successes, we are no longer the most efficient producers, the most imaginative entrepreneurs, the most prolific inventors in the world, and that we can no longer compete successfully with smaller and poorer nations without imposing barriers against their access to our markets. Fundamentally, these pessimists believe that international trade is a zero sum game, and that any gains on one side must be matched by losses on the other. As Robert Samuelson wrote:

> NAFTA's opponents are—despite disavowals—preaching protectionism, and their larger agenda is to make fundamental changes in U.S. policies.

These pessimists see the end of the American dream, and demand that we turn inward with our preoccupations, husband our resources, and wall the rest of the world out.

The optimists, the supporters of the North American Free-Trade Agreement in particular and free trade in general, continue to celebrate America as the strongest economy in the world, the most imaginative and the most productive. They believe that much of our prosperity, and that of the rest of the world, is based on constantly freer and greater international trade. They believe that we will continue to enhance our competitive advantages by competing and that the broadest free markets result in the greatest increases in productivity and efficiency. The optimists clearly have the facts on their side. The statistics of productivity around the world support their position. But the optimists' success in this debate is principally a reaffirmation of a belief in the continued vitality of the American dream.

Mr. President, the United States has always maintained a healthy skepticism about the future of its economic might. Last year, Economist, a British magazine, wrote:

> Economic paranoia has become an American habit. That has not stopped it from growing richer, at a rate that is dissappointing only by the standards of a comparative handful of countries * * * America worries as it prospers. So be it.

But is is important that our fundamental optimism about America's future always remains an antidote to the skepticism that brought us to the brink of protectionism this year. With this successful vote, Congress will reaffirm its confidence in the United States. The optimists in our Nation will win, the people of the United States will win, our prosperity will be enhanced, and the people of the world will be reassured about the success and benevolence of American leadership.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. CHAFEE. Mr. President, if I could just saw one word, I thank the distinguished Senator from Washington for that fine statement and express our appreciation. I also want to say I thought the Senator from New Jersey gave a very, very fine statement here earlier.

I thank the Chair and thank the Senator from Nebraska.

Mr. EXON. I am glad to accommodate my colleague.

Mr. President, I have remained uncommitted on the North American Free-Trade Agreement [NAFTA] because of some valid concerns, some of which I will discuss here. This is a difficult vote for me to cast for several reasons.

Even today I cannot, without reservations, easily come to what is the correct vote. But clearly this is decisionmaking time.

This decision is made even more difficult by the fast-track procedure which prohibits congressional amendment to the pact. I opposed fast-track authority for this agreement because it deprived Senators the opportunity to offer amendments and clarifications to the implementing legislation.

I listened to many parts of the keen and informative debate in the House. I have likewise listened to the debate here in the Senate. I compliment my colleagues in both bodies for a thoughtful debate that primarily has focused on legitimate issues.

I have studied the most contentious issues; met with and listened to my constituents on all sides of this issue, taken into account the letters, phone calls, and petitions delivered to me. This has been helpful, instructive and constructive. I have read editorial opinions from across Nebraska, most if not all are supportive of the proposal. Yet from all of this, I can only conclude that my constituents are fairly evenly divided on which is the right vote on NAFTA.

One option was to vote "no" and call for an immediate renegotiation. That would have been an unrealistic cop out since a reality check would clearly show it would not happen.

Another option would be to vote "yes" and explain, as some have, that we can conveniently escape from NAFTA should it not work out by simply giving 6 months notice and then pull out. The same people touting this salesmanship are the ones claiming we would be ostracized by the international community if we fail to ratify. This is clearly the phony easy divorce syndrome. If the world community would be upset by our refusal to ratify now can one imagine their rash at jilting the new bride during the honeymoon? It will not happen.

My decision came down uneasily on two primary considerations, net job loss or gain and the economic repercussions pro or con.

On the job issue, I have listened to the conflicting arguments and have concluded that no one honestly has a handle with any certainty whatsoever on the correct answers.

I was astonished at some of the arguments. One was a listing of several United States companies who are returning to his country after unpleasant experiences in Mexico and there would be more, many more, after approval of NAFTA. The explanation was that with the end of all tariff barriers there would be a flood of further present Mexican-based business firms back to the United States. How rewarding that all is. The Mexican Government, we are led to believe, has signed on to NAFTA so that they can lose factory production jobs to the United States. That is indeed a gracious gesture on their part. We gain and they gain by their losing jobs to us.

At one time we all but conceded that we would lose some low-skilled production jobs to Mexico, but would make it up by creating highly paid skilled jobs in this country. All would benefit.

I remembered the old adage that "a rising tide floats all boats". This truism has it that NAFTA will so swell the Mexican economy that their job boat and ours would both float upright by the tremendous rising tide to smooth sailing. That may be true provided both country's boats are of the same size and displacement. But if one is a 12-foot swamp boat and the other a yacht with a 12-foot keel, the later is not likely to float by the same tide but flounder. I refer, of course, to the undisputed vast differences between wage levels and standards of living.

I am unconvinced that NAFTA is generally good for our vast middle-class workers and therefore in the aggregate not good for America on the whole, at least in the short run and/or the long run. I readily concede that I could be wrong, but there is no clear sure win for both countries.

Thus far, to my knowledge, there has not been significant discussion of what long-term ill-affect NAFTA could have on the possible exploitation of other nations, quickly taking advantage of NAFTA, by bringing into Mexico their extensive capital to build plants there, with cheap labor, targeted for production that would flow freely into the United States duty free. I am afraid that many do not begin to realize the covetous eyes foreign entities cast on the most lucrative market in all the world—the United States of America and our unprecedented buying power. If you do not understand it ask Wal-mart or Sam's Stores, K-mart or Target. It's there to be awed and plucked by foreigners and domestic interests alike. NAFTA may just be a salvation for Mexico through the avenue of not only attracting United States investment but more opportunistically European and Japanese investment with resultant clear and unfettered highway of no tariff assessment that otherwise applies to them through direct shipments into our country from theirs. Interesting, is it not?

To emphasize my concerns, I wish to pointedly overstate the following scenario. Although make believe yet not totally removed from reality. I am a small production businessman on one side of the street—or the border—in the United States.

I have 50 employees who make an average of $7 per hour, plus the usual fringe and health benefits, Social Security and Medicare, I meet the minimum wage, honor all employee safety protection laws, obey expensive environmental requirements and pay income and property taxes of a high amount comparatively. I am doing OK as are my employees selling widgets wholesale at $10 each to Wal-mart and so forth. I even sell a few in Mexico and am hopeful that with NAFTA my business will boom there, as I have been assured by so many a bright future is assured for all.

Then you came along and started a direct competing business just across the street—or just across the border. No problem. Your widget is not as good as mine. Everyone knows of my reputation for quality widgets and, of course, all know we Americans are the most productive people in the world, especially when it comes to making widgets. You are destined to be forced out of business shortly.

It was then that I discovered that you had somehow cut a deal to pay your 50 employees $2 per hour, no fringe benefits, no health care, no Social Security or Medicare benefits. You do not know what minimum wages even mean. You are not required to follow environmental rules even if they are the law and employee safety requirements are limited to only safety razors in the outdoors men's facilities. Furthermore, you pay little or no income tax and your property taxes are paid for you by the local chamber of commerce. Reportedly, you have been awarded a big contract to supply Wal-Mart with "widgets" for $1.50 each but, gosh, everyone knows mine are better and besides Wal-Mart is a lousy merchandiser. Any economist can readily see that you are out of business before you begin. Poor you, I really feel sorry for you. But the good news is that you will not be faced with a union organizer because collective bargaining is outlawed under the deal you cut! At least you will not have to worry about giving your employees a raise, or any of those nasty fringe benefits that workers do not want anyway.

So much for the fantasy that may be more truth than fiction.

Whether this agreement passes or fails, there is one undisputed fact. American workers, industry and technology have been and will continue to be under intense competition. Low wage and increasingly skilled workers from Mexico, China, Southeast Asia, and the Caribbean have and will challenge the American standard of living.

As a nation, we Americans have our work cut out for us. Just as we united with a single purpose for 40 years to win the cold war, we must unite to win the economic war. Our best weapons are productivity, education, skills, and innovation. Every American from the rich suburbs to the poorest inner-cities to the rural heartland must rededicate themselves to education, the acquisition of new skills and personal responsibility. Our schools must be the best, our health care costs and costs of government must be brought under control and our commitment to quality and productivity must become near religious regardless of the fate of this agreement. If we are not prepared to meet this challenge, our Nation is doomed.

Indeed, there are many good features to NAFTA. Many American products will enter Mexico with fewer restrictions and with reduced tariffs. The maquiladora system will be phased out, intellectual property will be better protected. Whether these benefits will outweigh the increased access Mexico gains to the United States markets is a close question.

I feel that this NAFTA treaty is poorly drawn and most likely not in the best interests of most Americans and certainly Nebraskans. My agricultural groups are divided, there are some potential benefits but I suspect they may be short term.

My judgment is that on a current basis there will be little net job loss or gain in Nebraska as a result of NAFTA's passage. I emphasize this judgment is based on the Nebraska economy and jobs as they exist today. But the future effects of NAFTA's approval could cloud and adversely affect hope for new factories and new employment in Nebraska's future. We have been successful in maintaining our considerable industrial base but have been frustrated in some instances when seeking new plants. It is my belief that a Mexico with NAFTA, cheap labor, free access to Americans' buying power and devoid of industrial environmental controls would be perhaps an overpowering and unfair competitor against Nebraska's future industrial expansion efforts. Therein lies my concerns about future if not current Nebraska job losses caused by NAFTA. What about the next few years? In closing, I want to say, it remains my conviction from early on that a reduction in our standard of living would accrue to Nebraskans and other Americans if this NAFTA agreement is approved as I feel it will be.

Therefore, I am obliged in good conscience to cast my vote no. If the measure is passed, I hope it works out better than I have predicted.

Mr. President, I yield the floor and reserve any remaining time.

The PRESIDING OFFICER. Under the previous order, the Senator from Connecticut [Mr. DODD] has 12 minutes.

Mr. DODD. Mr. President, I thank my colleague from Montana.

I rise this evening to speak in favor of the North American Free-Trade Agreement and urge my colleagues to support it. Many of our colleagues over the last number of days have spoken eloquently about the economic impact of this agreement. I invite my colleagues' attention to the most recent remarks of our colleague from New Jersey, Senator BRADLEY. Tomorrow, we should read carefully his comments regarding the economic issues and concerns that have been raised in this debate. There is no doubt in my mind whatsoever that it is the economic concerns in our respective States and the country that are the most important reasons to vote for this agreement.

I would like to spend these few minutes this evening to address another aspect of this agreement which ought not to go unmentioned or undiscussed in this debate, and that is the foreign policy implications of this decision.

As chairman of the Subcommittee on the Western Hemisphere, I specifically want to discuss what our vote will mean, I believe, for U.S. relations with our neighbors to the south of us.

I see the North American Free-Trade Agreement as far more than a trade pact linking the United States, Canada, and Mexico. I see it also as the very first step in the construction of a Western Hemisphere of democracy and of prosperity. Following approval of

this agreement, we must move forward with our neighbors throughout the Americas to negotiate a free trade agreement for the entire Western Hemisphere. That would pave the way for a historically new kind of relationship among the nations of this part of the world.

The relationship between the United States and the other countries of this hemisphere has been rocky over the past number of years. Many of the nations of Latin America and the Caribbean deeply mistrusted the United States. They closed their markets to our products and were often, as we all know, hostile to our foreign policy aims around the globe.

At the same time, the United States too often looked at this region, this hemisphere, only through the distorted lens of the cold war. In my view, our country for far too many years did not make an effort to truly understand these nations, and when push came to shove, we were often all too eager to support military solutions for the social, the economic, and the political problems that plague this hemisphere.

While the geographic distance between the United States and Latin America has only spanned the width of the Rio Grande, the political and economic distance throughout much of the past 2 centuries was far larger. In my view, Mr. President, this unhealthy relationship has hurt everyone involved.

After a number of years of growth, many Latin American economies began to run out of steam in the 1970's and some collapsed in the 1980's. The closed, state-dominated economies of the region were incapable of competing in the changing world marketplace. The United States suffered as well, as we all know, in the postwar period. We expended billions of dollars—billions of dollars, Mr. President—on military aid and military solutions. We missed, in my view, numerous opportunities to forge closer economic and political links to this part of the world. I merely invite my colleagues to recall that in the 1980's we spent $4 billion of American taxpayer money to support the military side of the equation in El Salvador. For one small country, $4 billion was spent by this Nation.

With the crumbling of communism and passing of the cold war, the nature of the relationship between the United States and its neighbors to the south has changed.

Mr. President, it has changed for the better. The issue is whether or not we will be wise enough, intelligent enough, thoughtful enough, perceptive enough to take advantage of this unique moment that has been offered to us. It may not last for long. The vote we cast on this agreement is of such historic importance that it ought not to be lost on our colleagues.

What I am talking about, Mr. President, is a hemisphere-wide free trade agreement—an agreement, that would cement an inter-American relationship based on cooperation, democracy, free market principles, and trade. Nothing less than that is at stake with our decision in this body.

As I see it, our approval of the North American Free-Trade Agreement is not an end of a process but only the very beginning. We will have lost a historic opportunity if we use this agreement as the blueprint for the construction of Fortress North America. We must extend the sphere of commerce and cooperation outward to encompass the rest of this hemisphere beyond Mexico, beyond Canada and beyond our own shores. If we pursue this course, Mr. President, we will look back upon our decision on the North American Free-Trade Agreement as the first installment of a truly amazing story, a story about the countries of an entire hemisphere, long kept apart by mutual mistrust and suspicion, linking their fates together.

This story, Mr. President, should not end with the adoption of the North American Free-Trade Agreement but with the adoption of a Pan-American Free-Trade Agreement that will unite the Americas. From the icy reaches of northern Canada to the deepest corner of the Amazon jungle, from the Arctic Circle nearly all the way to Antarctica, from the thriving urban centers of New York, Mexico City, Santiago, to the humblest villages of rural Mississippi, Yucatan, and Patagonia, this hemisphere now has a unique, truly unique opportunity to come together around the shared principles of democracy, mutual respect, free markets and free trade.

Such a union, Mr. President, would fulfill the vision of Simón Bolivar, the liberator of South America. As he led the continent to independence in the 1820's, Bolivar dreamed that Spain's former colonies in the Americas would form a union and that the union would forge close ties with the United States. The forces of nationalism and division dashed his dream of a hemisphere of peace and cooperation. But now we have before us, Mr. President, a chance to reconstitute that dream of 170 years ago. Gonzalo Sanchez De Lozada, the President of Bolivia, put it well:

> We can not underestimate how important NAFTA is as a symbolic message of inclusion and not of exclusion. For the first time in history the countries of the developed world invite the underdeveloped world to join in a great project, to create wealth, to bring social justice and more equality in the framework of freedom.

Assuming this body passes the North American Free-Trade Agreement—and I hope it will—our task, Mr. President, in the months ahead is to move forward in open negotiations for the expressed purpose of creating a regional free trade area. There are a number of countries that have evidenced a strong interest in taking part in this endeavor, and as the negotiating process proceeds my hope is that other countries will join us.

Hemispheric trade integration will not be easy, and it may take many years to complete. But we must begin that process. We must commit ourselves to achieving the goal because the success of such an effort in my view will be critical to our future economic well-being.

I rest this conclusion on the premise that the global economy of the future will be divided into powerful regional trading blocs. The Europeans have already formed one and Asia may soon follow. To compete in such an environment, the United States and other nations of the Western Hemisphere must form our own trading bloc. Such a bloc will guarantee us a huge market for our products and bolster our position in worldwide trade talks. A Western Hemisphere free trade agreement is also, Mr. President, the best means at our disposal to help our neighbors in Latin America and the Caribbean to improve their standards of living. It is in our interest for that to happen too.

A wealthier hemisphere will be better able to buy American goods. It will be better able to combat a variety of social ills including the illegal drug trade and the violence that accompanies it. Undocumented workers will not be so eager to flee nations, the economies of which are growing, and civil strife will be less likely to visit the citizens of prospering countries.

The kind of debates that wracked this body in the 1980's over Central America and earlier this year over Haiti would diminish, in my view, markedly if we could find a way to work with our neighbors to increase prosperity for everyone in the family of the Americas. The road to that goal does not lie through foreign aid. It will not happen that way. There certainly would not be enough money available in our budget even if we decided to do it. The route to prosperity, Mr. President, in the Americas lies through trade and democracy, through mutual respect and real cooperation. The route to prosperity travels the road of integration and unification.

That is the future I see for the Western Hemisphere, and that is the future we can begin to create passing the North American Free-Trade Agreement.

As Robert Kennedy said, Mr. President, nearly 30 years ago:

> History is a relentless master. It has no present, only the past rushing into our future. To try to hold fast is to be swept aside.

To reject the North American Free-Trade Agreement and the possibility of a new hemisphere-wide system that it signals would, indeed, in my view, put us in danger of being swept aside by the current of events. To approve the agreement would be a bold attempt to seize the rudder of American history

and to steer our course directly into the future. I strongly urge my colleagues to vote in favor of this agreement.

Mr. President, I yield the floor.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Under the previous order, the Senator from Wyoming was going to speak next on this side to be followed by the Senator from Michigan. The Senator from Wyoming is not present, so I would suggest the Senator from Michigan go ahead and if the Senator from Wyoming then comes, at his conclusion we put him in there, if that is agreeable.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, there are many parts of the NAFTA agreement that make it unfair to workers in the United States, but I am just going to focus on a few this evening, mainly as it relates to automobiles and auto parts.

First, under NAFTA, Mexico's discriminatory trade laws against American manufactured automobiles remain for 10 years.

Mexico now discriminates against United States assembled autos by requiring auto manufacturers to produce in Mexico in order to sell in Mexico. They also require manufacturers in Mexico to export $2 worth of automobiles from Mexico for every $1 worth of autos that they bring into Mexico. Those are called trade balancing laws. They have had the effect of making it impossible to sell in Mexico cars assembled in the United States.

That is the barrier we face with American assembled automobiles.

Now, under NAFTA, that barrier remains at a slightly phased down version for 10 years. That is the phase down period. Some people say, under NAFTA, these barriers are eliminated. What they do not tell you is that they remain for 10 years. We face those restrictions for 10 years, slightly phased down, yet we are going to lose manufacturing jobs in the auto and auto parts sector during that 10-year period because of these discriminatory restrictions.

What they do not tell you, because I do not think people want to know this, is that we are going to be asked to put into American domestic law—for the first time—these discriminatory restrictions that are currently in Mexican law. If NAFTA is agreed to, they become part of American domestic law. That is the first line under the auto decree part of the appendix of NAFTA. Reading from NAFTA:

> Until January 1, 2004, 10 years, Mexico may maintain the provisions of the decree through development of the Mexican automotive industry.

That is one part of the unfairness. But, we do not have any restriction on cars assembled in Mexico coming here. What is our restriction? Zip.

Next, Mexico's current laws require auto manufacturers in Mexico to purchase 36 percent of the parts that they use from Mexican parts manufacturers. That discriminatory law would also not be eliminated for 10 years under NAFTA. It would drop gradually during that 10-year period, from 36 to 34 percent for 5 years, and then for the next 5 years, 1 percent a year down to 29 percent.

We do not have any restriction on auto parts made in Mexico coming here. They have restrictions on our auto parts going to Mexico. And that restriction that discriminates against American auto parts also becomes part of NAFTA, which becomes part of American domestic law.

Why do we allow discriminatory restrictions on American autos and auto parts to remain for 10 more years? Why do we tolerate it for 10 more months or 10 more days? It is one thing for Mexico to protect its auto industry, which it has done. But surely, we should not incorporate in American domestic law discriminatory restrictions against our automobiles and our auto parts.

It is tough enough to compete against the $1 an hour labor, weak enforcement on environmental safety, and child labor laws, without tolerating discriminatory restrictions against our products for 10 more years.

This country has lost over 2½ million manufacturing jobs since 1979. A lot of that has been lost because of unfair trade practices. This is one of them. NAFTA says "Wait 10 more years, auto workers. Be discriminated against for 10 more years, and at the end of 10 more years then the discriminatory barriers end. In the meantime, take the slight reduction in the barrier and be satisfied with that."

And what I am here to say is we should not. Whether or not you produce autos or auto parts, all of us have manufacturing in our States. And what this is symptomatic of is a weak policy relative to manufacturing jobs.

Mr. President, NAFTA does not give us an open market for our automobiles or free trade for our automobiles. It has 2,000 pages of deals, rules involving all kinds of industry and trade. Some of our industries do well. Some of them do terribly. I am looking at an industry which is probably the biggest, involves more people employed in this country than any other industry. What I am telling this Senate is that the restrictions which discriminate against our auto parts and automobiles remain for 10 years in a slightly phased-down version, and this treaty would put those discriminatory restrictions in our law for the first time.

We want to get rid of these barriers now, not 10 years from now. Get rid of the Mexican barriers to our autos and auto parts now if you really believe in free trade, or do not give us the lectures about free trade. Drop the lectures. Drop the optimist-pessimist, future-past, rear view mirror-front view mirror right now. Drop the barriers to American automobiles and auto parts now instead of 10 more years of discrimination and hundreds of thousands of more lost jobs in a very important manufacturing sector.

This is what we have lost in manufacturing jobs in this country. I want to compare it to Mexico, Japan, and Germany since 1985.

In 1985, the United States had 19.2 million manufacturing jobs. In 1992, 7 years later, 18.1 million. We lost over 1 million manufacturing jobs.

Mexico, during that period, went from 2.3 million manufacturing jobs to 3.3 million manufacturing jobs. That is an increase of 1 million manufacturing jobs in 1985 to 1992.

Japan went from 10.6 million to 13.8 million.

Germany went from 8.06 million to 8.34 million.

Every one of them significant increases in manufacturing jobs, except us. And one of the reasons that we have lost jobs, one of those—and there are many—is because we have tolerated one-way streets in trade. This is a perfect example of it, one-way street in trade with Mexico in auto parts.

The way to get rid of it is to get rid of it now, not 10 years from now.

If they will not get rid of it, and they want to protect their auto industry at the cost of auto jobs and auto parts jobs here, then we have no alternative but to tell them—Japan, Mexico, Canada—we have to put the same restrictions on your products that you put on our products and we will phase out our restrictions at the same rate that you phase out your restrictions. That is a two-way street.

Free trade is get rid of the barriers now. Let us do it. But if you are not going to do it, if you are going to keep those restrictions on our products for 10 years, then for Heavens' sake, if we have any common sense and care about our manufacturing sector, we have to put the same restrictions on the other guy that the other guy puts on us.

I wonder if the Chair would tell me how many more minutes I have.

The PRESIDING OFFICER. The Senator has 6 minutes and 1 second.

Mr. LEVIN. I thank the Chair.

Mr. President, the underlying premise supporting NAFTA is that American exports to Mexico will increase and that all exports create jobs. That is the premise. Over and over and over again we are told by the administration that there will be 200,000 American jobs created in the first 2 years of NAFTA. That is exactly one-half of the picture. Even if the assumption is right that we will have 10 billion more exports, what they have not even calculated, although they admit there will

be some lost jobs to imports, is what the number of those jobs lost to imports is. They have not made any deduction on the 200,000 new jobs they claim for jobs lost as a result of imports. Do all imports lose jobs? No. But the administration and everybody admits some imports are job losses. But, we still do not get any deduction for imports.

That is what I call "NAFTA math." It is half of the picture, exactly half of the picture. In the NAFTA math book, which would make my old math teacher wince, they only have pluses, no minuses. We asked the Under Secretary of Commerce for Economic Affairs, Paul London, last week whether or not it is not true that there is going to be some job losses from imports. He said, "Yes." We asked him, "Have you deducted them from the 200,000?" He said, "No." We asked, "Do you know about how many there are?" He said, "No." We asked, "Did you try to calculate how many there will be?" He said, "No." But there it still flows, 200,000 jobs.

It is a distortion. It is like looking at a ledger in a business and just looking at the revenues, not at the expenses, and saying it has been a really profitable year. By NAFTA math, we would be doing real well with Japan. Just look at the exports to Japan. Our exports to Japan are just terrific, in the tens of billions of dollars. In 1992, we had $47 billion in exports to Japan. Under NAFTA math, that is 840,000 export-created jobs to Japan. We are doing great by NAFTA math. There are 840,000 export-driven jobs because of exports to Japan. But, our trade, policy with Japan, in reality, is a disaster because you must deduct the much larger losses from imports from that export figure.

They do the same thing with that 60,000 automobile figure. I have heard that over and over again in the last few days. There will be 60,000 more cars shipped to Mexico next year. That is a Department of Commerce figure which derives from information it allegedly got from the Big Three. Assuming that it is true for the moment, how many extra cars are coming this way to the United States next year? Again, it is exactly one-half of the picture. All you get is export number. Ask the Commerce Department how many extra cars are coming this way to the United States. In fairness, do you not have to deduct the extra number coming this way from the extra number going that way, or at least consider them? We only get half of the picture. Is that the way they are going to sell this agreement? The answer is yes.

We tried for a month to get a number from the Commerce Department on the other half of the picture, how many additional cars are coming this way to the United States. Mexico increased their exports from 39,100 to 341,800 cars in the last 5 years. So if they claim, as they do, that 60,000 more cars under NAFTA will be going south, and those are all job creators under NAFTA math, how many additional cars will come this way north, and how many of those cars will be job losers? I think the Commerce Department owes the American people that number. I know the Commerce Department will not give us that number, and that is wrong and unfair.

We have an obligation to improve the way we measure plant relocation and job loss in the United States. I held a hearing on this very topic last spring which showed that our Government does not even track the movement of U.S. plants offshore. In 1992, the Department of Labor discontinued its mass layoff survey, the only survey that even attempted to track plant movement. If NAFTA passes, I will work to require the Labor Department to begin collecting this data in a useful way so we can monitor runaway plants and jobs.

Proponents of NAFTA have tried to portray anyone opposing NAFTA as preaching fear while they preached optimism. But when it looked like NAFTA was going to lose, the fear of Japan's going into Mexico was raised, the threat of anti-Americanism in Mexico was stressed, and the threat of illegal immigration was emphasized, to give but a few examples.

We must vote to defeat this NAFTA and send a strong message to our trade negotiators and our President that we want a better trade policy for our Nation. We want a trade policy that will allow our workers to compete on a level playing field. We want a trade policy that will ensure good jobs at fair pay for our people.

I yield the floor.

Mr. CHAFEE. Mr. President, the next order of business is for this side of the aisle. Senator LUGAR will have 10 minutes. Then it goes back to the other side to Senator GRAHAM, and then if Senator SIMPSON appears, it goes to him. Then it will go back to Senator CONRAD. So we will go ahead with Senator LUGAR for 10 minutes.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. LUGAR. Mr. President, the Senate should approve the North American Free-Trade Agreement. This agreement is in the strategic economic interest of the United States and will benefit our businesses, workers, consumers, and farmers.

The NAFTA is a strategic move to make the United States the preferred supplier of goods and services to the North American market. It breaks down trade barriers that have kept U.S. businesses from realizing their full potential in selling to Mexico. Even with these barriers, our Nation's exports to Mexico have been on the rise. In 1992, Indiana firms exported $359 million worth of products to Mexico, up from $156 million in 1988. But with the NAFTA, businesses in my State will be able to increase their exports—and therefore employment—even more.

Let me cite just three examples of how the NAFTA advances our strategic agenda of expanding export opportunities—for manufactured goods, for agriculture, and for services. First, an example in manufacturing: The NAFTA will gradually exempt the United States from Mexico's protectionist auto decree, which has often encouraged United States auto parts facilities to locate in Mexico in order to satisfy domestic content requirements in that market. The NAFTA will phase out these distortions—and Indiana companies like Arvin Industries in Columbus will benefit.

Second, in agriculture, the NAFTA will abolish Mexico's import licensing system on corn and other agricultural products. The result will be that the United States will have an advantage over competing suppliers in supplying the food and agricultural needs of Mexico's young and rapidly growing population. Indiana's 40,000 corn farmers, along with processing companies like American Maize-Products in Hammond, will gain by serving this market.

Third, an example from the services sector: the NAFTA will give United States insurance companies access to the Mexican insurance market—which is growing 20 percent a year, in contrast to 3 percent growth in the United States. Mexico is an underinsured society—few automobiles carry insurance, for instance—and companies that operate in Indiana, like the Chubb Group in Indianapolis and many others, will be positioned to serve this potentially huge market.

In a practical sense, the NAFTA will expand exports and export-related jobs in important industries. This is the consensus of informed analysts. For example, U.S. automotive exports could rise by as much as $1 billion in 1994 alone. Independent analysis projects an 8 percent increase in U.S. steel exports. And agricultural exports are forecast to rise by $2 billion upon full implementation of NAFTA—and Indiana farmers' share will be about $100 million.

I do not, however, base my assessment of the NAFTA's export potential primarily on the forecasts of academic experts, but on the experience and expectations of people who are actually selling products in Mexico and other markets. An exceptionally wide variety of Indiana companies have contacted my office to say they are selling to Mexico now and believe they will sell even more with the NAFTA. Their products are made in Indiana, not Mexico. A representative listing of what they sell would include corn products, auto parts, scientific instruments, soy

products, pharmaceuticals and chemicals, gears and transmissions, compressors, refrigerated condensers, exhaust systems, metal stampings, power gear products, oil spill cleanup equipment, seed, furniture, consumer satisfaction surveys, ice cream equipment, woodworking equipment, and canning products.

Indiana's communities are increasingly aware of the potential for growth through exports. For example, the Evansville Chamber of Commerce writes in support of the NAFTA and says:

> We estimate that NAFTA would result in the creation of at least 540 new manufacturing jobs [in the Evansville area] and some 325 jobs in related sectors, such as construction and service.

The NAFTA will expand employment prospects in the United States at the grassroots, not restrict them. For all the many statistics that have been thrown around during the NAFTA debate, there has been relatively little focus on some basics.

Since the 1950's, U.S. manufacturing output as a percent of gross domestic product has stayed relatively constant—a little over 20 percent throughout that period of time. But U.S. manufacturing employment as a percent of all jobs has been on a long-term downtrend. Manufacturing jobs were around 35 percent of all jobs in the early 1950's but are well below 20 percent today. This downward trendline, by the way, is remarkably constant. The decline in the manufacturing share of employment dates to the 1950's, long before maquiladora plants or Japanese mercantilism or any of the other commonly blamed factors.

Surely, Mr. President, one logical response to this long-term secular decline phenomenon is to try and expand the demand for manufactured goods. By selling more products—by enlarging the demand base—we can maintain and expand employment opportunities without sacrificing productivity gains.

These considerations bring us back to why the NAFTA is in our Nation's strategic economic interest. The NAFTA will expand demand. It offers an opportunity to sell more products.

Today, Mr. President, many people are anxious about the future. That is understandable; we are living in a time of sometimes wrenching change.

The question is how we respond to anxiety—as individuals, and as a nation.

Do we retreat in fear and resentment? Do we build walls around ourselves? Is our reaction to be purely defensive?

That is not a healthy way for individuals to deal with their problems. It is not healthy for nations either.

We must, and we will, respond to economic anxiety with creativity, innovation and initiative. The NAFTA encourages us to do that. This agreement will break down trade barriers that have reduced sales of our products and services to Mexico. It will encourage innovation by creating an integrated continental market. It will allow us to engage the world through a powerful and growing trading alliance.

We should approve the NAFTA for the good of our country and for our future.

I thank the Chair.

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

Mr. BAUCUS. Mr. President, I yield 8 minutes to the Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida is recognized for 8 minutes.

Mr. GRAHAM. Mr. President, I will support the NAFTA, as I indicated in remarks several days ago.

My reason for that support includes the fact that I am convinced that NAFTA will result in more jobs for Americans and more jobs for Floridians. NAFTA will enhance the economic future of not only the United States but two of our critical allies. NAFTA will facilitate and accelerate hemispheric trade relations. NAFTA will contribute to avoidance of a slippage of Latin America back into its previous history of economic statism and authoritarian government. And NAFTA is a symbol of the United States self-confidence and willingness to compete in the world as we conclude the 20th century.

Mr. President, what I wanted to use my time for this evening was—on the assumption that NAFTA will pass, there will become a new economic relationship in North America—what do we do from here? The North American Free-Trade Agreement has always been seen as a milepost, not a destination. The larger destination is a move toward a greater economic unity within the Western Hemisphere. I hope that we will see this victory in the ratification of NAFTA as an impetus to move rapidly toward that destination.

We should not assume that Latin America is automatically going to be within the purview and within the influence of the United States. In fact, the largest community of Japanese outside Japan itself live in Brazil.

During the period of extreme economic dislocation in much of Latin America, our policies, which were seen as strident and not forthcoming, resulted in a substantial residue of goodwill being developed by Europeans.

So we should not take for granted that we will be the dominant economic force in this most growing economic area of the world. Rather we must use this as an opportunity to move forward aggressively to secure that position.

Mr. President, I particularly urge that the United States consider the Caribbean Basin nations, the nations of the Caribbean and Central America, as a priority of that next step. The United States has invested much over the last 12 years in encouraging the development of free market economies and democratic governments in this region.

The CBI countries, as a group, represent one of the fastest growing and most significant trade surpluses of any region in the world for the United States.

The United States has special interests in these nearest neighbors from trade, refugees, drugs, and democracy. We are going to see that interest particularly in focus I hope in the next few months as Haiti overcomes its authoritarian government and begins to try to rebuild a shattered economy.

The CBI nations are especially vulnerable to some of the effects of NAFTA. Currently, the CBI countries in areas such as apparel have a preferential position in terms of entry of their products into the United States. With NAFTA, they are going to fall behind Mexico in terms of economic competitiveness.

The United States would benefit by positive bilateral relations with the CBI countries. Today, under the Caribbean Basin Initiative, we have essentially a one-way trade relationship. We provide access to our markets without a great deal of demand having been made upon the CBI countries. A bilateral relationship will provide us with opportunities for expanded export into these countries as we are assuring their continued relationship with the United States.

Mr. President, I conclude with a second point in terms of what we need to be doing in the post-NAFTA environment, and that is a domestic initiative. NAFTA has been a ripping experience for much of this Nation. We need to be looking for opportunities for healing. I believe that much of that opportunity for healing will be to draw upon our own experience as the world's oldest and largest free-trade zone.

The United States of America for over 200 years has benefited by the fact that goods could be sold from South Dakota to Florida with no barriers or interference. But even though we have had that type of relationship, that has not meant that the 50 States of our Union have stood by passively. Rather, they have learned that it is important to develop relative advantage, competitive advantage in order to attract quality jobs, sustainable jobs in their States.

States have taken different approaches to accomplish that objective. South Carolina, under the leadership of our colleague, Senator HOLLINGS, developed one of the most innovative job training programs. California has made a long-time investment in one of the great public university systems of America. Those are two examples of strategies that States have used in order to make themselves attractive.

The United States of America now needs to see itself as a nation state

competing with other nation states on a global basis for economic development.

That strategy must include components such as an effective job training program, quality basic education, research and development, and infrastructure, especially in transportation.

Those are going to be the characteristics of a nation state that can be competitive in a free market global economy. We should draw upon our own experience and familiarity and willingness to be a competitive nation as we adapt in the post-NAFTA environment.

Mr. President, the adoption of NAFTA completes an important chapter in our Nation's economic history. We now move forward with renewed confidence to the next chapter and with that confidence and enthusiasm America will continue to provide world example of leadership in terms of an open, effective, competitive, economic system that provides expanded opportunities for all of our people.

Mr. President, I ask unanimous consent to have printed in the RECORD a statement by the Ambassador of Jamaica on behalf of the Caribbean nations' interest in NAFTA.

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

[From the Washington Times, Oct. 1, 1993]

CARIBBEAN NATIONS NEED NAFTA, TOO

(By Richard Bernal)

One of the ironies of the NAFTA debate is that while the North American Free Trade Agreement promises to expand the market for U.S. goods and services in Mexico, creating jobs in the U.S. by increasing U.S. exports, it simultaneously threatens to reduce U.S. trade with Central American and Caribbean countries at an ultimate cost to U.S. jobs. This is a needless tradeoff, because the NAFTA's adverse impact can be prevented by an extension of parity of U.S. market access to the region.

In the last 10 years, U.S. exports to the Caribbean Basin (the nations of Central America and the Caribbean) have increased by nearly 100 percent, and exports from the region to the United States have climbed by 50 percent. The total bilateral trading relationship now exceeds $21 billion per year, supporting over 40,000 jobs in the U.S. and thousands more in the Caribbean Basin. In 1992 the United States posted its seventh straight trade surplus with the 13 nations of the Caribbean Basin. The Caribbean Basin has become the 10th largest market for exports, and the United States continues to be the single largest market for the Caribbean. Some Caribbean Basin nations such as my own, Jamaica, purchase 75 percent of our imports from the United States. We will not be able to sustain this level of imports from the United States if we lose access to your markets, and the result will be a loss of jobs in both the United States and Jamaica.

The Clinton administration recognizes the importance of this trading relationship. Secretary of State Warren Christopher has linked U.S. market access to the viability of fragile democracies in Central America. In a summit last month with five Caribbean heads of government, President Clinton clearly stated that strong Caribbean economies generate U.S. exports, and directed U.S. Trade Representative Mickey Kantor to study the impact of NAFTA on the small economies of the Caribbean and to recommend measures to increase regional trade.

Fortunatley, the mechanism for this regional trade measure already exists and is gaining increasing support throughout the congress. Known as "Caribbean parity," this mechanism would temporarily extend the NAFTA provisions (including side agreements) to the Caribbean and Central America to keep these countries and Mexico on a level playing field: In return for permanent access to NAFTA or some other free trade agreement, the Caribbean countries would complete full trade liberalization negotiations with the United States, removing the remaining trade barriers and guaranteeing open access in Caribbean markets for U.S. products.

Since the mid-1980s, the U.S., Central American and Caribbean economies have grown increasingly interdependent. In an effort to stay internationally competitive, many U.S. firms have lowered the cost of U.S. produced apparel by manufacturing the cutting cloth in the United States with skilled labor and sending it to the Caribbean for assembly by relatively unskilled lower-wage workers. The garments are then sent back to the United States and exported from here at a price lower than would be otherwise possible. This "complementarity of production" has preserved the skilled, higher-wage jobs in the United States while providing employment and stimulating economic growth in the Caribbean.

The Commerce Department recently reported that U.S. apparel exporters have expanded their sales worldwide by over 75 percent since 1990. About two-thirds of their exports are assembled in Central America and the Caribbean from fabric produced and cut in the United States. In the case of Jamaica, close to 80 percent of the garment consists of U.S. produced, fabric and labor.

Without low-cost Caribbean assembly operations, U.S. apparel exporters would have been priced out of the market and employment would be lost in the United States. Without high-quality U.S.-made fabric, Caribbean Basin garment assemblers would quickly become unemployed. The regional trading structure now dictates that future economic growth will depend upon expanding U.S.-Caribbean Basin trade links.

As the Clinton administration builds its coalition on NAFTA, it must not forget the Caribbean. Not only would "parity" for the region help congressional passage of the treaty, it would also expand the way in which NAFTA will generate jobs and stimulate shared economic prosperity among the United States and its trading partners.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I want to be certain of the order here.

How much time is remaining on each side?

The PRESIDING OFFICER. The Republicans have 2 hours and 51 minutes; the Democrats have 2 hours and 1 minute.

Mr. DOMENICI. Mr. President, I understand that when Senator CHAFEE left, he left the floor to me.

Senator SIMPSON asked for 15 minutes and I yield him 15 minutes.

Mr. SIMPSON. Mr. President, I do not believe I will use that, and I will yield time back.

I obviously am in strong support of the North American Free-Trade Agreement. This debate has been rather an epic one. It has been a struggle often between myth, misery and misinformation—on the one hand—versus a positive economic vision for the future.

I think this Bush-Clinton NAFTA is the centerpiece of what is envisioned as an American trading region stretching to the very tip of South America.

This is a historic moment for our country, and our decision on NAFTA should rise above partisan politics. What sort of message would a rejection of NAFTA convey to the world? I can tell you one thing is certain: If we reject NAFTA, Germany, the European Community, Japan, China, and the rest of Asia will be more than willing to take up the slack with their exports. We will have lost a golden opportunity to have gained a larger portion of Mexico's swiftly growing import market. We will have lost the stepping stone to a worldwide trade agreement that will reduce all barriers to trade.

I have had the opportunity of hearing a great deal about NAFTA from Wyomingites ever since this trade accord was negotiated. I have heard some concerns which I shall address. But for the most part, I have heard about the positive impact NAFTA would have on Wyoming, and I will mention several specific benefits for Wyoming in these remarks.

In my travels back to Wyoming, I am always confronted with people who are right in your face, so to speak, who say, "Vote 'no' on NAFTA." And I say, "Why?" And they do not know why. Sometimes they just say, "Vote 'No.'" I think sometimes they have been listening too much to Ross Perot, who I think has magnificently distorted this issue.

I was very impressed by the work of our Vice President during the debate, so-called debate, with Ross Perot. I thought Vice-President AL GORE did a very fine job of disclosing, at least letting Ross Perot disclose, to the American people his shallowness with regard to his knowledge of complex issues, which, of course, has been known to many of us as we watched him campaign.

He is a man of easy answers to hard questions. Little snippets of irritation and peskiness do not substitute for intelligence. I think that he was portrayed in a way which has probably led to the decline of whatever role he has in the United States, and certainly he has a central one with his vote that he obtained in the last general election. Nevertheless, I think he was repudiated, along with some of his allies who were quite extreme in this matter.

My home State is a very small State, obviously, of 465,000 people. I represent

fewer people than are in any other congressional district, which usually contain approximately 600,000 persons.

So people would say, "Vote 'no' on NAFTA." And I would say, "Why?" And they would give me some answer and then they would say, "Why would you vote for it?" after I would describe to them that that is exactly what I intended to do.

I said, "Let me put it in the simplest possible terms. You are asking this delegation"—Senator WALLOP, Congressman THOMAS, and our Governor, a Democrat named Mike Sullivan—"You continually ask us on the State level and the national level to go forth into the world, taking our great bag of goodies and tricks and paraphernalia and asking people to buy what we produce; asking them to buy our trona."

We are the largest producer of trona in the United States. The southeast corner of Wyoming produces 95 percent of the world's trona, which, of course, is a component of soda ash and the singular important product in glass.

The people and economy of Wyoming will profit from greater trade and investment liberalization under NAFTA. Wyoming's exports to Mexico have grown substantially since Mexico began to liberalize its economy in 1985. Since 1987, Wyoming's exports to Mexico have been growing at an average annual rate of 45 percent. Wyoming's exports to Mexico totaled $5 million in 1992. Current trade with Mexico generates considerable employment and income for Wyoming companies and residents.

Wyoming's economic potential is based on free trade. We produce oil, gas, wool, sheep, cattle, coal—we are the largest coal-producing State in the United States of America—and chemicals, MTBE, and other manufactured items. We certainly produce much more than the 465,000 of us could ever consume. The very essence of our work and half our day is spent trying to establish markets for Wyoming products in the United States and throughout the world.

Mexico is our third largest trading partner, and we have already entered into the agreement with Canada.

It was obvious to me then that the next part of the argument people would present would be, "How about pollution? What are we going to do about that? Their laws on pollution are very lax."

Then there would be a discussion of sewage on the border, which is always a dramatic thing. I did not have any pictures of that, but that was described in some detail.

Then, of course, corporations fleeing to Mexico, which, of course, they can already do.

And, like Vice President GORE in the debate with his adversary, I would say,

What are you getting when you do not get NAFTA? What is your influence on what Mexico does internally with regard to its pollution? What is your influence on sewage on the border? What is your influence within the country when people ask about illegal immigration?

which is a subject that I have been deeply involved in.

And I would say to them,

Please tell me what rejection of that agreement will do for those issues? Please replace emotion with reason and tell me what will happen.

Well, that always created a pretty good discussion. I would listen to them, and I have listened to those who are in opposition.

Now we find ourselves on the threshold of completion, I believe successfully, of this agreement.

And there is another thing, though, that I want to be assured that my colleagues hear, if we do not pass NAFTA. At least in my mind, there is a certainty that illegal immigration will become an ever more serious question. I say illegal immigration, because the principal reason for illegal immigration is the magnet of jobs. And the best way, the very best way to assure that those people do not come to the United States for jobs is to assure that their country reaches a higher level of economic status. When they do, the jobs will be created in Mexico, those jobs will be available to Mexican people, and they will stay. It is a very simple procedure.

That may not take place for the first year, for the second, or the third. But, long-term, 5, 10 years, certainly after that, this will be a very strong adhesive to cause people to remain in Mexico, to work in Mexico under the Government of Mexico, with no tariffs on either side after 15 years.

Wyoming agriculture will see growth in numerous areas. NAFTA will increase trade in both live cattle and beef through the removal of tariffs and licensing requirements. By the end of the transition period, revenue for the U.S. beef industry is projected to increase by $200 to $400 million. Sheep and lamb producers can expect increased exports. Ewe and lamb exports nearly doubled from 1990 to 1991 and are expected to continue to increase under the NAFTA.

Local concerns about how the agreement would have affected Wyoming sugar producers have been successfully addressed. The side letter was designed to protect against potential economic harm. It ensures that Mexico will not export large quantities of sugar and surplus sweeteners into the United States market.

Mexico has already passed legislation to open up its mining industry. I have heard from Wyoming mining companies that will have new opportunities to operate in Mexico under the NAFTA.

Wyoming soda ash companies will also enjoy increased trona exports to Mexico. Exports of trona—for fiber optics, car windows and other glass products—are projected to greatly increase as Mexican tariffs are removed.

NAFTA gradually reduces investment restrictions on banking and security firms allowing for open competition in financial services by the year 2000. Wyoming banks will now have the ability to open branches throughout Mexico.

The need for infrastructure improvement along the border and in Mexico—new roads, sewage and waste systems, and bridges—will bring about opportunities for Wyoming construction companies.

I have heard it asserted that free trade is the cause of the decline in real wages in the United States. That is a fallacious argument. Throughout history, increases in total trade volume have only led to increases in real wages, and more jobs.

NAFTA does not change the way which corporations can move their production facilities across the border. Any company that thinks it would be more profitable to move to Mexico and produce manufactured items, can do so today. However, NAFTA does commit Mexico to abide by United States labor and environmental laws. The labor and environmental side agreements to NAFTA will reduce the incentives U.S. companies might continue to enjoy without NAFTA.

I have also heard concerns about job displacement. The removal of U.S. tariffs will cause an estimated 150,000 displaced U.S. workers over the first 5 years of the agreement. However, that increase will be more than offset by the creation of 350,000 new jobs that the Department of Commerce estimates will be created by the removal of Mexican tariffs.

This means that America will realize a net increase of 200,000 new jobs due to NAFTA. Wages in those jobs will be equivalent to the wages currently earned in the U.S. export industries. Today, the average weekly wage in that sector of our economy is over $420 a week—17 percent higher than the average U.S. wage.

In the years ahead, we can expect to see free-trade blocs in Europe, Southeast Asia, and possibly South America. The U.S. economy is by far the largest single economy in the world. But we must compete for world markets. If we are forced to compete with a European free-trade bloc, or a Japanese-Southeast Asia bloc—both of which would be larger than our current economy and market—the United States would be at a terrible competitive disadvantage.

The prosperity that NAFTA will bring offers Mexico the only long-term solution to the problem of undocumented immigration into the United States from Mexico. The agreement does not and will not allow the free movement of Mexican labor into the

United States. The best way that we can cooperate with Mexico in alleviating the bilateral problem is through free trade. NAFTA will create jobs in the United States for Americans and it will create jobs in Mexico for Mexicans, who can then remain there to work.

This North American accord does not threaten our national sovereignty as some have suggested. We do not yield any authority to our northern and southern neighbors. In fact, no trade agreement surrenders any authority over U.S. citizens to any other national or international entity. All of that authority remains within the U.S. Government.

Wyoming will be one of the most negatively impacted States if we lose NAFTA.

So those are very interesting things.

And then the troublesome part of the debate—and I heard it enough because I am sensitive to it. I have had such remarkable recommendations presented to me as to what we should do with illegal immigration in America over the years, and usually, or at least sometimes, there is often a touch of racism involved. That is an ugly thing.

I thought Ross Perot's comments were very demeaning toward the Mexican Government and the Mexican people, to portray them as slovenly, lazy, inept people with a corrupt Government.

We can thank God that President Salinas has been there and tried desperately, unilaterally, to open his country to us. We are now going to do it bilaterally.

And I could not imagine a worse scenario than to defeat NAFTA, get nothing done with the environment, get nothing done with sewage, get nothing done with corporations fleeing, and then find that the whole election campaign for the next President of Mexico would be spent talking about the gringos from the North who did them in one more time, with a paternalistic, ugly, mean-spirited dialog of a campaign about how puny, how ineffective was the economy of Mexico. I cannot imagine what would have been worse for the United States of America, to watch a Mexican Presidential campaign on the platform. The winner would be the one who took the hardest strikes and blows at the United States of America. That is not going to happen, I do not believe.

Nevertheless, these are realities, and I think we will see reason triumph over emotion. I respect greatly those on the other side and particularly one. I mention his name—that is Lane Kirkland, president of the AFL–CIO.

I know the man and have come to have high regard for him. I enjoy him very much. He was a noble and stalwart figure and help with me with regard to illegal immigration. He was in the trench and assisted me on two separate occasions when we passed the illegal immigration bill. I have the deepest respect for him.

I said to him, "Lane, how did you get in this position? How did the AFL–CIO get to this position when the whole issue of America is jobs, and the whole issue of jobs is exports, and the whole issue of exports is free trade?"

He said, "Al, forget the reasons. We are just here. We are here. And you ought to hear the speeches that we can give." And then he gave me one and I said, "That is impressive. In fact it is moving, it is powerful."

Well, he said, "I could not turn back from this course regardless of what the arguments or the blandishments might be."

So it was. It is a shame because I think it has hurt organized labor in some ways, and that is unfortunate. I think at some point in time they could have given a shred. That is what legislating is about. That is what we are about—compromising an issue without compromising ourselves. I think at some point, back at some unknown milestone on the course, they could have given a bit and we never would have reached this unfortunate crossroads.

Nevertheless, I respect him greatly for fighting for a cause with passion and skill. I want to commend those in the House of Representatives, on both sides of the aisle, who did such a splendid job over there. I think of Congressmen BILL RICHARDSON, NEWT GINGRICH, BOB MATSUI, JIM KOLBE, DICK ARMEY, Minority Leader BOB MICHEL, and MICHAEL KOPETSKI. I could go down the list of people on both sides of the aisle, including TOM FOLEY, the Speaker. They did such tremendous work for our country.

I will end by saying that my State was founded and settled by men and women who never lost their vision of the future. To me, that is the same ethic that NAFTA represents.

We have a choice here today to express an economic vision for the future. I am proud to make that choice by supporting this historic trade agreement.

The PRESIDING OFFICER. Who yields time? The Senator from New York.

Mr. MOYNIHAN. Mr. President, I happily yield 10 minutes to the distinguished Senator from North Dakota.

The PRESIDING OFFICER. The Senator is recognized.

Mr. CONRAD. I thank the chairman of the Finance Committee, and I thank the Chair.

Mr. President, this vote on the North American Free-Trade Agreement has been a difficult decision for this Senator. It has been difficult because I believe in free trade, I believe in the doctrine of comparative advantage, that we produce what we do most efficiently, others do the same, and all of us benefit as a result. I believe in the economic benefits of opening markets, particularly for our agricultural products.

But we in North Dakota have learned from bitter experience that the devil is in the details with respect to so-called free-trade agreements.

Our most recent experience has been with the Canadian Free-Trade Agreement. All of us remember that the Canadian Free-Trade Agreement promised that we would have free trade, that we would have open markets, that we would have growing markets. We found out in North Dakota that it was not free trade; it was negotiated trade, and certain agricultural sectors had been traded away. Since the Canadian Free-Trade Agreement was implemented, Canadian wheat has flooded into the United States market. Any of my colleagues could come to North Dakota on any day and see the trucks rumble south carrying load after load of Canadian grain. Imports of durum wheat have increased from zero in 1985–1986 to 15 million bushels today. The Canadians have captured more than 20 percent of our market.

Imports of hard end spring wheat have totaled 35 million bushels in the most recent year, five times the average in the 5-year period prior to implementation of the Canadian Free-Trade Agreement.

Did this happen because our Canadian neighbors are more efficient, more productive, more competitive? Unfortunately, no. That is not what happened. We could understand if we were losing our markets because the other side was better at producing the product. But that is not the case. We have lost these markets, we have suffered these losses, because the Canadian Free-Trade Agreement put in place a system of unfair competition—plain and simple: unfair competition.

For example, the Canadian Free-Trade Agreement allows Canada to use transportation subsidies on wheat and barley shipments into the United States, a subsidy that is not available in this country. And the Canadian Free-Trade Agreement does nothing to curb the secret, anticompetitive pricing practices of the Canadian Wheat Board.

The distinguished occupant of the chair, along with others of us, recognized at the time the Canadian Free-Trade Agreement was passed that it contained these flaws, and we sought assurances from the Reagan administration that these problems would be resolved. Unfortunately, these assurances have turned out to be worthless.

We were told in the implementing legislation for the Coalition Free-Trade Agreement that the President would immediately begin negotiations to end the Canadian transportation subsidies. Not only has that not happened, there has never been a single serious attempt to make it happen.

We were told we retained the option to use section 22 of the Agricultural Adjustment Act to protect our farm programs. Section 22 would allow the President to limit imports of Canada's agricultural products into this country.

In fact, section 22 requires the Secretary of Agriculture to advise the President whenever he has reason to believe that imports are materially interfering with any program or operation of the Department, and further requires the President to take action if he agrees that there is reason for such belief.

The Bush administration refused to even consider initiating a section 22 action, despite clear evidence of damage to the American wheat program. As if that were not enough, we learned earlier this year that, in a secret side agreement never revealed to Congress, then-Trade Representative Clayton Yeutter told the Canadians that the plain language of the agreement, when it comes to selling wheat in our market at below their cost, did not really mean what it said. The agreement says that Canada cannot sell into the United States at less than the full acquisition price of the grain. But instead of the full acquisition price of Canadian grain, Mr. Yeutter told the Canadians we would only count part of the price. We would not count the transportation subsidy that gives their producers a 50-cent-a-bushel advantage.

We would not count the interim and final payments of the Canadian Wheat Board that typically amount to at least 20 percent of the total payments that the Canadian Wheat Board makes to Canadian producers. So full acquisition price did not mean full acquisition price at all. It meant something far less than that, and that has allowed Canada to dump at below cost into our markets, stealing markets which rightfully belong to our producers, costing our people literally hundreds of millions of dollars. North Dakota is on the front lines—right on the front lines—bearing the brunt.

Mr. President, this has been a bitter lesson for North Dakotans. We have become wary of so-called free-trade agreements. We want to know the details. And when I turned to the NAFTA, this experience with the Canadian Free-Trade Agreement was the backdrop for my review.

As I looked at the NAFTA, I saw the problems with wheat in the Canadian Free-Trade Agreement flowing right through to the NAFTA. I saw problems with sugar. Mexico, which is now an importer of sugar, was allowed unlimited access to the United States market.

I saw problems with dry edible beans. We are the largest producer of dry edible beans in the country. Our exports to Mexico are cut in half under the terms of this agreement. That is not free trade, when exports are cut in half. And I saw problems for potatoes. From 1990 to 1991, we doubled our exports to Mexico, but that growth of exports was cut off under the terms of the NAFTA.

The Clinton administration, to its credit, moved on some of these problems. On sugar, they resolved the problem. On wheat, they proposed to accept our end use certificate legislation so we could tag Canadian grain coming into this country, just as they do to us. Unfortunately, the words are there but the substance is lacking. We do not have the enforcement mechanism on end use certificates that assures us we will treat Canada in an equivalent way.

The administration came to us and said they would invoke section 22 action against Canada, that we would use our right to limit Canadian imports. The President told us he would send a section 22 action to the International Trade Commission in 60 days if Canada fails to respond. But there is no criteria for what is an acceptable Canadian response. That to me is a pig in a poke. I cannot tell farmers in North Dakota that the problem is resolved because Canada could take minimal action and the administration might then suspend the section 22 action. If this happened, we would have lost our best chance to rectify the mistakes of the Canadian Free-Trade Agreement that flow through to the NAFTA.

I cannot in good conscience tell my hardworking farmers that we have solved the problem when we do not have final action.

Finally, I believe we in this country can compete with anyone if we have a level playing field. But I am deeply concerned that the wage differential between our country and Mexico is artificially exaggerated because Mexican wages are artificially suppressed. That abandons our workers to an unfair playing field, one in which they are condemned to fight for their jobs with the scales weighted against them.

Mr. President, that is not free trade, it is not fair trade, it is negotiated trade. For those reasons, I must vote no on the NAFTA.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. MCCAIN. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Arizona is recognized for 10 minutes.

Mr. MCCAIN. Mr. President, in 1785 Thomas Jefferson wrote to his fellow Virginian, James Monroe: "I would say to every nation on earth, by treaty, your people shall trade freely with us, and ours with you."

The votes we cast today on the North American Free-Trade Agreement, like the votes cast in the other body Wednesday evening, will determine for many years to come whether Jefferson's aspiration remains the sincere pursuit of this great Nation.

I am confident that the Senate will approve NAFTA by an even larger margin than it won in the other body. I am very gratified that Congress resisted the often demagogic appeals of NAFTA opponents whose fears about the outside world overcame their confidence in America's strength, and our ability to protect our interests abroad.

America has little to fear from competition with a southern neighbor with an economy one-twentieth the size of ours, and a trade deficit with the United States that exists despite the fact that Mexico currently imposes higher tariffs on our goods than we impose on theirs.

I commend President Clinton for his energetic advocacy of NAFTA over the last 2 months. I would also like to salute the vision and industry of two previous Presidents, Ronald Reagan and George Bush, as well. Ronald Reagan was the first President to draw attention to the idea of a North American Free-Trade Agreement. And George Bush saw the idea through, negotiated the treaty with all the diplomatic skill for which he is rightfully respected by the world. For a President so often criticized for lacking vision, NAFTA could well serve as one of the most visionary endeavors any modern President has ever pursued.

Like President Clinton, I too hope that this success marks a new beginning for the administration. I am sure I need not remind the President of the nature of the coalition which ensured this important victory. Wednesday, over three-fourths of the Republican Members voted for NAFTA. Considerably fewer than half of the Democratic Members followed their example. By any fair reckoning, NEWT GINGRICH and his fellow Republicans deserve more than half the credit for NAFTA's approval in the other body. And, I am confident that well over half the support which NAFTA will receive in the Senate will come from Republican Members.

It is not clear to me today that Republicans are receiving the credit that they truly deserve. NAFTA was envisioned by a Republican, negotiated by a Republican, and passed by Republicans. With all due credit to the President, and those Democrats who had the coverage to vote with him, I think it is important that this town not overlook that fact that the vision and courage of Republicans was the difference between success and failure of NAFTA.

Mr. President, while I join in celebrating President Clinton's successful advocacy of NAFTA, I do have some regrets about all the means employed to achieve that success.

Purchasing votes for NAFTA with promises of trade protection for certain industries undermined the very principle of free trade that NAFTA was negotiated to advance. Even more egregious were the bribes of wasteful Federal projects which exacerbate the

public's cynicism about their Government.

Every Member of Congress should have had the courage and wisdom to vote for NAFTA for no other reason than it is so clearly in the interests of our Nation. The Clinton administration should have had the courage to base its appeals to Members of Congress in a review of the treaty's many advantages for U.S. economic and political interests—advantages that overwhelm the narrow-minded, fearful arguments of NAFTA opponents.

To be fair, the administration did make an effective case for the treaty by emphasizing the important economic benefits certain to accrue to the United States if NAFTA passed, as well as the visionary quality of the treaty as a potential cornerstone of a hemisphere wide free-trade regime.

Those arguments, however, were diminished in the closing days by the politics as usual vote buying and selling that had little to do with free trade or a vision of a mutually prosperous hemisphere, and a lot to do with pork barrel pursuits.

I also note the President's willingness to send a letter to Republican supporters of NAFTA discouraging Democrats from exploiting the pro-NAFTA votes of Republicans in the next election. That is very generous of the President.

However, as a Republican I am happy to proclaim my support for NAFTA. I am proud of my support for NAFTA. And I am perfectly content to let the people of Arizona judge my support on its merits without a doctor's excuse from the White House.

Let me summarize the argument which should have been sufficient to persuade most Republicans and Democrats alike to support NAFTA.

For Republicans, how our party's divisions over NAFTA are resolved will shape the very heart and soul of Republican philosophy for a long time. Will we remain a party dedicated to the proposition that the people, being infinitely wiser and more practical in pursuit of their own interests than Governments, be allowed to act in their own economic interests with the least interference from their Government?

As a practical economic proposition, NAFTA and free trade generally, rest on the bedrock of Republican economic philosophy—common sense. No less an authority that the founding father of free market economic principles, Adam Smith would agree. He illustrated the folly of Government protectionism this way:

> By means of glasses, hot beds, and hot walls, very good grapes can be raised in Scotland, and very good wine can be made of them at about thirty times the expense for which equally good wine can be bought from foreign countries.

This commonsense perception of the negative consequences of high tariffs was well understood by Americans who engaged in the great tariff debates of the last century. It was understood by many of our Founding Fathers, by committed free traders in the 19th century, and by supporters of free trade today who argue persistently that tariffs are unfair taxes on an already overtaxed public and an impediment to prosperity.

Simply compare the Nation's prosperity in the period from 1860 to 1940 when tariff rates averaged 40 percent with the post World War II period when tariff rates averaged 6 percent. The first period was marked by three major depressions. The depression of 1873 was one of the longest in American history. The depressions of the 1890's and 1930's were at the time they struck the worst the Nation had ever experienced. By contrast, the period since World War II has been more prosperous than either the protectionists or free traders of the 19th century could have imagined.

It is with respect for these hard learn economic lessons of the past that the supporters of NAFTA have been so vigorous in their advocacy of the treaty.

Put plainly, Americans have prospered substantially from liberalized trade with Mexico, and they stand to prosper even more under NAFTA. There is no credible argument to disprove that simple fact. It should remain our party's firm resolve that it is the proper function of Government to remove whatever impediments remain to important markets for the goods and services of the American people.

There are, of course, other arguments at stake that transcend partisan economic values. Under President Salinas, Mexico—the only nation with which we share an unstable border—has moved dramatically away from statism, protectionism, and the reflexively anti-American, anticapitalism leftwing policies that have kept Mexico so firmly rooted in the Third World.

Rejecting NAFTA, denying Mexico the benefits of enlightened engagement with the world, might very well have provoked a return to these policies which are so inimical to our own interests.

Finally, there is the vision of our Nation which we have long sought to present to the rest of humanity. Involved in the NAFTA debate was the question of whether we are still a people imbued with the enlightened spirit of the New World or have we become more like the Europeans whose opposition to free minds and free markets our Founding Fathers struggled to overcome.

What NAFTA asks of us is to take counsel of our enduring aspirations, and not our fears, and by so doing help fulfill the promise of the New World—the promise of a hemisphere of free, democratic, prosperous nations, at peace with one another, and serving as the model for the entire world.

That, I submit, is a vision worth casting a vote for.

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

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I yield myself 15 minutes on the Republican side in favor of NAFTA.

The PRESIDING OFFICER. The Senator is recognized for 15 minutes.

Mr. DOMENICI. Mr. President, fellow Senators, I have not spoken much about NAFTA other than a few days ago, perhaps 15 minutes on the floor of the Senate. But that should not be taken as any indication that my support for this arrangement of free trade in this hemisphere between Canada, Mexico, and the United States is not something that I have studied well and that I understand as well as I can and that I wholeheartedly support.

In fact, it was many months ago when this Senator took to the floor of the Senate and said the United States was very lucky to have a President of the Republic of Mexico named Carlos Salinas. It seemed to me that if ever this country wanted to develop this hemisphere with the same spirit, with the same freedom, with the same capitalistic ideas that would create wealth and jobs and prosperity, we had in a very real sense lucked out because onto this hemisphere came this man.

Many of us do not happen to have the luxury of having gone to Yale or Harvard or Stanford, although I can say at least a few of the children in my family have, but all of a sudden I decided that the Harvard Business School and its School of Economics—many of us would joke about it and talk about it because many thought it produced kind of a selfishness and maybe even a business sort of greed, none of which I agree with at this point—was worthwhile because of what it gave to Mexico, because this President was educated there. He obtained a PhD in economics, and I gather he was no run-of-the-mill student.

Then I went to Mexico two times, and I had the opportunity to look around, I say to my friend from Montana, at the Cabinet of this country called Mexico headed by this man Salinas. Let me say, fellow Americans, you could take that Cabinet and you would not have to teach them English and you could move them to the United States and, President Clinton, I regret to tell you, that would probably be as good a Cabinet as you have and maybe better.

Their Secretary of the Treasury, or, at least, the counterpart to ours, would not take a back seat to any economist in America, or anyone managing money for people or governments. Go

all the way down the line and you find a youthful, exuberant, bright, dedicated group of men and women working for this man, President Salinas.

When he went into office, the United States of America did not have a glimpse of a chance of success in hemispheric trade with equity and equality and growth on both sides of the border that we could both be proud of as neighbors and grow with together because that Government and that country had not yet committed to the ideals and the spadework of a NAFTA.

There was no chance there could have been a NAFTA 6 or 7 years ago. Mexico was in the throes of a government that was protectionist, that did not want foreign investment. Remember that? They ran it all out of the country. They ran their own capital out of the country.

What happened under that atmosphere? Inflation rates were sky high, labor rates were in constant turmoil, and they had to control everything to make the economy run. The banks were nationalized at one point because the inflation and interest rates were too high, and they thought we will fix that by the Government owning them", right? It just got worse.

Then came a budget director. Now, we have had some famous budget directors in our day, in fact, in this time that I have been a Senator. But there was a budget director named Salinas, and he started this fellow Portillo, the President before Salinas, down the path of thinking of the Mexican people in a modern world, in a world where there was greater trade among countries, where tariffs were going down, where investments were made between peoples and between countries, so that growth could occur and jobs and prosperity move upward and skyward.

Out of the clear blue, when the new President was going to be selected, they found this budget director, and they made him President. Some of us have taken to the floor—not this Senator—and we were inferentially critical of how he was selected. Right? Because we said they are not a big enough democracy, we should not trade with them. Right? Inferentially they should have had an election, because how could Salinas be a good leader unless he was elected by everybody. Frankly, the United States of America thinks that in world trade, we are going to go to every country and say: Now just put it out here. You have a constitution; let us see it. You have three branches of government. Where are they? You have elections every 2 years and every 4 years? You do not? We are not sure we are going to have free-trade with you.

Let me tell you, we are not so perfect either. I mean, how would we like Salinas and his group of people looking over here to the United States, if they had the big club, and saying: We do not like what you are doing, either. Why should we have free trade with you?

They could think of a litany from that ceiling to this floor of things we are not doing right, that are not in the interest of free trade. They could give us a list of social problems in America that they do not want in their country. They do not want the social problems of our murders in our inner cities being part of this new trade between the countries.

In fact, if I were one of their politicians, I might be saying: "Wait, are we going to import that lifestyle? Is that what we are going to get when we have free trade? I am not sure we want it."

But that is not true. We are not talking about that. We are talking today about the economy of the United States, jobs for our people, and at the same time the American economic machine made up of capital investment, working men and women, educated people, and meeting the competition of a different world.

So why should we not tomorrow institutionalize in this hemisphere the successes of the Salinas administration in Mexico? That is what NAFTA is, more than anything else. It will say to Mexico, and between Canada and the United States, we will say to Mexico: "Now you have to keep the free markets that you started under this great leader; you have to take those trade barriers down." They are 16 feet tall and should go down to zero. Yes, people will say "what about ours?" Our trade barriers are 16 feet tall, down to a little curb. We are going to vote them down. Which nation should that favor more?

That is institutionalizing permanently between two great nations and two great peoples what President Salinas and his group of educated people committed to growth and prosperity have brought into being. If I had more time, I could give you a lengthy list outlining the growth in that country during the last 6 years that would make the United States look feeble. Granted, they started poorer. But we are not doing as well as Mexico. Their gross national product is growing faster than ours. Their inflation has come down from a higher rate down to a level that is really livable in the international marketplace. Their interest rates have come down from double digits to something we can live with and they can live with. Everywhere you look, their prosperity is increasing; their standard of living is going up; their disposable income is going up. And who do they want to spend it on? Is it not amazing? Every living man and woman in Mexico, I say to my friend from Nebraska, in that poor country, spends more of their Mexican pesos on American goods than the Japanese spend on American goods.

That is interesting. As poor as they are, on a yearly basis, they spend a higher percentage of their income buying American goods than the Japanese do. Why should we not institutionalize that? Or do we want to throw that out the window because of some kind of concern that they have not yet perfected their democracy?

Let me tell you. We were pretty lucky that we did not have a big free giant like the United States looking over our shoulders as we developed our democracy. They would not have traded with us in terms of being a real democracy with individual freedom and liberty until about the last 25 years. It was not long ago women could not vote. It was not long ago blacks were slaves. Right? Those are all things we could be critical of if we sit around and say we want perfection in terms of individual opportunity, freedom, and prosperity. Yet, we had more freedom and more opportunity than most countries in the world will ever have, and we were not perfect.

Having said that, let me suggest what is happening to this great country is very, very simple to this Senator. After the Second World War, we decided that we were going to be a strong economic power and we were going to sell our goods to the world. Frankly, they bought everything we could produce. From and after the Second World War and for about 25 to 28, 30 years, we dominated the world marketplace. We produced automobiles that were not very good. And the rest of the world bought them because nobody else produced them. They bought our American steel even though it was very expensive because nobody else produced steel. And we had a luxurious 25 to 30 years.

What did we want the world to do? Just think of it for a minute. We did not want to send our military and take them over. We got out of that Second World War; we said that is it. What did we want of the world? We wanted them to become democratic as best they could, and as quickly as possible, and capitalistic, with private property ownership, investment, and growth. We sat back and without using armies, without using navies, we encouraged other countries to follow our lead, for armies and navies had nothing whatsoever to do with peoples of the world catching onto democracy, to leadership in economics, to investment, to opportunities, to enterprise. And so the world grew like America; grew to be like us.

There was born real international trade, because before that we dominated it. Then there came a Japan, then there came a Germany, and then there came a Europe. And then, not too far behind them, came a number of countries that are growing in terms of material wealth much like ourselves.

And therein lies the competition that somehow or another frightens us to death. We asked the world to be like us, and prepare goods and services like us, grow and prosper like us, and now

that they are getting there, and doing it well, we are timid and fearful. We should not even open our borders to Mexico because we are afraid of it. Right? Are they going to truly put our people out of work?

That is something hard to believe. I have not seen many things flow through here that are as hard to believe as the little country of Mexico, with great potential, 90 million and growing—what is it, 4 percent of our economy—just urging that we take down both countries' barriers, that we trade with each other. They invest in us, we invest in them, and guess what will happen when we do it? Both countries are going to grow.

Mexico's standard of living must grow faster than ours now percentagewise. That happens in every country. When you go from poor to a little less poor, to a little bit wealthy, to much more wealthy, it kind of stops growing exponentially and goes in the other direction. It gets harder. We are already up there. So theirs is going to grow faster. If we do it right, guess what is going to happen? They are going to be our biggest traders, trading partners, buying more goods and services from us than any country in the world.

It will happen just as sure as we are here. And anybody that criticizes the caliber, quality, and culture of the Mexican people is dooming this hemisphere to second-rate economic power in the world. For this hemisphere is not just North America.

Let me just suggest that as Mexico grows, the next thing to happen is that Central America, which is already catching on, is going to grow. And the next thing that is going to happen is countries in South America are going to start to grow, and they are going to be doing business our way.

It is going to be investment, competition, job training, education, produce what you are best at, and sell it to your own people and others. What is going to happen to America is that our manufacturing base and our base that requires good, high-paying jobs will grow. The thing that has caused us the most concern is that the high-paying jobs are not growing sufficiently in the United States.

They will never grow sufficiently unless they are fed by exports of finished products that demand high quality workers to put them together at competitive prices. How can Mexico not help us as we seek to do that? Think of what this hemisphere is going to look like when you add them all together—our Mexican friends to the south and all of the Latin American countries and Canada, with no trade barriers and the enthusiasm of investment and growth; and job training and education becomes contagious in the hemisphere. You can forget all of the prophets of gloom that appear on the American horizon and tell us we better keep it like it is.

Frankly, it is not so great like it is. Not wanting to do this with Mexico because we are fearful means we are going to keep the relationship like it is. The relationship like it is is getting better with the current government of Mexico, but it could fall backwards if we do not help institutionalize their successes with NAFTA.

I want to close tonight by suggesting that in the city of Santa Fe, NM, every year we burn what we call a Zozobra, a big stuffed kind of mummy that we walk down the road. And when we burn him, we are burning "old man gloom." That is an annual event, burning old man gloom, or Zozobra. Frankly, it reminds me of that when I hear those who are so skeptical, so fearful of our work force and our manufacturing companies and our ability to train our people, invest our money in modern technology to build competitive goods for Mexico and the world marketplace, I do not think we ought to have to burn Zozobra every year. I think we ought to just burn that tomorrow morning and vote "aye" for NAFTA.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER (Ms. MOSELEY-BRAUN). The Senator from Montana.

Mr. BAUCUS. Madam President, I want to first commend the Senator from New Mexico for one of the best statements on this subject I have yet heard. The Senator from the State of New Mexico represents a State next to Mexico, and he knows and understands Mexico very well. I commend him. I only regret that not every Senator was here this evening to hear it.

I yield 5 minutes to the Senator from Nebraska.

Mr. KERREY. Madam President, I rise to offer my support for the North American Free-Trade Agreement and to give proper recognition to those whose dedication to this historic agreement have now made our vote seem anticlimatic.

Both President Clinton and Vice President GORE deserve praise for their disciplined efforts to engineer and implement a NAFTA game plan that appealed to the competitive inclinations and the high-moral aspirations of the American people. In the process, the President and the Vice President demonstrated great respect for the legitimate fears that many Americans have about their job security. And, they have refused to concede to those who would prey on these fears to keep the United States from seizing an opportunity to expand job opportunities through trade and economic growth.

I also want to commend our Trade Representative, Ambassador Kantor, for his skill in keeping the NAFTA agreement moving ahead. He has always been available as a patient and concerned listener, and for that reason he has earned my personal respect and my support for this agreement.

I also wish to thank Bill Daley, the President's Special Counselor for NAFTA. He answered the call to come on to the NAFTA playing field in the final quarter, with his team down and the clock running out, and showed cool competence in moving NAFTA across the goal line. The administration's entire effort was a picture of teamwork.

Finally, I want to pay tribute to former President Bush. Tonight, no one should question George Bush's vision. It was his vision of a hemispheric trading block which brings us to this historic moment.

Having given proper individual recognition let me also recognize and speak to the legitimate concerns and fears of those who oppose the NAFTA. This agreement merely give us the opportunity for success; it by no means guarantees it. If it is our desire to counter the downward pressure on wages or to compensate for the loss of American jobs, we must with all due diligence implement policies which give increased job growth a chance.

What we do after this agreement becomes law is much more important than what we have said prior to enactment. The vision of mutual and rising prosperity will not become a reality if we continue fiscal policies in America which consume three-fourths of all available savings, entitlement policies which annually transfer income faster than working people can generate it and which inhibit the urgent need to invest in public infrastructure, tax policies that penalize savings, regulatory policies which make no effort to compare costs with benefit, education policies which produce high school graduates deficient in math, science, and reading skills, or health care policies which allow millions of American babies to begin life without a fighting chance to succeed.

The NAFTA is a five volume document of text and accompanying tariff schedules. The agreement provides the framework for an increasingly open trade relationship between the United States, Mexico, and Canada. As such it is little more than rules of the road. It will not and cannot determine either the quality of the road or the vehicles we use.

This framework, Madam President, lowers existing tariffs between the three countries. It converts quantitative restrictions on imports into tariffs so that these restrictions, too can be phased out in an orderly and measured way over the next few years. Thus, it allows each country some time to adjust to the new trade rules.

This framework obligates the United States, Mexico, and Canada to seek to harmonize the standards that govern commerce in their respective economies, but to do so in a way that respects each country's right to maintain

the health and safety standards necessary to protect its citizens.

Madam President, any framework is only as strong as its foundation. In this case, the strength of our economic foundation, and the economic foundations in Mexico and Canada, will ultimately determine whether the NAFTA framework stands or fails. On this score, it is clear that we and our NAFTA partners have much to do in order to ensure NAFTA's true success.

In the case of Mexico, I can only say, Madam President, that if that country continues on the courageous path that it has pursued the past several years, I am confident that it will one day have the strong economic foundation required to make NAFTA work for Mexicans.

I cannot help but look with deep admiration and a bit of envy at all that President Salinas has done to right his country's economic ship of state. He has, in the face of long odds and clear political risk, asked individual Mexicans—many of whom have little—to make the sacrifices required to curb inflation, bring foreign debt under control, close a yawning Federal budget gap, and shrink a stifling Government role in the marketplace.

In the process, President Salinas has persuaded Mexicans to confront cold truths, as revealed by the Mexican farm leader who this past summer said, "We are slowly realizing that small farms only produce poverty." He has asked his fellow Mexicans to sacrifice in the present in the hopes that Mexico eventually will climb the ranks of the world economic order. In many ways NAFTA is simply about giving support to Mexico's reforms and ensuring that they are not reversed.

I must say, Madam President, I wish we could demonstrate a similar resolve in confronting the economic truths here in the United States. If we did, our economy would be growing faster and our people more secure. Instead, the powerful American economy—capable of much greater things—limps along with sluggish job growth and stagnant living standards.

Many Americans believe the NAFTA will cost them their job or their pay raise. I believe this fear is misplaced. Instead, I believe we should fear our failure to do the fundamental things needed to build people and businesses with the capacity to produce and succeed.

Let me give you an example of a fact which to me is fearsome. The fact is the mathematics achievement of American high school students. Math skills, in particular multistep mathematics and statistics, used to be a workplace luxury. Thirty years ago, 20 years ago, and in some cases 10 years ago it was possible to find high paying jobs which did not demand high skills.

Today, that has changed. Today, the hard economic truth is this: There are not very many high-wage, low-skill jobs around anymore.

Now, here is the fact. The National Assessment of Educational Performances 1992 scorecard for mathematics in Nebraska—a State that consistently scores among the top 10 percent in the Nation—revealed that 20 percent of white and 75 percent of our black eighth graders do not even manage to achieve a basic level of achievement. At the basic level a student need only do simple addition or calculate the correct change for a dollar.

This means that nearly 5,000 Nebraska students and 750,000 each year are given high school diplomas that are fraudulent. After 13 years of school we present them with the economic equivalent of a death certificate.

Madam President, this is just one fact and one reason why millions of Americans, especially those whose skills have not kept pace with market demands, fear NAFTA. They know their business and political leaders have failed them, and they do not trust us to do it right this time.

They do not trust us because they have seen us cower in the presence of special interests who insist on satisfying today's needs and who do not care about tomorrow. They do not trust us because they see our unwillingness to stand up to those corporate interests and wheeler-dealers who treat human beings and their lives as if they were depreciable assets. They do not trust us because we are afraid to lead.

Madam President, NAFTA represents a collective act of leadership. Those who began the negotiations, those who finished it, and those who have managed it to its success in the House and Senate have demonstrated the leadership needed to make NAFTA a success. Let us join them—and on behalf of the people we serve—earn the trust needed to complete our work.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. MACK. Madam President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Florida.

Mr. MACK. Madam President, this is a time of great opportunity for America and, frankly, a defining moment in our history.

There have been times when I have not been proud of what we in Congress have accomplished. But I must say that I take great pride in what this Congress is about to accomplish with respect to the North American Free-Trade Agreement.

When the NAFTA passed the other body just the other night, a significant victory was scored against some pretty tough opposition. Members voted to stand up for the basic principles that made America great, what an encouraging and exciting moment.

When I think about the future of my children, who are today 32 and 26 years of age, and that of my three grandchildren, aged 9, 5, and 5 months, it looks brighter as a result of Wednesday's vote in the House and the decision we will soon make in the U.S. Senate to approve the North American Free-Trade Agreement.

When I think about the future of my State, I wonder, too, what that will be like. It would be very easy to simply rely on the standbys of Florida's economy: agriculture, tourism, the military and people moving into the State. But now we can begin to set our sights on an even brighter future for Florida. The ports around the State, Jacksonville, Melbourne, Fort Lauderdale, Miami, Tampa, and Panama City look forward to this North American Free-Trade Agreement and hail the great opportunities which lie in the development of new technologies.

When I think about the future of my country, I also see a much brighter future dawning.

As the debate on the NAFTA has taken place, I have asked myself what America's future will be like? Will we remain the center of influence in the 21st century? Because of the passage of NAFTA I believe that answer is yes. It is a firm commitment to the principles that has made America great: The principles of free markets, free enterprise, free trade, and free people, the essence of capitalism and democracy.

Freedom is the organizing principle of this Nation, and the core of all human progress.

We live in a dramatically changing world today, one that is dramatically different from even the one that I experienced growing up. America is moving from an industrial society into the information and communications age, and this movement from one economic base to another is tearing at all quarters of our society and our economy.

But we must be prepared to change. We must look forward. We cannot allow ourselves to be trapped in the old technologies, in the old ways.

Sure, protectionism may create a temporary haven for investment in the old technologies, but it also consigns us to the limitations of the past.

I come from a city called Fort Meyers down on the west coast of Florida. There, Thomas Edison had his winter home and carried out many of the experiments to find just the right filament for the electric light.

I have heard others say that if Thomas Edison were alive today and invented the electric light bulb, Dan Rather would lead off his newscast with dire warnings that the candle-making industry was threatened, and someone would come to the floor of the U.S. Senate to protect the candle-making industry.

We must follow policies that lead to opportunities. We must follow the principles that made America great. Only if we do, will we continue to be the center of influence.

Last year, I read a book titled "Millenium." It was written by the former president of the Eastern Europe Development Bank, who was a former aide to French President Francois Mitterrand. The essence of the book was the question, what nation would be the center of influence in the 21st century? The answer responded to that question as if America no longer existed. In the author's mind, at issue was would Japan or the Pacific nations be the center of influence or would it be Europe. He believed America's time had, in fact, passed. While he allowed that some things could be done to get us back into the game, he really doubted whether we would be able to do it.

I think that the decision that we are about to make will clearly demonstrate that we are prepared to follow those ideals and those principles into the 21st century which will allow America to retain its position as the center of influence.

You might ask, is it really important for us to remain the center of influence? Are not there other more important challenges for America? I think it is fundamental to our own future, to that of our children and grandchildren, both from an economic moral perspective that we retain our pivotal role.

Were America to turn its back on the North American Free-Trade Agreement, how could we say to the rest of the world that the principles which are most important to your people and your future are freedom, justice, democracy, human rights, free markets, free enterprise, and capitalism? Why would they ever pay any attention to us, if we are not confident enough in those principles to accept a free-trade agreement with Mexico.

In conclusion, I am terribly proud of what America is about to do. I recall a statement that was made back in 1979, which proved to be the moment in which the very idea of a North American Free-Trade Agreement was born.

I refer to a paragraph in Ronald Reagan's announcement speech that he would seek the office of President of the United States in 1979. This is what he said.

A developing closeness between the United States, Canada and Mexico," Reagan said, "would serve notice on friend and foe alike that we were prepared for a long haul, looking outward again and confident of our future; that together we are going to create jobs, to generate new fortunes of wealth for many and provide a legacy for the children of each of our countries.* * * It may take the next 100 years but we can dare to dream that at some future date a map of the world might show the North American continent as one of which the peoples and commerce of its three strong countries flow more freely across their present borders than they do today.

He spoke those words in 1979, and warned that it might take 100 years to accomplish. We have realized President Reagan's remarkable dream in only 14.

It is a great victory for every American. I take great pride in what we are about to do, and I hope my colleagues will vote overwhelmingly for the North American Free-Trade Agreement.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BAUCUS. Madam President, I ask unanimous consent that the 5 minutes of the time allocated to the Republican side be transferred over to the Democrat proponents.

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

Mr. BAUCUS. Madam President, I now yield 7 minutes to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington,

Mrs. MURRAY. I thank the Senator from Montana for yielding time from the leadership on this critical issue.

Over the past year, thousands of my friends and neighbors in Washington State have written and called me about the North American Free-Trade Agreement. I have heard from many people at town hall meetings and other events I have attended around the State.

I have spent countless hours analyzing this treaty and the side agreements on the environment and labor relations. And, I have been lobbied hard even at home: my daughter, Sara, opposes the agreement. My mother is in favor. The people of Washington have strong views on both sides of this issue. Each person has made a compelling case.

Throughout my conversations, I have asked two simple questions: Will the NAFTA help or hurt working families in Washington State? And, will it help or hurt Washington State's opportunity for economic growth and expanding trade?

Based on my study of all the issues involved, I believe this agreement will not harm working families in Washington State, and it will enhance our State's economic growth. NAFTA will expand exports for aerospace and transportation, for computer software, for industries of the future that are dependent on intellectual property, for financial services, and for most agricultural sectors of Washington State's economy.

Throughout this year, my many friends in the labor movement have worked hard against the NAFTA. I have listened carefully to their arguments and concerns. They articulated clearly the fear of many families in my State and in this Nation. They fear loss of jobs, loss of their ability to put food on the table or to send their children to college.

They speak fervently about the lack of attention to the needs of real families who work hard every day. Madam President, we must heed those fears, because they are real.

But defeating NAFTA is not going to eliminate those concerns. Defeating NAFTA will not increase job opportunities in this Nation. Without NAFTA, our workers and our States will continue to face competition from low-wage countries.

My labor friends helped send me here, to Washington, DC., and I came here to work on issues that are important to them and all working families in this Nation. I came here ready to fight to reform health care, to reduce the deficit, to curb violence, to make college affordable, to create jobs and to ensure that working people have a brighter future. These are the real issues which working class families, like mine, will be dealing with in the next century. And those are the issues we must continue to fight for here in the U.S. Senate.

My friends in the environment movement have also expressed concerns about NAFTA. I have listened carefully to their arguments as well. But I have reached the conclusion that without NAFTA, we will have little or no leverage to improve the environment or the conditions for workers along the border with Mexico. This agreement is the first trade pact which specifically includes environmental concerns. This is unprecedented. It will allow us to use trade sanctions to compel Mexico to enforce its environmental laws. It gives us a base to improve on for the GATT.

Madam President, passage of this NAFTA is important to my region and to the people I represent. If we walk away from NAFTA, we also walk away from the Uruguay round. We walk away from any success with the APEC organization—whose members are meeting this week in my hometown of Seattle. Those trade talks are vital to our economy. Each year, Washington State conducts more than $64 billion in trade with Asian countries. This compares to half a billion dollars in trade with Mexico.

Madam President, I believe the best way to create new jobs and boost wages in the State of Washington is to expand markets for our products in other countries. Lowering tariff and non-tariff barriers around the world is important for our economy. NAFTA is far from perfect—it is not without risk. No trade agreement is. It is a compromise worked out between nations.

Madam President, I will vote for NAFTA because it is the beginning of a new dialogue on international trade vital to our State's and our Nation's economy. It is not the end of a conversation. It is the beginning of a movement to improve our economy and to increase our ability to compete in an emerging worldwide marketplace.

I will vote for NAFTA because the only reasonable conclusion I can reach, after months of researching this issue and listening to the debate between my mother and my daughter, is I know that it will help workers in my State. And, finally, together with the Uruguay round and APEC, it will promote

economic growth and expand trade for Washington State as we face the next century.

I thank the Chair, and I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Montana.

Mr. BAUCUS. Madam President, I do not see any Senators seeking time. Might I say to all Senators who may be listening or watching and all staff who may be doing the same, that Senators who have not yet spoken should come to the floor now to speak.

We have approximately 35 minutes. If there are no speakers, we may have to move to a quorum call. During that time, all time will be charged to the time allotted to the managers of the bill.

So if Senators do not come now, they may not be able to speak on this issue. I strongly encourage staff to inform their Senators and Senators who may be watching or listening to come to the floor now. We have approximately 35 minutes within which Senators can make statements. If they do not come at this time, there is a chance they will be jeopardizing their right to speak on this issue.

Mr. FORD. Madam President, will the Senator yield for a question?

Mr. BAUCUS. Yes.

Mr. FORD. Is that 35 minutes for the proponents?

Mr. BAUCUS. That is total; 35 minutes before we are scheduled to vote at 11 o'clock.

Mr. FORD. That is not the amount of time left on the bill itself?

Mr. BAUCUS. No.

Mr. FORD. The Senator left that impression. I was concerned that you had 35 minutes left on the bill.

I thank the Senator.

Mr. BAUCUS. Madam President, the Senator from Kentucky is absolutely right. After the 35 minutes tonight, there will be time tomorrow to speak. But I am suggesting that the time tomorrow might not be available to the same degree it would be as it would be tonight.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. I apologize for coming in in the middle of the conversation. Is there any time tonight?

Mr. BAUCUS. There is time.

Madam President, I yield 10 minutes to the Senator from Delaware.

Mr. BIDEN. Madam President, listening to the long debate over NAFTA leading up to the vote today, I have been struck by the depths of the concerns expressed by those who oppose NAFTA, on the one hand, and the apparent ease with which some of NAFTA's supporters have dismissed those concerns, on the other.

How, I wondered, could some Americans be so confident that NAFTA is key to a bright future, when others are just as convinced that with NAFTA, they will have no future. Perhaps most disturbing to me has been the argument by some—not all, but some—supporters of NAFTA that their opponents are reacting out of ignorance and fear.

After all, they seem to say, we know that a poll of our country's experts and elites would show overwhelming support for the principles of free trade. Surely, if only the opponents would study a little economics, the vote for NAFTA would be unanimous.

Madam President, I am her to tell my colleagues that the opponents of NAFTA have every right to fear for the future, and every right to be skeptical of deals that, like NAFTA, experiment with mixing two economies as different as those of Mexico and the United States.

But I am also here today to announce that I believe that NAFTA is the best deal we are going to get now, and for the foreseeable future. More than that, it is in the interests of my State and of our country to increase the markets for our goods and create the jobs that increased trade will bring.

So while I share the fear and concerns of those who have called on us to reject NAFTA, I do not share their conclusion that defeating NAFTA will solve the very real problems that fuel those fears.

Let us turn away for a moment from the theory of free trade, and from the imaginary realm of econometric models, and look at some of the facts that millions of Americans have had to face for years.

First, there is the hemorrhaging of middle class jobs and incomes that has persisted unchecked for decades. Manufacturing jobs—the bedrock of not only American economic security, but of the families, neighborhoods, and communities whose values we so dearly need today—hundreds of thousands of those jobs have disappeared, and are now at their lowest level since 1965.

From 1979 to 1992, 2,850,000 manufacturing jobs have been lost in America.

While we are doing better at job creation this year than in the previous few years, at the same time corporate America has announced more layoffs—255,000 jobs—for the first half of this year. That was 23 percent higher than last year, and the highest first-half figure ever.

Long-term unemployment is the highest ever, because middle class jobs are being eliminated, not just moved around the country or to other industries. Workers cannot find the same kinds of jobs they have lost.

In my State of Delaware, Madam President, restructuring has cost us what we once thought were our most stable and secure jobs—DuPont has cut 5,000 jobs; and the General Motors plant at Boxwood is scheduled to close, wiping out 3,500 jobs. Those auto jobs alone threaten another 3,000 jobs in the State.

Every one of those jobs means a family tragedy.

How dare we tell these people not to worry. How dare we tell the 45-year-old Dupont chemist, with two kids in college and a mortgage to pay, that he has nothing to fear. Will he get another job? Maybe. Will it be as good as the one he lost? Probably not. Will he be the same guy when this is over? Never.

How dare we tell the line worker at GM not to worry, free trade will make us all better off. He's staring down the barrel of unemployment, torn up thinking about what will happen next. How dare we tell him and his family to put their faith in economists, in government experts, in the very businessmen whose calculations will soon put him in the street?

I understand those fears; I will not ignore them. And I want to tell them now that my vote for NAFTA today is cast with their fates foremost in my mind.

Their fears have been legitimately and forcefully expressed by both the leaders of organized labor, and the rank and file. I know, I've heard from them. Such genuine feelings cannot be whipped up on command by the leaders of organized labor, as some NAFTA supporters have cynically claimed.

Madam President, those fears are based on the reality that the America that we used to take for granted, the America in which hard work and clean living was rewarded with a decent, secure standard of living, is harder and harder to find.

Those who patronize that fear, or dismiss it as irrational, or who put it down as one of the costs of doing business to be balanced against better profits in the long run, are deluding only themselves. And, I must add, those who attempt to exploit those fears for their own self-aggrandizement, will find that they are playing with fire.

Because to dismiss those concerns—or to toy with them—is to ignore the fact is that we are at a critical juncture in the history of our country; we have real problems, serious problems that we ignore at our peril.

We have won the cold war, both prevailing over a military threat and winning the clash of values, and as a result we now confront a world of freer trade, with wealthier competitors, and with new markets to compete for. At the same time, a demobilization unparalleled since the end of World War II, the self-feeding trend of layoffs by our major employers, and explosion of new technologies have combined to keep this the most jobless—and joyless—so-called expansion in our modern economic experience.

Having won the war, we must not lose this new peace. We must find the ways to create the kinds of stable, secure, middleclass jobs on which we

have built our free society and democratic institutions. If we fail, I fear that the cost will be that society and that democracy.

In the many years I have spent studying the causes and cures of crime, Madam President, I have become convinced that unless our citizens can have hope in a better future, our society will crumble from within. Despite our best efforts, including what I believe is a historic crime bill that we just passed here in the Senate, we are fighting only the symptoms of these problems in the criminal justice system. We must soon address their causes.

But, despite what we have heard in recent weeks, NAFTA is not the cause of the economic problems we face today. Nor, I must say, will it be more than a small part of their solution. The volume of the debate has been far out of proportion to the significance of this agreement to do either harm or good to our economy. Let us look at some of the facts.

Supporters of NAFTA have told us that all told, NAFTA may create 200,000 new jobs. Opponents claim that it will eventually come to cost us as much as 500,000 jobs. But with or without NAFTA, our economy will create over 18 million new jobs over the next 10 years. Whatever our decision here on NAFTA, our dynamic economy will create waves of activity that will swamp any ripples from NAFTA.

So I cannot agree with either side—those who sell NAFTA as a major source of new jobs or these who tell us that trade with Mexico will be some kind of suicide pact that will destroy the economy of both countries. Let me explain why I think NAFTA can be small, but positive step in solving those problems.

When President Clinton said that he would only support the NAFTA negotiated by the Bush administration if he could get side agreement to improve it, I agreed with him. The premise of the agreement to improve it, I agreed with him. The premise of the agreement is underiable—more open exchange with our closest neighbors and most important trading partners was inevitable, and ultimately in the best interest of all three countries.

But we needed better protection for workers on both sides of the border, and for the environment. I believe the agreements reached by the Clinton administration are a real improvement—they provide us with leverage we have never had in any other trade agreement to promote compliance by Mexico with their environmental, safety, health, and child labor laws. No; NAFTA does not transform Mexico into a mirror-image of our country, but no trade agreement can, or ever will.

But the biggest changes under NAFTA are reductions in Mexican tariffs that now make U.S. products more expensive. U.S. tariffs are so small now that they make little difference in the price of goods coming here from Mexico. Right now, any company, from the United States, or from any other country, can move right now to Mexico to take advantage of the fact that we are already the model of an open economy for the rest of the world.

So it is Mexico that will give up its protections—when we pass NAFTA, our products will sell better there.

Let's look at the detail of this agreement in the area of automobiles, an industry important to my State of Delaware and to our country's economy. Mexico now requires that our automakers have to build cars in Mexico if they want to sell there. NAFTA would get rid of that requirement. The result of that change, and the eventual phase out of tariffs, is that American workers will be able to build more cars in America for sale in Mexico.

The chairman of Chrysler was in Delaware just last week, to accept a quality award from the State on behalf of the workers in our Chrysler plant. Chrysler expects to sell 5,000 more cars to Mexico from their Newark, DE, plant by the end of the decade.

Without NAFTA, Chrysler will have to manufacture more cars in Mexico to meet the requirements of pre-NAFTA laws.

Mexico now has a tariff of 20 percent on American cars; that means those cars sell for 20 percent more than they will when NAFTA is fully implemented. That 20 percent price cut will increase our auto sales there. Now, Madam President, I wish that price cut would come all at once, instead of over a number of years; but it will come, under the terms of NAFTA. A defeat for NAFTA means the rules that discriminate against American goods will stay in place.

There are many other ways NAFTA will help Delaware take advantage of expanding international trade. Scott Paper has created 100 new jobs, and made a major long-term capital investment, specifically for an expanding Mexican market. When Mexico cuts the 10 percent tariff on their products from Delaware, demand there will expand.

Delaware's chemical industry sells numerous products to the world market. As Mexico has brought down its trade barriers in recent years, exports from three of DuPont's Delaware plants into Mexico have quadrupled, despite the barriers that now exist. With NAFTA, prices for their products will drop, trade will expand, and Delaware jobs will be protected.

ICI workers at the Atlas Point plant will increase sales to a major customer, Procter and Gamble, that makes the American consumer products so much in demand in Mexico.

Hercules Corporation's Middletown plant make chemicals used in the manufacture of circuit boards. The workers there will benefit when Mexico cuts its high tariffs on circuit boards from the United States, but leaves them in place for European and Asian competitors.

Hewlett-Packard's sales in Mexico have already increased 26 percent in the last year, particularly in the area of environmental monitoring equipment that will be needed to comply with NAFTA. With NAFTA, those sales will continue to increase.

Madam President, I am proud to say that Delaware has the highest per capita number of patents in this country. NAFTA provides the best protections for intellectual property rights of any trade agreement we have ever negotiated. Better protections for patents means that under the terms of NAFTA, Mexican companies can no longer copy products and processes that by right are property of our State's high-tech industries. That's why Barcroft Labs in Lewes, DE, told me that they support NAFTA.

The United States currently supplies almost all of Mexico's poultry imports. Delaware's important poultry industry will benefit from reduced tariffs and an expanded market in Mexico.

Now, opponents of NAFTA tell us much that is true about what they do not find in the agreement—NAFTA will not require fundamental changes in the Mexican Government and political system that has been rightly criticized by my friends in organized labor, and here on this floor, by my good friend, the Senator from South Carolina, and by the distinguished chairman of our Finance Committee.

Nor are there guarantees that every business deal undertaken with Mexico will create jobs for United States citizens, or that we will get to set Mexican wages to protect our workers here. But such terms are found in no trade agreement anywhere, nor could they be part of any future NAFTA that could possibly be negotiated.

So, let us move on from the distractions of this debate to the real trade problems that we face. We must remember that Mexico is not now, and at one-twentieth the size of our economy, is no threat to be, a major trade competitor. The real trade threats to our country come from high wage countries in Europe and Asia, that compete here on quality, not cheap labor.

One of those countries is Japan, that sold over $50 billion more here last year than we were allowed to sell there under their restrictive trade and commercial rules. This year, the imbalance will be worse. In contrast, we have a $5 billion trade surplus now with Mexico, without NAFTA's significant additional benefits in lowering barriers to our products.

I believe a vote for NAFTA can strengthen our hand in the next days, weeks, and months, as we press on with much more important trade negotiations with the Asia Pacific countries,

with the more than $200 billion in increased world trade that can come from successful GATT negotiations, and with our bilateral talks with Japan early next year.

Madam President, we cannot let our legitimate fears turn into a fear to compete. A vote against NAFTA now would signal that doubt and hesitation have replaced our country's historical commitment to open markets. At the very time when we must break down barriers to trade with Japan, Europe, and the rest of the world, we will only hurt ourselves if we are distracted by the inflated claims of both sides in this NAFTA debate. After NAFTA, the real trade negotiations begin.

But, despite the critical role that trade will play in our future, the real threat to our country is that we still do not have a domestic economic plan that offers us hope for the future. Only hope can dispel the fears American workers feel today. And only real progress in creating jobs and income security will bring that hope.

Throughout the post-war period, we have experienced significant shifts in trade and jobs, equalling and even exceeding some of the trends we find so troubling today. But we managed the displacement and disruption caused by those shifts much more easily than today, because our economy was growing, and creating new jobs as quickly as the old ones disappeared. More importantly, we were creating better, higher-wage and more secure jobs.

Today, in Delaware, and throughout the economy American workers are trading stable, good-paying, secure jobs for temporary, lower wage jobs. This trend is feeding the fear that is rightly focused on NAFTA—when all the assumptions we have accepted for years fail us, why should we bet on an experiment promoted by big business, experts, and the government?

As important as new markets will be for our future, more important still is a plan—and a commitment—to create jobs now, in the United States. Those of us who vote for NAFTA tonight have a duty to fashion that plan. If we want to take advantage of the small step of NAFTA, and the bigger step of opening up trade with Japan and Europe, we must undertake the task of reviving jobs now.

I will be back at the first of next year, reminding the President that with this legislative victory comes not only additional leverage to pry open the markets of Europe and Japan. With his victory tonight comes a responsibility to commit to a domestic program to stimulate growth and job creation.

Much of what we must do to make such a strategy succeed, will require increased investments in our workers and the tools they will work with in a competitive international economy. At the same time, we must focus our energies and resources here and now to those tasks that have too long been neglected—renewing our country's economic foundations.

Madam President, I believe that it would be self-defeating for us to retreat from international competition, by rejecting NAFTA and weakening our negotiating clout with Europe and Japan. What would be equally bad, however, would be to commit ourselves to that competition without a plan to make our workers the best in the world, and to keep our domestic economy healthy.

Tonight, with our vote for NAFTA, we take the first step toward creating more jobs in an expanding world market; we will also take on the responsibility to take the next steps to revive job-creating investments in our own country.

And one more thing, Madam President. Our Governments' reluctance to enforce the trade deals already on the books is good reason for us to remain skeptical about the tangible benefits of NAFTA. I want to see more diligent and vigorous defense of our industries under current law, and will insist on the highest standards of monitoring and enforcement for NAFTA.

I know that there are plenty of folks willing to join me in this effort—not the least of which are my friends in organized labor. Passage of NAFTA here tonight is not the end of the process—its the beginning of an experiment that we will all be watching. And I'll be right back here on the Senate floor, demanding that this administration and all future administrations protect our interests with the strictest enforcement of the terms of NAFTA, up to and including our right to withdraw on 6 month's notice.

In addition to our rights to get out of this deal, NAFTA has a built-in procedure to guarantee a comprehensive review, 3 years from now, of the agreement's effects. Along with the new dispute settlement procedures set up under the side agreements, this review requirement will keep the spotlight of public opinion on what everyone agrees is still an experiment in international trade.

And in Delaware, I will be watching those companies that promised our State the new jobs and income security that will come with increased trade, to remind them of their commitments.

The challenge we face today is as serious as the challenge we faced at the beginning of the postwar period. It's hard to remember now, Madam President, but many economists told us at the end of World War II that without the boost from wartime spending, we were doomed to slip back into depression.

But of course that did not happen. And why not? Because we made the commitment to lead the world into a new era of international trade, opening markets through the GATT and other processes. We preached the virtues of free markets, free societies, and free people. The world economy expanded, and our economy led the way.

In that historical perspective, NAFTA is more important as a signal of our resolve to take command of our future than its modest, positive effect on our trade would suggest. It will soon—in the next few days, weeks, and months—strengthen the hand of our President as he negotiates trade agreements with Europe and Japan.

And in the future, this will be seen as the point at which we accepted the challenge, when we confronted the profound changes that give us real reasons to worry about our future, the point when turned this latest challenge into our next success.

Mr. DANFORTH. Madam President, I yield 1 minute to the Senator from Idaho.

Mr. CRAIG. Madam President, our vote on the NAFTA will have far reaching effects. My decision to vote against the agreement was a difficult one. In general, the NAFTA will create the largest single market in the world and has the potential to create jobs and spur economic growth. However, attached to this agreement is language that, in my mind, negates these potential benefits. Mr. President, I refer to the attachment of the environmental and labor side agreements. Specifically, I am concerned about provisions in the environmental side agreement which establish a Supra-National Commission to deal with trade related environmental concerns.

It is no secret that the NAFTA has had a long and rocky journey to reach this point today. I, myself, have been both pleased and disappointed with various aspects of the agreement. While the bottom line looks good economically, I remain very troubled by President Clinton's creation, the environmental side agreement.

In reviewing this problem, I looked at arguments both supporting and opposing the NAFTA. Some argue that the environmental side agreement language is too strong, while others argue that it is not strong enough. I found the language of the agreement very vague—something that could work to the benefit of those on both sides of this issue. It may be that the Commission is just a puppet organization, existing for show only. However, depending on the intent of those implementing it, it could prove to be a trilateral environmental protection agency. The latter is something I cannot accept, and am not willing to risk.

Under the previous administration, it could possibly have been overlooked. However, the Clinton administration has given me every indication that this side agreement is a crucial element of the NAFTA and will be implemented with the idea of upward harmonization of environmental laws. A memorandum

I received from the administration on October 29 of this year indicated that they would not proceed without the side agreements.

Another issue of concern is the relinquishment of sovereignty under the environmental side agreement. Initially, the administration came out with very forceful language about the strength and importance of this side agreement. For example, Ambassador Kantor, as quoted in the August 17, 1993, Wall Street Journal: "NAFTA's environmental provisions are a model for new international cooperation. Under them, no country in the agreement can lower its environmental standards, ever."

There is not enforceable language in the side agreement preventing the lowering of standards and the administration has since backed down on its rhetoric, but we know from the war on the west being waged by environmentalists in the administration that they are likely to implement this agreement to its fullest extent.

Let me be clear, I am not opposed to the appropriate care and concern about our environment. Quite the opposite—in a State like mine, where the economy is based on agriculture and natural resources, wise stewardship of resources is very important. We already are faced with extensive Federal encroachment into State natural resource policies without extending authority to a trinational commission.

That covers my concern on a practical level. On a philosophical level, I have great difficulty in supporting any agreement that even has the appearance of relinquishing sovereignty. The NAFTA side agreements, through their supranational structure, have gone beyond mere appearance. Therefore, I cannot ignore them, or pass them off as pure rhetoric.

Again, this decision has been difficult for me because I appreciate the positive aspects of this agreement. A year ago, I felt any problems in the NAFTA could be worked through—and I am pleased that one of my main concerns, the sugar language, has been resolved. However, the current administration has taken this opportunity to improve our economy and used it to establish multinational labor and environmental authorities which I cannot support.

Because of my support of free or freer trade, the decision to oppose the NAFTA was not easy. I supported providing fast-track authority which allowed us to proceed with this effort. I am very aware that there are many positive aspects to this agreement. There is much needed language dealing with intellectual property protection. The reduction of tariff barriers for United States products going to Mexico will create jobs and expand our exports. We have all heard that for every billion dollars in exports thousands of jobs are created; the current figure being 17,000 jobs per billion dollars in exports. That ratio varies from year to year because inflation is constantly raising the value of goods that can be produced by any individual and productivity changes; the number of people required to produce a certain value of goods.

Under the NAFTA, exports are expected to increase from $43.5 billion to perhaps $56 or $57 billion by as early as 1995.

The agreement also opens up opportunities for investment. Significant barriers in this area currently exist. There is also enhanced access for the service industry under the NAFTA. In addition, the agreement would open up access to Government procurement in Mexico.

However, as a U.S. Senator, I am tasked with more than just looking at the economic aspects of an international agreement. I must also be satisfied that this Nation's sovereignty is protected and our State's rights are preserved. I do not take that task lightly.

Above and beyond the positive aspects of the NAFTA, I cannot resolve my concerns about the potential impact of the environmental side agreement. No one has been able to tell me unequivocally that my concerns cannot be carried out should the NAFTA pass. Rather, the general response is that they are unlikely, or it is doubtful. My experience representing the State of Idaho tells me that is just not good enough. Too often, vaguely worded laws or agreements fall to the desires of those who are charged with implementing them.

If the NAFTA were simply a trade agreement I could support it. But, it is more than that. Therefore, I will oppose passage of the NAFTA.

I ask unanimous consent to have printed in the RECORD a letter signed by myself, Senator KEMPTHORNE and Congressman CRAPO to the President, further outlining our shared concerns.

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

U.S. SENATE,
Washington, DC, November 17, 1993.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: One common theme expressed by those for and against the North American Free Trade Agreement (NAFTA) is that it is more than just a trade agreement. You say the NAFTA is "essential to our leadership in this hemisphere of the world", while opponents claim it threatens America's future and sovereignty.

The NAFTA is more than just a trade agreement. If the NAFTA was just a trade agreement, it would simply eliminate unfair trade. Surely the NAFTA does that, and if it did just that, we would strongly support it.

We recognize the positive aspects of this agreement. The NAFTA creates the world's largest market, reduces tariffs, removes many investment barriers, offers greater protection of intellectual property and opens access to government procurement in Mexico. In Idaho, industries and trade experts such as Hewlett Packard, Simplot, Boise Cascade, Alex Sinclair and others predict that exports will increase. Idaho agriculture is expected to benefit from an anticipated increase in exports. If additional provisions reached on sugar prove effective, Idaho will benefit. We also appreciate the efforts by Ambassador Kantor to work with us to address some of the commodity problems with the Canadian Free Trade Agreement (CFTA).

Concerns about other issues raised by the NAFTA have not been addressed, specifically the provisions included in the Environmental and Labor Cooperation Side Agreements. These agreements negotiated by your Administration are vaguely worded and leave great latitude for subsequent interpretation.

For example, the effect of the environmental side agreement is unclear. EPA Administrator Carol Browner says the NAFTA has "teeth" when it comes to environmental protection, and says that the NAFTA defends the "environmental protection, and says that the NAFTA defends the "environmental sovereignty of the United States and its state and localities." Treasury Secretary Lloyd Bentsen testified that NAFTA is the "greenest trade agreement the United States has ever negotiated. It recognizes the links between trade and the environment . . . recognizes the obligation to enforce environmental laws. It also provides for accountability and dispute settlement—including possible trade sanctions."

Others say exactly the opposite. The Sierra Club says the NAFTA "puts the U.S. in a position where we will be pressed to weaken our pollution control laws." The issue of U.S. sovereignty is hotly disputed with some saying the NAFTA relinquishes American independence.

Both views cannot be right. Either the NAFTA has teeth or it doesn't. If the side agreements are tough, and enforceable through an international forum, then the impacts on U.S. sovereignty and states rights must be carefully considered.

With respect to environmental protection, Idaho is a natural resources state that depends on wise stewardship of these resources. The state is already governed by extensive federal, state and local environmental regulation that result from vaguely written laws.

Idahoans don't need more vague laws. Idahoans don't want agreements when no one knows how they will be interpreted, implemented or enforced. Idahoans don't want the EPA Administrator, or the Secretary of Labor or the OSHA Commissioner to be responsible for protecting Idaho's interests in international forums. Idahoans don't deserve Mexico and Canada dictating labor and environmental protection, especially if Idahoans are not a major part of the decision-making process.

But that is exactly what the NAFTA and the side agreements provide.

Little attention has been focused on the tri-national commissions created by the side agreements. The key concern is that while it is expected that most decisions are to be by consensus, environmental enforcement actions can be decided by a two-thirds vote (i.e. two governments voting against the other.)

It is noteworthy that at no time are state governments of the United States granted a formal role in this process. It is even more noteworthy that Canadian provinces are allowed to opt out of the enforcement provisions.

Frankly, our preference is that, at a minimum, the labor and environmental side

agreements should be renegotiated. If that is not done, we hope to work with you to address the concerns listed below. In raising these issues, we should point out that NAFTA is a lengthy and complex document surrounded now by the implementing legislation, side agreements and inter-connections with other agreements such as GATT. It is very difficult to know if there are other problems which have not yet been identified that need to be corrected.

Our concern is that state governments are too removed from a process that adjudicates in an international forum a complaint based on actions taken by state governments. States should be able to represent themselves.

The environmental agreement provides that the EPA Administrator will represent a state or local government at the consultation or initiation process as a result of a complaint filed against them. At a minimum, the agreement should specify that States should be guaranteed the right to represent their interests.

State governments should have a greater degree of autonomy than is reflected in the side agreements. Although the NAFTA agreement itself does not overturn any conflicting state law, the United States has an obligation to Mexico and Canada to take "all necessary measures" to bring state laws into conformity with the agreement. The implementing legislation specifically authorizes the federal government to challenge any state law which conflicts with the NAFTA.

If a state law is in conflict with the NAFTA but the relevant state government can make a case for its retention, the law should be retained and should be exempted from the agreement. In the NAFTA, Canada and Mexico use this process extensively. The United States does not.

To force compliance with the NAFTA, the environmental side agreement allows as a last resort for fines to be imposed on national governments. As a delegation, we are concerned that the United States will seek to recover from a state a penalty imposed against the United States in cases where the state disagrees with the interpretation of a state or federal law or regulation. Legitimate differences in interpretation could be wrongly labeled as a failure to enforce an environmental law. Language should be included which prohibits the federal government from recovering a fine or other penalty where an interpretive dispute or a constitutional question exists.

Finally, there should be a guarantee that NAFTA enforcement actions should not be used as evidence and should be inadmissible in any federal proceeding against a state or local government. This is especially needed since under the existing agreement states are denied a reasonable opportunity to be heard and evidence of such a decision would have an unreasonable prejudicial effect.

With respect to the important issue of water, the NAFTA and the CFTA appear to open up the possibility of large-scale water exports from the United States to Canada and Mexico. The actual text of NAFTA supports the claim that large-scale water transfers cannot be prevented on the national or local level. Consistent with the CFTA, the NAFTA tariff treatment of water considers water as it would any other good by including it in its tariff schedules.

One of the basic principles of free trade is that similar goods and services should be treated similarly regardless of whether they are being traded domestically or internationally. This principle is embodied in Articles 102 and 301 of NAFTA. The agreement states that each party, province or state must accord no less favorable treatment accorded to any similar, directly competitive or substitutable good and service. Article 102 makes national treatment one of the underlying objectives of NAFTA. Article 301 specifically accords this national treatment provision of Article III of the General Agreement on Tariffs and Trade (GATT). As GATT tariff schedules typically include all types of water including large-scale exports, and because both NAFTA and the CFTA specifically include water in their tariff provision, NAFTA's national treatment principle appears to apply to large-scale water exports, thus allowing large-scale water exports. Because of its vagueness a guarantee preventing the NAFTA's application to large-scale water exports in the United States should be included.

This leads to great concern in Idaho where water is the life blood of our economy. It appears that the NAFTA, as an agreement entered into by the federal government, overrules state water law which prohibits interbasin transfer of water and exports of water outside of Idaho without the consent of the State Legislature. Large-scale export of Idaho water cannot be allowed and we urge you to work with us in the coming months to clarify this matter and implement agreement language which explicitly disallows large-scale export of water to Canada and Mexico or any other countries.

We hope we can work together to resolve these issues and any others that may arise. We look forward to working with you.

Sincerely,

LARRY B. CRAIG.
DIRK KEMPTHORNE.
MIKE CRAPO.

Mr. WALLOP. Madam President, I ask either of the managers if I might have 2 minutes.

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

Mr. WALLOP. Madam President, let me begin by adding my kudos to those of others for the address that the Senator from New Mexico made. I have very little that I think I could add to his eloquence. But I believe this to be a historic opportunity for the three great nations of this hemisphere.

Growth in the next decade will be, in my judgment, in Asia and in Latin America where the real creation of wealth and exciting job growth will be. NAFTA secures an advantageous and important segue into a market which is already the fastest growing for many American exports.

It is important to step back and look at the broader implications of this debate. Because of its timing, NAFTA has become nothing less than a referendum on America's confidence, confidence which embodies our ideals and, indeed, our role in the world. For the last 50 years, America has led the world with vision, moral authority, for an ever-increasing global trading system. American vision and American persistence has worked spectacularly. It has brought prosperity, economic and political freedom to millions in Europe and in Asia. From the Marshall Plan to the rebuilding of Japan to a forward military presence in the far reaches of the globe, America's commitment meant the eventual collapse of communism and the specter of free markets from Stuttgart to Seoul.

That is why this vote is so significant. After 50 years of spectacular leadership and growth, will America be daunted by the very success she has created? So daunted that as the most powerful economy in the world, she rejects a liberalizing trade agreement with a market one-twentieth our size?

Perhaps even 10 years from now, students and scholars will scratch their head: What possibly could have made NAFTA so controversial?

But clearly it is controversial. And while I am an ardent supporter of this agreement, I do understand some of the anxieties that have been expressed during this debate. A shrinking global market has meant fundamental restructuring for our economy. And no one can deny that this kind of change brings loss and hardship. But it also means opportunity. This debate is not unique in displaying two differing visions for America—one is to erect barriers to protect an ever decreasing pie, another is finding ways to increase the pie. NAFTA is one way we can increase the pie. But trading a small slice of security for a bigger slice of opportunity can be a scary thing. In the end, however, it is vitally important to realize that whatever anxieties we may have will not go away if NAFTA were defeated.

Mr. President, I am perhaps most excited that today we are fulfilling the vision for the Americans expressed by Ronald Reagan over a decade ago. It was President Reagan, whose belief in freedom for all peoples, whose vision of a secure and prosperous American continent was the seed for this trade agreement.

In closing, Mr. President, let me say something about the man who has personified the ugly scare tactics and negativity of this debate. When this agreement passes, the only sucking sound you will hear will be the American people finally flushing Ross Perot down and away. This hypocritical assault on the confidence of America and Americans was his sad misjudgment. We are better, braver, and more certain than Ross Perot ever knew or ever could know. Passage of NAFTA will be a double blessing.

I hope and trust that the Senate will endorse and vote for NAFTA.

Mr. DANFORTH. Madam President, I yield 10 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized for 10 minutes.

Mrs. HUTCHISON. Madam President, I thank the senior Senator from Missouri. I would like to talk about NAFTA because I do think it is one of the most far-reaching agreements that I will get to vote on in my lifetime in the U.S. Senate.

It is important for us because we are looking at a changing world. We look at a Europe that is coming together and perhaps in the next 25 years it will be difficult for American products to go into Europe. Then we look at the Asian basin which also is coming together, and the world is coming together within hemispheres.

America must do the same. We must look to our hemisphere where we will create the largest trading alliance in the entire world. For us to have a strong hemisphere, we will take Canada, the United States and Mexico and we will bond and we will create jobs for all three of our countries. It is truly a win, win, win situation.

I want to commend ourselves and the President of the United States because this has been truly a bipartisan effort. President George Bush had the foresight to come to the table and say, "It is time for us to have a treaty with Mexico, along with Canada." He was looking to the future. President Clinton picked up the mantle and he has worked tirelessly to make sure that this gets through Congress. Congress has come together in a bipartisan way and the Republican leadership has worked with the President, as well as the Democratic leadership. We are going to make history tonight or tomorrow.

I would like to take the arguments one at a time because I am concerned. Senator BIDEN made a very good point. I am concerned about the working people because they do have a reason to wonder what in the world will happen because it has been a pretty unsettling few years for the working people of this country. So I would like to talk about the arguments because it is the working people who will benefit the most from this treaty.

Corporations will move to Mexico because of the low wages. In fact, corporations can move to Mexico now and, in fact, if corporations are going to move, I would rather they move to Mexico than so far away that American companies will not be able to use the component parts and the trade that is on our border. In fact, American companies do benefit when our corporations operate in Mexico.

The Dallas Morning News reported that Jefe, a microwave connection company for cellular telephones has grown by leaps and bounds. McAllen Bolt went from 10 workers to 42 when tariffs started coming down. They are doing work for Telefono de Mexico; 61,500 new jobs were created in Texas since 1987 because of exports to Mexico and that happened because the tariffs started coming down.

So corporations can move to Mexico now, but what we are going to be able to do with the tariffs gone is become more competitive. We will have more business in our hemisphere which will create more jobs for us.

Exports have gone from $10 billion to $40 billion since 1987. Mexico is now our third-largest trading partner. It is the largest trading partner of my home State of Texas. The average Mexican citizen now spends $380 on American products. That is more than the average European citizen, more than the average Japanese citizen. So we see that Mexico is becoming a real factor, a true trading partner and a valuable trading partner.

So fostering this is, of course, going to make it better for all of us. One out of six jobs in the United States depends on exports. One of three acres of farming is now for export. So exports do equal jobs in our country. That is why this treaty is so important.

Let us take the argument on the environment. The Rio Grande is the most polluted river in America. That is without NAFTA. We hear people say the environment is going to suffer if we have NAFTA. My goodness, the environment is going to be helped with NAFTA; in fact, it is our only hope. If you go to El Paso, you see the air pollution that the citizens of El Paso can do nothing about because it comes from Mexico. When we have NAFTA, there will be leverage, there will be a tripartite commission made up of members from Canada, United States, and Mexico. There will be a forum where we can have complaints if the laws are broken. The environment is going to be better with NAFTA. We will have the capability to police, we will have a commission that will be able to say you are polluting and you must stop or there will be a price to pay. So our only hope for the environment on our border cities is to have NAFTA with the leverage that produces.

Immigration. I will never forget when I was attending a speech that President Salinas made to the Texas Legislature in 1991, and the words that stuck in my mind were: "We want to export goods, not people."

President Salinas saw that if we have a trade agreement and we have an alliance that is drawn between our two countries, that people will be working in Mexico, they will be able to support their families, they will be able to buy more American goods and they will stay at home.

The estimates are that 1.5 million fewer illegal immigrants will come into our country if we have NAFTA. This is very, very important. It is important for the Mexican people; it is important for us. That is why I think of all of the reasons we have talked about on NAFTA, probably the least discussed has been our relationship with Mexico.

Our relationship with Mexico is better than at any time in the history of our countries, and it is an important alliance. Having two countries on borders that are friendly is such an advantage for us. When we look at the things that are happening in other parts of the world, we see what a great advantage it is to have friendly neighbors like Canada and Mexico. This will solidify that friendship even more.

So I am very proud that the U.S. Senate is going to join the House of Representatives and where the Republicans and the Democrats have come together to do something that is far-range thinking. It is not just reacting to crises all the time that we see so much. It is not just saying, OK, what are we doing today? This is planning for the future. NAFTA is not the end. NAFTA is the beginning.

I wish to see a time when we will go from the top of Canada all the way through South America and we will have free trade in North, Central, and South America, because that is going to be a strength when the Americas come together in this way. We are going to put together in the next 24 hours the largest trading alliance in the world, and it is going to be the Americas coming together.

So I am proud that we are going to do it because this is one of the ways that we will be able to continue to grow the economy, and it is only by growing the economy we can assure the workers of America that the jobs will be there, that the job growth will be there. It will be there because we are going to build this economy and make it bigger and make it better for all of the Americas.

So I thank the Chair, I thank the Senator from Missouri, and I am very proud to be part of this historic event because I know that in the next 10 years we are going to see the good benefits for the workers of America and especially for our neighboring countries and the strength of all the Americas will be started tonight.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Madam President, I yield 10 minutes to the Senator from Indiana.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Madam President, today, America is presented with a historic prospect. The opportunity to build a free market that stretches to every corner of a continent. The chance to find, with our neighbors north and south, the benefits of shared growth. The prospect of becoming the heart of the largest economic market in the world.

Together, under NAFTA, we will comprise an economic power containing 360 million consumers with a gross domestic product of almost $7 trillion.

This move to a continental market is rooted in both the clear merits of cooperation, and the increasing urgency of competition. The economic union of the European Community, the emerging power of Pacific economies, the

new competitiveness of Third World agriculture and steel; the world is a blurred image of swift change. We have no choice but to take steps ensuring our strength in the world economy, and our access to markets close to home.

We have already had a taste of what the future holds. Until 1986, Mexico had in place a nearly 100 percent tariff on imported goods from the United States. The situation today has greatly improved, with barriers to U.S. imports now at 10 percent.

Since 1986 when Mexico opened its borders to American goods, U.S exports have more than tripled from $11.9 billion to $40.6 billion in 1992. We have changed a $2 billion trade deficit in 1990 into a $5 billion trade surplus with Mexico.

Exports to Mexico support 700,000 U.S. jobs with predictions that there will be a net gain of 200,000 jobs with NAFTA. And, these won't be jobs flipping hamburgers. They will be export-related jobs which pay 17 percent more than the average job.

NAFTA will benefit all three nations. But the absence of an agreement could do great harm. Without a trade pact, there is nothing to prevent Mexico from restoring import barriers to our goods to 50 or even 100 percent. In fact, the Mexican left, have suggested an alternative to NAFTA in which Mexico would place 100 percent tariffs on American goods while allowing European or Japanese products to enter duty free.

Mexico's current President Salinas has proven himself an activist in the field of free trade and open markets. But this President, under the Mexican constitution, will only hold office for one term. We have no indication of who his successor might be or what trade philosophies he might pursue. This is the time to put in writing a trade agreement with Mexico that will favor United States interests.

In Indiana, exports are the lifeblood of our economy. One-third of our farm production goes overseas; one of every six manufacturing jobs is due to exports. Indiana exports to Mexico and Canada were $3.3 billion in 1992—supporting 104,000 Hoosier jobs. Our exports to Mexico have increased 30 percent since 1987. This is impressive growth, but growth that could go much higher with NAFTA.

From the beginning I have said that my support for NAFTA would be based on whether the agreement would be in the best interest of Indiana workers. Over the last year, I studied the agreement and surveyed affected Indiana interests to determine its impact on our State's economy. I consulted with representatives of business, labor, and academia in order to reach a responsible decision. An intensive effort to discover the actual facts has made a strong case for supporting the NAFTA agreement. I found that the industries most important to Indiana's future—agriculture, auto, steel, and many others—stand to gain under NAFTA.

First, Hoosier farmers will gain under NAFTA. NAFTA would give Hoosier and American farmers accelerated access to more than 92 million Mexican consumers. As a major producer of corn, soybeans, and hogs, Hoosier farmers will benefit from increased exports of these high-value items.

Mexican meat consumption has doubled in the last 20 years, but it is still far below U.S. levels. As Mexican incomes rise, Mexicans will undoubtedly consume more beef. All of the beef, whether it is raised here or in Mexico, will be fed with more American corn, soybeans, and animal feed. Either way, American farmers and agribusiness workers will win.

A study conducted by Purdue University found that sales of Indiana farm produce would increase by $100 million in the first year after NAFTA goes into effect. And, according to the Indiana Farm Bureau, Indiana pork and corn exports will double; beef exports will go up by one-third; and one-fifth more of our soybeans will be headed to Mexico.

Beyond NAFTA's immediate opportunities, by creating the world's largest trade bloc, the pact will give us important leverage in dealing with the European Community and the Pacific rim on agricultural issues.

Second, Indiana's auto industry wins under NAFTA. The Mexican market holds great promise. Currently, only 1 in 16 Mexicans owns a car versus one in two Americans. Some forecasts show that annual car and truck sales in Mexico will rise from 706,000 in 1992 to over 2 million by decade's end.

United States auto companies have been producing inside Mexico mainly to sell to the Mexican market, not to export. These companies were attracted to Mexico by the Nation's prohibitive trade barriers, most significantly Mexican tariffs of up to 20 percent on imports. The U.S. tariff, by contrast, stands at only 2.5 percent. These policies have virtually prohibited United States exports of assembled vehicles from entering Mexico.

Right now, there is nothing preventing United States plants from relocating to Mexico to sell in this growing market—in fact, the current barriers provide incentive for United States plants to relocate. NAFTA reduces that possibility. It would be more profitable for our big three to use existing capacity to export to Mexico at an efficient scale rather than to add additional new capacity in Mexico at considerable expense.

Hoosier autoparts suppliers will be a winner. NAFTA will provide opportunities to increase sales to Mexican assembly plants, to United States plants that would sell more to Mexico, and to Japanese transplants who would face higher North American content requirements.

NAFTA's rules of origin will be of particular help to our autoparts industry. The treaty requires 62.5 percent of a vehicle's content must originate within the region to be counted as a North American-made car—and thus avoid higher tariffs. This is expected to encourage some small car production—as well as parts supply business—to move from Asia back to North America.

NAFTA is the reason Chrysler is investing heavily in its Kokomo, IN facility which produces transmissions. According to Bob Eaton, Chrysler's CEO, NAFTA will mean 64,000 transmissions will be sold in the first year of NAFTA. That means more jobs for Kokomo and more secure jobs in Kokomo.

Third, Indiana steel will do well under NAFTA. Mexico and Canada are our first and second largest markets for primary metal products. Five years ago, we imported 2½ times more steel from Mexico than we exported. Today, we export three times as much steel as we import from Mexico.

As Mexico continues to build its economy, demand for American steel will grow. Hoosier mills stand to gain market share because of their proximity to Mexico and the growing demand for steel that Mexicans cannot supply. From 1987 to 1992, Indiana exports of primary metals to Mexico increased from $19.5 million to $88.5 million—an increase of 350 percent.

On the whole, NAFTA is a net plus for Indiana. Some jobs may be lost. This would be the case with or without NAFTA. And Congress should rightly focus efforts on retraining workers that are displaced with or without the agreement. But there will be no giant sucking sound that will draw jobs south.

A trade agreement would bring growth to both sides of the border. First, it will increase American exports to Mexico by lowering that nation's considerable trade barriers to desirable American products. Second, it will eventually increase Mexican incomes so they can better afford United States goods—building a hungry market close to home.

What counts most today is not the cost of labor but the productivity of the worker. As James Glassman points out in the Washington Post, "Germany's wages are 60-percent higher than ours, while Portugual's are 70-percent lower. Which country do we fear as a competitor? Are we scared of Bangladesh?"

Mexico will have lower wages than the United States with or without the NAFTA agreement. United States companies that want to move to Mexico can do so already. But low wages alone do not attract businesses. U.S. companies look for good labor, not cheap labor, United States workers compete

successfully with low wage Mexican workers because we are five times more productive.

For example, one company, North American Power Supply, recently closed its operations in Mexico and moved to Huntington, IN because it was drawn by a more stable, better trained workforce. Due to the difference in training, one job in this company that required 72 workers in Mexico is now being done by three workers in Indiana.

Kenneth Davidson, President of Dalton Foundries, an Indiana company, does not feel threatened by low Mexican wages. His business looked at putting a plant in Mexico but found that "water and electricity were expensive and not readily available, many of the raw materials would have to be imported, primarily from the United States." They also found that the work force was not trained as well or as productive as American workers.

It's a wonder that NAFTA opponents don't pay attention to BMW or Daimler-Benz when they choose to locate in the U.S. because of our highly-trained, highly productive work force.

It is also ironic that opponents see NAFTA making it difficult for United States businesses to compete with low wage Mexican labor, but many of these same opponents did not bat an eye as this administration raised the tax rates on American small business and made those increases retroactive.

As our former Trade Ambassador Carla Hills points out in an article in the New York Times, open trade is most important to our Nations small businesses which create 80 percent of the new jobs in the United States. "These firms usually cannot afford to build facilities in a foreign country. With NAFTA, they don't need to move to Mexico to sell to Mexicans." This is the message I am hearing in Indiana.

No trade agreement should be supported as an act of international philanthropy. I would not support anything that was not in the best interests of American workers and American jobs. But markets have a way of working to everyone's benefit. And I am convinced American workers will feel that benefit when economic barriers are dismantled.

We have also heard that NAFTA will turn over our foreign and economic policy to unelected bureaucrats and corporate elites. That the treaty creates transnational bureaucracies with the right to inspect American businesses, fine the U.S. Government, and supersede State laws.

The idea that NAFTA is some kind of conspiracy designed to dilute American sovereignty is nothing more than a scare tactic. These commissions may not be useful, but they are toothless. They possess no subpoena or investigatory powers. They can't issue restraining orders. They can only fine governments, not private parties. The U.S. retains complete control over our economy. And we can leave the agreement in 6 months if there are problems.

As Paul Gigot points out in the Wall Street Journal, it is because these agreements are toothless that the AFL–CIO and Sierra Club still oppose NAFTA.

Madam President, in looking at this debate we clearly have a choice between the past and the future. Getting a glimpse of what the future holds, we ought to look at where we were with Mexico not all that long ago in terms of our trade and where we are today.

Until 1986, Mexico had in place virtually a 100-percent tariff on imported goods from the United States, and that has been reduced substantially and, of course, under this agreement will be reduced considerably more. But since 1986, when Mexico opened its borders to American goods, United States exports have more than tripled, from $11.9 billion to $40.6 billion in 1992. We have taken what was in 1986 a $2 billion trade deficit to a $5 billion trade surplus with Mexico. We not only promote the idea of expanding and opening markets because under economic theory it suggests that both sides can profit and increase their standard of living, can increase their production, can increase their involvement in improving their economies in theory but also because in experience we know that this works.

Our Nation has had considerable experience with protectionism, and each time protectionism has resulted not in a greater standard of living for our work force but a lower standard of living—not in greater economic opportunities but in lower economic opportunities.

Madam President, when I initially heard that we were going to be dealing with the NAFTA agreement, I undertook an extensive analysis of Indiana industries, Indiana businesses, and Indiana workers to determine what effect this might have on our State. I consulted with representatives of business, labor, and academia to try to arrive at a responsible decision.

This intensive effort to discover the actual facts has, I believe, made a strong case for support for this agreement for the State of Indiana, and I think the same is true for our Nation as a whole.

I found that the industries most important to our State and to our future—agriculture, auto, auto parts, steel, pharmaceuticals, chemicals—stand to gain under NAFTA. As I looked at each one of these industries, I realized that exports are the lifeblood to the Indiana economy. One-third of our farm production is shipped overseas; one of every six manufacturing jobs in our State is due to exports. Our exports to Mexico and Canada were $3.3 billion in 1992, supporting 104,000 Hoosier jobs. Those exports to Mexico alone have increased 30 percent just since 1987. This is impressive growth and I think growth that can accelerate under NAFTA.

As I examined each industry, I realized that the restrictions and the restraints that are currently placed on export of these goods into Mexico are because Mexico's tariffs are up to three and four times what our tariffs are on their goods coming back into the United States. So it does not take a lot of mathematical analysis to understand that equalizing or lowering or even zeroing out those tariffs is going to be of substantial benefit to our State.

Many people talk about how the wages of Mexican workers are going to offset this advantage, and yet what I learned in my analysis of our business and industry and service sectors throughout the State of Indiana was that it is productivity which counts for far more than the wage base.

While the wage base in Mexico is less than one-third of what it is in Indiana, we found that our productivity in Indiana is five times greater. So business people were making decisions in terms of locating their businesses in Indiana on the basis of the productivity that they could achieve.

A study conducted last October by the Office of Technology Assessment found that it is $410 cheaper to make a car in the United States than Mexico, even though United States labor costs are eight times higher in this case. This is because the United States car could be built faster in a more advanced factory with more skilled workers, and labor, in any event, was a fraction of the car's overall cost.

Mexico will have lower wages than the United States with or without the NAFTA agreement. United States companies that want to move to Mexico can do so already, but low wages alone do not attract businesses. U.S. companies look for good labor, not cheap labor. U.S. workers compete successfully with low-wage Mexican workers because we are five times more productive.

No agreement, Madam President, should be supported as an act of international philanthropy. I would not support anything that is not in the best interest of American workers and American jobs, but markets have a way of working to everyone's benefit. I am convinced American workers will feel that benefit when economic barriers are dismantled.

Through all the arguments one simple fact remains. Trade walls hurt American workers. Domestic markets alone cannot sustain our growing, highly productive manufacturing and industrial base. We search for foreign markets for our own good. Our economic future is in open, two-way markets.

Advocates of trade barriers lack one important thing, a trust in the productivity and the quality of American workers. Free and fair world markets are an opportunity for American workers and for Hoosier workers who are among the best workers in the world.

Growing exports mean growing jobs if we refuse to be ruled by fear and doubt. America has no national interest in Mexican poverty. We cannot preserve our economic health by shutting off vast markets. A more prosperous Mexico is a larger consumer of American products. A more prosperous Mexico is a better defender of its environment. It is America that benefits from free trade. It is a fact both sides can improve their standards of productivity, their standards of worker benefits, their environmental standards, and their standard of living. It is in our best interests as a nation to look forward, not back. We are now competing in a global economy. We have little choice. Our choice is to look back and then see stagnation result, see a moderating standard of living, or to look forward and realize that we are competing in a global economy. We have the workers; we have the technology; we have the capital. We can compete and compete successfully. The good news is that all can benefit if we do so.

So I am looking forward to voting for and supporting NAFTA not only because it is in the best interests of my State but because it is the best interests of my country and its future.

Madam President, I yield the floor.

Mr. WELLSTONE. Madam President. I regret that I cannot support President Clinton on a matter as important as this one. No vote that we have taken this year says more about our vision for the country's economic future. If this NAFTA is a precedent for other trade agreements to come, and is a model for the way we believe that business should be conducted in the world trading system, then few votes can as deeply affect the lives of our citizens and communities.

The debate here in Washington over NAFTA has been valuable. It has been passionate at times, usually reasoned, and it has generally focused on the proper questions. I believe it has focused on the proper questions in large part because the democratization of the NAFTA debate outside of Washington has transformed the way we now consider trade policy inside of Washington.

The dramatic increase in grassroots involvement around and study of NAFTA has surprised the experts, bureaucrats, and business lawyers who previously had been accustomed to writing trade agreements by themselves, with little or no public input or accountability. This healthy development has forced attention to the questions that should matter most:

Will NAFTA improve the living standards of the majority of working people in the United States, Mexico, and Canada by encouraging a continental strategy of growth and global competition that is based on creating more, not fewer, high-wage/high-skill jobs?

Will NAFTA promote environmental and consumer protection?

Will it contribute to democracy and respect for human rights?

These interests have not in the past been the leading concerns in debate over trade agreements. The interests traditionally protected in trade agreements have been those of our financial and industrial sectors which seek safe investment opportunities and open markets for their products abroad.

Those traditional interests are assuredly addressed in this NAFTA. But in the NAFTA debate, citizens have brought additional concerns to the table. As a result, I believe that trade policy, thankfully, will never be the same.

The President has shown a lot of determination in the debate over NAFTA. And he showed considerable skill in using the power of his office to win passage of NAFTA in the House. I am sorry to say, however, that I believe that the President has missed a crucial opportunity to demonstrate the same kind of determination and to use the same kind of skills to pass a better agreement—an agreement which I believe it was possible to reach.

We are, as has been said many times in recent days, at an important historic moment for domestic and international leadership. In my opinion, this NAFTA does not promote the principles that America should stand for in the post-cold war world at this key moment. I believe that international agreements that we enter into in this period should demonstrate our leadership according to the best of American principles—the principles of raising living standards, of democracy and of human rights. This NAFTA does not do so.

I also believe that we are missing—by passing this NAFTA and not a better one which I think it was and is possible to reach—an important chance to address the legitimate concerns of the majority of working people in the United States, in Mexico, and in Canada.

By approving this NAFTA, we not only miss our chance to deliver a better agreement. We very likely also will preclude any chance of improving upon it when we consider additional agreements with other countries in Central and South America. NAFTA is a clear precedent for such further agreements.

Trade can lead to growth which benefits the majority of working people in all countries involved in that trade. Trade agreements can encourage the raising of labor and environmental standards to comparable levels. Trade agreements can make a positive link between respect for human rights and democracy and the granting of trade privileges. In my opinion, NAFTA should have these provisions and effects. I would be the first to embrace a NAFTA with such provisions and effects.

A good agreement would have delivered on the President's promise to encourage the raising of labor and environmental standards. It would have included a principled link to human rights and democracy.

But this NAFTA does not. Unfortunately, this NAFTA is a backward-looking document. It seeks to revive at the continental level 1980s-style, trickle-down economics. It would place downward pressure on hard-won environmental and consumer standards. And it relaxes our principled linkage of trade privileges to human rights performance.

This NAFTA fails to tie trade to respect for labor and human rights—two elements which are directly related. That failure is NAFTA's most basic flaw. The poor record of respect for labor and human rights in Mexico is the basic reason why competition between United States and Mexican workers is not fair and why we should not institutionalize such a relationship through a trade agreement.

It is well known that the current Mexican Government has held down wages and suppressed dissent in that country. This has been accomplished through the prevention of independent labor unions, through police and military repression, and through unfair elections. These combined policies have allowed Mexico to seek to attract investment on the basis of cheap labor.

Our workers can compete with workers anywhere in the world when that competition is fair. But competition is not fair when Mexican wages are held to one-seventh of United States levels through government policy, even when productivity and quality are comparable, as is more and more the case of Mexico's modern, high-productivity, export-oriented, new manufacturing sector. Holding down Mexican wages also, by the way, prevents Mexican workers from becoming a middle class which can purchase our consumer goods.

Unfortunately, the side agreements negotiated by this Administration do little to improve on the original text. My consistent position on a trade agreement with Mexico and Canada has not been "No, never." It has been "Yes, if * * *." I waited before taking a final position on NAFTA to examine the side agreements on labor and the environment that were announced in August. I wanted to give the President and Ambassador Kantor a chance to address the deep flaws in the text negotiated by the Bush administration. Ambassador Kantor assured me in March that he would deliver side agreements with real teeth.

But the side agreements contain no real effort to harmonize either labor or environmental standards upward. The enforcement mechanism in the side agreements is so weak that Mexican Secretary of Commerce Jaime Serra Puche reportedly assured the Mexican Congress that sanctions—the so-called teeth of the side agreements—would probably never be used. When we compare the protections afforded to business in the text of the agreement itself—the investment protections, the intellectual property protections, both of which, by the way, strictly require upward harmonization on the part of Mexico—with the lack of real protection for workers and the environment in the side agreements, then the unbalanced character of this agreement becomes abundantly apparent. In fact, the enforceability of these side agreements has been even further challenged in recent days by the interesting analysis of Public Citizen and by the elements of the debate which has occurred here today over the issue raised by the Senator from Alaska.

Madam President, I support more open global trade. I know that export industries provide jobs. I know that competitive imports benefit consumers and push our domestic industries to improve their quality and efficiency. I support the idea of a trade agreement with Mexico.

But this NAFTA will lead to a significant loss of U.S. jobs. By locking in incentives for United States firms to shift investment to Mexico to take advantage of lower wages and weaker regulation, NAFTA will depress wages in the country. It will place downward pressure on consumer and environmental standards.

Madam President, we could do much better.

Mr. INOUYE. Madam President, I am announcing my intention to vote against the legislation required to implement the North American Free-Trade Agreement [NAFTA].

When the NAFTA was announced last year, it did not provide sufficient environmental safeguards and financing for a program to help retrain American workers displaced as a result of the agreement. It also did not address the concerns of Hawaii's sugar industry on the export of surplus Mexican sugar to the United States. While I applaud the effort of the Clinton administration in allaying the concerns of the sugar industry, I believe that more adjustments are needed before there is a truly satisfactory agreement for the United States.

I believe that basic fairness requires that labor, environment, health, and quality standards be imposed in this new free-trade arena. Without these requirements, American jobs and many of Hawaii's agricultural markets will be lost to Mexico, where such standards are minimal. As the world's premier economic power, the United States has an obligation not only to bring about free and fair trade, but to improve the life of the 360 million people who live in the new free-trade area to be created by the NAFTA.

I will not support the NAFTA because of a glaring lack of these basic fairness standards. This is most apparent with some of the products most likely to be replaced should the NAFTA be implemented as presently drafted. I am not assured that Mexican producers will comply with the same health and environmental standards as required of United States producers.

Further, while there are NAFTA provisions that define remedies to health and environmental standards violations, such remedies are not likely to be pursued vigorously for products derived from the smaller industries in the United States. Hawaii's tropical crops, such as papayas, mangos, bananas, coffee, and horticultural products are examples of products in jeopardy because they are small in volume and are unlikely to warrant vigorous support by the administration should there be trade violations.

Businesses in my State tend to have higher operating costs than comparable operators in Mexico. In part, this is the case since Hawaii places a high value on providing workers with a safe working environment and a fair wage. Hawaii agricultural producers are committed to complying with pesticide regulations and fruit fly quarantines. I am not confident the NAFTA provides sufficient assurances that Mexico will also comply with United States standards in return for duty-free trade.

Further, while there are promises for worker retraining initiatives, I am not convinced of their sufficiency. Due to recent plantation closures in my State of Hawaii, I am very sensitive to the fact that older sugar worker have few realistic retraining opportunities for the remaining years of their working lives. With Mexico advertising its low wage rates as an inducement for foreign investment, it is not difficult to guess where cost-conscious firms will locate. The worker adjustment issue has been seriously underestimated by proponents of the NAFTA.

I have voted for free-trade agreements in the past. In 1988, the Congress deliberated the free-trade agreement with Canada. When the Senate voted for the implementing legislation on September 19, 1988, I was one of 83 Senators voting in favor of the agreement. That was a good agreement—one between nations with comparable economic levels of development and nations where labor unions enjoy the ability to organize and defend the interests of their workers. Even the side agreement concluded on labor does not authorize the committees and panels formed by it to examine critical issues such as the right to organize unions, the right to bargain collectively, and the right to strike. This is a serious flaw in this side agreement.

Madam President, those who oppose the NAFTA have been unfairly branded as antifree trade, protectionist, and anti-Mexican. That is patently untrue. The purpose of free trade is to support economic development in the participating nations, to create positive gains from trade. Inevitably, there is a redistribution of economic activity resulting in gains for some and losses for others. From a public policy standpoint, we need to compensate those adversely affected by helping them make an easier transition to a new economic environment. The NAFTA does not go far enough in this direction. It is for this reason that I emphasize that I am not opposed to free trade with Mexico, but am opposed to this particular agreement.

Mr. DASCHLE. Madam President, several days ago I announced my decision to vote for the North American Free-Trade Agreement. In that statement, I outlined the reasons for my position.

As I indicated at that time, this was a decision I reached after extensive analysis and a great deal of thought. Ascertaining the facts was not easy in light of the wide array of claims being made on both sides and, to some extent, the degree of the unknown inherent in a trade pact of this nature.

Since that time, the House of Representatives has approved NAFTA, and it appears all but certain that the agreement will be approved by the Senate, as well.

Today, as we prepare to vote on NAFTA, I would simply like to take a moment to commend my colleagues for their efforts to get to the bottom of the debate and make whatever decision they feel is best. I frankly have been very impressed with—and assisted by—many of the thoughtful comments that I have heard on the floor on this subject.

Most important, I would like to thank the host of individuals in my State, both for and against NAFTA, who have shared their thoughts on this agreement with me. I have received letters, talked on the phone, and met with these individuals, and I cannot begin to express how useful their comments have been.

Let me also say that their views, and all of the thinking from which I have benefited in making this decision, will continue to guide me as NAFTA is being implemented.

We must not vote today and walk away from this issue. Our job is not done when the final legislation is sent to the President for his signature. The focus will shift, but the job is not done.

Once in force, the agreement will put into play an array of actions called for in its provisions, and we in Congress

must help ensure that the intended goals are achieved.

We must not only be sure that we and our NAFTA trading partners reduce tariffs and other barriers to trade as called for in the agreement, but that our partners live up to their promises to provide better enforcement of environmental laws, and to provide higher wages and better conditions for their workers. We must monitor the impacts on our own workers, our food inspection system, our environment, our industries, and every other aspect of our economy and well-being, in the event that adjustments are required either in our own laws or in the agreement itself.

So, I would urge my colleagues, as they vote on NAFTA, to keep this in mind. Let us do all we can to ensure that NAFTA truly meets our best expectations.

Mr. MCCONNELL. Madam President, the NAFTA document before us today is the fruition of an idea conceived by Ronald Reagan and carried forward by George Bush. A commitment to free trade by President Clinton and 234 Members of the House has made today's Senate action possible.

The Senate has been presented with a rare opportunity today. We can, with a single vote, commit the country to a course that clearly leads to a bright economic future and higher standard of living for all Americans. Today, we can clearly announce what this country stands for. I consider it a privilege to be part of this historic undertaking.

The evidence in support of NAFTA is overwhelming. So overwhelming, in fact, that I find it difficult to see how anyone can oppose it. NAFTA is a good deal for America. It is so obvious that, as Ross Perot might say, anyone over the age of 6 ought to be able to figure it out.

Let me highlight just a few of the reasons why I support NAFTA.

First of all, Mexicans can—and do—buy American goods. For all the talk about poverty south of the border, the average Mexican spends $450 a year on U.S. products. Compare that to the Japanese, who spend only $385, or the Europeans, who spend only $299. In fact, 70 percent of all Mexican imports come from the United States.

In my State, exports to Mexico have grown 356 percent since 1987, and trade with Mexico and Canada now supports 29,100 jobs.

Second, American firms will not move to Mexico just for lower wages. Let me illustrate this point with a Kentucky example. Mid-South Electric in Jackson County was recently awarded two manufacturing contracts by Motorola.

The contracts came to Kentucky from Mexico and Puerto Rico because, in the words of one official, Mid-South Electric offers superior quality, timely delivery, engineering capabilities, and added services not available in Mexico. If wages were the only factor, those contracts would still be in Mexico and Puerto Rico.

I might add that, without NAFTA, United States firms are more likely to move production to Mexico. Signet Systems produces auto air conditioners in Harrodsburg, KY. The firm now pays a 15-percent import duty and an 8-percent customs fee on goods it exports to Mexico.

This makes it next to impossible to compete in the Mexican market without putting a plant there. But under NAFTA, those tariffs will disappear. According to the CEO of Signet, the company is much more likely to build a plant in Mexico without NAFTA.

Third, NAFTA is not just supported by big business. Hundreds of small Kentucky enterprises, including farmers, strongly support the deal.

Take, for example, the Thiel Co. in Lexington. Thiel employs 43 people and makes stereo loudspeakers.

Under NAFTA, Thiel's exports to Mexico will increase from 45 to 60 percent of gross sales. Also, Kentucky's 92,000 small farmers will see exports to Mexico grow significantly. Fourth, America will gain as much, if not more, than Mexico under NAFTA. Currently, Mexican tariffs on United States products average $10. United States tariffs on Mexican goods average $4. Now, it shouldn't take a Rhodes scholar to figure out that eliminating all tariffs benefits us more than them.

To illustrate, consider Fruit of the Loom.

This fine Kentucky firm, which is my State's largest private employer, expects to boost sales to Mexico under NAFTA and eventually create 1,000 new jobs. The reason? Currently, Mexican tariffs on cotton underpants are 20 percent, while the U.S. tariff is only 8 percent. With NAFTA, those tariffs will eventually be eliminated. Without NAFTA, Fruit of the Loom will continue to be disadvantaged.

Moen Corp., which employs 155 Kentuckians, will increase the sale of its faucets and plumbing supplies to Mexico under NAFTA.

That is because faucets exported to Mexico face a 15-percent tariff, whereas faucets shipped into the United States from Mexico face no tariff. Under NAFTA, the playing field for Moen will be leveled.

Fifth, NAFTA is a winner for Kentucky agriculture. Almost all of the Commonwealth's agricultural groups have endorsed NAFTA, as have hundreds of farmers and dozens of local county farm bureaus. And it is no surprise. Under NAFTA, Kentucky corn farmers will see exports increase as much as $35 million. Kentucky soybean producers expect to see a $9 million gain from increased exports. And Kentucky dairy farmers anticipate sales will jump by more than $7 million.

I understand that concern has been expressed by some in the Kentucky tobacco community about NAFTA, and I want to take a moment to clearly address this issue. Currently, Mexico maintains a strict licensing system which essentially blocks United States tobacco exports. NAFTA immediately eliminates this major barrier. Mexico also imposes a 15 to 20 percent tariff on imported tobacco. NAFTA initially increases that tariff to 50 percent, but over a 10-year period, reduces it to zero.

Obviously, I would prefer an immediate reduction of this tariff. However, removal of the licensing requirement gets rid of the most significant barrier to exporting U.S. tobacco. In fact, USDA anticipates exports of tobacco and tobacco products to Mexico could reach $100 million by the end of the transition period. Without NAFTA, Mexico's market would remain closed to Kentucky farmers.

Finally, NAFTA will help, not hurt, the environment. It is said you can judge a person by the company he keeps. Well, NAFTA is endorsed by every major environmental group in the country, including the Natural Resources Defense Council, the Audubon Society, the Environmental Defense Fund, the National Wildlife Federation, and the World Wildlife Federation.

These groups represent 80 percent of the Americans who call themselves environmentalists. EPA Administrator Carol Browner, no friend of big business, strongly supports the agreement, as, of course, does Vice President Al Gore.

Can all these environmentalists be wrong? Those who oppose NAFTA on environmental grounds must seriously ask themselves if they aren't really just looking for an excuse to oppose free trade with Mexico.

I must note that I am deeply moved—and indeed encouraged—by the concern being expressed over the negative impact this action by Congress might have on American business. Many NAFTA opponents say we simply can't subject our companies to the burden of unfair competition from Mexico.

I assume these same Senators will, in the future, show equal concern with subjecting American firms to the burden of new taxes and government regulations. To these Senators, let me say that I stand ready to help you block such anticompetitive congressional actions.

Now, the opponents of NAFTA piously claim that they are not protectionist. In fact, they say they actually support free trade with Mexico. It is simply this NAFTA they oppose. Not this NAFTA has become their rallying cry. Well, if you believe that line, you have not been reading the papers.

Make no mistake about it: the opponents of NAFTA oppose free trade in

any form. NAFTA is just their first target. Next on their list is the GATT negotiations. After that, they'll be looking to kill the budding economic cooperation among the Asia-Pacific nations. It was this kind of backward thinking, flat-earth economics that led to passage of the Smoot-Hawley Act. And we all know where that got us.

Whether Ralph Nader and Ross Perot like it or not, the world is surging towards global economic unity. The process simply cannot be stopped. Not by ham-handed political threats. Not by blatant manipulation of economic insecurities. And not by ugly appeals to xenophobia. The process of global integration is underway, and it is irreversible.

So today, Madam President, we have a choice. We can accept reality and embrace the future by preparing to compete in this new global economy. Or we can cling to the past by withdrawing further behind a wall of quotas and tariffs.

Does embracing the future involve risk? Absolutely. But this country was founded on a willingness to take on risk. Does clinging to the past reduce that risk? In the short term, perhaps. But in the long term, it most certainly means a declining economy and lower standard of living.

Madam President, I say to my colleagues, let us pass this NAFTA and let the world know that America stands ready and willing to compete—with anyone, anywhere, anytime.

Mr. DURENBERGER. Madam President, the battle for NAFTA was won in the House on Wednesday. The less dramatic vote in the Senate will present the final victory to the people of this country, and my home State of Minnesota.

We have reaffirmed to the country that we are a world leader.

We are not afraid to compete in an increasingly competitive global economy.

The President's hand is strengthened on the eve of the APEC meeting with other heads of state from the Asia/Pacific region.

Without this mandate, the country would not have the tools it needs to tackle the pesky trade problems we have with our Asian trade partners—the high trade deficits, the continuing bias, and trade barriers we face selling in the Asian market.

Without this vote, the Uruguay round would be dead. Now there is hope.

I support NAFTA because I believe that to improve the American economy we have to support expanded trade opportunities. This is not the time to retreat—to close our border to respond to what appears to be a growing isolationist movement in the United States.

We are already faced with a global economy. To opt out by failing to accept a trade agreement with our closest neighbors would drive a stake through the heart of our economy. President Clinton is already on fairly shaky ground in the way he is perceived abroad as an international leader. It is unconscionable that House Democrats, including the leadership, were willing to further weaken his leadership on both the economic and foreign policy fronts. One hundred and fifty-six Democrats voted against their own President.

Some Democrats apparently believe that they are safe to vote against a Republican policy negotiated during the Bush administration. That is a weak argument that will only hurt their own President.

This was certainly not the case in the past. Despite a divided Government, Republicans supported their Presidents on the United States-Canada Free-Trade Agreement, the CBI, and many other smaller initiatives with other countries designed to reduce barriers abroad. There was opposition to these agreements as well, but we were able to work together in a positive manner to come up with the best outcome. Republicans worked together with President Carter as he implemented the Tokyo round of multilateral negotiations. That, too, was very controversial, but we voted for the overall benefit of our constituents. An undivided Government should have persuaded the Democrats to rally behind the President. Is this not what the voters wanted in the last election? Did they get it?

Minnesota needs NAFTA because we have long been dependent on its export economy.

Minnesota iron ore and agricultural commodities have depended upon export markets for decades.

Minnesota multinationals such as 3M, Honeywell, General Mills, to name just a few, have been exporting worldwide for years creating many export-dependent jobs for Minnesotans as a result.

Minnesota has had for many years a great number of small and medium size high-technology companies which concentrate on niche markets abroad. The medical devices designed and produced by Minnesota Medical Alley companies are in high demand throughout the world.

Our State has offices in many other countries to take advantage of a growing international market, a market whose true dimensions are somewhat disguised by the general move toward an integrated global economy.

A NAFTA defeat would be a serious blow to Minnesotans who are just starting to concentrate on Mexican and Latin American markets. As European and Far Eastern economies stagnate, as these countries raise barriers against U.S. product, Minnesota needs to look toward more promising markets. The subsequent extension of NAFTA to Caribbean, Central, and South American countries would also help a great deal Growing economies in our hemisphere represent real opportunities for Minnesotans.

NAFTA will create the world's largest open market, with a population of 370 million and a GDP of $7 trillion. This is an unparalleled opportunity for the United States as a whole, and for Minnesota companies in particular.

In 1987, Mexico started to remove its trade barriers. Since then, Minnesota's exports to Mexico have grown 191 percent. In 1992 alone, Minnesota had $261,420,000 worth of exports to Mexico. Minnesota sales to Mexico will dwarf this figure, once we pass NAFTA and remove the remaining barriers.

Minnesota will not be alone in prospering from NAFTA. In 1987, the United States had a $5.7 billion trade deficit with Mexico. In 1992, just 5 years later, we had a surplus trade balance with Mexico of $5.6 billion.

In 1990, United States trade with Mexico totaled $59 billion—putting Mexico behind only Canada and Japan in overall trade with our country.

It is time for the United States to expand its freedom of trade with a trading partner that has a proven record of buying our products, and especially a trading partner that has striven to open its market to even more U.S. goods.

And Mexico is a proven trading partner. Mexico bought 40.6 billion dollars' worth of United States goods in 1992 alone.

The United States currently buys more from countries with which we have enormous trade deficits—countries like those in the Far East. Does it not make more sense to buy more from a country that will in turn provide an expanded market for even more Minnesota goods and services? Mexico is the third largest United States export market, and it is the fastest growing.

Minnesota has experienced great growth in exports as a result of the United States-Canada Free-Trade Agreement. Minnesota exports to Canada have increased 65 percent over the last 4 yours as a result of this agreement. In 1992, Minnesota's exports to Canada totalled $1.8 billion.

Just as the Canadians are our natural trading partner being our neighbor, so too are the Mexicans. The CFTA was just the beginning of the enormous trade potential in our hemisphere—Minnesota will continue to be an export leader as we expand our exports.

I hear constantly from Minnesotans across the State who urge me to support NAFTA because it will significantly expand their business and agricultural export opportunities.

The elimination of the high Mexican tariffs on agricultural products will open a large and growing market for our farmers. Not one single agriculture interest in the State of Minnesota opposes NAFTA. Not one. Minnesota agriculture depends on exports.

69-059 O—97 Vol. 139 (Pt. 21) 37

Minnesota Department of Agriculture Commissioner Elton Redalen bears out this analysis. He estimates that "NAFTA could mean up to $2.5 billion in additional agricultural exports to Mexico and because Minnesota is such a strong agricultural State, estimates indicate the NAFTA will increase agricultural revenues to Minnesotans by $80 to $110 million. This is simply too big of an opportunity to pass up."

Under NAFTA, exports of pork, pork products, and live hogs to Mexico are expected to double by the end of the transition period. This increase in exports will result from the elimination of Mexican tariffs and increased growth in Mexican consumer demand. It is expected that the increase in demand resulting from NAFTA implementation will add approximately $9 million in annual income for producers in Minnesota, and a total of $100 million nationwide.

Mexico is currently the United States pork industry's second largest—and fastest growing—export market. And that is with tariffs of 20 percent.

Under NAFTA, these tariffs will be eliminated over 10 years, providing preferential access for United States pork, while tariffs will remain in place for all other countries exporting pork to Mexico.

If NAFTA fails, Mexico could raise its current tariffs on a variety of products from a maximum of 20 percent to 50 percent. If we let this happen, United States exports would be virtually stopped and United States processors will be forced to move to Mexico in order to participate in the market. Mexico will give the special tariff reduction treatment to some other country, and United States producers will be driven out of Mexico.

According to the Meat Industry Trade Policy Council, the suggestion that NAFTA will create a mass exodus of meat processing activity south of the border is contradicted by fact. Nothing is stopping plant relocation today. In fact, the current tariffs on pork should be encouraging relocation but it has not happened. In fact, Mexican processing plants are moving to the United States. Mexico's second largest pork processor has relocated in San Antonio creating jobs for Americans.

The United States has exported over $650 million worth of corn to Mexico over the last 2 years. A free-trade agreement would increase these sales even further. The Minnesota Corn Growers Association predicts a significant increase in Mexico's demand for United States corn, and, as a result, the association has issued a strong endorsement of NAFTA.

The Mexican beef market is the fastest growing market on the continent, with some 90 million consumers. In 1988, United States exports of beef to Mexico were $80 million. In 1992, the figure exceeded $260 million, and it is expected to continue increasing. Mexico is a natural market for United States beef, as beef can be shipped there easily, and at low cost, by rail or truck.

Mexico is the fourth largest market in the world for United States soybeans, and the fifth largest for United States soybean meal. Mexico is far from self-sufficient in soybeans, and has to import to meet domestic consumption. There is significant room for expansion of U.S. exports. United States soybean exports to Mexico are expected to be about 2.5 to 2.7 million metric tons by the end of the transition period. That's about 20 percent above what would be expected without a NAFTA.

The opportunities for the U.S. agricultural industry are endless under the NAFTA. Without it, however, we threaten the prosperity of this industry that has been sparked, at least in part, by the preliminary tariff reduction. And we risk closing our farmers out of this profitable market entirely, as Mexico, without NAFTA, will seek a free trade agreement with another country which will be given the preferential tariff reduction, which will price United States agricultural products right out of the market.

Minnesota agriculture depends on access to a world market. The NAFTA is a choice about whether Minnesota farmers will help define the future with a world of new markets, or bind themselves to the past.

Small businesses will be able to compete in a market that is all but impenetrable to them now due to the cost of high tariffs and other unfair trade practices—barriers which NAFTA will eliminate or significantly reduce.

Minnesota's 3M is a world leader in the export of production materials—more than half of 3M's sales came from markets outside of the United States—$1.5 billion in 1992. 3M will increase its exports of production materials to Mexico once NAFTA is passed. Indeed, they recently added 300 manufacturing jobs in the United States to service the growing demand of the Mexican market. 3M's exports to Mexico have increased almost ninefold since 1986 and they expect them to continue growing.

Honeywell is another Minnesota company that will benefit from breaking down the Mexican trade barriers. Honeywell sources 95 percent of the raw materials it uses in its Mexican operations from the United States—this amounts to about $2.2 billion this year. After decades of flat sales in Mexico, since 1987 Honeywell has experienced an increase of 137 percent in sales there. Minnesota jobs in administration, sales, R&D, and engineering will only increase as a result of expanded exports of Honeywell's products to Mexico.

Over 700 Minnesotans make medical devices at Lake Region Manufacturing Co. of Chaska, MN. G.E. Melton, the company's chief financial officer, states:

> We have no intention of moving jobs out of the U.S. We like it here in Minnesota. There is a work ethic here that can't be matched in Mexico or Canada. But if we can't sell our products, be competitive in those two markets, then someone else, probably from Japan or Asia, will be there to supply the market. Lake Region currently exports 25–30% of our production. If we lose those sales, one hundred more Minnesotans would be unemployed. A vote for NAFTA is a vote for Minnesota.

An improved investment climate in Mexico will not cost United States jobs—it will create new ones. Much of the new investment in Mexico will be not the movement of United States jobs to Mexico, but rather the relocation of United States facilities in the Far East to Mexico. These relocations from the Far East will serve both Mexican and United States markets, but they will displace imports from the Far East that are shipped from countries possessing significant trade barriers to our products. Minnesota companies will be able to sell more parts, components and services to these relocated facilities as they seek quality inputs.

While we have made substantial progress reducing trade barriers with Japan, much work remains to be done. Barriers remain against construction services, against auto parts, against telecommunications products and services, to name a few. The biggest problems are structural impediments which include a real cultural bias against purchasing imported products. Is it not better to open our market to two countries which have demonstrated consumer demand for U.S. products?

The United States Commerce Department estimates that NAFTA's elimination of Mexican performance requirements could mean $1 billion in potential new sales for major United States auto producers in the first year of the agreement alone. That would mean an additional 15,000 new jobs in the U.S. auto and supplier industries. Without NAFTA, United States auto jobs will continue to shift to Mexico.

Without the market stimulus of NAFTA, demand for American goods and services will continue to be stifled, and high trade barriers will continue to restrict United States export opportunities in Mexico. At the same time, low U.S. tariffs promote imports. For example, United States automobiles exported to Mexico face a 20 percent tariff, while cars imported into the United States from Mexico face a 2.2 percent tariff. On top of that, Mexico requires auto manufacturers to export two cars from Mexico for every one car imported. NAFTA would eliminate these performance requirements and open the Mexican market to United States auto exports. This not only opens a

large new market for United States cars and trucks, but it also eliminates the incentive for United States manufacturers to invest in Mexico.

Another example is telecommunications. Who is better situated to take care of Mexican telecommunications needs than United States companies? Improving the Mexican telecommunications infrastructure is a natural opportunity for United States companies. When United States companies sell United States-made telecommunications equipment to Mexico, it will not only help Mexico and create opportunities for American components, but it will also create an ongoing need for United States replacement components, product education, and continued service of the systems. This increased demand for U.S. technology and U.S. products will create more jobs in the United States and a stronger U.S. economy.

NAFTA will significantly benefit the United States, throughout our whole economy. The side agreements on environment and worker rights will give us needed leverage to obtain improvements in Mexico's enforcement of environmental laws. Mexico has the right laws, but neither the funding nor the will to enforce them.

The mere pressure of negotiating NAFTA has resulted in a Mexican commitment to provide further funding for environmental law enforcement—many polluting plants have already been closed—a United States-Mexican Commission committed to cleaning up the border, and a new United States-Mexican Development Bank to provide funding for environmental protection in Mexico. All of these initiatives will help a number of Minnesota companies which specialize in environmental technologies.

Mexico has also committed, through the labor side agreement, to increasing its minimum wage, permitting workers to organize into unions, and pursuing other improvements in worker rights.

I would like to remind my colleagues that none of this would have occurred without NAFTA. NAFTA is going to be a huge plus for human rights in Mexico because it will raise the standard of living of the Mexican people, and reduce the economic hardship that sends so many Mexicans spilling into the United States in desperate search of a better life.

There has been some relocation of United States jobs to Mexico in the past. Decisions to relocate are based on far more complex considerations than a mere comparison of labor costs. Key factors include worker productivity, infrastructure needs, transportation costs, telecommunications access, proximity to suppliers, local laws and regulations, and stability of the Government. These factors weigh just as heavily as labor costs.

HB Fuller Company in St. Paul has operated in Mexico, Central America, the Caribbean, and South America for nearly three decades. Using partners, local leaders and companies, this company has built local markets, created more jobs in its United States operations than in Latin America, and returned investment dollars to Minnesota. In fact, the President of HB Fuller, Walter Kissling, is a Costa Rican who rose from a Central American President to international business to his current position in the United States.

I am proud of American workers. They are the most productive in the world. One study states that Mexican workers are only one-fifth as productive as United States workers. That certainly would be an important consideration for those companies looking at a possible relocation. In fact, we have already seen some United States companies who have invested in Mexico close their Mexican plants and move back to the United States.

The productivity of these plants level in Mexico was so low that they were losing money. Without NAFTA, more jobs will shift to Mexico.

The threat of sanctions included in the side agreements will enable us to achieve further progress. The threat of withdrawing from the NAFTA, as is our right under the agreement, will pave the way for further progress. Again: What leverage would we have without NAFTA?

With NAFTA, we gain all of the benefits of open preferential access to the Mexican economy, as well as addressing current unfair trade practices. Without NAFTA, we would see diminished United States export opportunities, continuing plant relocations, disregard for the environment, maquiladoras, immigration pressures, and put ourselves at a competitive disadvantage vis-a-vis our Far East competitors, who would exploit investments in Mexico to target the United States market.

America has a national mission to promote global prosperity. Our principles show how we can do it. We must not shrink from our responsibility to lead the whole world into a peaceful, prosperous 21st century economy. For the good of our economy, for the future of our country, and for the future of a world in which too many people are still mired in poverty and yearn for the prosperity that can only be built on a foundation of global economic freedom, we must implement the NAFTA.

Mrs. KASSEBAUM. Madam President, I rise today in strong support of the North American Free-Trade Agreement.

Over the past 6 months, I have spent a lot of time talking to Kansans about NAFTA. Many are skeptical. They fear that this agreement will lead to the loss of good jobs and lowered wages for U.S. workers. NAFTA has come to symbolize the growing insecurity about the U.S. economy.

I have tried to convince these Kansans that the opposite is true: NAFTA will help expand the U.S. economy, create more high-paying jobs for American workers, and help secure our economic future.

Over the next decade, NAFTA will create the largest and most powerful market in the world. This expanded market will lead to new opportunities for American businesses and workers. Increased exports to Mexico will create new high-paying American jobs.

Economists have argued at length about the number of jobs that will be created by NAFTA or the number of jobs lost. The reality is that no one knows the exact numbers for certain. But we do know—based on our experience—that open markets create more and better U.S. jobs for U.S. workers.

The gradual opening of Mexican markets over the past 6 years shows that United States workers gain with increased trade. In this period, United States exports to Mexico climbed by more than 200 percent. In 1987, the United States had a $5.7 billion trade deficit with Mexico; we now have a $5.6 billion trade surplus with Mexico. NAFTA locks in these significant gains and will further expand United States exports to Mexico.

Madam President, since World War II, the world has undergone a period of unprecedented economic growth and prosperity. The fundamental engine of this expansion has been trade between nations. In this period, the United States rejected simple-minded protectionism and embraced the challenges of an economically interrelated world.

NAFTA takes another important and historic step in the direction of open markets and expanding economic growth. It reaffirms America's commitment to free trade and confirms U.S. leadership. In the near term, NAFTA strengthens U.S. credibility in two critical ongoing trade discussions.

President Clinton is meeting currently with Asian leaders in Seattle at the APEC forum. In the coming years, this region will become the most important trading partner for the United States. Already, the volume of trans-Pacific trade is 50 percent greater than trade across the Atlantic.

The next 3 weeks will also determine whether or not the GATT negotiations will succeed. These talks present an unprecedented and historic opportunity to expand world trade, international growth, and economic security.

Madam President, in addition to the compelling economic benefits for the United States, NAFTA will also help Mexico become more stable and prosperous, and that is good for the United States. Over the long term, prosperity in Mexico is the only lasting solution to illegal immigration from Mexico to the United States.

NAFTA reinforces the market-oriented economic and political reforms

instituted under Mexican President Salinas. As a neighbor, we have an important stake in supporting progress and stability in Mexico.

Madam President, the debate on NAFTA stands as a test of the direction our country's economy will take over the coming decades. I believe we must seize the opportunities offered by NAFTA to compete and succeed as part of a dynamic global economy.

This is not an elitist argument. We only have to look to the history of our pioneering families to understand why trade matters. The Santa Fe Trail was undertaken at great risk in lives and fortunes to open the Southwest and trade to Mexico.

The question we face on NAFTA is whether we will compete and expand trade in the tradition of our pioneering heritage or turn inward and retreat from the future.

Mr. COHEN. Madam President, earlier this week I spoke on the floor of the Senate to express my opposition to the North American Free-Trade Agreement. As part of my justification for this position, I focused on recent actions by Canadian border officials. Specifically, these Canadian officials have been blatantly harassing Maine and Canadian citizens entering Canada as part of a larger strategy to deter Canadians from shopping in Maine.

I ask unanimous consent that three newspaper articles which provide graphic examples of this outrageous conduct be placed in the RECORD.

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

[From the Bangor Daily News, Nov. 10, 1993]

"IRON CURTAIN" SEEN AT MAINE'S BORDER

(By Wayne Brown and Andrew Kekacs)

An angry group of Maine businesspeople told U.S. trade representatives Tuesday that New Brunswick's tax and trade policies were building on "Iron curtain" between the province and Maine.

The complaints to trade officials about the provincial tax come just as debate has reached fever pitch concerning the North American Free-Trade Agreement which aims to remove most trade barriers between Canada, the United States and Mexico during the next 15 years.

On July 1, Canadian customs officials began collecting an 11 percent provincial sales tax on goods purchased outside New Brunswick. Collection efforts are targeted at shoppers returning home from the United States.

Keith Guttormsen, executive director of the Greater Calais Chamber of Commerce, said the tax was being collected only along the Maine border, not along New Brunswick's borders with Nova Scotia, Prince Edward Island and Quebec.

"The tax is against New Brunswick law, GATT (General Agreement on Tariffs and Trade) and the Free Trade Agreement," he said. ". . . In effect, (Canadians) are establishing an Iron Curtain between Maine and New Brunswick."

At meetings Tuesday in Bangor and Houlton, business people said New Brunswick shoppers were being subjected to intense questioning and frequent vehicle searches by Canadian customs officials. They said the harassment had sharply reduced the number of Canadians willing to make day trips to the United States.

"(Provincial leaders) only are hurting themselves," said Peter Daigle, president of Erin Co., which owns hotels in Bangor, Ellsworth and Waterville. "U.S. tourists are being forced to wait in line while Canadians are rousted for a pair of shoes . . . or a lawnmower bought in Bangor."

In Houlton, the operator of McLaughlin's Textiles held up a piece of calico fabric. The cloth costs $3.99 a yard at his store, said Mark Gendron, while the price in Canada is $6.99 a yard.

When a Canadian shopper buys fabric from Gendron, however, the exchange rate, taxes and duties increase the final cost to the shopper to $7.57 a yard.

"It's killed my Canadian business," he said. "Now, I'm at a competitive disadvantage."

The comments were echoed by speaker after speaker. Retailers, innkeepers and restaurateurs said that the sales to Canadian shoppers had fallen 24 to 69 percent in the past four months.

"The Greater Bangor economy has been hit hard by this illegal action of the province of New Brunswick," said Ted Sherwood, chairman of the Greater Bangor Chamber of Commerce. "How can we enter into broader Free Trade Agreement (between the United States, Canada and Mexico) when we cannot enforce this existing agreement?"

Gov. John R. McKernan said U.S. Trade Representative Mickey Kantor wasn't moving aggressively enough to persuade New Brunswick to curb the special tax enforcement.

"To this point, Trade Representative Kantor has taken a lackadaisical approach to this issue," McKernan said during his Capital for a Day visit to Waldoboro.

"Maine businesses are being hurt by this unfair tax, and it's time our trade representatives start protecting the state's interests in this matter," said the governor.

Pressure from Maine's congressional delegation persuaded federal officials to hold open meetings in several Maine communities this week.

In Bangor, representatives of organized labor and the Maine Greens protested the Clinton administration's support for the North American Free Trade Agreement.

"(The agreement) was negotiated in haste, in secret, in a fast-track deal," said John Hanson, director of the Bureau of Labor Education at the University of Maine. "These trade agreements raise more questions than they provide answers."

David Weiss, deputy assistant U.S. trade representative for North American affairs, said the border tax collections were a violation of the 1989 Free Trade Agreement between the United States and Canada.

"One of the difficult issues we face is not just can we win the case, but can we get some relief for you," said Weiss.

Weiss said Saskatchewan, Manitoba and Quebec also were collecting provincial sales tax from returning shoppers. In fact, the Canadian tried to persuade all border provinces to take similar actions.

The issue will be one of a half-dozen on the agenda when U.S. and Canadian trade officials meet in early December, according to Weiss.

In Houlton, more criticism was leveled at the inaction of the U.S. government in its dealings with Canada.

"My main fear is not Canada, it's you, the representatives . . . in my own country," Rodney McCrum, a Westfield potato farmer, told trade representatives. "Our government is doing a real good job taking care of the Canadians."

McCrum described U.S. officials as "the worst negotiators in the world." He said Canadians can easily bring potatoes into the United States, but the U.S. farmers are blocked from bringing spuds into Canada.

"It seems so simple . . . but U.S. politicians can't seem to understand," said McCrum. "I cannot, and will not, stay in business with this unfair trade."

[From the Bangor Daily News, Nov. 11, 1993]

CANADIAN CUSTOMS OFFICE DIVERTS TRUE LOVE'S COURSE

(By Nancy Garland)

The course of true love ran smoothly for Royce "Mickey" Smith of Gardiner and Alison Teed of Machias until they stopped at the Calais-St. Stephen, New Brunswick, border crossing last Friday.

Smith, 21, had planned to surprise his girlfriend, a Canadian citizen, with a diamond ring over the weekend, but Canadian border inspectors not only ruined the surprise, they seized the $1,400 solitaire. Authorities are refusing to return the half-carat ring until Smith pays $730 (Canadian) in duties and penalties for not declaring the ring at the border. The American said he didn't know he had to.

Adding insult to injury, Smith and Teed were told they may be slapped with an additional 11 percent provincial tax which is assessed on goods purchased outside the province, according to Randall Wilson, an attorney in St. Stephen.

The action is "outrageous. It's officialdom gone awry," said John Mitchell, an attorney in Calais who, with Wilson, has volunteered legal services to help the young couple.

The couple's dilemma was brought to the attention of U.S. Rep. Olympia Snowe who termed the action a particularly egregious example of the increasingly hostile conditions confronting individuals crossing the border into New Brunswick.

"I was horrified to learn of the situation of Alison Teed and Mickey Smith," Snowe said in a press release.

Canadian authorities offered little explanation of the matter Wednesday. Duane Ingram, chief of customs for the St. Stephen area, said privacy restrictions prevent him from discussing a particular incident, but he said he would be able to offer general opinions in a day or two, once he had researched the situation.

He pointed out that all items other than clothing must be declared when crossing the border into Canada, Ingram said.

The incident is one of several reported confrontations this fall at border crossings between Maine and Canada, as the Canadian government attempts to curtail cross-border shopping. Harassment of motorists at border crossings has been a topic of discussions this week in meetings between Maine business people and U.S. trade representatives.

The couple's situation is "another example of the Iron Curtain being sewn between Maine and Canada," said attorney Mitchell. "It's an outrageous abuse of power."

The incident started when the couple stopped at the Calais-St. Stephen crossing station at about 4:45 p.m. Friday on their way to Saint John, New Brunswick, to visit Teed's family. A guard asked them if they had anything to declare, and Alison declared $20 worth of gifts she had bought for a niece.

The guard ordered them, and most cars in front and behind them, into a search line. Smith's bags were searched and the ring, which was in a box, was discovered.

At that point, Smith asked to speak with the guard privately, so the pair went into an office building. For the next half hour, Smith explained that he bought the ring in Augusta and intended to surprise Teed with a proposal.

The ring was seized and Smith was told that duties and penalties would be 40 percent of the ring's value, or $730.

When Smith returned to the car, accompanied by a guard, he told Teed about the now-confiscated ring.

"At that point I became very upset and started to cry," Teed recalled.

Teed got her marriage proposal, but it was in front of a customs' inspector. It wasn't the romantic scenario planned by her beau, but she accepted.

Teed, 24, is a Canadian citizen but she resides in Washington County where she is a student at the University of Maine at Machias. She is doing her student teaching at a Washington County school. She said Wednesday that she was still upset and angry at the poor treatment she and Smith received.

"It's not like I'm going to get proposed to every weekend," said Teed.

Smith remained angry Wednesday at the official invasion into a very personal moment. A marriage proposal "is supposed to be something you remember all your life. We'll remember this, but not the way we might want to," Smith said from his Gardiner home.

The pair resumed their trip and returned to Maine on Sunday. The ring remains in Canadian hands.

Attorney Wilson said he plans to file an appeal and request a hearing before customs officials. He questioned the guard's authority to seize the ring which was owned by an American and which would have returned to America within a few days.

Customs guidelines in Canada allow Canadian residents who marry non-residents to import wedding and engagement rings acquired outside Canada for a temporary period without payment of duties.

Canadian border inspectors are under pressure, Wilson said, to collect taxes and to file statistics on the number of searches they perform.

"They've gone way overboard in this situation. It's way beyond the bounds of propriety," said Wilson.

Meanwhile, Smith and Teed consider themselves engaged, but they want the ring back because it is a symbol of their love.

"I may use my next two or three paychecks to get it back," said Smith, who works in a warehouse in Gardiner.

[From the Houlton Pioneer Times, Nov. 17, 1993]

CANADIAN SHOPPERS STUCK AT N.B. BORDER FOR 11 HOURS

A bus carrying 44 elderly Canadian women stayed at the Canadian Border Station in Woodstock, N.B. for 11 hours on Oct. 28 as the items they bought on a trip to Bangor was processed by Canadian Customs officials.

The three-day trip mostly consisted of women buying Christmas presents for their grandchildren, according to Gordon Harvey, co-owner of Harvey Tours of Sydney, Nova Scotia, the company which ran the tour.

The women on the bus were from Nova Scotia.

Problems arose when the two customs officials working at the station learned that many had filled out their declarations of $100 worth of duty-free goods in American funds, not Canadian funds.

The items' value had to be converted into Canadian funds, he said, and then the duties on them had to be calculated. The women arrived at about 7 p.m. and finally left at about 8 a.m. the next morning.

In previous trips, Harvey said, processing items lasted from one to two hours.

The passengers stayed in a warehouse as their items were processed, Harvey said, even though one of them suffered from asthma, another had a pacemaker and others had high blood pressure.

"It was not a great place to spend the night," he said.

Harvey added that customs officials were entitled to do what they did and thought the incident was "blown way out of proportion."

Mr. CAMPBELL. Madam President, for almost 3 years, now, I have expressed my serious reservations about this NAFTA. As a Member of the House of Representatives, I voted against fast track because it takes away Congress' right and responsibility to change a flawed trade agreement. As a candidate for the U.S. Senate last year I expressed my serious reservations about this agreement.

Now that it is all said and done, the situation is exactly as I feared: We are stuck with a flawed agreement, and we do not have the right to make changes. That is why I am going to vote against this NAFTA.

My vote against NAFTA is not a vote against free trade, or a vote for isolationism, or a vote against Mexico. I have always said that we need develop trade ties with Mexico, and help Mexican workers earn better lives for themselves. I support free trade, the same way I support free markets and free political systems.

I also want to say that I reject any arguments against NAFTA that reflect racism and bigotry. I know that average Mexicans are honorable, hard-working people who want the same things we want—to earn an honest living, to live in a free and clean country, to provide for their children. As a powerful neighbor, I would like to help Mexicans meet those goals.

But I will vote against this flawed agreement, because in the end I believe it hurts American jobs. I have other concerns, but jobs is the key. This agreement is unfair to American workers and to Mexican workers.

NAFTA proponents use a whole bunch of studies that say in the long run, NAFTA will create jobs. Well, it is great to say that eventually NAFTA might create jobs. But nobody argues that in the short run, NAFTA will cause the dislocation of hundreds of thousands of American workers. Economic forecasts and theories are good for speculation, but I care about reality, and the reality is American families are going to suffer a lot more before there is any hope of improvement. I cannot accept that kind of sacrifice.

NAFTA supporters dismiss job losses under NAFTA as short term, as if they do not matter. Well, short term means nothing to workers and their families who lose their jobs, and do not know when they will get new ones. So many people already lost their jobs due to downsizing, and they are not getting those jobs back. Workers who lose their jobs under NAFTA will not have anywhere to go either. Sure, some worker may pick up a job eventually because of NAFTA, but that is little solace to all those people who know that NAFTA will cost them their jobs. To tell people that they will lose their jobs in the short term, but promise them that sometime in the future America may gain more jobs, is cold and unfeeling—and if recent history is any guide, also meaningless. The auto makers especially disturb me. They brag that United States auto plants will export 60,000 cars to Mexico in the first year. They do not say what will happen the second year, after they relocate their assembly plants to Mexico.

I wrote the U.S. Trade Representative about this concern, and he responded that the Government is committed to a large worker retraining program. He did not tell me that these NAFTA retraining programs would only last a couple of years, and he didn't tell me that according to the Government's own figures, only about 23,000 workers will be able to participate. That is a drop in the bucket compared to the job dislocations predicted under NAFTA. That is a cold slap in the face to American workers who trusted their elected representatives to look out for their interests.

NAFTA supporters say those of us in opposition don't have any faith in the American worker, that we're afraid to compete with other countries. As they say in my neck of the woods, that is a lot of bull. I know American workers can compete and win. After some tough years and a lot of concessions, American workers can manufacture cars and produce steel without subsidies and still compete strongly against workers in Germany and Japan. American workers are not afraid to compete—as long as the playing field is level.

That is not the case with Mexico. NAFTA does not provide a level playing field. NAFTA asks American workers to compete against Mexican workers who have no right to ask for better wages, who have no right to ask for better working conditions, and who have no right to ask for a better environment. Our American workers pay willingly for strong institutions that enforce our laws, protect workers' safety, and protect our civil rights. The Mexican Government does not provide any of this for Mexican workers. The Clinton administration could have dealt with these inequities in the Labor Side Agreement—but it did not.

I do not believe President Clinton wants to hurt American workers, but the labor provisions are so vague that

they're useless. It seems to me that without theses provisions, American workers eventually either lose jobs or drop their wages to the level of Mexico. I wonder if CEO's of American companies will drop their own wages proportionately to their employees—or maybe Congress should drop its wages to the same level as Mexico's parliamentarians.

No one yet has convinced me that we are going to adequately handle the very real problem of third countries taking advantage of NAFTA and building plants in Mexico to avoid limits on their goods going to the United States. When I raised the issue of third county dumping of goods through Mexico, with the originating country reaping the profits and avoiding U.S. trade laws, our Trade Representative avoided the question.

I have said from the beginning that I was very leery about the environmental impact of NAFTA. I was concerned that our local and national environmental laws would still have to be followed by United States companies, but that companies in Mexico would not have to, giving Mexican-based companies an unfair advantage over their United States based counterparts. No one has yet addressed this issue. I want to be sure that NAFTA be compatible with all local, State and Federal environmental laws. The USTR assured me that any attempt to change U.S. laws to achieve NAFTA compatibility would require specific congressional approval. That is good news, but the bad news is, how do we enforce NAFTA's environmental side agreement against Mexico? How do we force Mexico's compliance? American workers pay a ton of money for strong, well-enforced environmental laws because we care about our health and our families' health. One need only look at the Rio Grande and wonder at the ability of the Mexican Government to address its environmental problems, let alone those that are expected with more plants going up in that country as a result of NAFTA. This is not a knock on Mexico's commitment to the environment, but a concern that the cost of that commitment makes it a very difficult proposition at best.

And let us talk about the cost of environmental cleanup. American taxpayers are expected to pay at least several billion more dollars under NAFTA for environmental cleanup. Why should American taxpayers have to pay this? I am outraged that those American companies that closed down their United State plants, fired all of their workers, and then moved to Mexico, where they took advantage of Mexico's lax environmental laws are bearing no responsibility for this mess that American taxpayers are now supposed to pay for. What a perfect example for all those other American companies who are just waiting to close down their United States plants, throw their employees out of work and move down to Mexico.

I still have some concerns about how the fairness of NAFTA for specific industries, like trucking. Lately, though, there have been so many side deals that we do not know what NAFTA means anymore. It is hardly worth calling a "free-trade agreement." In recent days we have seen agreements on wheat, beef, peanut butter, frozen orange juice, cucumbers, wine, textiles, flat glass, and tomatoes, and who knows what else. These deals do not promote an open and fair debate on this agreement. Something is very wrong with this agreement if the NAFTA supporters have to stoop to this just to gain votes.

The fact is, NAFTA pits industries which stand to win against industries which stand to lose. It puts American citizens and states that stand to gain jobs and market access against those American citizens and states that stand to lose jobs. It is dividing America as few issues have in recent years. I am very uncomfortable with the notion that I should vote for NAFTA, because it is good for some Coloradans, or some Southwest based companies, when I know it's going to screw many other American citizens elsewhere. If we have come to this point, pitting one region of the country against the other in our desire to improve the national economy, I have to say "no."

Mr. BOREN. Madam President, we begin a very important debate on our economic and political future. At stake is nothing less than our country's ability to shape our economic destiny and provide leadership in tomorrow's world. I believe NAFTA will allow us to prepare for the coming challenges and I urge my colleagues to pass this important legislation.

Instead of embracing the opportunities presented to us by NAFTA, many in Congress are responding to the shortsighted, misguided arguments raised by NAFTA's opponents. By now, we are familiar with the charges that this trade agreement will move jobs to Mexico, worsen the environmental conditions along the border and lock-in poor working conditions and low wages for Mexican workers.

Implicit in these arguments is the notion that the status quo is somehow better than the proposals in NAFTA; that a future without this NAFTA is more desirable. This notion is wrong.

When naysayers repeat their mantra about the massive job losses NAFTA would afflict, I point them to the real world experience of the past 10 years. Just 8 years ago Mexico reformed its economy and began reducing its trade barriers. Before those reforms, the U.S. had a trade deficit of $5 billion, now we have a trade surplus of $5 billion—a $10 billion turn around.

The reason for this dramatic shift is clear: Trade liberalization helps our economy. During that time, 400,000 jobs nationwide and 2,000 jobs in Oklahoma were created because of increased Mexican trade. This is what happens when trade is facilitated between countries. The job pie does not shrink, it expands. If the partial trade reforms created by the reform of the Mexican economy created 400,000 jobs, imagine how many more jobs NAFTA would create as barriers are completely eliminated.

Yet the barriers to trade have been one way. Our market is largely open; but the Mexican market, though changing, remains restricted in many areas. NAFTA would change this unfair trade relation and lock-in economic reform in Mexico. Under the trade agreement, the United States eliminates Mexican tariffs that are on average 2½ times higher than our own: On average, a 4-percent United States tariff on Mexican goods would be dropped in exchange for removal of a 10-percent Mexican tariff on United States goods. NAFTA would also strike the Mexican law that requires those who sell in Mexico to produce there also. The result is that NAFTA would make it easier to produce goods and services in the United States for sale in Mexico.

However, let us imagine a future without NAFTA. As Secretary Christopher said in his testimony to the Finance Committee, let us think of the alternatives to NAFTA and ask if they are better. Without NAFTA, companies will continue to move to Mexico knowing they will not have to comply with the environmental and labor standards dictated by the side agreements. Investors will seek opportunities in places like Asia where the consumer only spends an average 12 cents of every dollar on American goods compared to the 70 cents spent by Mexicans. Impoverished, jobless Mexicans will look towards jobs north of the border, fleeing from an economy that cannot support its labor force. This is what will happen if NAFTA fails—and possibly much worse.

At stake in NAFTA is the potential stability of our North American region. We care about what happens in Mexico because one way or another our futures are tied. We are for a growing Mexican economy, not just because we feel compassion for the Mexican worker, but also because we know it is in the long-term interest of the American worker. If Mexico can create jobs and encourage its workers to live there rather than emigrate, often illegally, to the United States, then both countries will benefit.

Mexico is a country where half of the population is under 19. Who will employ them in the future? At its present growth rate, Mexico cannot, and border states such as California are already pushed to the breaking point by immigrants seeking work and a better way of life. If NAFTA fails, I fear that

many will come here to our already crowded job market if they cannot find work in their country.

Only through economic development and reform will Mexico be able to create a healthy market that benefits both countries. NAFTA represents continued reform in Mexico.

But make no mistake. Many in Mexico would prefer a return to the statist economy and closed markets of the early 80's. We must realize that economic reform in Mexico is tied with democratic change, and the forces against trade liberalization in Mexico are the same forces against a pluralistic society. The oligarchy that reaped the benefits of an inefficient economy are a dangerous and powerful faction of that country. Nothing would empower them more than the rejection of the economic reforms proposed by NAFTA.

If the repressive forces take control over Mexico, the political and social upheaval would be dramatic with immediate consequences in this country. Instead of making policies to enrich our workers and businesses with increased trade, our Government will be forced to rebuild our relationship with a cautious, possibly hostile country. Should the Mexican economy make a turn for the worse, the United States will be forced to hand out more foreign aid. I doubt whether our overburdened foreign aid program can sustain another needy country that is so important to our national interests. Our priorities would change from opening markets, to protecting democracy.

Some dismiss this kind of questioning and say that reform in Mexico is irreversible, that the changes from the last several years are permanent. But reforms can easily be stopped and circumstances can turn for the worse. One needs only to remember the events of the past several months in Russia to conclude how fragile progress can be. The lesson from Russia is clear: Change can not be taken for granted—it must be constantly promoted. The progressive change in Mexico is no exception and we must be prepared to encourage reform in this important country.

We must also think about how NAFTA—or the failure to enact it—will prepare us for tomorrow's economic arena. Let us not fool ourselves. Mexico with an economy the size of Los Angeles, is not this country's true economic threat. Our true competitors are Germany and Japan. We must ask how they are preparing for the future. Germany is a major force in the European Community, while Japan is slowly dominating the economies of its Asian neighbors. The view of our real competitors is that economic integration is part of their strategy to compete in the new global marketplace. Free-trade has not lowered wages or living standards in these countries. Instead, free-trade promotes international competitiveness while raising the standard of living and wages for its citizens.

Within NAFTA is a great economic opportunity for American workers to solidify and establish their share in the Mexican and North American market. But if we defeat NAFTA, this opportunity is lost. We must heed the statements by Mexican officials when they say they will look toward trade agreements with the Europeans and Japanese if NAFTA is rejected. We should not take this as merely a warning, but as a sober reminder of the emerging alliances of the international marketplace.

As important as the economic considerations are, this debate means much more. This is also about this country's leadership in tomorrow's world. Whether we like it or not, this debate reveals something fundamental of our nation's priorities. Will we lead the effort to tear down barriers or will we allow others to build new ones? Will we take the necessary steps to compete in the global market-place or will we let others surpass our economic position? Will we continue to fight for democracy and free markets or will we jettison those values which we fought so passionately for during the cold war?

Not other initiative before the Congress this year, perhaps the next several years, deals with the fundamental issues of control over our economic fortunes and our country's relations with two of our most important trading partners than does NAFTA. If we miss this historic opportunity to build this long-term relationship, then we are simply asking for unforseen economic and foreign policy problems.

Yet all of these important considerations seem to be forgotten in the NAFTA debate. Instead, the arguments against the agreement focus on empty rhetoric and misleading facts.

The truth is NAFTA is good for the American worker and business. It creates jobs, instead of eliminating them. It tears down trade barriers, instead of erecting them. It improves the environment, instead of damaging it. It puts pressure on us to prepare ourselves for the new global market place.

This decision is an historic one. This Nation is great not because it has been afraid to face new challenges. It is great because it has faced them with courage, hard work, and self confidence.

Mr. COCHRAN. Madam President, by phasing out licenses and tariffs now imposed by Mexico on our agricultural products and processed foods, we will sell more of what we produce because it will be less expensive. Uncle Ben's Rice mill in Greenville, MS, for example, will increase its production by one-third if NAFTA is approved. This will create 10 to 15 new jobs at the plant and over 200 in the Mississippi rice industry. Other mills in the Delta also expect similar increases in production.

During a visit to my office in Washington last week, the head of the chemicals division of First Mississippi Corp. estimated that their sales in Mexico would triple, or maybe quadruple, if NAFTA is approved.

The elimination of Mexican tariffs on Mississippi products gives us an advantage over our competition. Our goods can be bought for less as a result.

Therefore, we will sell more poultry products, more beef products, more pork products, and more dairy products, all of which are important businesses in our State. As a matter of fact, the Mississippi Farm Bureau expects NAFTA to generate an additional $10 to $15 million annually for Mississippi agriculture.

Because there will be more demand for what we produce on our farms the prices farmers are paid for their crops will go up. Corn is expected to increase by 6 cents a bushel and rice by 25 cents per hundredweight. Soybeans and wheat will also increase in value. Mississippi State University says NAFTA will mean an annual increase of 26,000 bales in exports of Mississippi cotton.

Others who will derive clear and important growth and new jobs from this agreement include furniture manufacturers, lumber and wood products, electronics, electric equipment, transportation, and port facilities.

Few votes that I have had to cast in my 20 years as a member of the Mississippi congressional delegation have been more clearly and unambiguously supported by such persuasive evidence.

Madam President, I ask unanimous consent to have printed in the RECORD excerpts I have compiled from "Correcting the Record," the response of the U.S. Trade Representative to the Perot/Choate NAFTA book and a summary of "What NAFTA means for Mississippi," compiled by the Department of Commerce.

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

[Excerpts from "Correcting the Record"]

RESPONSE OF THE OFFICE OF THE U.S. TRADE REPRESENTATIVE TO THE PEROT/CHOATE NAFTA BOOK, SEPTEMBER 2, 1993

The Office of the U.S. Trade Representative (USTR) refutes over 115 assertions made by Ross Perot (with Pat Choate) in the book, Save Your Job, Save Our Country: Why NAFTA Must be Stopped—Now! A few are quoted below.

* * * * *

Perot (p. 10): "The NAFTA deal on agricultural trade is * * * bad."

USTR: "U.S. agriculture and the American farmer are big winners under the NAFTA. Conservative estimates show an expected increase of $2 billion to $2.5 billion in U.S. agricultural exports annually by the end of the transition period because of the NAFTA." ("Effects of the North American Free Trade Agreement on U.S. Agricultural Commodities," U.S. Department of Agriculture, March 1993.)"

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Perot (p. 10): "NAFTA * * * exempts Mexico from the U.S. Meat Import Act, which limits the amount of imported beef that can enter U.S. markets. At the same time, the agreement will give Mexico unrestricted access to U.S. and Canadian feed grains, which it needs to develop a large scale cattle-feeding and beef-processing industry. The result will be a massive shift of the U.S. beef industry from the United States to Mexico as investors rush to take advantage of cheap wages, low safety standards, and lax sanitation practices."

USTR: "This statement completely misrepresents the benefits of NAFTA for U.S. beef producers. The American beef industry is one of the biggest winners of all under the NAFTA. Mexican tariffs of 15 percent on live cattle, 20 percent on fresh beef, and 25 percent on frozen beef will immediately be eliminated under the NAFTA. As a result, U.S. beef exports to Mexico are expected to double under the NAFTA. That is why U.S. cattlemen are among the strongest supporters of this Agreement.

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Perot (p. 12): "The eventual elimination of Mexican tariffs on U.S. goods going to Mexico, which average only about ten percent, will mean little to most U.S. companies and workers. The reason is simple: Mexico's market is small—less than five percent of the size of the U.S. market—and Mexican consumers are poor."

USTR: "The Perot book's dismissal of Mexico as an important market shows a lack of understanding of international trade. While Mexico is currently a small economy, it is a big market for U.S. exports. It is our third largest—and fastest growing—major export market, after Canada and Japan. Mexican per capita imports from the U.S. total $450 per year, more than that of Japan or Europe, even though Mexico's per capita income is far lower.

"The book is also wrong in minimizing the importance of Mexico's current trade barriers. The fact is that Mexican tariffs are 2.5 times as high as U.S. tariffs, and Mexico also relies on non-tariff barriers to restrict U.S. access to their markets. NAFTA will level the playing field."

* * * * *

Perot (p. 18): "Under the 1974 Trade Act, Congress directed the Office of the U.S. Trade Representative to seek advice and counsel from private advisory panels during any treaty negotiations, including NAFTA. For the most part, it never happened."

USTR: "Totally untrue. The U.S. Trade Representative consulted with its 39 advisory committees and other members of the private sector to the fullest extent. During the NAFTA negotiating process, NAFTA negotiators held over 350 meetings with private sector advisory committees, and an additional 350 briefings for trade associations and private sector organizations throughout the country. Each of the advisory committees later wrote reports on the final agreement reflecting their extensive knowledge of the agreement."

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Perot (p. 20): "After the trade pact was completed, one of the U.S. negotiators explained to an audience of federal regulators that although changes in most domestic regulations normally require notice and public comment, secret trade negotiations (such as NAFTA) could alter these same regulations without the need for notice and public comment. The negotiator said, 'I have seen specific instances where USTR staff denied copies of U.S. negotiating positions which would require overturning Federal regulations from the staff of the agency issuing those regulations.'"

USTR: "False. This is another quote from a paper later repudiated by its author. As noted in the Department of Commerce's retraction: 'Contrary to the assertion in the [paper], the NAFTA is not a treaty that is self-executing and it will not automatically supersede any Federal laws or regulations. Rather, the NAFTA is an executive agreement that will supersede existing laws only to the extent provided by the Congress in implementing legislation.'

"Congress has the final say as to whether to change our laws. NAFTA doesn't change that."

* * * * *

Perot (p. 23): "Only a handful of people * * * know what is actually in the agreement * * *"

USTR: "NAFTA is the most broadly received trade agreement in history. It has been publicly available for a year, and has been the subject of numerous economic studies (almost all of which are positive). This statement is irresponsible in implying that NAFTA has somehow been kept a secret."

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Perot (pp. 28–29): "NAFTA will accelerate the loss of manufacturing jobs in the United States."

USTR: "False. U.S. exports of manufactures to Mexico have grown rapidly since Mexico lowered its trade barriers after 1986, and are projected to grow more under NAFTA. This has actually added more than 400,000 new jobs to the American economy.

"* * * NAFTA will create the largest market in the world. By increasing our export opportunities, NAFTA will enable us to take advantage of U.S. economic strengths, which include high-wage, high-tech manufacturing, and to increase further the number of jobs associated with exports to Mexico."

* * * * *

Perot (p. 31): "Mexico provides automakers an easy escape hatch from the high cost of operating in the United States, and they are taking advantage of it."

USTR: "False NAFTA immediately reduces and eliminates Mexican local content and local production requirements that have encouraged U.S. automobile and parts manufacturers to move production, and jobs, to Mexico. with NAFTA, the United States will be able to export automobiles and parts to Mexico, the fastest growing market for these products in North America. NAFTA reduces and eliminates Mexican trade balancing rules that require the export of automotive products produced in Mexico to the United States in order to import parts needed for assembly to serve the Mexican market.

"In other words, NAFTA phases out to current Mexican measures which force investment in Mexico and exports from Mexico in order for a company to sell in Mexico.

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Perot (p. 79): "NAFTA Chapter Three tariff provisions will quickly open the U.S. market to goods shipped from Mexico."

USTR: "Fifty percent of goods entering the United States from Mexico currently enter free of duty, and have been doing so for years. Chapter Three merely codifies current treatment for such products.

"For those tariffs that have not been reduced previously, NAFTA provides sufficient time (up to 15 years for some highly import-sensitive goods) for U.S. industries to adjust to the elimination of those tariffs."

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Perot (p. 80): "U.S. textile manufacturers are disadvantaged by the NAFTA."

USTR: "U.S. exports to Mexico of textiles, fibers and apparel have grown 25 percent on average each year since 1986, reaching $1.5 billion in 1992, and creating a trade surplus in the sector of $81 million, in spite of Mexico's current 10–20 percent tariffs. NAFTA will continue and accelerate this export growth because it will phase out remaining tariffs and barriers to trade in this sector."

* * * * *

Perot (p. 97): "Mexico, Canada, and the United States also agreed to form a new trade bureaucracy that would assist in the administration of NAFTA. This is just what the U.S. taxpayers need—another international agency to support."

USTR: "The NAFTA won't require a new, costly 'international agency.' Nothing of the sort has been required under nearly identical provisions of the U.S.-Canada FTA. What the NAFTA will provide is a comprehensive forum for the countries involved to consult on and resolve trade and investment issues before they turn into costly disputes that could threaten U.S. jobs."

* * * * *

Perot (p. 102): "Any trade agreement that can't stand full public scrutiny by Congress before, during, and after the negotiations is not worth having."

USTR: "It is not possible to negotiate in public, but it is absolutely true that any trade agreement must be able to stand full scrutiny by Congress and the public. NAFTA has been, and will be, the subject of exhaustive public discussion and Congressional debate. * * *

"The upcoming debate over NAFTA this fall promises to be one of the most intensive in memory. Congress will pass the implementing legislation for NAFTA only after fully satisfying itself that the agreement is in the national interest. The Administration believes that it can and will make that case, but there is surely no danger of any rush to judgment.

* * * * *

Perot (p. 102): "The first action that is required of Congress is to reject NAFTA. Congress' second action should be to reauthorize the president to negotiate a win-win trade deal with Mexico."

USTR: "Virtually every serious study done has shown that the NAFTA, strengthened by the supplemental agreements recently completed, is a 'win-win trade deal with Mexico.' But if this agreement, negotiated by a Republican president and supplemented by a Democratic president, is rejected, there should be no illusions that the U.S. and Mexico will be back at the table, negotiating some better deal. There will be no further negotiations; trade relations between the countries will be set back significantly, for years to come."

WHAT NAFTA MEANS FOR MISSISSIPPI

EXPORTS

Mississippi exports to Mexico and Canada—$494 million in 1991.

JOBS

Mississippi jobs supported by manufactured exports to Mexico and Canada—15,000.

Mississippi industries: NAFTA market openings benefit vital Mississippi industries: lumber, furniture, stone, clay and glass, electronics, computers, transportation equipment, paper products, food products. To highlight just a few that will gain from NAFTA:

Electric and electronic equipment, a leading Mississippi export, will benefit from improved access to the Mexican and Canadian markets under NAFTA. Sales in this industry to Mexico and Canada have nearly doubled in the last three years. U.S. exports to Mexico grew from $3.2 billion in 1987 to nearly $6 billion in 1991, while exports to Canada reached $10.1 billion. Government procurement provisions, incorporated into NAFTA, will create opportunities for U.S. manufacturers to sell under open and transparent bidding to Mexico's public sector, including government-owned enterprises such as PEMEX and the Comision Federal de Electricidad, which comprise the largest share of this market in Mexico. Elimination of Mexican tariffs that are as high as 20%, more open government procurement, greater uniformity in product standards, and stronger intellectual property protection will help Mississippi firms increase their market share. Today, 57,000 U.S. jobs, many in Mississippi, are supported by exports of electric and electronic machinery to Mexico alone.

Lumber and wood products exports from Mississippi, are likely to show strong export growth under NAFTA, because it eliminates the red tape of import permits, user fees, and other non-tariff barriers that restrict the movement of U.S. forest product exports to Canada and Mexico. NAFTA provides strong rules of origin that will ensure that these products contain substantial North American content. NAFTA also eliminates tariffs ranging from 10 to 20%, creating opportunities to exceed the approximately $1.4 billion of lumber and forestry products that the U.S. exported to Canada and Mexico in 1991.

Furniture and fixtures, a major Mississippi export, will benefit from increased access to markets with major potential. U.S. exports of furniture alone to Mexico increased over 65 percent in 1991, reaching $553 million. Exports have continued to increase rapidly—over 35 percent—in the first quarter of 1992. Mississippi furniture manufacturers will have greater appeal to Mexican consumers as Mexican tariffs of 10–20% are eliminated. Canadian tariffs on American furniture will be eliminated January 1993. Government procurement provisions incorporated into NAFTA will open this market to competitive, transparent bidding by U.S. manufacturers for sales to Mexico's public sector, including government-owned enterprises such as PEMEX and the Comision Federal de Electricidad, which comprise a sizable share of the market.

Mississippi's Paper industry will enjoy increased access to the Mexican paper market when tariffs of 10–20% and import barriers are removed. In addition, government procurement provisions incorporated into NAFTA will open this market to competitive, transparent bidding by U.S. firms for sales to Mexico's public sector, including government-owned enterprises. Mexico is the U.S.' third leading paper export market, following Canada and Japan, even with its comparatively high duties. U.S. exports of paper products to Mexico expanded from $574 million to almost $1.1 billion between 1987 and 1991.

Food products, a leading North American export of Mississippi, will build on their recent export gains (ranging from a 34% increase in U.S. exports of alcoholic beverages to Mexico, to a 271% increase in U.S. exports of bakery products to Mexico between 1990–91) due to reductions in tariffs and other barriers. As Mexican tariffs on food products drop to zero and import licenses disappear, the 6,000 jobs which U.S. food exports to Mexico support, will continue to increase. Removal of Canadian tariffs on U.S. foodstuffs will reach the midpoint by 1993 and zero by 1998, which should boost U.S. exports of food products above the $3.3 billion worth exported in 1991. The NAFTA also obligates Canada and Mexico to recognize and protect bourbon and Tennessee whiskey as distinctive products, with immediate elimination of tariffs on these products into Canada and Mexico. Most other alcoholic beverage tariffs will be phased out over five years.

Stone, clay, glass, and concrete products, a leading export of Mississippi to Mexico, will be more competitive in Mexico as tariffs ranging from 10 percent to 20 percent are eliminated. U.S. exports to Mexico of these products grew from $199 million to $383 million between 1989 and 1991. Exports of household glass should benefit particularly. As Canadian tariffs reach zero on stone, clay, glass and concrete products exports (most by 1993), the U.S. share of the Canadian market should grow from the approximately $1.3 billion of exports shipped in 1991.

Services are an important employer in Mississippi—mostly in health and business services. This sector will gain from unprecedented export opportunities through NAFTA. Restrictions on the cross-border provision of most services will be removed. Liberalization of the telecommunications and land transport sectors will enhance access for all service providers through cheaper communications and transport costs. NAFTA enables firms to provide services in Canada or Mexico without forcing them to establish there, and makes it easier for sales representatives, agents, market researchers, investors, intracompany transferees, after sales service providers (a vital element of success for business services), and professionals (provided they meet the country's licensing criteria) to move between the three countries to provide their services.

Mississippi agriculture has the potential for large gains under a NAFTA. In 1990, agricultural production in Mississippi generated $2.4 billion in farm cash receipts. Cotton, broilers, cattle and calves, soybeans, aquaculture are Mississippi's leading commodities. Exports are expected to increase for most of these commodities.

Last year, U.S. exports to Mexico of cotton were $49 million, poultry $131 million, beef and veal $185 million, and soybeans $343 million. U.S. cotton exports to Mexico will likely increase as income growth increases Mexican textile and apparel demand. The removal of tariffs and licensing requirements and the reduction of feed costs in Mexico will allow U.S. poultry exports to Mexico to increase slightly. Under NAFTA, U.S. cattle exports, currently small, will likely grow to over 1 million head per year. U.S. soybean exports to Mexico by the end of the transition period are expected to double, with a net gain of approximately $75 million, annually above non-NAFTA levels.

NAFTA IS GOOD FOR THE APPAREL INDUSTRY IN ARKANSAS

Mr. PRYOR. Madam President, I recently received a letter from America's largest apparel manufacturer supporting the North American Free-Trade Agreement [NAFTA].

In his letter, Levi Strauss president and CEO Thomas W. Tusher makes a strong appeal to reject protectionism in exchange for a forward looking trade policy.

I was particularly impressed by Mr. Tusher's letter because he is a veteran in trade with Mexico. In fact, Levi Strauss sells more than 3.4 million apparel products a year in Mexico and, as he points out, 90 percent of these products are produced in the United States by 25,000 American employees.

Madam President, many of those Levi Strauss employees work in Arkansas and, I daresay, the Arkansas employees are widely known as among the most productive and efficient employees in that company and in the apparel industry.

Mr. Tusher's letter makes a strong case for NAFTA and should be reassuring to workers who have been told by misleading commercials that their jobs may be shipped to Mexico due to NAFTA. The message is that NAFTA will help, not hurt, the workers at Levi Strauss in the United States.

Madam President, I ask unanimous consent that Mr. Tusher's letter be printed in the RECORD following my statement.

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

LEVI'S,
November 12, 1993.

Hon. DAVID PRYOR,
U.S. Senate, Washington, DC.

DEAR SENATOR PRYOR: On behalf of Levi Strauss & Co., the largest apparel manufacturer in the United States, I am writing to urge your support for the North American Free Trade Agreement (NAFTA).

As a global corporation with affiliates in numerous countries, Levi Strauss & Co. employs 25,000 workers in the United States. Our affiliate in Mexico sells more than 3.4 million apparel products a year there and over 90 percent of those products are manufactured in the United States. If NAFTA fails to pass and Mexico reverts to its earlier, more protectionist practices, these exports and the U.S.-based jobs that produce them could be in jeopardy.

As a major employer and exporter in your state, we believe enactment of NAFTA will enhance economic growth.

A ratified NAFTA can:

Encourage more Levi Strauss & Co. exports by reducing the high cost of Mexican tariffs, making our American-made products more affordable in Mexico, boosting demand, and providing an edge over European and Asian competitors:

Prevent foreign apparel manufacturers from using Mexico as a platform for exports into the United States due to NAFTA's strict rules of origin that prohibit the use of non-North American denim;

Save Levi Strauss & Co. as much as $14 million in tariff reductions in 1994 alone;

Increase Levi Strauss & Co.'s flexibility to achieve long-term efficiencies in our U.S. manufacturing and North American retail outlets; and

Set an historic trade precedent by including specific environmental and labor standards—standards that Levi Strauss & Co. already practices around the world.

Our company's decision to support NAFTA is the result of careful consideration of the agreement and our commitment to responsible commercial success. Based upon our review of NAFTA's trade provisions, "side" accords on environmental and labor standards, specific protections against textile and apparel import surges, and worker retraining

assistance, we believe the North American Free Trade Agreement is in the best interest of our company and our country.

We urge you to support NAFTA's implementing legislation and provide Levi Strauss & Co. with the tools to remain competitive.

Sincerely,

THOMAS W. TUSHER,
President and Chief Operating Officer.

Mr. FEINGOLD. Madam President, I rise to oppose the North American Free-Trade Agreement.

This has been a difficult issue for me as many individuals whom I deeply respect have urged me to support this agreement. They argue that this agreement will provide many opportunities for industries, especially Wisconsin-based industries, that would not otherwise exist.

Others make the classic arguments that have been set out in every freshman economics text since Adam Smith's "Wealth of Nations" was published in our Nation's birth year of 1776. Free trade, the argue, will benefit all as each economy moves toward doing what it does best and overall economic efficiency is enhanced.

But many others have urged, passionately, that I oppose the measure. They have seen the significant migration south of many of our basic manufacturing jobs over the past 30 years, and more recently, have seen many jobs leave Wisconsin and go to Mexico. For them, NAFTA will only serve to further accelerate this migration, and any theoretical benefits that would result from free trade would do little to soften the economic blow to their livelihood.

Madam President, much of what has been said on each side of this argument has merit. Some of the statements made on each side are grossly exaggerated, and misrepresent what is likely to happen, and to that end, this debate has done a disservice to the American people.

In the end, just as everyone else in this body has done, I have had to weigh the costs and benefits of this agreement as I see them.

I would support a free-trade agreement, even one which produces some economic dislocation, if I thought the benefits outweighed the costs, and if the agreement was fundamentally balanced.

I will vote against this agreement because it fails both of those tests.

This agreement effectively creates a 51st State, with a population approaching 100 million. This State will have many of the legal protections for capital and intellectual property that exist in the other 50 states. But, it will have no effective minimum wage, there will be no real right to form a union, no real right to collectively bargain, and no real right to strike.

This 51st State will be an industrial robber baron's dream come true. It will be as if the Wagner Act of 1935 and the Fair Labor Standards Act of 1938 never happened.

For those who doubt the attitude this State has toward workers, they need only recall an incident that occurred in 1987. An automobile manufacturer in Mexico renounced its union contract, discharged 2,000 employees, and imposed a new union contract with reduced wages—a 45 percent pay cut. Workers who protested in support of dissident union leadership were shot by gunmen hired by the official, government controlled union, and 1,000 state police occupied the plant to enforce the new contract.

And this attitude is not isolated. In their 1992 review of the State Department's Report on Human Rights, the Lawyers Committee for Human Rights disclosed that there were over 400 reported cases of torture as well as other forms of institutionalized violence by security forces.

Madam President, that review also faulted the Bush State Department for attempting to minimize and hide human rights abuses in Mexico in an effort to promote the agreement we are debating today. And during this debate, others have joined in the effort to quiet those who would raise questions about the human rights record of the current regime in Mexico. My colleague from Minnesota [Mr. WELLSTONE] was criticized on the floor yesterday for daring to raise this matter in the context of a free-trade agreement.

There is no better forum to insist on specific commitments to improve human and worker rights than a free-trade agreement. That is the philosophy behind Jackson-Vanik. I believe it made a real difference in the lives of hundreds of thousands of Soviet Jews. It is the reason many of us are insisting that China improve their record before granting most favored nation status.

Instead, we are asked to believe to take on faith that enhanced trade will improve the lot of Mexican workers.

We are told that, over time, this 51st State's economy will grow, that the workers will benefit from that growth, will increase their purchases of goods from the other 50 States, which, in turn, will create more jobs. Supporters of NAFTA essentially are arguing for a policy of constructive engagement as an instrument to increase Mexican consumer income.

Madam President, allow me to express some skepticism that, given the horrendous human and worker rights record of Mexico, we will see significant growth in the disposable income of Mexican workers.

Even in an environment which is much more friendly to labor, we have seen that an increase in national productivity does not necessarily translate into an increase in disposable income. We need look no further than our own country's experience of the past 12 years, where our productivity increased while family income dropped.

To ensure that workers and consumers enjoy the fruits of their productivity takes a government policy that is affirmatively dedicated to that end—hardly the labor policies of Mexico over the past decade.

This environment of artificially low wages has already proven inviting to many American businesses, and we have lost thousands of jobs to Mexico because of it. Nothing in NAFTA promises any change to this situation.

Far from it.

The critical protections that are absent for labor, are detailed and substantial for those making capital investments, owners of intellectual property, and providers of financial services. Given the administration that negotiated the underlying agreement, this should not be surprising. It is consistent with the trickle down approach to economic growth evident for the past 12 years, a theory that has been thoroughly discredited in practice, but still has political appeal.

Madam President, this agreement isn't just about free trade. If we just wanted to eliminate all the tariffs between our countries over a few years, we could agree to eliminate tariff and non-tariff barriers over time in an agreement only two pages long.

But this agreement is so massive its almost bullet proof.

The great bulk of the agreement is taken up by the detailed protections for owners of property that I just mentioned, but not one word ensuring workers will benefit as well.

Madam President, this agreement is not balanced.

At the same time the benefits of this agreement have been exaggerated, while its costs have been diminished.

There are many instances of this distortion. Let me look at one that is close to home for me.

Proponents of this agreement have always pointed to agriculture as one of the potential big winners under NAFTA. As a native of the dairy State, such a claim has special interest for me. Proponents point to the potential market of nearly 100 million Mexicans that will be able to buy Wisconsin dairy products.

Careful examination, however, reveals a different story.

A study done at the University of Wisconsin estimates that NAFTA will, at best, increase farm revenue by one-tenth of one percent for dairy farmers. That figure is achieved only if one assumes strict and absolute enforcement of the so-called rules of origin, and further assumes that there will be no increase in Mexican exports of dairy products to the United States—both extremely unlikely events.

Madam President, a one-tenth of one percent increase in income in an industry that is purported to be one of the big winners under NAFTA, and achieved only under fairy tale conditions is a gloomy endorsement of the agreement.

While the benefits of dubious, for Wisconsin at least, the costs of all too evident. We have seen jobs, high paying manufacturing jobs, move from Wisconsin to Mexico in recent years. One company, Briggs and Stratton, has moved jobs from Wisconsin to its Juarez plant since 1988, shifting another 240 jobs there just a few weeks ago. When the move to Juarez is complete, the Briggs and Stratton plant there will actually employ more people than the plan in Glendale, WI, plant.

The reason for this move, and for the other jobs Wisconsin as lost to Mexico, is simple. The average wage for Briggs workers in the Milwaukee area is about $15 per hour, and as the head of the local union noted, Wisconsin workers just cannot compete with wages of $1 dollar an hour and the lack of health, safety, and environmental standards.

And this job loss has come without the massive protections for capital investment and intellectual property. Can anyone doubt that it will be even more attractive for some businesses to move to our new 51st State?

One national study suggests that in Wisconsin alone, there are 178,000 jobs that will be at risk because of NAFTA. Maybe that study is wrong. Maybe it is off by half, maybe only 90,000 Wisconsin jobs will be at risk because of NAFTA.

Madam President, for Wisconsin at least, the potential costs far outweigh the potential benefits.

Beyond the basic economic concerns that many have raised, there is another area that has not received a great deal of attention, but which I want to highlight—the erosion of our democratic institutions under NAFTA.

To be sure, this agreement is only part of a larger trend of sacrificing democratic institutions for so-called economic efficiency. But this agreement accelerates that process needlessly.

Under NAFTA, we are asked to replace the judgment of our people as reflected in the laws and standards set forth by their elected representives with rules written by organizations dominated by multi-national corporations.

The agreement itself is deliberately deceptive on this point. It purports to assure us that we can continue to set our own food, environmental, and safety standards. But upon closer examination, one discovers that any of our standards that do not conform to NAFTA approved standards are subject to potential challenge. In the end, NAFTA forces us to choose between our own standards and remaining as a party to the agreement.

Given the massive economic and political power lined up in favor of this agreement, it is unlikely that once implemented, we will ever withdraw from NAFTA.

We could have had an agreement that would have brought Mexican workers income up to the levels their high productivity justifies, lessening the risk of runaway plants and making them better consumers of American products. We could have had an agreement that would ensure that the benefits of free trade were equitable distributed to everyone. We could have had an agreement that established landmark environmental guidelines as a model for future-trade agreements. We could have had an agreement that would have included sufficient retaining money to minimize the dislocation that is inevitable in any free-trade agreement.

The tragedy, Madam President, is that we could have had a trade agreement that laid the groundwork for a market-based economy that would bring all of the New World into the 21st century.

This NAFTA does not do that, and I will vote against it.

Mr. ROCKEFELLER. Madam President, I will vote against the North American Free-Trade Agreement. Coming to this decision has not been an easy process. The rhetoric about NAFTA from all sides has been hot and often full of exaggeration.

In trying to sort through the arguments, my focus has been on West Virginia. For almost 30 years I have worked to bring more jobs to West Virginia and to hang on to the ones we have. This has not been an easy task. Although our unemployment rate is half what it was 10 years ago in the depths of recession, until only a few months ago it was still the highest in the country, as it has been for the past 4 years.

One of the reasons for the lack of jobs has been the lack of diversity in our economy. The fact is we are over dependent on a few large industries—chemicals, steel, coal—industries that have employed thousands of our people, but now find themselves more vulnerable than most to international competition. And, too many of our workers are at the mercy of corporate headquarters, which are generally located somewhere else.

Our people and communities feel like they are on economic thin ice. They wonder how we can take the risk of free trade with Mexico, before taking the steps to turn the ice into firm ground.

It is a risk that I have concluded we should not take right now. We should not have to risk any more jobs or lose any more plants. Instead it is time to first shore up the jobs and economy of States like West Virginia and take the steps needed to be competitive with other countries.

Consequently, I will vote against NAFTA. I believe this decision reflects the views of most West Virginians and the expectation that this Nation's No. 1 priority should be the economic security of our people.

At the same time, I want to acknowledge the hard work of the President and his team on behalf of this agreement. Ambassador Kantor, Ambassador Yerxa, and their general counsel and my friend, Ira Shapiro, have been extraordinarily diligent and thorough in trying to fashion the best agreement possible and subsequently in trying to address the detailed concerns of many of us in the Congress, including myself.

I also appreciate the President's reason for promoting NAFTA. As he says, NAFTA points us toward our inevitable future. Economic integration with Canada and Mexico is going to occur, and eventually must occur for our region to be competitive with other blocs in Asia and Europe. The economic seams between the United States, Canada, and Mexico are already disappearing, and bringing painful change to all our economies. In Canada, the United States—Canada Free-Trade Agreement has meant numerous plant closings as companies consolidate their production in the United States. Here hemispheric integration has meant the ongoing movement of jobs and investment south to Mexico, initially in the maguiladora plants and now more broadly.

While we have improved productivity dramatically, we have done it at the cost of thousands of jobs. For 12 years we have labored under an administration that encouraged companies to think that the best way to improve productivity was to lower labor costs, either by reducing the work force or paying workers less. While labor costs can be a relatively small part of a manufacturer's total costs, they are often a large part of his controllable costs. The movement of manufacturing facilities outside our borders—not just to Mexico but a host of countries—has been an important reflection of that.

Between 1987 and 1991, 5.6 million Americans became displaced workers. When surveyed last year, only 27 percent of them had full-time jobs as good or better than the ones they lost. Equally important, 35 percent of those displaced workers were in manufacturing. The output of those that remain has increased, which makes us more efficient and internationally competitive, but it is our growing inability to create new jobs for the displaced that destroyed George Bush in the 1992 election and will threaten Bill Clinton 3 years from now if he cannot solve it.

As I said, NAFTA is not responsible for this continued high unemployment and the erosion of our manufacturing base, but I have concluded that NAFTA is far more likely to accelerate those trends in the short term than it is to reverse them, and we are simply not prepared to deal with that development.

NAFTA will not do that solely because of lower wages or weaker enforcement of health, safety, or environmental laws, as some have argued. To the extent those are factors in the marketplace, they are present now. What

NAFTA brings to the table is certainty for investors and corporate planners. Certainty of policy and law in Mexico. Certainty against arbitrary actions like expropriation. And certainty of a dispute settlement mechanism that takes key issues out of the Mexican judicial system and into a bilateral process where the U.S. has a role. In other words, NAFTA represents a green light for those contemplating investment in Mexico, which will be good for the Mexicans and good for those companies and their shareholders, but it is unlikely to be good for the people of West Virginia.

As I indicated, the relatively narrow breadth of our State's economy already provides limited opportunities for growth, and it does not appear that those opportunities are likely to be found in Mexico, which has historically been one of West Virginia's minor trading partners. In 1992, only 2.6 percent of our exports went to Mexico. That puts Mexico 12th on our list of export markets.

Indeed, industries like chinaware and glassware, which are labor intensive and where the technology is stable and well known, will face serious difficulties from Mexican competition. There is little doubt about that—virtually all studies that have examined specific sectors have come to that conclusion. Steel may be in that position as well, though that is more difficult to predict.

Our biggest employer, chemicals, supports NAFTA and makes a good case it will lead to increased exports to Mexico. At the same time, it is a capital-intensive, highly mechanized industry, and it is much harder to demonstrate that the increased exports that will occur will lead to more jobs in West Virginia.

I could go on, but the pattern is the same. Some industries will lose jobs; others will gain exports, but not necessarily jobs. That is not to say there are no American winners in the NAFTA. No doubt there are—but they will be hard to find in West Virginia.

The biggest NAFTA winners will be the large companies and banks that successfully invest in Mexico. Such investment in the short run will mean increased exports there, as we ship capital equipment to Mexico to establish or expand manufacturing facilities. In the long run, it will mean more imports back into the United States.

Clyde Prestowitz of the Economic Strategy Institute suggested several weeks ago in an article in the Washington Post that one way to enhance NAFTA's prospects is for the likely beneficiaries to commit themselves to narrowing the socioeconomic gap between Mexico and the United States. Paying higher wages in Mexico, promising to reassign and retrain displaced workers here, and maintaining a company trade surplus with Mexico would not only, as Prestowitz says, "go a long way to calm the fear of losing more American's jobs," it would more rapidly erode the differences between our economies and put them on a more equal footing.

This suggests that those of us worried about the green light of NAFTA should not simply support a red light instead. Our interest is not in blocking economic integration, which, as I said, is going to occur anyway; it is in making sure that our economy is prepared for that integration so that it can go forward with minimal dislocation. A yellow light, perhaps.

An analogy that both sides in this debate have used is the accession of Portugal and Spain into the European Community, beginning in 1985. Proponents of NAFTA argue that the relatively smooth accession of two poor countries with much lower per capita incomes into the EC shows that integration between very different economies can succeed. Opponents point out, however, that the terms of accession were very different than what has been negotiated in the NAFTA. The EC resisted integration until both Spain and Portugal had removed authoritarian regimes and restored democracy and human rights; it provided for significant transfers of resources to the two new members to bring their economies more into line with the rest of the community; and it included protections for the dislocations that would occur in both the old and new members. In other words, economic integration between poor and rich partners can succeed—if the foundation is carefully prepared and the progress closely monitored.

Prestowitz' proposals are examples of what we need to do before exposing American workers to the full impact of a NAFTA. That is, timing is an important factor. We need to prepare our own economy—and our workers—for the change a NAFTA will cause before we simply allow the light to turn green.

Some of that preparation is defensive—commitments by American companies to pursue better living and working standards in Mexico, and actions by our Government to provide effective job search assistance, job retraining, and economic support while it is going on. In fact, I should note the aggressive role played by some of us on the Senate Finance Committee in pressing for the development of an effective and funded dislocated worker plan that will apply specifically to NAFTA. My objective in participating in this part of the process was very clear. If and when NAFTA causes workers in West Virginia and other States to lose their jobs, I want to see our Government have the commitment and ability to reach out quickly with support that will help them get reemployed. These are people who want to work, play by the rules, and raise their families. We need them to be productive members of the workforce.

But that is clearly not enough. The classic worker response to proposals for dislocated worker assistance is, "retraining for what?" And they have a point. If there are no jobs, retraining is not only useless, it's a fraud on the workers.

So our pre-NAFTA focus must also be on job creation, specifically high-skill, high-wage job creation. We are not good at that. Neither is anybody else, but that is small consolation to the laid-off worker. I believe that history will show we missed a golden opportunity to do something about job creation last spring when Congress rejected the President's stimulus program. Much of the debate at that time was on its short-term aspects, like more summer jobs and more police. Relatively unnoticed in the debate was the substantial package of support for critical technology research, development, and commercialization.

We have recaptured some of the R&D money, but commercialization—turning good ideas into marketable products—is where the jobs are. It is also where our competitive future must be, for it is manufacturing that generates not only jobs but profits to fund research and development of new generations of technology and products. We may lead the world in research, but ultimately if we don't make anything, we won't be inventing anything, and we won't be finding good jobs for our workers.

S. 4, the National Competitiveness Act, which I have been working hard to bring to the Senate floor, also addresses commercialization, and we need to get that bill enacted. Several weeks ago I appeared on a panel with Bo Cutter, Deputy Director of the National Economic Council, and listened to him lament the fact that both the Government and the American people seem incapable of dealing with both deficit reduction and a shift in spending priorities at the same time. That is tragically true. The private sector knows the difference between an operating budget and a capital budget for investment. We should make the same distinction and invest in areas that will produce economic growth. Instead, an opportunity was missed to refocus the Government's energy on high-wage, high-skill job creation.

That missed opportunity makes it more difficult to support NAFTA, because when the question is asked, "What are we doing about those who will lose their jobs due to NAFTA," the Government has no good answer. And make no mistake about it, there will be job losses. Most studies suggest there will also be gains, and most of the debate has been over where the gains and losses net out. The more important issue is what we do about the

losses. And, since many of those losses are likely to be in West Virginia, I cannot support NAFTA.

Finally, I would also suggest the debate over NAFTA needs to be placed in a larger context. The same forces that have opposed NAFTA will oppose the Uruguay round and any other trade liberalization initiative we take in the near future. It is too easy simply to say that this is a problem of communication. The old "if we get our story out, everyone will agree with us" approach.

In fact, what we have witnessed in the NAFTA debate is not so much a failure of communication as a failure to address the underlying concerns. Those concerns focus on what NAFTA or any other trade liberalization initiative means for jobs because of its implications for investment and production outsourcing. NAFTA will be good for our highly skilled workers in competitive industries, but it poses only additional threats for the 60 percent of our work force that does not fit that definition. It is easy for economists and journalists—who have never lost a job to a trade agreement—to argue cavalierly that our economy is changing and those low skill jobs are disappearing anyway, but that does not free us from the responsibility of dealing with the victims.

As politicians, we see the pain those changes cause and know from firsthand experience that while the jobs may disappear, the people do not. They stay—and they vote, as they should. Congress recognized this 30 years ago and struck a deal with labor that they would acquiesce in open trade policies, and the Government would provide training and income support for workers who lost their jobs as a result. That became the Trade Adjustment Assistance Program.

Today's dynamic is the same—only worse. The potential victims of our trade policy are more numerous, the job alternatives fewer, and our training programs have hardly changed at all—yet. We just heard President Clinton promise to take the next steps including the reform of worker adjustment programs.

I want to make clear that I am not making an argument against trade liberalization. I am suggesting it is time to renew and update our vows of 30 years ago. Trade liberalization inevitably takes place in a political context that perceives its consequences in much more immediate terms than our media and economic elites. We can pursue it successfully only if we are also tackling the very real losses that it causes—by preventing the losses, not just assisting the victims.

Simply put, we cannot get away with trade liberalization just because it helps the part of our population that is already doing well. We must convince our workers, their families, and their communities that it is part of a larger set of policies that addresses all of our—and their—economic needs.

The President will win this NAFTA debate, but it is only the first battle, not the war. If we are to pursue our historic, forward-looking policy of trade liberalization, then we must do a better job of showing—not simply telling—our people that our Government is committed to creating new jobs not just through trade policy but, if necessary, in spite of it.

BRADY HANDGUN VIOLENCE PREVENTION ACT

The PRESIDING OFFICER. The hour of 11 p.m. having arrived, the Senate will now resume consideration of S. 414, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 414) to amend title 18, United States Code, to require a waiting period before the purchase of a handgun.

The Senate resumed consideration of the bill.

Mr. KENNEDY. Madam President, I strongly support the Brady bill, and I urge its speedy enactment. The Senate should invoke cloture immediately and get this law on the books.

We face an epidemic of violence in this country, and it is fueled by the promiscuous availability of firearms. The statistics are shocking:

Every year, more than 24,000 Americans are killed with handguns.

Over half a million violent crimes are committed each year by individuals armed with handguns.

Every 2 minutes, a handgun causes an injury.

Over $1 billion a year is spent on medical treatment for gunshot wounds, and over $14 billion is lost each year in medical costs and lost productivity.

Behind each statistic is a human tragedy. A young child killed or maimed as a bystander in a schoolyard dispute. A mother shot dead as she drives home from work. A shopkeeper struck down in an armed robbery. Congress' failure to act in the face of this carnage is inexcusable.

Perhaps the most horrifying aspect of gun-related violence is its impact on children. Firearms are the second leading cause of death for the young, second only to automobile crashes. Every day in America, 12 children are killed with guns. In 1988, for the first time, the firearm death rate for teenagers exceeded the death rate from natural causes. And this trend has continued. In 1990, there were nearly 40 percent more deaths by firearms among 15- to 19-year-olds than from natural causes.

Firearms kill more teenagers than cancer, heart disease, and all other natural causes combined. Among young people 15 to 24 years old, one in four deaths are by firearms. The statistics among black teenage males are even more shocking; 3 out of 5 deaths in this age group—60 percent—result from a firearm injury.

A recent article in the Washington Post describes very young children in this city planning their own funerals. One 11-year-old girl named Jessica dreams of being buried in her junior prom dress. Children deserve a chance to dream about the future, not about their funerals.

Increasingly, young people are not only the victims of such violence—they are also the perpetrators. The FBI reports that the past decade has seen an unprecedented level of juvenile violence. Homicide arrest rates for teenage boys more than doubled between 1985 and 1991, and nearly 75 percent of these juvenile murder offenders used guns, primarily handguns, for their crimes.

At the heart of the problem is the ease with which teenagers and young adults can acquire handguns. The Brady bill will reduce handgun violence in two important ways.

First, it will stop thousands of illegal handgun purchases by providing law enforcement with a window of opportunity to conduct background checks on would-be purchasers. This step will help keep guns out of the hands of felons, minors, those with a history of mental illness, and others who should not possess these lethal weapons.

It will also reduce the number of shootings by providing a cooling off period for potential purchasers who are inclined to commit violent acts in the heat of the moment.

Support for responsible steps on gun control is overwhelming. Every major law enforcement organization in the country urges us to pass this bill. Eighty-five percent of the American people want this bill. At their recent crime summit, the big-city mayors asked us to pass this bill and then move on to additional gun restrictions.

The current Surgeon General, Dr. Joycelyn Elders, and her two immediate predecessors, C. Everett Koop and Antonia Novello, have each urged Americans to recognize gun violence as a critical public health issue.

It is not enough to impose tough sentences on those who commit crimes with these weapons. All of us who favor this bill also support tough punishment for violent criminals. But we know that punishment alone is not a sufficient answer to the handgun crisis. This bill can help prevent violent crime before it occurs. It will save lives and restore some measure of sanity to the debate on crime.

The tide is turning against the National Rifle Association. Assault weapons bans have prevailed in Connecticut and New Jersey. Virginia has enacted a limit of one gun a month.

California has a waiting period that is a precursor of the legislation we are debating today. In fact the worst thing

we could do is use this worthy bill as a vehicle to preempt State laws that go further to restrict access to handguns. I am pleased we adopted the Mitchell amendment to strike preemption from the bill.

I regret that the Senate rejected the Metzenbaum amendment to strike the sunset provision from the bill. There is no reason to sunset a law that will save lives.

Earlier today, the Senate passed a crime bill that restricts the manufacture, sale, and possession of assault weapons, and prohibits possession of handguns by minors. The Brady bill represents the next urgently needed step toward a rational gun policy for the Nation.

The bill before us is also a monument to the courage and perseverance of Jim and Sarah Brady. Action in this legislation is long overdue, and because of their tireless work, it may finally be taking place.

I urge my colleagues to support the cloture motion and support this bill.

Mr. DODD. Madam President, if we want to make our streets safer, we must make it harder for criminals to get guns. We took an important step in that direction by passing the Feinstein amendment to the crime bill. That measure, which restricts the manufacture, possession, and to transfer of semi-automatic assault weapons, will help keep these weapons of war out of the hands of gangs, and help ensure that our police officers are not outgunned.

But we need to do much more. That is why we must pass the Brady bill, which would give police officers 5 days to complete a background check on anybody purchasing a handgun. I am a cosponsor of this measure, and I urge my colleagues to join with me to pass this bill.

Many of us have worked for a number of years to enact this simple, but important, measure into law. By now, most of us know the horrifying statistics by heart: 24,000 Americans killed with handguns each year; someone injured by a handgun every 2 minutes; $1 billion spent treating gunshot victims each year.

The effect of this violence on our children is particularly disturbing. Too many kids are either carrying guns or living in fear of those kids who carry guns. Each day, approximately 130,000 students bring a firearm to school. How are children supposed to learn in that kind of environment? What kind of lessons do they learn from seeing a friend or family member gunned down? How are they supposed to become productive members of their society when their world is filled with so much violence?

Because the problem has become so big, and so urgent, it has been very frustrating to see this bill stalled year after year. What we are trying to accomplish is such a small step—a 5-day waiting period. The bill will not take handguns away from law-abiding hunters and collectors. It simply gives the police a chance to make sure that a handgun purchaser does not have a criminal record. Not surprisingly, every major police organization in this country supports this legislation.

In fact, many of my constituents who are gun collectors and hunters support this bill. They know what this measure can accomplish. My home State of Connecticut has had a 14-day waiting period in effect for years. Background checks of gun buyers in Connecticut have kept guns out of the hands of hundreds of unqualified purchasers. In California, which has a similar law, background checks have prevented criminals from purchasing 11,000 guns.

Earlier, we passed a $22 billion crime bill. That measure should go a long way toward making our neighborhoods safer. Let us take another step forward and pass the Brady bill.

Ms. MIKULSKI. Madam President, as an original cosponsor of the Brady bill and a longtime supporter of a handgun waiting period, I rise today to express my support for the Brady Handgun Prevention Act.

I support the Brady bill because it will make it more difficult for criminals to obtain guns. It will help protect our children. It will help protect our society, our streets and our neighborhoods.

When I visit schools in Maryland, I hear time and time again about the fear of crime. Some kids are scared to go to school. Some are scared about what happens to them on the way to school. And some are scared about what happens to them in school. How do we expect our kids to learn when they are worried about their own safety? How do we expect them to learn when we spend money on metal detectors instead of books?

We cannot tolerate what is happening on our streets. Children in our cities are hostages in their own homes. Kids in Baltimore are afraid to play jacks on their white marble steps. Neighborhood storeowners are afraid to open their doors. Moms and Dads are afraid to walk to the grocery store.

We cannot look the other way when a woman is raped at gunpoint. Or a store clerk is shot in a robbery attempt. Or a 10-year-old is killed in a drive-by shooting.

We have a chance to make it more difficult for criminals to buy guns. We have a chance to make a difference. And we owe it to the victims of violent crimes and their loved ones. Victims like Jim and Sarah Brady, whose determination helped bring this legislation to a vote.

A waiting period in the State of Maryland has made it possible for the Maryland State Police to stop over 12,000 criminals from obtaining handguns. We need to give police this tool everywhere in America.

Let us run a check on someone who wants to buy a gun. Let us keep a criminal from walking into a store, buying a gun and walking out onto our streets. Let us pass the Brady bill now.

Mr. BRADLEY. Madam President, I rise as a cosponsor to speak in support of S. 414, the so-called Brady bill. I urge my colleagues to do the same.

This bill requires that every purchase of a handgun be preceded by a 5-day waiting period during which local police can investigate the criminal background of the potential purchaser. The purpose of the bill is to give local police the opportunity to screen out felons and other high-risk individuals, as well as provide a cooling-off period designed to deter the commission of crimes of passion.

This bill also establishes a program of grants to the States for the improvement and automation of their central criminal record systems. Eventually, a system will be put in place to provide for an instant background check of all people wishing to purchase a handgun.

This bill is a modest attempt to restrict the flow of handguns to individuals who pose a high risk to the public. Yet there are some in this body who contend that it will have no positive effect. I strongly disagree. In my home State of New Jersey, a permit-to-purchase background check program has operated for 20 years. During that period, the program has stopped more than 10,000 purchases by convicted felons. How can anyone say that stopping 10,000 handgun purchases by convicted felons has not made a difference?

Although the Brady bill should not be a panacea for society's crime problems, I believe it will have a very positive effect. If used by local law enforcement, this program can reduce the number of criminals or other-wise unfit individuals who legally receive handguns. It will not, by itself, solve the problem of gun-related homicide. But, when combined with other crime control measures, it will make a very positive difference.

Mrs. BOXER. Madam President, I rise first of all to speak in support of the Brady bill that is now before us. It is not the solution to the handgun problem in America. It is only a start. But its passage is an important signal of a new attitude in our country toward gun violence.

I rise also to pay tribute to the people who are most responsible for bringing this legislation to this point—Chairman BIDEN and Senator HOWARD METZENBAUM, Congressman CHUCK SHUMER and former Congressman Ed Feighan, and most especially, to Jim and Sarah Brady.

Their courage and determination are truly inspirational.

Finally, Mr. President, I rise to express my hope that this bill will be the

first step toward enactment of more comprehensive laws to reduce gun violence in this Nation. It is a dose of common sense, that critical first step in shaking our Nation loose from the dream and myth that says each American has the right to possess any and every gun without even the hint of limitation.

Madam President, Americans justifiably take great pride in the economic quality of life in our country, compared to that in other industrialized nations.

But there is one area where the rest of the world is baffled by our poor quality of life—and that is violence, especially gun violence.

Just consider the number of people killed by handguns in other industrialized nations: In 1990, there were 22 people killed by handguns in Great Britain, 13 in Sweden, 91 in Switzerland, 87 in Japan, 10 in Australia, and 68 in Canada.

In that same year, however, handguns claimed the lives of 10,567 Americans, and in 1991, the number rose to 14,200.

Why are other nations relatively free of gun violence?

One reason could be their stricter laws. Japan, for example, denies weapons to those with no fixed address; rifle or shotgun ownership is allowed only for those who have safely possessed a hunting firearm for at least 10 years. Virtually no one other than the police may posses a handgun.

In Germany, a gun license is valid only for 3 years, and to keep that gun, the applicant must continually apply for a new license. As a result, misuse of guns in Germany accounts for only 0.3 percent of all criminal acts.

In Australia, you get your gun license from law enforcement officials, must renew the license annually, and risk confiscation of the gun if the license is not renewed.

Madam President, these facts are compelling evidence that we simply are not doing enough in this country to keep guns out of the hands of criminals. Stronger laws—like the Brady bill's 5-day waiting period and computerized criminal record check—are needed.

Waiting periods and mandatory background checks work. My State of California has had a 15-day waiting period and background check since 1975 for handguns and since 1991 for long guns.

A gun dealer who does not comply with the waiting period or sells a gun to a person he knows or suspects to be ineligible faces up to a year in jail and a $1,000 fine.

The California Department of Justice reports that from January 1991 through September 1993, California's waiting period stopped 16,420 illegal gun purchases. Just over 8,000 of these were denied to convicted murderers.

California's law is effective unfortunately, State laws are not enough. Without a national waiting period, we cannot prevent the kind of violence that occurred in San Francisco last summer.

On July 6, a gunman went across the border into Nevada, used a fake address to purchase two guns, and returned to kill eight people in an office building in downtown San Francisco.

As the distinguished chairman of the Judiciary Committee has so often said, there are some problems so vast that piecemeal solutions just will not do, State-by-State approaches just will not do.

With a national waiting period, we can begin to put a stop to the thousands of senseless deaths from handguns. The Brady bill can help us stop criminals from getting guns. It's just a first step, but it is a good and necessary one.

Madam President, the Brady bill passes the common sense test. If we want to stop criminals from getting guns, then we have to do something to make it harder for them to get the guns.

Common sense tells us that the dramatically lower gun deaths in other countries has something to do with their laws.

Common sense tells us that a 5-day waiting period and a mandatory background computer check are sensible and reasonable limitations to impose on anyone wishing to buy a dangerous weapon that has wreaked so much destruction on American society.

And common sense tells us that unless we do something now to limit the availability of handguns, our children will never again feel safe in their schools, our neighborhoods will never again be safe to walk, and out cities will never again be good places in which to live and work and raise families.

Let us pass the Brady bill today, and begin to change history.

• Ms. MOSELEY-BRAUN. Madam President, during the debate of the past 3 weeks we have heard time and time again how, throughout this country, crime and violence are causing Americans to change the way we live our daily lives. Parents refuse to let their children play outside for fear they will be the next victim of a drive-by shooting. Neighbors eye each other suspiciously as they walk down the streets, unsure who among them might be armed with a handgun. Entire cities or neighborhoods are avoided for fear of what might happen there.

During the debate on the crime bill, this body has proposed numerous solutions to make the American people once again feel safe in their homes, in their schools, and on the streets.

We have authorized money to build bigger and better prisons to punish people convicted of crimes. We have enacted stiffer penalties for those who commit acts ranging from hate crimes to arson. We have authorized rehabilitation efforts, including treatment programs for drug-addicted prisoners and boot camps for young first-time offenders.

But I submit that these efforts—as effective and as well-intentioned as they are—go only part of the way toward addressing the tremendous fear of violence that affects so many American citizens. Simply put, Madam President, neither punishment nor rehabilitation alone is enough. Unless and until we get serious about the tremendous toll that handgun violence takes on our society, no American can feel safe.

Despite what opponents of gun control would have us believe, the majority of the American people are outraged by the permissiveness of our Nation's gun laws. In many places throughout America, an individual can easily obtain an unlimited number of guns, regardless of his or her age, prior criminal convictions, or mental health.

The American people have told us loud and clear that it is time to inject some sanity—and some simple common sense—into our gun laws. We can see this triumph of common sense in the decision of the New Jersey Legislature to maintain a ban on automatic weapons, despite heavy lobbying from gun control opponents. Common sense also prevailed in Virginia, a State traditionally known for relaxed gun laws, where the legislature decided to limit gun purchases to one per month.

And common sense is also motivating the thousands of American citizens who have urged this Congress to pass the Brady bill. In fact, more than 90 percent of the American public supports the Brady bill, including 68 percent of the NRA's own members.

What do these Americans know that the U.S. Senate has, for far too many years, failed to comprehend? Perhaps the public realizes that, in the 6 years since the Brady bill was first introduced, handgun violence has resulted in 150,000 homicides. That amounts to 65 men, women, and children who lose their lives to gunfire each day.

Perhaps they realize that, if a waiting period had been in place when John Hinckley purchased the handgun he used to shoot James Brady, the pawnshop owner would have discovered that Hinckley lied about his home address—claiming to still live in Texas when he had moved to Colorado—and that Hinckley had recently been arrested for trying to carry a shotgun on an airplane, and could have prevented the sale. Or perhaps they simply realize that, in States where a waiting period is already in effect, literally thousands and thousands of criminals have been prevented from purchasing handguns. The waiting period in my home State of Illinois has already halted gun sales to nearly 3,000 people who had felony convictions or other disqualifying factors.

The time has come, Madam President, for the U.S. Senate to take a stand. We can no longer ignore the rising toll that handgun violence takes on this country. The problem of handgun violence is a national epidemic. It needs a national solution.

The Brady bill is a simple and reasonable response to the tremendous rise in handgun violence. The bill imposes a national 5-day waiting period on the sale of a handgun, and requires local law enforcement officials to conduct background checks on handgun purchasers. That is it, Madam President. The bill does not restrict the right of law-abiding citizens to purchase or own a handgun. Those individuals can purchase or own all the handguns they choose. This bill simply prevents handguns from being sold to convicted felons, the mentally ill, drug addicted, or non-U.S. citizens—nothing more and nothing less. Who in their right mind could argue with that?

But there are, of course, opponents who would like to see this important legislation defeated. These opponents argue that the Brady bill is the wrong response to the problem of gun violence, that we should concentrate instead on punishing those who commit crimes.

I agree with the opponents of this bill that criminals should be punished. That is why this Senate has voted to increase money for prisons, to impose longer sentences on a wide variety of crimes, and even to try juveniles who commit violent crimes with a firearm as adults.

But I disagree with the opponents of this bill that punishing criminals is the only way to fight crime. We cannot simply focus on locking people up, because once you need to lock someone up, you have already failed at what should be the central task of the criminal justice system: preventing crime in the first place.

I would much rather prevent a murder than give assurances to the victim's family we will lock up the person who murdered their mother or father, sister or brother, husband or wife. I would much rather prevent a crime than spend taxpayer dollars—to the tune of $75,000 per cell per year—punishing criminals. That is why I so strongly support this legislation. If we can keep a criminal from ever getting his or her hands on the weapon, we can stop the crime from occurring.

Will the Brady bill stop every convicted felon from securing a handgun? Of course not. But we can look to the results in States that have already enacted waiting periods to know just how successful these laws can be. As I stated earlier, the waiting period in my home State of Illinois has already halted gun sales to nearly 3,000 individuals. California's waiting period has prevented 16,000 gun sales since 1991, including 8,000 sales to criminals convicted of homicide or assault. New Jersey, Oregon, and Georgia, all of which have waiting periods, have had similar success.

Unfortunately, not every State has seen the wisdom of imposing a waiting period of handgun sales. Far too many States allow handguns to be sold immediately, over the counter, to anyone who has the cash, fills out a simple form and displays identification. Because there is no uniform Federal law, criminals prevented from buying a handgun in one State can simply travel to another to purchase their weapon.

If handgun violence were isolated and occurred only in Illinois, or California, State laws would be perfectly adequate to solve the problem. But handgun violence is a national crisis. From Maine to California, and every point in between, guns are killing and injuring more and more people every day. The Brady bill recognizes that we can not address the national epidemic of handgun violence with piecemeal, State-by-State legislation. It proposes a comprehensive, national solution to this increasingly national problem, the problem of easy access to handguns throughout our Nation. The Federal Government must show the necessary leadership to enact this comprehensive, national bill.

When James Brady addressed Congress earlier this year, to urge that we enact the Brady bill, he told us: "I'm not here to ask help for me, but to do it for our kids. They deserve a future. And we owe it to them to see they have one." We can not help the 150,000 people who have been murdered with handguns in the 7 years since the Brady bill was first proposed. For them, it is too late. But it is not too late to save the 150,000 people who will be murdered in the next 7 years. It is for those people that we must act today.

Madam President, as I mentioned earlier, 90 percent of all Americans support the passage of the Brady bill. The American people are watching and waiting for us to do something to curb the increasing amount of violent crime and handgun murders. Clearly, the average American has seen through the self-serving and misguided arguments raised by Brady bill opponents.

The time has come for the U.S. Senate to do the same. I urge the Senate to act quickly to enact this legislation.●

Mr. JEFFORDS. Mr. President, I am on the floor of the Senate today to support the Brady Handgun Violence Prevention Act and will cast my vote for passage of that measure. But before doing so, I wanted to take this opportunity to say a few words about why I believe this is a vote that must be cast for the benefit of the Nation.

The State of Vermont is both small in size and largely rural in character. As such, we do not have the large metropolitan centers found in many other States. We do not have the distressingly high levels of crime and gun-related violence which are coming to be the most recognized characteristics of our cities. But we do have a disturbing number of violent crimes, even in our State.

We also have guns in Vermont, Mr. President, lots of guns. Vermonters are avid hunters, shooters, sportsmen, and collectors of firearms. Many of our young people are trained early in the ways of hunting and shooting. That training includes a good measure of instruction in the safe use and handling of firearms, as well as a healthy respect for one's fellow man. Coming from this background, I am not one who believes that guns are inherently evil, or that gun owners are criminals. In fact, I am a gun owner myself.

Still, I support the Brady bill even though a large and vocal number of my fellow Vermonters are vehemently opposed to its passage for fear that their second amendment rights are being infringed. I also support the right of Vermont's hunters and sportsmen to purchase, collect and use firearms. However, I recognize that this right has to be balanced against the Government's obligation to protect public safety. I don't think these are inconsistent concepts.

I do not believe that Brady bill waiting periods should be established prior to hand gun purchases unless accurate background checks can be made. Thus, I am not here supporting waiting periods without background checks. Further, I agree with those people who maintain that the best way to achieve my objective would be through an instant check system. This is precisely what I would like to see established not only in Vermont, but throughout the Nation.

However, it is clear that a national instant check cannot be set up immediately. It will take time to upgrade the data bases and software necessary to make this system a reality. Thus, because I believe that we should act now to try to keep guns out of the hands of people who cannot legally buy them—such as convicted felons and the mentally ill. I also support the current version of Brady that imposes a 5-day waiting period with a background check as a bridge to the establishment of instant check or similar systems.

Vermont will probably be able to get its system up and running early in the game. Despite budget limitations, the State has automated its criminal names index and will soon add its criminal history files. The funds which the Brady bill will provide should make this process even easier to complete. When this happens, the waiting period provisions of the Brady bill will cease to be applicable and only the instant check will remain.

Mr. President, the debate on this issue has not changed much in the few

years since we last voted on it in the Senate. Then, as now, there are good arguments on both sides. The bill won't end crime, in Vermont or the country, and criminals will still get guns on the black market. But it will make the job of our police a little bit safer, and even if only a few lives are saved because a gun could not be bought through legal sources, I think its worth the effort.

The bill does not limit the lawful purchase of handguns. It simply provides an effective means of enforcing the current law. Some delay may result to the law abiding citizen in the purchase of a handgun, but in my view this is a small price to pay for the improved criminal identification system.

As a former attorney general of the State of Vermont, I am naturally sensitive to the interests of those on the front lines of law enforcement, our police forces. Law enforcement organizations throughout Vermont and across the Nation have given their support to the Brady bill, and I can do no less for them that to give this measure my vote.

Mr. DURENBERGER. Mr. President, I rise today in support of swift Senate passage of the Brady bill.

Throughout my years in the Senate, I have generally been skeptical of gun control legislation. I have not supported efforts to have the Federal Government ban ownership of guns. However, I have supported the Brady bill since 1991, when we crafted a reasonable compromise during debate on a crime bill.

During consideration of the crime bill that eventually died in the 102d Congress, we agreed to move toward an instant background check system to ensure that gun dealers do not sell handguns to dangerous individuals. That compromise is the version of the Brady bill that stands before us today.

We should enact this compromise.

This bill provides for a temporary national 5-day waiting period until a national, computerized background check system is phased in. The national 5-day waiting period and the instant check system are designed to enable gun sellers to learn whether a potential buyer is a felon or otherwise unqualified to purchase a handgun. The legislation provides $100 million to States to help them acquire instant check technology. Once the instant check system is operational, the Federal waiting period will disappear.

To some extent, we are forcing Federal policy on the States by requiring them to adopt an interim waiting period and an instant background check. That is because the Congress passed a law in 1968 that said that guns should be kept out of the hands of felons and other dangerous individuals. Let me point out that gun control opponents and proponents alike agree that we should prevent the sales of guns to dangerous people. The Brady bill will help us move toward that important national goal.

Some States have imposed waiting periods as a measure to prevent heat of passion crimes. My home State of Minnesota has a 7-day waiting period for citizens trying to obtain a 1-year license to purchase handguns.

I must add that I oppose any effort to use this bill to erase State waiting periods. Once the Federal waiting period disappears, we should allow State decisions to impose waiting periods to stand.

The preemption provision proposed by Senator DOLE and endorsed by the NRA would wipe out State waiting periods for 1 year after the expiration of the Federal waiting period. Proponents of State waiting periods would then be required to initiate new legislation.

I can find no compelling reason to preempt existing State waiting periods.

With the installation of instant check capacity, one of the reasons for a waiting period ends. But others remain. The burden will be, as it is today, with gun sellers and gun buyers to prove these reasons invalid. That's the way it is today. That's the way it ought to remain. I must continue to cast my vote for cloture to end a debate most of us who were there believed ended with our 1991 compromise.

Let's get to final passage. It's the will of a substantial majority. I am pleased that we are finally moving toward enactment of this consensus measure. I am especially grateful to Jim Brady and his remarkable wife Sarah for their tireless efforts to bring us to this point.

I urge my colleagues to join me in voting yes for cloture and final passage of this bill.

Mr. FORD. Madam President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the Mitchell-Dole substitute amendment to S. 414, the Brady bill:

Joe Biden, Dianne Feinstein, Christopher Dodd, George Mitchell, Harlan Mathews, Barbara Boxer, Edward M. Kennedy, Frank R. Lautenberg, Carl Levin, Howard Metzenbaum, Herb Kohl, Bill Bradley, John Glenn, Claiborne Pell, J. Lieberman, Patty Murray.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the Mitchell-Dole substitute amendment, as amended, shall be brought to a close? The yeas and nays are required. The clerk will call the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. DORGAN] is necessarily absent.

Mr. SIMPSON. I announce that the Senator from North Carolina [Mr. HELMS] is necessarily absent.

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

The result was announced—yeas 57, nays 41, as follows:

[Rollcall Vote No. 390 Leg.]

YEAS—57

Akaka	Ford	Mikulski
Baucus	Glenn	Mitchell
Biden	Gorton	Moseley-Braun
Bingaman	Graham	Moynihan
Boren	Harkin	Murray
Boxer	Hatfield	Nunn
Bradley	Inouye	Pell
Bumpers	Jeffords	Pryor
Byrd	Kassebaum	Reid
Chafee	Kennedy	Riegle
Conrad	Kerrey	Robb
Danforth	Kerry	Rockefeller
Daschle	Kohl	Roth
DeConcini	Lautenberg	Sarbanes
Dodd	Leahy	Sasser
Durenberger	Levin	Simon
Exon	Lieberman	Warner
Feingold	Mathews	Wellstone
Feinstein	Metzenbaum	Wofford

NAYS—41

Bennett	Domenici	McCain
Bond	Faircloth	McConnell
Breaux	Gramm	Murkowski
Brown	Grassley	Nickles
Bryan	Gregg	Packwood
Burns	Hatch	Pressler
Campbell	Heflin	Shelby
Coats	Hollings	Simpson
Cochran	Hutchison	Smith
Cohen	Johnston	Specter
Coverdell	Kempthorne	Stevens
Craig	Lott	Thurmond
D'Amato	Lugar	Wallop
Dole	Mack	

NOT VOTING—2

Dorgan	Helms

The PRESIDING OFFICER. On this vote, the yeas are 57, the nays are 41. Three-fifths of the Senators duly chosen and sworn, not having voted in the affirmative, the motion is rejected.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. BIDEN. Madam President, I yield to the majority leader.

The PRESIDING OFFICER. The majority leader, the Senator from Maine, is recognized.

Mr. MITCHELL. Madam President, there will be no further rollcall votes this evening. The Senate will return to session at 10:15 a.m. tomorrow to resume debate on the North American Free-Trade Agreement.

It is not possible to state at this time what time votes will occur, if any, but I can state that there will be no votes prior to noon.

However, those Senators who intend to participate in what remains of the debate on the North American Free-Trade Agreement should be here at 10:15 a.m. to participate in that discussion.

The PRESIDING OFFICER. The minority leader, the Senator from Kansas.

Mr. DOLE. Madam President, if the majority leader will yield, it is my understanding there is still some hope we will complete the work tomorrow. If that is not successful, then it could be on Wednesday.

Mr. MITCHELL. That is correct.

Madam 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. BIDEN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BIDEN. Madam President, with regard to the Brady bill, which we have been debating for the past 72 hours, I want to say that I have been asked by a number of people, including our colleagues, as well as the press, what the next step will be. The fact is I think the next step is next year.

I congratulate the opponents of the Brady bill. They required us to get 60 votes. We did not get it. We did not get it twice. So where I come from that means we lost.

So I just want to make it clear. There is no negotiation actively going on, as far as I know, at this moment. We will be back. The proponents of the Brady bill will be back next calendar year and I expect and hope we will prevail.

But, at the moment, there is no ongoing negotiation, no expectation, at least that I have, that we are likely to come back to our colleagues in the Senate and say, "By the way, we will try it another way."

So I just want to tell literally 15, 20 of our colleagues who have asked me that question, as well as the press, that that is the state of play as it stands now.

Obviously, we are always open to listen to anything. But there is no negotiation.

Mr. DOLE. Will the Senator yield?

Mr. BIDEN I am delighted to yield.

Mr. DOLE. I just want to underscore the last point: There is a willingness to listen.

Mr. BIDEN. Absolutely.

Mr. DOLE. I think there is a willingness to cooperate. We have said that many times today. There have been no negotiations today. I think that was a misunderstanding. Everybody thought that.

But there is a willingness to do so. It is still our hope that we can pass a bill here with about 99 votes.

Mr. BIDEN. If the Senator will yield, Madam President, that is a hope. But, after being involved in several years of negotiation on this, I think it is a false hope and a false expectation. But, hope springs eternal. It is an occupational requirement for this job.

So I will continue to hope and I will continue to be available to listen. And I am sure the lead sponsor of this bill, the distinguished Senator from Ohio, Senator METZENBAUM, will be. But I think it is little more than a fading hope.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Madam President, I am not very optimistic. I know that if you do not have 60 votes, you cannot cut off the debate. You may have a majority of the Senate, but you cannot go very far in this body under these circumstances.

With respect to negotiations, I do not know where to negotiate. But let me say, my door is open, my ears are open, my mind is open. I would be very happy to listen to any proposals or suggestions that the leadership on that side of the aisle are prepared to make.

But, at this moment, there is just nothing much to talk about. We did not have the 60 votes. We have a majority. I will be here at 10 o'clock tomorrow morning. If anybody has something on the plate, we are certainly willing to look at it.

MORNING BUSINESS

Mr. FORD. Madam President, I ask unanimous consent there now be a period for morning business with Senators to speak therein for up to 5 minutes.

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

TRIBUTE TO DR. BARBARA HATTON, PRESIDENT, SOUTH CAROLINA STATE UNIVERSITY

Mr. THURMOND. Mr. President, this past Saturday I had the great pleasure of bringing greetings to the inauguration ceremony of Dr. Barbara Hatton as the seventh president of South Carolina State University.

Originally established in 1896 as a land grant institution, South Carolina State University now offers more than 60 undergraduate degrees as well as graduate degrees in several fields of study. In almost a century of existence, the State university has educated thousands of South Carolinians who have distinguished themselves in all facets of society. This university plays a critical role in our State's higher education system and we are proud of the university and its graduates.

Dr. Hatton comes to South Carolina State University with an impressive wealth of experience, as both an educator and an administrator. Holding degrees from Stanford, Atlanta, and Howard Universities, Dr. Hatton has dedicated her life to education. In her long and respected career, she has worked with some of this Nation's leading colleges and universities, constantly seeking to further her own knowledge while working to provide her students the best possible education available.

Mr. President, from my days as a young teacher in rural South Carolina to the floor of the U.S. Senate, I have always championed the importance of education and I recognize that Dr. Hatton does the same. I am pleased that this outstanding woman has assumed the presidency of South Carolina State University and I am confident that she will do an admirable job in guiding it into the 21st century. Mr. President, I ask unanimous consent that a copy of the program from Dr. Hatton's inauguration be inserted into the RECORD following my remarks.

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

THE INAUGURAL CEREMONY

(Dr. James A. Boykin, Chairman, Board of Trustees of South Carolina State University, Presiding)

Organ prelude—"O Hail This Brightest Day of Days," Johann S. Bach.

"Rigadon," Andre Campra.

Academic procession—"War March of the Priests" (Athalie), Felix Mendelssohn.

Invocation, The Reverend James W. Sanders, Member, Board of Trustees.

National Anthem, Audience.

Welcome, Mr. I.S. Leevy Johnson, Member, Board of Trustees.

Music—"Lift Every Voice and Sing," arr. Roland Carter.

South Carolina State University Choir, Arthur L. Evans, Conductor.

GREETINGS

The Students, Mr. Marcus Butts, President, Student Government Association.

The faculty and staff, Dr. Jacqueline Skubal, President, The Faculty Senate.

The Alumni, Mr. Louis Buck, President, National Alumni Association.

Colleges and universities, Dr. Luns C. Richardson, President, Morris College, Sumter, South Carolina.

Learned societies, associations and foundations, Mr. Barry Gaberman, The Ford Foundation, Ms. Mary L. Bundy, The Edward W. Hazen Foundation.

Music—"You Must Have That True Religion," arr. Roland Carter.

South Carolina State University Choir.

SALUTATIONS

Commission on Higher Education, Mr. Fred Sheheen, Commissioner.

Local government, The Honorable Martin Cheatham, Mayor, City of Orangeburg.

South Carolina Legislature, The Honorable Marshall B. Williams, President Pro Tempore and The Honorable John W. Matthews, State Senator.

State of South Carolina, the Honorable Carroll Campbell, Governor.

United States Senate, The Honorable J. Strom Thurmond, Senator.

United States House of Representatives, The Honorable James E. Clyburn, Representative.

THE ACT OF INAUGURATION

Presentation of Barbara R. Hatton as seventh president of South Carolina State University, Dr. Stephen Wright, Chairman Emeritus, College Entrance Board.

Presentation of charter and seal, Mr. Charles C. Lewis, Sr., Vice Chairman, Board of Trustees.

Presentation of the medallion, Dr. M. Maceo Nance, Jr., President Emeritus.

The investiture, Dr. James A. Boykin, Chairman, Board of Trustees.

Inaugural Address, Dr. Barbara Rose Hatton, President, South Carolina State University.

Alma mater, Robert Shaw Wilkinson—T.D. Phillips.

South Carolina State University Choir

Audience

Sing the praise of Alma Mater, Let us rally to her call
Lift our voices, send them ringing, Thru the groves and classic hall.

Refrain

Hail! Hail! Dear Alma Mater, Hail! Hail! Dear S.C.C.
We'll defend and honor, Love and Cherish thee.
We are loyal sons and daughters, Proud to own the name we bear
For the truths that thou has taught us, Ready all to do and dare.

Benediction, The Reverend Sanders.

Academic recession—"Pomp and Circumstances," Elgar.

Dr. Arthur L. Evans, Director, Concern Choir/Organist.

Mr. Lamerial R. Ridges, Choir Accompanist.

RECEPTION

Following this program, President Hatton will greet members of the audience at a reception in the Kirkland W. Green Student Center.

SPEECH BY PRESIDENT GEORGE BUSH TO THE ASSOCIATION OF THE U.S. ARMY

Mr. THURMOND. Mr. President, each year, the Association of the U.S. Army presents its prestigious George C. Marshall Award to an individual who has distinguished himself through selfless and outstanding service to our Nation. This year, the AUSA presented this award to former President George Bush.

President Bush's contributions to the United States need little review in this Chamber. From the day he enlisted in the Navy at age 18, to the reasoned advice he provides today as one of the country's elder statesman, George Bush has established an enviable record of public service. It is because of his impressive experience and unique insight into world affairs that I would like to share the remarks Mr. Bush made following his acceptance of the Marshall Award last month. I found what he had to say about maintaining a strong defense to be especially poignant, given the final conference report which we in the Senate passed yesterday. I believe that we have cut our forces as deeply as we dare, and that any further reductions will adversely affect the ability of our military to protect our national security and interests. I ask unanimous consent that a copy of President Bush's speech be included in the RECORD following my remarks.

I would also like to take this opportunity to recognize Mr. Norman R. Augustine, the chairman of the Association of the U.S. Army and chairman and chief executive officer of the Martin Marrietta Corp. Mr. Augustine has considerable experience in the defense field, having served at the highest levels in both the public and private sectors, and does an admirable job in advocating the goals of his association and the U.S. Army.

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

SPEECH BY HON. GEORGE BUSH

Thank you all very much. Let me tell you how to get a medal like this. What you do is you get good people like Brent Scowcroft, over here (who made the mistake of going into the Air Force, but nevertheless), and a hand-full of others. You get a good group of chiefs and you let the Army that you count on get the job done, and that's exactly what happened.

That's why I am standing up here honored by this award, proud of course to receive an award the same night as my friend, Strom Thurmond. What a great, great man he is and how much support he gave us, and I mean the military and this President.

I want to thank everybody, pay my respects to Chaplain Zimmerman. He and I worshiped together the day Desert Storm started. I would also like to pay my respects to Secretary of the Army (Designate) West, and of course to General Gordon Sullivan, the Chief with whom I worked so closely. Also, to all the members of this Association of the U.S. Army, to the members of the Council of Trustees, members of the Army Band. (They're smart; they left before the speech.) But those guys are wonderful. And of course to my friend, Norm Augustine. I thank him for the introduction, those very kind words, and the medal presentation. And I am very pleased to be with you for this dinner.

I listened to Chaplain Zimmerman's invocation, and I was reminded of a convocation last week in Houston where Barbara and I live, where a new Bishop was ordained. And the guy introducing the Bishop was talking about all the previous Bishops, and he mentioned how proud he was to know every single one of them except Bishop Smyth who served 95 years before him. And then he continued, "After seeing the face that looked back at me in the mirror this morning, I was surprised I did not know Bishop Smyth." And so I look out here and see some of these young troops, and I know exactly how he felt, and I'm delighted to be here.

And literally, this is another true story. The other day in the barber shop in Houston, I was sitting there getting shorn and two little kids were looking around the corner and one said, "No, no, no, it's not." And the other said, "Yes, it is. I'm sure that's him. You can tell by the wrinkles." How quickly they forget—but at least the chef didn't bring on the broccoli. And Hillary, wherever you may be, they didn't bring on any peas either.

So this is only my third trip back to Washington since leaving office, and one reason is that Barbara and I are really enjoying our retirement, thank you. I can now relax and enjoy a nice relaxing hour playing eighteen holes of golf. But one thing has changed: now everybody beats me on the golf course. It's different!

A lot of you asked about Barbara, and I think we exemplify the finest in marriage tradition. We have been married almost 49 years; 49 in January. And she is like a school girl. Just two nights ago we spent the first night in a new house we built in Houston. Built on the very same lot, incidentally (I hope the press are here), where they ridiculed me saying, "An elitist like Bush would never live on a tiny lot like that." We got a neat house there. Barbara is doing the heavy lifting, and I'm up here having a good time. So everything is going fine.

I don't come to Washington much any more, as I said, but I must say I was proud and pleased to be along with many of you here (and I know Gordon Sullivan was there, and so many others) at Fort Myers the other day when one of your own, General Colin Powell, said farewell to the troops that he led so well. I believe that speech was about the finest I've ever heard.

I was also here to witness the handshake that was heard around the world, and to put in a plug the next day for NAFTA. I'll say a word about that later. And you should know, in all fairness and all decency and honor, that President Clinton and the First Lady just went out of their way to make me feel welcome. It was a little tense. Barb didn't even want to go, and she didn't. You know her; she wasn't quite ready. But I went, and I'm proud I did. Our President was extraordinarily gracious and so was his lady.

I loved it when I was here. I don't miss Washington. I don't miss the politics. I damn sure don't miss the press. I am not running for a darn thing, so I don't care what they think about that. You know, it's wonderful to be liberated at last. All I want to do is stay out of their first-strike zone. What I do miss are friends, many of them in this room tonight. I miss that wonderfully professional staff in the People's House, the White House.

Most of all, and I said this is a non-military gathering the other night, I miss most of all dealing with our Military. And that is why I am particularly pleased to be here. I am honored, I really am, by this award. The Marshall Award is both a tribute and a metaphore. It's named for a man who made a difference—not because he wished it, but because he willed it.

And your program lists the honor roll; Norm clipped them off tonight. I'm very proud that former Secretary Marsh and General Vessey, meritorious winners of this award, are here. But it was, as you can tell from the list of Marshall Medal recipients, generals, ambassadors, public servants, and three Presidents—Eisenhower, Truman and Ford. I think they were all peace makers, and I am very proud to be in their company.

The June day in 1942 that I graduated from school, Secretary of War Henry Simson gave our commencement speech. This was four days before, or maybe it was on my eighteenth birthday, and he spoke of what an American soldier should be. "The soldier," he said, "should be brave without being brutal, self-confident without boasting, being part of an irresistible might without losing faith in individual liberty." Simson was describing our sons and daughters. In effect, he also defined George Catlett Marshall—a man who loved each one of them, and who made this country proud.

A soldier/wartime chief of staff/diplomat/Nobel Peace Prize recipient, George Marshall engraved those words on America's heart and mind. Hating war—he loved freedom more. He made history move his way.

Let me just say a little about what he taught us then and now. As democracy triumphed in the eighties, some called it accidental. It was not accidental. It's just that

man like George Marshall made its victory seem providential.

General Marshall believed first in peace through strength and he showed that in World War I. It was in the spring of 1918 that, as operations officer responsbile for tactical plans, he helped General Pershing acquire artillery flame throwers; something new called "tanks" came into use.

This materiele allowed the famed First Division to prepare for a local offensive at Cantigny in France. Our troops won their first battle of the war, and it was the first-ever won by Americans fighting in Europe. Think of the names and places, and it's hard to believe it was called the War to End All Wars. Billy Mitchell, Sergeant York, Eddie Rickenbaker, Sedan, Bellau Wood, the Marne. George Marhall affected them all.

His goal was real peace. The peace of freedom over tyranny. He knew that when it comes to that national defense of the democracies, finishing second means finishing last.

A few moments ago you honored a man who knows and shows this. Some like Strom Thurmond for his politics. I most admire him for a different reason—the same reason I revere other good friends tonight. Strom always stood up, and still stands up for a strong defense. He was appalled by the thought of a hollow army. When the light show began over Bagdad in January 1991, I thanked my lucky stars for Strom and the many, many others who are here tonight, who fought to give our young men and women the very best arms in the world.

Over the years I have been privileged (some of it through my father) to know a number of such statesmen: Senator Russell, Scoop Jackson, Senator John Stennis, my dear friend, John Tower (who got brutalzied in what I think was an unfair proceeding in the United States Senate), and many others. They knew that only a strong America could be vigilant America and that only a vigilant America could help the force of law outlast the use of force.

Marshall knew that no one walks away from appeasing an aggressor. He knew that as Saint Thomas Aquinas said, "If the highest air of a Captain is to protect his ship, he would keep it in port."

So General Marshall sailed freedom's ship against the doubters and against the defeatists—teaching us a second lesson. America thrives when, in Arthur Vandenberg's words, "Politics stop at the water's edge." To this day I don't know whether George Marshall was a Democrat or a Republican. As a matter of fact, I don't know whether Colin Powell is a Democrat or Republican. I don't think it matters. What does matter is that Marshal believed in what became the outlines of the New World Order.

That world order continues to evolve and continues to change every day. It is defined by three fundamental characteristics: More democracy around the world—More economic freedom—More growth and prosperity for all.

These are all hallmarks not only of a new but of a better world—a world that depends on American leadership. I have always believed that America bears a mandate or responsibility. Now, more than ever, it is our responsibility—our destiny to lead.

That leadership takes different forms. It starts with the knowledge that nations are like individuals. You can't insult them if you hope to affect them.

You may recall at the time of the fall of the Berlin Wall, political opponents jumped all over me for my prudence, for my apparent uncaring nature. One TV personality, bless her (we see her quite a bit, I'm afraid, on the television), said to me, "Why don't you express the emotion that we, the American people, feel at this moment in history?" The Senate Leader suggested that I was wrong because I wouldn't go to Berlin and join those enthusiastic people on top of the Berlin Wall.

Well, it could have been good theater, it might have been good politics. God knows, I needed some last year. But it would have also been a total disaster. When the wall fell, our first questions were: (And Brent remembers this well.) "Would the Soviets just stand by and watch as the GDR left the fold? Would they accept a free Germany in NATO?" Our team, and it was a good and able team, knew that it wasn't time to celebrate. It was time to get to work.

Today we know from our embattled friend, Edvard Shevardnadze's account, that Mikhail Gorbachev was then in fact fighting a hard-line contingent willing to do anything to defend the Soviet sphere.

I tried to be sensitive to this—never publicly saying, "The Cold War is over," until October 3, 1990, the day Germany was reunited. Incidentally, as some of you know (I'm sure Al Haig and others know), former President Gorbachev—the architect of perestroika and glasnost—for which history, I believe, will treat him very, very kindly—still bristles when someone from the West says, "We won the Cold War." We forget the courage that he showed in moving that country, the Soviet Union, toward openness, towards reform.

Our refusal to grandstand over the Cold War, I think, bore fruit in the Gulf War. In the two months after that August second invasion, the Security Council passed eight major resolutions setting terms to solve the crisis. And if we had taunted earlier or split from Gorbachev solely to back Yeltsin at that time, Gorbachev would never have signaled to Saddam Hussein that he did not have Soviet support.

And American leadership matters. No other nation has the reach, the respect, and the resources to touch each corner of the world. Take China. After Tianamen Square, many in Congress wanted me to cut a billion people off from the rest of the world by cancelling our MFN trade provision. I felt incensed about the shortcomings in the human rights department, and we led the way on sanctions. But they wanted me to cut this off. I knew that if we cancelled trade with China, China would cancel cooperation with us.

I know for a fact that there are more individual freedoms in China today than when Barbara and I lived there just eighteen to nineteen years ago. And certainly things could be better. But the middle kingdom simply cannot be bullied, it is economic reform which has already led to dramatically more individual freedoms that will inevitably lead to more political reform.

Now if we had slammed the door to express the strong feeling we have against the outrages we saw, China would have repaid us, I am absolutely certain, by vetoing the UN Resolutions in 1990. I am not saying that would have stopped us in our tracks. I think everybody here probably agreed we did what we had to do. But China did not oppose us when Desert Storm began, and avoiding their vetoes meant avoiding a UN deadlock, and it meant a much easier way of mobilizing the entire world in support of the mission of the United States Army, the Marines, the Air Force, Navy, Coast Guard and everyone else.

Incidentally, now this is a side bar, I think Congress was dead wrong in injecting politics into the Olympics and trying to block China from getting the games. Sydney is going to do a good job. I've been there. They are athletically-oriented, and I hope the committee's decision was based on an athletic agenda and not a political agenda. More contact between China and the rest of the world means more openness and more change. Besides, we ought to keep politics the hell out of the Olympic games. So that's my view.

This brings me to a final lesson taught by General Marshall. America must remain engaged. General Marshall knew that America must not turn inward. And today, the Army's mission under the commanders that we have here, has been beautifully and superbly executed. People are saying, "Well now, we ought to pull back." And across the political spectrum, Democrat, Republican, Liberal, you hear calls for protectionism, isolationism. America first. Put us first. Here is my answer: Nowhere is that more true than in the debate now going on over the North American Free Trade Agreement. I was proud of our team that negotiated that agreement. And when we negotiated the NAFTA agreement, we knew the immediate benefits of linking Mexico, Canada and the United States into one huge market of 360 million consumers with a combined GDP of six trillion dollars. NAFTA will boost economies on both sides of the border—whether you talk exports and jobs, or new investment and less state control over goods and markets.

I believe it is vitally important to us—and to Mexico—and more than that, it's vitally important to our relationship with Latin America and the entire hemisphere. NAFTA is a big concept. It is bigger than one aspect of the debate—jobs or anything else. So I am confident it is going to mean an increase in jobs in America. It is also bigger than trade. It really has to do with how our hemisphere looks at America.

I am very proud of how our administration improved relations with Latin America—often neglected in the past. Democracy and freedom are on the rise in this precious hemisphere of ours, and NAFTA will guarantee that they stay there.

Courageous South American leaders like Carlos Menem in Argentina, or Aylwin in Chile, to say nothing of Carlos Salinas, my dear friend in Mexico, all of them are looking to say, "Is the United States going to do with us that which they did with their neighbor to the North?" It is a big concept, and we simply must go forward. They are friends. We treat people as friends. They must not be treated as second-class citizens.

I remember how, during the Gulf War (Brent will never let me forget it; in fact, he made me make the phone call I am going to refer to), when we decided not to interdict a ship that was suspected of carrying contraband up the Gulf of Iraq. Other ships had been turned around by our Navy in conjunction with the Brits and I had the assignment, thanks to General Scowcroft—courageous man that he is—and Baker and all of these guys, to call Margaret Thatcher to explain to her why we did not interdict this ship. And she listened to the argument mumbling, "Very nice, very nice," and then she said, "But now George, remember, this is no time to go wobbly." Well, America then did not go wobbly against tyranny abroad, and America now must not go wobbly against demography at home.

George Marshall knew that principles were too large to permit small-minded prejudice. Listen to how, in 1947, the then-Secretary of

State announced his plan to help Greece and Turkey. He said: "Our policy is directed, not against any country, but against hunger, poverty, desperation, and chaos." At the time, Lord Bevin, the British Foreign Secretary, said of the Marshall Plan: "This is the turning point." I recall how the London Economist said: "Marshall aid is the most straightforwardly generous thing that any country has ever done for others."

Think of 1918 and 1945 or foreign aid in General Marshall's time. Each showed a strong, bipartisan and fully engaged America. America at her most generous. America at her best. George Marshall knew there are things worth fighting for—as he showed from the Philippines to Normandy. And, yes, things worth living for—values that he learned at Virginia Military Institute. Values that don't change from one year to the next.

As I look around this room, I see those who led and shaped the greatest Army in the world, and I vowed as President that I would never send an American soldier into combat with one hand tied behind that soldier's back. I did the politics, and you all did the military part. We did the politics, and you all superbly did the fighting.

America's Army—Count on Us, you bet! Panama (I see Max Thurman here), Desert Storm, General Franks is here, and many, many others who served in the Storm. And, yes, Somalia where every kid in that original mission felt that they were doing, he or she was doing the Lord's work. They were saving those starving children, and they did it superbly. And what a job they did, and god bless each and every one of them.

And that is kind of a capstone, the way I look at how the presidency interacted with the military, and I can't say that after twelve years in the arena, eight as Vice President, four as President, that I don't miss certain things. As I mentioned to you, I miss dealing with the Military. I can say that what matters in the end, and Barb and I are just discovering this (we are kinda like newlyweds after 49 years), I can say that what matters isn't prestige or power. What matters are family, friends, and faith in God and in our Country. And like George Marshall, Barbara and I have been blessed with all, and I feel blessed being with you tonight, and deeply honored by receiving this piece of ribbon and this medal.

Thank you all and God bless you.

TRIBUTE TO MARGO STONE

Mr. DECONCINI. Mr. President, Margo Stone, a cross-categorical resource teacher at Centennial Elementary School in the Flowing Wells Unified School District in Tucson, has been chosen as the 1994 Arizona Teacher of the Year/Ambassador for Excellence. I would like to extend my congratulations as well as my appreciation for her efforts on behalf of Arizona's children.

As we all know, teachers are the backbone of our educational system. They are all-too-often unsung heroes on the frontlines of America's efforts to educate our children, to steer them away from the negative influences of drugs and gangs and to equip them and inspire them to seek a better future through education. Margo Stone exemplifies the finest of Arizona's and our Nation's teachers.

Margo Stone has been teaching special education in Arizona schools since 1983. In 1990, she came to Centennial Elementary School. Renate Krompasky, her nominating principal, is quick to extol her qualifications: "Margo is an exemplary teacher who can combine the scientific principles of teaching with human relations skills and creativity to make learning come alive for her special education students. It is amazing how confident the students become after a year of working with Margo Stone." Krompasky's support is shared by Stone's colleagues who praise her not only because of her dedication to her students, but for the assistance she provides to other teachers.

Stone believes that she brings to her classroom the confidence that her own teachers gave to her throughout her life. She no doubt passes this gift of self-confidence and drive for success on to her students.

Stone's accomplishments continue beyond the classroom into her community. She has been a block captain in a neighborhood crime-prevention program, the Centennial School's representative for the United Way Campaign, and a participant in the March of Dimes Walk America. In addition, she donates her time helping to prepare hot meals and brown bag lunches for the Salvation Army. She is also a member of the Council for Exceptional Children, the Learning Disabilities Association of America and Arizona and a delegate to the Arizona Education Association.

Margo Stone deserves to be commended for her devotion to improving the lives of our children. I ask my colleagues to join me, along with many Arizona citizens, in honoring Margo Stone for her excellence as a teacher and role model.

JAMES PHILLIP "PHIL" JONES

Mr. BOND. Mr. President, I would like to give special recognition today to Mr. James Phillip "Phil" Jones of Jefferson City, MO. On June 6, 1992, Mr. Jones broke a Taekwondo world record by breaking 74 concrete blocks in 14.53 seconds. This past month, on October 29, Mr. Jones broke another world record by breaking 152 blocks in 60 seconds, becoming the first person in the history of martial arts to go over the 150 mark for blocks broken in 60 seconds or less.

The hard work and dedication evident in Mr. Jones' feat is indeed inspiring, but what makes these events even more special is that they benefit students. From the beginning of September until October 29, American Taekwondo Association schools and clubs have contacted friends, neighbors, and family members to secure pledges on a per-brick-broken basis. The proceeds will go to the Grandmaster H.U. Lee Scholarship Foundation. Each year, the foundation grants 12 scholarships to outstanding high school seniors who hold a black belt in Taekwondo and excel in academics and leadership. Funding for the foundation is raised throughout America in similar events, and every dollar is awarded directly to a new college student.

Mr. Jones displays tremendous dedication and self discipline with his achievements in Taekwondo. By donating the proceeds of his efforts to students, he proves his compassion and dedication to his neighbors and his community.

GRANT TODD

Mr. NICKLES. Mr. President, to say Grant Todd was an outdoor enthusiast is an understatement. He loved the natural beauty of Oklahoma and worked tirelessly to preserve both its wildlife and habitat. This same devotion reflected his love for his wife and family, people and friendships, his country and his faith. On Monday, November 8, Oklahomans lost a friend when Grant and two other Oklahomans were killed approximately 2 miles south of Marlow, OK, in a small four-seat Cessna aircraft which crashed into a wooded ravine. Grant was the manager of my Oklahoma City office.

Grant was just 28 years old, and had been on my staff since 1986, leaving briefly in 1988 to work on the Presidential campaigns of Bob Dole and George Bush. He had been with my Oklahoma City office full time since 1989, and was promoted to office manager later that same year.

Grant achieved a great deal during his life. His quick rise through my office into a position of management responsibility was an indication of his talents. He was a very friendly and outgoing young man who was always easy to approach. Grant had the unique ability to relate well to almost anyone with whom he came into contact. These qualities made him one of those rare and valuable finds, the kind of individual that anyone would be proud to work with and to have as a friend. I am certainly proud of Grant and proud that he chose to serve the citizens of Oklahoma by working on my behalf with the U.S. Senate.

I was privileged to know Grant as a personal friend. Grant met his wife Lauren while working in Washington. Their relationship was based on their love for each other and their faith in God. For those closest to them, it was easy to see that Grant and Lauren were the best of friends, with a solid relationship and strong values.

Mr. President, I join Grant's family and friends in their loss, as I will miss him. The State of Oklahoma and our Nation are better places for his having lived, and share our loss. I have heard

from many people in Oklahoma and around the country who have expressed their condolences. I appreciate their kind thoughts, and Grant's family and friends appreciate their prayers as well.

I would like to add my thoughts and prayers for the other men killed in the accident, Joel K. Smith and Raymond Gene Moss II. They, too, were men of honor that served their State and Nation with distinction. May God bless Grant, Joel, and Ray as they enter eternal life and may He comfort their families and friends as we grieve their departure from us.

God gave us a gift in Grant Terry Todd. Having had the opportunity to know Grant, to work with him, to worship with him, to witness his love and devotion to his wife and family, to understand his appreciation of God's natural creations and to see the way he touched and is still touching people's lives I know the power of God's gift. It is great and it is forever.

COMPUTER ABUSE TITLE IN S. 1607

Mr. LEAHY. Mr. President, I am delighted that the Computer Abuse Amendments Act that I have worked on over the years with Senators BROWN and KOHL is part of the crime bill.

It is important to update our laws to stay abreast of rapid changes in computer technology and computer abuse techniques. In the 101st Congress, the Senate responded to the threat posed by new forms of computer abuse—destructive viruses, worms, and Trojan horses—by unanimously passing S. 2476. That bill was not considered by the House of Representatives, so I joined with Senators BROWN and KOHL in reintroducing the bill, S. 1322, in the last Congress. S. 1322 passed the Senate as an amendment to S. 1241, the Violent Crime Control Act. The provision was altered slightly in the crime conference with the House in November 1991. It passed the House in this modified form as part of the conference report to H.R. 3371, the Violent Crime Control Act of 1991.

The computer abuse amendments are the product of several years of work by the Subcommittee on Technology and the Law. In the 101st Congress, I chaired two hearings on computer abuse. This proposal has been drafted and revised on the basis of careful review of issues raised in the subcommittee's hearings, and with the benefit of consultation with computer experts. This proposal has been broadly supported by the computer industry and by computer users. At the subcommittee's hearing on July 31, 1990, Deputy Assistant Attorney General Mark Richard testified that this bill "* * * provides a useful improvement over and clarification of, the scope of existing law."

The free flow of information is vital to our competitiveness as a nation. Innovations in computer technology create new opportunities for improving the flow of information and advancing America's economic future, but they also create new opportunities for abuse by those who seek to undermine our computer systems. The maintenance of the security and integrity of computer systems has become increasingly critical to interstate and foreign commerce, communications, education, technology, and national security.

The National Research Council [NRC] published a major study, "Computers at Risk: Safe Computing in the Information Age." The study finds that we risk computer breaches that could cause economic disaster and even threaten human life. According to the NRC study, "tomorrow's terrorist may be able to do more damage with a keyboard than with a bomb." The NRC study underscores the need for immediate action to protect our computer systems.

This legislation deals with new technologies and newly discovered forms of computer abuse. An alarming number of new techniques—computer viruses, worms, and Trojan horses—can be used to enter computers secretly. Their simple names belie their insidious nature. Thousands of virus attacks have been reported and hundreds of different viruses have been identified. Computer breaches can cause economic disaster and even threaten human life.

Hidden programs can destroy or alter data. For example, a Michigan hospital reported that its patient information had been scrambled or altered by a virus that came with a vendor's image display system. Hidden programs can also hopelessly clog computer networks, as we saw with the INTERNET worm of November 1988.

Other computer incidents, using the same kinds of programs, have been inadvertent. For example, in December 1989, that Vermont State computer network froze. It was impossible to sign on to the system. Rather than a virus or sabotage, it turned out to be a security device in the form of a time bomb, built into the system's hardware to deter outside access. The manufacturer code would be triggered after a given date, locking out access through normal channels. It was a nuisance to be sure, but certainly not criminal.

The subcommittee held a hearing on May 15, 1989, to explore the threat to computers and the information stored in them posed by new forms of computer abuse. We heard testimony from FBI Director William Sessions, who stressed the seriousness of the threat posed by computer viruses and other techniques.

The subcommittee also heard testimony from Dr. Clifford Stoll, an astrophysicist at the Harvard-Smithsonian Center for Astrophysics. He testified that many researchers throughout the United States were prevented from using their computers for 2 days as a result of a worm that was introduced onto the INTERNET computer network in November 1988. While managing the computer system at the Lawrence Berkeley Laboratory, Dr. Stoll caught a West German spy using computer networks to try to gain access to military information.

As a prosecutor for more than 8 years in Vermont, I learned that the best deterrent to crime was the threat of swift apprehension, conviction, and punishment. Whether the offense is murder, drunk driving, or computer crime, we need clear laws to bring offenders to justice. Trespassing, breaking and entering, vandalism, and stealing are against the law. They have always been against the law because they are contrary to the values and principles that society holds dear. That has not changed and will not change.

In crafting these computer abuse amendments, we have been mindful of the need to balance clear punishment for destructive conduct with the need to encourage legitimate experimentation and the free flow of information. As several witnesses testified in the subcommittee's hearings, the open exchange of information is crucial to scientific development and the growth of new industries. We cannot unduly inhibit that inquisitive 13-year-old who, if left to experiment today, may tomorrow develop the telecommunications or computer technology to lead the United States into the 21st century. He or she represents our future and our best hope to remain a technologically competitive nation.

Mr. President, these amendments clarify the intent standards, the actions prohibited, and the jurisdiction of the current Computer Fraud and Abuse Act [CFAA], 18 U.S.C. Sec. 1030. Under the current statute, prosecution of computer abuse crimes must be predicated upon the violator's gaining unauthorized access to the affected Federal interest computers. However, computer abusers have developed an arsenal of new techniques which result in the replication and transmission of destructive programs or codes that inflict damage upon remote computers to which the violator never gained access in the commonly understood sense of that term. The new subsection of the CFAA created by this bill places the focus on harmful intent and resultant harm, rather than on the technical concept of computer access.

The computer abuse amendments make it a felony intentionally to cause harm to a computer or the information stored in it by transmitting a computer program or code—including destructive computer viruses—without the knowledge and authorization of the person responsible for the computer attacked. This is broader than existing law, which prohibits intentionally access[ing] a Federal interest computer

without authorization, if that causes damage.

This legislation recognizes that some computer incidents are not malicious—or even intentional—and they are treated differently. The computer abuse amendments create a parallel misdemeanor for knowingly transmitting a computer program with reckless disregard of a substantial and unjustifiable risk that the transmission will cause harm. The standard for recklessness is taken from the Model Penal Code. This provision will give prosecutors and juries greater flexibility to get convictions for destructive conduct.

The computer abuse amendments create a new, civil remedy for those harmed by violations of the CFAA. This would boost the deterrence of the statute by allowing aggrieved individuals to obtain relief.

The legislation expands the jurisdiction of the CFAA. It would cover all computers involved in interstate commerce, not just Federal interest computers, as the current law does. This is appropriate because of the interstate nature of computer networks. American society is increasingly dependent on computer networks that span State and national boundaries. The potential for abuse of computer networks knows no boundaries. The computer abuse amendments address this threat by expanding the jurisdiction of the CFAA to the full extent of the powers of Congress under the commerce clause of the U.S. Constitution, article I, section 8.

I want to thank Senators BROWN and KOHL for working with me on this legislation. Enactment of this sound and balanced legislation would help ensure that our laws keep pace with new forms of computer abuse.

VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT

Mr. HARKIN. Mr. President, 3 days ago, a drive-by shooting occurred. Dennis Dozier was driving home from his job at 3:30 in the morning, when another vehicle came up behind him, and several shots were fired. One bullet entered Mr. Dozier's head below the ear, and blew away his tonsils. The bullet passed out of Dozier's body, and thankfully, he was able to maintain control of his vehicle, and stopped at a nearby house, where the residents called the police. Dennis' mother, Mary Dozier, speculated that it was someone out for kicks.

Here in Washington, this kind of attack has become all too common. We've all heard of the carjackings, random shootings, and rocks thrown through windshields on the beltway. We have grown all too accustomed to it.

For many years, Mr. President, Iowans felt they were immune from that sort of terror. We heard of the violence and crime in the major cities, but we felt that we were safe. People in small towns in Iowa would never imagine being afraid to walk around in their neighborhoods at night. They felt that it was safe to drive down the streets. They even felt secure leaving their homes unlocked—even if they were away from home.

Sadly, for a growing number of Iowans, even in small towns, that's no longer the case. Iowans are scared of crime. A recent poll by the Des Moines Register found that just half of the women surveyed in Polk County, where Des Moines is located, feel safe walking in their neighborhoods at night. Only 4 years ago, nearly two-thirds of women in Polk County felt safe walking at night in their neighborhoods.

What happened in the meantime? A series of highly publicized crimes have shocked my State. A double murder in the Drake Diner in Des Moines during a robbery, in front of many witnesses. The abduction of a college student returning to school after her summer holiday. The murderous rampage of a graduate student at the University of Iowa, leaving four dead and one severely wounded. Perhaps the most disturbing aspect of crime today—and the reason so many Americans are worried about crime—is that it appears so random. Everyone, everywhere, is a potential victim.

Mr. President, the drive-by shooting of Dennis Dozier I mentioned at the beginning of my statement didn't happen in Washington, or Los Angeles, or New York. It happened on County Road E–36 in Hardin County, IA. E–36 runs between Clutier, IA, population 249, and Garrison, IA, population 411, where Mr. Dozier owns the Hitchin' Post restaurant, which he had just closed for the night. So the people of Iowa no longer feel safe, as they once did.

Dennis Dozier's brother, Curt, came to my office in Cedar Rapids yesterday, and dropped off a note. He wrote:

> I am writing this note to you to tell you that I am fed up with the violence that has been going on in America. Recently my brother was shot three times in a random shooting incident last saturday nite. Thankfully he is recovering real well. At least he will be able to live to talk about it. I hope you support the crime bill that is currently being mentioned in the Senate. I know it is not a complete answer but it may help. Thank you for your support along with your fellow senators.

I certainly agree with Curt's concerns.

It's time for Congress to take action—far past time. For years, the American people have waited for the filibusters and blustering about crime to end, and for the Congress to take action. In the crime bill before us, we take some important steps to that end.

What does this bill do for rural States? It provides hundreds of new police and law enforcement personnel for Iowa, thanks to the amendment by the distinguished President pro tempore. It provides funds to establish cooperative projects in rural States to address the problem of domestic violence. Rural drug enforcement is also beefed up with substantially larger authorizations to address this problem.

In 1990, I worked with a number of my rural colleagues to request a study of rural drug abuse by the GAO. The results were startling, and demonstrated that drug and alcohol abuse are a major problem in rural States. Lifetime prevalence of substance abuse by rural 18 year olds in 1988 occurred at a similar rate to urban youths, for alcohol, cigarettes, stimulants, inhalants, tranquilizers, and heroin. The arrest rates for alcohol and drug abuse per thousand residents is similar between rural States and nonrural States.

Mr. President, most of the new officers provided under this bill would come through community policing grants. I have been a long-time supporter of community policing, as an effort to improve Community/Police interactions and as one of our most effective strategies for preventing and deterring crime in our neighborhoods. I also support the Triad program, authorized under this bill, which provides for important cooperative action by local law enforcement and senior citizens groups to prevent crime against seniors.

This emphasis on community policing and crime prevention is greatly needed. I believe we need to go even further to prevent crime and its root causes. We need a balanced two-pronged approach to combating crime and returning safety to our streets.

This bill is tough on criminals. And it should be. People have to know that if they commit a crime they will pay a heavy price. I supported the three-time-loser law, providing for a mandatory life term without parole for persons convicted of three violent crimes carrying terms of 5 years or more. I also supported Senator MOSELEY-BRAUN's amendment to try juveniles as adults for certain violent Federal crimes. And I supported sentencing enhancement for hate crimes, after moving for the inclusion of disability among applicable hate crime categories.

But I don't think this bill does enough to prevent crime and its root causes. To be serious about combating crime, we have to be serious about early intervention, education, substance abuse prevention and treatment, job creation, and other efforts to defeat the hopelessness that often leads to crime.

We also have to clearly recognize that action by the Government, cannot be looked upon as a magic bullet to crime control. President Clinton gave a speech last week at the Church of God in Christ, in Memphis, where the Reverend Dr. Martin Luther King delivered his last sermon. His speech emphasized

the most important issues in addressing the root causes of crime—personal responsibility and morality. While I believe it is appropriate to try as adults 13 and 14 year olds who commit savage crimes, I think we have to shake our heads and wonder why these young people would commit these heinous crimes. President Clinton spoke of the reaction Dr. King would have if he were here today—seeing the violence rampant in our cities. I agree with the President when he says, "it is our moral duty to turn it around." And that must start with families and their communities.

One issue that troubles me about this bill is its inclusion of capital punishment. I have always opposed the death penalty. I think it is not the place of the government to decide that someone no longer should live. Perhaps the most troubling prospect is that, where there is the potential to put someone to death, there is also the possibility of a mistake being made. No matter how carefully we devise the procedures or consider the evidence, there remains a distinct possibility of the execution of an innocent person. There can be no greater injustice than for a person to be executed by the State for a crime he or she did not commit.

But on balance, I believe that the many important anticrime measures in this bill outweigh the increased use of the death penalty it would permit. So without a laundry list of the valuable provisions, let me just state my support of this bill. My support for the bill is not unreserved, and I suspect that many Senators, perhaps most of us, have provisions that we would prefer were not in this legislation. But on the whole, this is an important step forward which should have a significant impact on crime.

THE 60TH RATIFICATION OF THE LAW OF THE SEA CONVENTION

Mr. PELL. Mr. President, on Tuesday of this week an event of great significance for the United States and for the world passed relatively unnoticed. That was the deposit of the 60th instrument of ratification for the U.N. Convention on the Law of the Sea. As a result of that action, the Convention—which governs the use of 71 percent of the Earth's surface—will enter into force in 1 year's time.

I have long been a proponent of such a treaty. In 1967, I introduced the first Senate resolution calling on the President to negotiate a Law of the Sea Convention. I followed up with several additional resolutions in support of the Convention and was actively involved in congressional oversight of the negotiations, serving as delegate to the negotiations as well as chairing and participating in numerous hearings on the negotiations. In short, I think it is fair to say that I was the leading proponent of the Convention in the Senate. Incidentally, too, the Seabed Arms Control Treaty grew out of the first Law of the Sea draft treaty I introduced.

Unfortunately, as a result of shortsighted decisions taken by an earlier administration the United States may not be a party to the Convention when it enters into force. That is a bitter pill, for as the world's foremost maritime nation, the United States has vital interests in the Convention and in being an active participant in the Convention's mechanisms and processes.

The stage for this debacle was set in 1982, when the Reagan administration decided the United States would not sign the Convention because of its treatment of deep seabed mining in part XI of the Convention. While I agree that there are problems with part XI, my own view was and is that these could have been worked out by the United States as a participant in the treaty process.

Instead, the Reagan administration opted out. It decided it would accept those portions of the Convention that it liked as customary international law, and reject the provisions that it did not like. The notion that this is viable proposition will now be put to the test if the Convention enters into force without the United States as a party.

Fortunately, a resolution of U.S. concerns with part XI may be in the offering. Beginning in the summer of 1990, then-Secretary General of the United Nations Javier Perez de Cuellar initiated informal consultations to try and resolve concerns related to the Convention's treatment of deep seabed mining. These consultations had the benefit of the input from one of the United States' finest diplomats, Thomas Pickering, during his tenure as U.S. Ambassador to the United Nations. The consultative process continued by the current Secretary General, Boutros Boutros-Ghali.

It picked up steam earlier this year when the Clinton administration announced that the United States would take a more active role in the Secretary General's consultations. Instead of participating merely in a listening role, the Clinton administration decided that the United States would participate with the intent of seeking a solution to the impasse over part XI.

As I commented earlier this year in the Senate, this was a marked improvement from the Reagan and Bush years. I expect that in the years to come, the Clinton administration will receive plaudits for its decision.

These consultations are beginning to bear fruit. The August round of consultations produced a draft paper—commonly referred to as the boat paper—that marked a significant advance in efforts to resolve concerns about part XI. The paper presented useful procedural and substantive approaches for addressing these concerns.

Does the boat paper paper resolve all of the U.S. seabed mining industry's concerns about part XI? Probably not. But it is a start toward resolving the concerns expressed by the Reagan administration in 1982. And, last week it was the basis for negotiation towards an accepted part XI and a generally acceptable Law of the Sea Convention. This is all the more urgent now that the Convention will come into force in 1 year, on November 16, 1994.

Mr. President, the Law of the Sea Convention represents an important advance in the development of international law. In the long term, the articulation of a sound and just legal architecture to govern the Earth's oceans will benefit the United States. For example, the Convention establishes agreed limits on territorial seas and provides for exclusive economic zones. It formally supports important freedom of navigation rights. It contains significant rules for the protection of the marine environment. There are many other benefits.

Mr. President, we have the opportunity to repair a mistake that was made 11 years ago when the Reagan administration did not sign the LOS Convention. During the coming 12 months, it will still be possible to negotiate modifications to the Convention, and to reach agreement with the other signator nations. After the Convention enters into force, comes into force, this will be more difficult. I hope the Clinton administration will move ahead rapidly to resolve concerns with part XI so that the United States will be able to sign the Convention before it comes into force.

EMERGENCY UNEMPLOYMENT COMPENSATION LEGISLATION MUST PASS BEFORE ADJOURNMENT

Mr. PELL. Mr. President, as my colleagues will recall, the Senate passed H.R. 3167, the Unemployment Compensation Amendments of 1993 on October 28, 1993.

Unfortunately, that bill has been stalled in a conference committee since that time. Last week, the conference reached what it thought was a final bill. Regrettably, the other body rejected that proposal and sent the bill back to conference. It is my understanding that the conference has not even met since that time.

The Senate members of the conference have done a fine job representing the Senate in their efforts to produce a final bill. Unfortunately, however, this process has taken entirely too much time. While the other body spends time discussing the merits of an extraneous matter, thousands of Rhode Islanders and hundreds of thousands of other Americans are forced to wait. They wait to find out if and when their Representatives will act on their

behalf. While they wait, they plan and worry about making ends meet until we do act.

Not a single day passes without my offices in Providence and Washington receiving calls from unemployed Rhode Islanders, all wanting to know if, by chance, Congress finally passed the bill. Not only are these people trying to pay the rent and buy the groceries, but as time goes by they now want to know if a Thanksgiving dinner can be prepared and whether Christmas and Hanukkah gifts can be bought. It is impossible to explain the peculiarities of the legislative process to someone worrying about feeding their family.

Mr. President, I voted for the Gramm amendment that appears to be at the center of current debate. While the amendment does have merit, it should not, must not, kill this essential legislation. If Members of the other body feel strongly about the issues contained in the Gramm amendment, I would urge the joint leadership to provide them with a separate vote on this matter in January.

I am very concerned that in the press to go home for the year this important issue will be lost in the shadows of other more high profile matters. It would be unconscionable if we adjourn before passing and sending to President Clinton a final version of the emergency unemployment compensation legislation.

THE DEFICIT AND THE CRIME BILL

Mr. MATHEWS. Mr. President, a few moments ago, I joined the majority of our colleagues in voting in favor of the crime bill. But now that the vote is taken, I want to say I am troubled about one consequence of the bill we have just passed. Make no mistake: I endorse what this bill will achieve. The Senate has taken aggressive action to crush the criminals who terrorize our streets and to stop the flow of weapons slaughtering Americans coast to coast. I supported that bill because assuring public safety and welfare is one of the highest obligations of Government. However, there is another obligation of Government, one that all of us have been struggling with, a priority as important as crime in the minds of Americans, and a problem that likewise will haunt future generations if we don't act today. That priority and problem is the Federal deficit.

The crime bill that President Clinton and the distinguished chairman of the Judiciary Committee initially proposed was a focused and well crafted measure costing $5.9 billion. When it reached the floor, it was $12 billion. That is a sizable sum of money, but it was a reasonable sum for the task that the bill set out to achieve—provided those billions were fully and frankly funded. Unfortunately, Mr. President, they were not. The measure was merely a $12 billion addition to the Federal deficit.

Then two things happened almost simultaneously. After the November elections, we expanded the crime bill to a $22 billion package. And we decided we'd pay for it out of money we planned to save in the future. Spending money we haven't saved yet is a vexing enough idea for someone who, like me, has spent 42 years in public service as a finance man. But what was maddening is that we earlier voted to spend that very same money for deficit reduction and infrastructure. So when the crime bill came up, we not only spent money we didn't have—we spent it a second time.

Mr. President, I voted for the crime bill because I've had a bellyful of the guns and criminals who tyrannize American life. But, Mr. President, I remain deeply troubled that we have not financed this measure honestly and responsibly.

Look what we've been doing. Twenty years ago Congress spent and said the money would come from somewhere. Ten years ago Congress spent and said tomorrow's growth would pay for everything. Now we spend and say tomorrow's savings will pay for everything. Mr. President, we cannot continue—however worthy and deserving the project—to use as our financing source a bottomless bucket of smoke.

Deficit reduction has to be a fixed priority if we're going to achieve it, and we aren't making it a fixed priority. We have a priority du jour. Every time disciples for the next new priority hit the beach, we're converted. And every time we spend without real, explicit, responsible ways to pay, we magnify the deficit. Deficit reduction fades further into a vague and elusive tomorrow, where our children and grandchildren will indeed have to face it—even though we've vowed a hundred times we won't let that happen.

Nonetheless, Mr. President, I am pinning one hope on the immediate future. I am hoping that a fiscally accountable crime bill will emerge from conference accompanied by a credible financing package. Even though I won't have a seat among the conferees, I will have a voice when the bill returns here. And I will remind this chamber that the commitment we made to reduce the deficit is every bit as earnest as the commitment we made to reduce crime.

EXPLANATION OF VOTE

Mr. DANFORTH. Mr. President, I rise today to explain my vote against the motion to cut off debate on the nomination of Janet Napolitano to be the U.S. attorney for the District of Arizona. In my view, Ms. Napolitano played a key role in an incident which disqualified her from a position of public trust.

A little over 2 years ago, the Judiciary Committee took the deposition of a witness, Ms. Hoerchner, during its deliberations on the nomination of Clarence Thomas to be an Associate Justice of the Supreme Court. For some reason, the committee not only permitted Ms. Hoerchner and her attorney to attend the deposition, but also allowed Ms. Napolitano, the attorney for another witness, before the committee, to attend the deposition.

A careful reading of the transcript of the deposition of Ms. Hoerchner on October 10, 1991, reveals that, following an off-the-record conference with Ms. Napolitano and requested by Ms. Napolitano, Ms. Hoerchner modified her preceding testimony in ways to make it far less damaging to Ms. Napolitano's client and far more damaging to Justice Thomas. I believe this intervention was inappropriate.

Ms. Napolitano has refused to disclose the substance of her conversation with Ms. Hoerchner to the Judiciary Committee. She claims that the conversation is protected by attorney-client privilege, claiming that her client, Ms. Hill, and the other witness, Ms. Hoerchner, shared a common interest.

I disagree with her analysis. Ms. Napolitano has given no hint as to what that common interest might be. There was no apparent legal or economic interests Ms. Hill and Ms. Hoerchner held in common. Rather, they were supposedly disinterested witnesses in a proceeding in which neither had any apparent personal interest. Their testimony was designed solely to inform the Senate about a nominee. In my view, the two did not share a common interest, and thus her defense of attorney-client privilege should fail.

Because I believe that Ms. Napolitano was centrally involved in this unfortunate incident, I will vote against cloture on this nomination.

CONGRATULATIONS TO L. PAUL DUBE ON HIS RETIREMENT

Mr. NUNN. Mr. President, at the end of this month, the Department of Defense, and the Nation, will be losing a dedicated public servant. Mr. L. Paul Dube will retire after serving with distinction in the Department of Defense for 31 years.

Paul Dube began his career in the Department of Navy in 1962, the same year he received his degree from the University of New Hampshire. Paul spent 6 years in the Navy before moving to the Office of the Secretary of Defense in 1968. For the past 25 years, Paul Dube has served in the Office of the Comptroller, which is the primary office in the Defense Department responsible for preparing the defense budget each year.

In the Office of the Comptroller, Paul has served as Director for Military Personnel programs; as Director for Operations, with oversight of the operation

and maintenance accounts which fund training and other crucial readiness activities; as Assistant Deputy Comptroller; and, since 1988, as Deputy Comptroller for Program and Budget. Paul is a charter member of the Senior Executive Service.

As Deputy Comptroller for Program and Budget, Paul has served as the senior official assisting the Comptroller in the preparation and execution of the defense budget in a time of extraordinary change and extraordinary challenge. As the defense budget has declined in real terms each year since 1985, the Department of Defense has made significant reductions in personnel and force structure while at the same time undertaking military operations such as Operation Just Cause in Panama, Operation Restore Hope in Somalia, and Operation Desert Storm, to name just a few.

The Department has met these challenges through the dedicated efforts of people like Paul Dube. Although career civil servants like Paul Dube are for the most part unknown to the public, those of us responsible for the oversight of the Defense Department recognize the contribution Paul Dube has made to the difficult job of getting the best defense possible from our declining defense budget.

As I well know, putting together and managing the defense budget is an exceedingly complex process. Our Nation has been fortunate to have a consummate professional like Paul Dube to help carry out that task. I congratulate him for a distinguished career and, on behalf of the Armed Services Committee, I want to express our best wishes to Paul for continued success in all his endeavors.

UNITED STATES RELATIONS WITH INDONESIA

Mrs. FEINSTEIN. Mr. President, this week President Clinton will meet leaders of 12 Asian nations at the Seattle meeting of the Asia Pacific Economic Cooperation [APEC] forum. For the first time, heads of state will meet to discuss economic cooperation in the Pacific rim—the fastest-growing region of the world. Japan, South Korea, Indonesia, China, and other countries have proven that sustained growth is still possible in our global economy. I commend President Clinton for his vision in seeking a Pacific Community for economic cooperation and coordinated growth.

In my State of California, we are well aware of the benefits of trade with Asia. Almost half of California's exports go to the Asia-Pacific region—some $31 billion. But tariffs on American goods limit free access and prevent those California businesses from selling even more American products to the region. I believe it is important for President Clinton to pursue new opportunities for American exports in Asia as we try to jump-start the American and, in particular, the California economy.

Unfortunately, American economic relations with some Asian nations have sometimes been complicated by human rights concerns. Some would say that human rights are a matter of a country's internal affairs. However, I believe we are our brother's keepers. The experience of World War II was a sobering one and taught us a valuable lesson. If the world had responded sooner, perhaps the tragic genocide would not have occurred. Human rights should be a matter of concern for every nation throughout the world.

Indonesia, in particular, has been criticized for its invasion and occupation of East Timor. On December 7, 1975, Indonesia invaded East Timor, which had just received independence from its Portuguese colonizers. It is estimated that more than 100,000 East Timorese, at least one-sixth of the population, died as a result of the invasion. In addition to reported torture, arbitrary arrests, and random violence, the Indonesia Army systematically burned Timorese crops and farm villages to wreak a gruesome famine. By one report, one-half of all surviving Timorese children have irreparable brain damage as a result of malnutrition.

During all of the years of occupation, the people of East Timor have defended their right to self-determination. On November 12, 1991, 1,000 peaceful demonstrators gathered to honor a human rights leader who had been killed 2 weeks earlier. As the marchers approached his grave, Indonesian troops gunned down some 100 unarmed protestors. The event was recorded by British television and prompted an international outcry.

To its credit, the Indonesian Government responded and took positive steps on human rights following the tragic event in 1991. Officials in Jakarta condemned the massacre and arrested the military leaders responsible for the shootings. The government has also granted limited access to the International Red Cross, established a human rights committee in parliament, and allowed increased public discussion of human rights.

And more recently, the Indonesian Government reduced the sentences of more than 16,000 prisoners for good behavior. Almost 900 others received conditional releases on Indonesian Independence Day. It is now possible that Timorese political prisoner Xanana Gusmao may be released after 12 years of his life sentence.

These small steps of progress must be rewarded and encouraged by the United States. A strong historical supporter of American interests, Indonesia was a bulwark against communism in Southeast Asia during the Vietnam war. Indonesia also played a crucial role in helping locate American prisoners of war, supported the liberation of Kuwait in the Persian Gulf war, and helped negotiate the historic Cambodian peace agreement.

It would be a mistake to cut off all contact with Indonesia because we have suddenly become more aware of historical abuses. I believe this could have devastating consequences. Indonesia is a multiethnic state and is the fifth largest nation in the world. A rigid American stance on Indonesia has the potential to destabilize Indonesia and all of Southeast Asia.

In order to promote human rights in Indonesia, the United States must develop a carrot-and-stick approach. We must continue to criticize human rights abuses and take appropriate action when these abuses continue. But, we must also use caution to ensure that economic and political cooperation continues, in part to help promote improvements in human rights.

The Foreign Assistance Act of 1993 includes measures—sponsored by Senator FEINGOLD—to promote continued improvement in Indonesia's human rights record. Humanitarian programs are continued while military aid is linked to documented and sustained improvements in Indonesia's human rights record, especially in East Timor. I support these provisions and am hopeful that this approach will help improve human rights in East Timor and maintain our strong relationship with Indonesia.

In addition, I believe this approach will help promote economic cooperation between our two countries; both the Indonesian and American economies could benefit.

Mr. President, Indonesia is an important Asian ally. It is important that the United States does not completely isolate itself from Indonesia and other countries in Southeast Asia. The APEC meeting this weekend presents an opportunity to increase American engagement with all of our Asian trading partners. Increased economic cooperation will result in mutual growth and improve human rights. It is my fervent hope that a strong American commitment to APEC will promote prosperity and democracy around the entire Pacific rim.

I ask unanimous consent that articles from the New York Times and Jakarta Post that demonstrate some improvements in Indonesia's human rights record be printed in the RECORD at this time.

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

[From the New York Times, Aug. 14, 1993]

INDONESIA REDUCES SEPARATIST'S PRISON TERM

BANGKOK, THAILAND.—The East Timor separatist leader who was sentenced to life imprisonment in May has had his sentence reduced to 20 years by President Suharto, the Indonesian government announced Friday.

The separatist, Jose Alexandre Gusmao, who is known as Xanana, had been found guilty of rebellion and firearms possession after a trial in East Timor, which was a Portuguese colony until 1975.

The President's decision was "based on the consideration that Xanana has acknowledged his mistakes and has accepted East Timor's integration into Indonesia," a Government spokesman said in Jakarta.

He would not comment on speculation that President Suharto's decision had been influenced by international condemnation over the conduct of Mr. Gusmao's trial and over Indonesia's human rights record in East Timor, which was invaded by Indonesia in 1975 and annexed the next year.

The State Department confirmed this month that it had blocked the sale of four used F-5 planes to Indonesia for reasons that included "human rights concerns in Indonesia." Meeting with President Suharto in Tokyo in July, President Clinton raised concerns about conditions in East Timor.

[From the Jakarta Post, Aug. 14, 1993]

MORE THAN 16,000 INMATES GET REMISSION

JAKARTA.—A total of 16,471 inmates will get remissions in their sentences of between one and six months and 896 others will receive conditional releases on Independence Day tomorrow, the government announced Saturday.

The Director General of Correctional Institutions of the Ministry of Justice, Baharudin Lopa, said remissions are granted each year on Aug. 17 for good behavior.

For some, this will mean freedom tomorrow but Baharudin declined "for ethical reasons" to disclose whether political prisoners are among those to be released.

The number of people receiving remissions this year is slightly higher than last year's 16,325, he told reporters.

There are currently 28,202 people serving jail terms in 375 prisons across Indonesia.

Those who won conditional releases are required to report to the authorities regularly until their time has been served, he said.

Baharudin also disclosed that 110 inmates have been given work release permission.

The government would have liked to give such a chance to more inmates but there are not many companies willing to accept them, he added.

The arrangement for "reassimilation" is given to inmates who are about to complete their jail terms and those who have served at least half of their sentences.

The length of remission which an inmate is entitled to increases each time, starting with one month for the first six month of his term, rising to two months after completing his first year, three months after the second year and so on.

XANANA

According a Kompas report yesterday, a person serving a 20-year term would only spend a total of 11 years and seven months if he or she gets all sentence remissions each year.

This means that Fretilin leader Jose Alexandre Xanana Gusmao, whose life sentence was commuted to a 20-year jail term through clemency from President Soeharto last week, may be freed after less than 12 years if he shows good behavior.

This is a likely prospect given that he had been cooperative with the authorities.

Xanana, who was convicted by a court in Dili last May of heading an armed rebellion in East Timor, began his jail term in Setnarang on Friday.

The clemency was praised by Armed Forces Chief Gen. Feisal Tanjung who said on Saturday that it was a very good move. He conceded that it might be connected with Indonesia's effort to better its image in international political circles.

Foreign diplomats welcomed the action as a sign of Jakarta's sensitivity to growing criticism of its human rights policies but London-based human rights group Amnesty International remained unconvinced, saying that the clemency was designed to appease the international community.

"Amnesty International has remained seriously concerned about the health of Xanana Gusmao throughout his detention," it said in a statement reported by Reuters news agency.

In Dili, lawyer Domingos M.D. Soares said the President's decision was politically wise and legally sound.

CONCERNING THE CHIEF OF THE U.S. FOREST SERVICE

Mr. DECONCINI. Mr. President, I rise today to discuss the recent removal of the Chief of the U.S. Forest Service, Dale Robertson. I am greatly disturbed by the manner in which Chief Robertson was removed from the position he has held, honorably in my opinion, for many years. It is very dismaying that a long term career employee of Chief Robertson's stature should be so abruptly removed from his position. Chief Robertson deserved better.

I would also like to note my dismay at the rumors concerning the future of the Forest Service Chief position. Rumors are running rampant that the administration intends to appoint a replacement for Chief Robertson who is not a career Forest Service or Federal Government employee, thus politicizing the office.

Mr. President, I certainly hope that these are just rumors and the belief that the administration is moving to politicize the office of the Chief of the Forest Service is unfounded. Not only would it be bad policy, but in light of the need for sound and professional forest management in this Nation, it just doesn't make sense. The Forest Service is beginning a major movement toward ecosystem management, and it is absolutely necessary to have a Chief who has the career status and professional knowledge to effectively lead the Forest Service in developing these new policies. Natural resource management in our national forests must have the stability and expert stewardship provided by experienced career employees.

Over 70 forest supervisors felt strongly enough about this to sign a letter expressing their concern and opposition to making the Chief position a political one. I think that is a pretty definitive statement on the negative effects such a decision would have on the Forest Service.

The administrator needs to state clearly its intention regarding the future of the Chief's position and the direction it has in mind for the Forest Service. The air needs to be cleared so that these rumors can be put to rest.

I don't think this country can afford a swing in forest management policy with each change in administration. The Forest Service has an important role in balancing multiple-use of our national forests with the protection of wildlife species. Secretary Espy and President Clinton have an opportunity to make sure that the responsibilities of this agency are not subject to political whims and to ensure consistent and professional leadership for the Forest Service.

I urge the administration to proceed with care on this issue and not to ignore the protests of numerous forest supervisors and the history of leadership of the agency itself. The acting Chief, Dave Unger, is a capable and experienced career employee. There is no need to rush forward with an ill-advised notion that will set a poor precedent for the future leadership of the Forest Service.

The importance of strong leadership for the Forest Service at this particular time cannot be understated. To alter the tradition of utilizing career employees in top management jobs at the Forest Service is not in the best interest of the public or for the management of our national forests.

OLYMPIC ORDER TO SENATOR STEVENS

Mr. DOLE. Mr. President, on October 30, at a ceremony in New York, the International Olympic Committee presented Senator TED STEVENS with its highest award, the Olympic Order.

The senior Senator from Alaska is the first Member of Comgress to be given the honor, and only the 34th person ever to receive the award.

Olympic gold medalist Donna deVarona, who won gold medals in swimming in the 1964 and 1968 Olympics, and who worked with Senator STEVENS on the Amateur Sports Act and on Title IX legislation, introduced the Senator to the crowd of more than 1,000 Olympians and members of the International Olympic Committee and the U.S. Olympic Committee, who were gathered for the ceremony.

Juan Antonio Samaranch, president of the International Olympic Committee, also made brief remarks commending Senator STEVENS, prior to conferring the Olympic Order on Senator STEVENS.

I ask unanimous consent that Ms. deVarona's introduction of Senator STEVENS, and IOC President Samaranch's words as he conferred the honor, be made a part of the RECORD.

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

Donna deVarona. Thank you for changing the program to accommodate my schedule, and thank you for asking me to come and speak on behalf of Senator Stevens.

Once the Olympics touches you, they are with you forever and none of us ever want to leave.

I remember in 1972 going to Munich for ABC as a broadcaster. And I remember wanting so much, as an athlete, to give back to sport. I wanted to tell the audience how important the Olympics were and how proud I was of America.

In 1972, as you know, our Olympic Committee was a different entity than it is today. It was structured, and it could not respond to the needs of the day.

When our Olympic games were over that year, we came back to the United States and found we could not re-structure from within.

Believe it or not, we went to Washington to solve our problems.

Very risky. But we were very lucky when President Ford appointed his commission and chose Senator Stevens, a devoted advocate of sports and physical fitness.

The commission convened in 1975. It came up with recommendations to the Senate for re-structuring the Olympic Committee to make the committee more credible, more honorable.

The commission also recommended creating a checks-and-balances system to give athletes rights. The system would also give the Olympic Committee more standing in the community so that the American business community would embrace the Olympics and be proud of the Olympics.

Then, we had a change in Administration. As most of you know with commissions, a change in Administration usually means those findings are put on a shelf.

But during the Carter Administration, Senator Stevens was relentless in pursuing a legislative agenda.

He was so relentless that in 1978 the Amateur Sports Act was passed. The entity you see today was created.

At that time Senator Stevens also had the courage during the Administration-led boycott to stand alone in the Senate—when all of America was caught up in the emotional charge to boycott the Moscow Games—and say it's insane to boycott the Olympics.

He did it again in 1993 when the House asked for a joint resolution in the Senate to protest Beijing's bid for the Olympics. Senator Stevens knew that a boycott would serve no purpose in promoting the understanding and goodwill that the Olympics generate. I promise you, it didn't earn him any votes.

During the Gorbachev-Reagan summit before the Seoul Olympics, Senator Stevens asked those two leaders to pledge noninterference and support of the Seoul Games.

Senator Stevens consistently speaks for us—athletes and Americans.

And I must say, as a female athlete, he has always supported us on Title Nine.

He is one leader we can always look to. He is one leader who keeps the focus on the athlete, and he makes me proud of Washington. I would like to now introduce the honorable Senator Stevens.

Juan Antonio Samaranch: Senator Stevens, in recognition of your outstanding merit in the cause of world sports and your faithfulness to the Olympic ideal as illustrated by Pierre deCoubertin, the innovator of the Olympic Games, I have the high honor to award you the Olympic Order.

AMERICA IN DENIAL

Mr. KENNEDY. Mr. President, I want to call to the attention of my colleagues an important Washington Post article by Joe Califano, the former Secretary of Health, Education, and Welfare. Secretary Califano is currently serving as President of the Center on Addiction and Substance Abuse at Columbia University, and has made great strides in educating the American people about the costs of substance abuse and the urgent need for an integrated, comprehensive substance abuse benefit in national health care reform.

Today we passed a $22 billion crime bill, but nothing will have a more significant impact on the crime rate than providing drug treatment to everyone who needs it.

I urge my colleagues to give this thoughtful article their careful attention.

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

[From the Washington Post, Nov. 14, 1993]

AMERICA IN DENIAL

(By Joseph A. Califano, Jr.)

The scent of self-delusion perfumes the air as Washington debates its current trinity of concerns; health care reform, the crime bill and violence in America. The hot air coming from Capitol Hill and the White House on these subjects could fry an egg on a chilly sidewalk, yet it's difficult to find any discussion of the cold reality common to all three trendy topics; substance abuse and addiction involving legal and illegal drugs, alcohol and nicotine.

The health reform debate is mired in arguments over how to manipulate the financing and delivery of care to the sick, although no industrial nation has been able to provide universal access at reasonable cost solely by such tinkering. Senators spar over mandatory sentences and the death penalty for drug-related and violent crimes as they vote to build more prisons to demonstrate their machismo, although a generation of such narrowly focused "get tough" policies has failed to arrest the rise of crime in urban and rural America.

To stem violence, Congress and the administration fire their heavy artillery at movies and television and tee up a five-day waiting period before you can buy a gun legally. They profess the belief that a little infringement on the First Amendment and a touch of gun control will give urban America kinder, gentler streets, even though millions of weapons, along with drugs and alcohol, will remain readily available on most street corners.

First, health care reform. At least $140 billion of the $1 trillion Americans will spend on health care next year is attributable to substance abuse and addition. A recent Center on Addition and Substance Abuse study found that more than $7.4 billion of the $41 billion Medicaid will spend on inpatient hospital care in 1994 can be traced directly to smoking, chewing tobacco, alcohol and drug abuse—and that doesn't count the victims of violence sparked by drugs and alcohol abuse, the smokers and prescription-drug abusers whose hospital records do not reveal substance abuse, and the many individuals whose eligibility for Medicaid stems from substance abuse that precipitated their slide into poverty or disability.

A recent study from the Medical College of Wisconsin revealed that more elderly Medicare patients are hospitalized for alcohol abuse than for heart attacks. In most urban areas, at least half the hospital beds are filled by patients suffering the ravages of cancer, heart disease, AIDS, tuberculosis, accidents and violence spawned or aggravated by tobacco alcohol and drugs. On a weekend evening, it's hard to find a patient in a city emergency room whose visit isn't due to substance abuse. If we had effective efforts to stop mothers from smoking, drinking and using drugs during pregnancy, we could save billions of dollars in health care costs for them and their children.

Next, crime and violence. Drugs and alcohol are implicated in at least three-fourths of the nation's homicides, suicides, assaults, rapes and child molestations. Add to that the muggings and robberies by drug-crazed perpetrators and the vandalism and date rape by high school and college students high on beer, pot or cocaine, and it's easy to understand why our nation is drowning in a crime wave.

Eighty percent of state and local prisoners are incarcerated for drug- or alcohol-related crimes. Most federal inmates are serving time for drug offenses. Most of the homeless who make our city sidewalks smack of Calcutta are victims of alcohol and drug abuse.

How can any member of Congress or administration policy wonk believe that tinkering with the financing and delivery of sick care, more mandatory prison sentences and death penalties and less violent television shows and movies will stop this carnage? It's time to confront substance abuse and addiction for what it is: America's Public Enemy Number One. Defeat of this formidable foe requires more resources, energy and commitment to research education, prevention and treatment.

The National Institutes of Health spend more than $4 billion on cancer, cardiovascular disease and AIDS research. They spend less than 20 percent of that amount on research into the causes, cures and prevention of substance abuse and addiction, the largest single cause and exacerbator of all three of the nation's fashionable killers and cripplers.

The only sure way not to get hooked on drugs or cigarettes is not to try them. Alcohol and cigarette education can promote moderation in drinking, curb teenage binges and discourage smoking. Tough enforcement of laws against underage drinking (closing and imposing heavy fines on bars and stores that sell alcohol to minors) has an impact. Yet we spend remarkably little on health promotion and disease prevention in this area. The police, overwhelmed in their battle against violent criminals and drug dealers, have little time to get tough on liquor law enforcement.

We need to know a lot more about what treatment works for whom. Skepticism about the effectiveness of treatment led the Democratic Congress to give the Bush administration less money for treatment than it requested, and led the Clinton administration and House to reduce treatment funds by a quarter of a billion dollars earlier this year. But good treatment programs—residential and nonresidential, long-term therapeutic communities and 30-day inpatient care—have success rates that compare favorably with many cancer treatments in which we invest millions without blinking an eye. Until we provide effective treatment in our prisons, America will continue to hold the shameful distinction of caging more prisoners per capita than any other nation.

If we do not confront substance abuse and addiction candidly and aggressively, the sound and the fury that echo in the corridors

of power about the current trinity of political hot buttons, however well-international, will be just a lot of noise.

MEDICAID AND MEDICARE BENEFICIARIES IN HEALTH REFORM

Mr. DURENBERGER. Mr. President, today's "Washington Post" included an article regarding the recent approval of Tennessee's waiver application to adopt a new medical care program, known as TennCare. I request that the entire article be placed in the RECORD following my statement.

This announcement prompts me to recall the principles that my distinguished colleague and chairman of the Committee on Finance, Mr. MOYNIHAN, and I embodied in legislation we introduced last year, entitled the "Medicaid Coordinated Care Improvement Act".

The goal of our legislation was to remove the Federal barriers discouraging States from giving Medicaid clients the benefits of coordinated care. The essence of the bill was that States would no longer have to undergo the uncertain and frustrating process of seeking Federal Government waivers every time one of them wished to establish a coordinated care program for Medicaid enrollees. Millions of Americans already receive their care from health maintenance organizations and other forms of coordinated care. This is hardly a novel method of delivering health care and it shouldn't be a Federal case if a State wishes to offer it.

At the same time, our legislation included consumer safeguards that are unmatched in any health program under current law and that far exceeded the very few requirements faced by the traditional, uncoordinated, fee-for-service providers serving Medicaid clients.

Our bill would have given Medicaid clients more choice, tightened the quality assurance requirements, and specified that coordinated care organizations must work together with community health centers and other caregivers serving this population.

Mr. President, the purpose of the "Medicaid Coordinated Care Improvement Act" was to improve access, quality, and cost-effectiveness of health care for Medicaid enrollees across the Nation.

Access would improve as providers come forward—as they already have in New York, Minneapolis, Baltimore, and Philadelphia—to serve a population often ignored by fee-for-service physicians. Quality would be enhanced because of greater emphasis on preventing illness and on continuity of care. And cost-effectiveness would be improved for exactly the same reasons. It's cheaper to do it right the first time—to get that expectant mother into the doctor's office now instead of paying the big hospital bills later.

As exemplified in the efforts of Oregon and Tennessee, States are turning to innovative plans to restructure the health care programs administered at the state level as they continue to face unprecedented fiscal crises. The concept of removing federal obstacles to efficient care delivery systems is something that Republicans, Democrats, the States, the administration, caregivers, and consumers can all get behind.

As we near the close of the first session of the 103d Congress, we continue to move forward in addressing the needed reforms to this nation's health care delivery system. I am especially pleased that both sides of the aisle appear to be entertaining an idea I have long pontificated—the idea of integrating both our Medicare and Medicaid beneficiaries into any health care reform proposal.

As the Washington Post article points out, TennCare embraces some of the key elements of the Health Security Act. In addition, the "Health Equity and Access Reform Today Act of 1993" includes much of the bill Senator MOYNIHAN and I introduced as a standalone Medicaid proposal last year.

However, to date, the various health reform proposals do not change the underlying incentives in the Medicare program, which represents nearly 20 percent of all personal health expenditures. Although, the Federal Government is the primary buyer of services for the 34 million Medicare beneficiaries, Medicare would remain the largest unmanaged, open-ended fee-for-service health insurance program in the country—thereby providing contradictory incentives to efficient managed care delievey and possible undermining the ability of managed competition to succeed at cost containment.

I am continuing to work on legislation to restructure the Medicare program through the application of the managed competition principles. Specifically, my legislation will provide Medicare beneficiaries with an annual enrollment period to select from among competing health plans, employer-sponsored coverage, or the current federally administered fee-for-service program.

I hope to introduce this proposal early next year. In the interim, I urge my colleagues to seriously consider the impact of failing to incorporate the Medicare program in the context of health reform. Reform should serve to encourage quality, efficient care delivery to all consumers—regardless of the source of premium payment. I look forward to revisiting this issue in the second session of Congress.

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

[From the Washington Post, Nov. 19, 1993]

TENNESSEE'S HEALTH GAMBLE

U.S. GIVES GO-AHEAD TO PLAN AKIN TO CLINTON'S

(By Dan Morgan)

The Clinton administration yesterday gave Tennessee permission to adopt a major new medical care program for 1.5 million poor and uninsured people that includes some of the key elements of the White House health reform plan.

The program, known as TennCare, will shift nearly 1 million Medicaid recipients and as many as 500,000 uninsured people into private "managed care" plans that will compete with each other for patients in 12 regions of the state.

Health and Human Services Secretary Donna E. Shalala said approval of TennCare is "consistent with the administration's policy of encouraging states to develop alternative [health] programs."

Tennessee needed a federal "waiver" of Medicaid rules to adopt its broad experiment, because it intends to finance the program almost entirely with state and federal Medicaid funds.

The approval, after months of high-level bargaining, amounts to a major coup for Tennessee's outgoing governor, Ned McWherter (D), who made a pitch for it at a White House meeting with President Clinton on Nov. 8. McWherter has staked his political legacy on a health care plan that will end the spiraling costs of the state Medicaid program.

Federal officials cautioned yesterday that they have reserved the right to approve participating health plans to make sure they are signing up enough doctors and hospitals to serve the beneficiaries.

The administration has expressed concern throughout the negotiation process that the program is underfunded. Some Tennessee doctors have said the fees being considered under the plan are so low that they will not treat TennCare patients, but state officials said they do not believe doctors will boycott the program.

Although TennCare eventually could provide health coverage for another 500,000 Tennesseans, neither the federal nor state governments will put up more cash initially than they would if the current Medicaid system continued unchanged. State officials say benefits will be as good as or better than those now offered by Medicare.

Some health care experts say doctors and hospitals, therefore, will bear the brunt of providing the same benefits to more people at the same cost.

"There is no question that the providers are taking the hit in this plan," said Gordon Bonnyman, a health attorney at Tennessee Legal Services.

State officials said their plan is on solid financial footing. "If we can emphasize preventive care, we'll save enormous amounts of money," said state Finance Commissioner David Manning. "We have fragmented our health care for the poor. Bringing it all together in a coherent plan makes it more cost-effective."

He added that Medicaid funds previously used to subsidize hospitals caring for the uninsured now will be available to buy health policies, since fewer hospital patients will be uninsured.

"We are confident that there'll be more service, not less, particularly primary care," said Charles A. Miller, a lawyer at the Washington firm of Covington & Burling who helped draft the proposal. "The benefit package is equal to or better than Medicaid."

The Tennessee package is the most far-reaching state Medicaid reform plan to be approved since Oregon won approval in March to restrict the number of Medicaid services offered so it could expand coverage to more people. Administration officials stressed that the Tennessee proposal does not do that.

As in the Clinton reform scheme, Medicaid recipients and the uninsured will be able to choose from one of several health plans in their region on the state, each of which will guarantee them a package of benefits. Many of the health plans are expected to let patients choose from a list of participating doctors and hospitals. Others may be health maintenance organizations (HMOs).

The state, acting much like one of Clinton's proposed state "health alliances." will buy coverage for those eligible for TennCare, using state and federal funds plus small sums paid for coverage by uninsured workers.

The plan also contains provisions for limiting state and federal outlays, and for restricting the growth of the federal contribution to 8.5 percent a year.

Bruce C. Vladeck, head of the Health Care Financing Administration, acknowledged that similarities exist between the Clinton and Tennessee schemes, but cautioned against "overselling the resemblances." He noted that the Clinton plan relies heavily on employees putting up some of the money toward health coverage of the poor. But in TennCare the private health insurance system will remain largely unchanged and there will be no new contributions by employers.

This has led to concerns about the adequacy of financing.

TennCare evolved out of a state financial crisis resulting from soaring Medicaid costs. Over the last few years, the state expanded Medicaid benefits and the Medicaid rolls but now finds itself with growing demands and no new sources of funds. The federal government already pays about two-thirds of the costs.

Tennessee's lobbying on behalf of TennCare went all the way to the White House. McWherter briefed Clinton on the negotiations during a half-hour meeting earlier this month that sources said also included a lengthy discussion of the North American Free Trade Agreement.

A senior White House official said the two subjects were "not related." However, Tennessee's House delegation on Wednesday voted 9 to 0 in favor of the trade pact.

DESIGNATES MAURICE RIVER AS WILD AND SCENIC RIVER

Mr. LAUTENBERG. Madam President, I am pleased to support S. 1380, which designates the Maurice River and its tributaries as components of the national Wild and Scenic Rivers System. Senator BILL BRADLEY and I agree that this bill is the best way to protect 35 miles of pristine waterways in an important area of New Jersey.

New Jersey is the most densely populated and urbanized State in the Nation. Most people see the New Jersey that is spotted with industries—industries that keep this country strong and moving forward.

But most people do not see another part of New Jersey, the extraordinary natural resources that have, in some remarkable way, remained relatively undisturbed and untouched as they withstand increasing pressure from development. The Maurice River and its tributaries which are protected by this legislation, is one such area.

In 1987, Senator BRADLEY and I introduced legislation that authorized the National Park Service to study the suitability and feasibility of designating portions of the Maurice River and its tributaries for inclusion in the Wild and Scenic Rivers System. Through consultation with the local communities, the Park Service issued a study recommending that the Maurice River and its tributaries be included in the system.

I am pleased that this bill enacts this recommendation, while respecting the rights of individual property owners and recognizing the preferences of local governments.

Twenty-five years ago, in the Wild and Scenic Rivers Act, we recognized the need to protect certain free-flowing rivers with remarkable natural, cultural, scenic and recreational features. We decided that river systems meeting certain criteria should be designated as components of this national system and be managed cooperatively by the communities, the local and State governments and the Federal Government.

In this vein, the act recognizes that communities are the largest stakeholders in this process; that those whose lives and leisure are tied to the river must be included as integral players in the management of the river. The management plan must reflect the needs and concerns of the community. This bill does just that.

The bill ensures sound management and local participation by requiring cooperative agreements to protect the river system in ways which are consistent with local river management plans. These local plans will be developed by the communities based on input from the residents, businesses and officials. The Department of the Interior will offer planning assistance to the local communities at their request.

The Maurice River and its tributaries are one of New Jersey's true treasures. It functions as the critical link between the Pinelands National Reserve and the Delaware Estuary ecosystems, and is an important habitat for many varieties of birds, wildlife and plants. The river system has been the focal point of the area's economy, culture, history and recreation.

Each time I visit this area, I am humbled by its beauty. A few years ago, while travelling down the river, a bald eagle flew just above me. Last week, my first grandchild was born. Now I feel an even more profound obligation to ensure that future generations can have that kind of experience. This bill, then, is more than an attempt to preserve the past; it is a promise that we will enrich the future.

I would like to thank Senator BRADLEY and Congressman BILL HUGHES for their diligence in crafting this bill to everybody's satisfaction. Citizens United to Protect the Maurice River and Its Tributaries has worked tirelessly to make this bill a reality. The Cumberland County Board of Chosen Freeholders represents the commitment of local government to build consensus and support for this effort. Finally, the National Park Service was invaluable in this process and I offer my thanks to them.

With this in mind, I urge all my colleagues in the Senate to join Senator BRADLEY and me in support of this bill that provides for protection and sound management of the Maurice River and its tributaries, a critical New Jersey resource.

TRIBUTE TO JERGEN NASH

Mr. DURENBERGER. As 1993 comes to an end, I would like to take a moment to remember one of Minnesota's great Scandinavians who dominated the airwaves for more than a quarter of a century. For many years, as sure as the day would begin, Jergen Nash would wake his listeners with the first daytime newscast for WCCO–AM Radio. And, just as night would fall, he would relax listeners at 9:30 with an array of light musical classics. Later, he became the primary newscaster from 8:00 to 5:00.

Jergen was one of the great radio announcers who helped to make WCCO–AM Radio the institution it is in the Upper Midwest. Radio audiences were drawn to this worldly Scandinavian who developed a reputation for acting like an Englishman. Jergen was known to be the most down-to-earth man broadcasting from Minneapolis and St. Paul into Minnesota, Wisconsin, Iowa, and the Dakotas. From the station's daily "Good Morning Stop" to his lively banter, Jergen rose to the top of the radio industry with his humor and creativity. Early in his career, Nash was named the winner of the American Federation of Television and Radio Artists award as the best radio announcer in the Twin Cities.

He explained the key to his own success when he described his outlook on providing daily news and entertainment for hundreds of thousands of listeners. He said that he just tries to "be a guest in someone's home every time I open the microphone—I guess that is why I enjoy radio so much. You can be an intimate guest—one radio man visiting one person at a time." Then he modestly adds, "At least that's what they write me and that's the easiest way for me to entertain and inform my friends."

The most endearing part of Jergen was how he shared anecdotes of his family life with the audience. During World War II while he was stationed in

England, he met his wife Mary Kathleen McMahon of Shoneyburn, Scotland, which explains how this Minnesotan acquired his British tastes. Mary and Jergen were married in 1944, and soon after began to raise a family with children Michael, Susan and Kathleen. Later, he became a grandparent.

Nash's Siamese cat, Tango, became a Northwest celebrity. That is because Jergen made a brief off-hand comment one noon about his sick cat. Good news for Tango and the Nash family came from all over the territory. WCCO listeners offered medical advice, sympathy, postcards, get-well cards, catnip, and even a get-well letter from a cat 200 miles away. Even the front yard elm tree became a matter of some concern across the five States. Jergen always reported its first buds, its first Robin, its new shoots of summer and its first fall colors.

In 1980 after 27 years at WCCO Radio, Jergen retired. But he could not completely leave one of his many passions in life. Until just before his death this year, he continued to grace "'CCO-Land" every Sunday morning with a show called "Life's Passing Parade."

Throughout his life—and certainly over the airwaves—Jergen Nash was a good neighbor. His commentary will be missed, but he left a legacy that will be carried on over the airwaves of WCCO Radio.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, 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.)

REPORT ON AN AGREEMENT WITH THE RUSSIAN FEDERATION RELATIVE TO THE AGREEMENT ON MUTUAL FISHERIES RELATIONS—MESSAGE FROM THE PRESIDENT—PM 72

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; referred jointly, pursuant to 16 U.S.C. 1823(b), Public Law 94–265, to the Committee on Commerce, Science, and Transportation, and to the Committee on Foreign Relations.

To the Congress of the United States:

In accordance with the Magnuson Fishery Conservation and Management Act of 1976 (Public Law 94–265; 16 U.S.C. 1801 *et seq.*), I transmit herewith an Agreement Between the Government of the United States of America and the Government of the Russian Federation Amending and Extending the Agreement on Mutual Fisheries Relations of May 31, 1988. The agreement, which was effected by an exchange of notes at Washington on March 11 and September 15, 1993, extends the 1988 agreement through December 31, 1998. This agreement also amends the 1988 agreement by simplifying the provisions relating to the issuance of licenses by each Party to vessels of the other Party that wish to conduct operations in its 200-mile zone and by adding the requirement that the Parties exchange data relating to such fishing operations. The exchange of notes together with the present agreement constitute a governing international fishery agreement within the meaning of section 201(c) of the Act.

The agreement provides opportunities for nationals and vessels from each country to continue to conduct fisheries activities on a reciprocal basis in the other country's waters. The agreement also continues a framework for cooperation between the two countries on other fisheries issues of mutual concern. Since the 1988 agreement expired October 28, 1993, and U.S. fishermen are conducting operations in Russian waters, I strongly recommend that the Congress consider issuance of a joint resolution to bring this agreement into force at an early date.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *November 19, 1993.*

DEFERRALS OF BUDGET AUTHORITY—MESSAGE FROM THE PRESIDENT—PM 73

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Appropriations, the Committee on the Budget, the Committee on Foreign Relations, and the Committee on Environment and Public Works:

To the Congress of the United States:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report four new and two revised deferrals of budget authority, totaling $7.8 billion.

These deferrals affect International Security Assistance programs as well as programs of the Agency for International Development, the Department of State, and the General Services Administration. The details of these deferrals are contained in the attached report.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *November 19, 1993.*

MESSAGES FROM THE HOUSE

At 12:48 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 796. An act to amend title 18, United States Code, to assure freedom of access to reproductive services;

H.R. 3225. An act to support the transition to nonracial democracy in South Africa;

H.R. 3471. An act to authorize the leasing of naval vessels to certain foreign countries; and

H.J. Res. 159. Joint resolution to designate the month of November in 1993 and 1994 as "National Hospice Month."

The message also announced that the House has passed the following bill and joint resolutions, each without amendment:

S. 1667. An act to extend authorities under the Middle East Peace Facilitation Act of 1993 by six months;

S.J. Res. 55. Joint resolution to designate the periods commencing on November 28, 1993, and ending on December 4, 1993, and commencing on November 27, 1994, and ending on December 3, 1994, as "National Home Care Week";

S.J. Res. 75. Joint resolution designating January 2, 1994, through January 8, 1994, as "National Law Enforcement Training Week"; and

S.J. Res. 122. Joint resolution designating December 1993 as "National Drunk and Drugged Driving Prevention Month."

At 6:46 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill and joint resolution, in which it requests the concurrence of the Senate:

H.R. 3514. An act to clarify the regulatory oversight exercised by the Rural Electrification Administration with respect to certain electric borrowers; and

H.J. Res. 294. Joint resolution to express appreciation to W. Graham Claytor, Jr., for a lifetime of dedicated and inspired service to the Nation.

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 amendment of the Senate to the bill (H.R. 1268) to assist the development of tribal judicial systems, and for other purposes.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 2632) to authorize appropriations for the Patent and Trademark Office in the Department of Commerce for fiscal year 1994.

MEASURE READ THE FIRST TIME

The following measure was read the first time:

H.R. 1025. An act to provide for a waiting period before the purchase of a handgun, and for the establishment of a national instant criminal background check system to be

contacted by firearms dealers before the transfer of any firearm.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–1764. A communication from the Assistant Attorney General (Office of Legislative Affairs), Department of Justice, transmitting, pursuant to law, the annual report on the Asset Forfeiture Program for fiscal year 1992; to the Committee on the Judiciary.

EC–1765. A communication from the Assistant Attorney General (Office of Legislative Affairs), Department of Justice, transmitting, pursuant to law, a report on the extent and effects of domestic and international terrorism on animal enterprises; to the Committee on the Judiciary.

EC–1766. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10-141 adopted by the Council on October 5, 1993; to the Committee on Governmental Affairs.

EC–1767. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10-142 adopted by the Council on November 2, 1993; to the Committee on Governmental Affairs.

EC–1768. A communication from the Office of the District of Columbia Auditor, transmitting, pursuant to law, a report entitled "Lawrence Street Lease"; to the Committee on Governmental Affairs.

EC–1769. A communication from the Office of the District of Columbia Auditor, transmitting, pursuant to law, a report entitled "Contracting Out For Prison Cell Space"; to the Committee on Governmental Affairs.

EC–1770. A communication from the Acting Comptroller General of the United States, transmitting, pursuant to law, a report of a review of the White House travel office; to the Committee on Governmental Affairs.

EC–1771. A communication from the Director of Employee Benefits, Farm Credit Bank of Baltimore, transmitting, pursuant to law, report of the plan for calendar year 1992; to the Committee on Governmental Affairs.

EC–1772. A communication from the Chairman of the Federal Maritime Commission, transmitting, pursuant to law, the semi-annual report of the Office of the Inspector General for the period April 1, 1993 through September 30, 1993; to the Committee on Governmental Affairs.

EC–1773. A communication from the Chairman of the International Trade Commission, transmitting, pursuant to law, the semi-annual report of the Office of the Inspector General for the period April 1, 1993 through September 30, 1993; to the Committee on Governmental Affairs.

EC–1774. A communication from the Secretary of Education, transmitting, pursuant to law, notice of final funding priority—Rehabilitation Short-Term Training; to the Committee on Labor and Human Resources.

EC–1775. A communication from the Secretary of Education, transmitting, pursuant to law, notice of final funding priority—Rehabilitation Engineering Research Center for Accessibility and Universal Design in Housing; to the Committee on Labor and Human Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. INOUYE, from the Committee on Indian Affairs, with an amendment:

S. 1654. A bill to make certain technical corrections (Rept. No. 103–191).

By Mr. LEAHY, from the Committee on Agriculture, Nutrition, and Forestry, with an amendment in the nature of a substitute and an amendment to the title:

S. 1288. A bill to provide for the coordination and implementation of a national aquaculture policy for the private sector by the Secretary of Agriculture, to establish an aquaculture commercialization research program, and for other purposes (Rept. No. 103–192).

By Mr. INOUYE, from the Committee on Indian Affairs, without amendment:

S. 282. A bill to provide Federal recognition of the Mowa Band of Choctaw Indians of Alabama (Rept. No. 103–193).

By Mr. INOUYE, from the Committee on Indian Affairs, with an amendment in the nature of a substitute and an amendment to the title:

S. 1345. A bill to provide land-grant status for tribally controlled community colleges, tribally controlled postsecondary vocational institutions, the Institute of American Indian and Alaska Native Culture and Arts Development, Southwest Indian Polytechnic Institute, and Haskell Indian Junior College, and for other purposes (Rept. No. 103–194).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 680. A bill to provide for toy safety, and for other purposes (Rept. No. 103–195).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with amendments:

S. 1432. A bill to amend the Merchant Marine Act, 1936, to establish a National Commission to Ensure a Strong and Competitive United States Maritime Industry (Rept. No. 103–196).

By Mr. LEAHY, from the Committee on Agriculture, Nutrition, and Forestry, with an amendment in the nature of a substitute:

S. 717. A bill to amend the Egg Research and Consumer Information Act to modify the provisions governing the rate of assessment, to expand the exemption of egg producers from such Act, and for other purposes.

S. 994. A bill to authorize the establishment of a fresh cut flowers and fresh cut greens promotion and consumer information program for the benefit of the floricultural industry and other persons, and for other purposes.

By Mr. GLENN, from the Committee on Governmental Affairs, with an amendment:

S. 1070. A bill to provide that certain politically appointed Federal officers may not receive cash awards for a certain period during a Presidential election year, to prohibit cash awards to Executive Schedule officers, and for other purposes.

By Mr. KENNEDY, from the Committee on Labor and Human Resources, without amendment:

S. 1523. A bill to reauthorize certain programs under the Stewart B. McKinney Homeless Assistance Act, and for other purposes.

By Mr. MOYNIHAN, from the Committee on Finance, without amendment:

S. 1560. A bill to establish the Social Security Administration as an independent agency, and for other purposes.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. MOYNIHAN, from the Committee on Finance:

Olivia A. Golden, of the District of Columbia, to be Commissioner on Children, Youth, and Families, Department of Health and Human Services.

(The above nomination was reported with the recommendation that she be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. ROCKEFELLER, from the Committee on Veterans' Affairs:

Preston M. Taylor, Jr., of New Jersey, to be Assistant Secretary of Labor for Veterans' Employment and Training.

(The above nomination was reported with the recommendation that he be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources:

Christine Ervin, of Oregon, to be an Assistant Secretary of Energy (Energy Efficiency and Renewable Energy).

(The above nomination was reported with the recommendation that she be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. PELL, from the Committee on Foreign Relations:

Treaty Doc. 103–4. Protocol to the International Convention for the Conservation of Atlantic Tunas (Exec. Rept. 103–24).

Treaty Doc. 103–9. Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer (Exec. Rept. 103–25).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources:

Christine Ervin, of Oregon, to be an Assistant Secretary of Energy (Energy Efficiency and Renewable Energy).

(The above nomination was reported with the recommendation that she be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

TEXTS OF RESOLUTIONS OF ADVISE AND CONSENT TO RATIFICATION TO ABOVE TREATIES REPORTED BY THE COMMITTEE ON FOREIGN RELATIONS

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Protocol Adopted June 5, 1992, by the Conference of Plenipotentiaries of the Contracting Parties to the International Convention for the Conservation of Atlantic Tunas (ICCAT), Signed by the United States on October 22, 1992, to Amend Paragraph 2 of Article X of ICCAT.

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, Adopted at Copenhagen, November 23–25,

1992, by the Fourth Meeting of the Parties to the Montreal Protocol.

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. BINGAMAN:

S. 1687. A bill to promote the effective and efficient use of Federal grant assistance provided to State governments to carry out certain environmental programs and activities, and for other purposes; to the Committee on Environment and Public Works.

By Mr. GRAHAM (for himself, Mr. DOMENICI, and Mr. MACK):

S. 1688. A bill to amend the Internal Revenue Code of 1986 to treat spaceports like airports under the exempt facility bond rules; to the Committee on Finance.

By Mr. GRAHAM (for himself and Mr. DOMENICI):

S. 1689. A bill to amend the Internal Revenue Code of 1986 with respect to the treatment of accelerated benefits under life insurance contracts; to the Committee on Finance.

By Mr. PRYOR (for himself, Mr. DANFORTH, Mr. BOREN, Mr. HATCH, Mr. CONRAD, Mr. WALLOP, Mr. SASSER, Mr. HATFIELD, and Mr. MATHEWS):

S. 1690. A bill to amend the Internal Revenue Code of 1986 to reform the rules regarding subchapter S corporations; to the Committee on Finance.

By Mr. CONRAD (for himself, Mr. DASCHLE, and Mr. GRASSLEY):

S. 1691. A bill to amend the Internal 1 to amend the Internal Revenue Code of 1986 to provide taxpayers engaged in certain agriculture-related activities a credit against income tax for property used to control environmental pollution and for soil and water conservation expenditures; to the Committee on Finance.

By Mr. PELL:

S. 1692. A bill to authorize the Secretarssue a certificate of documentation for the vessel Big Guy; to the Committee on Commerce, Science, and Transportation.

By Mr. REID:

S. 1693. A bill to amend the Internal Revenue Code of 1986 to delay the effective date for the change in the point of imposition of the tax on diesel fuel, to provide that vendors of diesel fuel used for any nontaxable use may claim refunds on behalf of the ultimate users, and to provide a similar rule for vendors of gasoline used by State and local governments; to the Committee on Finance.

By Mr. BROWN:

S. 1694. A bill to suspend certain requirements until it is determined or agreed that the requirements do not violate the General Agreement on Tariffs and Trade, and for other purposes; to the Committee on Finance.

By Mr. MACK (for himself and Mr. KERREY):

S. 1695. A bill to require the Secretary of the Treasury to mint coins in commemoration of the 25th anniversary of the Apollo 11 Moon landing; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. HATFIELD (for himself, Mr. BRADLEY, Mr. KERRY, and Mr. FEINGOLD):

S. 1696. A bill to amend the Military Selective Service Act to terminate the registration requirement and to terminate the activities of civilian local boards, civilian appeal boards, and similar local agencies of the Selective Service System; to the Committee on Armed Services.

By Ms. MIKULSKI:

S. 1697. A bill to improve the ability of the Federal Government to prepare for and respond to major disasters, and for other purposes; to the Committee on Governmental Affairs.

By Mr. WALLOP (for himself, Mr. BOREN, and Mr. MCCAIN):

S. 1698. A bill to reduce the paperwork burden on certain rural regulated financial institutions, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SIMON (for himself and Mr. METZENBAUM):

S. 1699. A bill to amend the Internal Revenue Code of 1986 to provide that the amortization deduction for goodwill and certain other intangibles be determined by amortizing 75 percent of the adjusted basis of the intangibles ratably over a 15-year period; to the Committee on Finance.

By Mr. SIMON:

S. 1700. A bill to amend the Internal Revenue Code of 1986 to limit the interest deduction allowed corporations and to allow a deduction for dividends paid by corporations; to the Committee on Finance.

By Mr. SARBANES (for himself and Mr. SASSER):

S. 1701. A bill to provide for certain notice and procedures before the Social Security Administration may close, consolidate, or recategorize certain offices; to the Committee on Finance.

By Mr. SIMON:

S. 1702. A bill to amend the Federal Food, Drug, and Cosmetic Act to ensure that human tissue intended for transplantation is safe and effective, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. SARBANES (for himself, Mr. WARNER, Ms. MIKULSKI, and Mr. ROBB):

S. 1703. A bill to expand the boundaries of the Piscataway National Park, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SIMON (for himself and Ms. MOSELEY-BRAUN):

S. 1704. A bill to amend the Immigration Reform and Control Act of 1986 concerning interim assistance to States for legalization (SLIAG); to the Committee on the Judiciary.

By Mr. WOFFORD:

S. 1705. A bill to extend temporarily the suspension of duty on Tfa Lys Pro in free base and tosyl salt forms; to the Committee on Finance.

S. 1706. A bill to suspend temporarily the duty on certain chemicals; to the Committee on Finance.

S. 1707. A bill to suspend temporarily the duty on keto ester; to the Committee on Finance.

By Ms. MOSELEY-BRAUN:

S. 1708. A bill to renew the previously existing suspension of duty on parts of aircraft generators; to the Committee on Finance.

By Mr. WOFFORD:

S. 1709. A bill to suspend temporarily the duty on mounted closed circuit television lenses; to the Committee on Finance.

S. 1710. A bill to extend temporarily the suspension of duty on certain chemicals; to the Committee on Finance.

S. 1711. A bill to suspend temporarily the duty on certain chemicals; to the Committee on Finance.

By Mr. BOND (for himself and Mr. DANFORTH):

S. 1712. A bill entitled the "Charles Evans Whittaker United States Courthouse Act"; to the Committee on Environment and Public Works.

By Mr. DODD:

S. 1713. A bill to award grants to public-private partnerships to encourage work force diversity in order to improve the working conditions of all Americans and to help organizations compete more effectively both domestically and internationally, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. BAUCUS:

S. 1714. A bill to amend title 23, United States Code, to provide for the establishment of State transportation investment loan funds, and for other purposes; to the Committee on Environment and Public Works.

By Mrs. HUTCHISON (for herself, Mrs. BOXER, Mr. RIEGLE, Mr. FAIRCLOTH, Mr. PRYOR, Mr. CAMPBELL, Mr. PRESSLER, Mr. HARKIN, Mr. PELL, Mr. BAUCUS, Mr. GRAHAM, Mr. BREAUX, Mr. GRASSLEY, Mr. REID, Mr. BURNS, Mr. HELMS, Mr. AKAKA, Mr. SIMON, Mr. COCHRAN, Mr. LOTT, Mr. BOND, Mr. BRADLEY, Mr. SHELBY, Ms. MOSELEY-BRAUN, Mr. FORD, Mr. SMITH, Mr. COATS, Mr. CHAFEE, Mr. WOFFORD, Mr. SIMPSON, Mr. LAUTENBERG, Mr. BENNETT, and Mrs. FEINSTEIN):

S. 1715. A bill to provide for the equitable disposition of distributions that are held by a bank or other intermediary as to which the beneficial owners are unknown or whose addresses are unknown, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. ROBB (for himself and Mr. WARNER):

S. 1716. A bill to amend the Thomas Jefferson Commemoration Commission Act to extend the deadlines for reports; to the Committee on the Judiciary.

By Mr. MITCHELL (for himself, Mr. HATFIELD, Mr. KENNEDY, Mr. SIMPSON, and Mr. MOYNIHAN) (by request):

S. 1717. A bill to amend the John F. Kennedy Center Act to transfer operating responsibilities to the Board of Trustees of the John F. Kennedy Center for the Performing Arts, and for other purposes; to the Committee on Environment and Public Works.

By Mr. LIEBERMAN:

S. 1718. A bill to create a Supreme Court for the District of Columbia, and for other purposes; to the Committee on Governmental Affairs.

S. 1719. A bill to amend title XI of the Social Security Act to delay the penalty for failure of employers to file certain reports with respect to the Medicare and Medicaid Coverage Data Bank; to the Committee on Finance.

By Mr. SIMON:

S. 1720. A bill to establish the Gambling Impact Study Commission; to the Committee on Governmental Affairs.

By Mr. BREAUX:

S. 1721. A bill to provide for the transfer of certain tuna fishing vessels documented in the United States to foreign registry; to the Committee on Commerce, Science, and Transportation.

By Mr. KOHL (for himself and Mr. FEINGOLD):

S. 1722. A bill to amend the Federal Water Pollution Control Act to reserve a portion of the funds made available for capitalization grants for water pollution control revolving

69-059 O—97 Vol. 139 (Pt. 21) 38

funds for the purpose of making grants to States that set aside amounts of State funds for water pollution control in excess of the amounts required under such Act, and for other purposes; to the Committee on Environment and Public Works.

By Mr. COHEN:

S. 1723. A bill to improve provisions relating to tech-prep education; to the Committee on Labor and Human Resources.

By Mr. JOHNSTON:

S. 1724. A bill to authorize the Secretary of Health and Human Services to award a grant for the establishment of the National Center for Sickle Cell Disease Research, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. COHEN (for himself, Mr. MACK, Mr. BENNETT, and Mr. FAIRCLOTH):

S. 1725. A bill to amend the Federal Deposit Insurance Act to clarify provisions intended to protect the Corporation from having bank loans or other assets diluted by secret side agreements; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SIMON:

S. 1726. A bill to provide for a competition to select the architectural plans for a museum to be built on the East Saint Louis portion of the Jefferson National Expansion Memorial, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. COHEN:

S. 1727. A bill to establish a National Maritime Heritage Program to make grants available for educational programs and the restoration of America's cultural resources for the purpose of preserving America's endangered maritime heritage; to the Committee on Commerce, Science, and Transportation.

By Mr. BRYAN (for himself and Mr. DOMENICI):

S. 1728. A bill to provide regulatory capital guidelines for treatment of real estate assets sold with limited recourse by depository institutions; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DOMENICI:

S. 1729. A bill to amend the Internal Revenue Code of 1986 to repeal the 1993 Federal income tax rate increases on trusts established for the benefit of individuals with disabilities or for college education costs of a beneficiary; to the Committee on Finance.

By Mr. THURMOND:

S. 1730. A bill to suspend temporarily the duty on 3,4-Dimethylbenzaldehyde (3,4-DBAL); to the Committee on Finance.

By Mr. CRAIG (for himself and Mr. WALLOP):

S. 1731. A bill to provide that the President shall appoint, by and with the advice and consent of the Senate, the Chief of the Forest Service of the Department of Agriculture, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. HEFLIN:

S. 1732. A bill to extend arbitration under the provisions of chapter 44 of title 28, United States Code, and for other purposes; considered and passed.

By Mr. BAUCUS (for himself, Mr. MCCAIN, and Mr. RIEGLE):

S. 1733. A bill to amend the Internal Revenue Code of 1986 to provide tax treatment for foreign investment through a United States regulated investment company comparable to the tax treatment for direct foreign investment and investment through a foreign mutual fund; to the Committee on the Judiciary.

By Mr. SIMON (for himself, Mr. HATCH, and Ms. MOSELEY-BRAUN):

S. 1734. A bill to amend the Federal Food, Drug, and Cosmetic Act to expand the provisions relating to market exclusivity; to the Committee on the Judiciary.

By Mr. SIMON:

S. 1735. A bill to establish a Privacy Protection Commission, and for other purposes; to the Committee on the Judiciary.

By Mr. ROBB (for himself and Mr. WARNER):

S.J. Res. 154. A joint resolution designating January 16, 1994, as "Religious Freedom Day"; to the Committee on the Judiciary.

By Mr. D'AMATO:

S.J. Res. 155. A joint resolution to designate the week beginning March 13, 1994 as "National Manufacturing Week"; to the Committee on the Judiciary.

By Mr. MITCHELL (for himself, Mr. LAUTENBERG, Mr. HOLLINGS, Mr. EXON, Mr. NUNN, Mr. MOYNIHAN, Mr. D'AMATO, Mr. WARNER, Mr. NICKLES, Mr. KENNEDY, Mr. PELL, Mr. COHEN, and Mr. BIDEN):

S.J. Res. 156. A joint resolution to express appreciation to W. Graham Claytor, Jr., for a lifetime of dedicated and inspired service to the Nation; to the Committee on Commerce, Science, and Transportation.

By Mr. SASSER (for himself and Ms. MOSELEY-BRAUN):

S.J. Res. 157. A joint resolution to designate 1994 as "The year of Gospel Music"; to the Committee on the Judiciary.

By Mr. WOFFORD (for himself, Mr. PELL, Mr. ROBB, and Mr. GLENN):

S.J. Res. 158. A joint resolution to designate both the month of August 1994 and the month of August 1995 as "National Slovak American Heritage 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. CHAFEE (for himself, Mr. INOUYE, Mr. HATFIELD, Ms. MIKULSKI, Mr. BOND, Mr. MCCAIN, Mr. STEVENS, Mr. MURKOWSKI, Mr. KEMPTHORNE, Mr. LOTT, Mr. COCHRAN, Mr. COHEN, Mrs. MURRAY, Ms. MOSELEY-BRAUN, Mr. SIMON, Mr. DURENBERGER, Mr. LUGAR, Mrs. HUTCHISON, Mr. LAUTENBERG, Mr. WARNER, Mr. AKAKA, Mr. SPECTER, Mr. BRYAN, Mr. HOLLINGS, Mr. THURMOND, Mr. GRASSLEY, Mr. JEFFORDS, Mrs. FEINSTEIN, Mr. BURNS, Mr. LEAHY, Mr. LIEBERMAN, Mr. REID, Mr. FORD, Mr. DECONCINI, Mr. WOFFORD, Mr. MCCONNELL, Mr. PELL, Mr. BINGAMAN, Mr. EXON, Mr. MACK, Mr. JOHNSTON, and Mr. DODD):

S. Res. 170. A resolution to express the sense of the Senate that obstetrician-gynecologists should be included as primary care providers for women in Federal laws relating to the provision of health care; to the Committee on Labor and Human Resources.

By Mr. FORD (for Mr. MITCHELL (for himself and Mr. DOLE)):

S. Res. 171. A resolution to authorize the production of records by the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs; considered and agreed to.

By Mr. DECONCINI:

S. Con. Res. 54. A concurrent resolution expressing the sense of the Congress regarding the impeded delivery of natural gas for heating to the civilian population of Bosnia-Herzegovina; to the Committee on Foreign Relations.

By Mr. LIEBERMAN (for himself, Mr. WOFFORD, and Mr. GRAHAM):

S. Con. Res. 55. A concurrent resolution expressing the sense of the Congress with respect to Taiwan's membership in the United Nations and other international organizations; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BINGAMAN:

S. 1687. A bill to promote the effective and efficient use of Federal grant assistance provided to State governments to carry out certain environmental programs and activities, and for other purposes; to the Committeee on Environment and Public Works.

ENVIRONMENTAL FLEXIBLE FUNDING ACT OF 1993

• Mr. BINGAMAN. Mr. President, today I am introducing a bill which marks a major first step in our efforts to deal with unfunded mandates. This is a bill which deals with one segment of these mandates, those in the environmental arena. This bill will help alleviate the impact of unfunded envirohmental mandates by promoting more effective and efficient use of existing environmental funds and by facilitating targeting of funds where the problems are the greatest.

The 1970's marked an environmental awakening of our country. We saw major Federal legislation in the areas of air, surface water, drinking water, and solid and hazardous waste. Over the years, we discovered that environmental problems were far more difficult to correct and far more pervasive than we realized. Existing legislation was reauthorized and with each reauthorization additional Federal requirements were enacted. New legislation was enacted, and again, new Federal requirements accompanied the bills.

The Federal laws did provide some funds to help implement the growing requirements. The EPA administers over 15 different programs providing $500 million annually to the States. These funds, however, are far below the moneys that the States estimate are needed to meet Federal requirements. Moreover, they are awarded to States for specific categories of activities regardless of the particular conditions or relative importance of these activities within a State. They are also awarded with different administrative and reporting requirements presenting States with accounting nightmares and providing barriers to more efficient use of funds through consolidation on a particular problem or a particular geographic area.

Existing grant programs fail to recognize that States differ between and within themselves. What might be of most concern to one community due to its unique circumstances is relatively

unimportant to another. Federal assistance that might be available is restricted to nationally perceived priorities, preventing more effective use of funds or greater regional or local needs.

Many have called for a reform in the way the Federal Government funds environmental activities. State environmental directors have identified the constricting nature of the existing grant programs which prevent them from using existing funds where the problems are the greatest. The National Governors Association and the National Conference of State Legislators have called for flexible grants as a "first step toward broader, more ambitious reforms." The Vice President's National Performance Review identified flexible grants as a means of cutting redtape and creating a government that works better. Obviously, the time is ripe for changes to occur in the way the Federal Government conducts business.

I am proposing the Flexible Funding Act of 1993 so that we can begin now the process to enact these changes. This act recognizes that States are partners with the Federal Government in cleaning up pollution. It gives States the responsibility of developing a strategy of priority courses of action for the different major environmental endpoints—air, wetlands, water, et cetera—affected by pollution. It allows EPA to consolidate grant funds within an endpoint and award them to the States so they can implement these strategies. It also gives EPA the authority to transfer a percentage of funds from one program to another which is of greater concern to a State.

As a result of this bill, States will be able to better adapt Federal programs to meet the particular environmental needs of the State and its counties and municipalities. States will be able to develop underfunded or identified high risk programs. Barriers to the synergistic combination of different grants will be removed. The reduction in redtape will free resources that can be redirected to solving environmental problems.

Mr. President, my colleagues in Congress as well as the executive branch must face today's financial realities. Our State and local governments want to be environmental stewards. They want to promote a healthy environment. However, resources are finite. State and local governments, as well as the Federal Government, are strapped for funds. We must begin to use available resources more selectively and focus them where the risk is the greatest.

This bill, Mr. President, provides a needed first step in the more effective use of public funds to meet increasing Federal requirements.

I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 1687

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Environmental Flexible Funding Act of 1993".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the magnitude, causes, and interrelationship of environmental pollution are far more significant than previously estimated;

(2) because, in recent years, the requirements under Federal law to address pollution have expanded, State and local governments have greater economic burdens in meeting the Federal requirements;

(3) the nature and extent of environmental problems vary among and within States;

(4) Federal financial assistance to help remediate environmental pollution is limited;

(5) grant programs that are in effect on the date of enactment of this Act are generally restricted to funding specific categories of activities, without regard to the particular conditions of individual States or the relative importance of the activities within a State; and

(6) a single program designed to deal with all forms of environmental pollution within a geographic area may be more effective than a number of programs that address specific components of pollution.

(b) PURPOSES.—The purposes of this Act are to—

(1) promote more effective and efficient use of Federal, State, and local funds with respect to the control of pollution;

(2) enable a State to adapt programs of Federal assistance to meet the particular environmental needs of the State;

(3) help alleviate the impact of Federal requirements by enabling States to integrate and target Federal assistance from a variety of funding sources into a single program to address priority problems if the integration of the assistance into the program furthers the goals and objectives of the programs for which the assistance was initially provided; and

(4) facilitate the funding of environmental programs that address multiple sources of pollution within a geographic area.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) AREA OF ENVIRONMENTAL CONCERN.—The term "area of environmental concern" includes air, drinking water, pesticides, solid and hazardous waste, toxics, and water quality (as defined and determined by the Administrator).

(3) ENVIRONMENTAL MEDIUM GRANT.—The term "environmental medium grant" means a grant made pursuant to the grant program established under section 4(a).

(4) GOVERNOR OF A STATE.—The term "Governor of a State" means the Governor of a State, or if the State does not have a Governor, the equivalent official of the State.

(5) INDIVIDUAL GRANT PROGRAM AUTHORITY.—The term "individual grant program authority" means an individual grant program authority described in section 4(a)(2). The term does not include any authority for a grant made to a State for—

(A) the protection of a specific geographic area within a State; or

(B) capitalization for the establishment of an environmental loan fund.

(6) MULTI-MEDIA ENVIRONMENTAL GRANT.—The term "multi-media environmental grant" means a grant made pursuant to the grant program established under section 4(b).

(7) STATE.—The term "State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau (until such time as the Compact of Free Association is ratified). The term shall include, to the extent allowable by law—

(A) an interstate agency that has jurisdiction over 2 or more States and is established pursuant to an agreement or compact that is approved by Congress to carry out the control of pollution (as defined and determined by the Administrator); or

(B) an entity that is—

(i) established by a cooperative agreement between 2 or more States to carry out the control of pollution (as defined and determined by the Administrator); and

(ii) approved by the Administrator.

(8) STATE AGENCY.—The term "State agency" means an entity of a State that is designated by the Governor of a State as having primary responsibility for carrying out the laws of the State relating to pollution prevention, control, and abatement.

SEC. 4. GRANT PROGRAMS.

(a) ENVIRONMENTAL MEDIUM GRANTS.—

(1) IN GENERAL.—

(A) ESTABLISHMENT OF PROGRAM.—As soon as practicable after the date of enactment of this Act, the Administrator shall, in consultation with the Governors of States and by regulation, establish an environmental medium grant program. Notwithstanding any other provision of law, for each fiscal year, from the amounts made available to the Administrator to make grants to States under the individual grant program authorities specified in paragraph (2), the Administrator may make a consolidated grant to any State with respect to which the Governor or the head of a State agency submits an application that is approved by the Administrator, in lieu of awarding the funds as individual grants that would otherwise be awarded to the State under the individual grant program authorities specified in paragraph (2), to fund eligible programs and activities relating to pollution prevention, control, and abatement and related environmental activities of a State.

(B) ADMINISTRATION BY STATE.—Except as otherwise provided in this Act, in carrying out the consolidated grant program under this subsection, a State may exercise the individual authorities that the State may exercise under the individual grant program authorities, and to the extent required to carry out this Act, may transfer authority to an appropriate State agency.

(C) USE OF GRANTS.—Under the grant program, grants shall be awarded to address the pollution prevention, control, and abatement problems and related environmental problems of one area of environmental concern on a statewide basis, in accordance with a priority work plan that meets the requirements of paragraph (4) and that is developed by the appropriate official of the State pursuant to such paragraph.

(2) INDIVIDUAL GRANT PROGRAM AUTHORITIES.—The individual grant program authorities specified in this paragraph include the following grant program authorities granted

to States under the following provisions of Federal environmental law:

(A) AIR PROGRAMS.—Sections 103(b), 105, 106, and 112 of the Clean Air Act (42 U.S.C. 7403(b), 7405, 7406, and 7412, respectively) and section 306 of the Toxic Substances Control Act (15 U.S.C. 2666).

(B) DRINKING WATER PROGRAMS.—Sections 1427, 1428, 1443, and 1465 of the Public Health Service Act (42 U.S.C. 300h–6, 300h–7, 300j–2, and 300j–25, respectively).

(C) PESTICIDES.—Section 23 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136u).

(D) SOLID AND HAZARDOUS WASTE PROGRAMS.—Sections 2007, 3011, and 4008 of the Solid Waste Disposal Act (42 U.S.C. 6916, 6931, and 6948, respectively).

(E) TOXIC SUBSTANCES PROGRAMS.—Sections 10, 28, and 403 of the Toxic Substances Control Act (15 U.S.C. 2609, 2627, and 2683, respectively).

(F) WATER QUALITY.—Sections 104(b), 104(g), 106, 205(j), 314(b), 319, 320, and 604(b) of the Federal Water Pollution Control Act (33 U.S.C. 1254(b), 1254(g), 1256, 1285(j), 1324(b), 1329, 1330, and 1384(b), respectively).

(G) OTHER PROVISIONS.—Any other related provision of Federal environmental law that the Administrator considers to be appropriate.

(3) APPLICATION.—An application submitted pursuant to paragraph (1) by the Governor of a State or the head of a State agency shall be in such form, and contain such information, as the Administrator determines appropriate and shall, at a minimum, include—

(A) a description of the programs and activities to be carried out by the State with funds made available under the grant that is the subject of the application;

(B) a statement concerning how the programs and activities specified in subparagraph (A) will promote the goals and objectives of the priority work plan of the State developed pursuant to paragraph (4);

(C) for each program or activity listed pursuant to subparagraph (A), a description of—

(i) the objectives of the program or activity; and

(ii) measurable performance criteria to be applied to the program or activity;

(D) a statement of the proposed distribution of funds made available under the grant among activities and programs, including an order of priorities;

(E) a statement concerning how the distribution of funds of the State will adequately address the requirements under the individual grant authorities covered under the environmental medium grant; and

(F) an identification of the State agency that will—

(i) carry out the programs and activities specified in subparagraph (A);

(ii) monitor the use of funds made available under the grant that is the subject of the application; and

(iii) report to the Administrator on the use of the funds.

(4) PRIORITY WORK PLAN.—

(A) IN GENERAL.—As part of a grant application, the Governor of the State or the head of the State agency of the State shall submit a priority work plan to the Administrator. The priority work plan shall be for a period of 1 or more years. The plan shall—

(i) be developed—

(I) in accordance with guidance issued by the Administrator pursuant to subparagraph (B); and

(II) with appropriate public notice and opportunity for review and comment; and

(ii) include a description of—

(I) the environmental problems to be addressed by the work plan;

(II) the proposed strategy of the State to address the problems specified in subclause (I), including the goals and objectives of the State relating to the strategy;

(III) priority actions to be taken pursuant to the work plan; and

(IV) the expected outputs and results in terms of effects on the environment to be accomplished pursuant to the work plan.

(B) GUIDANCE.—As soon as practicable after the date of enactment of this Act, the Administrator shall issue guidance for priority work plans prepared pursuant to this paragraph.

(5) ELIGIBLE PROGRAMS AND ACTIVITIES.—Any program or activity that is eligible to receive funding under a grant that would otherwise be awarded to a State under individual grant program authorities, but for this subsection, shall be considered to be an eligible program or activity for the purposes of this subsection.

(6) AMOUNT OF GRANT.—The amount of a grant awarded to a State under this subsection shall not exceed the total amount of grants that would otherwise be awarded to the State under individual grant program authorities, but for this subsection.

(7) COST-SHARING.—

(A) IN GENERAL.—Notwithstanding any other provision of law, including any requirement of individual grant program authorities that would otherwise apply but for this subsection, the Federal share of each program or activity that receives funding from a grant awarded pursuant to this subsection shall not exceed 50 percent of the cost of the program or activity.

(B) NON-FEDERAL SHARE.—Except as otherwise provided by law, as a condition of receiving a grant under this subsection, the State shall pay a non-Federal share from non-Federal sources.

(C) EXCESS CONTRIBUTIONS.—Any amount of funds contributed from non-Federal sources that is in excess of the non-Federal share required to be contributed pursuant to subparagraph (B) may not—

(i) be considered to be funds contributed pursuant to subparagraph (B); and

(ii) be subject to Federal auditing requirements that would otherwise apply to funds contributed pursuant to such subparagraph.

(8) LIMITATIONS AND CONDITIONS ON USE OF FUNDS.—Notwithstanding any other provision of law, including any limitation or condition of the use of funds under any individual grant program authority that would otherwise apply but for this subsection, a State that receives a grant under this subsection may use funds made available pursuant to this subsection for financial assistance to individuals only to the extent that the assistance is related to the costs of eligible programs and activities. The Administrator may not attach any other condition or limitation to the use of the grant funds.

(9) SATISFACTORY PROGRESS.—With respect to a State, the Administrator may reduce the amount of a grant or disapprove a grant application submitted pursuant to paragraph (3) if the Administrator determines that—

(A) for a preceding fiscal year, the State has failed to make satisfactory progress in achieving the performance measures stated in an application for a grant awarded to the State under this subsection; and

(B) on the basis of information available to the Administrator concerning the reliability and achievability of the performance measures referred to in subparagraph (A), the measures that the State failed to achieve are reliable and achievable.

(10) REPORTING REQUIREMENTS.—Not later than 120 days after the end of the 1-year period of a grant made to a State pursuant to this subsection, the appropriate official of the State agency specified in paragraph (3)(F) shall submit to the Administrator a report on the principal activities and achievements of the State accomplished with funds made available pursuant to the grant program under this subsection. The report shall compare the achievements referred to in the preceding sentence to—

(A) the measurable performance criteria described in the application of the State submitted pursuant to paragraph (3); and

(B) the goals and objectives specified in the priority work plan pursuant to paragraph (4)(a)(II) and the expected results specified in the priority work plan of the State pursuant to paragraph (4)(a)(ii)(IV).

(b) MULTI-MEDIA ENVIRONMENTAL GRANT.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Administrator shall, by regulation, establish a multi-media environmental grant program. Notwithstanding any other provision of law, the Administrator may make a grant to each State that submits an application that is approved by the Administrator to assist the State in designing, developing, and carrying out pollution prevention, control, and abatement programs and activities and other related environmental programs and activities that affect 2 or more areas of environmental concern.

(2) APPLICATIONS.—An application for a grant under this subsection shall be made in the same manner as prescribed under subsection (a)(3).

(3) PRIORITY WORK PLAN.—A priority work plan submitted as part of an application made under this subsection shall meet the requirements for a priority work plan developed under subsection (a)(4).

(4) ELIGIBLE PROGRAMS AND ACTIVITIES.—The Administrator shall designate programs and activities that shall be eligible to receive funding under this subsection and shall include programs and activities for—

(A) designing and conducting environmental risk assessments;

(B) environmental education;

(C) enhancing the capacity of a State to support environmental programs;

(D) enhancing the capacity of a State to support a geographical approach to environmental control programs and activities;

(E) promoting source reduction, including activities authorized under section 6605 of the Pollution Prevention Act of 1990 (42 U.S.C. 13104); and

(F) pollution prevention, control, and abatement.

(5) FEDERAL SHARE.—Except as otherwise provided by law, the percentage amount of Federal share of a grants awarded under this subsection shall not exceed the amount specified in subsection (a)(7)(A).

(6) SATISFACTORY PROGRESS.—Subsection (a)(9) shall apply to a grant or application for a grant made by a State under this subsection in the same manner as such subsection applies to a grant made under subsection (a).

(7) REPORTING REQUIREMENTS.—The reporting requirements under subsection (a)(10) shall apply to the Governor of a State that receives a grant under this subsection in the same manner as the requirements apply to the Governor of a State that receives a grant under subsection (a).

(c) GOVERNORS' DISCRETIONARY AUTHORITY.—Notwithstanding any other provision of

law, on the request of a Governor of a State, the Administrator may transfer an amount not to exceed 20 percent of the amount that would otherwise be awarded to the State pursuant to individual grant authorities or a grant to the State under subsection (a) or (b) and award the funds as a supplemental amount that shall be subject to the same requirements as any other amounts awarded pursuant to—

(1) a grant authorized under the individual grant authorities specified in subsection (a)(2);

(2) an environmental medium grant awarded pursuant to subsection (a); or

(3) a multi-media environmental grant awarded pursuant to subsection (b).

(d) REQUEST FOR INFORMATION.—The Administrator may request such information, data, and reports as the Administrator considers necessary to—

(1) review an application submitted under this section for approval or disapproval;

(2) evaluate progress made under a grant awarded pursuant to this section; or

(3) prepare a report that the Administrator is required to prepare under section 5.

(e) NO REDUCTION IN AMOUNTS.—In no case shall the award of a grant to a State pursuant to this section result in a reduction of the total amount of funds awarded by the Administrator to a State as grants for conducting environmental programs and activities. Except as expressly provided otherwise, nothing in this section is intended to reduce or supplant the obligation of a State to pay a non-Federal share of a grant awarded by the Administrator to the State for conducting an environmental program or activity.

(f) APPLICABILITY.—This section shall apply beginning with the first full fiscal year following the date of issuance by the Administrator of the regulations establishing an environmental medium grant program under subsection (a)(1).

SEC. 5. REPORT TO CONGRESS.

Not later than 5 years after the date of enactment of this Act, the Administrator, in cooperation with the States, shall submit a report to Congress concerning the grant programs established under this Act. The report shall include such recommendations for changes in the grant programs as the Administrator considers appropriate.●

By Mr. GRAHAM (for himself, Mr. DOMENICI, and Mr. MACK):

S. 1688. A bill to amend the Internal Revenue Code of 1986 to treat spaceports like airports under the exempt facility bond rule; to the Committee on Finance.

THE SPACEPORT FINANCING ACT

Mr. GRAHAM. Mr. President, today I rise with my colleagues Senator MACK and Senator DOMENICI to introduce legislation entitled the Spaceport Financing Act. I am also submitting with this statement a technical description of this legislation. I urge my colleagues in the Senate to join us in this important effort by cosponsoring this bill.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

THE SPACEPORT FINANCING ACT

DESCRIPTION OF PRESENT LAW

Present law allows exempt facility bonds to be issued to finance certain transportation facilities, such as airports, docks and wharves, mass commuting facilities, high speed intercity rail facilities, and storage of training facilities directly related to the foregoing. Except for high-speed intercity rail facilities, these facilities must be owned by a governmental unit to be eligible for such financing. Exempt facility bonds for airports and docks and wharves are not subject to the private activity bond volume cap. Only 25% of the exempt facility bonds for a high-speed intercity rail facility requires private activity bond volume cap.

Airports.—Treasury Department regulations provide that airport property eligible for exempt facility bond financing includes facilities that are directly related and essential to servicing aircraft, enabling aircraft to take off and land, and transferring passengers or cargo to or from aircraft, but only if the facilities must be located at, or in close proximity to, the take-off and landing area to perform these functions. (See Treas. Reg. Sec. 1.103-8(e)(2)(ii)(a).) The regulations also provide that airports include other functionally related and subordinate facilities at or adjacement to the airport, such as terminals, hangers, loading facilities, repair shops, maintenance or overhaul facilities, and landbased navigational aids such as radar installations. (See Treas. Reg. Sec. L103-8(e)(2)(ii)(b).) Facilities the primary function of which is manufacturing rather than transportation are not eligible for exempt facility bond financing. (See IRC Sec. 142(c)(2)(E): see also Rev. Rul. 77-186, 1977-1, C.B. 22 (facility primarily used for constructing supertankers); Rev. Rul. 77-324, 1977-2, C.B.37 (facility primarily used by a manufacturer for custominizing and structurally modifying new aircraft).)

Public Use Requirement.—Treasury Department regulations provide generally that, in order to qualify as an exempt facility, the facility must serve or be available on a regular basis for general public use, or be a part of a facility so used, as contrasted with similar types of facilities that are constructed for the exclusive use of a limited number of nongovernmental persons in their trades or businesses. (See Treas. Reg. Sec. 1.103-8(e)(2) & 1.103-8(e)(1).) For example, a private dock or wharf leased to and serving only a single manufacturing plant would not qualify as a facility for general public use, but a hanger or repair facility at a municipal airport, or a dock or a wharf, would qualify even if it is leased or permanently assigned to a single nongovernmental person provided that such person directly serves the general public, such as a common passenger carrier or freight carrier. Certain facilities, such as sewage and solid waste disposal facilities, are treated in all events as serving a general public use although they may be part of a nonpublic facility, such as a manufacturing facility used in the trade or business of a single manufacturer.

Federally Guaranteed Bonds.—Bonds directly or indirectly guaranteed by the United States (or any agency or instrumentality thereof) are no tax-exempt. (See IRC Sec. 149(b).) The Treasury Department has not issued regulations interpreting the prohibition of federal guarantees and the scope of the prohibition is unclear.

EXPLANATION OF PROPOSED AMENDMENT

The proposed amendment clarifies that spaceports are eligible for exempt facility bond financing to the same extent as airports. As in the case of airports, the facilities must be owned by a governmental unit to be eligible for such financing.

The term "spaceport" includes facilities directly related and essential to servicing spacecraft, enabling spacecraft to take off or land, and transferring passengers or space cargo to or from spacecraft, but only if the facilities must be located at, or in close proximity to, the launch site to perform these functions. Space cargo includes satellites, scientific experiments, and other property transported into space, whether or not the cargo will return from space. The term "spaceport" also includes other functionally related and subordinate facilities at or adjacent to the spaceport, such as launch control centers, repair shops, maintenance or overhaul facilities, and rocket assembly facilities that must be located at or adjacent to the launch site. The term "spaceport" further includes storage facilities directly related to any governmentally-owned spaceport (including a spaceport owned by the U.S. Government).

It is intended that spaceports shall be treated in all events as serving the general public and will therefore satisfy the public use requirement contained in present Treasury Department regulations. It is also intended that the use of spaceport facilities by the federal government will not prevent the spaceport facilities from being treated as serving the general public, will not prevent the spaceport facilities from being treated as owned by a governmental unit, and will not otherwise render such facilities ineligible for exempt facility bond financing. In addition, the amendment specifies that payments by the federal government of rent, user fees, or other charges for the use of spaceport property will not be taken into account in determining whether bonds for spaceports are federally guaranteed as long as such payments are conditioned on the use of such property and are not payable unconditionally and in all events.

By Mr. PRYOR (for himself, Mr. DANFORTH, Mr. BOREN, Mr. HATCH, Mr. CONRAD, Mr. WALLOP, Mr. SASSER, Mr. HATFIELD, and Mr. MATHEWS):

S. 1690. A bill to amend the Internal Revenue Code of 1986 to reform the rules regarding subchapter S corporations; to the Committee on Finance.

S CORPORATION REFORM ACT OF 1993

Mr. PRYOR. Mr. President, I am proud and honored to rise with my friend and colleague, the Senator from Missouri, Senator JOHN DANFORTH and others, to introduce the S Corporation Reform Act of 1993.

This legislation is the culmination of the efforts of many, and certainly, represents a step Congress can, and should, take in order to capitalize on one of our country's most valuable resources—small businesses.

I want to thank all of the business men and women, attorneys, accountants, and small business organizations who have worked with me and my staff to help us to understand the unique problems of subchapter S corporations. They have helped us arrive at solutions that we think are easily administered and targeted to encourage economic growth.

The interest and enthusiasm for this effort is of special mention. At this date, the bill is endorsed by the: U.S. Chamber of Commerce, National Federation of Independent Businesses,

Small Business Legislative Council, National Association of Private Enterprises, American Institute of Certified Public Accountants, and Subchapter S Committee of the American Bar Association's Tax Section.

Mr. President, these fine organizations represent hundreds of thousands of businesses across our country. It is quite a team, one that has worked thoughtfully and diligently to help produce a bill that Congress can and should pass overwhelmingly.

The S Corporation Reform Act of 1993 contains 26 provisions designed to usher sub S corporations into the financial environment of the 1990's.

Subchapter S was first enacted in 1958 to help remove tax considerations from small business owner's decisions to incorporate. This tax treatment has proved helpful to small business over the years, especially to start-up businesses. But subchapter S, as originally enacted in 1958, was very limiting and contained a number of pitfalls.

Today, over 1.6 million U.S. businesses are S corporations. And these businesses are still subject to many of the oppressive restraints which date back to its original enactment in 1958.

Mr. President, it goes without saying that times have changed since 1958. The financial environment is far more complex, and the 1950's sub S limitations restrict growth opportunities. Frankly, sub S needs an overhaul.

This legislation is the overhaul we need. It is an overhaul that is doable. And it is an overhaul that can give a boost to our economic recovery. In ordinary times, small businesses account for 50 percent of the new jobs in this country. However, in times of recovery, that number jumps to 75 percent.

This bill capitalizes on this phenomenon by:

First, expanding capital formation techniques available to S corporations;

Second, reforming S corporation fringe benefit rules;

Third, promoting the preservation of family-owned businesses; and

Fourth, removing undesirable tax traps.

Mr. President, these objectives are met by this legislation in ways that have been carefully thought through. There may well be other ways to encourage these goals and I hope and expect my colleagues will come forward with their ideas. I look forward to this dialog, and I urge my colleagues to examine this bill closely and join with Senator DANFORTH and I to focus on achievable progress for small business and enact this legislation.

Mr. President, I ask unanimous consent that a copy of the a summary of the bill be included in the RECORD.

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

S. 1690

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "S Corporation Reform Act of 1993".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE I—ELIGIBLE SHAREHOLDERS OF S CORPORATION

Subtitle A—Number of Shareholders

SEC. 101. S CORPORATIONS PERMITTED TO HAVE 50 SHAREHOLDERS.

Subparagraph (A) of section 1361(b)(1) (defining small business corporation) is amended by striking "35 shareholders" and inserting "50 shareholders".

SEC. 102. MEMBERS OF FAMILY TREATED AS 1 SHAREHOLDER.

Paragraph (1) of section 1361(c) (relating to special rules for applying subsection (b)) is amended to read as follows:

"(1) MEMBERS OF FAMILY TREATED AS 1 SHAREHOLDER.—

"(A) IN GENERAL.—For purposes of subsection (b)(1)(A)—

"(i) except as provided in clause (ii), a husband and wife (and their estates) shall be treated as 1 shareholder, and

"(ii) in the case of a family with respect to which an election is in effect under subparagraph (E), all members of the family shall be treated as 1 shareholder.

"(B) MEMBERS OF THE FAMILY.—For purposes of subparagraph (A)(ii), the term 'members of the family' means the lineal descendants of the common ancestor and the spouses (or former spouses) of such lineal descendants or common ancestor.

"(C) COMMON ANCESTOR.—For purposes of this paragraph, an individual shall not be considered a common ancestor if, as of the later of the effective date of this paragraph or the time the election under section 1362(a) is made, the individual is more than 6 generations removed from the youngest generation of shareholders.

"(D) EFFECT OF ADOPTION, ETC.—In determining whether any relationship specified in subparagraph (B) or (C) exists, the rules of section 152(b)(2) shall apply.

"(E) ELECTION.—An election under subparagraph (A)(ii)—

"(i) must be made with the consent of all shareholders,

"(ii) shall remain in effect until terminated, and

"(iii) shall apply only with respect to 1 family in any corporation."

Subtitle B—Persons Allowed as Shareholders

SEC. 111. CERTAIN EXEMPT ORGANIZATIONS.

(a) CERTAIN EXEMPT ORGANIZATIONS ALLOWED TO BE SHAREHOLDERS.—

(1) IN GENERAL.—Subparagraph (B) of section 1361(b)(1) (defining small business corporation) is amended to read as follows:

"(B) have as a shareholder a person (other than an estate, a trust described in subsection (c)(2), or an organization described in subsection (c)(7)) who is not an individual,".

(2) ELIGIBLE EXEMPT ORGANIZATIONS.—Section 1361(c) (relating to special rules for applying subsection (b)) is amended by adding at the end the following new paragraph:

"(7) CERTAIN EXEMPT ORGANIZATIONS PERMITTED AS SHAREHOLDERS.—For purposes of subsection (b)(1)(B), an organization described in section 401(a) or 501(c)(3) may be a shareholder in an S corporation."

(b) CONTRIBUTIONS OF S CORPORATION STOCK.—Section 170(e)(1) (relating to certain contributions of ordinary income and capital gain property) is amended by adding at the end the following sentence: "For purposes of applying this paragraph in the case of a charitable contribution of stock in an S corporation, rules similar to the rules of section 751 shall apply in determining whether gain on such stock would have been long-term capital gain if such stock were sold by the taxpayer."

(c) SPECIAL RULES APPLICABLE TO PARTNERSHIPS AND S CORPORATIONS.—

(1) IN GENERAL.—Subsection (c) of section 512 (relating to unrelated business tax income) is amended—

(A) by inserting "or S corporation" after "partnership" each place it appears in paragraphs (1) and (3),

(B) by inserting "or shareholder" after "member" in paragraph (1), and

(C) by inserting "AND S CORPORATIONS" after "PARTNERSHIPS" in the heading.

(2) REPORTING REQUIREMENT.—Section 6037 (relating to return of S corporation) is amended by adding at the end the following new subsection:

"(c) SEPARATE STATEMENT OF ITEMS OF UNRELATED BUSINESS TAXABLE INCOME.—In the case of any S corporation regularly carrying on a trade or business (within the meaning of section 512(c)(1)), the information required under subsection (b) to be furnished to any shareholder described in section 1361(c)(7) shall include such information as is necessary to enable the shareholder to compute its pro rata share of the corporation's income or loss from the trade or business in accordance with section 512(a)(1), but without regard to the modifications described in paragraphs (8) through (15) of section 512(b)."

SEC. 112. FINANCIAL INSTITUTIONS.

Subparagraph (B) of section 1361(b)(2) (defining ineligible corporation) is amended to read as follows:

"(B) a financial institution which uses the reserve method of accounting for bad debts described in section 585 or 593,".

SEC. 113. NONRESIDENT ALIENS.

(a) NONRESIDENT ALIENS ALLOWED TO BE SHAREHOLDERS.—

(1) IN GENERAL.—Paragraph (1) of section 1361(b) (defining small business corporation) is amended—

(A) by adding "and" at the end of subparagraph (B),

(B) by striking subparagraph (C), and

(C) by redesignating subparagraph (D) and subparagraph (C).

(2) CONFORMING AMENDMENTS.—Paragraphs (4) and (5)(A) of section 1361(c) (relating to special rules for applying subsection (b)) are each amended by striking "subsection (b)(1)(D)" and inserting "subsection (b)(1)(C)".

(b) NONRESIDENT ALIEN SHAREHOLDER TREATED AS ENGAGED IN TRADE OR BUSINESS WITHIN UNITED STATES.—

(1) IN GENERAL.—Section 875 is amended—

(A) by striking "and" at the end of paragraph (1),

(B) by striking the period at the end of paragraph (2) and inserting ", and", and

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

"(3) a nonresident alien individual shall be considered as being engaged in a trade or business within the United States if the S corporation of which such individual is a shareholder is so engaged."

(2) APPLICATION OF WITHHOLDING TAX ON NONRESIDENT ALIEN SHAREHOLDERS.—Section 1446 (relating to withholding tax on foreign partners' share of effectively connected income) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) S CORPORATION TREATED AS PARTNERSHIP, ETC.—For purposes of this section—

"(1) an S corporation shall be treated as a partnership,

"(2) the shareholders of such corporation shall be treated as partners of such partnership, and

"(3) any reference to section 704 shall be treated as a reference to section 1366."

(3) CONFORMING AMENDMENTS.—

(A) The heading of section 875 is amended to read as follows:

"SEC. 875. PARTNERSHIPS; BENEFICIARIES OF ESTATES AND TRUSTS; S CORPORATIONS."

(B) The heading of section 1446 is amended to read as follows:

"SEC. 1446. WITHHOLDING TAX ON FOREIGN PARTNERS' AND S CORPORATE SHAREHOLDERS' SHARE OF EFFECTIVELY CONNECTED INCOME."

(4) CLERICAL AMENDMENTS.—

(A) The item relating to section 875 in the table of sections for subpart A of part II of subchapter N of chapter 1 is amended to read as follows:

"Sec. 875. Partnerships; beneficiaries of estates and trusts; S corporations."

(B) The item relating to section 1446 in the table of sections for subchapter A of chapter 3 is amended to read as follows:

"Sec. 1446. Withholding tax on foreign partners' and S corporate shareholders' share of effectively connected income."

(c) PERMANENT ESTABLISHMENT OF PARTNERS AND S CORPORATION SHAREHOLDERS.—Section 894 (relating to income affected by treaty) is amended by adding at the end the following new subsection:

"(c) PERMANENT ESTABLISHMENT OF PARTNERS AND S CORPORATION SHAREHOLDERS.—If a partnership or S corporation has a permanent establishment in the United States (within the meaning of a treaty to which the United States is a party) at any time during a taxable year of such entity, a nonresident alien individual or foreign corporation which is a partner in such partnership, or a nonresident alien individual who is a shareholder in such S corporation, shall be treated as having a permanent establishment in the United States for purposes of such treaty."

SEC. 114. ELECTING SMALL BUSINESS TRUSTS.

(a) GENERAL RULE.—Subparagraph (A) of section 1361(c)(2) (relating to certain trusts permitted as shareholders) is amended by inserting after clause (iv) the following new clause:

"(v) An electing small business trust."

(b) CURRENT BENEFICIARIES TREATED AS SHAREHOLDERS.—Subparagraph (B) of section 1361(c)(2) is amended by adding at the end the following new clause:

"(v) In the case of a trust described in clause (v) of subparagraph (A), each potential current beneficiary of such trust shall be treated as a shareholder; except that, if for any period there is no potential current beneficiary of such trust, such trust shall be treated as the shareholder during such period."

(c) ELECTING SMALL BUSINESS TRUST DEFINED.—Section 1361 (defining S corporation) is amended by adding at the end the following new subsection:

"(e) ELECTING SMALL BUSINESS TRUST DEFINED.—

"(1) ELECTING SMALL BUSINESS TRUST.—For purposes of this section—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'electing small business trust' means any trust if—

"(i) such trust does not have as a beneficiary any person other than an individual, an estate, or an organization described in section 401(a) or 501(c)(3),

"(ii) no interest in such trust was acquired by purchase, and

"(iii) an election under this subsection applies to such trust.

"(B) CERTAIN TRUSTS NOT ELIGIBLE.—The term 'electing small business trust' shall not include—

"(i) any qualified subchapter S trust (as defined in subsection (d)(3)) if an election under subsection (d)(2) applies to any corporation the stock of which is held by such trust, and

"(ii) any trust exempt from tax under this subtitle.

"(C) PURCHASE.—For purposes of subparagraph (A), the term 'purchase' means any acquisition if the basis of the property acquired is determined under section 1012.

"(2) POTENTIAL CURRENT BENEFICIARY.—For purposes of this section, the term 'potential current beneficiary' means, with respect to any period, any person who at any time during such period is entitled to, or at the discretion of any person may receive, a distribution from the principal or income of the trust. If a trust disposes of all of the stock which it holds in an S corporation, then, with respect to such corporation, the term 'potential current beneficiary' does not include any person who first met the requirements of the preceding sentence during the 60-day period ending on the date of such disposition.

"(3) ELECTION.—An election under this subsection shall be made by the trustee in such manner and form, and at such time, as the Secretary may prescribe. Any such election shall apply to the taxable year of the trust for which made and all subsequent taxable years of such trust unless revoked with the consent of the Secretary.

"(4) CROSS REFERENCE.—

"For special treatment of electing small business trusts, see section 641(d)."

(d) TAXATION OF ELECTING SMALL BUSINESS TRUSTS.—Section 641 (relating to imposition of tax on trusts) is amended by adding at the end the following new subsection:

"(d) SPECIAL RULES FOR TAXATION OF ELECTING SMALL BUSINESS TRUSTS.—

"(1) IN GENERAL.—For purposes of this chapter—

"(A) the portion of any electing small business trust which consists of stock in 1 or more S corporations shall be treated as a separate trust, and

"(B) the amount of the tax imposed by this chapter on such separate trust shall be determined with the modifications of paragraph (2).

"(2) MODIFICATIONS.—For purposes of paragraph (1), the modifications of this paragraph are the following:

"(A) Except as provided in section 1(h), the amount of the tax imposed by section 1(e) shall be determined by using the highest rate of tax set forth in section 1(e).

"(B) The exemption amount under section 55(d) shall be zero.

"(C) The only items of income, loss, deduction, or credit to be taken into account are the following:

"(i) The items required to be taken into account under section 1366.

"(ii) Any gain or loss from the disposition of stock in an S corporation.

"(iii) To the extent provided in regulations, State or local income taxes or administrative expenses to the extent allocable to items described in clauses (i) and (ii).

No deduction or credit shall be allowed for any amount not described in this paragraph, and no item described in this paragraph shall be apportioned to any beneficiary.

"(D) No amount shall be allowed under paragraph (1) or (2) of section 1211(b).

"(3) TREATMENT OF REMAINDER OF TRUST AND DISTRIBUTIONS.—For purposes of determining—

"(A) the amount of the tax imposed by this chapter on the portion of any electing small business trust not treated as a separate trust under paragraph (1), and

"(B) the distributable net income of the entire trust,

the items referred to in paragraph (2)(C) shall be excluded. Except as provided in the preceding sentence, this subsection shall not affect the taxation of any distribution from the trust.

"(4) TREATMENT OF UNUSED DEDUCTIONS WHERE TERMINATION OF SEPARATE TRUST.—If a portion of an electing small business trust ceases to be treated as a separate trust under paragraph (1), any carryover or excess deduction of the separate trust which is referred to in section 642(h) shall be taken into account by the entire trust.

"(5) ELECTING SMALL BUSINESS TRUST.—For purposes of this subsection, the term 'electing small business trust' has the meaning given such term by section 1361(e)(1)."

Subtitle C—Other Provisions

SEC. 121. EXPANSION OF POST-DEATH QUALIFICATION FOR CERTAIN TRUSTS.

Subparagraph (A) of section 1361(c)(2) (relating to certain trusts permitted as shareholders) is amended—

(1) by striking "60-day period" each place it appears in clauses (ii) and (iii) and inserting "2-year period", and

(2) by striking the last sentence in clause (ii).

TITLE II—QUALIFICATION AND ELIGIBILITY REQUIREMENTS FOR S CORPORATIONS

Subtitle A—One Class of Stock

SEC. 201. ISSUANCE OF PREFERRED STOCK PERMITTED.

(a) IN GENERAL.—Section 1361(c), as amended by section 111(a)(2), is amended by adding at the end the following new paragraph:

"(8) TREATMENT OF QUALIFIED PREFERRED STOCK.—

"(A) IN GENERAL.—Notwithstanding subsection (b)(1)(D), an S corporation may issue qualified preferred stock.

"(B) QUALIFIED PREFERRED STOCK DEFINED.—For purposes of this paragraph, the term 'qualified preferred stock' means stock described in section 1504(a)(4) which is issued to a person eligible to hold common stock of an S corporation.

"(C) DISTRIBUTIONS.—A distribution (not in part or full payment in exchange for stock) made by the corporation with respect to qualified preferred stock shall be includible as interest income of the holder and deductible to the corporation as interest expense in computing taxable income under section 1363(b) in the year such distribution is received."

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 1361(b)(1), as redesignated by section 113(a)(1)(C), is amended by inserting "except as provided in paragraph (8)," before "have".

(2) Subsection (a) of section 1366 is amended by adding at the end the following new paragraph:

"(3) ALLOCATION WITH RESPECT TO QUALIFIED PREFERRED STOCK.—The holders of qualified preferred stock shall not, with respect to such stock, be allocated any of the items described in paragraph (1)."

SEC. 202. FINANCIAL INSTITUTIONS PERMITTED TO HOLD SAFE HARBOR DEBT.

Subparagraph (B) of section 1361(c)(5) (defining straight debt) is amended by adding "and" at the end of clause (i) and by striking clauses (ii) and (iii) and inserting the following:

"(ii) in any case in which the terms of such promise include a provision under which the obligation to pay may be converted (directly or indirectly) into stock of the corporation, such terms, taken as a whole, are substantially the same as the terms which could have been obtained on the effective date of the promise from a person which is not a related person (within the meaning of section 465(b)(3)(C)) to the S corporation or its shareholders, and

"(iii) the creditor is—

"(I) an individual,

"(II) an estate,

"(III) a trust described in paragraph (2), or

"(IV) a person which is actively and regularly engaged in the business of lending money."

Subtitle B—Elections and Terminations

SEC. 211. RULES RELATING TO INADVERTENT TERMINATIONS AND INVALID ELECTIONS.

(a) GENERAL RULE.—Subsection (f) of section 1362 (relating to inadvertent terminations) is amended to read as follows:

"(f) INADVERTENT INVALID ELECTIONS OR TERMINATIONS.—If—

"(1) an election under subsection (a) by any corporation—

"(A) was not effective for the taxable year for which made (determined without regard to subsection (b)(2)) by reason of a failure to meet the requirements of section 1361(b) or to obtain shareholder consents, or

"(B) was terminated under paragraph (2) of subsection (d),

"(2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent,

"(3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken—

"(A) so that the corporation is a small business corporation, or

"(B) to acquire the required shareholder consents, and

"(4) the corporation, and each person who was a shareholder in the corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period,

then, notwithstanding the circumstances resulting in such ineffectiveness or termination, such corporation shall be treated as an S corporation during the period specified by the Secretary."

(b) LATE ELECTIONS.—Subsection (b) of section 1362 is amended by adding at the end thereof the following new paragraph:

"(5) AUTHORITY TO TREAT LATE ELECTIONS AS TIMELY.—If—

"(A) an election under subsection (a) is made for any taxable year (determined without regard to paragraph (3)) after the date prescribed by this subsection for making such election for such taxable year, and

"(B) the Secretary determines that there was reasonable cause for the failure to timely make such election,

the Secretary may treat such election as timely made for such taxable year (and paragraph (3) shall not apply)."

(c) AUTOMATIC WAIVERS.—The Secretary of the Treasury shall provide for an automatic waiver procedure under section 1362(f) of the Internal Revenue Code of 1986 in cases in which the Secretary determines appropriate.

(d) EFFECTIVE DATE.—The amendments made by subsection (a) and (b) shall apply with respect to elections for taxable years beginning after December 31, 1982.

SEC. 212. AGREEMENT TO TERMINATE YEAR.

Paragraph (2) of section 1377(a) (relating to pro rata share) is amended to read as follows:

"(2) ELECTION TO TERMINATE YEAR.—

"(A) IN GENERAL.—Under regulations prescribed by the Secretary, if any shareholder terminates the shareholder's interest in the corporation during the taxable year and all affected shareholders agree to the application of this paragraph, paragraph (1) shall be applied to the affected shareholders as if the taxable year consisted of 2 taxable years the first of which ends on the date of the termination.

"(B) AFFECTED SHAREHOLDERS.—For purposes of subparagraph (A), the term 'affected shareholders' means the shareholder whose interest is terminated and all shareholders to whom such shareholder has transferred shares during the taxable year. If such shareholder has transferred shares to the corporation, the term 'affected shareholders' shall include all persons who are shareholders during the taxable year."

SEC. 213. EXPANSION OF POST-TERMINATION TRANSITION PERIOD.

(a) IN GENERAL.—Paragraph (1) of section 1377(b) (relating to post-termination transition period) is amended by striking "and" at the end of subparagraph (A), by redesignating subparagraph (B) as subparagraph (C), and by inserting after subparagraph (A) the following new subparagraph:

"(B) the 120-day period beginning on the date of any determination pursuant to an audit of the taxpayer which follows the termination of the corporation's election and which adjusts a subchapter S item of income, loss, or deduction of the corporation arising during the S period (as defined in section 1368(e)(2)), and".

(b) DETERMINATION DEFINED.—Paragraph (2) of section 1377(b) is amended by striking subparagraphs (A) and (B), by redesignating subparagraph (C) as subparagraph (B), and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

"(A) a determination as defined in section 1313(a), or".

(c) REPEAL OF SPECIAL AUDIT PROVISIONS FOR SUBCHAPTER S ITEMS.—

(1) GENERAL RULE.—Subchapter D of chapter 63 (relating to tax treatment of subchapter S items) is hereby repealed.

(2) CONSISTENT TREATMENT REQUIRED.—Section 6037 (relating to return of S corporation), as amended by section 111(c)(2), is amended by adding at the end the following new subsection:

"(d) SHAREHOLDER'S RETURN MUST BE CONSISTENT WITH CORPORATE RETURN OR SECRETARY NOTIFIED OF INCONSISTENCY.—

"(1) IN GENERAL.—A shareholder of an S corporation shall, on such shareholder's return, treat a subchapter S item in a manner which is consistent with the treatment of such item on the corporate return.

"(2) NOTIFICATION OF INCONSISTENT TREATMENT.—

"(A) IN GENERAL.—In the case of any subchapter S item, if—

"(i)(I) the corporation has filed a return but the shareholder's treatment on his return is (or may be) inconsistent with the treatment of the item on the corporate return, or

"(II) the corporation has not filed a return, and

"(ii) the shareholder files with the Secretary a statement identifying the inconsistency,

paragraph (1) shall not apply to such item.

"(B) SHAREHOLDER RECEIVING INCORRECT INFORMATION.—A shareholder shall be treated as having complied with clause (ii) of subparagraph (A) with respect to a subchapter S item if the shareholder—

"(i) demonstrates to the satisfaction of the Secretary that the treatment of the subchapter S item on the shareholder's return is consistent with the treatment of the item on the schedule furnished to the shareholder by the corporation, and

"(ii) elects to have this paragraph apply with respect to that item.

"(3) EFFECT OF FAILURE TO NOTIFY.—In any case—

"(A) described in subparagraph (A)(i)(I) of paragraph (2), and

"(B) in which the shareholder does not comply with subparagraph (A)(ii) of paragraph (2),

any adjustment required to make the treatment of the items by such shareholder consistent with the treatment of the items on the corporate return shall be treated as arising out of mathematical or clerical errors and assessed according to section 6213(b)(1). Paragraph (2) of section 6213(b) shall not apply to any assessment referred to in the preceding sentence.

"(4) SUBCHAPTER S ITEM.—For purposes of this subsection, the term 'subchapter S item' means any item of an S corporation to the extent that regulations prescribed by the Secretary provide that, for purposes of this subtitle, such item is more appropriately determined at the corporation level than at the shareholder level.

"(5) ADDITION TO TAX FOR FAILURE TO COMPLY WITH SECTION.—

"For addition to tax in the case of a shareholder's negligence in connection with, or disregard of, the requirements of this section, see part II of subchapter A of chapter 68."

(3) CONFORMING AMENDMENTS.—

(A) Section 1366 is amended by striking subsection (g).

(B) Subsection (b) of section 6233 is amended to read as follows:

"(b) SIMILAR RULES IN CERTAIN CASES.—If a partnership return is filed for any taxable year but it is determined that there is no entity for such taxable year, to the extent provided in regulations, rules similar to the rules of subsection (a) shall apply."

(C) The table of subchapters for chapter 63 is amended by striking the item relating to subchapter D.

SEC. 214. REPEAL OF EXCESSIVE PASSIVE INVESTMENT INCOME AS A TERMINATION EVENT.

(a) IN GENERAL.—Section 1362(d) (relating to termination) is amended by striking paragraph (3).

(b) MODIFICATION OF TAX IMPOSED ON EXCESSIVE PASSIVE INVESTMENT INCOME.—

(1) INCREASE IN THRESHOLD.—Subsections (a)(2) and (b)(1)(A)(i) of section 1375 (relating to tax imposed when passive investment income of corporation having subchapter C earnings and profits exceeds 25 percent of gross receipts) are each amended by striking "25 percent" and inserting "50 percent".

(2) TAX RATE INCREASE AFTER THIRD CONSECUTIVE YEAR.—Section 1375 is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) TAX RATE INCREASE AFTER THIRD CONSECUTIVE YEAR.—

"(1) IN GENERAL.—If an S corporation is described in subsection (a) for more than 3 consecutive taxable years, then the rate of tax imposed under subsection (a) with respect to each succeeding consecutive taxable year (if any) shall be determined under the following table:

"In the case of the—	The rate of tax imposed under subsection (a) shall be equal to such rate of tax for the 3rd taxable year, plus the following percentage points:
4th taxable year	10
5th taxable year	20
6th taxable year	30
7th taxable year	40
8th taxable year and thereafter	50.

"(2) YEARS TAKEN INTO ACCOUNT.—No tax shall be increased under paragraph (1) for any taxable year beginning before January 1, 1994."

(c) CONFORMING AMENDMENTS.—

(1) Section 1362(f)(1) is amended by striking "or (3)".

(2) Subsection (b) of section 1375 is amended by striking paragraphs (3) and (4) and inserting the following new paragraphs:

"(3) SUBCHAPTER C EARNINGS AND PROFITS.—The term 'subchapter C earnings and profits' means earnings and profits of any corporation for any taxable year with respect to which an election under section 1362(a) (or under section 1372 of prior law) was not in effect.

"(4) GROSS RECEIPTS FROM SALES OF CAPITAL ASSETS (OTHER THAN STOCK AND SECURITIES).—In the case of dispositions of capital assets (other than stock and securities), gross receipts from such dispositions shall be taken into account only to the extent of the capital gain net income therefrom.

"(5) PASSIVE INVESTMENT INCOME DEFINED.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'passive investment income' means gross receipts derived from royalties, rents, dividends, interest, and annuities.

"(B) EXCEPTION FOR INTEREST ON NOTES FROM SALES OF INVENTORY.—The term 'passive investment income' shall not include interest on any obligation acquired in the ordinary course of the corporation's trade or business from its sale of property described in section 1221(1).

"(C) TREATMENT OF CERTAIN LENDING OR FINANCE COMPANIES.—If the S corporation meets the requirements of section 542(c)(6) for the taxable year, the term 'passive investment income' shall not include gross receipts for the taxable year which are derived directly from the active and regular conduct of a lending or finance business (as defined in section 542(d)(1)).

"(D) SPECIAL RULE FOR OPTIONS AND COMMODITY DEALINGS.—

"(i) IN GENERAL.—In the case of any options dealer or commodities dealer, passive investment income shall be determined by not taking into account any gain or loss (in the normal course of the taxpayer's activity of dealing in or trading section 1256 contracts) from any section 1256 contract or property related to such a contract.

"(ii) DEFINITIONS.—For purposes of this subparagraph—

"(I) OPTIONS DEALER.—The term 'options dealer' has the meaning given such term by section 1256(g)(8).

"(II) COMMODITIES DEALER.—The term 'commodities dealer' means a person who is actively engaged in trading section 1256 contracts and is registered with a domestic board of trade which is designated as a contract market by the Commodities Futures Trading Commission.

"(III) SECTION 1256 CONTRACT.—The term 'section 1256 contract' has the meaning given to such term by section 1256(b).

"(E) COORDINATION WITH SECTION 1374.—The amount of passive investment income shall be determined by not taking into account any recognized built-in gain or loss of the S corporation for any taxable year in the recognition period. Terms used in the preceding sentence shall have the same respective meaning as when used in section 1374."

(3) The heading for section 1375 is amended by striking "25" and inserting "50".

(4) The table of sections for part III of subchapter S of chapter 1 is amended by striking "25" in the item relating to section 1375 and inserting "50".

(5) Clause (i) of section 1042(c)(4)(A) is amended by striking "section 1362(d)(3)(D)" and inserting "section 1375(b)(5)".

Subtitle C—Other Provisions

SEC. 221. S CORPORATIONS PERMITTED TO HOLD SUBSIDIARIES.

(a) IN GENERAL.—Paragraph (2) of section 1361(b) (defining ineligible corporation) is amended by striking subparagraph (A) and by redesignating subparagraphs (B), (C), (D), and (E) as subparagraphs (A), (B), (C), and (D), respectively.

(b) CERTAIN DIVIDENDS NOT TREATED AS PASSIVE INVESTMENT INCOME.—Section 1375(b)(5) (defining passive investment income), as added by section 214(c)(2), is amended by adding at the end the following new subparagraph:

"(F) TREATMENT OF CERTAIN DIVIDENDS.—If an S corporation holds stock in a C corporation meeting the requirements of section 1504(a)(2), the term 'passive investment income' shall not include dividends from such C corporation to the extent such dividends are attributable to the earnings and profits of such C corporation derived from the active conduct of a trade or business."

(c) CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 1361, as amended by sections 111 and 201, is amended by striking paragraph (6) and redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(2) Subsection (b) of section 1504 (defining includible corporation) is amended by adding at the end the following new paragraph:

"(8) An S corporation."

SEC. 222. C CORPORATION RULES TO APPLY FOR FRINGE BENEFIT PURPOSES.

(a) IN GENERAL.—Section 1372 (relating to partnership rules to apply for fringe benefit purposes) is repealed.

(b) CONFORMING AMENDMENTS.—

(1) Section 162(l) is amended by striking paragraph (5) and by redesignating paragraph (6) as paragraph (5).

(2) The table of sections for part III of subchapter S of chapter 1 is amended by striking the item relating to section 1372.

SEC. 223. TREATMENT OF DISTRIBUTIONS DURING LOSS YEARS.

(a) ADJUSTMENTS FOR DISTRIBUTIONS TAKEN INTO ACCOUNT BEFORE LOSSES.—

(1) Subparagraph (A) of section 1366(d)(1) (relating to losses and deductions cannot exceed shareholder's basis in stock and debt) is amended by striking "paragraph (1)" and inserting "paragraphs (1) and (2)(A)".

(2) Subsection (d) of section 1368 (relating to certain adjustments taken into account) is amended by adding at the end the following new sentence:

"In the case of any distribution made during any taxable year, the adjusted basis of the stock shall be determined with regard to the adjustments provided in paragraph (1) of section 1367(a) for the taxable year."

(b) ACCUMULATED ADJUSTMENTS ACCOUNT.—Paragraph (1) of section 1368(e) (relating to accumulated adjustments account) is amended by adding at the end the following new subparagraph:

"(C) NET LOSS FOR YEAR DISREGARDED.—

"(i) IN GENERAL.—In applying this section to distributions made during any taxable year, the amount in the accumulated adjustments account as of the close of such taxable year shall be determined without regard to any net negative adjustment for such taxable year.

"(ii) NET NEGATIVE ADJUSTMENT.—For purposes of clause (i), the term 'net negative adjustment' means, with respect to any taxable year, the excess (if any) of—

"(I) the reductions in the account for the taxable year (other than for distributions), over

"(II) the increases in such account for such taxable year."

(c) CONFORMING AMENDMENTS.—Subparagraph (A) of section 1368(e)(1) is amended—

(1) by striking "as provided in subparagraph (B)" and inserting "as otherwise provided in this paragraph", and

(2) by striking "section 1367(b)(2)(A)" and inserting "section 1367(a)(2)".

SEC. 224. CONSENT DIVIDEND FOR AAA BYPASS ELECTION.

Section 1368(e)(3) (relating to election to distribute earnings first) is amended by adding at the end the following new subparagraph:

"(C) CONSENT DIVIDEND.—Under regulations prescribed by the Secretary, an S corporation may, subject to the election under this paragraph, consent to treat as a distribution the amount specified in such consent, to the extent such amount does not exceed the accumulated earnings and profits of such corporation. The amount so specified shall be considered—

"(i) as distributed in money by the corporation to its shareholders on the last day of the taxable year of the corporation and as contributed to the capital of the corporation by the shareholders on such day, and

"(ii) if any such shareholder is an organization described in section 511(a)(2), as unrelated business taxable income (as defined in section 512) to such shareholder."

SEC. 225. TREATMENT OF S CORPORATIONS UNDER SUBCHAPTER C.

Subsection (a) of section 1371 (relating to application of subchapter C rules) is amended to read as follows:

"(a) APPLICATION OF SUBCHAPTER C RULES.—Except as otherwise provided in this title, and except to the extent inconsistent with this subchapter, subchapter C shall apply to an S corporation and its shareholders."

SEC. 226. ELIMINATION OF PRE-1983 EARNINGS AND PROFITS.

(a) IN GENERAL.—If—

(1) a corporation was an electing small business corporation under subchapter S of chapter 1 of the Internal Revenue Code of 1986 for any taxable year beginning before January 1, 1983, and

(2) such corporation is an S corporation under subchapter S of chapter 1 of such Code for its first taxable year beginning after December 31, 1993,

the amount of such corporation's accumulated earnings and profits (as of the beginning of such first taxable year) shall be reduced by an amount equal to the portion (if any) of such accumulated earnings and profits which were accumulated in any taxable year beginning before January 1, 1983, for which such corporation was an electing small business corporation under such subchapter S.

(b) CONFORMING AMENDMENTS.—

(1)(A) Subsection (a) of section 1375 is amended by striking "subchapter C" in paragraph (1) and inserting "accumulated".

(B) Subsection (b) of section 1375, as amended by section 214(c)(2), is amended by striking paragraph (3) and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(C) The section heading for section 1375 is amended by striking "**subchapter c**" and inserting "**accumulated**".

(D) The table of sections for part III of subchapter S of chapter 1 is amended by striking "subchapter C" in the item relating to section 1375 and inserting "accumulated".

(2) Clause (i) of section 1042(c)(4)(A), as amended by section 214(c)(5), is amended by striking "section 1375(b)(5)" and inserting "section 1375(b)(4)".

SEC. 227. ALLOWANCE OF CHARITABLE CONTRIBUTIONS OF INVENTORY AND SCIENTIFIC PROPERTY.

(a) IN GENERAL.—Section 170(e) (relating to certain contributions of ordinary income and capital gain property) is amended—

(1) by striking "(other than a corporation which is an S corporation)" in paragraph (3)(A), and

(2) by striking clause (i) of paragraph (4)(D) and by redesignating clauses (ii) and (iii) of such paragraph as clauses (i) and (ii), respectively.

(b) STOCK BASIS ADJUSTMENT.—Paragraph (1) of section 1367(a) (relating to adjustments to basis of stock of shareholders, etc.) is amended by striking "and" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", and", and by adding at the end the following new subparagraph:

"(D) the excess of the deductions for charitable contributions over the basis of the property contributed."

TITLE III—TAXATION OF S CORPORATION SHAREHOLDERS

SEC. 301. UNIFORM TREATMENT OF OWNER-EMPLOYEES UNDER PROHIBITED TRANSACTION RULES.

The last sentence of section 4975(d) (relating to exemptions from prohibited transactions) is amended by striking "a shareholder-employee (as defined in section 1379, as in effect on the day before the date of the enactment of the Subchapter S Revision Act of 1982),".

SEC. 302. TREATMENT OF LOSSES TO SHAREHOLDERS.

(a) TREATMENT OF LOSSES IN LIQUIDATIONS.—Section 331 (relating to gain or loss to shareholders in corporate liquidations) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) LOSSES ON LIQUIDATIONS OF S CORPORATION.—

"(1) IN GENERAL.—The portion of any loss recognized by a shareholder of an S corporation (as defined in section 1361(a)(1)) on amounts received by such shareholder in a distribution in complete liquidation of such S corporation which does not exceed the ordinary income basis of stock of such S corporation in the hands of such shareholder shall not be treated as a loss from the sale or exchange of a capital asset but shall be treated as an ordinary loss.

"(2) ORDINARY INCOME BASIS.—For purposes of this subsection, the ordinary income basis of stock of an S corporation in the hands of a shareholder of such S corporation shall be an amount equal to the portion of such shareholder's basis in such stock which is equal to the aggregate increases in such basis under section 1367(a)(1) resulting from such shareholder' pro rata share of ordinary income of such S corporation attributable to the complete liquidation."

(b) CARRYOVER OF DISALLOWED LOSSES AND DEDUCTIONS UNDER AT-RISK RULES ALLOWED.—Paragraph (3) of section 1366(d) (relating to carryover of disallowed losses and deductions to post-termination transition period) is amended by adding at the end the following new subparagraph:

"(D) AT-RISK LIMITATIONS.—To the extent that any increase in adjusted basis described in subparagraph (B) would have increased the shareholder's amount at risk under section 465 if such increase had occurred on the day preceding the commencement of the post-termination transition period, rules similar to the rules described in subparagraphs (A) through (C) shall apply to any losses disallowed by reason of section 465(a)."

TITLE IV—EFFECTIVE DATE

SEC. 401. EFFECTIVE DATE.

Except as otherwise provided in this Act, the amendments made by this Act shall apply to taxable years beginning after December 31, 1993.

S CORPORATION REFORM ACT OF 1993

ACCELERATING CAPITAL FORMATION

Shareholder limitations

1. Increase the thirty-five shareholder limitation to fifty shareholder.

2. Permit tax exempt organizations as eligible shareholders.

3. Permit financial institutions as eligible shareholders.

4. Allow nonresident alien shareholders to own S corporation stock.

Preferred stock

5. Permit S corporations to issue "plain vanilla" preferred stock with no convertibility, and treat the stock as corporate debt for federal tax purposes.

Subsidiaries

6. Permit an S corporation to won more than 80 percent of another corporation's stock.

Debt

7. Expand Safe Harbor Debt to permit convertible debt.

8. Permit venture capitalists and lending institutions to hold "safe harbor debt."

PRESERVING FAMILY-OWNED BUSINESS

Shareholder limitations

9. Expand the types of trusts that can own S corporation stock.

Construction ownership

10. Count all members of a single family who own an S corporation's stock as a single shareholder.

REMOVING TRAPS FOR THE UNWARY

Elections

11. Permit the Secretary of Treasury to treat invalid elections as effective.

12. Provide for automatic waiver of certain inadvertent terminations.

Fringe benefits

13. Place S corporation shareholders in the same position as owners of regular corporations with respect to fringe benefits.

14. Repeal restrictions on qualified plan loans made to S corporation shareholders.

Passive investment income

15. Repeal excessive passive investment income as a termination event.

16. Exclude trade or business income from the passive investment income definition.

Technical proposals

17. Treat losses on liquidation of S corporations as ordinary to the extent the loss created by ordinary income passthrough triggered the liquidation.

18. Allow a carryover of disallowed losses and deductions under section 465 to the post-termination transition period.

19. Expand to two years the period of post-death S qualification for certain trusts.

20. Modify order of adjustments to AAA and stock basis.

21. Permit consent dividend for AAA bypass election.

22. Permit subchapter C to apply to S corporations.

23. Eliminate pre-1983 subchapter S earnings and profits.

24. Allow interim closing of the books on termination of shareholder interest with consent of corporation and affected shareholder.

25. Expand the post-termination transition period until 120 days after a determination is made that the election had terminated in a prior year.

26. Allow for charitable contributions of inventory and scientific property to be the same for subchapter S as for subchapter C.

Mr. DANFORTH. Mr. President, the bill that Senator PRYOR and I are introducing, the S Corporation Reform Act of 1993, would modernize an area of tax law of rapidly increasing importance to small businesses.

Our bill is supported by the U.S. Chamber of Commerce, the National Federation of Independent Businesses, the Small Business Legislative Council, the National Association of Private Enterprises, the American Institute of Certified Public Accountants, and the Subchapter S Committee of the American Bar Association. We are encouraged by expressions of strong interest from the Treasury Department, the Small Business Administration, and the House and Senate Small Business Committees.

TIME TO DUST OFF SUBCHAPTER S

Subchapter S was enacted in 1958 to help remove tax consideration from small business owners' decisions regarding the type of entity in which to conduct business; for example, partnership, sole proprietorship, or corporation. Under subchapter S, small businesses could choose to operate in whatever form they want without being penalized with a second level of tax. However, subchapter S, as originally enacted, was very limiting and contained a number of pitfalls and traps for the unwary. The first—and until today—only real attempt to update and improve the subchapter S rules occurred in 1982, over a decade ago.

S CORPORATION GROWTH HAS BEEN ASTOUNDING

In the early 1980's, S corporation tax returns accounted for only about 19 percent of all corporate returns, owned only 1 percent of corporate assets, and earned 2 percent of corporate income. In the late 1980's, posttax reform, an astounding growth in S corporations occurred. Today, S corporations represent over 42 percent of all corporate returns filed; their share of corporate net income is over 11 percent; and their share of corporate assets has nearly doubled since the 1980's.

THE ECONOMIC AND BUSINESS ENVIRONMENT HAS CHANGED

It is time to update the Tax Code to reflect the changing business and economic environment in which small businesses exist. Many of the prohibitive restraints currently in subchapter S date back to 1958. The financial environment in the 1990's is far more complex and the current restraints are handicapping small business.

For instance, small businesses have a difficult time attracting financing. Nontraditional sources of financing such as venture capitalists and pension funds play a growing role in investing in many businesses. Under current rules, however, S corporations are all but precluded from tapping into the capital of these investors.

The S Corporation Reform Act has 26 separate provisions. A number of these were contained in legislation passed last year by Congress but which did not become law. Some are contained in H.R. 13, the Tax Simplification Act of 1993, introduced by Chairman ROSTENKOWSKI. The package, taken as a whole, would modernize this section of the Internal Revenue Code by accomplishing four broad goals.

In summary, our legislation:

First, broadens eligibility rules for subchapter S corporations and their shareholders, enhancing the availability and desirability of electing S corporation status;

Second, simplifies some of the complex rules that confront S corporations and their shareholders and at the same time removes some of the traps for the unwary;

Third, expands capital formation techniques available to S corporations, creating a more level playing field with C corporations, limited liability companies and partnerships;

Fourth, helps preserve family-owned businesses.

I believe these objectives are very important to the Nation. It is my hope that the Senate and House of Representatives will have hearings on this issue next year and that comprehensive S corporation reform will be part of the next tax bill passed by Congress.

By Mr. CONRAD (for himself, Mr. DASCHLE, and Mr. GRASSLEY):

S. 1691. A bill to amend the Internal Revenue Code of 1986 to provide taxpayers engaged in certain agriculture-related activities a credit against income tax for property used to control environmental pollution and for soil and water conservation expenditures; to the Committee on Finance.

ENVIRONMENTAL REGULATIONS LEGISLATION

• Mr. CONRAD. Mr. President, today I am introducing legislation that is intended to ease the financial burden of the agricultural community in complying with the ever-increasing number of environmental regulations imposed by Federal, State, and local governments.

There are many reasons to support the agricultural community in this endeavor. American agricultural provides the safest, most reliable, and lowest cost food and fiber supply in the world. The food and fiber industry from farm to retail is America's single largest industry. This industry employs nearly 21 million people, almost 19 percent of the Nation's total workforce, and accounts for nearly one-fifth of our gross domestic product [GDP]. In spite of its importance, however, farm income is at record low levels on a per-decade basis, and, while there has recently been some recovery, projections for the 1990's anticipate further decline.

Agriculture is also the subject of the continuing upward spiral of expensive governmental regulation. The legislation that I am introducing today addresses the expense of current and proposed water and air quality regulations with which taxpayers engaged in agriculture or agricultural related businesses are required to comply. This bill would provide a 15 percent agricultural environmental tax credit for purchases of machinery, equipment, and structures for which the primary purpose is to comply with environmental regulations. The credit would be limited to $15,000 in any given year and to $150,000 today for any taxpayer.

A farmer or an agricultural related business would receive the credit for investment in structures and equipment including, for example, livestock waste-handling systems, constructed wetlands, terraces, no-till planters and other conservation farm equipment, and containment dikes. These are items for which cost ranges from $200 to $100,000, sizable sums of money for a North Dakota farmer with an average per farm income of $20,003.00 in1991. The credit would help alleviate some of the financial burden of complying with these provisions.

This legislation that I am introducing with my colleagues, Mr. DASCHLE and Mr. GRASSLEY, will help the rural community while furthering the goals of controlling environmental pollution and conserving America's soil and water resources.

I urge my colleagues to support this legislation. I ask unanimous consent that the entire text of this bill be printed in the RECORD.

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

S. 1691

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CREDIT FOR PROPERTY USED IN CERTAIN AGRICULTURE-RELATED ACTIVITIES TO CONTROL ENVIRONMENTAL POLLUTION AND FOR SOIL AND WATER CONSERVATION EXPENDITURES.

(a) IN GENERAL.—Section 46 of the Internal Revenue Code of 1986 (relating to amount of investment credit) is amended by striking

"and" at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting ", and", and by adding at the end thereof the following paragraph:

"(4) in the case of an eligible taxpayer (as defined in section 48(c)), the agricultural environmental credit."

(b) AGRICULTURAL ENVIRONMENTAL CREDIT.—Section 48 of such Code is amended by adding at the end thereof the following new subsection:

"(c) AGRICULTURAL ENVIRONMENTAL CREDIT.—

"(1) IN GENERAL.—For purposes of section 46, in the case of an eligible taxpayer, the agricultural environmental credit for any taxable year is equal to the lesser of—

"(A) the sum of—

"(i) 15 percent of the portion of the basis of each agricultural environmental property placed in service by the taxpayer during such taxable year, and

"(ii) 15 percent of the amount allowed as a deduction under section 175 (determined without regard to paragraph (4)(B)) for such taxable year, or

"(B) the lesser of—

"(i) $15,000, or

"(ii) the excess of—

"(I) $150,000, over

"(II) the amount of the credit taken into account under this section by the taxpayer for taxable years preceding the taxable year.

"(2) ELIGIBLE TAXPAYER.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'eligible taxpayer' means any taxpayer primarily engaged in a farming-related business.

"(B) FARMING-RELATED BUSINESS.—For purposes of this subsection, the term 'farming-related business' means—

"(i) a farming business (as defined in section 263A(e)(4)),

"(ii) a trade or business of mixing fertilizers from purchased fertilizer materials, and

"(iii) a trade or business of the wholesale distribution of animal feeds, fertilizers, agricultural chemicals, pesticides, seeds, or other farm supplies (other than grains).

"(3) AGRICULTURAL ENVIRONMENTAL PROPERTY.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'agricultural environmental property' means any new identifiable treatment facility—

"(i) which is used in a farming-related business for the primary purpose of complying with Federal, State, and local environmental laws dealing with the abatement or control of water, soil, or atmospheric pollution or contamination by removing, altering, disposing, storing, or preventing the creation or emission of pollutants, contaminants, wastes, or heat, and

"(ii) which does not significantly—

"(I) increase the output or capacity, extend the useful life, or reduce the total operating costs of plant or property to which such facility relates, or

"(II) alter the nature of any manufacturing or production process or facility.

"(B) NEW IDENTIFIABLE TREATMENT FACILITY.—The term 'new identifiable treatment facility' has the meaning given such term by section 169(d)(4)(A), determined by substituting 'December 31, 1993' for 'December 31, 1968'.

"(4) SPECIAL RULES.—

"(A) COORDINATION WITH ENERGY AND REHABILITATION CREDITS.—This subsection shall not apply to—

"(i) any property to the extent the basis of such property is attributable to qualified rehabilitation expenditures (as defined in section 47(c)(2)), or

"(ii) energy property.

"(B) COORDINATION WITH DEDUCTION FOR SOIL AND WATER CONSERVATION EXPENDITURES.—The amount which would (but for this subparagraph) be allowed as a deduction under section 175 for any taxable year shall be reduced by the amount of the credit allowed by paragraph (1)(B) for such year.

"(C) COORDINATION WITH AMORTIZATION OF POLLUTION CONTROL FACILITIES.—This subsection shall not apply to any property to the extent an election is made under section 169 with respect to the basis of such property."

(c) CLERICAL AMENDMENTS.—

(1) The section heading for section 48 of such Code is amended to read as follows:

"SEC. 48. ENERGY CREDIT; REFORESTATION CREDIT; AGRICULTURAL ENVIRONMENTAL CREDIT."

(2) The item relating to section 48 in the table of sections for subpart E of part IV of subchapter A of chapter 1 of such Code is amended to read as follows:

"Sec. 48. Energy credit; reforestation credit; agricultural environmental credit."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to periods after December 31, 1993, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).●

By Mr. PELL:

S. 1692. A bill to authorize the Secretary of Transportation to issue a certificate of documentation for the vessel *Big Guy*; to the Committee on Commerce, Science, and Transportation.

VESSEL "BIG GUY" CERTIFICATE OF DOCUMENTATION LEGISLATION

Mr. PELL. Mr. President, I am introducing a bill today to direct that the vessel *Big Guy*, official No. 939310, be accorded coastwise trading privileges and be issued a coastwise endorsement under 46 U.S.C. 12106.

The *Big Guy* is 30.5 feet in length, 11.9 feet in breadth, has a depth of 5 feet, and is self-propelled.

The vessel was purchased by Mr. and Mrs. Vincent Galvin of East Providence, RI, who would now like to use the boat for a charter business. When the owners purchased the boat, they were unaware of the coastwise trade and fisheries restrictions of the Jones Act. They assumed that there were no restrictions on engaging the vessel in such a limited operation. However, due to the fact that the vessel has previously been partially foreign owned, it did not meet the requirements for a coastwise license endorsement in the United States. Such documentation is mandatory to enable the owners to use the vessel for its intended purpose.

The owners of *Big Guy* are thus seeking a waiver of the existing law because they wish to use the vessel for the purpose of engaging in limited commercial use. Their desired intentions for the vessel's use will not adversely affect the coastwise trade in U.S. waters. If they are granted this waiver, it is their intention to comply fully with U.S. documentation and safety requirements. The purpose of the legislation I am introducing is to allow the *Big Guy* to engage in coastwise trade and fisheries of the United States.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1692

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Notwithstanding sections 12106, 12107, and 12108 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (41 Stat. 999, chapter 250; 46 U.S.C. App. 883), the Secretary of Transportation may authorize a certificate of documentation for the vessel Big Guy, United States official number 939310.

By Mr. HATFIELD (for himself, Mr. BRADLEY, Mr. KERRY, and Mr. FEINGOLD):

S. 1696. A bill to amend the Military Selective Service Act to terminate the registration requirement and to terminate the activities of civilian local boards, civilian appeal boards, and similar local agencies of the Selective Service System; to the Committee on Armed services.

SELECTIVE SERVICE STANDBY ACT OF 1993

● Mr. HATFIELD. Mr. President. I am pleased to introduce legislation, along with Senators BRADLEY, KERRY, and FEINGOLD which will repeal the requirement that young men register for the draft or face legal penalties. The Selective Service Standby Act of 1993 will terminate the activities of the Selective Service System and halt the unnecessary and wasteful expenditure of $25 million or more every year.

Our bill will end the requirement for draft registration, end the Selective Service System's maintenance of lists of potential draftees, and will terminate the imposition of penalties against those who fail to register.

The gathering of these lists of names is not only a waste of our young people's time and the taxpayer's money, but it is not done well. Grave concerns have been raised about the true accuracy of the data bank, which seeks to track current addresses of one of the most transient sectors of our society. What is more, a highly critical report recently prepared by U.S. Army Force Integration Support Agency stated that the Selective Service System is overstaffed, with employees wasting time because they have nothing to do, and has not sought to maintain its data with appropriate technology.

The Senate Appropriations Committee, in its fiscal year 1994 report accompanying the VA-HUD bill, stated that

If the Selective Service System is to continue, the Committee believes that the Agency must change, and change dramatically.

The Committee has been disturbed by repeated reports that the agency is overstaffed, suffers from widespread poor morale among its employees, and seemingly has little self-discipline to correct its own internal problems.

Such negative findings would certainly challenge the existence of the most vital national program. Clearly, no one wants to waste money on a program which fails to fulfill its mission. And yet Selective Service continues on.

The irony is that this is an agency without a mission. With the breakup of the Soviet Union, defense analysts do not show a scenario where the United States military would require a draft to augment our total force. And analysis also shows that Selective Service registration will not provide significant time savings if a draft is necessary.

And certainly our recent experience in the Persian Gulf war has shown that our military capability is adequate to handle even the most challenging circumstances.

Proponents of draft registration and the harsh penalties which are brought against those young men who fail to register have argued that registration somehow promotes patriotism and that the Selective Service System is an insurance policy to guard against some unforeseen emergency.

Our Nation was founded upon the rock of individual freedom. Our ancestors fled a Europe which was rife with unjust and unwise conflicts, where people were compelled to fight at the whim of their monarch. Our Nation has experienced some of its most bitter civil unrest during debates over the draft.

During World War II, I felt it was my duty to answer the call for military service. My concern for my country and for those battling totalitarianism was deep and I joined the Navy without reservation. But my own decision to put on a uniform did not lead me to criticize those who chose not to serve.

The issue of voluntary versus mandatory service became much more critical during the Vietnam war. Slowly but surely the American public lost confidence in its leadership because the people did not support our adventurism in Southeast Asia. Only the draft kept the military ranks full. The draft sustained an unjust and unwanted war. Even this sad experience did not deter President Carter from reinstating registration in 1980. He did not do so because of a military need. He did so for political reasons. He resurrected draft registration as a political symbol to the Soviets after their invasion of Afghanistan.

Thus the purpose for the most recent reinstatement of the requirement to register for the draft is moot. What was intended as a symbolic act has caused tangible inconvenience and, unfortunately, some grief to our Nation's young men. The requirement to register with the Selective Service System is not painless. It is not cheap. It is not necessary. Even as we downsize our military we continue to maintain the world's most impressive and capable military force. It is time to place the Selective Service System on standby.●

● Mr. BRADLEY. Mr. President, on September 10, I came before this body with two principles by which to judge the value of Federal spending: First, does the spending provide something that is in the general interest and essential to American public life? If so, is taxpayer funding the only and most cost-effective way that this specific important public purpose can be met? At that time, I promised to propose legislation to cut spending that violates these principles. During consideration of the fiscal year 1994 appropriations bills, I offered amendments to cut spending by over $500 million. Unfortunately, all but one of those amendments was voted down by my colleagues in the Senate.

But budget-cutting is more than just offering amendments to appropriations bills. It requires taking every legislative opportunity to eliminate programs that fail to meet the criteria I have outlined. I therefore take great pleasure in joining with my friend Senator HATFIELD, and our cosponsors, in introducing the Selective Service Standby Act of 1993, an act to end the requirement for draft registration and terminate the activities of local Selective Service boards.

The plain fact is that the Selective Service System no longer provides something that is in the general interest and is essential to American public life. The Selective Service System is a dinosaur in the post-Soviet world, make obsolete by two welcome developments—the creation of the All-Volunteer Armed Forces, and the end of the Soviet threat.

Our all-volunteer force is a remarkable success story. After a rocky start, it has become the best-educated force in U.S. history. For example, last year over 98 percent of all new recruits had a high school degree. Recruits score higher than the population as a whole on the Armed Forces Qualifying Test. Most important, this force has proved itself—in Grenada, Panama, Iraq, and Somalia. Backed by Reserves, it is capable of handling the only kinds of conflicts we are likely to see—the Somalias, the Bosnias, and yes, the Desert Storms of the foreseeable future.

Desert Storm proved that our volunteer force, based by Reserves, can put a half-million men on the ground and support them, without resorting to conscription. In fact, we didn't come close to exhausting the supply of reservists and guardsmen. There was no thought of resorting to conscription.

The fact is, we don't need conscription for any conflict we are at all likely to fight in the foreseeable future. I don't ask you to take my word for this; the Pentagon's own 1993-99 Defense Planning Guidance Scenario Set found that only one of seven scenarios lasted long enough to require—or even allow for—conscription. And that scenario envisaged a reunified, rearmed Soviet Union, an increasingly remote possibility. The Congressional Research Service, in its January 22, 1991, Report for Congress on "The Persian Gulf War and the Draft" concluded:

A requirement to increase the size of the active armed forces . . . could be met much more quickly with other methods than reinstituting a draft and using draftees to provide most enlisted manpower to fill new units.

With the disintegration of the Soviet Union and Russia's weakness, the Pentagon's worst-case scenario is not realistic. Today's events in Russia do not change that basic fact. Should the situation deteriorate further, and the forces of reform be defeated, any Russian threat could only be reconstituted over a period of years. This would give us time both to try to counteract this development by diplomatic and economic means, and to develop a system to identify our 18-year-olds—without paying millions of dollars per year in the meantime.

Indeed, this is what we have done in the past. The United States initiated registration in 1940, only a year before the World War II draft became necessary. After the war, the Selective Service was disbanded. It was then reconstituted in 1948 as the cold war took hold. In this day of drivers licenses and social security records, I find it hard to believe we couldn't, if necessary, identify our 18-year-olds in a cost-effective and timely manner.

Some may argue that spending $25 million per year on the Selective Service System is a cheap insurance policy in a dangerous world. I cannot agree. Twenty-five million dollars may seem a small figure to us in the Congress, who have become used to talking in terms of billions and, increasingly, trillions of dollars. But to our constituents, $25 million is real money. I don't see how we can justify spending such a sum on something we simply don't need.

Some argue that the military is the best judge as to whether Selective Service registration is still necessary. They counsel us to keep registration until the military tells us it is no longer necessary. That argument just doesn't hold water. Section 547 of the fiscal year 1993 Department of Defense Authorization Act (P.L. 102-484) requested DOD to prepare a report on the continued need for draft registration, due April 30, 1993. That report has not been done, not even in response to our nearly successful legislative effort to cut off all but termination funding. Were registration a high priority, we

certainly would have heard from DOD by now.

The Selective Service System is not even performing its residual functions well. A November 1992 study by the U.S. Army Forces Integration Agency uncovered severe overstaffing, poor morale, and overgrading in the work force. It found employees reading newspapers and magazines, and freely admitting that they had no meaningful work to perform. As a result, the study recommended a cut of almost one-third in the work force. The study also found that work normally done by workers at grades 7, 9, 11, and 12 was being done by workers at grade 12, 13, 14, and 15. Even more, the study found that workers were using technology that is badly out of date, such as using a key punch system to enter names. It should be no surprise, then, that the study found morale to be so low.

The Selective Service System played an important role during the cold war. But the cold war is over, and keeping this outdated relic is a luxury we simply cannot afford. It is time to end government by inertia, stop unneeded spending, and phase out the Selective Service System. The Selective Service Standby Act of 1993 will do just that.●

By Ms. MIKULSKI:

S. 1697. A bill to improve the ability of the Federal Government to prepare for and respond to major disasters, and for other purposes; to the Committee on Governmental Affairs.

FEDERAL DISASTER PREPAREDNESS AND RESPONSE ACT

● Ms. MIKULSKI. Mr. President, today I am reintroducing legislation to reform the Federal Emergency Management Agency [FEMA]. On May 20, 1993, I introduced legislation entitled the Federal Disaster Preparedness and Response Act.

Today's legislation is simply a refinement of that original bill. It incorporates some important suggestions made by those who are on the front lines of disaster response, and I believe their input really strengthens this legislation.

The revised bill pays special tribute to firefighters—those who are fit for duty and ready to respond to the scene immediately—whenever disaster strikes.

I feel as strongly today as I did last spring that this legislation is vitally needed. Despite FEMA's excellent job at responding to the recent California fires and the Midwest floods, I believe this legislation is needed to completely reorient FEMA and change its culture to a risk-based all hazards agency.

My legislation requires FEMA to adopt a risk-based strategy in developing Federal disaster policy, based on the three R's: readiness, response, and recovery. Its objective is to save lives, save jobs, and save communities. It is intended to bolster the capability of State and local governments to be ready for all hazards—whether it's an earthquake, a hurricane, or a flood.

I look forward to seeing this bill enacted early next year, so that our civilian disaster agency will be as fit for duty as the U.S. military.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1697

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 "Federal Disaster Preparedness and Response Act of 1993".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. DECLARATION OF PURPOSES.

The purposes of this Act are—

(1) to improve Government preparedness for and response to catastrophic disasters;

(2) to shift the emphasis of the Federal Emergency Management Agency (referred to in this Act as "FEMA") from nuclear attack-related activities to a risk-based strategy to improve preparedness for all hazards; and

(3) to redirect the mission of FEMA to mitigation, preparedness, response, and recovery for all hazards.

SEC. 3. DEFINITIONS.

Section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122) is amended—

(1) by striking paragraph (2) and inserting the following new paragraph (2):

"(2) MAJOR DISASTER.—The term 'major disaster' means any occasion or instance that, as determined by the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of State and local governments, and disaster relief organizations in alleviating the damage, loss, and hardship caused by the disaster. Major disasters include disasters resulting from all hazards."; and

(2) by adding at the end the following new paragraphs:

"(10) CATASTROPHIC DISASTER.—The term 'catastrophic disaster' means a major disaster that immediately overwhelms the ability of State, local, and volunteer agencies to adequately provide victims of the disaster with services necessary to sustain life.

"(11) ALL HAZARDS.—The term 'all hazards' means natural or man-caused events, including, without limitation, civil disturbances, that may result in major disasters or emergencies.

"(12) DIRECTOR.—The term 'Director' means the Director of the Federal Emergency Management Agency.".

SEC. 4. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) the Federal Government should give immediate attention to developing a broad risk-based strategy for improving Federal readiness for and response to major disasters;

(2) the all hazards approach is the best way to prepare the United States for all disasters or emergencies;

(3) all reasonable actions should be taken to mitigate the effects of disasters;

(4) initial response to emergencies and disasters is made by State and local fire and emergency service agencies, whose capabilities must therefore be strengthened and maintained;

(5) the fire service performs a critical function of first response to fire and other hazards, and should be recognized for performing this function;

(6) the American Red Cross and other volunteer organizations have made, and will continue to make, valuable contributions in responding to disasters nationwide by providing channels for the generous sharing of time and resources with those in need;

(7) private nonprofit organizations play an important role in disaster relief operations, and are an essential element of disaster preparedness, response, and recovery efforts; and

(8) training and hazard mitigation are important preventive measures and are vital elements in disaster preparedness and recovery.

SEC. 5. PRESIDENTIAL RESPONSE PLAN.

Section 201 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5131) is amended to read as follows:

"SEC. 201. FEDERAL AND STATE DISASTER PREPAREDNESS PROGRAMS.

"(a) ESTABLISHMENT.—The President is authorized to establish a program of disaster preparedness that utilizes services of all appropriate agencies, and includes—

"(1) preparation of disaster preparedness plans for mitigation, warning, emergency operations, rehabilitation, and recovery;

"(2) training and exercises;

"(3) postdisaster critiques and evaluations;

"(4) annual review of programs;

"(5) coordination of Federal, State, and local preparedness programs;

"(6) application of science and technology; and

"(7) research.

"(b) TECHNICAL ASSISTANCE.—The President shall provide technical assistance to the States in developing comprehensive plans and practicable programs for—

"(1) preparation against disasters, including hazard reduction, avoidance, and mitigation;

"(2) assistance to individuals, businesses, and State and local governments following such disasters; and

"(3) recovery of damaged or destroyed public and private facilities.

"(c) PRESIDENTIAL RESPONSE PLAN.—

"(1) ESTABLISHMENT.—Not later than 180 days after the date of enactment of the Federal Disaster Preparedness and Response Act of 1993, the President, acting through the Director, shall develop a Presidential Response Plan to provide Federal assistance, when requested, to States impacted by a major disaster, catastrophic disaster, or emergency, in coordination with appropriate Federal and non-Federal agencies, as determined by the President.

"(2) DISTRIBUTION.—The Director shall ensure that copies of the plan are widely distributed and publicly available.

"(3) TRAINING EXERCISES.—The plan shall include provisions for annual training exercises to be performed by designated participants in the plan, State and local entities, and private relief agencies to test their disaster preparedness capability.

"(4) OPERATIONAL PLANS.—The Director shall prepare operational plans to accompany the Presidential Response Plan, not later than 1 year after the date of enactment of the Federal Disaster Preparedness and Response Act of 1993, that shall—

"(A) describe the chain of command;

"(B) describe the specific duties of all Federal agencies involved;

"(C) describe the relationship between, and the respective duties of, Federal, State, and local governments, and private relief agencies;

"(D) be prepared for specific geographic regions designated by the Director;

"(E) be based on a comprehensive risk assessment of the United States, undertaken by the Director, that assesses the probability and severity of natural or man-made disasters occurring and having a severe impact on public health, safety, and property within various regions;

"(F) ensure consistency with the emergency operations plans of the State and local governments in the region;

"(G) support the development of mutual aid agreements between and among the States and local governments;

"(H) include specific systems and standardized plans for mutual aid, incident management, and emergency communications between State, regional, and local entities for the purpose of coordinating and integrating all emergency management activities; and

"(I) specify the participation of representatives from civilian disaster management and local fire and emergency service response communities.

"(d) NATIONAL DISASTER MEDICAL SYSTEM.—

"(1) TRANSFER OF FUNCTIONS.—The functions, personnel, facilities, and equipment of the National Disaster Medical System (referred to in this section as the 'System') are transferred from the Department of Health and Human Services to a new directorate, to be established within FEMA not later than 60 days after the date of enactment of the Federal Disaster Preparedness and Response Act of 1993.

"(2) PURPOSE OF SYSTEM.—It shall be the purpose of the System to prepare for and respond to major disasters, catastrophic disasters, and emergencies that require medical assistance in excess of the medical service capabilities of the affected States. The System shall provide for—

"(A) medical assistance to a disaster area through disaster medical assistance teams;

"(B) evacuation of patients that cannot be cared for locally; and

"(C) hospitalization through a national network of medical care facilities that agree to provide medical care to disaster victims.

"(3) LOCAL RESOURCES.—The services of the System shall supplement and not supplant State and local medical resources.

"(4) COORDINATION OF SERVICES.—The Director and the Secretary of Defense shall establish procedures, roles, and responsibilities for the provision of medical care in the event of a catastrophic disaster to ensure coordination between the System and the Department of Defense.

"(5) MILITARY CASUALTIES.—The System shall be made available to care for military casualties evacuated to the United States in the event that the medical care capabilities of the Department of Defense and the Department of Veterans Affairs are exceeded.

"(6) EVALUATION.—Not later than 180 days after the date of enactment of the Federal Disaster Preparedness and Response Act of 1993, the Director shall evaluate the performance of the System and the degree to which the System fulfills the intended mission of the System, and make recommendations to the President and Congress regarding potential improvements in the operations of the System.

"(7) DISASTER MEDICAL ASSISTANCE TEAMS.—

"(A) ESTABLISHMENT.—Not later than 1 year after the date of enactment of the Federal Disaster Preparedness and Response Act of 1993, the Director shall—

"(i) take steps necessary to ensure that not fewer than 20 disaster medical assistance teams are established and are made operational; and

"(ii) develop standards and guidelines for equipment, staffing, operations, and regular training of the disaster medical assistance teams.

"(B) EMPLOYMENT SECURITY.—A volunteer who leaves a position (other than a temporary position) in the service of an employer to perform services in conjunction with a disaster medical assistance team, and makes application for reemployment within 90 days after the completion of service or release from hospitalization continuing after completion of service for a period of not more than 1 year shall—

"(i) if still qualified to perform the duties of the position or able to become requalified with reasonable efforts by the employer, be restored to the position or to a position of like seniority, status, and pay; or

"(ii) if not qualified to perform the duties of the position or able to become requalified with reasonable efforts by the employer, by reason of disability sustained during service, but qualified to perform the duties of any other position in the employ of the employer, be offered employment and, if the person so requests, be employed in such other position the duties of which the person is qualified to perform as will provide the person like seniority, status, and pay, or the nearest approximation of seniority, status, and pay, consistent with the circumstances of the case, unless the circumstances of the employer have so changed as to make it impossible or unreasonable to do so.

"(C) CONSTRUCTION WITH OTHER LAWS.—Nothing in this subsection shall excuse noncompliance with any law of a State or political subdivision establishing greater or additional rights or protections than the rights and protections established under this subsection.

"(8) AUTHORIZATION OF APPROPRIATIONS.—Beginning with fiscal year 1994, there are authorized to be appropriated to the National Disaster Medical System $20,000,000 for each fiscal year, of which $5,000,000 shall be available for the Disaster Medical Assistance Teams.

"(e) ROLE OF NATIONAL GUARD.—

"(1) REVIEW.—The Secretary of Defense, in cooperation with the Director, shall direct the Chief, National Guard Bureau, to review the role of the National Guard in responding to major disasters and emergencies and make recommendations to the President. The recommendations shall address—

"(A) how the National Guard could better prepare for and respond to major disasters and emergencies;

"(B) how the force structure of the National Guard could be adjusted to provide Governors with improved immediate access to critical assets during an emergency;

"(C) how the National Guard should be integrated with the Presidential Response Plan;

"(D) how the National Guard should coordinate with the Disaster Medical Assistance Teams in preparing for and responding to disasters and emergencies; and

"(E) the development by the Chief, National Guard Bureau, of a format for an interstate compact that, when subscribed to by the States, facilitates the mutual use of National Guard assets across State borders during national disasters and domestic emergencies.

"(2) STUDY.—Not later than 30 days after the date of enactment of the Federal Disaster Preparedness and Response Act of 1993, the Director shall contract with the National Academy of Public Administration for a study to determine the proper roles of the Adjutant Generals of the States and the National Guard in preparing for and responding to natural disasters and domestic emergencies.

"(3) REPORT.—Not later than 1 year after the date of enactment of the Federal Disaster Preparedness and Response Act of 1993, the Secretary of Defense shall report to the President and Congress on the results of the review conducted pursuant to paragraph (1) and the study conducted pursuant to paragraph (2).

"(4) ALL HAZARDS RESPONSE TRAINING.—The Chief, National Guard Bureau, shall require National Guard units or members to participate in specialized training and exercises designed to enhance the readiness of the National Guard to respond to all hazards. Up to 5 percent of the funds appropriated for the military pay and operations and maintenance of the Army and Air National Guard may be used to fund the training and exercises.

"(5) INTERSTATE MUTUAL ASSISTANCE COMPACT.—The States are encouraged to enter into a nationwide compact for the mutual use of National Guard assets across State borders during domestic disasters and emergencies.

"(6) RESPONSE TO DISASTERS AND REIMBURSEMENT FOR AUTHORIZED ACTIVITIES.—To ensure more effective and rapid responses by National Guard units to natural disasters and domestic emergencies, the Chief, National Guard Bureau, is authorized to approve reimbursement to a State or States for all or any part of expenses incurred as a result of the use of the National Guard in any natural disaster or domestic emergency at the onset of the disaster or domestic emergency in any instance in which, in the judgment of the Governor of the affected State, it is probable that the occurrence will result in a declaration of a national emergency.

"(A) ELIGIBILITY.—For a State to be eligible for reimbursement under this subsection for deployment of its National Guard units in support of a natural disaster and domestic emergency, the National Guard units must be deployed in a State active duty status.

"(B) SOURCE OF FUNDS.—Funds available for disbursement to the States under this subsection shall come from the funds appropriated to the disaster relief fund.

"(C) APPROVAL.—A request by a Governor for reimbursement for use of the National Guard of the State shall be submitted to the Director, and the Director, upon validation of eligible activities, shall issue the necessary funding documents to effect reimbursement to the State.

"(D) CONSISTENCE WITH ACT.—In instances of natural disasters and domestic emergencies that result in a Federal declaration of a disaster or emergency by the President, the Director shall ensure that all funding reimbursement is in accordance with this Act, at a Federal share rate determined for that occurrence.

"(7) TRAINING AND COORDINATION WITH STATE ENTITIES.—

"(A) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 to the National Guard through FEMA to conduct disaster and emergency training exercises in conjunction with appropriate State and local entities.

"(B) ALLOCATION.—The Director shall allocate the funds made available under subparagraph (A) to the States.

"(C) USE OF FUNDS.—

"(i) IN GENERAL.—Funds made available under this paragraph shall be used to enhance the preparedness of State and local governments for disasters and emergencies.

"(ii) MINIMUM TRAINING.—The National Guard shall be required to conduct at least 2 disaster preparedness training exercises annually in every State, in conjunction with appropriate State and local entities.

"(f) DISASTER RESOURCE INVENTORY.—

"(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Federal Disaster Preparedness and Response Act of 1993, the Director shall complete an inventory of resources that are available to the Federal Government, including medical assets and foreign language communication, through public or private entities, for use or deployment, or both, in disaster relief or search and rescue operations following a major disaster, catastrophic disaster, or emergency. Each item in the inventory shall include the information necessary for prompt access to the resource.

"(2) ORGANIZATION.—The inventory shall be organized to facilitate the dispatch of resources on a regional basis. This paragraph shall not be construed to preclude the dispatch of specialized equipment or scarce resources from outside the geographic proximity of the disaster or emergency.

"(3) AVAILABILITY.—The Director shall ensure that the inventory is made available to the Governor of each State for the purposes of formulating a request for the declaration of a major disaster, catastrophic disaster, or emergency.

"(4) MAINTENANCE.—The Director shall ensure that information contained in the inventory is current and accurate.

"(5) STATE PARTICIPATION.—

"(A) IN GENERAL.—Not later than 90 days after the establishment of the inventory, the Director shall request each Governor of a State to identify the State Coordinating Officer and other public safety officials who are responsible for coordinating or overseeing State and local response to disasters and emergencies in the State.

"(B) ACCESS.—A public safety official designated under subparagraph (A) shall have direct and immediate access to the information contained in the inventory to expedite State and local responses to disasters and emergencies not declared by the President.

"(g) VOLUNTEERS.—Not later than 180 days after the date of enactment of the Federal Disaster Preparedness and Response Act of 1993, the Director shall—

"(1) establish a system that is coordinated with systems of private relief agencies to manage and utilize spontaneous disaster volunteers to carry out priority disaster response services; and

"(2) report to Congress on the system.

"(h) DONATED GOODS.—Not later than 180 days after the date of enactment of the Federal Disaster Preparedness and Response Act of 1993, the Director shall—

"(1) establish a system for the management of goods donated to the Federal Government to support disaster victims; and

"(2) report to Congress on the system.".

SEC. 6. PREDECLARATION AUTHORITY.

Title II of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5131 et seq.) is amended by adding at the end the following new section:

"SEC. 203. PREDECLARATION AUTHORITY.

"(a) AUTHORITY.—When, in the determination of the Director, events indicate that an emergency, major disaster or catastrophic disaster is likely to be declared, a Federal agency, in consultation with the Director, may take such actions as the agency considers necessary to prepare to provide Federal assistance to State and local governments and to disaster victims.

"(b) REIMBURSEMENT.—The Federal agency shall be reimbursed by the disaster relief fund for the cost of actions taken in accordance with this section.".

SEC. 7. DOMESTIC CRISIS MONITORING UNIT.

(a) ESTABLISHMENT.—Not later than 30 days of the date after the enactment of this section, the President shall establish a unit within the White House to be known as the "Domestic Crisis Monitoring Unit".

(b) HEAD.—The Domestic Crisis Preparedness and Monitoring Unit shall be headed by the Vice President.

(c) OTHER PARTICIPANTS.—The Cabinet Secretary, or a designee of the Secretary, and the Director, or a designee of the Director, shall be detailed to the unit upon activation.

(d) RESPONSIBILITIES.—The head of the Domestic Crisis Monitoring Unit shall—

(1) monitor potential and pending disasters and emergencies;

(2) notify the President and Federal agencies of impending disasters and emergencies as soon as practicable; and

(3) ensure effective, coordinated, and rapid Federal agency response in the immediate aftermath of a catastrophic disaster or emergency.

(e) COORDINATION OF ACTIVITIES.—The head of the Domestic Crisis Monitoring Unit shall coordinate with the Director and the Governors of States affected by a catastrophic disaster or emergency or in which a catastrophic disaster or emergency is likely to be declared.

(f) ACTIVATION.—The President shall activate the Domestic Crisis Monitoring Unit during the warning stages of a major or catastrophic disaster, or immediately following a catastrophic disaster when there is no warning, and shall remain activated until the President determines that continued activation is unwarranted.

(g) ROLE OF FEDERAL COORDINATING OFFICER.—

(1) CHIEF OF PRESIDENTIAL RESPONSE PLAN.—After activation of the Domestic Crisis Monitoring Unit, the Federal Coordinating Officer shall retain authority as the chief administrator of the Presidential Response Plan.

(2) COORDINATION OF PLAN PARTICIPANTS.—The Federal Coordinating Officer shall coordinate the activities of the participants of the Plan, including consulting with participating agencies to determine disaster response priorities and directing participating agencies to carry out assignments as needed.

SEC. 8. DAMAGE AND NEEDS ASSESSMENT.

(a) IN GENERAL.—Title III of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5141 et seq.) is amended—

(1) by redesignating sections 304 through 321 as sections 305 through 322, respectively; and

(2) by inserting immediately after section 303, the following new section:

"SEC. 304. DISASTER ASSESSMENT TEAMS.

"(a) IN GENERAL.—Not later than 6 months after the date of enactment of this section, the Director shall establish disaster assessment teams to be deployed at the discretion of the Director to a staging area near the impact area at the request of a governor of an affected State, or to an area where a major disaster, catastrophic disaster, or emergency is likely to be declared. The Director or other FEMA official designated by the Director shall lead each such assessment team, which shall have the purpose of assessing damage and resulting needs.

"(b) COMPOSITION.—The Director shall designate experts and officials from appropriate Federal agencies, including FEMA and the Department of Defense, supported by representatives of State and local agencies, and private relief agencies, to serve on the disaster assessment teams.

"(c) DETAIL OF GOVERNMENT EMPLOYEES.—Upon the request of the Director, the head of any Federal agency shall detail to temporary duty with an assessment team on a nonreimbursable basis, such personnel within the administrative jurisdiction of the head of the Federal agency as the Director may need or believe to be useful for carrying out the functions of the assessment team. Each such detail shall be without loss of seniority, pay, or other employee status.

"(d) EXERCISES.—The assessment teams shall conduct practice exercises at least annually, including officials from appropriate Federal, State, and local agencies.

"(e) DAMAGE AND NEEDS ASSESSMENT.—

"(1) IN GENERAL.—Not later than 3 hours after the onset of a potential or actual catastrophic disaster, the Director shall deploy an assessment team established under subsection (a) to evaluate the extent of the damage and the resulting needs for authorized Federal disaster relief assistance.

"(2) RECOMMENDATIONS.—As soon as possible after deployment, the assessment team shall make recommendations to the Director, the President, and the Governors of the affected States regarding the damage and the resources needed to provide life support to the affected areas. The assessment team shall recommend whether the disaster should be classified as a catastrophic disaster or a major disaster.

"(3) COORDINATION WITH STATE AND LOCAL OFFICIALS.—The damage and needs assessments shall be conducted in coordination with the State and local officials of the affected area.".

(b) CONFORMING AMENDMENT.—Section 408(d)(2) of such Act (42 U.S.C. 5176(d)(2)) is amended by striking "308" and inserting "309".

SEC. 9. CATASTROPHIC DISASTERS.

Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170 et seq.) is amended by adding at the end the following new section:

"SEC. 426. CATASTROPHIC DISASTERS.

"(a) DECLARATION.—

"(1) RECOMMENDATION BY DISASTER ASSESSMENT TEAMS.—At the onset of a disaster in which the disaster assessment teams established under section 304(a) have been deployed, or immediately thereafter, the disaster assessment teams shall make concurrent recommendations to the Director, the President, and the Governors of the affected

States, the Director, and the President as to whether the disaster should be declared a catastrophic disaster.

"(2) REQUEST FOR DECLARATION.—A request for a declaration by the President that a catastrophic disaster exists shall be made by the Governor of each affected State seeking such declaration. A request for a major disaster declaration complying with the requirements of section 401 may accompany the request for a declaration of a catastrophic disaster.

"(3) FINAL DETERMINATION.—Based on a request or requests under paragraph (2), the President may declare that a catastrophic disaster, a major disaster, or an emergency exists. A determination by the President that a catastrophic disaster or an emergency exists shall be final.

"(b) EFFECT OF DETERMINATION.—

"(1) FEDERAL SHARE.—Notwithstanding subsections (b) and (c)(4) of section 403, the Federal share of the eligible cost of essential direct Federal assistance necessary to sustain life or to protect property following a catastrophic disaster declaration shall be—

"(A) for the first 72 hours (and for up to an additional 96 hours, at the discretion of the President) 100 percent; and

"(B) after the assistance provided under subparagraph (A), not less than 75 percent.

"(2) DISASTER RESPONSE AND MASS CARE.—Upon the declaration of a catastrophic disaster, the Federal Coordinating Officer shall assume an active role in determining whether ancillary resources, such as the resources of the Department of Defense, are required to support any disaster response function. Upon the determination that ancillary resources are required for mass care, the Federal Coordinating Officer will actively assist the American Red Cross in obtaining the resources of the Federal agencies.

"(3) RESPONSIBILITY OF THE DEPARTMENT OF DEFENSE.—

"(A) IN GENERAL.—Following the declaration of a catastrophic disaster, the Secretary of Defense shall, when requested by the President and with the concurrence of the Governor of the affected State, provide to persons adversely affected by the disaster, disaster response services not otherwise available from State, local, or volunteer agencies, including—

"(i) food, water, and shelter;

"(ii) communications;

"(iii) debris removal;

"(iv) medical assistance; and

"(v) any other services necessary to sustain human life or to promote recovery.

"(B) REIMBURSEMENT.—The Secretary of Defense shall be reimbursed by the disaster relief fund for the provision of disaster response services described in subparagraph (A).

"(C) DIRECTION OF ACTIVITIES.—The provision of disaster response services under subparagraph (A) and the administration of relief by consenting State, local, and volunteer agencies shall be directed by the Federal Coordinating Officer in consultation with the Vice President in coordination with the Governors of the affected States or a designee of the Governors. After a declaration of a catastrophic disaster, specific requests by the Governors for the individual disaster response services described in subparagraph (A) shall not be necessary.

"(D) TRAINING.—The Secretary of Defense shall undertake necessary training and exercises to ensure preparedness for this humanitarian mission.

"(E) CONTINGENCY PLAN.—The Director shall develop a contingency plan for the provision of disaster response services described in subparagraph (A) in the event that sufficient disaster response services are unavailable under subparagraph (A).

"(4) ADDITIONAL ASSISTANCE.—The assistance provided in this subsection shall supplement and not supplant the major disaster assistance programs provided in titles IV and V.".

SEC. 10. TARGETED EMERGENCY GRANTS.

(a) IN GENERAL.—Title II of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5131 et seq.) is further amended by adding at the end the following new section:

"SEC. 204. TARGETED EMERGENCY GRANTS.

"(a) IN GENERAL.—

"(1) ESTABLISHMENT.—The Director shall establish a grant program for the purposes of enabling State and local governments—

"(A) to mitigate, prepare for, and respond to major disasters or emergencies;

"(B) to construct and maintain State and local emergency operating centers;

"(C) to develop, install, and maintain emergency communications systems; and

"(D) to evaluate potential hazards in the State.

"(2) APPLICATION.—Application for a grant shall be made by the Governor of an affected State, and shall be reviewed by the Director.

"(3) BASIS FOR AWARDS.—The Director shall determine eligibility for grant awards under this section based on compliance with the performance standards described in subsection (b), and on equal consideration of—

"(A) the risk of occurrence of major disasters or emergencies; and

"(B) the population of each State applying for a grant.

"(4) DISTRIBUTION TO LOCAL JURISDICTIONS.—Each recipient State shall allocate a portion of the grant award, in an amount to be determined by the Director, to local participating jurisdictions.

"(b) PERFORMANCE STANDARDS.—

"(1) ESTABLISHMENT.—Not later than 1 year after the date of enactment of this section, the Director shall establish performance standards to determine eligibility and application procedures for a grant award under this section.

"(2) CRITERIA.—The performance standards shall be based on the relative severity of risk to public health, safety, and property at risk in the State, and shall include provisions for—

"(A) updating emergency operations plans annually;

"(B) ensuring interoperability between Federal, State, and local emergency operations plans;

"(C) conducting training and annual exercises with all appropriate entities including the National Guard; and

"(D) requiring appropriate hazard mitigation activities.

"(3) PERFORMANCE REVIEW.—The Director shall conduct annual performance reviews of State emergency operations plans based on the criteria described in paragraph (2).

"(4) NOTIFICATION.—The Director shall notify a State that does not meet the performance standards within 60 days of review. In the notice, the Director shall direct the State as to the steps that must be taken to meet the performance standards.

"(5) OPPORTUNITY TO COMPLY.—A State that does not meet the performance standards shall be given an additional 60 days to comply.

"(c) FEDERAL SHARE OF GRANT.—The Federal share of a grant under this section shall be 75 percent of the cost of the emergency preparedness activities of the State.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $200,000,000 for each of fiscal years 1994 through 1998.".

(b) FEDERAL SHARE OF ASSISTANCE.—Title IV of such Act (42 U.S.C. 5170 et seq.) is amended—

(1) by redesignating sections 406 through 424 as sections 407 through 425, respectively; and

(2) by inserting immediately after section 405, the following new section:

"SEC. 406. COMPLIANCE WITH PERFORMANCE STANDARDS.

"(a) IN GENERAL.—Notwithstanding any other provision of this Act, the Director shall establish a sliding scale, in accordance with subsection (c), setting forth the Federal share of the cost of eligible assistance following a disaster or emergency for a State that is not in compliance with the performance standards established under section 204(b).

"(b) SLIDING SCALE.—On the sliding scale established under subsection (a), the Federal share shall not exceed 70 percent of the cost of long-term recovery for each year the State remains out of compliance with the performance standards. States that are not in compliance with performance standards shall pay a greater share of Federal assistance.".

(c) CONFORMING AMENDMENTS.—

(1) Section 106(c) of the Housing and Community Development Act of 1974 (42 U.S.C. 5306(c)) is amended by striking paragraph (4).

(2) Section 5(b)(2)(A) of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7704(b)(2)(A)) is amended—

(A) by striking clause (iv); and

(B) by redesignating clauses (v) and (vi) as clauses (iv) and (v), respectively.

(3) The Robert T. Stafford Disaster Relief and Emergency Assistance Act is amended—

(A) in section 312 (as so redesignated in section 8(a)(1) of this Act)—

(i) by striking "406" each place it appears, and inserting "407"; and

(ii) by striking "422" each place it appears, and inserting "423";

(B) in section 317 (as so redesignated in section 8(a)(1) of this Act)—

(i) by striking "407" and inserting "408"; and

(ii) by striking "422" and inserting "423";

(C) in section 403(c)(2), by striking "407(b)" and inserting "408(b)";

(D) in section 405 (as so redesignated)—

(i) by striking "409" and inserting "410"; and

(ii) by striking "406" and inserting "407";

(E) in section 407(f)(2) (as so redesignated in paragraph (1) of this subsection), by striking "406, 407" and inserting "407, 408";

(F) in section 423 (as so redesignated)—

(i) by striking "407" each place it appears and inserting "408"; and

(ii) by striking "406" each place it appears, and inserting "407"; and

(G) in section 502(a)—

(i) in paragraph (5), by striking "407" and inserting "408"; and

(ii) in paragraph (6), by striking "408" and inserting "409".

SEC. 11. REORGANIZATION OF FEMA.

(a) IN GENERAL.—The Director shall restructure FEMA to—

(1) implement an all hazards approach to disaster management that includes activities and measures designed or undertaken to—

(A) minimize the effects of natural disasters, civil disturbances, or attack-related emergencies and disasters;

(B) respond to the immediate emergency conditions that are created by the disasters; and

(C) effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by a disaster, subject to reimbursement by private utilities;

(2) utilize resources dedicated to defense-related programs on the date of enactment of this Act to respond to major disasters, catastrophic disasters, and emergencies;

(3) redefine the relationship between the Director and FEMA headquarters and regional offices to ensure effective disaster planning and response; and

(4) reduce the number of regional offices and locate the offices in areas the Director identifies as high risk.

(b) REDESIGNATION OF EMPLOYEE POSITIONS.—Not later than December 31, 1995, the following employee positions within FEMA shall be classified as career reserved positions within the meaning of section 3132(a)(8) of title 5, United States Code:

(1) The position of Executive Director of FEMA/Chief of Staff of FEMA.

(2) The position of Federal Insurance Administrator.

(3) The positions of Regional Director of FEMA, which shall be reduced in number.

(4) The position of General Counsel of FEMA.

(5) The position of Senior Advisor to the State and Local Programs and Support Directorate.

(6) Positions of a confidential or policy-determining character described in schedule C of subpart C of part 213 of title 5, Code of Federal Regulations.

SEC. 12. NATIONAL ACADEMY OF FIRE AND EMERGENCY PREPAREDNESS.

(a) ESTABLISHMENT.—The National Academy for Fire Prevention and Control and the Emergency Management Institute operated by FEMA are abolished and merged into the National Academy of Fire and Emergency Preparedness. The National Academy of Fire and Emergency Preparedness shall provide appropriate education for fire prevention and control of all hazards emergency management.

(b) PURPOSE.—The primary purpose of the Academy shall be first-response training for all hazards. Not less than 50 percent of the resources of the Academy shall be spent on training fire and emergency services professionals.

(c) REDESIGNATION OF TRAINING ACADEMY.—Section 7 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2206) is amended—

(1) in subsection (a), by striking "National Academy for Fire Prevention and Control" and inserting "National Academy of Fire and Emergency Preparedness"; and

(2) in subsection (d)—

(A) by striking "and" at the end of paragraph (4);

(B) by striking the period at the end of paragraph (5) and inserting "; and"; and

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

"(6) train employees of the Federal Emergency Management Agency and State and local officials in all hazards, as defined in section 102(11) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.".

(d) TRANSFER OF FUNCTIONS AND RESOURCES.—The Director of the Federal Emergency Management Agency shall transfer the functions, personnel, facilities, and equipment of the Emergency Management Institute existing on the date of enactment of this Act to the National Academy of Fire and Emergency Preparedness.

(e) AUTHORIZATION OF APPROPRIATIONS.—Section 17 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2216) is amended by adding at the end the following new subsection:

"(h) There are authorized to be appropriated for the National Academy of Fire and Emergency Preparedness $80,000,000 for each of fiscal years 1994 through 1998.".

(f) CONFORMING AMENDMENT.—Section 4 of such Act (15 U.S.C. 2203) is amended by striking "National Academy for Fire Prevention and Control" and inserting "National Academy of Fire and Emergency Preparedness".

SEC. 13. RESEARCH CENTER.

Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5101 et seq.) is amended by adding at the end the following new section:

"SEC. 605. RESEARCH CENTER.

"(a) ESTABLISHMENT.—Not later than 1 year after the date of enactment of this section, the Director shall establish a university-based research center to—

"(1) conduct research on disaster management methods, technologies, mitigation and response systems;

"(2) develop a curriculum for disaster management and related fields curriculum; and

"(3) provide education and training to the emergency response community.

"(b) COMPOSITION.—The university or universities shall be selected by the Director following a competitive selection process.

"(c) REPORT.—The center shall report annually to the President and Congress on the activities of the consortium.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $5,000,000 for each of fiscal years 1994 and 1995.".

SEC. 14. REPEAL OF CIVIL DEFENSE ACT.

(a) REPEAL.—The Federal Civil Defense Act of 1950 (50 U.S.C. App. 2251 et seq.) is repealed.

(b) CONFORMING AMENDMENTS.—

(1) Section 813(d)(2) of the Agricultural Act of 1970 (7 U.S.C. 1427a(d)(2)) is amended by striking "as proclaimed" and all that follows through the period and inserting a period.

(2) Section 310 of title 23, United States Code, is amended by striking "Federal Civil Defense Administrator" and inserting "Director of the Federal Emergency Management Agency".

(3) Section 202 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5132) is amended—

(A) by striking subsection (c); and

(B) by redesignating subsection (d) as subsection (c).●

By Mr. WALLOP (for himself, Mr. BOREN, and Mr. MCCAIN).

S. 1698. A bill to reduce the paperwork burden on certain rural regulated financial institutions, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

RURAL COMMUNITY BANK PAPERWORK RELIEF ACT OF 1993

● Mr. WALLOP. Mr. President, continuing many of our efforts to respond to bankers' requests for paperwork reduction while working to ensure that appropriate degrees of safety and soundness are maintained in the banking industry, Senator MCCAIN, Senator BOREN, and I have drafted the Rural Community Bank Paperwork Relief Act to deal with a pressing need for Community Reinvestment Act reform in small, nonurban towns.

While the legislation would not apply to every bank in every town in any single State, I urge my colleagues to finally recognize that a politically viable compromise should be adopted to deal with the differing needs of banks in small and large communities. It is not right for smalltown banks to be subjected to the same Federal regulations as banks in large urban areas. It is time for a tiered approach to the CRA paperwork issue.

It is clear to me that unnecessary regulations are stifling the economic vitality of our Nation. This is just another part of many of our ongoing efforts to turn the tide on unnecessary Federal regulations. I urge my colleagues to cosponsor this reasonable legislation to finally deal with an important paperwork issue which adversely affects responsible banks in small communities.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1698

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Rural Community Bank Paperwork Relief Act of 1993".

SEC. 2. SELF CERTIFICATION.

The Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.) is amended by adding at the end the following new section:

"SEC. 809. SELF CERTIFICATION FOR INSTITUTIONS IN RURAL TOWNS.

"A regulated financial institution shall be exempt from the evaluation and examination requirements of this title if such institution—

"(1) is located in a town, political subdivision, or other unit of general local government that—

"(A) has a population of not more than 20,000 residents, according to the most recent available census data; and

"(B) is not located in a metropolitan statistical area of the United States Department of Commerce, Bureau of the Census;

"(2) has a net loans and leases to deposits ratio of not less than 70 percent of the average institutional ratio of financial institutions of similar size in the same State, as defined by the appropriate Federal financial supervisory agency; and

"(3) certifies that it is effectively meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, as determined in regulations published by each appropriate Federal financial supervisory agency.".

SEC. 3. INCREASED INCENTIVES TO LENDING TO LOW- AND MODERATE-INCOME COMMUNITIES.

Section 804 of the Community Reinvestment Act of 1977 (12 U.S.C. 2903) is amended by adding at the end the following new subsection:

"(c) CERTAIN RURAL INSTITUTIONS.—In evaluating a regulated financial institution, the

appropriate Federal financial supervisory agency shall give appropriate consideration and weight to the institution's investments in and loans to joint ventures or other entities or projects that provide benefits to distressed communities located within or outside of the service area of the institution (as such terms are defined by the appropriate Federal financial supervisory agency) if such institution—

"(1) is located in a town, political subdivision, or other unit of general local government that is not located in a metropolitan statistical area of the United States Department of Commerce, Bureau of the Census; and

"(2) does not meet the requirements of section 809.".●

● Mr. BOREN. Mr. President, the Rural Community Bank Paperwork Relief Act introduced today by Senators MCCAIN, WALLOP, and I would reform the Community Reinvestment Act to make compliance easier for rural banks and it will do much to relieve them from the excessive paperwork requirements of the act.

The Community Reinvestment Act [CRA] was passed in 1977 to encourage community development and investment. It requires banks to demonstrate evidence of community investment or an effort to encourage loans in their communities.

Currently, banks in small communities face substantial difficulties in complying with CRA paperwork requirements. Our bill would modify the CRA to provide insured depository institutions in towns of not more than 20,000 a means to self-certify they are meeting local credit needs. The bill allows banks to show they are meeting their communities' credit needs by utilizing State-based ratios as defined by the appropriate Federal agencies. By requiring banks to meet State-based ratios, we are retaining appropriate requirements for safety and soundness.

Banks in small towns are often the economic backbone of their communities. They invest in building the corner store on Main Street or loaning money to a family to build their first home. When we require banks in small towns to comply with identical regulations intended for banks in urban areas, we often unintentionally suppress economic growth and investment. It is essential that we balance the need for safety and soundness in our financial institutions with the need to stimulate, not stifle, economic growth. This bill would provide a way for responsible community banks to comply with the Community Reinvestment Act and continue to make credit available in their communities.●

● Mr. MCCAIN. Mr. President, I am pleased to join with Senators WALLOP and BOREN in introducing the Rural Community Bank Paperwork Relief Act of 1993. This legislation takes a small but important step toward eliminating the tremendous regulatory burden imposed on financial institutions, especially smaller community banks, and allowing them to focus on their core business—making loans to creditworthy customers in their communities.

Much has been made of the so-called credit crunch, and the consequent inability of businesses and individuals in need of bank financing to obtain it, even if they are creditworthy. One principal reason banks are unable to make loans is the bewildering array of statutory and regulatory restrictions and paperwork requirements imposed by Congress and the regulatory agencies. While a case can certainly be made that every law and regulation is intended to serve a laudable purpose, the aggregate effect of the rapidly increasing regulatory burden imposed on banks is to cause them to devote substantial time, energy, and money to compliance rather than meeting the credit needs of the community. In fact, the Federal Financial Institutions Examination Council found that the annual cost of regulatory compliance may be as high as $17.5 billion. These are funds that can, and should, be loaned out to the community.

A prime example of a well-intentioned law which has clearly had a counterproductive effect on many financial institutions is the Community Reinvestment Act of 1977 [CRA]. The CRA has the laudable purpose of ensuring that banks meet the credit needs of their local communities. Unfortunately, however, the practical effect of the CRA has been for regulators to require, and banks to maintain, extensive records documenting their compliance with the CRA, even if the absence of a scintilla of information that an institution is not meeting the credit needs of the local community. The focus has been on documentation rather than performance.

This problem is particularly acute for smalltown banks. Small banks have fewer personnel and monetary resources to devote to unnecessary and unduly burdensome regulations. Loan officers that have to do double duty as regulatory compliance officers, as is the case in most smaller institutions, obviously have much less time to spend on making loans. Yet logic tells us that, even without heavy-handed Government regulation, small banks in rural communities must serve their local credit needs if they are to stay in business. A small bank in Gila Bend, AZ, is not going to be sucking up local deposits and siphoning them off to New York or Los Angeles, or even to Phoenix. The deposits collected locally will necessarily be reinvested in the community regardless of whether a Federal law like CRA requires it.

This bill recognizes this fact, and takes a small step forward toward eliminating unnecessary regulatory burdens imposed on banks. It would still require small banks in our smallest communities to comply with the basic goals of the CRA, but would enable them to self-certify that they are meeting the credit needs of their community and avoid having to deal with unnecessary evaluation and examination requirements.

I want to emphasize that, while it would be appropriate for the Congress to engage in a broader reexamination of whether the CRA, as currently written and implemented, represents sound public policy, the intent of this bill is much, much narrower. It applies only to banks in towns with populations of fewer than 20,000 persons and, I repeat, it does not exempt these banks from meeting the community lending requirements of the act.

It would, however, allow banks in small communities to spend fewer resources on paperwork regulations and more resources on making loans. That is what the business of banking is all about, and that is what we should seek to encourage. I urge my colleagues to join with us to cosponsor this important legislation.●

By Mr. SIMON (for himself and Mr. METZENBAUM):

S. 1699. A bill to amend the Internal Revenue Code of 1986 to provide that the amortization deduction for goodwill and certain other intangibles be determined by amortizing 75 percent of the adjusted basis of the intangibles ratably over a 15-year period; to the Committee on Finance.

INTANGIBLE ASSETS LEGISLATION

● Mr. SIMON. Mr. President, today I am introducing legislation to amend the Internal Revenue Code to provide that the amount of deduction with respect to any amortizable section 197 intangible is determined by amortizing 75 percent of the adjusted basis of the intangible over 15 years. The remaining 25 percent of adjusted basis will not be amortizable.

The Budget Reconciliation Act of 1993 provided the 100-percent amortization of goodwill and other intangible assets, and that is of great concern to me. It will cost the Treasury more than $2 billion each year in the long term.

Before the enactment of the new law, companies engaging in corporate buyouts could deduct the cost of tangible assets, such as buildings and machinery. The acquiring company could also deduct interest costs on borrowed money. This generous tax treatment for companies acquiring other companies stimulated the buyout and merger mania we saw in the 1980's and early 1990's—at great cost to taxpayers.

The wave of mergers led companies to increasingly seek tax deductions for their intangible assets as well. According to a 1991 report by the GAO, the reported value of intangible assets—assets that do not physically depreciate but that companies claim decline in value over time—in leveraged buyouts

and other merger activities went from $45 billion in 1980 to $262 billion in 1987.

In the past, the IRS disallowed many deductions claimed by corporations for intangible assets. These included claims for goodwill, which can be defined as the value of a company's good name. Corporations attempted to deduct such items as customer lists, patents, brand name loyalty, all in the name of goodwill. When the IRS refused to allow these deductions, these major corporations went to court to avoid paying the taxes they owed to the IRS. This led to the so-called litigation explosion and the subsequent change in the tax law. Proponents of this provision claimed that simplification was needed to address the problems created by this litigation explosion.

In order to bring about simplification, the Congress simply caved in, Mr. President, by allowing the 100-percent deduction of intangible assets, including goodwill.

I led the battle against a similar provision last year during the debate on the unsuccessful tax bill, and I have spoken on this subject at length. In my CONGRESSONAL RECORD statement of September 10 of this year, I go into great detail about my objections to the amortization of goodwill. Today I will be brief.

The bill I am introducing, to allow only a 75-percent write-off of the value of a claimed intangible asset, is the same as the provision passed by the Senate in the 1993 budget reconciliation bill. The Senate adopted the 100-percent provision only after conference with the House.

The Joint Tax Committee and the GAO estimated that goodwill constitutes approximately 25 percent of all intangible assets. My bill therefore allows deductions for legitimate intangible assets but not for the amorphous goodwill. My bill also provides the needed tax simplification, while at the same time saves the Treasury more than $2 billion a year, over time.

Mr. President, let us not leave the Treasury with a long-term revenue loss, when we do not have to do so. Instead, let us take this golden opportunity to bring about further deficit reduction. I urge my colleagues to support this needed legislation.●

By Mr. SIMON:

S. 1700. A bill to amend the Internal Revenue Code of 1986 to limit the interest deduction allowed corporations and to allow a deduction for dividends paid by corporations; to the Committee on Finance.

EQUITY INCENTIVE ACT OF 1993

● Mr. SIMON. Mr. President, I introduce a bill to amend the Internal Revenue Code to limit the interest deduction allowed corporations and to allow a deduction for dividends paid by corporations.

Our current system of taxation encourages American businesses to use debt, rather than equity, to provide needed financing. My bill would encourage firms to shift from greater debt financing to more equity financing by limiting the interest deduction allowed corporations and allowing a deduction for dividends paid by corporations.

My proposal would be revenue neutral, although in the long run it should add to revenue because it would help the economy. I propose that, while 80 percent of interest payments remain deductible, 20 percent of the interest payments of all but the smallest corporations—including farm corporations—should be disallowed. And 50 percent of dividends should be deductible.

If a corporation borrows money to acquire another company or to buy equipment or for any other purpose, the interest on that debt is deductible, even though the debt can—and often does—put the corporation in a precarious position. But if the same corporation issues stock, and then pays dividends, there is no deduction. The tax laws favor debt.

That same corporation, if it cannot meet the payments of principal and interest, will have to sell itself or go bankrupt, neither of which are desirable goals. But if that corporation issues stock, and there is a dip in the economy, the only penalty the corporation must pay is that it cannot issue dividends. It can continue to thrive, employ people, and be a productive part of our society.

Our tax laws have encouraged corporations and banks and law firms to make the fast buck, rather than do the slow, solid things that are necessary to build their business and the economy of this nation. I favor tax laws that give corporations deductions for research, for creating jobs, for adding to the productivity of the nation.

My proposal would provide the incentive corporations need. It would encourage investment and help the growth of productivity. It would also help eliminate the excessive debt our country has accumulated, and it would go a long way toward strengthening the economy.

I hope my colleagues will join in supporting this legislation. It may need to be refined, but the idea is sound. Alan Greenspan endorses the concept of this proposal, Mr. President. I hope we can make it a part of the Tax Code.●

By Mr. SARBANES (for himself and Mr. SASSER):

S. 1701. A bill to provide for certain notice and procedures before the Social Security Administration may close, consolidate, or recategorize certain offices; to the Committee on Finance.

SOCIAL SECURITY ADMINISTRATION SERVICES PRESERVATION ACT

● Mr. SARBANES. Mr. President, today I am reintroducing the Social Security Administration Services Preservation Act. This legislation, which I first proposed during the 101st Congress, would establish procedures to be used when the Social Security Administration proposes to close a field office.

Public confidence in the Social Security program is vital to its effectiveness and is based, to some degree, on the service the Agency provides. The Agency's extensive network of offices plays an important role in providing quality service to the millions of Americans who depend upon Social Security programs. While the nationwide toll-free number has become an effective tool for some simple inquiries, it cannot replace the local offices where citizens can talk face-to-face with Agency representatives.

In the past, the Social Security Administration has closed, moved, and categorized service offices without adequate consideration of the public interest. This legislation would establish a process for considering such actions that would ensure that organizations, employees, and Social Security beneficiaries all receive adequate notice of the proposed change.

This bill would also require the Agency to list, as part of its annual budget submission, those offices which have been closed in the preceding year as well as those that the Agency plans to close. At present, Mr. President, there is no readily available source of this information even though it is clearly important if we in Congress are to be informed about the Agency's service to our constituents.

The procedures in the legislation are based both on the procedures for office closings employed by the U.S. Postal Service and on guidelines that the social Security Administration issued on April 25, 1980. Those guidelines specified criteria that should be used in decisions about closing and relocating facilities. Among the key criteria discussed are shifts in population, demand for personal service, socioeconomic changes, transportation availability, and public reaction to the proposal. I regret that, through the years, there has been too little adherence to the Agency's own procedures.

Mr. President, I am confident that many of my colleagues are aware of situations in their own States in which a service office was closed or downgraded without input from community groups and without adequate consideration of the public interest. This legislation would assure that the need for personal attention of many Social Security beneficiaries, such as senior citizens and handicapped persons, is considered before an office is closed. It recognizes that residents of areas that are characterized by low levels of income or education often have a greater need for personal assistance.

This legislation does not prevent the Administration from closing or moving

offices. In my view, reasonable changes in the office structure should be made to maximize service while minimizing cost to the American taxpayer. As she assumes the challenging task of leading this critically important Agency, I hope that Dr. Shirley Sears Chater, the impressive new Commissioner, will review this legislation and indicate her own support for codifying these procedures.

Mr. President, this act would simply ensure that all decisions to close, recategorize, or move a Social Security office are considered using a fair process. The populations served by Social Security programs deserve nothing less.

As my colleagues may recall, I introduced similar legislation in the 101st and 102d Congresses. I hope that this important issue can finally be resolved by the 103d Congress and I am pleased that my colleague and friend, Senator JIM SASSER, is joining me as an original cosponsor of this bill.

Mr. President, I hope that this important legislation will be promptly approved by the Senate and I ask that the text of the act be printed in the RECORD.

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

S. 1701

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Social Security Administration Services Preservation Act".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds that—

(1) the service philosophy of the Social Security Administration recognizes that the effective administration of programs depends upon the goodwill and acceptance of the public;

(2) the Statement of Objectives of the Social Security Administration in the year of 1958 recognized that public confidence and cooperation is partially based on the locations and appearances of offices;

(3) the mission of the Social Security Administration touches the lives of virtually all United States citizens and therefore offices of the Administration need to be readily accessible to all citizens regardless of residence;

(4) many United States citizens, especially many among the handicapped and the elderly, need personal attention to needs and should not be unnecessarily deprived of access to agency officers;

(5) discrepancies exist between the formal procedures for closing, consolidating, and recategorizing Social Security Administration offices and the practice often used;

(6) the procedures used for such decisions are inconsistent and often too informal;

(7) the procedures used in many closings, moves, and recategorizations have not adequately considered the interests of the individuals affected by the decisions; and

(8) all changes in the status and location of Social Security Administration offices should be considered in such a way as to not undermine public confidence in the Social Security program.

(b) The purposes of this Act are to—

(1) ensure that the public interest is considered and protected in all decisions to close, consolidate, or recategorize Social Security Administration offices; and

(2) establish a fair procedure to be followed in all such decisions.

CONSOLIDATION, CLOSING, OR RECATEGORIZATION OF A SOCIAL SECURITY ADMINISTRATION OFFICE

SEC. 3. Title VII of the Social Security Act is amended by adding at the end thereof the following new section:

"CONSOLIDATION, CLOSING, OR RECATEGORIZATION OF A SOCIAL SECURITY ADMINISTRATION OFFICE

"SEC. 712. (a) For purposes of this section, the term—

"(1) 'adequate public notice' means the conspicuous posting of a formal notice at the affected office and the mailing of a written notice to at least—

"(A) the employees of the affected office;

"(B) the regularly published local press serving the affected community;

"(C) all elected local public officials, community groups, and county, parish, and State welfare offices, and any other affected or relevant organization; and

"(D) the Members of Congress who serve the area in which the affected office is located;

"(2) 'move' with respect to an office means any change in the physical location of such office, unless such move is within the same political subdivision and is necessitated by an involuntary loss of a lease or a need for additional space;

"(3) 'office' includes all field offices, district offices, and hearings and appeals offices of the Social Security Administration;

"(4) 'political subdivision' means a component of a county or large city which has a common civic identity characterized by neighborhood pride, independence, or homogeneous ethnic, racial, religious, or economic background; and

"(5) 'recategorize' means the process of scaling down an office to a lesser status or level of function.

"(b) The Social Security Administration, after making a determination as to the necessity for the closing, consolidation, or recategorization of any office, shall provide adequate public notice of such determination at least 90 days prior to the proposed date of such closing, consolidation, or recategorization. Such notice shall include an invitation for written comments on the proposal and shall include an address for mailing such comments.

"(c) When making a determination to close, consolidate, or recategorize an office, the Social Security Administration shall consider—

"(1) the effect of such change on the community served by such office including the availability of public transportation to any site, the socioeconomic status of the community, the caseload of the affected office, and such other factors as the Social Security Administration determines are necessary;

"(2) the need of the community for personal service, relative to mail or telephone service, based on demographic information such as educational and literacy levels;

"(3) the effect of such determination on employees of the Social Security Administration at such office; and

"(4) the economic savings to the Social Security Administration resulting from the change.

"(d) The Commissioner of Social Security or the Deputy Commissioner of Social Security shall approve all preliminary and final determinations to close offices that are open full-time and provide a full range of services. The authority to make other preliminary and final determinations may be delegated by the Commissioner.

"(e) Any preliminary determination of the Social Security Administration to close, consolidate, or recategorize an office shall be in writing and shall include the findings of the Social Security Administration with respect to the considerations required under subsection (c).

"(f) A public hearing shall be—

"(1) held upon written request;

"(2) held no earlier than 60 days after adequate public notice of such hearing is made;

"(3) conducted on all proposals to consolidate, close, or recategorize the affected office;

"(4) held at or near the location of the affected office; and

"(5) conducted by an official designated by the regional or central office.

"(g) Within 30 days after the hearing held under the provisions of subsection (f) or after the 90-day period described under subsection (b), whichever is later, the Social Security Administration shall—

"(1) issue a final report that—

"(A) incorporates all of the testimony provided at the public hearing and all written comments received; and

"(B) specifies the final determination of the status of the affected office;

"(2) send copies of the final report to the local community press and the appropriate Members of Congress; and

"(3) provide adequate public notice of the final determination, including a notice that copies of the full final report may be viewed or obtained, without charge, at the affected office.

"(h) A final determination of the Social Security Administration to close, consolidate, or recategorize an office may be appealed by any person served by such office to the Commissioner of Social Security. Such appeal shall be filed no later than 30 days following adequate public notice of the final determination under subsection (g)(3). The Commissioner shall review such determination on the basis of the record before the Social Security Administration in deciding such appeal. The Commissioner shall set aside any determination, finding, or conclusion found to be—

"(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law;

"(2) without observance of procedure required by law; or

"(3) unsupported by substantial evidence on the record.

"(i) No action may be taken to close, move, or recategorize any office during the 30 days following the announcement of a decision nor during the time that any level of appeal is pending.

"(j) The Social Security Administration shall include in its annual budget submission to the Congress a list of all offices, as defined under subsection (a)(3), and all contact stations that—

"(1) were closed or discontinued during the year preceding the date of such submission; and

"(2) are scheduled to be closed or discontinued and the date that such action is planned.".●

By Mr. SIMON:

S. 1702. A bill to amend the Federal Food, Drug, and Cosmetic Act to ensure that human tissue intended for

transplantation is safe and effective, and for other purposes; to the Committee on Labor and Human Resources.

HUMAN TISSUE FOR TRANSPLANTATION ACT OF 1993

• Mr. SIMON. Mr. President, today I am introducing the Human Tissue for Transplantation Act of 1993, which will regulate human tissue banks and tissue banking practices. Representative RON WYDEN is introducing an identical measure in the other body today. It has been a pleasure to work with him and his staff, and I appreciate his leadership.

We have been circulating drafts of our bills among interested parties for a number of weeks and have received helpful comments that we have tried to incorporate in the final draft. I am aware there are remaining concerns about the bill as drafted, and my staff and I will continue to work with the tissue bank community and with my colleagues to resolve remaining issues in the weeks ahead. My hope is we can move quickly to final enactment early in the next session.

Every year more than 10,000 tissue donors supply approximately 500,000 pieces of tissue for transplantation in the United States. Approximately 400 tissue banks are operating in our country procuring, processing, storing, and/or distributing this tissue. These figures are approximate because no one really knows how many tissue banks are operating. There is currently no Federal oversight and only a handful of States require such tissue banks to register.

My involvement with this issue began 2 years ago when I was approached by the University of Chicago. The University and others involved with human heart valve transplantation were concerned about the FDA's decision to regulate human heart valves as class III medical devices. The concern was that such classification would result in potential shortages and unreasonably high costs. The more closely my staff and I examined this issue, the more we realized that the issues surrounding the regulation of heart valves were only the tip of the iceberg. The FDA, in the absence of an appropriate statutory framework to regulate human tissue, intended to move ahead to regulate other tissue under their cumbersome medical device regulations. This possibility was creating consternation among tissue banks, particularly the nonprofit tissue banks. And after four tissue transplant recipients contracted the HIV virus from infected tissue in 1991, many more people became painfully aware that human tissue banks needed to be regulated—and regulated in an effective and appropriate manner.

I have received at least one letter from a person who, but for the risk of infectious disease, would choose to receive tissue transplants. In my experience, one letter can represent the views of a significant number. This person was fortunate because for her it was not a life-or-death matter, and there were alternatives.

Those whose condition is life-threatening, a child in need of a heart valve replacement, for example, do not have this luxury. It is important, not just from a disease prevention standpoint, to assure people about the safety and quality of the tissue they are receiving.

Organizations such as the American Association of Tissue Banks [AATB] have done an admirable job of promulgating thorough standards under which tissue banks must operate to receive their accreditation. Unfortunately, too few banks have sought this accreditation and there is no means to enforce these standards.

There appears to be a consensus among the interested parties to this legislation that there is a need for regulation. We are in agreement that any regulation must provide for the registration of tissue banks, effective, uniform donor screening, and effective tracking from donor to recipient. None of these is uniformly being carried out in the tissue bank community today.

Most believe that the FDA should oversee any regulatory scheme that may be created and that compliance with the standards promulgated by the Secretary of the Department of Health and Human Services should not be voluntary.

Funds for startup costs will need to be appropriated. This amount could be $5 million, perhaps more, perhaps less. Once the regulatory scheme is in place, however, this program should be self-sustaining. User fees are a means by which to reach this end. In coming to this decision, we have taken into account the altruistic nature of tissue donation and the fact that most tissue banks are not for profit. Ultimately the cost of the user fees will be passed along to the transplant recipient. Under health care reform we are likely to provide assistance to those who are medically in need of such transplants. This seems an appropriate, fair, and reasonable way to cover the FDA's expenses for carrying out this important responsibility.

This bill will rescind those Federal regulations that classify human heart valves as class III medical devices and that subject human heart valves to premarket approval. Human heart valves will be regulated as human tissue. This bill will not regulate organs or blood, which are now appropriately regulated under their own authorities.

Under this bill, good tissue banking practices will be promulgated, to which tissue banks that wish to continue operating, will adhere. All tissue will be appropriately labeled so that both physicians and patients may be better informed. The likelihood of receiving infected tissue will be diminished by mandatory donor and tissue screening and testing, along with a uniform recordkeeping system that tracks the tissue from donor to recipient.

The FDA will be given the flexibility to determine the best means by which to enforce these regulations. For those banks not complying with good tissue banking practices or for those that otherwise fail to maintain the standards by which they obtained a license, the FDA may revoke their license.

Consideration has been given to protecting proprietary information so as not to discourage innovation in this rapidly developing field. I understand how far along tissue transplantation has come over the last 20 years, and in order to ensure continued developments, it is important that the new regulations that will be promulgated do not unnecessarily burden those involved with this research.

Involvement of the tissue banking community will come from their participation in a National Tissue Advisory Committee. This Committee will advise the Secretary on such matters as what are the appropriate quality standards and regulations for tissue banks; standards for good tissue banking practices; and among others, standards for the prevention of infectious disease transmission. It is my expectation that the advisory committee will take into consideration the standards used by organizations who currently accredit tissue banks.

The bill utilizes existing enforcement powers available to the FDA under the Federal Food, Drug, and Cosmetic Act. Seizure authority is a means to handle contaminated tissue as are the adulteration and misbranding provisions.

Last fall the Labor and Human Resources Committee in the Senate held a hearing on this subject and the House held a similar hearing in October, at which time we listened to the comments of the FDA, the profit and not-for-profit tissue bank community, and practicing physicians. We have incorporated many of their suggestions into this new bill and I am hopeful that this bill will be passed with relative ease. Again, although I am introducing this bill today, I will continue to work with interested parties so that all of their concerns will be sufficiently addressed.

I urge my colleagues to look carefully at this issue and to join me in supporting tissue transplant legislation early in the coming session.•

By Mr. SARBANES (for himself, Mr. WARNER, Ms. MIKULSKI, and Mr. ROBB):

S. 1703. A bill to expand the boundaries of the Piscataway National Park, and for other purposes; to the Committee on Energy and Natural Resources.

PISCATAWAY NATIONAL PARK EXPANSION

• Mr. SARBANES. Mr. President, today I am introducing legislation, together with my colleagues Senators

WARNER, MIKULSKI, and ROBB, to expand the boundaries of Piscataway National Park on the Maryland shores of the Potomac River. This boundary expansion will help protect the Park and the historic viewshed of Mount Vernon—one of our Nation's best known historic landmarks—by enabling the National Park Service to acquire two critical tracts of forested riverfront land, north of the existing boundaries of the park, which, if developed, could threaten or damage these national resources.

Piscataway National Park was established in 1961 under Public Law 87-362 to

* * * preserve for the benefit of present and future generations to the historic and scenic values . . . and the present open and wooded character of certain lands situated along the Potomac River in Prince George's and Charles Counties, Maryland . . . which provide the principal overview from the Mount Vernon Estate and Fort Washington * * *

A number of proposed developments in the 1950's including a sewage treatment plant, oil tank farm and high rise apartments, sparked an ambitious effort by the Mount Vernon Ladies Association, the Accokeek Foundation, the Alice Ferguson Foundation, the Moyaone Association, and many individual citizens to protect the natural beauty along the Maryland shore of the Potomac River that ultimately resulted in the creation of Piscataway Park. The National Park Service, in cooperation with these organizations and local residents acquired land and scenic easements and, as a consequence, today the landscape or viewshed remains essentially unchanged from the time that George Washington's Mount Vernon home and Fort Washington were first constructed.

Piscataway Park currently comprises over 4,200 acres of which some 1,500 acres have been acquired in fee title and 2,700 acres have been protected through donated or purchased scenic easements. It is an oasis in the midst of an area that is highly urbanized and subject to continued population growth and development pressures. In addition to a rich diversity of animal and plant life and many archeological and historic sites, the Park includes the National Colonial Farm, a living historical farm operated by the Accokeek Foundation; Marshall Hall, the remains of an historic plantation dating back to the early 1700's; and the Hard Bargain Farm Environmental Center, a cooperative environmental education program developed by the Alice Ferguson Foundation where thousands of children come each year to learn about the natural beauty of this area and the importance of environmental stewardship.

A 1991 study, commissioned by the Mount Vernon Ladies Association, identified two major parcels of land beyond the current boundaries of Piscataway Park which, if developed according to existing zoning regulations, would intrude on this otherwise completely protected viewshed. The subject tracts comprise approximately 163 acres. They are steeply sloped; thus any development would present a visual intrusion on the viewshed and reverse the public benefits gained through the original authorizing legislation for Piscataway Park. They contain many important natural, historic, and cultural resource values, including several documented archeological sites from an Indian tribe which occupied the area. They also provide important habitat for bald eagles, great blue herons and a variety of other animals, fish, and plants.

This legislation authorities the National Park Service to acquire these remaining and critical unprotected areas. It will not only preserve the historic viewshed of Mount Vernon, but conserve the properties' important resource values. Federal ownership of this shoreline would also help provide additional protection to our Nation's River. Action is urgently needed before the opportunity and the decades of effort already made to protect the natural beauty of the area are lost forever.

The legislation has the strong support of the Mount Vernon Ladies Association of the Union, the Accokeek Foundation, the Alice Ferguson Foundation, the Moyaone Association and many individual citizens. I ask unanimous consent that letters from these organizations in support of the legislation and a letter from the Regional Director of the National Park Service, be included in the RECORD immediately following my statement. I urge my colleagues to join me in supporting this legislation. I am hopeful that the Energy and Natural Resources Committee will schedule a hearing on this measure early next year and that the legislation will be enacted before 103d Congress adjourns.

Mr. President, I ask unanimous consent to place additional material in the RECORD.

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

MOUNT VERNON LADIES
ASSOCIATION OF THE UNION,
Mount Vernon, VA, November 16, 1993.

Hon. PAUL S. SARBANES,
U.S. Senate, Washington, DC.

MY DEAR SENATOR SARBANES: It has come to our attention that certain river-front properties may become available for purchase adjacent to Piscataway National Park on the Potomac River across from Mount Vernon. If these properties are lost to private development this would cause irreparable harm to the parks, the river, and the historic view from Mount Vernon that has remained relatively intact since George Washington first made his home there in 1754.

Piscataway Park was established in 1961 to ensure the permanent protection of the view from Mount Vernon across the river into Maryland. Development of lands adjacent to the park could undo the public benefits gained through the original legislation. It is my understanding that you will be proposing legislation that would extend the boundaries of Piscataway Park. If there is anything we can do to assist you in this effort, please do not hesitate to contact me.

We greatly appreciate your interest, for it would be most regrettable if the commitment made to protect the setting of Mount Vernon over the past thirty years would be negated by indiscriminate development.

Sincerely,

NEIL W. HORSTMAN,
Resident Director.

ALICE FERGUSON
FOUNDATION, INC.,
Accokeek, MD, November 17, 1993.

Hon. PAUL S. SARBANES,
Senate Office Building,
Washington, DC.

DEAR SENATOR SARBANES: The Alice Ferguson Foundation is pleased that you are introducing legislation to purchase property to expand the boundaries of Piscataway Park. Your efforts to preserve these valuable natural and cultural resources from development are greatly appreciated.

In 1963 the Foundation donated 85 acres of land to help establish the Park. We were pleased to be part of a joint effort between citizens, organizations and the Department of Interior to preserve these lands. However, the pressures are still with us. We recognize the importance of protecting the natural, cultural and scenic features along Piscataway Creek. The Foundation supports this legislation which will expand the boundaries of the Park and protect those lands for future generations.

Sincerely,

KATHERINE G. POWELL,
Executive Director.

ACCOKEEK FOUNDATION,
Accokeek, MD, November 16, 1993.

Hon. PAUL S. SARBANES,
U.S. Senate, Washington, DC.

DEAR SENATOR SARBANES: I am writing to express the Accokeek Foundation's strong support for the acquisition of additional land for inclusion in Piscataway Park.

Our organization was founded more than thirty five years ago, to preserve, protect and foster, for scientific, educational or charitable use and study for the benefit of the people of the nation, the historic sites and relics, trees, plants and wild life rapidly disappearing from an area of great natural beauty along the Maryland shore of the historic Potomac River.

To that end, the Accokeek Foundation acquired land and easements at Bryan Point on the Maryland shore of the Potomac in the 1950s and 60s. Those lands, donated by the Foundation to the federal government, became the core of Piscataway Park, which was dedicated in 1968. We continue to work in close cooperation with the National Park Service to ensure the Park's protection and appropriate use.

Piscataway Park contains what archaeologists have called the richest collection of American Indian archaeological sites in any National Park east of the Mississippi. The additional land in question also contains significant archaeological deposits, and should be protected for that reason alone.

Further, Piscataway Park protects the historic view from the home of our nation's first president. Nearly one million people visit Mount Vernon each year and thus benefit directly from Piscataway Park, as well.

In our role as stewards in our community, we recognize the importance of protecting the natural, archaeological, and scenic resources along Piscataway Creek. All these values would be adversely impacted by inappropriate development, which we understand is likely if the land is not added to the park.

Thank you for your leadership on this issue. Please let me know if there is any further information that would be useful to you in this matter.

Sincerely yours,

WALTON C. CORKEN, *President.*

DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE,
Washington, DC, September 17, 1993.

Hon. PAUL S. SARBANES,
U.S. Senate, Washington, DC.

DEAR SENATOR SARBANES: This letter is written in response to your staff's recent inquiry relative to a study by the Mount Vernon Ladies' Association of the Union who have identified private lands in Prince Georges County, Maryland which, if left unprotected, could be developed so as to despoil the view from the Mount Vernon Estate.

Public Law 87-362, approved October 4, 1961, authorized the preservation and protection of land to preserve the overview from the Mount Vernon Estate and Fort Washington by establishing Piscataway Park. The legislative intent was to protect the natural beauty of the lands as they existed at the time of construction and active use of Mount Vernon and Fort Washington for the benefit of future generations. This "viewshed park" is held in fee by the United States or protected with donated or purchased scenic easements.

The Association contracted with EDAW, Inc. for an analysis of all lands in and around Piscataway Park to delineate areas of sensitivity where excessive building heights or significant tree cutting would intrude on the view. The EDAW analysis revealed that land developments in certain areas beyond the boundary of Piscataway Park would be visible from Mount Vernon. The National Park Service has had an opportunity to review the 1991 visual analysis and the concerns which have been forwarded to you by the Mount Vernon Ladies' Association. Indeed, additional protection on the properties they have identified is needed to preserve the view. Reliance on existing local zoning and subdivision regulations enacted to preserve environmentally sensitive areas, such as stream beds and steep slopes, will not adequately protect the historic view from Mount Vernon. It is conceivable that cluster development plans or a planned unit development plan on several properties could be approved by local land use review bodies to the detriment of the historic view.

Two undeveloped parcels of property totalling approximately 161.5 acres adjoin Piscataway Bay. The properties are viewed from Mount Vernon across nearly 4 miles of open water and their development would be highly visible to the public. Locally, development on Piscataway Bay, near Piscataway Creek Stream Valley Park would be disruptive to the natural and historic features that have till now been largely protected by the Piscataway Park land resource and its management. Archaeological and prehistoric resources are known to exist on portions of the property.

We enthusiastically endorse the continual interest that has been taken by the Mount Vernon Ladies' Association in preserving the congressionally authorized viewshed. At the present time we cannot purchase land beyond our authorized boundary unless it is donated. However, we support any efforts to preserve this nationally signficant resource and would be pleased to work with you on determining the best method of protecting these properties.

Sincerely,

ROBERT STANTON,
Regional Director.●

By Mr. SIMON (for himself and Ms. MOSELEY-BRAUN):

S. 1704. A bill to amend the Immigration Reform and Control Act of 1986 concerning interim assistance to States for legalization [SLIAG]; to the Committee on the Judiciary.

IMMIGRATION REFORM LEGISLATION

● Mr. SIMON. Mr. President, today, I am pleased to introduce legislation to address a fundamentally important need in the United States—the unmet desire of new and recent immigrants to learn the English language and prepare to become naturalized U.S. citizens.

My bill, in which I am joined by my friend and colleague from my own State of Illinois, Senator MOSELEY-BRAUN, is the companion to a bill introduced earlier this month by my friend LUIS GUTIERREZ, the Representative from Illinois, and endorsed by the Congressional Hispanic Caucus.

This bill reimburses State and local governments and community based organizations for educational services to the approximately 1.9 million permanent residents who gained legal status under the Immigration Reform and Control Act of 1986. Approximately 5.3 percent of these permanent residents live in Illinois. They are now beginning to be eligible to apply to become naturalized U.S. citizens.

In 1986, Congress committed up to $4 billion to State and local governments and private service agencies who would provide health, education, and welfare support services to newly legalized aliens. The $82 million provided under this bill represents the final installment and will enable eligible individuals to gain proficiency in the English language.

Greater English proficiency is not only of benefit to the individual. It is a tremendous gift they provide to their families and children who they then can help learn English and gain greater educational and employment skills. It is in the national interest for there to be greater literacy on the part of all Americans as well.

We know there are tens of thousands of individuals on waiting lists for adult English classes in Chicago, New York City, San Francisco, Los Angeles, and communities throughout the Nation.

This bill provides some help to those local schools and community based organizations that provide English classes. This bill has attracted the strong support of the Hermandad Mexicana Nacional, Chicago Coalition for Immigrant and Refugee Protection. Both organizations have worked closely with the drafters of this bill as they know of its great importance to the future of immigrants and the Nation.

I look forward to working with all Senators who have an interest in education, immigration, and language issues to enact this bill.

I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 1704

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INTERIM ASSISTANCE TO STATES FOR LEGALIZATION.

(a) ENTITLEMENT OF STATES.—Section 204(b)(4) of the Immigration Reform and Control Act of 1986 is amended—

(1) in the second sentence by inserting before the period at the end ", except that any funds which a State obligates as provided in paragraph (6) shall remain available through September 30, 1997";

(2) in the third sentence by striking "Any funds" and inserting "Aside from the funds that may be obligated pursuant to paragraph (6)(A), any funds";

(3) by inserting before the period at the end of the third sentence "including outstanding obligations pursuant to paragraph (6)(A), but not to exceed each State's unreimbursed costs and obligations"; and

(4) in the fourth sentence by inserting before the period at the end "and shall be reallocated by the Secretary as described in paragraph (6)(B)".

(b) EXTENSION OF SERVICES.—Section 204(b) of the Immigration Reform and Control Act of 1986 is amended by inserting after paragraph (5) the following new paragraph:

"(6)(A)(i) Notwithstanding any other provision of this Act, States may obligate $82,000,000 to make payments to public and private nonprofit organizations for educational services provided to adult eligible legalized aliens and for public information and outreach activities regarding naturalization and citizenship in fiscal years 1994 through 1997.

"(ii) Each State's share of the funds under clause (i) shall be equal to that State's share of the total number of eligible legalized aliens residing in all States for the fiscal year 1992, as determined by the Secretary.

"(iii) Any State in which more than 5 percent of the total number of eligible legalized aliens resided in 1992 shall obligate its full share of funds for the purposes of this clause (i) not later than September 30, 1994.

"(iv) Each State may designate the appropriate agency or agencies to administer funds under this subparagraph, except that for any State in which more than 20 percent of the total number of eligible legalized aliens resided in 1992, such agency shall be the State educational agency.

"(B) The Secretary shall make available on an equitable basis all additional funds remaining after June 30, 1995, for States to use for the purposes described in subparagraph (A) and to reimburse or make payments for any other services provided to eligible legalized aliens in fiscal years 1995 through 1997 which were approved by the Secretary before October 1, 1993.".

(c) ELIGIBLE LEGALIZED ALIEN DEFINED.—Section 204(j)(4) of the Immigration Reform and Control Act of 1986 is amended by inserting before the period at the end ", except

that the 5-year limitation shall not apply for the purposes of providing services described in subsection (b)(6)".

(d) PROVISION OF SERVICES.—Section 204(c)(3)(C) of the Immigration Reform and Control Act of 1986 is amended by inserting ", and related program administration," after "aliens".

(e) REPORTS.—Section 204(e) of the Immigration Reform and Control Act of 1986 is amended by adding at the end the following:

"(5) For each of the fiscal years 1994 through 1997, the State shall include in the annual report to the Secretary information, in the aggregate and by individual provider, with respect to the following—

"(A) the number of eligible legalized aliens enrolled in educational services under subsection (b)(6);

"(B) the number of aliens described in subparagraph (A) who have applied for United States citizenship;

"(C) the number of aliens described in subparagraph (A) who have passed a test of written English and United States history and government administered or approved by the Immigration and Naturalization Service; and

"(D) the number of aliens described in subparagraph (A) who have become United States citizens.".●

By Mr. WOFFORD:

S. 1705. A bill to extend temporarily the suspension of duty on Tfa Lys Pro in free base and tosyl salt forms; to the Committee on Finance.

S. 1706. A bill to suspend temporarily the duty on certain chemicals; to the Committee on Finance.

S. 1707. A bill to suspend temporarily the duty on keto ester; to the Committee on Finance.

DUTY SUSPENSION LEGISLATION

● Mr. WOFFORD. Mr. President, today I am introducing legislation to suspend temporarily the duty on certain chemicals used to manufacture drugs used in the treatment of serious ailments.

The particular chemicals covered by these duty suspension bills must be imported from foreign sources because there are no domestic manufactures producing them in substantial quantities, if at all. Suspending the duties will lower the production cost for American companies that use these chemicals and help them to remain competitive. One such company, Merck & Co., U.S.A., has over 6,300 active employees and 1,400 retirees in the State of Pennsylvania.

While Merck imports many of the components needed to manufacture its drugs, it also exports many finished products. Duty suspension will help ensure the continued competitiveness of companies like Merck in domestic and foreign markets. Reducing production costs will also help to maintain current employment levels and may even enable companies to begin producing new products either through expansion of current operations or by building new facilities.

The legislation I am introducing today will help lower the production costs of drugs used to treat serious ailments. I urge my colleagues to support these measures.

TFA LYS PRO IN FREE BASE AND TOSYL SALTS

The first bill would extend for 3 years the suspension of the duty on Tfa Lys Pro in free base and tosyl salts, a component of lisinopril, a patented ace inhibiting antihypertensive.

METMERCAZOLE AND PYRMETHYL ALCOHOL

The next bill I am introducing would suspend for 3 years the duty on 2,5-dimethyl-2-hydroxymenthyl-4-methoxy-pyridine (pyrmethol alcohol) and 2-mercapto 5-methoxy benzimidazole (metmercazole).

Neither pyrmethol alcohol or metmercazole is manufactured by anyone in the United States. Both products are imported through the port of New York for reformulation into the drug prilosec by Merck & Co., Inc., at its Flint River, GA and West Point, PA plants. Prilosec is a new class of gastrointestinal drug called acid pump inhibitors and is approved for use in treating gastroesophageal reflux disease, severe erosive esophagitis, and conditions such as Zollinger-Ellison syndrome. Prilosec is also shown to be effective in the treatment of duodenal ulcers and other acid-related stomach disorders.

KETO ESTER

The last bill I am introducing today would suspend for 3 years the duty on ethyl 2-keto-4-phenylbutanoate (keto ester). This component of the drugs vasotec and prinivil is not manufactured by anyone in the United States.

Vasotec is an angiotensin coveting enzyme [ACE] inhibitor for the control of high blood pressure. It is also highly effective in reducing the death rate of patients with severe heart failure, and was the only proven ACE inhibitor to do this when it received additional approval in June 1988 for use in congestive heart failure. Prinivil is Merck's second ACE inhibitor for the treatment of hypertension and is approved in a number of countries for congestive heart failure.

Mr. President, duty suspension benefits a broad spectrum of American businesses by removing an artificial barrier to trade—an import duty that is effectively penalizing U.S. manufacturers. The duties addressed in the legislation I am introducing today are no longer needed to serve their primary purpose of protecting an American industry because their are no domestic manufacturers of these products. And, retaining existing duties will hamper the ability of American companies to reduce their production costs and remain competitive. Reducing the cost of production ultimately benefits the consumers who depend on these vital drugs and the employees who manufacture them.

Mr. President, I ask unanimous consent that the text of the bills be printed in the RECORD.

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

S. 1705

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF DUTY SUSPENSION.

Heading 9902.30.53 of the Harmonized Tariff Schedule of the United States is amended by striking "12/31/92" and inserting "12/31/96".

SEC. 2. EFFECTIVE DATE.

(a) IN GENERAL.—The amendment made by section 1 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.

(b) RETROACTIVE APPLICATION TO CERTAIN ENTRIES.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, upon a request filed with the appropriate customs officer on or before the date that is 90 days after the date of the enactment of this Act, any entry, or withdrawal from warehouse for consumption, of goods described in heading 9902.30.53 of the Harmonized Tariff Schedule of the United States that was made—

(1) after December 31, 1992, and

(2) before the 15th day after the date of the enactment of this Act,

shall be liquidated or reliquidated as though such entry or withdrawal occurred on the 15th day after the date of the enactment of this Act.

S. 1706

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SUSPENSIONS.

Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new headings:

"9902.31.12	3,5-Dimethyl-2-hydroxymethyl-4-methoxy-pyridine (pyrmethyl alcohol) (CAS No. 86604–78–6) (provided for in subheading 2933.39.47)	Free	No change	No change	On or before 12/31/96
"9902.31.13	I2-Mercapto 5-methoxy benzimidazole (metmercazole) (CAS No. 37052–78–1) (provided for in subheading 2933.90.80)	Free	No change	No change	On or before 12/31/96".D

SEC. 2. EFFECTIVE DATE.

The amendment made by this Act 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.

S. 1707

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TEMPORARY DUTY SUSPENSION.

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:

"9902.31.12	Ethyl 2-keto-4-phenylbutanoate (keto ester) (provided for in subheading 2918.30.20)	Free	No change	No change	On or before 12/31/96".

SEC. 2. EFFECTIVE DATE.

The amendment made by section 1 applies with respect to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of enactment of this Act.●

By Ms. MOSELEY-BRAUN:

S. 1708. A bill to renew the previously existing suspension of duty on parts of aircraft generators; to the Committee on Finance.

DUTY SUSPENSION ON AIRCRAFT GENERATOR PARTS

• Ms. MOSELEY-BRAUN. Mr. President, I am introducing legislation today to provide a temporary duty-suspension on aircraft generator parts through December 31, 1994, and retroactively give entries made after December 31, 1992, duty-free status.

This bill merely continues the duty-free status of aircraft generator parts that had been granted in an earlier miscellaneous tariff bill, but which has now expired. It provides a temporary suspension until a more permanent mechanism can be put in place to correct an inequity created by the harmonized system of tariffs.

Prior to the tariff schedules being harmonized, aircraft generator parts could be imported into the United States duty-free. U.S. manufacturers would then take those imported parts, and parts from domestic suppliers, and build an aircraft generator in the United States, using U.S. labor.

Under the new harmonized tariff schedule, this duty-free status on aircraft generator parts was eliminated. However, under the new tariff schedule, foreign-built aircraft generators can be imported duty-free. This inverted tariff structure works to the direct disadvantage of U.S. companies and U.S. workers.

This change resulted in a significant handicap to U.S. manufacturers, who want to build aircraft generators in the United States, and not overseas. Foreign manufacturers of aircraft generators can bring their product into the U.S. without any tariffs, while our U.S. manufacturers must pay duties on foreign aircraft generator parts they use when they build the complete generator here, at home. This change is an incentive for U.S. manufacturers to move their production overseas in order to avoid the duties on parts. At the very least, it makes our U.S.-built aircraft generators less competitive than foreign built aircraft generators.

As a result of this aberration, the 101st congress passed legislation to temporarily suspend duties on aircraft generators until the GATT negotiations or another method could be found to permanently correct the problem.

That duty extension has expired, and the tariff has once again become a significant burden on U.S. manufacturers, particularly, one in my State of Illinois. My bill would extend and make retroactive the duty-free status on aircraft generator parts. This bill is simple. It is non-controversial. It is reasonable.

The goal of our tariff system ought to be to establish a level playing field between U.S. and foreign manufacturers. It certainly ought not create disincentives to build products in this country.

I understand the finance committee may put together another miscellaneous tariff bill. I urge the committee to consider including this legislation in any miscellaneous tariff bill the committee may consider.

Mr. President, I look forward to working with my colleagues to ensure that this bill, which levels the trade playing field between U.S. and foreign aircraft generator manufacturers and between U.S. and foreign workers, is promptly enacted.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1708

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PARTS OF AIRCRAFT GENERATORS.

Heading 9902.85.03 of the Harmonized Tariff Schedule of the United States is amended by striking "12/31/92" and inserting "12/31/94".

SEC. 2. EFFECTIVE DATE.

(a) IN GENERAL.—The amendment made by section 1 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.

(b) RETROACTIVE PROVISION.—Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, upon a request filed with the appropriate customs officer on or before the 90th day after the date of the enactment of this Act, any entry, or withdrawal from warehouse for consumption, of an article described in heading 9902.85.03 of the Harmonized Tariff Schedule of the United States that was made—

(1) after December 31, 1992; and

(2) before the 15th day after the date of the enactment of this Act;

and with respect to which there would have been no duty or a lower duty if the amendment made by section 1 had applied to such entry or withdrawal, shall be liquidated or reliquidated as though such entry or withdrawal occurred on such 15th day.•

By Mr. WOFFORD:

S. 1709. A bill to suspend temporarily the duty on mounted closed circuit television lenses; to the Committee on Finance.

SUSPENDING THE DUTY ON CERTAIN TELEVISION LENSES

• Mr. WOFFORD. Mr. President, today I am introducing legislation to suspend temporarily the duty on mounted closed circuit television lenses.

These lenses are used in the manufacture of closed circuit television cameras by Burle Industries, a Pennsylvania corporation with its headquarters and principal manufacturing facility in Lancaster, PA where it employs over 700 people. It is not owned or controlled by foreign entities.

Burle is one of a very few domestic-owned companies still engaged in the manufacture of closed circuit television cameras in significant quantities in the United States. Burle designs, engineers and manufactures a full line of closed circuit television cameras and other equipment, as well as various electronic elements. It also exports a considerable quantity of its products.

Because of the extremely competitive nature of the business Burle is engaged in, it must find ways to reduce the cost of producing its products. This is particularly important to Burle's ability to support its current employment levels. If Burle is unable to remain competitive, it will be unable to continue to support its current level of employment.

A mounted lens is a vital part of the closed circuit television cameras. Japan is the principal source of these lenses. Germany is another source of high quality lenses, but provides a much smaller volume of the lenses sold here. Other sources include China, Hong Kong, and India. A very limited quantity of certain custom made lenses are manufactured in the United States by one company.

Currently, Burle imports closed circuit television camera lenses from Japan for use as a component of its closed circuit television cameras and for resale as discrete lenses. Lenses meeting Burle's specifications are not available from the U.S. manufacturer because it does not produce a sufficient quantity in the United States to meet Burle's requirements.

Burle competes for the closed circuit television camera market with a number of foreign, mostly Japanese, camera manufacturers. Under existing duty rates, U.S. Customs imposes a lower duty on cameras, parts and accessories entering the United States than it does for lenses alone. Lenses attached to cameras when they enter the United States are considered part of the camera. Thus, Burle pays a higher duty on the lenses it imports than other companies pay on cameras entering the United States with the lenses attached. This situation is typically described as "tariff inversion," and in this case, it is unfair.

Removal of the duty imposed on these lenses for a temporary period will assist Burle in competing with foreign television camera manufacturers. It will not injure domestic lens suppliers because effectively, there are none that manufacture the quantity required by Burle.

Suspending the duty on the mounted closed circuit television lenses used by Burle will lower the production cost and will help Burle remain competitive, thereby preventing the loss of jobs. And, in the long run, lowering production costs will not only benefit the domestic manufacturer but the consumer as well.

Mr. President, I ask unanimous consent that this bill be printed in the RECORD.

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

S. 1709

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MOUNTED CLOSED CIRCUIT TELEVISION LENSES.

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:

"9902.90.02	Mounted lenses consisting of lenses suitable for use in, and presented separately from, closed circuit television cameras, with or without attached electrical or non-electrical closed circuit television camera connectors, and with or without attached motors (provided for in subheading 9002.11.80, 9002.90.90, or 8529.90.30)	Free	No change	No change	On or before 12/31/96".

SEC. 2. EFFECTIVE DATE.

The amendment made by section 1 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. WOFFORD:

S. 1710. A bill to extend temporarily the suspension of duty on certain chemicals; to the Committee on Finance.

S. 1711. A bill to suspend temporarily the duty on certain chemicals; to the Committee on Finance.

SUSPENDING THE DUTY ON CERTAIN DYE INTERMEDIATES

● Mr. WOFFORD. Mr. President, today I am introducing two bills to suspend the duties on certain dye intermediates.

Beginning in 1922, Congress imposed tariffs on imported benzenoid intermediates in order to protect U.S. manufacturers of these dye intermediates. Now there are no domestic producers of benzenoid dye intermediates and these tariffs are hurting U.S. companies that must import them to produce their dyes.

During the past decade, the number of U.S. dye manufacturers has diminished until only eight remain, of which only two are totally U.S.-owned. As the major domestic dyes manufacturers ceased operations, the domestic sources for intermediates needed to make dyes also disappeared. Foreign manufacturers have been quick to fill this void in the U.S. dye market. Today, over 50 percent of the dyes sold in the United States, and a much higher share of the dye intermediates, are imported. They come primarily from Europe, but increasingly from less developed countries, such as India. As foreign-based dye manufacturers become more dominant in the industry, the remaining U.S.-based dye manufacturers are struggling to compete and survive.

Crompton & Knowles Corp. is among the largest totally U.S.-owned suppliers of dyes to the domestic textile industry. It is a leading domestic producer of specialty dyes for nylon, polyester, acrylics, and cotton. Two of Crompton & Knowles dye manufacturing plants are located in Reading and Gilbralter, PA, and its corporate headquarters is in Greenhills, PA. Together, these locations employ over 350 persons. The dye intermediates for which duty suspensions are being sought are used by Crompton & Knowles mainly to manufacture more than fifty types of dyes. Other domestic dye manufacturers use these chemicals for the same purpose.

In addition to selling its dyes domestically, Crompton & Knowles markets them overseas. Its sales in foreign markets, however, have been limited because of its inability to compete profitably with foreign suppliers that use duty-free intermediates. Crompton & Knowles has been forced to begin production of its dyes overseas in order to compete with European companies. The suspension of duties in the legislation I am introducing will assist Crompton & Knowles in exporting dyes and therefore minimize the amount of production and jobs that are shifted overseas.

Mr. President, I ask unanimous consent that the text of the bills be printed in the RECORD.

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

S. 1710

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF SUSPENSION OF DUTY ON CERTAIN CHEMICALS.

Each of the following headings of the Harmonized Tariff Schedule of the United States is amended by striking "12/31/92" and inserting "12/31/94".

(1) 9902.29.04 (relating to p-Toluenesulfonyl chloride).

(2) 9902.29.13 (relating to 2,6-Dichlorobenzaldehyde).

(3) 9902.29.28 (relating to α,α,α-Trifluoro-o-toluidine).

(4) 9902.29.30 (relating to 8-Amino-1-naphthalenesulfonic acid and its salts).

(5) 9902.29.31 (relating to 5-Amino-2-(p-aminoanilino)benzenesulfonic acid).

(6) 9902.29.33 (relating to 1-Amino-8-hydroxy-3,6-naphthalenedisulfonic acid; and 4-Amino-5-hydroxy-2,7-naphthalenedisulfonic acid, monosodium salt (H acid, monosodium salt)).

(7) 9902.29.35 (relating to 6-Amino-4-hydroxy-2-naphthalenesulfonic acid (Gamma Acid)).

(8) 9902.29.38 (relating to 3,3'-Dimethoxybenzidine (o-Dianisidine) and its dihydrochloride).

(9) 9902.29.40 (relating to 2-Amino-5-nitrophenol).

(10) 9902.29.43 (relating to 1-Amino-2,4-dibromoanthraquinone).

(11) 9902.29.44 (relating to 1-Amino-4-bromo-2-anthraquinonesulfonic acid (Bromamine acid) and its sodium salt).

(12) 9902.29.47 (relating to 4-Methoxyaniline-2-sulfonic acid).

(13) 9902.29.51 (relating to N-(7-Hydroxy-1-naphthyl acetamide).

(14) 9902.29.57 (relating to N,N-bis(2-cyanoethyl)aniline).

(15) 9902.29.64 (relating to 6-(3-Methyl-5-oxo-1-pyrazolyl)-1,3-naphthalenedisulfonic acid (amino-J-pyrazolone) (CAS No. 7277-87-4); and 3-Methyl-1-phenyl-5-pyrazolone (Methylphenylpyrazolone).

(16) 9902.29.69 (relating to 3-Methyl-5-pyrazolone).

(17) 9902.29.79 (relating to 2-Amino-N-ethylbenzenesulfonoanilide).

(18) 9902.30.15 (relating to 7-Hydroxy-1,3-naphthalenedisulfonic acid, dipotassium salt (CAS No. 842-18-2)).

(19) 9902.30.18 (relating to 1,4-Dihydroxyanthraquinone (CAS No. 81-64-1)).

(20) 9902.30.31 (relating to 2-Chloro-4-nitroaniline (CAS No. 121-87-9)).

(21) 9902.30.32 (relating to 4-Chloro-α-α-α-trifluoro-o-toluidine (CAS No. 445-03-4)).

(22) 9902.30.34 (relating to 5-Amino-2-naphthalenesulfonic acid (CAS No. 119-79-9)).

(23) 9902.30.35 (relating to 7-Amino-1,3-naphthalenedisulfonic acid, monopotassium salt (CAS No. 842-15-9)).

(24) 9902.30.36 (relating to 4-Amino-1-naphthalenesulfonic acid, sodium salt (CAS No. 130-13-2)).

(25) 9902.30.37 (relating to 8-Amino-2-naphthalenesulfonic acid (CAS No. 119-28-8)).

(26) 9902.30.38 (relating to mixtures of 5- and 8-amino-2-naphthalenesulfonic acid (CAS No. 119-28-8)).

(27) 9902.30.39 (relating to 1-Naphthylamine (CAS No. 134-32-7)).

(28) 9902.30.40 (relating to 6-Amino-2-naphthalenesulfonic acid (CAS No. 93-00-5)).

(29) 9902.30.43 (relating to 2,4-Diaminobenzenesulfonic acid (CAS No. 88-63-1)).

(30) 9902.30.48 (relating to 2-Amino-4-chlorophenol (CAS No. 95-85-2)).

(31) 9902.30.47 (relating to 1-Amino-2-methoxybenzene (o-Anisidine) (CAS No. 90-04-0)).

(32) 9902.30.51 (relating to 7-Anilino-4-hydroxy-2-naphthalenesulfonic acid (CAS No. 119-40-4)).

(33) 9902.30.52 (relating to 1,4-Diamino-2,3-dihydroanthraquinone (CAS No. 81-63-0)).

(34) 9902.30.55 (relating to 1-Amino-2-bromo-4-hydroxyanthraquinone (CAS No. 116-82-5)).

(35) 9902.30.67 (relating to 4-Aminoacetanilide (CAS No. 122-80-5)).

(36) 9902.30.75 (relating to 2-[(4-Aminophenyl)sulfonyl]ethanol, hydrogen sulfate ester (CAS No. 2494-89-5)).

(37) 9902.30.80 (relating to 2,5-Dichloro-4-(3-methyl-5-oxo-2-pyrazolin-1-yl)-benzenesulfonic acid (CAS No. 84-57-1)).

(38) 9902.30.89 (relating to 1,3,3-Trimethyl-2-methyleneindoline (CAS No. 118-12-7)).

(39) 9902.30.94 (relating to 7-Nitronaphth[1,2]-oxadiazole-5-sulphonic acid (CAS No. 84-91-3)).

SEC. 2. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by section 1 apply 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.

(b) RETROACTIVE PROVISION.—Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, upon a request filed with the appropriate customs officer on or before the 90th day after the date of the enactment of this Act, any entry or withdrawal from warehouse for consumption of

goods to which the amendment made by section 1 applies and that was made—

(1) after December 31, 1992; and

(2) before the 15th day after the date of the enactment of this Act;

and with respect to which there would have been a lower duty if the amendment made by section 1 had applied to such entry or withdrawal, shall be liquidated or reliquidated as though such entry or withdrawal had occurred on such 15th day.

S. 1711

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCE.

(a) SHORT TITLE.—This Act may be cited as the "Miscellaneous Tariff Act of 1993".

(b) REFERENCE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a chapter, subchapter, note, additional U.S. note, heading, subheading, or other provision, the reference shall be considered to be made to a chapter, subchapter, note, additional U.S. note, heading, subheading, or other provision of the Harmonized Tariff Schedule of the United States.

SEC. 2. EXTENSION OF EXPIRED SUSPENSIONS.

(a) BETA NAPTHOL.—Heading 9902.29.08 is amended by striking "12/31/90" and inserting "12/31/95".

(b) J ACID.—Heading 9902.29.34 is amended by striking "12/31/90" and inserting "12/31/95".

SEC. 3. 2-NITROBENZENESULFONYL CHLORIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.31.12	2-Nitrobenzenesulfonyl chloride (CAS No. 1694–92–4) (provided for in subheading 2904.90.47)	Free	No change	No change	On or before 12/31/95"

SEC. 4. NEVILLE AND WINTER ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new headings:

"9902.31.13	4-Hydroxy-1-naphthalenesulfonic acid, monopotassium salt (CAS No. 37860–62–1) (provided for in subheading 2908.20.60)	Free	No change	No change	On or before 12/31/95
9902.31.14	2-Naphthol-3,6-disulfonic acid, (CAS No. 148–75–4) and its disodium salt (CAS No. 135–51–3) (provided for in subheading 2908.20.04)	Free	No change	No change	On or before 12/31/95".

SEC. 5. ORTHANILIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.31.15	o-Aminobenzene-sulfonic acid (Orthanilic acid) (CAS No. 88–21–1) (provided for in subheading 2921.42.20)	Free	No change	No change	On or before 12/31/95".

SEC. 6. 2,5-DICHLOROANILINE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.31.16	2,5-Dichloroaniline (CAS No. 95–82–9) (provided for in subheading 2921.42.20)	Free	No change	No change	On or before 12/31/95".

SEC. 7. 2,5-DICHLOROANILINE-4-SULFONIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.31.17	2,5-Dichloroaniline-4-sulfonic acid (CAS No. 88–50–6) and its monosodium salt (CAS No. 41295–98–1) (provided for in subheading 2921.42.75)	Free	No change	No change	On or before 12/31/95".

SEC. 8. 2,6-DICHLORO-4-NITROANILINE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.31.18	2,6-Dichloro-4-nitroaniline (CAS No. 99–30–9) (provided for in subheading 2921.42.75)	Free	No change	No change	On or before 12/31/95".

SEC. 9. 2,6-XYLIDINE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.31.19	2,6-Xylidine (CAS No. 87–62–7) (provided for in subheading 2921.49.50)	Free	No change	No change	On or before 12/31/95".

SEC. 10. 2,4-DIMETHOXYANILINE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.31.20	2,4-Dimethoxy-aniline (CAS No. 2735–04–8) (provided for in subheading 2922.29.20)	Free	No change	No change	On or before 12/31/95".

SEC. 11. 4'-AMINO-N-METHYLACETANILIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.31.21	4'-Amino-N-methylacet-anilide (CAS No. 119–63–1) (provided for in subheading 2924.29.09)	Free	No change	No change	On or before 12/31/95".

SEC. 12. 2-CYANO-4-NITROANILINE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.31.22	2-Cyano-4-nitroaniline (CAS No. 17420–30–3) (provided for in subheading 2926.90.04)	Free	No change	No change	On or before 12/31/95".

SEC. 13. P-AMINOAZOBENZENEDISULFONIC ACID AND ITS SALTS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.31.23	p-Aminoazobenzenedi-sulfonic acid, monosodium salt (CAS No. 61950–37–6) (provided for in subheading 2927.00.10), and p-aminoazobenzenedisulfonic acid, disodium salt (CAS No. 2706–28–7) (provided for in subheading 2927.00.40)	Free	No change	No change	On or before 12/31/95".

SEC. 14. P-AMINOAZOBENZENE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.31.24	p-Aminoazo-benzene (CAS No. 60–09–3) (provided for in subheading 2927.00.50)	Free	No change	No change	On or before 12/31/95".

SEC. 15. P-AMINOAZOBENZENE HYDROCHLORIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.31.25	p-Aminoazo-benzene hydrochloride (CAS No. 3457–98–5) (provided for in subheading 2927.00.50)	Free	No change	No change	On or before 12/31/95".

SEC. 16. 2,2-DINITRODIPHENYL DISULFIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.31.26	2,2-Dinitrodiphenyl disulfide (CAS No. 1155–00–6) (provided for in subheading 2930.90.28)	Free	No change	No change	On or before 12/31/95".

SEC. 17. 4-CHLORO-3-(3-METHYL-5-OXO-2-PYRAZOLIN-1-YL)-BENZENESULFONIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.31.27	4-Chloro-3-(3-methyl-5-oxo-2-pyrazolin-1-yl)-benzenesulfonic acid (CAS No. 88–76–6) (provided for in subheading 2933.19.10)	Free	No change	No change	On or before 12/31/95".

SEC. 18. 1-(P-SULFOPHENYL)-3-METHYL-5-PYRAZOLONE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.31.28	1-(p-Sulfophenyl)-3-methyl-5-pyrazolone (CAS No. 89–36–1) (provided for in subheading 2933.19.42)	Free	No change	No change	On or before 12/31/95".

SEC. 19. 2-AMINOTHIAZOLE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.31.29	2-Aminothiazole (CAS No. 96–50–4) (provided for in subheading 2934.10.50)	Free	No change	No change	On or before 12/31/95".

SEC. 20. 2-AMINO-6-NITROBENZOTHIAZOLE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.31.30	2-Amino-6-nitrobenzo-thiazole (CAS No. 6285–57–0) (provided for in subheading 2934.20.60)	Free	No change	No change	On or before 12/31/95".

SEC. 21. 2-AMINO-5,6-DICHLOROBENZOTHIAZOLE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.31.31	2-Amino-5,6-dichlorobenzo-thiazole (CAS No. 24072–75–1) (provided for in subheading 2934.20.60)	Free	No change	No change	On or before 12/31/95".

SEC. 22. META TOLYLENE DIAMINE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.31.32	Tolvane-2,4 Diamine (CAS No. 95-80-7) (provided for in subheading 2921.51.10	Free	No change	No change	On or before 12/31/95".

SEC. 23. XYLIDINE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.31.33	Xylidine (CAS No. 95-68-1) (provided for in subheading 2921.49.10)	Free	No change	No change	On or before 12/31/95".

SEC. 24. MIXTURES OF (3,4-DIHYDROXYPHENYL)(2,4,6-TRIHYDROXYPHENYL-METHANONE 2-(2,4-DIHYDROXYPHENYL)-3,5,7-TRIHYDROXY-4H-1-BENZOPYRAN-4-ONE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.32.03	Mixtures of (3,4-dihydroxy-phenyl-2,4,6–trihydroxy-phenyl)-methanone (CAS No. 480–16–0) and 2-(2,4-dihydroxy-phenyl)-3,5,7-trihydroxy-4H-1-benzopyran-4-one (CAS No. 519–34–6) (provided for in subheading 3203.00.50)	Free	No change	No change	On or before 12/31/95".

SEC. 25. EFFECTIVE DATE.

The amendments made by this Act apply 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. BOND (for himself and Mr. DANFORTH):

S. 1712. A bill entitled the "Charles Evans Whittaker United States Courthouse Act"; to the Committee on Environment and Public Works.

CHARLES EVANS WHITTAKER U.S. COURTHOUSE ACT

● Mr. BOND. Mr. President, today on behalf of myself and the senior Senator from Missouri, Senator DANFORTH, I am introducing legislation to be name the new Federal courthouse to be constructed in Kansas City, MO, for Justice Charles Evans Whittaker.

Charles Evans Whittaker practiced law in Kansas City for 30 years from 1924 to 1954. He was president of the Missouri Bar Association in 1954 when he was appointed to the U.S. District Court for the Western District of Missouri by President Eisenhower. In 1956 he was appointed to the Court of Appeals for the Eighth Circuit from whence he was appointed to the Supreme Court of the United States on March 2, 1957.

Justice Whittaker was a quintessential lawyer when he was first appointed to the district court and was universally held in high regard by the bench and bar. He is the only Missourian lawyer or judge ever to have served on the highest court in the land.

Mr. President, it is only fitting that the new courthouse which will be constructed in Kansas City to house the district court should bear the name of Charles Evans Whittaker.●

By Mr. DODD:

S. 1713. A bill to award grants to public-private partnerships to encourage work force diversity in order to improve the working conditions of all Americans and to help organizations compete more effectively both domestically and internationally, and for other purposes; to the Committee on Labor and Human Resources.

WORK FORCE DIVERSITY PARTNERSHIP ACT

● Mr. DODD. Mr. President, today I am introducing the Work Force Diversity Partnership Act of 1993, a bill that addresses one of the key issues in the next generation of employee relations.

The face of the American work force is changing dramatically. In the 1990's, people of color, Caucasian women, and immigrants will account for 85 percent of the net growth in our Nation's labor force. The expectations and demands of those in the work force are becoming increasingly diverse, yet our workplaces are on the whole inadequately prepared to deal effectively with this diversity. For example, more than a third of African-Americans holding masters degrees in business administration use "indifference" and "benign neglect" to describe their organization's treatment of African-American managers.

Clearly, diversity is also one of our Nation's greatest strengths. The myriad of peoples who have come to the United States and made it their home have brought with them unique talents and skills that have become the very foundation of our Nation. However, it is not clear that this diversity is being tapped in today's workplace. While there is a general agreement in the business community about the prevalence of the challenge, no one yet knows the best approach.

At the same time, increased domestic and international competition requires ever-increasing efficiency in the workplace. By understanding how to better manage a diverse work force, and by helping workers work together, American employers can improve the productivity of all Americans and increase the chances for economic success.

To help address these challenges, I am introducing the Work Force Diversity Partnership Act of 1993. This legislation would establish a grant program within the Department of Labor to study and address issues relating to cultural diversity in the work force and its impact on economic competitiveness, employment opportunities, advancement, and retention, and develop public and private sector training materials and programs concerning work force and cultural diversity.

The grant program would be a public-private partnership. Grants would be awarded to partnerships consisting of universities, corporations, nonprofits, labor groups, civil rights groups or other experts. Through this partnership structure, grants would produce real world answers to this challenge. Federal funds would be matched with funds from the private sector. In addition, grants would be awarded by the Secretary of Labor after being reviewed by peer review panels comprised of representatives from management, labor, education, and other interested organizations.

This legislation marks the first time that all who are affected by a challenge in the workplace are being asked to participate in the development of a solution. This bill acknowledges that management, labor, academia, workers, and others must come together to address these issues if we are to meet this challenge. It also marks one of the few times when Congress has had the opportunity to address an issue before it is perceived as a crisis. By working together, it is my hope that the interested parties can begin providing the possible ideas and answers to meet this important challenge.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1713

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Work Force Diversity Partnership Act of 1993".

SEC. 2. FINDINGS.

Congress finds that—

(1) the United States is becoming the most diverse work-place in the world at a time of growing economic dissatisfaction and intense global competition;

(2) people of color, caucasian women, and immigrants will account for 85 percent of the net growth in our Nation's labor force during the 1990's;

(3) the expectations, characteristics, demands, beliefs, work values, motivating factors and educational backgrounds of individuals in the work force are becoming increasingly diverse;

(4) employees, managers, administrators, and government officials are inadequately

prepared to deal effectively with increased diversity in the work force;

(5) increased domestic and international competition require that business, industry and government leaders effectively motivate and manage this diverse work force; and

(6) as more parents join the work force, it has become increasingly difficult for employees to balance the demands of the workplace with the needs of families; and

(7) by understanding and valuing diversity which respects differences, employers emphasize creativity, self initiative, leadership, innovation, and team-work, and thereby improve the working conditions of all Americans and the chances for economic success.

SEC. 3. PURPOSE.

It is the purpose of this Act to establish a grant program within the Department of Labor to—

(1) study and address issues relating to work force and cultural diversity and their impact on economic competitiveness, employment opportunities, advancement and retention; and

(2) develop collaborative public and private sector education and training materials that address the issues of work force and cultural diversity.

SEC. 4. DEFINITIONS.

As used in this Act—

(1) FEDERAL SHARE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "Federal share" means 50 percent of the cost of each grant awarded under this Act.

(B) EXCEPTION.—If the Secretary, after consultation with the peer review panel, determines that to do so will further the purposes of this Act, the Secretary may increase the amount of the Federal share.

(2) INSTITUTION OF HIGHER EDUCATION.—The term "institution of higher education" has the same meaning given that term by section 1201(a) of the Higher Education Act of 1965 ((20 U.S.C. 1141(a)).

(3) NON-FEDERAL SHARE.—

(A) IN GENERAL.—The term "non-Federal share" means the amount required to be expended by the recipient of a grant under this Act.

(B) IN-KIND SERVICES.—Amounts available to pay the non-Federal share under this paragraph may include in-kind services or other resources.

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

SEC. 5. WORK FORCE DIVERSITY GRANT PROGRAM.

(a) PROGRAM AUTHORIZED.—The Secretary is authorized to award grants to eligible entities to pay the Federal share of the cost of programs established by such entities that are designed to—

(1) target and develop issues relating to work force and cultural diversity;

(2) develop public and private sector education and training materials that focus on the issues of work force and cultural diversity;

(3) foster research, scholarship, innovative curriculum development, development of teaching materials, and other practicable supportive academic activities relating to such issues;

(4) assist in the dissemination and transfer of such materials for use in private sector training efforts as they relate to issues of work force and cultural diversity; and

(5) develop and establish cooperative higher education-business training programs to assist public and private industry leaders and workers in addressing the issue of work force diversity.

(b) REQUIREMENT.—The Secretary shall ensure that the recipient of a grant under this Act agrees to establish, operate, and provide the non-Federal share of the cost of the work force diversity programs for which the grant is made.

(c) DURATION OF GRANT.—No grant awarded under this Act may be for a period longer than 3 years.

SEC. 6. GRANT RECIPIENT SELECTION.

(a) SUBMISSION OF PROPOSALS.—To be eligible for a grant under this Act an entity shall prepare and submit to the Secretary a proposal, at such time, in such manner and containing such information as the Secretary may reasonably require.

(b) PARTICIPANTS.—

(1) IN GENERAL.—An institution of higher education in partnership with one or more organizations described in paragraph (2), shall be eligible to receive a grant under this Act.

(2) ORGANIZATIONS.—An organization referred to in paragraph (1) shall be—

(A) a corporation, business, or partnership, whether for profit or nonprofit;

(B) a labor organization; or

(C) an organization that has a demonstrated interest or expertise in work force diversity issues.

(c) CRITERIA FOR SELECTION.—

(1) IN GENERAL.—In determining whether to approve a proposal submitted under subsection (a), the Secretary shall take into account—

(A) the extent to which the grant applicant demonstrates a potential to achieve one or more of the purposes of this Act,

(B) the level of participation and financial commitment of the participants;

(C) the likelihood that a proposed program will foster the creation of increased diversity awareness programs in other institutional environments;

(E) the likelihood that the proposed program will result in the development and dissemination of national or regional best practices;

(F) the extent to which the project will impact the international competitiveness of the United States economy; and

(G) such other criteria as the Secretary may prescribe.

(2) FACULTY PARTICIPATION.—The Secretary shall encourage partnerships desiring to receive a grant under this Act to submit proposals that are written by teams of faculty from multiple disciplines, student and academic affairs professionals, or student organizations concerned with multicultural education, or any combination thereof.

(3) PRIORITY.—In awarding grants under this Act, the Secretary shall give priority to grant proposals that demonstrate the availability of sufficient amounts of non-Federal contributions or resources from non-governmental entities.

SEC. 7. AREAS OF ACTION.

A recipient of a grant under this Act shall use amounts received under such grant to engage in activities in accordance with one or more of the following guidelines:

(1) The development of instructional material concerning efforts designed to address cultural and work force diversity issues within the workplace setting.

(2) The development of public and private sector education and training materials that will address the issues of work force and cultural diversity.

(3) The development of new approaches to work force diversity issues and scholarship efforts to be integrated within the curriculum of business schools, ethnic and women's studies, engineering schools, social science disciplines, humanities and the arts and sciences. In using grant funds under this paragraph, a grantee may employ approaches to be carried out in conjunction with corporate education and training programs.

(4) The conduct of research concerning multicultural workplace interactions and team management and business in multicultural and multi-lingual marketplace settings.

(5) The implementation of faculty development programs that focus on research, appropriate learning environments, and pedagogical approaches to teaching multicultural management and work diversity issues.

(6) The development and dissemination of information concerning models for summer precollege business internship programs that aid in integrating the workplace and in giving students a better understanding of the private sector and of work force diversity issues.

(7) The conduct of forums, workshops, and conferences in which representatives from academic, corporate, government, or other institutions with a demonstrated interest or expertise in work force diversity will focus on issues, attitudes and strategies that sensitive managers, employees, faculty, corporate, government and other leaders and workers to workplace diversity issues.

(8) Any other activities that the Secretary determines to be appropriate to meet the purposes of this Act.

SEC. 8. PEER REVIEW.

To assist the Secretary in carrying out this Act, the Secretary shall establish peer review panels to review the merits of grant proposals proposed under this Act. In establishing such panels, the Secretary shall seek the widest participation of qualified individuals from participants, as defined in section 6(b). Each peer review panel shall report the findings and recommendations of the panel to the Secretary.

SEC. 9. RECIPIENT REPORTS.

Each recipient of a grant under this Act shall prepare and submit an annual report to the Secretary. Each such report shall include a summary of the progress of the activities implemented under the grant to achieve the purposes of this Act, a summary of the expenditures involved, a plan describing the recipient's planned use of funds for the forthcoming year, an explanation of the uses made of the results of the grant program where appropriate, and any other information that the Secretary determines to be appropriate.

SEC. 10. REPORT.

The Secretary shall annually prepare and submit to the appropriate committees of Congress, a report that shall include an evaluation of the progress made in achieving the purposes of this Act.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this Act, $10,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1998.●

By Mr. BAUCUS:

S. 1714. A bill to amend title 23, United States Code, to provide for the establishment of State transportation investment loan funds, and for other purposes; to the Committee on Environment and Public Works.

STATE TRANSPORTATION FINANCING IMPROVEMENT ACT

● Mr. BAUCUS. Mr. President, today I am introducing the State Transportation Financing Improvement Act of

1993. The bill gives States greater flexibility in financing transportation system improvements by allowing them wider access to public and private capital. Following my remarks, I will include a summary of the bill for the RECORD. But I would first like to make a few observations about the direction of our transportation policy.

In 1991, Congress passed an innovative, forward-thinking surface transportation bill. The Intermodal Surface Transportation Efficiency Act [ISTEA] provided for a distinct shift in the Federal Government's approach to financing surface transportation projects. It coordinated environmental transportation policy and introduced a new relationship among Federal, State and local governments for surface transportation planning.

ISTEA marks the end of the interstate era and the beginning of a new approach to how we solve our transportation problems. In addition to a new approach to planning, ISTEA recognized the need for additional capital to make necessary transportation modernizations and improvements. ISTEA authorized over $120 billion to be spent on surface transportation projects and programs over a 6-year period.

However, because of the need to restrain Federal spending, actual appropriations for highway and related programs have not kept pace with amounts authorized by ISTEA. For fiscal year 1992, ISTEA authorized $16.8 billion for surface transportation programs—not including transit funds. However, the 1992 appropriation was only $15.7 billion—approximately a $1.1 billion shortfall.

There was a similar experience in the past 2 years as well. The fiscal year 1993 authorized level was $18.3 billion and the appropriated amount was $15.3 billion. For 1994, the authorized level was $18.4 billion and $17.6 billion was appropriated.

These funding shortfalls make it more difficult to correct our deteriorating transportation system. The Department of Transportation's 1993 needs report indicated that we need to invest over $50 billion annually, at all levels of government just to maintain this Nation's Federal-aid system conditions—let alone improve them—which is far above the annual public sector investment of $33 billion. The report further stated that 45 percent of this Nation's bridges are obsolete or deficient and over 65 percent of its highways and roads need repair.

To deal with the conflicting pressures to reduce public spending and improve transportation systems, we must attract available capital from public and private sources. This is the goal of the State Transportation Financing Improvement Act that I am introducing today.

The bill reflects the philosophical basis of ISTEA—flexibility to solve problems—while adding financing tools that are familiar to and used by the capital markets.

Under the provisions of this bill, States have the discretionary authority to use a portion of their Federal-aid highway funds upfront to create a State transportation revolving loan fund [SRF].

Funds that are obligated to a SRF may be used for a number of financing options:

First, the making of a direct loan to a project or program;

Second, the refinancing of outstanding debt for a qualifying project;

Third, the purchasing of bond insurance or other forms of credit enhancement to improve capital markets;

Fourth, the subsidizing of interest rates of a loan for a qualifying project;

Fifth, the providing of a loan guarantee to a project; and

Sixth, as a source of security to issue bonds to provide additional capital.

States must still match their Federal funds and any project that receives assistance must still comply with all Federal regulations—including the Clean Air Act.

Choosing to use the financing options I have described will:

Make the capital formation process more rational and less risky;

Augment the funding limitations at the Federal, State, and local levels;

Reduce the banking industry's reluctance to invest or lend to transportation projects on a non-recourse basis;

Improve the feasibility of projects undergoing strict risk and credit analysis by financing institutions, credit enhancers and rating agencies; and

Provide leveraging opportunities to many parts of the Nation where economic and political obstacles make toll facilities infeasible.

While some States may choose not to create a SRF, they may choose to utilize the two other provisions of the State Transportation Financing Improvement Act—the toll loan provision and the nontoll provision. These provisions allow individual—of project-by-project—loans of Federal-aid funds to be made to public or private entities constructing toll or nontoll facilities.

While this bill will not alleviate all of our transportation problems, it can make a difference. During this period of continued high unemployment and Federal budget constraints, it is essential that the public and private sectors participate in future infrastructure development.

This bill can make a significant contribution to narrowing the Federal transportation funding shortfall by leveraging more private funds. My goal is to create financing tools that reflect the philosophical underpinnings of ISTEA and are familiar to and practical for the capital markets. It will help to create a steady, stable source of funds dedicated to transportation improvements and will facilitate the innovative provisions of ISTEA.

Mr. President, I now ask unanimous consent that a summary of the bill and bill itself be printed in the RECORD.

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

S. 1714

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "State Transportation Financing Improvement Act of 1993".

SEC. 2. STATE TRANSPORTATION INVESTMENT LOAN FUNDS.

Chapter 1 of title 23, United States Code, is amended by adding at the end the following new section:

"§ 161. State transportation investment loan funds

"(a) ESTABLISHMENT.—

"(1) IN GENERAL.—Subject to the requirements of this section and notwithstanding any other provision of law, a State may establish a transportation revolving loan fund (referred to in this section as a 'transportation investment loan fund') for making loans and providing other assistance to public or private entities constructing or proposing to construct projects or programs that are eligible to receive assistance under section 133(b) (referred to in this section as a 'qualifying project').

"(2) DETERMINATION OF DEPOSIT AND SPENDOUT RATES.—For each fiscal year, not later than 90 days after the date of enactment of an appropriations Act that funds the majority of programs of the Department of Transportation for the fiscal year, the Secretary, in consultation with the Director of the Office of Management and Budget and the Director of the Congressional Budget Office, in accordance with recognized scorekeeping conventions, shall establish a schedule for deposits and payments made by or on behalf of a State with respect to a transportation investment loan fund established pursuant to paragraph (1) to meet the obligations of the State referred to in paragraph (3).

"(3) OBLIGATIONS AND DEPOSITS.—A State may obligate for deposit in a transportation investment loan fund, from funds apportioned or allocated to the State under sections 104(b)(3) and 157, an amount not to exceed the sum of—

"(A) the discretionary 37.5 percent of the remaining 80 percent of the surface transportation program funds apportioned to the State under section 104(b)(3), as described in the matter following clause (ii) of section 133(d)(3)(A); and

"(B) the difference between the amount allocated to the State pursuant to section 157(a)(4) and the amount that is obligated to urbanized areas of the State pursuant to section 133(d)(3).

"(4) TREATMENT OF DEPOSITS.—Any amounts deposited by a State pursuant to paragraph (3) shall be considered an expenditure by the State.

"(5) APPLICABILITY OF CASH MANAGEMENT REQUIREMENTS.—Sections 3335 and 6503 of title 31, United States Code, shall not apply to this section.

"(b) STATE MATCHING REQUIREMENT.—

"(1) ADDITIONAL DEPOSIT FROM NON-FEDERAL SOURCES.—At the same time as a State deposits funds under subsection (a) into a transportation investment loan fund, the

State shall deposit into the transportation investment loan fund from non-Federal sources an additional amount of State matching funds equal to—

"(A) the sum of—

"(i) the amount deposited pursuant to subsection (a); and

"(ii) an amount equal to the proportional non-Federal share that the State would otherwise pay on the basis of the amount, determined in accordance with section 120(b); multiplied by

"(B) the percentage amount of the non-Federal share for the State for a project carried out by the State, determined in accordance with section 120(b).

"(2) INVESTMENT INCOME.—All investment income earned on amounts deposited into the transportation investment loan fund shall be—

"(A) credited to the transportation investment loan fund; and

"(B) available for use in providing loans and other assistance from the transportation investment loan fund.

"(c) LOANS AND OTHER ASSISTANCE.—

"(1) GENERAL AUTHORITY.—From the amounts deposited into a transportation investment loan fund established by a State under this section, a State may loan to a public or private entity an amount equal to all or part of the cost of constructing a qualifying project, or provide other assistance with respect to a qualifying project.

"(2) COMPLIANCE WITH THE FEDERAL TRANSIT ACT, FEDERAL ENVIRONMENTAL LAWS, AND OTHER REQUIREMENTS.—As a condition of receiving a loan or other assistance under this section, the public or private entity that receives the loan or other assistance shall comply with the requirements of this title and any other applicable Federal law (including any applicable provision of the Federal Transit Act (49 U.S.C. App. 1601 et seq.) or a Federal environmental law).

"(3) SUBORDINATION OF DEBT.—The amount of a loan or other assistance (if applicable) received for a qualifying project under this subsection may be subordinated to any other debt financing for the project or program, except that amount of the loan or other assistance may not be subordinated to any other loan made by a State or any other public entity to the entity that receives the loan or other assistance.

"(4) REPAYMENT.—The repayment of a loan or other assistance (if applicable) made pursuant to this subsection shall commence not later than 5 years after the qualifying project that is the subject of the loan or other assistance has opened to traffic.

"(5) TERM OF LOAN.—The term of a loan made pursuant to this subsection shall not exceed 30 years from the date of obligation of the loan.

"(6) INTEREST.—A loan made pursuant to this subsection shall bear interest at a rate at or below market interest rates, as determined by the State to make the qualifying project that is the subject of the loan feasible.

"(7) REUSE OF FUNDS.—The repayment of a loan or other assistance (if applicable) provided pursuant to this subsection may be credited to the transportation investment loan fund or obligated for any purpose for which the funds were available.

"(8) PROCEDURES AND GUIDELINES.—Not later than 180 days after the date of enactment of this section, the Secretary shall establish procedures and guidelines for establishing, operating, and making loans and providing other assistance from a transportation investment loan fund.

"(d) DEFINITION OF OTHER ASSISTANCE.—As used in this section, the term 'other assistance' includes any use of funds—

"(1) to refinance outstanding debt used to finance a qualifying project if the State certifies that any savings that result from the refinancing shall be used to carry out the purposes of this title;

"(2) to guarantee or purchase insurance or other forms of enhancement for borrower debt in order to improve credit market access or to subsidize interest rates; and

"(3) to provide a loan guarantee for a loan made from the transportation investment loan fund.

"(e) OTHER USES OF THE TRANSPORTATION INVESTMENT LOAN FUND.—

"(1) SOURCE OF REVENUE OR SECURITY FOR BONDS.—Notwithstanding any other provision of this section, a State may use funds from the transportation investment loan fund of the State as security for bonds and notes issued to provide capital in addition to the capital referred to in subsection (a)(2) for the transportation investment loan fund.

"(2) ADMINISTRATIVE COSTS.—For each fiscal year, a State may use an amount not to exceed 2 percent of the Federal funds deposited by the State into the transportation investment loan fund of the State to provide for the reasonable costs of administering the transportation investment loan fund.".

SEC. 3. LOANS OF FEDERAL FUNDS FOR THE CONSTRUCTION OF NONTOLL FACILITIES.

Chapter 1 of title 23, United States Code, as amended by section 2, is further amended by adding at the end the following new section:

"§ 162. Loans of Federal funds for the construction of nontoll facilities

"(a) IN GENERAL.—

"(1) LOANS.—A State may loan an amount equal to all or part of the Federal share of a project or program to a public or private entity constructing or proposing to construct a nontoll facility if the repayment of the loan by the public or private entity will be made from a dedicated revenue source, including any excise tax, sales tax, motor vehicle use fees, tax on real property, tax increment financing, or other dedicated revenue sources.

"(2) DEFINITION OF QUALIFYING PROJECT.—As used in this section, the term 'qualifying project' means a project that meets the requirements of paragraph (1).

"(b) COMPLIANCE WITH THE FEDERAL TRANSIT ACT, FEDERAL ENVIRONMENTAL LAWS, AND OTHER REQUIREMENTS.—As a condition of receiving a loan under this section, the public or private entity that receives the loan shall ensure that the qualifying project complies with the requirements of this title and any other applicable law (including any applicable provision of the Federal Transit Act (49 U.S.C. App. 1601 et seq.) or a Federal environmental law).

"(c) SUBORDINATION OF DEBT.—The amount of a loan received for a project under this section may be subordinated to any other debt financing for the project, except that the amount of the loan may not be subordinated to the amount of any other loan made by the State or any other public entity to the entity constructing the project.

"(d) OBLIGATION OF FUNDS LOANED.—Funds loaned pursuant to this section may be obligated for qualifying projects.

"(e) REPAYMENT.—The repayment of a loan made pursuant to this section shall commence not later than 5 years after the qualifying project that is the subject of the loan has opened to traffic.

"(f) TERM OF LOAN.—The term of a loan made pursuant to this section shall not exceed 30 years from the date of obligation of the loan.

"(g) INTEREST.—A loan made pursuant to this section shall bear interest at a rate at or below market interest rates, as determined by the State to make the qualifying project that is the subject of the loan feasible.

"(h) REUSE OF FUNDS.—Amounts repaid to a State from any loan made pursuant to this section may be obligated—

"(1) for any purpose for which the loaned funds were available; and

"(2) for—

"(A) the refinancing of outstanding debt used to finance a qualifying project;

"(B) the guarantee or purchase of insurance or other forms of enhancement for borrower debt in order to improve credit market access or to subsidize interest rates; or

"(C) the provision of a loan guarantee.

"(i) GUIDELINES.—Not later than 180 days after the date of enactment of this section, the Secretary shall establish procedures and guidelines for making loans pursuant to this section.".

SEC. 4. TOLL ROADS.

Paragraph (7) of section 129(a) of title 23, United States Code, is amended to read as follows:

"(7) LOANS.—

"(A) IN GENERAL.—A State may loan an amount equal to all or part of the Federal share of a toll project under this section to a public or private entity constructing or proposing to construct a toll project. As used in this paragraph, the term 'qualifying project' means a project referred to in the preceding sentence.

"(B) COMPLIANCE WITH THE FEDERAL TRANSIT ACT, FEDERAL ENVIRONMENTAL LAWS, AND OTHER REQUIREMENTS.—As a condition to receiving a loan under this paragraph, the public or private entity that receives the loan shall ensure that the qualifying project complies with the requirements of this title and any other applicable law (including any applicable provision of the Federal Transit Act (49 U.S.C. App. 1601 et seq.) or a Federal environmental law

"(C) SUBORDINATION OF DEBT.—The amount of a loan received for a qualifying project under this paragraph may be subordinated to any other debt financing for the project, except that the amount of the loan may not be subordinated to the amount of any other loan made by the State or any other public entity to the entity constructing the project.

"(D) OBLIGATION OF FUNDS LOANED.—Funds loaned pursuant to this paragraph may be obligated for qualifying projects.

"(E) REPAYMENT.—The repayment of a loan made pursuant to this paragraph shall commence not later than 5 years after the facility that is the subject of the loan has opened to traffic.

"(F) TERM OF LOAN.—The term of a loan to a private or public entity shall not exceed 30 years from the time that the loan was obligated.

"(G) INTEREST.—A loan made pursuant to this paragraph shall bear interest at a rate at or below market interest rates, as determined by the State to make the qualifying project that is the subject of the loan feasible.

"(H) REUSE OF FUNDS.—Amounts repaid to a State from a loan made under this paragraph may be obligated—

"(i) for any purpose for which the loaned funds were available; and

"(ii) for—

"(I) the refinancing of outstanding debt used to finance a qualifying project;

"(II) the guarantee or purchase of insurance or other forms of enhancement for borrower debt in order to improve credit market access or to subsidized interest rates; or

"(III) the provision of a loan guarantee.

"(I) GUIDELINES.—Not later than 180 days after the date of enactment of the State Transportation Financing Improvement Act of 1993, the Secretary shall establish procedures and guidelines for making loans pursuant to this paragraph.".

SEC. 5. CONFORMING AMENDMENT TO TABLE OF CONTENTS.

The chapter analysis at the beginning of chapter 1 of title 23, United States Code, is amended by adding at the end the following new items:

"161. State transportation investment loan funds.
"162. Loans of Federal funds for the construction of nontoll facilities.".

SUMMARY OF THE STATE TRANSPORTATION FINANCING IMPROVEMENT ACT

The Act contains three separate transportation financing proposals. One is a revision of an existing provision of title 23, U.S.C. and two are additional financing provisions for surface transportation.

STATE TRANSPORTATION REVOLVING LOAN FUNDS

The bill gives states the discretionary authority to establish state transportation revolving loan funds (SRFs). States may use the discretionary portion of both their Surface Transportation Program (STP) and Minimum Allocation (MA) fund apportionments to capitalize the SRF (only the discretionary portion of these funds, not the portion that is suballocated to urban areas). The funds, not the portion that is suballocated to urban areas). The funds deposited into a SRF may be used for eligible projects—projects listed under the STP program. The STP program is the most flexible program under ISTEA—many transportation related activities are eligible for use of these funds. This includes, among other things, highway construction and 4R work, capital costs for mass transit projects, bicycle and pedestrian facilities and certain transportation control measures under the Clean Air Act Amendments.

At the time a state obligates funds to the SRF, the state must also deposit the appropriate non-Federal share or match. STP and MA projects are generally funded on a Federal/non-Federal ratio of 80/20.

Funds obligated to the SRF may be used for a variety of uses that include:

1. The making of a direct loan to a project or program;
2. The refinancing of outstanding debt for a qualifying project;
3. The purchasing of insurance or other forms of credit enhancement to improve capital market access for debt financing;
4. The subsidizing of interest rates of a loan for a qualifying project;
5. The providing of a loan guarantee to a project; and
6. As a source of security to issue bonds to provide additional capital.

As a condition to receiving assistance from the SRF, the recipient of the assistance must ensure the compliance with all Federal requirements that are currently in place with regard to Federal-aid highway funds. This includes the Clean Air Act, Davis-Bacon and other applicable requirements.

Loans made from the SRF may be subordinated to other debt financing for the project. The repayment of the loans must begin no later than 5 years after the project has opened to traffic. The term of the loan shall not exceed 30 years and the state has the authority to set the interest rate at or below market interest rates. The interest rate provisions apply to both public and private entities and there is no distinction between public or private recipients of assistance.

LOANS OF FEDERAL FUNDS FOR THE CONSTRUCTION OF NONTOLL FACILITIES

This section of the bill gives states the authority to make individual loans or provide assistance to specific projects on a project-by-project basis. Assistance will be provided to a public or private entity that can demonstrate the ability to repay the assistance using a dedicated revenue source—this can include but is not limited to any excise tax, motor vehicle use fees, sales tax revenues and tax increment financing. Section 3 of this Act expands the availability of loan assistance to those projects that have a dedicated revenue source and thus not restrict this option to toll facilities only.

As with the SRF, all projects receiving assistance must comply with all Federal requirements attributed to the use of Federal-aid highway funds. The assistance may be subordinated to other debt financing and the repayments must commence no later than 5 years after the project is opened to traffic. The term of the loan must not exceed 30 years and the interest rate is set by the state, at or below market interest rates.

The repayments of these loans may be further loaned or used for credit enhancement, but they must be used for transportation projects that are eligible under Title 23.

TOLL FACILITY LOAN PROVISIONS

Section 4 of this Act is a revision of the current ISTEA toll loan provision—section 1012 [23 U.S.C. 129(a)(7)]. The current provision of ISTEA allows individual loans to be made to public or private entities proposing to construct a toll facility—thus the repayment is backed by toll revenues.

The bill proposes four changes to 23 U.S.C. 129(a)(7):

1. Public or private entities receiving assistance under the proposed language must ensure that all Federal requirements are met, including the Clean Air Act.

2. ISTEA currently allows the loan rate to be set at the time of repayment—up to 5 years after the project is opened to traffic, which could be 7 to 8 years after the loan is made when you factor in construction time. This makes it difficult for the underwriting of any project—the loan rate must be known when the loan is made, not 7 to 8 years into the future. The proposed language sets the loan rate at the time of the obligation of the funds.

3. The proposed language changes the existing language with regard to the interest rate. There is no distinction made between the interest rates that a public or private entity receives on the assistance. The state has the discretionary authority to set the interest rate at the level appropriate for project feasibility.

4. The loans made under this toll loan provision "may" be subordinated to other debt financing for the project. The current language says that it "shall" be subordinated. This change will give states additional flexibility to structure loan agreements in the best possible way to make a project feasible.●

By Mrs. HUTCHISON (for herself, Mrs. BOXER, Mr. RIEGLE, Mr. FAIRCLOTH, Mr. PRYOR, Mr. CAMPBELL, Mr. PRESSLER, Mr. HARKIN, Mr. PELL, Mr. BAUCUS, Mr. GRAHAM, Mr. BREAUX, Mr. GRASSLEY, Mr. REID, Mr. BURNS, Mr. HELMS, Mr. AKAKA, Mr. SIMON, Mr. COCHRAN, Mr. LOTT, Mr. BOND, Mr. BRADLEY, Mr. SHELBY, Ms. MOSELEY-BRAUN, Mr. FORD, Mr. SMITH, Mr. COATS, Mr. CHAFEE, Mr. WOFFORD, Mr. SIMPSON, Mr. LAUTENBERG, Mr. BENNETT, and Mrs. FEINSTEIN):

S. 1715. A bill to provide for the equitable disposition of distributions that are held by a bank or other intermediary as to which the beneficial owners are unknown or whose addresses are unknown, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

EQUITABLE ESCHEATMENT ACT OF 1993

● Mrs. HUTCHISON. Mr. President, today Senator BOXER and I are introducing the Equitable Escheatment Act of 1993. This important bill will restore fairness to the laws governing claims by States to abandoned property from securities distributions such as corporate dividends and interest paid on municipal bonds. It will return unclaimed dividends and interest payments to their States of origin rather than to the two or three States where the financial intermediaries that fortuitously hold these distributions are incorporated.

This bill represents a bipartisan effort to restore equity to the rules of escheatment for unclaimed securities distributions, and is in direct response to the March 1993, decision of the Supreme Court in Delaware versus New York, which encouraged the Congress to settle the dispute among the 50 States. It is the companion to H.R. 2443, a bill introduced by House Banking Committee Chairman GONZALEZ and its ranking Republican, Mr. LEACH.

The abandoned property which is the subject of the Equitable Escheatment Act of 1993 arises during the payment of dividends and interest on publicly traded securities to owners of record that hold the securities for the beneficial owners. Because billions of shares of stocks and bonds are traded each year, financial intermediaries such as banks, brokerage firms, and depositories receive dividends and interest from issuers and other intermediaries, yet do not know to whom they should be paid because they do not know the identity of their beneficial owners. These dividends and interest payments are called owner-unknown unclaimed securities distributions. Though only 0.02 percent of all money involved in these distributions remains unclaimed, the total dollar amount at stake is very substantial and has ranged from $100 to $150 million annually.

Under the escheatment doctrine, the State of New York has been seizing all owner-unknown unclaimed dividends

69-059 O—97 Vol. 139 (Pt. 21) 39

and interest arising from dividend and interest payments, without regard to the location of the company paying the dividend or the State or municipality paying the interest on their municipal bonds. From 1985 to 1991 alone, the State of New York appropriated more than $630 million of owner-unknown unclaimed dividend and interest payments from Wall Street brokerage firms and banks simply because they happen to be concentrated in New York City.

In 1988, Delaware filed a suite against New York in the U.S. Supreme Court, seeking its share of these funds. The remaining 48 States and the District of Columbia were permitted to intervene as plaintiffs in the lawsuit. The Supreme Court appointed a special master, who concluded that these unclaimed funds should be returned to the States from which the funds originated. Under the special master's decision, owner-unknown interest paid on a State or municipal bond would be returned to the paying State, and owner-unknown dividends paid by a publicly traded company would be returned to the State in which the company maintains its principal executive offices. The special master found that this arrangement was administratively feasible and would result in the most equitable distribution of the unclaimed property.

The Supreme Court, however, was constrained by its precedents, rejected the master's recommendation, and held that these funds should escheat to the State of incorporation of whatever financial intermediary, bank, depository, or brokerage firm happens to be holding these funds. Under this rule, two States—Delaware and New York—would recover virtually all of the unclaimed property because most large brokerage firms are incorporated in Delaware and the largest securities depository is incorporated in New York, as are most money center banks. Massachusetts would receive some funds because State Street Bank and Trust Co. is the largest custodial bank in the country.

The Court stated that

> If the States are dissatisfied with the outcome of a particular case, they may air their grievances before Congress. That body may reallocate abandoned property among the States without regard to this Court's interstate escheat rules. Congress overrode Pennsylvania versus New York by passing a specific statute concerning abandoned money orders and traveler's checks, and it may, ultimately settle this dispute through similar legislation.

The Court was referring to a law Congress enacted in 1974 to overrule the Supreme Court's 1972 decision in Pennsylvania versus New York that awarded all unclaimed money orders held by Western Union to New York because Western Union happened to be incorporated in New York. The 1974 legislation established a more equitable distribution of unclaimed money orders and travelers checks by returning such property to the States of origin, i.e., to the States where the money orders and travelers checks were purchased. The Equitable Escheatment Act of 1993 would continue the tradition of maintaining fair treatment of competing State claims to abandoned funds established in 1974 by following the Supreme Court's invitation to again overrule Pennsylvania versus New York, and reinstate the Special Master's recommendation.

I want to emphasize the importance of the securities industry's assistance in helping us to minimize the burden of the change proposed in this legislation on our financial institutions. It may be appropriate to protect the companies that have in good faith paid substantial funds to New York for more than 20 years so that they are not subject to audits by other States for money paid to New York. We are flexible on these issues, and remain open to working out a solution fair to all. Although some have argued that the industry cannot comply with this bill, I think that the most computerized industry in the Nation, which already keeps track of millions of accounts and their unclaimed property, can pay this money over to the States.

Mr. President, the unjust rule permitting this money to go to New York and Delaware cannot stand. To put it simply, we can't allow the States that got to the head of the bunk house dinner table first to eat all the food that the ranch hands at the foot rode all day for. Money from Texas citizens paid as in interest on Texas municipal bonds and dividends earned by the success of Texas companies cannot be used to line the State treasuries of Delaware and New York. Although I have used Taxes and California as examples, every Senator can substitute his or her State. Delaware and New York are taking the funds of your constituents, as well as mine. That is why the companion bill in the House has over 260 cosponsors, with more joining every day, and why I urge all Senators to support this important bill for the benefit of your State and its taxpayers.●

By Mr. ROBB (for himself and Mr. WARNER):

S. 1716. A bill to amend the Thomas Jefferson Commemoration Commission Act to extend the deadlines for reports; to the Committee on the Judiciary.

THOMAS JEFFERSON COMMEMORATION COMMISSION EXTENSION ACT

● Mr. ROBB. Mr. President, I introduce legislation to extend the Thomas Jefferson Commemoration Commission for an additional year. I am joined in this endeavor by the senior Senator from Virginia, Senator WARNER. This commission, dedicated to honoring the life, thought and legacy of Thomas Jefferson, promises to make important contributions to scholarly research and the body of knowledge concerning Thomas Jefferson. I encourage the Senate to approve this extension.

I want to be perfectly clear: this legislation does not authorize any new appropriations. This merely changes the due dates of the Commission's final reports. Originally authorized in August 1992 to commemorate the 250th anniversary of Jefferson's birth, the authorization for this non-partisan body will expire at the end of this year unless action is taken to extend it. This extension is necessary because the appointment of the Commission and its chairperson was not complete until June 1993. Consequently, although this delay occurred through no fault of its own, the Commission faces expiration just as its programs and activities are getting off the ground. I have therefore introduced this bill to extend the Commission's authorization to give the Commission more time to complete its work. Again, this extension involves no additional funding and will merely allow the Commission to proceed without interruption.

Twenty-one members compose the Commission, of whom 10 are officers of the U.S. Government and 11 are private citizens. The Commission's mission is to plan and implement conferences and symposia; recognize individuals and organizations that have contributed to the memory of Jefferson's achievements and to the understanding and preservation of his ideals, buildings, artifacts and writings; and coordinate the commemorative activities of States and Federal agencies.

The Commission, which met for the first time in July, has begun planning for several projects, including:

A conference to assess Jefferson's contribution to the development of the American West;

An international symposium in Washington, DC, to increase knowledge of Jefferson world-wide;

An educational project aimed at expanding the knowledge of Jefferson in schools; and

A series of discussion for public radio and television.

Mr. President, the interest in Thomas Jefferson generated by the celebration of his 250th birthday has been overwhelming, and particularly gratifying to those of us from Virginia, where Mr. Jefferson's memory is still revered. Extension of the Commission will allow that interest to be properly fulfilled, at no cost to the government.

I ask my colleagues in the Senate to support this important and worthwhile legislation.●

By Mr. MITCHELL (for himself, Mr. HATFIELD, Mr. KENNEDY, Mr. SIMPSON, and Mr. MOYNIHAN) (by request):

S. 1717. A bill to amend the John F. Kennedy Center Act to transfer operating responsibilities to the Board of

Trustees of the John F. Kennedy Center for the Performing Arts, and for other purposes; to the Committee on Environment and Public Works.

JOHN F. KENNEDY CENTER REAUTHORIZATION

Mr. MITCHELL. Mr. President, Washington, DC, is more than the political and governmental Capitol of our Nation. As the home of the National Archives, the Smithsonian Institution, the National Gallery of Art, the Library of Congress, and the Kennedy Center for the Performing Arts, it could also be called our cultural and educational capital. Every year, millions of Americans visit Washington to learn more about their Nation and their heritage. The Federal Government has long recognized that it has a role in preserving the Nation's history, celebrating its diverse citizenry, and supporting national museums and cultural centers.

These national institutions reach more than just the millions of Americans who personally visit Washington every year. Publications, seminars, and similar outreach programs expand the influence of our Nation's museums and cultural centers beyond their geographic locations.

One of the more innovative outreach programs has been developed by the Kennedy Center. The Kennedy Center, as the National Center for the Performing Arts, has repeatedly shown leadership in expanding the role of performing arts and arts education in communities across the Nation. In an effort to expand opportunities beyond the city of Washington, in 1991, it embarked on an effort to bring community arts centers and schools together from around the country to learn, share, and expand the influence of the arts. The Partners in Education Program at the JFK Center allows teams from community arts centers and schools to travel to the District of Columbia to learn from experts and from each other methods to successfully incorporate the arts into everyday curriculums.

This program has just completed its third successful year. In just 3 years, more than 42 teams from 31 different States have completed training sessions at the Kennedy Center, and all of the community arts centers which participated in the 1991 training session have since developed or expanded their programs for local teachers.

This type of program will expand accessibility of the arts to populations which have traditionally been underserved such as rural or inner-city communities. I am pleased to note that both the 1991 and 1992 programs included participants from Maine. Maine students do not always get the opportunity to travel to Washington to visit the Kennedy Center, but through the Kennedy Center's Partners in Education program, students in Maine will now find that the arts are more accessible and relevant to their studies.

The Kennedy Center has done an admirable job in bringing the arts to schools, but more can be done. That is why I am joining with Senators HATFIELD, KENNEDY, SIMPSON, and MOYNIHAN today in supporting legislation to increase the ability of the Kennedy Center to fulfill its role as the national arts and education center. Our legislation will expand the education and outreach programs of the Kennedy Center as well as provide for a more efficient and effective process of making necessary capital repairs to the physical structure.

I am very pleased with the bipartisan effort that has gone into the drafting of this legislation, and I appreciate the time and attention my colleagues and the administration have given the issue. The John F. Kennedy Center requires support if it is to fulfill its mandated mission as the National Performing Arts Center. I am encouraged by the support and progress that has been made on this measure, and I look forward to working with my colleagues in the Senate and with the administration to see this measure become law.

Mr. President, I ask unanimous consent that the text of the bill and additional material be printed in the RECORD.

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

S. 1717

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "John F. Kennedy Center Act Amendments of 1993".

SEC. 2. BUREAU, BOARD OF TRUSTEES, AND ADVISORY COMMITTEE.

Section 2 of the John F. Kennedy Center Act (hereafter referred to as the "Act") (20 U.S.C. 76h) is amended—

(1) by redesignating subsections (a), (b) and (c) as subsections (b), (c) and (d);

(2) by inserting before subsection (b) (as redesignated in paragraph (1)) the following new subsections:

"(a) The Congress finds that—

"(1) the late John Fitzgerald Kennedy served with distinction as President of the United States, and as a Member of the Senate and the House of Representatives;

"(2) by the untimely death of John Fitzgerald Kennedy this Nation and the world have suffered a great loss;

"(3) the late John Fitzgerald Kennedy was particularly devoted to education and cultural understanding and the advancement of the performing arts;

"(4) it is fitting and proper that a living institution of the performing arts, designated as the National Center for the Performing Arts, named in the memory and honor of this great leader, shall serve as the sole national monument to his memory within the city of Washington and its environs;

"(5) such a living memorial serves all of the people of the United States by preserving, fostering and transmitting the performing arts traditions of the people of this nation and other countries by producing and presenting music, opera, theater, dance and other performing arts; and

"(6) such a living memorial should be housed in the John F. Kennedy Center for the Performing Arts, located in the District of Columbia.";

(3) in subsection (b) (as redesignated in paragraph (1)),

(A) in the first sentence, by inserting "as the National Center for the Performing Arts, a living memorial to John Fitzgerald Kennedy," after "thereof"; and

(B) in the second sentence—by striking "Chairman of the District of Columbia Recreation Board" and inserting "Superintendent of Schools of the District of Columbia";

(4) by amending subsection (c) (as redesignated in paragraph (1)) to read as follows:

"(c) The general trustees shall be appointed by the President of the United States and each such trustee shall hold office as a member of the Board for a term of 6 years, except that—

"(1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of such term;

"(2) a member shall continue to serve until such member's successor has been appointed; and

"(3) the term of office of a member appointed prior to the date of enactment of this subsection shall expire as designated at the time of appointment.";

(5) in subsection (d) (as redesignated in paragraph (1)),

(a) in the first sentence, by inserting "of the United States" and "President" and before "may";

(b) in the fourth sentence, by striking "in" after "cultural activities to be carried on" and substituting "by"; and

(c) by inserting a period after "compensation" and striking the remainder of the last sentence.

(6) EFFECTIVE DATE FOR CERTAIN APPOINTMENTS.—the appointment made pursuant to the amendment made by clause (ii) of subsection (3)(B) shall not commence until the expiration of the term of the Chairman of the District of Columbia Recreation Board, serving as a Trustee of the John f. Kennedy Center for the Performing Arts on the date of enactment of this Act.

SEC. 3. PRESENTATIONS, PROGRAMS, FACILITIES FOR ACTIVITIES, AND MEMORIAL IN HONOR OF THE LATE PRESIDENT; RESTRICTION ON ADDITIONAL MEMORIALS

Subsection (a) of section 4 of the Act (20 U.S.C. 76j) is amended to read as follows:

"(a)(1) The Board shall—

"(A) present classical and contemporary music, opera, drama, dance and other performing arts from the United States and other countries;

"(B) promote and maintain the Center as the National Center for the Performing Arts by—

"(i) developing and maintaining a leadership role in national performing arts education policy and programs, including developing and presenting original and innovative performing arts and educational programs for children, youth, families, adults and educators designed specifically to foster an appreciation and understanding of the performing arts;

"(ii) developing and maintaining, a comprehensive and broad program for national and community outreach, including establishing model programs for adaptation by other presenting and educational institutions; and

"(iii) conducting joint initiatives with the national education and outreach programs of

the Very Special Arts, an entity affiliated with the John F. Kennedy Center for the Performing Arts which has an established program for the identification, development and implementation of model programs and projects in the arts for disabled individuals;

"(C) strive to ensure that the John F. Kennedy Center for the Performing Arts education and outreach programs and policies meet the highest level of excellence and reflect the cultural diversity of the Nation;

"(D) provide facilities for other civic activities at the John F. Kennedy Center for the Performing Arts;

"(E) provide within the John F. Kennedy Center for the Performing Arts a suitable memorial in honor of the late President;

"(F) develop a comprehensive building needs plan for the existing features of the John F. Kennedy Center for the Performing Arts;

"(G) plan, design, and construct all major capital projects at the John F. Kennedy Center for the Performing Arts; and

"(H) provide information and interpretation; all maintenance, repair, and alteration of the building; and janitorial, security, and all other services necessary for operating the building and site.

"(2) (A) The Board, in accordance with applicable law, may enter into contracts or other arrangements with, and make payments to, public agencies or private organizations or persons in order to carry out the Board's functions under this Act. This includes, but is not limited to, utilizing the services and facilities of other agencies, including the Department of the Interior, General Services Administration, and Smithsonian Institution."

"(B) The Board shall prepare a budget pursuant to 31 U.S.C. sections 1104 and 1105(a) and subject to 31 U.S.C. section 1513(b).

"(C) The Board may utilize or employ the services of personnel of any agency or instrumentality of the Federal Government or of the District of Columbia, with the consent of the agency or the instrumentality concerned, upon a reimbursable basis, or utilize voluntary or uncompensated personnel."

"(D) In carrying out its duties under this Act, the Board may negotiate any contract for an environmental system, a protection system or a repair to, maintenance of, or restoration of, the John F. Kennedy Center for the Performing Arts with selected contractors and award the contract on the basis of contractor qualifications as well as price.".

"(E) The Board shall maintain the Hall of Nations, the Hall of States, and the Grand Foyer in a manner that is suitable to a national performing arts center that is operated as a Presidential memorial."

SEC. 4. OFFICERS AND EMPLOYEES, REVIEW OF BOARD ACTIONS.

Sections 5 of the Act (20 U.S.C. 76k) is amended—

(1) in the first sentence of subsection (a), by striking "Smithsonian Institution" and inserting "John F. Kennedy Center for the Performing Arts, as a bureau of the Smithsonian Institution.";

(2) in subsection (b)—

(A) in the section heading, by deleting "DIRECTOR, ASSISTANT DIRECTOR," and inserting "CHAIRPERSON".

(B) in the first sentence, by striking "director, an assistant director, and a secretary of the John F. Kennedy Center for the Performing Arts and of" and inserting "chairperson of the John F. Kennedy Center for the Performing Arts (hereafter in this Act referred to as the 'chairperson'), who shall serve as the chief executive officer of the Center, and a secretary of the Center. The chairperson may appoint a senior level executive who, by virtue of the individual's background, shall be well suited to be responsible for facilities management and services and who may, without regard to the provisions of Title 5, be appointed and compensated with appropriated funds, provided that compensation does not exceed the maximum rate of pay under 5 U.S.C. section 5376 for Senior-Level IV positions, and"

(C) in the last sentence by striking "director, assistant director," and inserting "chairperson"; and

(3) by redesignating subsection (c) as subsection (e) in this section, and amending it to read as follows:

"(e) The actions of the Board relating to performing arts and to payments made or directed to be made by it from any trust funds shall not be subject to review by any officer or agency other than a court of law."; and

(4) by adding after subsection (b) the following new subsections:

"(c) TRANSFER.—The property, liabilities, contracts, records, and unexpended balance of appropriations, authorizations, allocations and other funds employed, held, used, arising from, available to or to be made available in connection with the functions transferred from the Secretary of the Interior by enactment of this law, subject to 31 U.S.C. section 1531, shall be transferred to the Board as the Board and the Secretary of the Interior may determine, but not later than October 1, 1995. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for, and subject to the terms under, which the funds were originally authorized and appropriated.

"(d) TRANSFER OF PERSONNEL.—Employees of the National Park Service assigned to duties related to those functions being undertaken by the Board will be transferred with their functions to the John F. Kennedy Center Board of Trustees not later than October 1, 1995. These employees shall remain in the Federal competitive service retaining all benefits and rights provided under Title 5 of the United States Code. For a period of not less than three years, transferred employees will retain the right of priority consideration under merit promotion procedures or lateral reassignment for all vacancies within the Department of the Interior. All United States Park Police employees assigned to the John F. Kennedy Center will remain employees of the National Park Service. Appropriations provided for the John F. Kennedy Center for the Performing Arts will bear all costs associated with adverse action or grievance procedures resulting from this transfer of function, and from the abolishment of law enforcement and security services performed by the U.S. Park Police which are incurred during the transition period when the U.S. Park Police are performing functions within the building and site of the John F. Kennedy Center for the Performing Arts. Nothing contained herein shall, following the transfer specified herein, be deemed to prohibit the Board of Trustees from reorganizing functions at the Center in accord with the law governing such reorganizations."

SEC. 5. OFFICIAL SEAL, BOARD VACANCIES, AND QUORUM, TRUSTEE POWERS AND OBLIGATIONS, REPORTS, NATIONAL PARK SERVICE INTERPRETIVE FUNCTIONS, SUPPORT SERVICES, REVIEW AND AUDIT, SECRETARY OF THE INTERIOR'S FUNCTIONS, ESTABLISHMENT OF FUND.

Section 6 of the Act (20 U.S.C. 761) is amended—

(1) in subsection (c)—by striking "its" and inserting "the Board's";

(2) by striking subsection (e); and

(3) by striking subsection (f) and inserting the following new subsections—

"(f) The General Accounting Office shall review and audit, at least every 3 years, the accounts of the John F. Kennedy Center for the Performing Arts for the purpose of examining expenditures of funds appropriated under authority provided herein.

"(g) The functions of the Board funded by amounts appropriated under section 12 shall be subject to the requirements of the Inspector General Act of 1978, as amended. The Inspector General of the Smithsonian Institution is authorized to carry out the requirements of that Act on behalf of the Board, on a reimbursable basis.

"(h) The Board may procure insurance against any loss in connection with its property and other assets administered by it. The Board's employees and volunteers shall be deemed civil employees of the United States within the meaning of the term 'employee' as defined in 5 U.S.C. section 8101, except that the Board shall continue to provide benefits with respect to any disability or death resulting from an injury to its non-appropriated fund employees pursuant to the District of Columbia workers compensation statute; and such benefits, whether under workers compensation statutes or the Federal Employees Compensation Act, shall continue to be the exclusive liability of the Board and the United States with respect to all employees and volunteers; but in no circumstance may an employee bring suit against the United States under the Federal Tort Claim Procedure, chapter 171 of Title 28 of the United States Code, for disability or death resulting from personal injury sustained while in the performance of the employee's duties for the Board.

"(i) Any settlement, award or judgment, made or entered pursuant to chapter 171 of Title 28 of the United States Code, arising from any act or omission of a Kennedy Center Board employee in the performance of a nonappropriated fund activity, shall be paid only from funds available to the Board for its performing arts activities."

SEC. 6. TECHNICAL AMENDMENT.

Section 10 of the Act (20 U.S.C. 76p) is amended—

(1) by striking "he" and inserting "the Secretary"; and

(2) by striking "his" and inserting "the Secretary's".

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

The Act is amended by inserting at the end thereof the following new section 12 (20 U.S.C. 76r):

"SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

"(a) MAINTENANCE, REPAIR AND SECURITY.—There are authorized to be appropriated to the Board $12,000,000 for fiscal year 1995 and each succeeding fiscal year through fiscal year 1999 to carry out subparagraph (H) of section 4(a)(1).

"(b) CAPITAL PROJECTS.—There are authorized to be appropriated to the Board $9,000,000 for fiscal year 1994 and each succeeding fiscal year through fiscal year 1999 to carry out subparagraphs (F) and (G) of section 4(a)(1).

"(c) FEDERAL FUNDS.—No funds appropriated pursuant to this section shall be used for the direct expenses incurred in the production of performing arts attractions, or for personnel (including supplies and equipment used by them) who are involved in performing arts administration, or for production, staging, public relations, marketing, fundraising, ticket sales and education. However,

funds appropriated directly to the Board shall not affect nor diminish other federal funds sought for performing arts functions and may be used to reimburse the Board for that portion of costs that are federal costs reasonably allocated to building services and theater maintenance and repairs."

SEC. 8. DEFINITIONS.

The Act is amended by inserting at the end thereof a new section 13 (20 U.S.C. 76s)—

"SEC. 13. DEFINITIONS.

"For the purpose of this Act—

"(1) the term 'capital projects' means capital repairs, replacements, improvements, rehabilitations, alterations and modifications to the existing features of the John F. Kennedy Center for the Performing Arts building and the site, including the theaters, garage, plaza, and building walkways;

"(2) the term 'maintenance, repair and security services' means all services and equipment necessary to maintain and operate the existing features of the John F. Kennedy Center for the Performing Arts building and the site, including the theaters, garage, plaza, and building walkways in a manner consistent with the requirements for high quality operations;

"(3) the terms "building and site of the John F. Kennedy Center for the Performing Arts" and "grounds of the John F. Kennedy Center for the Performing Arts" mean the site in the District of Columbia on which the John F. Kennedy Center building is constructed and which extends to the line of the west face of the west retaining walls and curbs of the Inner Loop Freeway on the east, the north face of the north retaining walls and curbs of the Theodore Roosevelt Bridge approaches on the south, the east face of the east retaining walls and curbs of Rock Creek Parkway on the west, and the south curbs of New Hampshire Avenue and F Street on the north."

SEC. 9. RULES AND REGULATIONS.

Sections 193r, 193u and 193v of Title 40 are amended as follows:

(1) 40 U.S.C. section 193r is amended by striking "and" after "Institution" and substituting a comma, and by adding ", and the Trustees of the John F. Kennedy Center for the Performing Arts," after "National Gallery of Art";

(2) 40 U.S.C. section 193u is amended by striking "and" after "Institution" where "Institution" twice appears, and substituting in both places a comma, and by adding ", and the Trustees of the John F. Kennedy Center for the Performing Arts," after "National Gallery of Art" in both places where "National Gallery of Art" appears; and

(3) 40 U.S.C. section 193v is amended by adding a new subsection (3)—

"(3) The site of the John F. Kennedy Center for the Performing Arts, which shall be held to extend to the line of the west face of the west retaining walls and curbs of the Inner Loop Freeway on the east, the north face of the north retaining walls and curbs of the Theodore Roosevelt Bridge approaches on the south, the east face of the east retaining walls and curbs of Rock Creek Parkway on the west, and the south curbs of New Hampshire Avenue and F Street on the north."

SECTION-BY-SECTION ANALYSIS

Sec. 1: Provides the short title of the bill.

Sec. 2: Repeats the findings of the existing statute.

Redesignates membership on the Board of Trustees.

Reduces the number of years served by a Trustee from 10 to 6.

Allows Trustees appointed previous to enactment of this law to serve out their appointed terms.

Sec. 3: Duties of the Board: requires that the Board:

(a)(1)(A)-(E): Presentations and programs:

Present both national and international classical and contemporary music, opera, drama, dance and other performing arts.

Develop and maintain a leadership role in national performing arts education policy and programs.

Develop and present original and innovative performing arts and educational programs for children, youth, families, adults and educators designed specifically to foster an appreciation and understanding of the performing arts.

Develop and maintain a comprehensive and broad program for national and community outreach.

Establish model programs for adaption by other presenting and educational institutions.

Conduct joint initiatives with Very Special Arts, an affiliate of the JFK Center develops and implements model programs for the disabled.

Ensure that the arts education and outreach programs meet the highest levels of excellence and reflect the cultural diversity of the nation.

(a)(1)(F): Building needs plan:

Develop a comprehensive building needs plan for the Center, not including expansion of the building or construction of new building.

(a)(1)(G): Capital projects: Construct capital projects.

(a)(1)(H): O&M and information: Provide O&M and information and interpretive functions in the building.

(a)(2) (A) and (B): Contract authority: Confirms Board's contract authority, similar to other situated entities, such as the Smithsonian, Holocaust Memorial and confirms Board's authority to enter into interagency agreements with other federal agencies.

(a)(2)(C) and (D) Procurement authority, contractor qualifications: Confirms Board's procurement authority, similar to the National Galler's; because of unique nature of the building, permits negotiation of contracts on basis of contractor qualifications as well as price.

(a)(2)(E): Public visitors: Requires maintenance of the Hall of States, Hall of Nations and Grand Foyer in a manner suitable for a performing arts memorial to the late President.

Sec. 4: Trust Funds, Officers and Employees, Review of Board Actions.

Clarifies Board's status as a bureau of the Smithsonian Institution, but does not alter relationship in any way; eases the legal entanglements regarding the receipt of gifts.

(2)(b): Modifies statutory language concerning leadership of the Kennedy Center to reflect past and present actions of the Board: the Chairperson, who also serves as CEO. Authorizes appointment of building administrator without regard to Title 5 restrictions.

(2) (c) and (d) Transfer: Provides for interagency transfer of pending projects from the Secretary of the Interior to the Board by October 1, 1995.

Transfers to the Board existing National Park Service employees, other than U.S. Park Police, and other security personnel, certain interpretive personnel, and grounds personnel. Carries over civil service entitlements. Confirms Board's authority to reorganize the staff. Gives transferred personnel three years' priority consideration for transfer back to the Department of the Interior. Provides that the Board shall cover the personnel costs of transferred personnel and the costs of any law enforcement and security services U.S. Park Police personnel actions.

(2)(e) Judicial Review: Confirms that other agencies are barred from reviewing actions of the Board only relating to performing arts and to payments made from nonappropriated, trust funds of the Board.

Sec 5: Official Seal, Board Vacancies, and Quorum, Trustee Powers and Obligations, Reports, Support Services, and Review and Audit.

Makes conforming amendments in language.

Requires GAO review of Kennedy Center accounts at least every three years.

Subjects Board to Inspector General Act of 1978 as to funds appropriated under section 12 of the Act.

Authorizes the Board to procure insurance, confirms that the Board's employees are federal employees for purposes of the Federal Employees Compensation act, except that the Board shall continue to cover its non-appropriated fund employees under the District of Columbia workers compensation statute.

Confirms that Board employees and volunteers are barred from any Federal Tort Claims Act action against the United States.

Sec. 6: Technical Amendment.

Sec. 7: Authorization of Appropriations

Maintenance, Repair and Security: Authorizes $12 million for FY'95 and each succeeding fiscal year through FY'99.

Capital Projects: Authorizes $9 million for FY'95 and each succeeding fiscal year through FY'99.

Federal Funds: Requires that no funds appropriated for capital projects or maintenance be used for direct expenses incurred in the production of performing arts attractions or related personnel costs, although the Board may reimburse itself from appropriated funds for federal costs reasonably allocated to building services and theater maintenance and repairs.

Sec. 8: Definitions.

Capital Projects: Capital repairs, replacements, improvements, rehabilitations and modifications to the existing building, theaters, garages, walkways and roadways.

Maintenance, Repair and Security Service: all services necessary to maintain and operate the existing features of the building and all existing interior and exterior spaces.

Defines the building and site of the Center as conforming to the original specification of the site, when the Center was established by Congress.

Sec. 9: Rules and Regulations.

Grants authority to the Kennedy Center trustees to promulgate regulations pertaining to the Kennedy Center site in the same manner as the Secretary of the Smithsonian Institution and Trustees of the National Gallery of Arts are authorized to promulgate regulations. These regulations must be published in the Federal Register.

Provides that the Kennedy Center trustees may suspend the applicability of certain prohibitions in the same manner as the Secretary of the Smithsonian Institution and Trustees of the National Gallery of Art may suspend applicability.

Defines the Kennedy Center site for which the Board may establish rules and regulations.

The proposed amendments do not provide to the Kennedy Center trustees authorization to designate employees as special policemen (40 U.S.C. section 193n), who have police powers (40 U.S.C. section 193u). The

Kennedy Center does not consider that such powers are required for the Kennedy Center's operations at this time.

By Mr. LIEBERMAN:

S. 1718. A bill to create a Supreme Court for the District of Columbia, and for other purposes; to the Committee on Governmental Affairs.

DISTRICT OF COLUMBIA JUDICIAL REORGANIZATION ACT OF 1993

• Mr. LIEBERMAN. Mr. President, I introduce the District of Columbia Judicial Reorganization Act of 1993. Last year, I introduced this bill at the request of the chief judge of the District of Columbia Court of Appeals and the chief judge of the Superior Court of the District of Columbia. The calls for enactment of this legislation to establish a three-tier appellate system for the District of Columbia continue to come from both the bench and the bar.

This bill has two titles. The first title creates a Supreme Court for the District of Columbia, to be the highest court in the District. This court would have an entirely discretionary jurisdiction, and would be the body principally charged with establishing uniform legal interpretations clarifying D.C. law. The current D.C. Court of Appeals would continue to hear appeals as of right from the trial court. The costs of creating and running this new court would be borne by the District, not the Federal Government. The second title adds four more judges to the superior court to handle that court's expanding caseload, expands the authority of the superior court's hearing commissioners to become judicial magistrates, and directs the Executive Office of the District of Columbia Courts to conduct a study of the feasibility and desirability of creating a night court to more speedily process criminal and civil cases.

The proposal to create a Supreme Court for the District of Columbia, thereby creating a three-tier court system similar to most States, has been around for several years. In 1990, the House of Representatives passed a version of this proposal, but it died in the Senate. This bill has already been reported by the House Committee on the District of Columbia, and is currently awaiting action by the full House. In hearings over the last several years, the creation of a three-tier judicial system has the support of the chief judges of the D.C. Court of Appeals and Superior Court, the Mayor, the corporation counsel, the D.C. Bar Association and the Bar Association of the District of Columbia, and the Council for Court Excellence. The administration has also stated that it supports allowing the District to restructure its court system.

Appellate courts have two generally recognized functions: error correction and law clarification. Proponents of moving to a three-tier system argue that because the caseload has grown dramatically, the D.C. Court of Appeals cannot longer perform both functions adequately. Because virtually all cases in the D.C. Court of Appeals are being heard on appeal for the first time as of right, the error correction function dominates the court's work. The caseload of the D.C. Court of Appeals has tripled since its creation in 1971, and it now has almost as many new filings each year as the entire Connecticut appellate court system—which has three-tiers. Indeed, the District of Columbia Court of Appeals has a larger appellate caseload than the appellate systems of 18 States, including seven with three-tier judicial systems.

Despite efforts to speed consideration of routine cases, the D.C. Court of Appeals sits en banc no more than 10 times per year, which gives little opportunity for resolving conflicts between panels. This adds confusion and uncertainty to the criminal and civil laws of the District. The D.C. Court of Appeals has taken a number of steps to increase judicial productivity, but the backlog continues to increase and delay on appeal now runs 22 months on average. This is 2½ times the American Bar Association's standards.

Moving to a three-tier appellate system is a tried and true way of facing up to appellate backlogs when nothing else has worked. Connecticut only recently moved to a three-tier system. Since I last introduced this bill in June 1992, two other States, Nebraska and Mississippi have also established three-tier judicial systems. And both of these States have fewer appellate filings than does the District of Columbia.

This is one of those issues that has been studied to death. Five separate studies have examined whether the District needs a supreme court with discretionary jurisdiction. Four of those five studies, the most recent of which was an exhaustive report completed in 1989 by a special committee of the D.C. bar, concluded that a three-tier judicial system was necessary. While the fifth study, a 1982 study by the District of Columbia Court System Study Committee of the District of Columbia Bar, recommended adding temporary judges to the court of appeals as an alternative, the respected chairman of that committee, Mr. Charles A. Horsky, has subsequently stated that his committee's conclusions were based on caseload assumptions that proved incorrect—they were too low—and he has endorsed the creation of a three-tier court system.

With such broad support and the benefit of a substantial amount of previous study, as well as the experience in other court systems, it is time for the Senate to pass legislation to create a three-tier judicial system in the District of Columbia. Improving the appellate system will improve the speed of final criminal and civil justice in the District. Persons properly convicted of crimes will know sooner that their sentences are final. And in those instances in which a retrial may be necessary, a faster appeals process means less time for memories to fade or for key witnesses to disappear.

Mr. President, it is not my goal to create a new tier in the court system just to do so. Nor is my mind closed to other alternatives to improving the appellate system. But based on the testimony of the chief judges of the D.C. Court of Appeals and the Superior Court, the Mayor, the corporation counsel, and the bar, the evidence so far is that these other alternatives have not solved the problem. The creation of a three-tier system appears to be the only permanent solution. On this matter of purely local concern, we should grant the District of Columbia's request.

I ask unanimous consent that a copy of the bill be printed in the RECORD.

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

S. 1718

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "District of Columbia Judicial Reorganization Act of 1993".

TITLE I—SUPREME COURT OF THE DISTRICT OF COLUMBIA

SEC. 101. ESTABLISHMENT OF SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Title 11 of the District of Columbia Code is amended by adding after chapter 5 the following new chapter 6:

"CHAPTER 6. SUPREME COURT OF THE DISTRICT OF COLUMBIA.

"SUBCHAPTER I. ESTABLISHMENT AND ORGANIZATION.

"Sec.
"11-601. Establishment; court of record; seal.
"11-602. Composition.
"11-603. Justices; service; compensation.
"11-604. Oath of justices.
"11-605. Term; hearings; quorum.
"11-606. Absence, disability, or disqualification of judges; vacancies.
"11-607. Assignment of justices and judges to and from other courts of the District of Columbia.
"11-608. Clerks and secretaries for justices.
"11-609. Reports.

"SUBCHAPTER II. JURISDICTION.

"11-621. Certification to the Supreme Court of the District of Columbia.
"11-622. Review by the Supreme Court of the District of Columbia.
"11-623. Certification of questions of law.

"SUBCHAPTER III. MISCELLANEOUS PROVISIONS.

"11-641. Contempt powers.
"11-642. Oaths, affirmations, and acknowledgments.
"11-643. Rules of court.
"11-644. Judicial conference.

"SUBCHAPTER I. ESTABLISHMENT AND ORGANIZATION.

"§ 11-601. Establishment; court of record; seal.

"(a) The Supreme Court of the District of Columbia (hereafter in this chapter referred

to as 'the court') is hereby established as a court of record in the District of Columbia.

"(b) The court shall have a seal.

"§ 11–602. Composition.

"The court shall consist of a chief justice and 6 associate justices.

"§ 11–603. Justices; service; compensation.

"(a) The chief justice and the justices of the court shall serve in accordance with chapter 15 of this title.

"(b) Justices of the court shall be compensated at the rate prescribed by law for judges of the United States Court of Appeals. The chief justice shall receive $500 per year in addition to the salary of other justices of the court.

"§ 11–604. Oath of justices.

"Each justice, when appointed, shall take the oath prescribed for judges of courts of the United States.

"§ 11–605. Term; hearings; quorum.

"(a) The court shall sit in one term each year for such period as it may determine.

"(b) The court shall sit in banc to hear and determine cases and controversies, except that the court may sit in divisions of 3 justices to hear and determine cases and controversies certified for review under section 11–621 if the court determines that subsection (b)(2) of such section is the exclusive basis for such certification. The court in banc for a hearing shall consist of the justices of the court in regular active service.

"(c) A majority of the justices serving shall constitute a quorum.

"(d) A rehearing before the court may be ordered by a majority of the justices of the court in regular active service. The court in banc for a rehearing shall consist of the justices of the court in regular active service.

"§ 11–606. Absence, disability, or disqualification of justices; vacancies.

"(a) When the chief justice of the court is absent or disabled, the duties of the chief justice shall devolve upon and be performed by such associate justice as the chief justice may designate in writing. In the event that the chief justice is (1) disqualified or suspended, or (2) unable or fails to make such a designation, such duties shall devolve upon and be performed by the associate justices of the court according to the seniority of their original commissions.

"(b) A chief justice whose term as chief justice has expired shall continue to serve until redesignated or until a successor has been designated. When there is a vacancy in the position of chief justice the position shall be filled temporarily as provided in the second sentence of subsection (a).

"§ 11–607. Assignment of justices and judges to and from other courts of the District of Columbia.

"(a) Upon presentation of a certificate of necessity by the chief judge of the District of Columbia Court of Appeals, the chief justice of the Supreme Court of the District of Columbia may designate and assign temporarily one or more justices of the Supreme Court of the District of Columbia or one or more judges of the Superior Court of the District of Columbia to serve on the District of Columbia Court of Appeals or a division thereof whenever the business of the District of Columbia Court of Appeals so requires. Such designations or assignments shall be in conformity with the rules or orders of the District of Columbia Court of Appeals.

"(b) Upon presentation of a certificate of necessity by the chief judge of the Superior Court of the District of Columbia, the chief justice of the Supreme Court of the District of Columbia may designate and assign temporarily one or more justices of the Supreme Court of the District of Columbia or one or more judges of the District of Columbia Court of Appeals to serve as a judge of the Superior Court of the District of Columbia.

"§ 11–608. Clerks and secretaries for justices.

"Each justice may appoint and remove a personal secretary. The chief justice may appoint and remove not more than three personal law clerks, and each associate justice may appoint and remove not more than two personal law clerks. In addition, the chief justice may appoint and remove law clerks for the court and law clerks and secretaries for the senior justices. The law clerks appointed for the court shall serve as directed by the chief justice.

"§ 11–609. Reports.

"Each justice shall submit to the chief justice such reports and data as the chief justice may request.

"SUBCHAPTER II. JURISDICTION.

"§ 11–621. Certification to the Supreme Court of the District of Columbia.

"(a) In any case or class of cases in which an appeal has been taken to or filed with the District of Columbia Court of Appeals, the Supreme Court of the District of Columbia, by order of the Supreme Court sua sponte, or, in its discretion, on motion of the District of Columbia Court of Appeals or of any party, may certify the case or class of cases for review by the Supreme Court before it has been determined by the District of Columbia Court of Appeals. The effect of such certification shall be to transfer jurisdiction over the case or class of cases to the Supreme Court of the District of Columbia for all purposes.

"(b) Such certification may be made only if not less than 3 of the justices of the Supreme Court of the District of Columbia determine that—

"(1) the case or class of cases involves a question that is novel or difficult or is of importance in the general public interest or the administration of justice; or

"(2) the case or class of cases was pending in the District of Columbia Court of Appeals on the effective date of this section and, because the justices of the Supreme Court of the District of Columbia were familiar with the case or class of cases while serving as judges of the District of Columbia Court of Appeals, the sound and efficient administration of justice dictates that the case or class of cases be certified for review by the Supreme Court of the District of Columbia.

"§ 11–622. Review by the Supreme Court of the District of Columbia.

"(a) Any party aggrieved by a final decision of the District of Columbia Court of Appeals may petition the Supreme Court of the District of Columbia for an appeal. Such a petition may be granted and appeal be heard by the Supreme Court of the District of Columbia only upon the affirmative vote of not less than 3 of the justices that the matter involves a question that is novel or difficult, is the subject of conflicting authorities within the jurisdiction, or is of importance in the general public interest or the administration of justice. The granting of such petitions for appeal shall be in the discretion of the Supreme Court of the District of Columbia. The Supreme Court of the District of Columbia shall not be required to state reasons for denial of petitions for appeal.

"(b) On hearing an appeal in any case or controversy, the Supreme Court of the District of Columbia shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties.

"§ 11–623. Certification of questions of law.

"(a) The Supreme Court of the District of Columbia may answer a question of law of the District of Columbia certified to it by the Supreme Court of the United States, a Court of Appeals of the United States, or the highest appellate court of any State, if—

"(1) such question of law may be determinative of the case pending in such a court; and

"(2) there is no controlling precedent regarding such question of law in the decisions of the District of Columbia Court of Appeals or the Supreme Court of the District of Columbia.

"(b) This section may be invoked by an order of any of the courts referred to in subsection (a) upon such court's motion or upon the motion of any party to the case.

"(c) A certification order under this section shall—

"(1) describe the question of law to be answered;

"(2) contain a statement of all facts relevant to the question certified and the nature of the controversy in which the questions arose; and

"(3) upon the request of the Supreme Court of the District of Columbia contain the original or copies of the record of the case in question or of any portion of such record as the Supreme Court of the District of Columbia considers necessary to determine the questions of law which are the subject of the motion.

"(d) Fees and costs shall be the same as in appeals docketed before the Supreme Court of the District of Columbia and shall be equally divided between the parties unless precluded by statute or by order of the certifying court.

"(e) The written opinion of the Supreme Court of the District of Columbia stating the law governing any questions certified under subsection (a) shall be sent by the clerk to the certifying court and to the parties.

"(f) The Supreme Court of the District of Columbia, on its own motion, the motion of the District of Columbia Court of Appeals, or the motion of any party to a case pending in the Supreme Court of the District of Columbia or the District of Columbia Court of Appeals, may order certification of a question of law of another State to the highest court of such State if, in the view of the Supreme Court of the District of Columbia—

"(1) such question of law may be determinative of the case pending in the Supreme Court of the District of Columbia or the District of Columbia Court of Appeals; and

"(2) there is no controlling precedent regarding such question of law in the decisions of the appellate courts of the State to which the order of certification is directed.

"(g) The Supreme Court of the District of Columbia may prescribe the rules of procedure concerning the answering and certification of questions of law under this section.

"SUBCHAPTER III. MISCELLANEOUS PROVISIONS

"§ 11–641. Contempt powers.

"In addition to the powers conferred by section 402 of title 18, United States Code, the Supreme Court of the District of Columbia, or a justice thereof, may punish for disobedience of an order or for contempt committed in the presence of the court.

"§ 11–642. Oaths, affirmations, and acknowledgments.

"Each justice of the Supreme Court of the District of Columbia and each employee of the court authorized by the chief justice may administer oaths and affirmations and take acknowledgments.

"§ 11–643. Rules of court.

"The Supreme Court of the District of Columbia shall conduct its business in accordance with such rules and procedures as the court shall adopt.

"§ 11–644. Judicial conference.

"The chief justice of the Supreme Court of the District of Columbia shall summon annually the justices and active judges of the District of Columbia courts to a conference at a time and place that the chief justice designates, for the purpose of advising as to means of improving the administration of justice within the District of Columbia. The chief justice shall preside at such conference which shall be known as the Judicial Conference of the District of Columbia. Each justice and judge summoned, unless excused by the chief justice of the Supreme Court of the District of Columbia, shall attend throughout the conference. The Supreme Court of the District of Columbia shall provide by its rules for representation of and active participation by members of the unified District of Columbia Bar and other persons active in the legal profession at such conference.".

SEC. 102. TRANSITION PROVISIONS.

(a) ELEVATION OF JUDGES OF THE DISTRICT OF COLUMBIA COURT OF APPEALS AS JUSTICES OF THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.—

(1) Except as provided in paragraph (2), beginning on the effective date of this title the chief judge of the District of Columbia Court of Appeals shall serve the remainder of the term to which he or she was appointed as the chief justice of the Supreme Court of the District of Columbia and the associate judges of the District of Columbia Court of Appeals shall serve the remainder of the respective terms to which they were appointed as associate justices of the Supreme Court of the District of Columbia. The Supreme Court of the District of Columbia shall conform to the numerical requirements of section 11–602 of the D.C. Code through attrition. Vacancies in the offices of chief judge and associate judge of the District of Columbia Court of Appeals shall be filled in accordance with chapter 15 of title 11 of the D.C. Code.

(2) Any judge of the District of Columbia Court of Appeals may serve the remainder of the term to which he or she was appointed as a judge of that court by providing written notice to the chief judge of the District of Columbia Court of Appeals not less than 30 days after the date of the enactment of this Act.

(b) TRANSITION PERIOD FOR THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.—

(1) A committee consisting of the chief judge of the District of Columbia Court of Appeals together with 2 other judges of such court and the chief judge of the Superior Court of the District of Columbia together with 2 other judges of such court shall be responsible for the administration of the period of transition prior to the establishment of the Supreme Court of the District of Columbia, including the hiring of necessary staff, the preparation of facilities, and the purchase of necessary equipment and supplies.

(2) Not more than 120 days after the date of the enactment of this Act, the committee referred to in paragraph (1) shall submit to the Committee on Governmental Affairs of the Senate and the Committee on the District of Columbia of the House of Representatives a transition report, consistent with this Act, regarding the establishment of the Supreme Court of the District of Columbia and the filling of vacancies on the District of Columbia Court of Appeals resulting from the elevation of the judges of such Court to positions on the Supreme Court of the District of Columbia pursuant to subsection (a).

(3) This subsection shall take effect on the date of the enactment of this Act.

SEC. 103. CONFORMING AND OTHER AMENDMENTS.

(a) AMENDMENTS TO THE HOME RULE ACT.—

(1) Section 431(a) of the District of Columbia Self-Government and Governmental Reorganization Act is amended—

(A) in the first sentence by inserting "Supreme Court of the District of Columbia," after "vested in the"; and

(B) by adding after the fourth sentence the following: "The Supreme Court of the District of Columbia has jurisdiction of appeals from the District of Columbia Court of Appeals and of cases certified to the Supreme Court under section 11–621(a), District of Columbia Code.".

(2) Section 431 of such Act is further amended—

(A) in subsection (b)—

(i) by inserting "chief justice or" before "chief judge" each place it appears,

(ii) by striking "term as a judge" and inserting "term as a justice or judge", and

(iii) by inserting "chief justice's or" before "chief judge's" each place it appears;

(B) in subsections (b) and (g), by inserting "justices or" before "judges" each place it appears; and

(C) in subsections (c) and (g), by inserting "justice or" before "judge" each place it appears.

(3) Section 432 of such Act is amended—

(A) by inserting "justice or" before "judge" each place it appears;

(B) by striking "District of Columbia Court of Appeals" each place it appears and inserting "Supreme Court of the District of Columbia"; and

(C) in subsection (a)(1) by striking "law or which would be a felony in the District" and inserting "law or the laws of the District of Columbia".

(4) Section 433 of such Act is amended—

(A) in the heading by inserting "JUSTICES AND" before "JUDGES";

(B) by inserting "justices and" before "judges" each place it appears; and

(C) by inserting "justice or" before "judge" each place it appears.

(5) Section 434 of such Act is amended in subsections (b)(3) and (d)—

(A) by inserting "justice or" before "judge" each place it appears;

(B) by inserting "justices or" before "judges" each place it appears; and

(C) by inserting "justice's or" before "judge's" each place it appears.

(b) AMENDMENTS TO CHAPTER 1 OF TITLE 11, D.C. CODE.—

(1) Section 11–101(2), D.C. Code, is amended by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively, and by adding before subparagraph (B) (as so redesignated) the following:

"(A) The Supreme Court of the District of Columbia.".

(2) Section 11–102, D.C. Code, is amended to read as follows:

"§ 11–102. Status of Supreme Court of the District of Columbia.

"The highest court of the District of Columbia is the Supreme Court of the District of Columbia. Final judgments, orders, and decrees of the Supreme Court of the District of Columbia and of the District of Columbia Court of Appeals where review is denied by the Supreme Court of the District of Columbia are reviewable by the Supreme Court of the United States in accordance with section 1257 of title 28, United States Code.".

(3) The item relating to section 11–102 of the table of contents of chapter 1 of title 11, D.C. Code, is amended to read as follows:

"11–102. Status of Supreme Court of the District of Columbia.".

(c) AMENDMENTS TO CHAPTER 7 OF TITLE 11, D.C. CODE.—

(1) Chapter 7 of title 11, D.C. Code, is amended by striking sections 11–707, 11–723, and 11–744 and by striking the items relating to such sections in the table of contents of such chapter.

(2) Section 11–703(b), D.C. Code, is amended by striking "the rate prescribed by law for judges of the United States courts of appeals." and inserting the following: "a rate equal to the average of the compensation provided for judges of the Supreme Court of the District of Columbia under section 11–603 and the compensation provided for judges of the Superior Court of the District of Columbia under section 11–904(b).".

(3) Section 11–708, D.C. Code, is amended by striking "not more than three law clerks for the court." and inserting "law clerks for the court and law clerks and secretaries for the senior judges.".

(4) Section 11–722, D.C. Code, is amended by striking "Commissioner" and inserting "Mayor".

(5) Section 11–743, D.C. Code, is amended by striking "according to" and all that follows and inserting "in accordance with such rules and procedures as it may adopt.".

(d) AMENDMENTS TO CHAPTER 9 OF TITLE 11, D.C. CODE.—

(1) Section 11–908(b), D.C. Code, is amended to read as follows:

"(b) When the business of the Superior Court requires, the chief judge may certify to the chief justice of the Supreme Court of the District of Columbia the need for an additional judge or judges as provided in section 11–607 and 11–707.".

(2) Section 11–910, D.C. Code, is amended by adding at the end the following new sentence: "In addition, the chief judge may appoint and remove law clerks for the court, who shall serve as directed by the chief judge.".

(3) Section 11–946, D.C. Code, is amended by striking "District of Columbia Court of Appeals" each place it appears in the second and third sentences and inserting "Supreme Court of the District of Columbia".

(e) AMENDMENTS TO CHAPTER 15 OF TITLE 11, D.C. CODE.—

(1) Section 11–1501, D.C. Code, is amended to read as follows:

"§ 11–1501. Appointment and qualifications of judges.

"(a) Except as provided in section 434(d)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, the President shall nominate, from the list of persons recommended by the District of Columbia Judicial Nomination Commission established under section 434 of such Act, and, by and with the advice and consent of the Senate, appoint all justices and judges of the District of Columbia courts.

"(b) No person may be nominated or appointed a justice or judge of a District of Columbia court unless that person—

"(1) is a citizen of the United States;

"(2) is an active member of the unified District of Columbia Bar and has been engaged in the active practice of law in the District for the five years immediately preceding nomination or for such five years has served as a judge of the United States or the District of Columbia, has been on the faculty of a law school in the District, or has been employed as a lawyer by the United States or the District of Columbia government;

"(3) is a bona fide resident of the District of Columbia and has maintained an actual place of abode in the District for at least 90 days immediately prior to nomination, and shall retain such residency as long as he or she serves as such judge, except judges appointed prior to December 23, 1973, who retain residency in Montgomery or Prince Georges Counties in Maryland, Arlington or Fairfax Counties (or any cities within the outer boundaries thereof) or the city of Alexandria in Virginia shall not be required to be residents of the District to be eligible for reappointment or to serve any term to which reappointed;

"(4) is recommended to the President, for such nomination and appointment, by the District of Columbia Judicial Nomination Commission; and

"(5) has not served, within a period of 2 years prior to nomination, as a member of the District of Columbia Commission on Judicial Disabilities and Tenure or of the District of Columbia Judicial Nomination Commission.".

(2) Section 11–1504(a)(1), D.C. Code, is amended by striking the period at the end of the first sentence and inserting the following: ", except that a retired judge may not serve or perform judicial duties on the Supreme Court of the District of Columbia.".

(3) Section 11–1505(a), D.C. Code, is amended in the second sentence by striking "District" and all that follows and inserting "court of the District of Columbia on which the judge serves.".

(4) Subchapter I of chapter 15 of title 11, D.C. Code, is amended by adding at the end the following new section:

"§ 11–1506. Definitions.

"For purposes of this chapter—

"(1) the term 'judge' means any justice of the Supreme Court of the District of Columbia, or any judge of the District of Columbia Court of Appeals or the Superior Court; and

"(2) the term 'chief judge' means the chief justice of the Supreme Court of the District of Columbia, or the chief judges of the District of Columbia Court of Appeals or the Superior Court, as appropriate.".

(5) Section 11–1526, D.C. Code, is amended by striking "District of Columbia Court of Appeals" each place it appears and inserting "Supreme Court of the District of Columbia".

(6) Section 11–1528, D.C. Code, is amended in subsection (a)(2)(C) by inserting "the Supreme Court of the District of Columbia or" after "elevation to".

(7) Section 11–1529, D.C. Code, is amended by striking "District of Columbia Court of Appeals" and inserting "Supreme Court of the District of Columbia".

(8) Section 11–1561, D.C. Code, is amended—

(A) in paragraph (1), by inserting "any justice of the Supreme Court of the District of Columbia," before "any judge"; and

(B) in paragraph (2), by inserting "a justice in the Supreme Court of the District of Columbia," before "a judge".

(9) The table of sections for subchapter I of chapter 15 of title 11, D.C. Code, is amended by adding at the end the following:

"11–1506. Definitions.".

(f) AMENDMENTS TO CHAPTER 17 OF TITLE 11, D.C. CODE.—

(1) Section 11–1701, D.C. Code, is amended—

(A) by amending subsection (a) to read as follows:

"(a) There shall be a Joint Committee on Judicial Administration in the District of Columbia (hereafter in this chapter referred to as the 'Joint Committee') consisting (during the first 3 fiscal years that begin after the date of the enactment of the District of Columbia Judicial Reorganization Act of 1993) of the chief justice of the Supreme Court of the District of Columbia (who shall serve as chairperson) and two other justices of such court, the chief judge of the District of Columbia Court of Appeals, and the chief judge of the Superior Court of the District of Columbia and two additional judges of such court.";

(B) in subsection (b)—

(i) by amending paragraph (4) to read as follows:

"(4) Preparation and publication of an annual report of the District of Columbia court system regarding the work of the courts, the performance of the duties enumerated in this chapter, and any recommendations relating to the courts.", and

(ii) by striking paragraphs (6) and (9) and redesignating paragraphs (7) and (8) as paragraphs (6) and (7); and

(C) in subsection (c)—

(i) by amending paragraph (2) to read as follows:

"(2) formulate and enforce standards for outside activities of and receipt of compensation by the judges of the District of Columbia court system;",

(ii) in paragraph (3), by striking ", and institute such changes" and all that follows through "justice",

(iii) by striking "and" at the end of paragraph (3),

(iv) by striking the period at the end of paragraph (4) and inserting a semicolon, and

(v) by adding at the end the following new paragraphs:

"(5) submit the annual budget requests of the Supreme Court of the District of Columbia, the District of Columbia Court of Appeals, and the Superior Court to the Mayor of the District of Columbia as part of the integrated budget of the District of Columbia court system, except that any such request may be modified upon the concurrence of 5 of the 7 members of the Joint Committee; and

"(6) with the concurrence of the chief justice of the Supreme Court of the District of Columbia and the respective chief judges of the other District of Columbia courts, prepare and implement other policies and practices for the District of Columbia court system and resolve other matters which may be of joint and mutual concern of the Supreme Court of the District of Columbia, the District of Columbia Court of Appeals, and the Superior Court.".

(2) Section 11–1702, D.C. Code, is amended—

(A) in the heading, by inserting "**the chief justice and the**" after "**of**";

(B) by redesignating subsections (a) and (b) as subsections (b) and (c); and

(C) by inserting before subsection (b) the following new subsection:

"(a) The chief justice of the Supreme Court of the District of Columbia, in addition to the authority conferred by chapter 6 of this title, shall supervise the internal administration of that court—

"(1) including all administrative matters other than those within the responsibility enumerated in section 11–1701(b), and

"(2) including the implementation in that court of the matters enumerated in section 11–1701(b),

consistent with the general policies and directives of the Joint Committee.".

(3) Section 11–1703(a), D.C. Code, is amended—

(A) by striking "He" each place it appears and inserting "The Executive Officer"; and

(B) in the fourth sentence, by striking "judges" and inserting "judge of the District of Columbia Court of Appeals and the chief judge of the Superior Court of the District of Columbia".

(4) Section 11–1721, D.C. Code, is amended by amending the matter following the heading to read as follows:

"(a) The Supreme Court of the District of Columbia shall have a clerk appointed by the chief justice of that court who shall, under the direction of the chief justice, be responsible for the daily operations of that court and serve as the clerk of the District of Columbia Court of Appeals.

"(b) The Superior Court of the District of Columbia shall have a clerk appointed by the chief judge of that court who shall, under the direction of the chief judge, be responsible for the daily operations of that court.

"(c) Each such clerk appointed under this section shall receive a level of compensation, including retirement benefits, determined by the Joint Committee on Judicial Administration, except that such level may not exceed the level of compensation provided for the Executive Officer.".

(5) Section 11–1726, D.C. Code, is amended—

(A) in the first sentence, by striking "Executive Officer" and all that follows and inserting "Joint Committee (upon the recommendation of the Executive Officer) shall fix the rates of compensation of such employees."; and

(B) in the second sentence, by striking "Executive Officer" and inserting "Joint Committee".

(6) Section 11–1730(a), D.C. Code, is amended—

(A) by striking "Judges" and inserting "Justices and judges";

(B) by inserting "11–609," after "sections"; and

(C) by inserting "chief justice or" after "respective".

(7) Section 11–1731, D.C. Code, is amended—

(A) by striking "or the chief judge" and inserting ", the chief justice, or the chief judges";

(B) in paragraph (7), by striking "the District of Columbia Bail Agency" and inserting "the District of Columbia Pre-trial Services Agency";

(C) by inserting "and" at the end of paragraph (9); and

(D) by striking paragraphs (10) and (11) and inserting the following:

"(10) the Department of Human Services.".

(8) Section 11–1741, D.C. Code, is amended—

(A) by amending the matter preceding paragraph (1) to read as follows: "Within the District of Columbia courts, and subject to the supervision of the chief justice of the Supreme Court of the District of Columbia (acting in consultation with the chief judge of the District of Columbia Court of Appeals and the chief judge of the Superior Court of the District of Columbia), the Executive Officer shall—";

(B) by inserting "chief justice or" before "chief" each place it appears in paragraphs (5), (7), and (9);

(C) by striking "and" at the end of paragraph (8);

(D) by striking the period at the end of paragraph (9) and inserting "; and"; and

(E) by adding at the end the following:

"(10) be responsible for the allocation, negotiation for, and provision of space in the courts.".

(9) Section 11-1745(b)(2), D.C. Code, is amended by striking "Commissioner" and inserting "Mayor".

(10) Section 11-1747, D.C. Code, is amended by striking "him" and inserting "the Executive Officer".

(11) The table of sections for subchapter I of chapter 17 of title 11, D.C. Code, is amended by amending the item relating to section 11-1702 to read as follows:

"11-1702. Responsibilities of the chief justice and the chief judges in the respective courts.".

(g) AMENDMENT TO CHAPTER 21 OF TITLE 11, D.C. CODE.—Section 11-2102(c), D.C. Code, is amended by striking "Superior Court" and all that follows and inserting "Joint Committee on Judicial Administration in the District of Columbia in accordance with section 11-1726.".

(h) AMENDMENTS TO CHAPTER 25 OF TITLE 11, D.C. CODE.—

(1) Section 11-2501, D.C. Code, is amended—

(A) by striking "District of Columbia Court of Appeals" each place it appears and inserting "Supreme Court of the District of Columbia"; and

(B) by amending subsection (c) to read as follows:

"(c) Members of the bar of the District of Columbia Court of Appeals in good standing on the effective date of title I of the District of Columbia Judicial Reorganization Act of 1993 shall be automatically enrolled as members of the bar of the Supreme Court of the District of Columbia, and shall be subject to its disciplinary jurisdiction.".

(2) Section 11-2502, D.C. Code, is amended by striking "District of Columbia Court of Appeals" and inserting "Supreme Court of the District of Columbia".

(3) Section 11-2503, D.C. Code, is amended by striking "District of Columbia Court of Appeals" and inserting "Supreme Court of the District of Columbia".

(4) Section 11-2504, D.C. Code, is amended by striking "District of Columbia Court of Appeals" and inserting "other courts of the District of Columbia".

(i) AMENDMENT TO CHAPTER 26 OF TITLE 11, D.C. CODE.—Section 11-2607, D.C. Code, is amended by striking "Commissioner" and inserting "Mayor".

(j) AMENDMENT TO CHAPTER 3 OF TITLE 13, D.C. CODE.—Section 13-302, D.C. Code, is amended by inserting "the Supreme Court of the District of Columbia," after "process of".

(k) AMENDMENTS TO CHAPTER 3 OF TITLE 17, D.C. CODE.—

(1) The chapter heading for chapter 3 of title 17, D.C. Code, is amended by inserting "SUPREME COURT OF THE DISTRICT OF COLUMBIA AND" before "DISTRICT".

(2) Section 17-302, D.C. Code, is amended by striking "District of Columbia Court of Appeals" each place it appears and inserting "Supreme Court of the District of Columbia".

(3) Section 17-305, D.C. Code, is amended by adding at the end the following new subsection:

"(c) The Supreme Court of the District of Columbia shall apply the same standards regarding the scope of review and the reversal of judgment as the District of Columbia Court of Appeals applies under subsections (a) and (b).".

(4) Section 17-306, D.C. Code, is amended by inserting "Supreme Court of the District of Columbia or the" before "District".

(l) AMENDMENT TO CHAPTER 5 OF TITLE 21, D.C. CODE.—The first sentence of section 21-502(e), D.C. Code, is amended by striking "in accordance with" and all that follows and inserting "by the Joint Committee on Judicial Administration in the District of Columbia in accordance with section 11-1726.".

(m) AMENDMENT TO TITLE 5, UNITED STATES CODE.—Section 5102(c)(4) of title 5, United States Code, is amended by striking "the chief judges" and inserting "the chief justice and the associate justices of the Supreme Court of the District of Columbia and the chief judges".

(n) AMENDMENTS TO TITLE 18, UNITED STATES CODE.—(1) Section 3006A(k) of title 18, United States Code, is amended in the second sentence by striking "the Superior Court" and all that follows and inserting "the Supreme Court of the District of Columbia, the District of Columbia Court of Appeals, or the Superior Court of the District of Columbia.".

(2) Section 6001(4) of title 18, United States Code, is amended by inserting "the Supreme Court of the District of Columbia," before "the District of Columbia Court of Appeals,".

(o) AMENDMENTS TO TITLE 28, UNITED STATES CODE.—(1) Section 1257(b) of title 28, United States Code, is amended by striking "District of Columbia Court of Appeals" and inserting "Supreme Court of the District of Columbia".

(2) Section 2113 of title 28, United States Code, is amended by striking "District of Columbia Court of Appeals" and inserting "Supreme Court of the District of Columbia".

SEC. 104. EFFECTIVE DATE.

Except as provided in section 102, this title and the amendments made by this title shall take effect 6 months after the date of enactment of this Act.

TITLE II—JUDGES OF THE DISTRICT OF COLUMBIA COURTS

SEC. 201. DESIGNATION OF CHIEF JUDGE.

(a) IN GENERAL.—Section 11-1503(a), D.C. Code, is amended to read as follows:

"(a)(1) Except as provided in paragraph (2), the chief justice or chief judge of a District of Columbia court shall be designated by the District of Columbia Judicial Nomination Commission from among the judges of the court in regular active service. A chief judge shall serve for a term of 4 years or until a successor is designated, and shall be eligible for redesignation. A judge may relinquish the position of chief judge, after giving notice to the District of Columbia Judicial Nomination Commission.

"(2) Notwithstanding the first sentence of paragraph (1), the first chief justice of the Supreme Court of the District of Columbia shall be appointed in accordance with section 102(a) of the District of Columbia Judicial Reorganization Act of 1993.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 202. COMPOSITION OF SUPERIOR COURT OF THE DISTRICT OF COLUMBIA.

Section 11-903, D.C. Code, is amended—

(1) effective October 1, 1993, by striking "fifty-eight" and inserting "sixty"; and

(2) effective October 1, 1994, by striking "sixty" and inserting "sixty-two".

SEC. 203. TREATMENT OF HEARING COMMISSIONERS AS JUDICIAL MAGISTRATES.

(a) IN GENERAL.—

(1) REDESIGNATION OF TITLE.—Section 11-1732, D.C. Code, is amended—

(A) by striking "hearing commissioners" each place it appears in subsection (a), subsection (b), subsection (d), subsection (i), subsection (l), and subsection (n) and inserting "judicial magistrates";

(B) by striking "hearing commissioner" each place it appears in subsection (b), subsection (c), subsection (e), subsection (f), subsection (g), subsection (h), and subsection (j) and inserting "judicial magistrate";

(C) by striking "hearing commissioner's" each place it appears in subsection (e) and subsection (k) and inserting "judicial magistrate's";

(D) by striking "Hearing commissioners" each place it appears in subsections (b), (d), and (i) and inserting "Judicial magistrates"; and

(E) in the heading, by striking "**Hearing commissioners**" and inserting "**Judicial magistrates**".

(2) CONFORMING AMENDMENTS.—(A) Section 11-1732(c)(3), D.C. Code, is amended by striking ", except that" and all that follows and inserting a period.

(B) Section 16-924, D.C. Code, is amended—

(i) by striking "hearing commissioner" each place it appears and inserting "judicial magistrate"; and

(ii) in subsection (f), by striking "hearing commissioner's" and inserting "judicial magistrate's".

(C) Section 16-2308, D.C. Code, is amended by striking "judge" each place it appears and inserting "judicial officer".

(D) Section 16-2312, D.C. Code, is amended—

(i) by striking "judge" each place it appears in subsections (c), (d), (e), (f), and (j) and inserting "judicial officer";

(ii) in subsection (c), by striking "He" each place it appears and inserting "The judicial officer";

(iii) in subsection (d)(1), by striking "his reasons" and inserting "the reasons" and by striking "he finds" each place it appears and inserting "the judicial officer finds";

(iv) in subsection (d)(2)(A), by striking "supervise him" and inserting "supervise the child";

(v) in subsection (d)(2)(C), by striking "his protection" and inserting "the child's protection";

(vi) in subsection (e), by striking "he shall" and inserting "the judicial officer shall";

(vii) in subsection (f), by striking "his reasons" and inserting "the reasons", and by striking "he shall" each place it appears and inserting "the judicial officer shall";

(viii) by striking "his detention" each place it appears in subsections (h) and (i) and inserting "the child's detention"; and

(ix) in subsection (j), by striking "his parent" and inserting "the child's parent".

(3) CLERICAL AMENDMENT.—The item relating to section 11-1732 of the table of sections of chapter 17 of title 11, D.C. Code, is amended to read as follows:

"11-1732. Judicial magistrates.".

(4) TRANSITION PROVISION REGARDING HEARING COMMISSIONERS.—Any individual serving as a hearing commissioner under section 11-1732 of the District of Columbia Code as of the date of the enactment of this Act shall serve the remainder of such individual's term as a judicial magistrate, and may be reappointed as a judicial magistrate in accordance with section 11-1732(d), D.C. Code, except that any individual serving as a hearing commissioner as of the date of the enactment of this Act who was appointed as a

hearing commissioner prior to the effective date of section 11–1732 of the District of Columbia Code shall not be required to be a resident of the District of Columbia to be eligible to be reappointed.

(b) EXPANSION OF DUTIES.—Section 11–1732(j), D.C. Code, is amended—

(1) in paragraph (4)(A)—

(A) by inserting after "involving" the following: "the establishment of paternity or", and

(B) by striking "guidelines established by rule of the Superior Court" and inserting "child support guidelines established by the Council of the District of Columbia";

(2) in paragraph (5), by striking "and Family" and inserting "Family, Probate, and Tax";

(3) by redesignating paragraph (5) as paragraph (7); and

(4) by inserting after paragraph (4) the following new paragraphs:

"(5) Conduct detention, neglect, and shelter care proceedings in which a child is alleged to be delinquent, neglected, or in need of supervision.

"(6) Conduct proceedings and issue orders in uncontested probate and fiduciary matters brought under title 20 of the District of Columbia Code.".

(c) ADDITIONAL CONFORMING AMENDMENTS.—(1) Section 11–1732(d), D.C. Code, as amended by subsection (a)(1), is further amended—

(A) by striking the period at the end of the first sentence and inserting ", in accordance with standards and procedures established by the Superior Court."; and

(B) by striking the second sentence.

(2) Section 11–1732(m), D.C. Code, is amended to read as follows:

"(m) The Chief Judge of the Superior Court shall, from time to time, conduct such studies on the utilization of judicial magistrates as the Board of Judges shall deem expedient, taking into account the suggestions of the District of Columbia Bar and other interested parties.".

(3) Section 11–1732, D.C. Code, is amended by adding at the end the following new subsection:

"(p) The Joint Committee on Judicial Administration in the District of Columbia shall determine the rate of compensation for judicial magistrates in accordance with section 11–1726.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 204. STUDY OF FEASIBILITY OF ESTABLISHING DISTRICT OF COLUMBIA NIGHT COURT.

(a) STUDY.—The Executive Officer of the District of Columbia courts shall conduct a study of the feasibility and desirability of establishing a District of Columbia Night Court as a division of the Superior Court of the District of Columbia.

(b) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Executive Officer shall submit a report on the study conducted under subsection (a) to the Joint Committee on Judicial Administration in the District of Columbia, which shall forward the study together with any comments and recommendations to Congress not later than 180 days after the date of the enactment of this Act.●

By Mr. LIEBERMAN:

S. 1719. A bill to amend title XI of the Social Security Act to delay the penalty for failure of employers to file certain reports with respect to the Medicare and Medicaid coverage data bank; to the Committee on Finance.

MEDICARE DATA BANK PENALTY DELAY ACT

● Mr. LIEBERMAN. Mr. President, I introduce a bill that addresses a problem created by faulty legislation and an intransigent bureaucracy. Earlier this year, as part of the Omnibus Budget Reconciliation Act, Congress created the Medicare data bank. The goal of that legislation is to get the information necessary to determine when Medicare is paying bills that should be paid by private insurers.

The goal of collecting these funds is a laudable one, and I support that effort. But this solution has not been well thought through. What is a problem of communication between a patient, the health care provider, Medicare, and insurance companies is solved by placing a tremendous burden on business. Business is not part of the problem, but under the Medicare data bank they must bear the burden and expense of the solution. To add insult to injury, 95 to 98 percent of the information collected will never be used. Only 2 to 5 percent of the labor force and their dependents are eligible for Medicare and have private health insurance.

At the time the legislation was introduced, I argued that the legislation was misguided. I held hearings that showed how contemporary information technology could provide better solutions with less overall expense, and that insurance companies and plan administrators are ready to consider these alternatives. Unfortunately, the administration persisted, and Congress gave them what they wanted—authority to create this Medicare data bank.

GAO has recently reviewed the data bank proposal and confirmed what we suspected, that the data bank is a clumsy, expensive way to address the problem of coordination of benefits with Medicare. I hope we can revisit this proposal as part of health care reform.

As of January 1, 1994, each employer must record, for each employee and their dependents, the type of health care, the period of coverage, Social Security numbers, and name and address. Most companies don't currently collect and retain all this information, particularly for spouses and dependents. Even insurance companies don't necessarily record the Social Security number for each person covered. Some process all claims using the Social Security number, or other identification number, of only the covered employee.

The Health Care Financing Administration [HCFA] which is charged with maintaining this data bank, has not issued any guidance to businesses on what to collect or in what form the information should be reported. To make matters worse, HCFA has refused to meet with anyone to discuss the data bank until after January. That means that beginning January 1, every employer will be responsible for collecting this information, and subject to substantial penalty if it is not collected, but without any guidance from HCFA on what to report to how to report it.

In other words, HCFA is saying:

We're going to fine you if you don't collect this information, even if you don't know you are supposed to collect it. And if the form we decide on for submission costs you money, or you have to go back and pay to reconstruct records to discover data we didn't tell you to collect, that's just too bad.

This does not sound like the customer oriented Government that President Clinton and Vice-President GORE said they were bringing us. This sounds more like Kafka's bureaucracy.

The provisions of this bill are quite simple. No penalties can be charged to employers for not reporting information they were not told to collect. In other words, until HCFA issues guidance telling employers what to collect and how to report it, employers can not be penalized for not collecting the information.

Because of the way the initial legislation was written, this bill adds two other provisions. First, penalties can be imposed for collections beginning the calendar year after HCFA issues guidance. The initial legislation for the data bank requires employers to report coverage data for one calendar year at the beginning of the following year. This change conforms penalties to the reporting schedule. Second, a reasonable period of time must be given for employers to alter their systems to collect and store this information.

This bill is simply a matter of fairness. It is unconscionable to impose penalties on business for not collecting information when we haven't told them what to collect or how to submit it. If HCFA can't issue final guidance to employers before January 1, penalties should be waived.

Mr. President. I ask unanimous consent that the text of the bill and additional material be printed in the RECORD.

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

S. 1719

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DELAY OF PENALTY FOR FAILURE OF EMPLOYERS TO FILE REPORTS WITH THE SECRETARY OF HEALTH AND HUMAN SERVICES WITH RESPECT TO THE MEDICARE AND MEDICAID COVERAGE DATA BANK.

(a) IN GENERAL.—Section 1144(c)(9) of the Social Security Act (42 U.S.C. 1320b–14(c)(9)), as added by section 13581(a) of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66), is amended to read as follows:

"(9) PENALTY FOR FAILURE TO REPORT.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), in the case of the failure of an employer (other than a Federal or other governmental entity) to report under paragraph (1)(A) with respect to each electing individual, the Secretary shall impose a penalty as described in part II of subchapter B of

chapter 68 of the Internal Revenue Code of 1986.

"(B) DELAY OF PENALTY.—Subparagraph (A) shall not apply before the first day of the first calendar year which begins 90 days after the Secretary has promulgated regulations with respect to the information required to be reported under paragraph (1)(A) and with respect to the manner (including electronic transmission) in which such information is required to be reported.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective as if included in the enactment of section 13581(a) of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66).

GENERAL ACCOUNTING OFFICE,
Washington, DC, November 15, 1993.

Hon. JOSEPH I. LIEBERMAN,
Chairman, Subcommittee on Regulation and Government Information, Committee on Governmental Affairs, U.S. Senate.

DEAR MR. CHAIRMAN: On June 2, 1993, you requested that we study ways to simplify the administration of the Medicare Secondary Payer (MSP) Provisions. These provisions require that, in certain cases, health and accident insurers covering Medicare beneficiaries pay medical claims ahead of Medicare. The purpose of these provisions is to save Medicare funds by ensuring that Medicare does not pay when other insurance is available. Although our work is not yet complete, you asked us to provide our observations on whether the recently mandated Medicare and Medicaid Coverage Data Bank will contribute to more effective MSP program administration.

BACKGROUND

Section 13581 of the Omnibus Budget Reconciliation Act of 1993 (OBRA–93), signed into law on August 10, 1993, directed the Secretary of Health and Human Services (HHS) to establish the Medicare and Medicaid Coverage Data Bank. The act requires employers to report to the Secretary of HHS detailed information on the health insurance coverage they provide to their workers, including descriptive data on these employees, their dependents, and their insurers. The act requires employers to report this information for calendar years beginning in 1994. The Health Care Financing Administration (HCFA), which administers the MSP provisions, has been assigned responsibility for administering the data bank.

The aim of the data bank is to provide a source of information for the Medicare and Medicaid programs to more readily identify and collect payments from health insurers for covered beneficiaries. The Congressional Budget Office estimated that over the next 5 years (fiscal years 1994 through 1998), the data bank will save Medicare an additional $653 million and Medicaid an additional $293 million, over current MSP activities.

OBSERVATIONS

Although preliminary, the information that we have gathered to date raises concerns that the OBRA–93 Medicare and Medicaid coverage data bank may not realize the anticipated level of additional savings and faces immediate implementation barriers.

The data bank duplicates other legislatively mandated MSP efforts currently under way. Section 6202 of the Omnibus Budget Reconciliation Act of 1989[1] P.L. 101–239; 103 Stat. 2225) provides for HCFA to periodically match Medicare beneficiary data with Internal Revenue Service employment information. These data are used to detect cases where insurers may be responsible for payments already made by Medicare. After several years of preliminary data collection, HCFA is using the results of this match to attempt to recover from health insurers about $1 billion of potential overpayments. Thus, to the extent that the data bank duplicates information that this data match obtains, the additional savings anticipated will not be realized.

The data bank is an inefficient and costly method to identify potential MSP cases. Employers will be required to provide information for all their employees. However, according to information provided by HCFA, it is likely that less than 2 percent of all employees or their dependents would be subject to the MSP provision. Therefore, 98 percent of the data collected would not be relevant to the MSP program.

The relevant information in the data bank may still be incomplete for MSP purposes, according to HCFA officials. For example, the act does not require information on dates of employment, which is often needed to determine whether the MSP provisions apply. As a result, additional information on employment dates would need to be collected.

The Assistant Secretary for Management and Budget at HHS has recently notified Office of Management and Budget (OMB) officials that it is unlikely that HCFA could establish the data bank without funding. In a letter to OMB dated September 30, 1993, HHS stated that HCFA would need $17 million in fiscal year 1994 to begin designing and implementing the data bank. Thereafter, HHS estimated that an additional $25 to $30 million annually would be needed to administer the data bank.

As of November 8, 1993, HCFA had not issued implementation guidance on how employers should report information to the data bank. According to American Payroll Association officials, who represent 10,000 employers nationwide, such guidance is needed before employers' information systems can capture and transmit the data required by OBRA–93. As a result, employers may not be able to comply with the OBRA–93 reporting timeframe for 1994.

I hope these observations are useful. We will continue to keep your staff apprised of our ongoing efforts to find ways to make the MSP program more effective. If you or your staff would like to discuss further the information in this letter, please call Frank Pasquier at (206) 287–4861 or me at (202) 512–7118.

We are sending a copy of this correspondence to the Ranking Minority Member, Subcommittee on Regulation and Government Information, Committee on Governmental Affairs. Copies also will be made available to others upon request.

Sincerely yours,

———.

(For Leslie G. Aronovitz, Associate Director, Health Financing Issues).●

By Mr. SIMON:

S. 1720. A bill to establish the Gambling Impact Study Commission; to the Committee on Governmental Affairs.

GAMBLING IMPACT STUDY COMMISSION

● Mr. SIMON. Mr. President, today I am introducing legislation that would establish an 18-month commission to review the impact gambling has had on local and State governments, as well as native American tribes.

Gambling has become one of the largest growth industries in this country; in 1991, legal gambling generated over $300 billion in betting, up over $90 billion from 1987.

State and local governments and native American tribes, strapped for financial resources, are turning to gambling as a source of revenue that involves neither cutting services nor increasing taxes. In 1991, State governments took in over $8 billion in monopoly profits from gambling. Thirty-three States have established State lotteries. Casino gambling is being developed in more and more cities and native American reservations across the country. And, as we have seen in my own State of Illinois, riverboat gambling is being viewed as the answer to many river communities' financial woes.

The potential for significant economic benefits from gambling are clear. But I am concerned that the potential for benefit is not being realized in communities across the country.

In Atlantic City, the site of the first major gambling operation on the east coast, $3.22 billion came into the city's gambling establishments in 1992. Of that, about $240 million, or 8 percent, of the earnings of the casinos actually ended up in the hands of State and local governments to be used for services. Those who have followed the course of the gambling industry in Atlantic City, and its effects on the surrounding communities, believe that the communities have come up short—most of the benefits fall to the casinos and not to the communities.

As the rush to State, local, and Indian gaming continues, I would like to see an objective, thoughtful review of the real impact of gambling operations in States, on communities and on native American tribes. I am introducing legislation that will establish a nine person commission, charged with doing this review, as well as recommending alternative sources of revenue that may be available to State, local and native American governments. The commission will have 18 months to complete their work and report back to Congress.

I urge my colleagues to join me in taking a hard look at what the real impact of gambling has been on some jurisdictions and States and to develop alternative sources of revenue for State, local and tribal governments.●

By Mr. BREAUX:

S. 1721. A bill to provide for the transfer of certain tuna fishing vessels documented in the United States to foreign registry; to the Committee on Commerce, Science, and Transportation.

TRANSFER OF CERTAIN TUNA FISHING VESSELS LEGISLATION

● Mr. BREAUX. Mr. President, I rise today to introduce a bill that would

[1] Section 13561 of OBRA–93 extended the provision permitting HCFA to match beneficiary and Internal Revenue Service data to September 30, 1998.

help correct an unintended consequence of the International Dolphin Conservation Act, which was signed into law last year as an amendment to the Marine Mammal Protection Act. The goals of the Marine Mammal Protection Act amendments are worthwhile, and I support the objective of protecting vulnerable populations of dolphins from the harmful effects of tuna fishing activities. However, complying with this law in many cases is cost prohibitive and is forcing many fishermen to decide whether or not to stay in business. I believe that it was not the desire of Congress, in passing that law, to put people out of business if those businesses comply with the new dolphin safe requirements.

The International Dolphin Conservation Act, enacted as Public Law 102-523, is intended to reduce and eventually eliminate the incidental mortality of dolphins due to commercial fishing in the eastern tropical Pacific Ocean. That law requires tuna fishermen to use dolphin safe techniques in harvesting yellowfin tuna. As a result, our Nation's yellowfin tuna fishermen have had to adjust their fishing operations and, as a consequence, have suffered severe economic dislocations. Many tuna fishermen have had to relocate their activities to other areas of the world's oceans; others have tried to remain in customary fishing grounds that are finding it increasingly prohibitive to do so. Mr. President, tuna fishermen have responded in a positive fashion, and at great expense, to attempt to comply with the requirements of this new law. However, in some cases, fishermen have found it difficult to keep from going out of business or selling to foreign owners.

This legislation that I am introducing today would provide the means for some tuna fishermen to both comply with the new law and to remain a U.S.-owned business. It would permit tuna vessel owners to document their boats under foreign registry, thereby facilitating access to productive fishing areas located off foreign shores. My bill would not excuse such U.S.-owned vessels from the requirements to fish in a dolphin safe manner. The vessels will continue to be owned by U.S. persons, who will still be bound by the provisions of the Marine Mammal Protection Act and the Merchant Marine Act of 1936.

Under the Merchant Marine Act, 1936, vessel owners may set aside certain monies in a Capital Construction Fund [CCF] to be used to acquire, construct, or reconstruct qualified vessels. Under existing law, owners of vessels acquired, constructed, or reconstructed with such funds must document these vessels in the United States. Although there are sound reasons for applying this requirement to large, ocean-going transport ships, there are no compelling reasons in this case that support such a restriction on tuna fishing vessels. My legislation, by allowing U.S.-owned, CCF-financed tuna vessels to reflag under foreign registry, makes it possible for this industry to absorb the costs of fishing in productive waters using dolphin safe methodologies. Without this legislation, the only alternative for some vessel owners is to sell out to foreign investors. This would mean an end to the tax revenues that this industry currently provides, and it would mean an end of the assurance that these vessels will continue to fish in an environmentally appropriate manner.

Mr. President, my measure ensures that the U.S. tuna fishing industry will continue to be conducted in an environmentally responsible fashion. At the same time, my bill offers an alternative that will allow U.S. fishermen to stay in business and to retain ownership of U.S. vessels. Mr. President, this measure promotes commercial development of marine resources while at the same time it guarantees consistency with the International Dolphin Conservation Act. I believe that these goals reflect the desires of the citizens of the United States, and I urge the Senate to support this legislation.●

By Mr. KOHL (for himself and Mr. FEINGOLD):

S. 1722. A bill to amend the Federal Water Pollution Control Act to reserve a portion of the funds made available for capitalization grants for water pollution control revolving funds for the purpose of making grants to States that set aside amounts of State funds for water pollution control in excess of the amounts required under such Act, and for other purposes; to the Committee on Environment and Public Works.

LEVEL OF EFFORT CLEAN WATER BONUS FUND ACT OF 1993

● Mr. KOHL. Mr. President, if we were to tell our constituents today that one of the largest Federal environmental programs in this Nation actively discourages States from contributing financially beyond a minimum level, most of them would see it as just another example of Government losing its collective mind. and Mr. President, I would agree with them.

This is why I rise today to introduce legislation to inject reason into the State water pollution control revolving fund, and the process used to allocate funds under that program.

The State water pollution control revolving fund [SRF] was created by the Water Quality Act of 1987, to provide grants for States to establish revolving loan funds. In turn, States provide low-cost loans to local governments for wastewater treatment infrastructure, and other water quality projects.

The formula for allocating funds appropriated each year under the SRF is weighted 75 percent for a State's level of environmental need relative to other States, and 25 percent based on the State's population.

On the surface, this formula may appear to make sense. But in reality, this formula gives State governments a disincentive to invest their own funds in environmental infrastructure, beyond the absolute minimum 20 percent match required. The more States invest to address their own environmental problems, the less they receive from the Federal Government, relative to less progressive States.

The end effect of this policy is that States are rewarded for environmental sluggishness and penalized for environmental progessivism.

In this time of budget crises and exploding environmental funding needs, we can no longer afford to be sending the wrong financial signals to our States. The Federal Government must foster a rational partnership with States. We must encourage, not discourage, stronger financial partnership.

My bill would help build a more rational financial partnership in environmental program funding, by creating a bonus fund for those States that overmatch the Federal SRF capitalization grant. In this way, we build fairness into a system that has long been unfair, and we create incentives for States to go above and beyond the minimum funding requirements specified by law. No longer would States have the incentive to lag behind other States in addressing their environmental problems in order to increase their slice of funding from the annual SRF grant pie.

The bill does not seek to change the existing SRF capitalization grant allocation formula. Instead, it would require that 20 percent of the capitalization grant appropriated each year for the water pollution control revolving funds be used to make bonus payments to those States that have overmatched their individual water pollution control revolving funds, or related non-Federal revolving funds.

I welcome my colleague from Wisconsin, Senator FEINGOLD, as a cosponsor. I urge my other colleagues to cosponsor this legislation, to inject a bit of reason into the funding process for this important environmental program.

It is my hope that this legislation would be incorporated into the Clean Water Act, when it is reauthorized next year.

I ask unanimous consent that text of the bill be printed in the RECORD.

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

S. 1722

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Level of Effort Clean Water Bonus Fund Act of 1993".

SEC. 2. LEVEL OF EFFORT CAPITALIZATION GRANTS.

(a) IN GENERAL.—Section 604 of the Federal Water Pollution Control Act (33 U.S.C. 1384) is amended—

(1) in subsection (a), by striking "Sums" and inserting "Subject to subsection (d), sums"; and

(2) by adding at the end the following new subsection:

"(d) LEVEL OF EFFORT CAPITALIZATION GRANTS.—

"(1) IN GENERAL.—For each fiscal year, the Administrator shall reserve 20 percent of the funds made available for capitalization grants under this title for making level of effort capitalization grants to eligible States in accordance with this subsection. A State that receives a grant under this subsection shall deposit an amount equal to the amount of the grant into the water pollution control revolving fund of the State established under this title.

"(2) ELIGIBILITY.—A State shall be eligible to receive a grant under this subsection if the State—

"(A) submits an application for the grant to the Administrator in such form and at such time as the Administrator shall require; and

"(B) for the fiscal year preceding the fiscal year for which the application is submitted, deposits—

"(i) an amount of State funds in addition to the amount required under section 602(b)(2) into the water pollution control revolving fund of the State established under this title;

"(ii) an amount of State funds into a non-Federal revolving fund that the Administrator determines is subject to requirements that are substantially similar to the requirements of the fund referred to in clause (i); or

"(iii) both an amount as described in clause (i) and an amount as described in clause (ii).

"(3) AMOUNT OF GRANTS.—

"(A) IN GENERAL.—Subject to subparagraph (B), a grant to a State under this subsection shall be in an amount equal to the total amounts deposited as described in paragraph (2)(B).

"(B) LIMITATIONS.—

"(i) STATE MAXIMUM.—For each fiscal year, no State may receive a grant under this subsection in an amount that is greater than 20 percent of the amount of funds reserved under paragraph (1).

"(ii) INSUFFICIENT FUNDS.—If, for any fiscal year, the sum of the grant amounts calculated under subparagraph (A) for all eligible States is greater than the amount of funds reserved under paragraph (1), the Administrator shall make a grant to each eligible State in an amount that is equal to the product obtained by multiplying—

"(I) the amount of funds reserved under paragraph (1); by

"(II) the quotient obtained by dividing—

"(aa) the grant amount calculated under subparagraph (A) for the State; by

"(bb) the sum of the grant amounts calculated under subparagraph (A) for all eligible States.".

(b) CONFORMING AMENDMENTS.—Section 602(b) of such Act (33 U.S.C. 1382(b)) is amended—

(1) in paragraph (2), by inserting "except with respect to grants made to the State under section 604(d)," before "the State will deposit"; and

(2) in paragraph (3), by inserting ", except that with respect to grants made to the State under section 604(d), the State will enter into binding commitments to provide the assistance in an amount equal to 100 percent of the amount of each grant payment" before the semicolon at the end.●

By Mr. COHEN:

S. 1723. A bill to improve provisions relating to tech-prep education; to the Committee on Labor and Human Resources.

TECH-PREP EDUCATION LEGISLATION

● Mr. COHEN. Mr. President, all to often, conversations with our children about school involve questions like "Why do we have to learn this?" and "What is the purpose of studying that?" These plaintive queries are usually followed by an assertion that "We won't use anything we learn in this class in the 'real world.'"

These are things many of us said decades ago. However, today's "real world" is very different than the "real world" many of us faced when we graduated from high school. At one time, for example, parents could tell their children "You're right. You probably won't need algebra in your job or daily life, but you must complete it to graduate. So just do it!" In today's competitive world market, parents are finding that they respond in this manner less frequently. Instead, parents find themselves increasingly trying to encourage their children to understand algebra because the ability to manipulate mathematical equations is now an important, sometimes necessary skill to have in our high-technology society.

At one time teachers could tell their students "You need to know about Europe because it's good to know it." In today's competitive world market, teachers are finding that they respond in this manner less frequently. Rather than focusing on other countries merely for the intrinsic pursuit of knowledge, teachers are finding themselves trying to make students understand the importance of other countries to their own lives and our country's well-being.

Like it or not, the global economy is here. The mighty economic engine of America has taken us from horse-and-buggy to commercial jet aviation in this century. But we are not alone. People in other countries have ideas and ability, and we can't hold back the tide.

Clearly, in the 1990s the answers to the questions "Why do we have to learn this?" and "What is the purpose?" have changed. Unless our youth understand the importance of this, our country may face serious consequences in coming years.

We must prepare all our students—elementary, secondary, and postsecondary—to meet the demands of a world market and a rapidly evolving society. We must teach our children to remain competitive with countries which desire to carve a niche into the market right here at home. This is all the more important given the pending passage of the North American Free-Trade Agreement [NAFTA]. The international market is a two-way street: At the same time that we jockey for position in foreign markets, so do other countries seek to position themselves in our domestic market. The global economy has the potential for enormous reward, but we must prepare to meet the challenge.

One way to meet this challenge is to reinvent our educational system, which in some ways is still the envy of the world, so that it can meet today's needs and provide for ways to meet tomorrow's opportunities.

Unfortunately, our educational system has not done a good job of preparing our youth for the workplace. The U.S. Department of Education, for example, recently released a study that showed "[n]early half of all adult Americans read and write so poorly that it is difficult for them to hold a decent job."

Recent reports by the General Accounting Office and the National Research Council tell us that in 1993 high schools focus their resources on those students going on to college. The General Accounting Office further found that only 15 percent of incoming high school ninth graders complete a college degree within 6 years of high school graduation.

These reports describe a situation that could well end in tragedy for a large majority of our youth. I agree with the National Research Council's conclusion that, as a country, we tend to think of "support for labor market transitions, particularly for youths most at risk of failing to make the school-to-work transition . . . as a social, rather than an economic, responsibility." It is time that we radically change this philosophy. Educating our at risk youth is certainly an economic responsibility. It is an investment in our future.

In my own State of Maine, a large number of students are not continuing on to 2- and 4-year colleges. In fact, compared with other States, Maine ranks near the bottom in sending high school students to college. I am quite concerned about this situation. Clearly, college is not for everyone. I am not suggesting that it is. However, given the research findings from the General Accounting Office and the National Research Council, I am alarmed that many young people around the country may be falling through the cracks in terms of getting a good, practical education.

Fortunately, Maine is a leader in efforts to facilitate the successful transition of high school students from school to work. For example, last month the Maine Youth Apprenticeship Program, which combines classroom education with hands-on training in the workplace, was selected by the National Alliance of Business as the School-to-Work Program of the Year.

The Maine Youth Apprenticeship Program started last winter with a pilot group of 15 high school juniors. Students spend 20 weeks in class and 15 weeks working for a company in their field of interest. This pattern continues through their senior year, but with 15 additional weeks working for a company. In the third year of the program, students spend 34 weeks on the job and 16 weeks taking courses at their local technical college.

The program, which will include 200 students beginning in January, benefits both the student and the business involved. Students finish the program with a high school diploma, significant work experience, and technical college training. They also receive certification that they have mastered a particular technical skill and can earn up to $5,000 each year on the job. Employers can be certain they are getting a qualified worker, already trained and trustworthy, to improve production.

Maine's Youth Apprenticeship Program is complemented by another education effort, Jobs for Maine's Graduates, which operates in 20 schools in 17 communities throughout the State. Among other things, this program provides job specialists who are responsible for 20 to 40 students who are at risk of dropping out of school. In addition, the program provides basic skills education, job search activities, instruction on 37 skills necessary in a work environment through a 4-day-a-week credit class, and 9 months of follow-up support after high school graduation.

A third program in Maine is the technology preparation program, known commonly as "tech-prep," which Congress included in 1990 as part of the reauthorization of the Carl D. Perkins Vocational and Applied Technology Education Act. This program combines the last 2 years of high school with 2 years of postsecondary work at a technical college. This is commonly referred to as the "2+2 model." It provides students with the math, science and technological skills they will need to succeed in the economy of the 1990's. By combining academic and occupational subjects, tech-prep is designed to prepare students for high-skill technical occupations and offers a more practical, hands-on way for kids to learn that the more abstract, traditional method of learning currently taking place in most of this Nation's schools.

The legislation that I am introducing today is very much in the spirit of the School-to-Work Opportunities Act, which the Senate will consider at some point. It would improve the tech-prep program by making the program more responsive to students, businesses, and universities and would allow greater flexibility in the types of tech-prep programs offered by helping community groups reach kids before they drop out of school. Specifically, the legislation would first, require the involvement of businesses and baccalaureate degree granting programs in the groups receiving tech-prep grants, second, give highest priority to those tech-prep applications that provide for employment placement activities and the transfer of students to 4-year baccalaureate degree programs, and third, authorize tech-prep programs to begin either in the 9th or 11th grades.

Let me explain the potential value of each of these provisions.

INVOLVEMENT OF BUSINESSES AND 4-YEAR COLLEGES AND UNIVERSITIES

At this time, current law does not require the involvement of business or colleges offering 4-year baccalaureate programs in the groups receiving tech-prep grants. However, the involvement of businesses and colleges/universities would strengthen the connection between these two groups, high schools, and technical or community colleges.

By requiring the involvement of the business community, this legislation would make businesses a part of the education process—beyond simply employing youth. Is it in their interests? Certainly. During authorization of the Tech-Prep Education Act, for example, Congress found that businesses spend approximately $210 billion each year for training, remediation, and lost productivity due to ill-prepared workers.

By requiring the involvement of businesses, non-collegebound youth will come to know and better understand that what they do in their high school studies truly matters for future employment. With the active involvement of businesses in designing the tech-prep curriculum, youth will be less likely to ask "Why do we have to learn this?" and "What is the purpose?" and the belief that "We won't use anything we learn in this class in the 'real world'" will be disproven.

By strengthening the connection between high schools and 4-year degree granting colleges and universities, more students may enter the tech-prep program. Unfortunately, at this time some colleges and universities do not appear to feel any responsibility for educating those students who will not enter the 4-year postsecondary education system. This situation tends to make colleges and universities skeptical of the tech-prep curriculum. With colleges and universities involved in the process of developing and implementing tech-prep, they will feel more responsibility for educating all students and may be more willing to admit students who have taken tech-prep classes. Thus, students who might benefit from the applied method of teaching in the tech-prep program but who want to get a baccalaureate degree, will have greater options available to them. They can complete the postsecondary component of the tech-prep program by receiving either an associate degree or a baccalaureate degree. In this way, the tech-prep program will have greater potential.

PRIORITY OF CERTAIN TECH-PREP APPLICATIONS

Complementarily, my legislation would give highest priority to those tech-prep applications that provide for employment placement activities and the transfer of students to 4-year baccalaureate degree programs. This will ensure that the tech-prep program focuses foremost on ways to improve the skills of our workforce.

EARLIER EMPLOYMENT OF TECH-PREP

Finally, the legislation I am introducing today will allow schools greater flexibility in providing tech-prep classes. In my research, one of the most common things I heard was that the applied learning classes in the tech-prep program should begin before the 11th grade, which is now required in the Tech-Prep Education Act. Many students who drop out of school do so before the 11th grade and having a tech-prep program in place earlier may prevent some of those students from dropping out and help those who stay in school learn more effectively through the applied learning method.

Although some schools, like Presque Isle High School, are beginning classes in the 9th grade, other schools which want to offer the tech-prep classes earlier do not because they feel restricted by federal law. By authorizing "4+2" tech-prep programs, those schools who feel restricted now will be able to move classes to the 9th grade, when students may benefit the most.

I am pleased that the tech-prep program is recognized by many to be a promising educational approach. Tech-prep is the type of innovative approach to education we need to encourage. The world our children face requires that workers have many skills. If we do not ensure all our youth are prepared to compete in the new economy of the 21st century, they will be left behind. We are in a position to stop this from happening, and we must—for the future of our Nation may be at stake.

For this reason, I hope my colleagues will agree that my legislation helps to strengthen one of this country's most valuable school-to-work programs.

Mr. President, I ask that the text of the bill be printed in the RECORD.

The bill follows:

S. 1723

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TECH-PREP EDUCATION.

(a) CONTENTS OF PROGRAM.—Paragraph (2) of section 344(b) of the Tech-Prep Education Act (20 U.S.C. 2394b(b)(2)) is amended by inserting "or 4 years" before "of secondary school".

(b) CONSORTIA MEMBERSHIP.—Subsection (a) of section 343 of the Tech-Prep Education Act (20 U.S.C. 2394a) is amended—

(1) in paragraph (1), by striking "and" after the semicolon;

(2) in subparagraph (B) of paragraph (2), by striking the period and inserting a semicolon; and

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

"(3) businesses, industries or labor unions; and

"(4) institutions of higher education that award baccalaureate degrees.".

(c) SPECIAL CONSIDERATION; PRIORITY.—Section 345 of the Tech-Prep Education Act (20 U.S.C. 2394c) is amended—

(1) by amending subsection (d) to read as follows:

"(d) SPECIAL CONSIDERATION.—The Secretary or the State board, as appropriate, shall give special consideration to applications which address effectively the issues of dropout prevention and re-entry and the needs of minority youths, youths of limited-English proficiency, youths with disabilities, and disadvantaged youths.";

(2) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(3) by inserting after subsection (d) the following new subsection:

"(e) PRIORITY.—The Secretary or the State board, as appropriate, shall give highest priority to applications that provide for effective employment placement activities or transfer of students to 4-year baccalaureate degree programs.".●

By Mr. JOHNSTON:

S. 1724. A bill to authorize the Secretary of Health and Human Services to award a grant for the establishment of the National Center for Sickle Cell Disease Resarch, and for other purposes; to the Committee on Labor and Human Resources.

THE NATIONAL CENTER FOR SICKLE CELL DISEASE RESEARCH

● Mr. JOHNSTON. Mr. President, I introduce legislation that will support research for a disease which disproportionately affects African-Americans and other minority groups. Sickle cell disease is a painful, life-threatening, genetic disease. Approximately 1 of every 12 African-Americans is born with the sickle cell genetic trait, and about 1 in every 600 is afflicted with sickle cell disease. Sickle cell conditions are also found, although less frequently, in other United States populations, including those of Puerto Rican, Cuban, and southern Italian ancestry. The disease has also recently been found in some Caucasians.

Sickle cell disease is based in the circulatory system and is a painful and disabling disorder for which there is currently no cure. In a healthy body, red blood cells contain the substance hemoglobin which carries oxygen from the lungs to various organs and tissues. This role of hemoglobin is essential to life because all body components require oxygen to live and carry out their functions. Diseased bodies have an abnormal type of hemoglobin which interrupts the flow of oxygen to these vital organs.

Red blood cells that contain normal hemoglobin remain round when they release oxygen. Cells with abnormal or sickle hemoglobin, upon releasing oxygen, become distorted into the shape of a sickle causing a chronic and painful anemia. Distorted, or sickled cells cannot traverse capillaries, further limiting oxygen supply to the body's tissues.

Mr. President, the minority population in the State of Louisiana is about 1.29 million people. Of this number roughly 3,250 people are suspected of having the disease, and of this number, 25 percent will have the most acute and serious form, which is often fatal. Alarmingly, about 130,000 Louisianians carry the genetic trait for this illness.

Mr. President, despite the fact that the cause of the sickle cell disease has been known for many years, progress has not been made in finding suitable treatment. Currently, the most common treatment for the illness is pain relief medication, treating only the immediate symptoms. Treating only the symptoms results in tissue damage, often to major organs, with each successive episode of oxygen depravation. Consequently, many of those afflicted with severe forms of the disease often do not even live to see adulthood.

Concerned with finding a cure for a disease that has such a devastating affect on the Nation's minority populations, Southern University in Baton Rouge, LA, the largest predominately African-American university in the United States, has committed itself to the creation of a center for sickle cell disease research.

With a single purpose, this center will conduct multidisciplinary research to lead to the discovery of a cure for sickle cell disease. The center will conduct basic biomedical research to determine the types of drugs that can prevent, inhibit, or reverse the sickling process, along with clinical research and joint studies to conduct clinical trials on antisickling agents. In addition, the center will work with other institutions to promote and enhance scholarship and teaching knowledge in order to disseminate newly gained knowledge on the disease.

Mr. President, it is important to note that the Louisiana State Legislature in recognition of the importance of such a center, and even in these exceedingly hard economic times, has committed $7 million to this project. To complete the center, and to be able to provide this valuable public health research, Southern University needs Federal assistance. To provide this assistance, I offer a bill to authorize the Secretary of Health and Human Services to award a grant for the creation of this center. This legislation will direct the Secretary to provide a grant to the Louisiana Department of Health and Hospitals for the establishment and construction of the National Center for Sickle Cell Disease Research at Southern University in Baton Rouge.

Mr. President, sickle cell disease is a vital public health problem which this bill would assist in overcoming. Such funding can only aid in the development of this Nation. I urge my colleagues to support this important legislation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1724

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that:

(1) Sickle Cell Disease is a serious illness that disproportionately affects African-Americans.

(2) Approximately 1 out of every 12 African-Americans is born with the sickle cell trait, and about 1 out of every 600 is afflicted with Sickle Cell Disease.

(3) Sickle cell conditions also occur in other United States populations, primarily those of Puerto Rican, Cuban, southern Italian ancestry and more recently sickle cell has been found in some Caucasian individuals.

(4) Sickle Cell Disease is a painful and disabling disorder which can lead to untimely death and is caused by inadequate transportation of oxygen due to an abnormal type of hemoglobin molecule in the red blood cells.

(5) Sickle Cell Disease is an inherited disease which can be transmitted to offspring, particularly if both parents carry the genetic trait.

(6) The sickle cell trait carriers show no sign of the disease, but statistically, 1 in 4 of their children will be afflicted with the disease.

(7) There is no national research center devoted to Sickle Cell Disease in the United States.

(8) There is no known cure for Sickle Cell Disease at this time and there is a need for prioritized and specialized research to find such a cure for this severely disabling disease.

(9) Louisiana's minority population is 1,299,281.

(10) Of this number, a suspected 3,248 individuals will have the disease and of those individuals, 25 percent (812 individuals) will have the most acute and serious stage of Sickle Cell Disease, a stage that is usually fatal.

(11) Some 129,928 individuals in Louisiana will carry the sickle cell trait.

(12) Southern University, located in Baton Rouge, Louisiana is the largest predominately African-American university in the United States.

(13) Approximately 16,700 students attend this 112 year old school and Southern graduates are located throughout the United States and the world.

(14) The State of Louisiana through the Louisiana Legislature and Southern University, has shown great leadership and committed significant financial and personnel resources towards the development of a National Center for Sickle Cell Disease Research.

(15) Because Southern University has committed its resources and personnel to seeing this project through to its ultimate goal, finding a cure for Sickle Cell Disease, and because of Southern University's large minority population it is appropriate to locate the National Center for Sickle Cell Disease Research at Southern University in Baton Rouge.

(b) PURPOSE.—It is the purpose of this Act to establish a National Center for Sickle Cell Disease at Southern University in Baton Rouge, Louisiana, that will have the following objectives—

(1) to conduct biomedical research and clinical investigations designed to find a cure for Sickle Cell Disease;

(2) to conduct a wide variety of human behavioral studies designed to provide new knowledge about such issues as the effectiveness of various counseling and education methods, and techniques to improve coping skills on the part of patients and their families;

(3) to establish collaborative arrangements and joint research programs and projects with other Louisiana institutions of higher education, such as Louisiana State University Medical Centers at New Orleans and Shreveport and Tulane University Medical Center to conduct clinical trials on antisickling agents;

(4) to provide expanded opportunities for faculty members at the institutions described in paragraph (3) to publish in the three broad areas of basic biomedical research, psychosocial research and clinical research;

(5) to become a laboratory for training both graduate and undergraduate students in research methods and techniques concerning Sickle Cell Disease; and

(6) to develop, promote and implement joint research projects with other public and private higher education institutions including teaching hospitals on Sickle Cell Disease.

SEC. 2. NATIONAL CENTER FOR SICKLE CELL DISEASE RESEARCH.

(a) GRANT.—The Secretary of Health and Human Services shall award a grant to the Louisiana Department of Health and Hospitals for the establishment and construction of the National Center for Sickle Cell Disease Research at Southern University in Baton Rouge, Louisiana, and for related facilities and equipment at such Center. Prior to the awarding of such grant, the State of Louisiana shall certify to the Secretary—

(1) that the State of Louisiana has provided not less than $7,000,000 to support and operate such Center; and

(2) that the State of Louisiana has developed a plan to provide funds for the continued operation and support of such center.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $21,000,000 to carry out the purposes of this Act.●

By Mr. COHEN (for himself, Mr. MACK, Mr. BENNETT, and Mr. FAIRCLOTH):

S. 1725. A bill to amend the Federal Deposit Insurance Act to clarify provisions intended to protect the Corporation from having bank loans or other assets diluted by secret side agreements; to the Committee on Banking, Housing, and Urban Affairs.

D'OENCH DUHME LEGISLATION

● Mr. COHEN. Mr. President, on November 9, the Subcommittee on Oversight of Government Management held a hearing at which the witnesses exposed examples of abuse, incompetence, and mismanagement at the Federal Deposit Insurance Corporation [FDIC].

In general, the subcommittee found that the FDIC's poor mismanagement of its records, delays in decision making and its very institutional culture has resulted in the unnecessary suffering of borrowers, closed businesses, and billions of dollars of loans and real estate being sold for a fraction of their worth.

The FDIC also demonstrates its willingness to complicate and delay during court proceedings. The FDIC's courtroom tactics have drawn deserved criticism from many sources, including Maine's Chief Federal Judge Gene Carter, who described the agency's style of litigation as "confused, obstructionist, inept and uncooperative."

Today, I wish to address yet another example of the callous disregard shown by the FDIC towards the rights of individuals and small businesses throughout the Nation. In my role as ranking Republican of the subcommittee, I have become aware of how the FDIC and the Resolution Trust Corporation [RTC] have systematically used an arcane banking law doctrine known as the "D'Oench Duhme Doctrine" to deny numerous individuals and small businesses their "day in court."

It is time to eliminate the "doom" in "D'Oench Duhme". Today, I am introducing legislation with Senators MACK, BENNETT, and FAIRCLOTH, that would rein in the FDIC and RTC in their use of the doctrine and clarify the right to seek and obtain judicial consideration of cases arising in this narrow banking law context. Once again, the doctrine would only apply where an "asset" of the bank is at issue.

In Ramins & Sons, Inc. versus RTC, Judge Jay Waldman of the Eastern District of Pennsylvania recently commented on how the doctrine is being misapplied, stating: "The doctrine is not a sword to be used to extinguish ordinary commercial obligations of a failed bank because they happen not to be accompanied by a formal agreement. The bank's gardener, window washer and garbage collector have a claim for services rendered whether or not they had a written contract."

It is important to understand the evolution of D'Oench Duhme to clearly see how the FDIC and RTC have been able to use this law to ignore legitimate claims of individuals and small businesses from across the country. In 1942 the U.S. Supreme Court issued a decision in D'Oench Duhme & Co. versus Federal Deposit Insurance Corporation creating this doctrine. The decision stated that if the FDIC took over a failed bank, then in disputes over the bank's assets, the FDIC would be bound only by written agreements contained in the bank's records.

This decision, which is not known as the D'Oench Duhme Doctrine, was later codified by Congress in 1950 and subsequently in 1989 [FIRREA] to provide that only certain written agreements could defeat the interest of the FDIC or RTC in an "asset" held by a bank. The key word here is "asset."

During the debate over the 1989 FIRREA legislation, much thought went into expanding the powers of the FDIC and RTC, which were thought to lack sufficient authority at the time. Apparently, based these recent D'Oench Duhme cases, the pendulum of authority has swung too far in favor of the FDIC and RTC. This imbalance has unintentionally hurt individuals and small businesses and needs to be corrected in a timely fashion.

However, I want to be careful to ensure that the FDIC and RTC maintain the D'Oench Duhme protections as they were originally intended. In its previous form, the doctrine clearly makes sense. The original intent of the D'Oench Duhme Doctrine, if interpreted properly, required that if someone is going to prevail over the FDIC or RTC in an asset dispute, he or she must overcome several procedural hurdles. The statute also requires that in order to prevail over the FDIC or RTC, a party must establish that there was a written agreement concerning the asset at issue and that the agreement was approved by the bank's board of directors or loan committee, entered into the minutes of the board or committee, maintained as an official record of the institution, and executed contemporaneously with the bank's acquisition of the asset.

It now appears that during the past few years, banking regulators and Federal courts have, based on the most recent codification of the D'Oench Duhme Doctrine, have read the word "asset" out of the statute. This has enabled the FDIC, RTC, and the courts to stretch the D'Oench Duhme Doctrine to the extreme, using it to cover not just loans and other assets held by a failed bank, but any liability.

Under the present FDIC and RTC policy, anyone performing services for a bank that failed is barred in some courts from raising legitimate claims against the receiver of the failed bank. Similarly, the doctrine has been used to deny a day in court for innocent third parties having a lawsuit against the bank for negligence or other claims.

The subcommittee has been contacted by a variety of individuals who have their claims against failed institutions dismissed in Federal court without even a hearing on the merits. In each case, the FDIC or RTC relied on the D'Oench Duhme Doctrine—even though an asset of the bank was not directly at issue.

There are many examples of businesses which provided services to a bank that subsequently failed and were denied the opportunity to collect the funds rightly owed them. The only thing standing in their way was the D'Oench Duhme Doctrine.

In Pennsylvania, for example, a general contractor made improvements on a property at the request of the bank

that owned the property. This was an oral agreement for about $12,000 worth of work. After the work was done, the bank did not pay the contractor, who was left with no alternative but to go to court to recover his money. The contractor was left with no choice but to fight for the $12,000 in Federal court, where the RTC, acting as the bank's receiver, predictably tried to use the D'Oench Doctrine to avoid paying the claim.

D'Oench Duhme has also made an unwelcome appearance in my home State of Maine. In 1990, a general contractor that had provided labor and materials for construction found itself stymied by the FDIC's misapplication of the D'Oench Duhme Doctrine. The contractor had to fight the FDIC in court to enforce a mechanic's lien and collect the money it was owed. However, because the FDIC's lawyers chose to invoke the D'Oench Duhme Doctrine and protect the agency's own balance sheet, the contractor has had to endure significant legal fees to fight the D'Oench issue. This case is still unresolved.

The application of D'Oench Duhme also has a chilling effect which effectively prevents individuals and small businesses from bringing legitimate claims against that FDIC and RTC. I know that in Maine and throughout the country people who may have legitimate claims are discouraged from ever fighting the FDIC or the RTC because of the high legal costs and the unlikelihood of prevailing in a D'Oench case. For those who have fought D'Oench, it has been an expensive, lengthy and frustrating experience where the legitimacy of the claim rarely is at issue.

Several other examples will illustrate my cause for concern. In a recent Florida case, a small business filed a lawsuit alleging negligence by a national bank. The loan in question had been paid back in full more than 1 year prior to the bank's failure. Therefore, no "asset" was at issue in this lawsuit and D'Oench Duhme should not have been applied. Nevertheless, the FDIC successfully convinced a Federal court in Miami to dismiss the suit under the D'Oench Duhme Doctrine by arguing that the claim did not meet the procedural hurdles outlined earlier. Adding insult to injury, in this Florida case, the plaintiff had obtained an affidavit from the bank vice president admitting the bank's negligence. But, because the case was dismissed without a hearing on the merits, a judge or jury never had the opportunity to consider the affidavit's contents.

I have also received information concerning D'Oench Duhme cases in which banks have allegedly reneged on agreements to provide crucial funding for small business projects. In a Massachusetts case, a bank terminated the financing for a construction project for unclear reasons, causing the project to collapse. Even though a State judge awarded them $4 million, including damages from the bank's action, the plaintiffs have been caught in a costly bureaucratic nightmare and have been unable to collect from the RTC because of the misapplication of the D'Oench Duhme Doctrine.

Mr. President, when I criticize the misuse of the D'Oench Duhme Doctrine, I am not suggesting that the FDIC and RTC should not be able to use legitimate means to weed out the bad actors and secret sweetheart deals that have occurred. What I am suggesting, however, is that a useful legal tool is being wrongly applied, unfairly penalizing many individuals and small businesses.

The legislation I am introducing today is a technical correction ensuring that the D'Oench Duhme Doctrine applies only in situations where it was originally intended to apply. As the FDIC, RTC, and courts have read the "asset" test out of the statute, this legislation would amend the Federal Deposit Insurance Act to put the "asset" test back in the statute in no uncertain terms. It would still require a party to meet the procedural hurdles enumerated earlier if there is a dispute over an asset such as the valuation of an outstanding loan. But, it would preclude the FDIC and RTC from relying upon the doctrine to obtain wholesale dismissals of tort and contract claims against failed banking institutions where no underlying asset is at issue.

Under this legislation, a claim against a bank for fraud or negligence could receive a hearing on the merits in court. Similarly, if a window washing company is owed $1,500 by a bank that fails, under this legislation the company could bring an action against the bank and the FDIC could not deny the company a day in court solely because the "agreement" with the bank to perform such services was not approved by the bank's board of directors, entered into the minutes, and so forth. While to the FDIC a $1,500 claim may seem trivial, I assure them that to most small businesses in Maine, it is an amount still worth pursuing.

The rationale for this legislation should be clear. The current interpretation of the D'Oench Duhme Doctrine by the FDIC, RTC, and the courts contradicts the purpose and intent of the statute. Under the current interpretation, if a bank fails and the FDIC steps in, a claim against the bank may be worthless because it isn't based on a written "agreement" approved by the board of directors and kept as an official record. This affects thousands of small businesses that perform services for banks.

The legislation would provide relief in a limited retroactive manner, applying to any claim pending, under judicial review, or on appeal on or after October 1, 1993. Some measure of retroactivity is justified because many individuals and businesses victimized by the FDIC and RTC policy have been denied their due process rights and deserve their day in court.

Mr. President, it is my hope that other Senators will join me in supporting this legislation and working together to eliminate the "doom" in D'Oench Duhme.●

By Mr. SIMON:

S. 1726. A bill to provide for a competition to select the architectural plans for a museum to be built on the East St. Louis portion of the Jefferson National Expansion Memorial, and for other purposes; to the Committee on Energy and Natural Resources.

ARCHITECTURAL DESIGN COMPETITION ACT

● Mr. SIMON. Mr. President, I am introducing, together with my colleagues Senator CAROL MOSELEY-BRAUN, Senator JOHN DANFORTH, and Senator CHRISTOPHER BOND, a bill to provide for a competition to select the architectural plans for a museum, which I hope will be built in East St. Louis, IL, across from the Arch in St. Louis, also known as the Jefferson National Expansion Memorial. Congressman JERRY COSTELLO is introducing the same bill in the House.

The Arch in St. Louis, which has been so vital to the economic resuscitation of St. Louis, grew out of an architectural competition. And I believe that is a good procedure for this; also, one that permits architects from around the Nation to be creative and come up with their ideas.

What we hope to have, eventually, is a museum that recognizes and celebrates the ethnic diversity of America.

We want a museum where Polish-Americans, Italian-Americans, African-Americans, and people of every background can come and see what their people contributed to the richness of America but also get an appreciation of what other ethnic groups have contributed to the richness of America. It not only can be a draw for tourists from other countries, but it can be a unifying factor within our own country.

I might add that some leaders of the Latter-day Saints have expressed an interest in it and say that they would cooperate in such a museum enterprise by having a computer printout so that people could come and learn a little more about their heritage, their family roots. The Latter-day Saints, better known as the Mormons, have done more work in the area of tracing the roots of people than any other group, by far.

In any event, what is built in East St. Louis can help to develop East St. Louis, just as the Arch helped develop St. Louis. And just as the Arch was an enterprise criticized by many at the time, it has served to provide employment opportunity for a great many

people in the St. Louis area, more indirectly than directly. The museum in East St. Louis can do the same.

I am pleased to introduce this legislation, which I hope we can pass next year.

I ask unanimous consent to print the legislation into the RECORD, at this point.

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

S. 1726

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "East Saint Louis Jefferson National Expansion Memorial Architectural Design Competition Act".

SEC. 2. ARCHITECTURAL DESIGN COMPETITION.

(a) COMMISSION.—

(1) ESTABLISHMENT.—There is established a commission to be composed of 7 members appointed by the Secretary of the Interior, of whom—

(A) two shall be selected from among persons who represent the Saint Louis, Missouri, community;

(B) two shall be selected from among persons who represent the East Saint Louis, Illinois, community;

(C) two shall be selected from among persons who represent the Department of the Interior; and

(D) one shall be selected from among disinterested persons who are experts in the area of architectural design, and who shall serve as the professional advisor to the Commission.

(2) APPOINTMENT OF MEMBERS.—The Secretary shall appoint the members of the commission not later than 90 days after the date of enactment of this Act.

(3) TERMS.—Members shall be appointed for the life of the commission.

(4) VACANCIES.—Any vacancy in the commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(5) CHAIRPERSON AND VICE CHAIRPERSON.—The commission shall select a Chairperson and Vice Chairperson from among the members of the commission.

(6) MEETINGS.—

(A) INITIAL MEETING.—The Secretary shall schedule and call the first meeting not later than 30 days after the date on which all members of the commission have been appointed.

(B) SUBSEQUENT MEETINGS.—The commission shall meet at the call of the Chairperson.

(7) COMPENSATION OF MEMBERS.—Members of the commission shall serve without compensation, except that members shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the commission.

(8) STAFF.—

(A) IN GENERAL.—The Chairperson of the commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the commission to perform its duties. The employment of an executive director shall be subject to confirmation by the commission.

(B) COMPENSATION.—The Chairperson may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(9) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(10) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(11) POWERS OF THE COMMISSION.—

(A) INFORMATION FROM FEDERAL AGENCIES.—The commission may secure directly from any Federal department or agency such information as the commission considers necessary to carry out this Act. Upon request of the Chairperson, the head of such department or agency shall furnish such information to the commission.

(B) POSTAL SERVICES.—The commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(C) GIFTS.—The commission may accept, use, and dispose of gifts or donations of services or property.

(b) ARCHITECTURAL COMPETITION.—The commission shall conduct an architectural competition to solicit design proposals for a museum to be built on the East Saint Louis portion of the Jefferson National Expansion Memorial. The member of the Commission appointed pursuant to subsection (a)(1)(D) shall organize, manage, and direct the competition, identify potential jurors, and appoint jurors, with the approval of the commission.

(c) STUDY.—The commission shall conduct a study into possible funding mechanisms for the development, construction, and maintenance of the museum identified in subsection (b).

(d) REPORT.—Not later than 18 months after the date of enactment of this Act, the commission shall submit a report, with recommendations, to the President and Congress. The report shall contain a detailed statement of the findings and conclusions of the commission with respect to the museum and possible funding mechanisms.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $300,000 to carry out this Act.•

By Mr. COHEN:

S. 1727. A bill to establish a National Maritime Heritage Program to make grants available for educational programs and the restoration of America's cultural resources for the purpose of preserving America's endangered maritime heritage; to the Committee on Commerce, Science, and Transportation.

NATIONAL MARITIME HERITAGE ACT OF 1993

• Mr. COHEN. Mr. President, I introduce the National Maritime Heritage Act of 1993, legislation which would help to preserve our Nation's disintegrating maritime heritage.

America's maritime industry and its heritage has been sorely neglected and is in a serious state of decline which threatens this Nation's national security. In 1988, when the Commission on Merchant Marine and Defense was asked to explore the condition of America's Maritime Industry, it was revealed that the U.S. merchant marine force is unable to meet our Nation's minimum defense requirements. The Commission concluded that the state of U.S. maritime affairs poses, and I quote, a "clear and growing danger to the national security in the deteriorating conditions of America's maritime industries." In response to these findings, the Commission warned that, "unless decisive action is taken to reverse this downward trend, by the year 2000, the number of ships will be reduced by one-half to 220 vessels; the proportion of the U.S. ocean trade carried in U.S. vessels will drop from approximately 4 to 1 percent; the number of merchant fleet shipboard billets and merchant seamen will be about one-half their current size, and the shipyard industrial base will continue to shrink at an alarming rate."

The United States is an island Nation. The continued economic health of our Nation is inextricably linked to a healthy U.S. merchant marine. Sadly, we have neglected the maritime industry and its heritage. New policies are required to restore and expand our Nation's merchant fleet. A firm commitment by the men and women in this chamber must underpin the effort to rebuild the American merchant marine fleet.

The National Maritime Heritage Act of 1993 would establish a National Maritime Trust in order to provide for the preservation of U.S. maritime heritage through a competitive grant program within the U.S. Department of Transportation that will be administered by the National Maritime Trust, a charitable, educational, and nonprofit corporation. The structures created by this legislation will act as an umbrella organization bringing together Federal, State, local and non-profit groups in an effort to coordinate a national initiative to preserve our most important maritime properties and educate Americans about the significance of our maritime industry and its heritage. Grants will be made available for projects of national, regional, and local historic significance to ensure the preservation of America's maritime heritage. In addition, this measure would establish an advisory committee composed of knowledgeable maritime specialists to oversee the grants program, review grant proposals and advise the Secretary of Transportation as appropriate.

The National Maritime Heritage Act of 1993 would establish a cohesive funding mechanism to address the deteriorating state of our national maritime industry and heritage without adding to the deficit. By retiring obsolete National Defense Reserve Fleet vessels, as recommended by the GAO, which are currently maintained at great expense by the Maritime Administration, and requiring that approved projects receive matching State and private funding, as appropriate, the U.S. Government will actually save money. Furthermore, it is my belief that a modest investment in the preservation of our maritime heritage now will serve to avert the need for large expenditures for the repair of rapidly deteriorating maritime properties in the future.

This measure would benefit virtually every State in the Nation, every American as well as Americans of subsequent generations, create much-needed jobs, help to preserve traditional maritime related skills and would help to educate the public, particularly our young people, as to the vital importance of the maritime industry and its venerable heritage.

It is my view that there is a link between the lack of awareness of maritime affairs on the part of Americans and the deterioration of the maritime industry and its heritage. By taking this important step toward educating Americans about maritime affairs and bringing a clear focus to the importance of maritime heritage, we may create an environment where the maritime industry may flourish.

It is for these reasons, Mr. President, that I strongly urge my colleagues to support this important piece of legislation.

Mr. President, I ask unanimous consent that the text of the bill and additional material be printed in the RECORD.

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

S. 1727

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Maritime Heritage Act of 1993".

SEC. 2. FINDINGS.

Congress finds and declares that—

(1) the United States is a maritime nation with rich maritime history, and it is desirable to foster in the American public a greater awareness and appreciation of the role of maritime endeavors in our Nation's history and culture;

(2) the maritime historical and cultural foundations of the Nation should be preserved as part of our community life and development;

(3) national, State, and local groups have been working independently to preserve the maritime heritage of the United States;

(4) historic resources significant to the Nation's maritime heritage are being lost or substantially altered, often inadvertently, with increasing frequency;

(5) the preservation of this irreplaceable maritime heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, and economic benefits will be maintained and enriched for future generations of Americans;

(6) in the face of ever-increasing development, the present governmental and nongovernmental historic preservation programs and activities are inadequate to ensure future generations a genuine opportunity to appreciate and enjoy the rich maritime heritage of our Nation;

(7) a coordinated national program is needed to immediately redress the adverse consequences of a period of indifference during which the maritime heritage of the United States has become endangered and to ensure the future preservation of the Nation's maritime heritage;

(8) a national maritime heritage policy would greatly increase public awareness of the educational, recreational, and preservation values of maritime heritage; and

(9) the creation of a National Maritime Trust for Historic Preservation in the United States would greatly enhance maritime preservation.

SEC. 3. NATIONAL MARITIME HERITAGE POLICY.

It shall be the policy of the Federal Government in partnership with the States and local governments and private organizations and individuals to—

(1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our historic maritime resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;

(2) provide leadership in the preservation of the historic maritime resources of the United States;

(3) contribute to the preservation of historic maritime resources and give maximum encouragement to organizations and individuals undertaking preservation by private means; and

(4) assist State and local governments to expand and accelerate their maritime historic preservation programs and activities.

SEC. 4. NATIONAL MARITIME TRUST.

(a) CREATION.—To further the policy enunciated in this Act to facilitate public participation in the preservation of maritime sites, buildings, and objects of significance or interest, and to further the education of the American public about the importance of our maritime heritage, there is hereby created a charitable, educational, and nonprofit corporation, to be known as the National Maritime Trust.

(b) PURPOSE.—The purposes of the National Maritime Trust shall be to—

(1) receive donations of real property and objects significant in American maritime history and culture;

(3) to preserve and administer them for public benefits;

(3) to accept, hold, and administer gifts of money, securities, or other property of whatsoever character for the purpose of carrying out a maritime preservation and education program; and

(4) to execute other functions as are vested in it by this Act.

(c) PRINCIPAL OFFICE.—The National Maritime Trust shall have its principal office in the District of Columbia and shall be deemed, for purposes of venue in civil actions, to be an inhabitant and resident thereof. The National Maritime Trust may establish offices in other places as it may deem necessary or appropriate in the conduct of its business.

(d) ADMINISTRATION OF NATIONAL TRUST.—

(1) COMPOSITION OF BOARD OF TRUSTEES.—

(A) The affairs of the National Maritime Trust shall be under administration of a board composed as follows: the Secretary of Transportation, the Secretary of Commerce, and the Secretary of the Navy, ex officio; and not less than six general trustees who shall be citizens of the United States (one of whom shall be a State Historic Preservation officer whose state has an agreement with the Secretary under section 5 of the Act), to be chosen as hereinafter provided.

(B) The Secretary of Transportation, the Secretary of Commerce, and the Secretary of the Navy, when it appears desirable in the interest of the conduct of the business of the board and to the extent as they deem it advisable, may, by written notice to the National Maritime Trust, designate any officer of their respective departments to act for them in the discharge of their duties as a member of the board of trustees.

(C) The number of general trustees shall be—

(i) fixed by the Board of Trustees of the National Maritime Trust;

(ii) chosen by the members of the National Maritime Trust from its members at any regular meeting of the National Maritime Trust; and

(iii) appointed by the Secretary of Transportation.

(2) TERMS OF OFFICE.—the respective terms of office of the general trustees shall be as prescribed by the said board of trustees but in no case shall exceed a period of five years from the date of election. A successor to a general trustee shall be chosen in the same manner and shall have a term expiring five years from the date of the expiration of the term for which the trustees predecessor was chosen, except that a successor chosen to fill a vacancy occurring prior to the expiration of such term shall be chosen only for the remainder of that term. The chairman of the board of trustees shall be elected by a majority vote of the member of the board.

(3) COMPENSATION AND EXPENSES.—No compensation shall be paid to the members of the board of trustees for their services as such members, but they shall be reimbursed for travel and actual expenses necessary incurred by them in attending board meetings and performing other official duties on behalf of the National Maritime Trust at the direction of the board.

(e) POWERS AND DUTIES OF NATIONAL MARITIME TRUST.—To the extent necessary to enable it to carry out the functions vested in it by this Act, the National Maritime Trust shall have the following general powers:

(1) To have succession until dissolved by Act of Congress, in which event title to the properties of the National Maritime Trust, both real and personal, shall, insofar as consistent with existing contractual obligations and subject to all other legally enforceable claims or demands by or against the National Maritime Trust, at the discretion of the Secretary of the Interior, pass to and become vested in the United States of America;

(2) To sue and be sued in its corporate name;

(3) To adopt, alter, and use a corporate seal which shall be judicially noticed;

(4) To adopt a constitution and to make such bylaws, rules, and regulations, not inconsistent with the laws of the United States or of any State, as it deems necessary for the administration of its functions under this Act, including among other matter, bylaws, rules, and regulations governing visitation to maritime historic properties, administration of corporate funds, and the organization and procedure of the board of trustees;

(5) To accept, hold, and administer gifts and bequests of money, securities, or other personal property of whatsoever character, absolutely or in trust, for the purposes for which the National Maritime Trust is created. Unless otherwise restricted by the terms of the gift or bequest, the National Maritime Trust is authorized to sell, exchange, or otherwise dispose of and to invest or reinvest in such investments as it may determine from time to time the moneys, securities, or other property given or bequeathed to it. The principal of such corporate funds, together with the income therefrom and all other revenues received by it from any source whatsoever, shall be placed in such depositories as the National Maritime Trust shall determine and shall be subject to expenditures by the National Maritime Trust for its corporate purposes;

(6) To acquire by gift, devise, purchase, or otherwise, absolutely or on trust, and to hold and, unless otherwise restricted by the terms of the gift or devise, to encumber, convey, or otherwise dispose of, any real property, or any estate or interest therein (except property within the exterior boundaries of national parks and national monuments), as may be necessary and proper in carrying into effect the purposes of the National Maritime Trust;

(7) To contract and make cooperative agreements with Federal, State, or municipal departments or agencies, corporations, associations, or individuals, under such terms and conditions as it deems advisable, respecting the protection, preservation, maintenance, or operation of any maritime historic site, building, object or other property used in connection with-them for public use, regardless of whether the National Maritime Trust has acquired title to the properties, or any interest therein;

(8) To enter into contracts generally and to execute all instruments necessary or appropriate to carry out its corporate purposes, which instruments shall include such concession contracts, leases, or permits for the use of lands, buildings, or other property deemed desirable either to accommodate the public or to facilitate administration;

(9) To appoint and prescribe the duties of such officers, agents, and employees as may be necessary to carry out its functions and to fix and pay such compensation to them for their services as the National Maritime Trust may determine; and

(10) Generally to do any and all lawful acts necessary or appropriate to carry out the purposes for which the National Maritime Trust is created.

SEC. 5. NATIONAL HERITAGE GRANTS PROGRAM.

(a) Establishment.—

(1) There is established within the Department of Transportation a National Maritime Heritage Grants Program to foster in the American public a greater awareness and appreciation of the role of maritime endeavors in our Nation's history and culture.

(2) Within ninety days after the date of enactment of this Act, the Secretary may enter into a cooperative agreement with the National Maritime Trust for assistance in the administration of the grants program.

(3) The Secretary shall administer a program of matching grants-in-aid to carry out the purpose of this Act.

(4)(A) In addition to the programs under paragraph (3) of this subsection, the Secretary may administer a program of direct grants for the preservation of maritime resources. Funds to support this direct grants program annually shall not exceed 10 percent of the amount derived under section 6 of this Act.

(B) These grants may be made by the Secretary—

(i) for the preservation of national maritime historic resources which are threatened with demolition or impairment and for the preservation of maritime historic resources of significance;

(ii) for maritime demonstration projects which will provide information concerning professional methods and techniques having application to maritime historic resources;

(iii) for the training and development of skilled labor in trades and crafts, and in analysis, marine survey, and curation, relating to maritime historic preservation; and

(iv) for educational programs to increase the awareness by the American public of our maritime heritage.

(b) GRANTS PROCESS.—

(1) The Secretary shall publish annually a grants solicitation, together with grant priorities and other relevant information, in the Federal Register and otherwise as the Secretary deems appropriate.

(2) Each fiscal year, the Secretary, acting through the National Maritime Trust, shall receive and process applications for grants under the regulations promulgated pursuant to section 11 of this Act.

(c) NATIONAL MARITIME TRUST RESPONSIBILITIES.—Under the cooperative agreement executed under section (a) of this section, the National Maritime Trust shall be responsible for administration of the grants program, including—

(1) publicizing the program to prospective grantees in accordance with the regulations promulgated by the Secretary;

(2) answering inquiries from the public, including providing information on the program as requested;

(3) distributing grant applications;

(4) collecting proposals and ensuring their completeness;

(5) forwarding the proposals to the Committee for review;

(6) transmitting the recommendations of the Committee to the Secretary;

(7) keeping records of all grant awards and expenditures of funds;

(8) monitoring progress of grants;

(9) providing progress reports to the Secretary as requested;

(10) delegating responsibility of administering a project to the appropriate state Historic Preservation officer for the State in which the project or program is principally located to the maximum extent possible consistent with the purposes of this Act; and

(11) any other responsibilities that the Secretary deems appropriate.

(d) REPORT TO CONGRESS.—The National Maritime Trust shall submit an annual report on the program to the Secretary for transmittal to Congress. The report shall include—

(1) a description of each project funded;

(2) the results or accomplishments of each project;

(3) a detailed review of the National Maritime Trust's operations, activities and financial condition;

(4) recommended priorities for achieving the purposes of the Act under section 5(c)(4); and

(5) the audit report required under section 8.

(e) CRITERIA FOR GRANT ELIGIBILITY.—To qualify for a grant under this section, a grantee must—

(1) demonstrate that the project for which funding is being sought—

(A) has the potential for reaching a broad audience with an effective educational program based on American maritime history, technology, or the role of maritime endeavors in American culture; and

(B) has the ability to gamer support for non-Federal sources;

(2) match the grant award with non-Federal assets, including cash, as appropriate;

(3) demonstrate organizational viability;

(4) exhibit the existence of approved business and operation plans;

(5) maintain records as may be reasonably necessary to fully disclose—

(A) the amount and the disposition of the proceeds of the grant;

(B) the total cost of the project for which the grant is given or used;

(C) the amount and nature of that portion of the cost of the project supplied by other sources; and

(D) other records as will facilitate an effective audit required in regulation by the Secretary;

(6) provide access for the purposes of any required audit and examination of any books, documents, papers, and records of the recipient under this Act;

(7) be principally located in a state whose state Historic Preservation officer enters into an agreement with the Secretary regarding the delegation of the administration of the project or program under this Act; and

(8) be a unit of Federal, State, or local government, or a nonprofit organization that has applied for, or has been granted, 501(c)(3) status—

(f) GRANTS.—Grants will be available for projects of—

(1) national, regional, and local maritime historic significance, including restoration of vessels, small craft, lighthouses, and other sites, structures, or objects listed on the National Register of Historic Places; and

(2) significant educational or cultural value, including museums, fishing villages, maritime educational waterborne-experience programs, construction or purchase of educational facilities, structures or vessels, and other projects that the Secretary deems appropriate.

(g) TERMS AND CONDITIONS.—

(1) No part of any grant made under this section may be used to compensate any person intervening in any proceeding under this act.

(2) An application must be submitted in accordance with regulations and procedures prescribed by the Secretary;

(3) No grant may be awarded—

(A) unless the grantee has agreed to assume, after completion of the project for which the grant is awarded, the total cost of the continued maintenance, repair, and administration of the property in a manner satisfactory to the Secretary; and

(B) until the grantee has complied with such further terms and conditions as the Secretary may deem necessary or advisable.

(4) Except as permitted by other law, the State share of the costs referred to in paragraph (3) of this subsection shall be contributed by non-Federal sources.

(5) Notwithstanding any other law, no grant made pursuant to this Act shall be treated as taxable income for purposes of the Internal Revenue Code of 1986.

(6) The secretary shall make funding available as soon as practicable after execution of a grant agreement through the State Historic Preservation Officer for the State in which the project or program is principally located.

(7) The State Historic Preservation Officer shall administer grants for projects and programs as provided by this Act.

(8) The total administrative costs, direct and indirect, charged for carrying out projects and programs may not exceed 25 percent of the aggregate costs.

(9) The amount of funds expended on Federal projects shall not exceed 20 percent of the amount appropriated annually under this Act for the fund.

(h) REVIEW OF PROPOSALS.—

(1) COMMITTEE RECOMMENDATIONS.—The committee established under section 7 of this Act shall review the grant proposals and make recommendations to the Secretary as to which projects should receive funding.

(2) SECRETARIAL APPROVAL.—Within one hundred and twenty days of the deadline for submission, the Secretary shall approve applications for grants under this subsection recommended by the committee if the Secretary is satisfied that—

(A) the applicant has the requisite technical and financial capability to carry out the project; and

(B) the project adequately implements the objectives of the Act and will comply with subsection (g) of this section.

(i) WAIVER.—The Secretary may waive the requirements of this section for any grant under this Act.

SEC. 6. CONVEYANCE OF NDRF VESSEL FOR SCRAPPING BY NATIONAL MARITIME TRUST

(a) VESSEL CONVEYANCE AUTHORITY.—

(1) IN GENERAL.—Notwithstanding any other law, the Secretary may convey to the National Maritime Trust, without consideration, all right, title, and interest of the United States Government in each vessel which—

(A) is in the National Defense Reserve Fleet on the date of the enactment of this section;

(B) has no usefulness to the Government; and

(C) is scheduled to be scrapped.

(2) CONDITION.—As a condition of conveying a vessel to the National Maritime Trust pursuant to this section, the Secretary shall require that the National Maritime Trust enter into an agreement with the Secretary which requires that the National Maritime Trust—

(A) sell the vessel for scrap purposes;

(B) use the proceeds of that scrapping for expenses directly related to the purposes of this Act; and

(C) comply with any other conditions the Secretary considers appropriate.

(b) DELIVERY.—The Secretary shall deliver a vessel conveyed under this section to the National Maritime Trust—

(1) at the place where the vessel is located on the date of the approval of the conveyance;

(2) in its condition on that date; and

(3) without cost to the Government.

(c) MINIMUM VESSEL SALE.—The National Maritime Trust shall sell a sufficient quantity of vessels annually to ensure that the amount derived is not less than $5,000,000 for each fiscal year beginning in fiscal year 1994 and ending in fiscal year 2000, and amounts as may be required thereafter.

(d) TREATMENT OF AMOUNTS AVAILABLE TO THE TRUST.—Amounts available to, or used by, the National Maritime Trust pursuant to this subsection shall not be considered in any determination of the amounts available to the Department of the Interior.

(e) ADMINISTRATIVE EXPENDITURES.—

(1) MINIMUM AMOUNT.—Not more than 15 percent or $250,000, whichever is greater, of the amount derived under this section in any fiscal year may be used for administering the program under the cooperative agreement executed under section 5 of this Act.

(2) ALLOCATION.—Of the amount used for administering the program in any fiscal year, two thirds shall be allocated to the National Maritime Trust and one-third allocated to the Secretary.

(f) DISBURSEMENT CRITERIA.—In expending the funds derived under this section, the Secretary shall give due consideration to the following factors:

(1) the national significance of a project;

(2) its maritime historical and educational value to the community;

(3) the imminence of its destruction or loss; and

(4) the expressed intentions of the donor.

SEC. 7. MARITIME HERITAGE PROGRAM GRANTS COMMITTEE.

(a) ESTABLISHMENT.—There is established a Maritime Heritage Grants Committee.

(b) MEMBERSHIP.—Within one hundred and twenty days of enactment of this Act, and biennially thereafter, the Secretary shall appoint the members of the Committee. The Committee shall consist of eleven members representing various sectors of the maritime community who are knowledgeable and experienced in maritime heritage and preservation, and showing regional geographic balance, as follows:

(1) one representative from the field of small craft preservation;

(2) one representative from the field of large vessel preservation;

(3) one representative from the field of sail training;

(4) one representative from the field of preservation architecture;

(5) one representative from the field of underwater archeology;

(6) one representative from the field of lighthouse preservation;

(7) one representative from the field of maritime education;

(8) one representative having a military naval history background;

(9) one representative from a maritime museum or maritime historical society;

(10) one representative who is a State Historic Preservation Officer whose state has an agreement with the Secretary under section 5 of this Act; and

(11) one representative from the general public.

(e) DUTIES OF THE COMMITTEE.—The duties of the Committee include—

(1) providing oversight of the grants program on a continuing basis;

(2) reviewing grant proposals;

(3) making funding recommendations to the Secretary;

(4) identifying and advising the Secretary regarding priorities for achieving the purposes of the Act;

(5) reviewing the National Maritime Trust's annual grants report to the Secretary; and

(6) performing any other duties as the Secretary deems appropriate.

(d) REPORT.—The Committee shall submit annually a comprehensive report of its activities and the results of its studies to the Secretary and Congress and shall from time to time submit additional and special reports as it deems advisable. Each report shall propose legislative enactments and other actions as, in the judgment of the Committee, are necessary and appropriate to carry out its recommendations and shall provide the Committee's assessment of current and emerging problems in the field of maritime historic preservation and an evaluation of the effectiveness of the programs of Federal agencies, State and local governments, and the private sector in carrying out the purposes of this Act.

(e) QUORUM.—Seven members of the Committee shall constitute a quorum.

(f) APPOINTMENTS PROCESS.—

(1) DUTIES OF THE SECRETARY.—The Secretary shall—

(A) publicize annually in the Federal Register a call for nominations with a statement that the applications for nomination shall be submitted to the National Maritime Trust;

(B) make the appointments to the Committee giving due consideration to the recommendations of the National Maritime Trust; and

(C) designate a Chairman and a Vice Chairman, from the members appointed under this section. The Vice Chairman may act in place of the Chairman during the absence or disability of the Chairman or when the office is vacant.

(2) DUTIES OF THE NATIONAL MARITIME TRUST.—The National Maritime Trust shall—

(A) widely publicize the call for nominations in its newsletter and by any other appropriate means;

(B) collect nominations and categorize the nominations as set forth in subsection (b); and

(C) submit the nominations to the Secretary with recommendations as to appointments by category as set forth in subsection (b).

(3) TERMS OF APPOINTMENTS.—The members of the Committee shall be appointed for staggered terms of not more than three years. If a vacancy occurs, the Secretary shall appoint a replacement for the balance of the vacated term within sixty days.

(g) GOVERNMENT REPRESENTATIVES.—There shall be nonvoting government representatives appointed to serve as advisors to the Committee as follows—

(1) one representative each from the Department of Transportation, Department of Navy, and the National Oceanographic and Atmospheric Administration; and

(2) at least one representative from the National Maritime Initiative of the National Park Service;

(3) other representatives from interested government agencies as the Secretary deems appropriate.

(h) COMMITTEE INDEPENDENCE.—No officer or agency of the United States shall have any authority to require the Committee to submit its legislative recommendations, or testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of recommendations, testimony, or comments to Congress. In instances in which the Committee voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Committee shall include a description of those actions in its legislative recommendations, testimony, or comments on legislation that it transmits to Congress.

(i) SECRETARY ASSISTANCE.—To assist the Committee in discharging its responsibilities under this Act, the Secretary at the request of the Chairman, shall provide a report to the Committee detailing the significance of any maritime historic resource, describing the effects of any proposed undertaking on the affected resource, and recommending measures to avoid, minimize, or mitigate adverse effects.

(J) COMPENSATION.—A member of the Committee who is not an officer or employee of the United States shall serve without pay, and a member of the Committee who is an

officer or employee of the United States shall receive no additional pay, on account of the member's service on the Committee. While away from home or regular place of business in the performance of service for the Committee, a member of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as a person employed intermittently in the Government service is allowed expenses under section 5703 of title 5, United States Code.

(k) FACA EXEMPTION.—The Committee is exempt from the provisions of the Federal Advisory Committee Act (86 Stat. 770).

SEC. 8. INTERIM PROJECTS.

(a) DETERMINATION BY COMMITTEE.—Within six months of the date of enactment of this Act, the Committee, in consultation with the Secretary, shall determine if any projects exist that meet the criteria under subsection (d) of this section.

(b) DESIGNATION BY SECRETARY.—The Secretary shall designate those projects determined qualified under subsection (a) of this section to receive a grant prior to issuance of the implementing regulations.

(c) ISSUANCE OF GRANTS.—Upon scrapping of a vessel under section 6 of this Act, the Secretary shall disburse funds derived under that section to those projects designated in subsection (b) of this section in the amounts approved in the grant for each project.

(d) INTERIM CRITERIA.—To qualify for an interim grant, a grantee must meet the criteria under section 5(e) of this Act and—

(1) be a 501(c)(3) organization;

(2) demonstrate that the project needs accelerated consideration to contribute to a significant national event relating to the maritime heritage of the United States;

(3) establish that one-half of the matching funds are in cash;

(4) demonstrate that the project for which funding is sought is national in scope and educational in nature; and

(5) show that the proposed project is supported by a broadbased membership program or group of donors.

SEC. 9. AUDITS OF ACCOUNTS.

(a) INDEPENDENT AUDIT.—The accounts of the National Maritime Trust shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States. The audits shall be conducted at a place or places where the accounts of the organization are nominally kept. All books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Alliance and necessary to facilitate the audits, and full facilities for verifying transactions with any assets held by depositories, fiscal agents, and custodians, shall be afforded to that person or persons. The report of this independent audit shall be included in the report to Congress required by section 3 of this Act.

(b) GENERAL ACCOUNTING OFFICE AUDIT.—The financial transactions of the National Maritime Trust for each fiscal year may be audited by the General Accounting Office in accordance with the principles and procedures and under rules and regulations as may be prescribed by the Comptroller General of the United States. Any audit shall be conducted at the place or places where accounts of the organization are normally kept. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, and files, and all other papers, things, or property belonging to or in use by the Trust, pertaining to its financial transactions and necessary to facilitate the audit, and shall be afforded full facilities for verifying transactions with any assets held by depositories, fiscal agents, and custodians. All books, accounts, records, reports, files, papers, and property of the organization shall remain in the possession and custody of the organization.

SEC. 10. DEFINITIONS.

(a) "Committee" means the Maritime Heritage Grants Committee established under section 5.

(b) "Secretary" means the Secretary of Transportation.

SEC. 11. REGULATIONS.

The Secretary, after consultation with the maritime community, shall promulgate regulations within one year of the date of enactment of this Act to establish terms of office for committee membership, granting priorities, the method of solicitation and review of grant proposals, criteria for review of grant proposals, administrative requirements, reporting and record keeping requirements, delegation of project and program administration to state Historic Preservation officers, and any other requirements as the Secretary deems appropriate.

SUMMARY—NATIONAL MARITIME HERITAGE ACT OF 1993

Section 1. Short Title.—"National Maritime Heritage Act of 1993".

Section 2. Findings.—Illustrates the need to support maritime projects to ensure the future preservation of the national maritime heritage of the United States.

Section 3. National Maritime Heritage Policy.—States a national policy to foster maritime heritage through a partnership with Federal, state and local governments, including State Historic Preservation Officers, and private entities.

Section 4. National Maritime Trust.—Creates a charitable, educational and non-profit corporation with a board of trustees composed of government officials and private citizens to administer this program.

Section 5. National Maritime Heritage Grants Program.—Establishes a competitive grants program within the Department of Transportation that will be administered by the National Maritime Trust. Grants will be available for projects of national, regional and local historic significance to ensure the preservation of America's maritime heritage.

Section 6. Conveyance of NDRF Vessels for Scrapping by National Maritime Trust.—Authorizes the disposal through transfer of National Defense Reserve Fleet vessels to the National Maritime Trust for scrapping to provide funding of $5,000,000 for each of the fiscal years 1994 to 2000 to support the grants program.

Section 7. Maritime Heritage Program Advisory Committee.—Establishes an advisory committee composed of eleven members of the maritime community with knowledge and experience in maritime heritage and preservation to oversee the grants program, review grant proposals and advise the Secretary as appropriate.

Section 8. Interim Projects.—Authorizes grants prior to issuance of regulations for those projects that demonstrate the need for immediate funding in order to contribute to a significant national event relating to the maritime heritage of the United States.

Section 9. Audits of Accounts.—Requires the National Maritime Trust to have its books audited annually by an independent auditor and subjects the Alliance to an audit by the General Accounting Office.

Section 10. Definitions.—Defines various terms in the Act.

Section 11. Regulations.—Requires the Secretary of Transportation to promulgate regulations implementing the grants program.

NATIONAL MARITIME HERITAGE ACT OF 1993—QUESTIONS AND ANSWERS

1. Why is there a need for maritime preservation funding?

The United States is a maritime nation, founded on wealth harvested from and carried upon the water. Our maritime heritage is an essential aspect of this country's history. The preservation of unique maritime resources and the communication of their value to the public has been sorely neglected. Many of our irreplaceable vessels, lighthouses, and other structures are endangered to the point of total loss. Only the heroic effort of a few individuals and groups has preserved the few resources that still exist.

The National Maritime Heritage Act of 1993 will coordinate grants to be made available for educational programs and the restoration of America's cultural resources for the purpose of preserving our endangered maritime heritage.

2. Why does the federal government have a responsibility to provide funding?

The federal government has a responsibility to raise public awareness of history and the importance of remaining cultural resources. That awareness, in turn, creates a sense of responsibility and stewardship to protect and preserve important properties in local communities. Federal preservation efforts provide the critical leadership and example needed to empower local people to do their part to preserve these valuable resources.

Maritime properties are subject to a harsh environment for preservation—ships and waterside structures deteriorate at a rapid rate. Federal assistance now may prevent a much greater monetary requirement in the future if we are to save the remnants of our maritime heritage.

3. What part of the federal preservation efforts is spent on maritime heritage projects?

The overwhelming majority of federal attention and funding has been focused on land-based preservation. Tens of millions of federal dollars every year go into land-based preservation through the National Trust for Historic Preservation, the National Park Service, and the state historic preservation offices. Maritime heritage has received little more than ten million dollars in federal funding in all its history.

4. What maritime cultural resources need assistance? Have specific maritime preservation priorities been set?

The National maritime Initiative of the National Park Service has identified and inventoried extant maritime historical resources across the United States including large vessels, small craft, lighthouses, shipwrecks and underwater sights, and the shoreside buildings that supported trade, fishing, and military activities afloat. The National Register of Historic Places and the National Historic Landmark Survey have evaluated many of these properties using standard objective criteria to determine the integrity and level of significance, be it local, state, or national. The History Division and other NPS cultural resources divisions have provided preservation assistance to many needy organizations and individuals and provided matching funding for a limited number of

properties when money was available. This program of inventory, evaluation, and technical assistance provides the requisite information for setting funding priorities.

5. Why is there a need for a special advisory committee?

A coordinated national program is needed to immediately redress the adverse consequences of a period of indifference during which the maritime heritage of the United States has become endangered. The required expertise to effectively determine which maritime heritage projects meet the highest standards—and therefore deserve to receive federal funding—resides with peers in the field. The committee will consist of individuals who are knowledgeable and experienced in the various aspects of maritime heritage and preservation, and show regional geographic representation to produce a coordinated grants program which is fair and balanced.

6. What is the basis for the criteria for selection of advisory committee members?

The proposed advisory committee would contain individuals knowledgeable in the field of maritime heritage in general and in many cases individuals who possess expertise with respect to the various categories of maritime heritage that are to be reviewed. Professional qualification and lack of conflict of interest with potential projects to be reviewed will be the primary criteria for a candidates selection to serve on the committee.

7. Are there any precedents for the establishment of a funding mechanism such as that contemplated by the NMHA of '93? For this type of grants program with an outside advisory committee?

The National Trust for Historic Preservation is chartered by Congress and receives a grant appropriation every year. The trust has consistently made sub-grants every year to organizations in the field of historic preservation. This is also true of the state historic preservation offices.

In 1979, the Trust administered grants with the Department of Interior for one year of funding of $5 million to maritime programs.

The Saltenstall and John Kennedy Grants Program within the Department of Commerce makes grants for fisheries development annually in the amount of $5 to $6 million.

8. Why is there a need for an interim program of grants before the actual program can be established?

Certain meritorious maritime heritage projects need accelerated consideration so that they may contribute to a significant national event relating to maritime heritage or are an endangered structure or vessel in need of immediate attention. Because they are on short timeliness they require support before the formal grants program can be set up and be in a position to review applications. Examples may be a crisis need for stabilization of an endangered structure or vessel; a project or event which has a definitive deadline; or a project which is underway and requires support to be able to continue to make progress toward a timely goal. The bill takes into account that such projects should meet the highest standards to be funded.

9. Why should the National Defense Reserve Fleet be used to fund maritime preservation and education?

Our maritime heritage endangered resources are in desperate need. If we don't act now many resources will be lost, many projects will not succeed and what does survive will require much greater sums of support later on. What better way to fund this important need than through merchant marine vessels which no longer have any useful function. The National Defense Reserve Fleet was created to fill a need resulting from our steadily diminishing national merchant marine. This decline in the merchant marine is partly a result of minimal maritime heritage education. The projects funded through the National Maritime Heritage Act of 1993 will serve to increase public awareness which ultimately can beneficially impact the status of the merchant marine. Using funds from the scrapping of obsolete vessels from the NDRF also provides the needed support without having to allocate "new" funds (which add to the federal deficit).

10. Who benefits from this type of program?

Everyone benefits! The American people of this and subsequent generations will have their culture enriched and preserved by increasing their awareness of and access to our maritime heritage. This relatively modest sum of money can have a major impact in creating jobs and work throughout the country through the funding of maritime heritage projects. These projects will also serve to perpetuate many of the traditional skills we are currently in danger of losing.

11. Would the MARAD programs such as the merchant marine academies go unfunded if the proceeds of the NDRF vessels went to maritime heritage projects?

No. Merchant marine academies have support from the Congressional appropriations to MARAD which are separate from any funding provided by vessel scrapping. In addition, this proposed legislation does not interfere with the need of the academies to use proceeds from NDRF vessel scrapping to purchase or refurbish their training vessels. The National Maritime Heritage Act of 1993 specifically provides that if there is another designated need for a NDRF ship it will not enter into the NMH act scrapping program. The intention of this bill is to share the proceeds from the scrapping of these obsolete vessels with the maritime community so that everyone benefits.

Clearly there is a need for an improved merchant marine for commerce and for our national defense. By supporting the maritime heritage programs we can improve public awareness and appreciation of the importance of maritime endeavors not only in our history but also in today's economy. An informed public is the key to strengthening the nation's merchant marine, maritime commerce and culture.

12. Who is the National Maritime Alliance, and why should they be the administrators of this grant program?

The National Maritime Alliance is a nonprofit organization, established in the State of Delaware with an administrative office in the State of Maine. It is an association established to advance the shared interests of organizations dedicated to preservation of any aspect of American maritime heritage, and membership is open to such organizations and individuals. Several of the primary goals of the alliance are to increase public awareness of the importance of maritime heritage; to articulate a common philosophy for the preservation of maritime artifacts, skills and values; to promote adherence to established standards of performance in maritime preservation activities; and provide national leadership for maritime heritage issues. The board of directors for the Alliance represents top leaders in maritime preservation, and the Alliance serves as a central resource for the entire field. As such, it is the only appropriate body for administering such a program.●

By Mr. BRYAN (for himself and Mr. DOMENICI):

S. 1728. A bill to provide regulatory capital guidelines for treatment of real estate assets sold with limited recourse by depository institutions; to the Committee on Banking, Housing, and Urban Affairs.

THE COMMERCIAL MORTGAGE CAPITAL AVAILABILITY ACT OF 1993

Mr. BRYAN. Mr. President, I am introducing today legislation with Senator DOMENICI that would remove impediments to the formation of a viable secondary market for commercial mortgages. I believe this legislation will foster a much needed resurgence in the commercial real estate market which will have positive consequences throughout our economy.

I know firsthand of the problems commercial real estate firms are experiencing getting financing. Earlier this year, the Banking, Housing, and Urban Affairs Committee held hearings in Nevada on the credit crunch facing the business community. We heard testimony from a number of extremely reputable firms that were having their lines of credit substantially curtailed or having difficulties rolling over loans.

The difficulty these businesses experienced getting financing were not a factor of poor economic conditions in Nevada. To the contrary, the Nevada economy has been relatively healthy. The credit crunch was more a consequence of changes going on in our State's financial institutions.

Without a doubt, our lending institutions curtailed their business lending in response to the perception that holding commercial mortgages was too risky. This legislation will address this problem by lessening the risk for lenders when they make commercial loans.

There are a number of recommendations to end this credit crunch. I believe the most immediate steps we could take would be to facilitate the growth in a secondary market for commercial loans.

Today, there is a fledgling secondary market for commercial real estate but is minuscule when compared to the secondary market for residential mortgages which numbers in the tens of billions of dollars. In fact, 53 percent of new mortgages in this country are successfully sold into a secondary market.

A viable secondary market for commercial mortgages is essential to provide liquidity and become the takeout vehicle that is currently missing from the market for construction lenders.

This legislation will also be of great benefit to the safety and soundness of our Nation's financial institutions. If we have learned nothing else from the savings and loan debacle, it is that when a financial institution becomes

overly concentrated in risky investments the U.S. taxpayers are in jeopardy.

This legislation would reduce this risk by allowing financial institutions to pass along commercial mortgages to the capital markets. This would spread the risk and foster stability by increasing the liquidity of these mortgages. Securities, by design, are a more liquid form of investment than direct investment in real estate, and the more liquid the assets held by a financial system, the more stable, secure, and flexible that system will be.

The thrust of this legislation is to remove a number of impediments to the development of a commercial secondary mortgage market. This legislation would broaden the Secondary Mortgage Market Enhancement Act [SMMEA] to apply to commercial mortgage securities, amend the Employment Retirement Income Security Act [ERISA] to include a class exemption for commercial mortgage securities from being considered prohibited transactions, and change the regulatory treatment—risk-based capital requirements—of subordinated commercial loans to avoid over-reserving.

The difficulties in the real estate industry resulting from various vulnerabilities in the commercial funding systems have aggravated this Nation's slow economic recovery. I believe by enacting this bill we will go a long way toward correcting this situation.

Mr. President, I ask unanimous consent that the text of the bill and a summary be printed in the RECORD.

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

S. 1728

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Commercial Mortgage Capital Availability Act of 1993".

SEC. 2. INSURED DEPOSITORY INSTITUTION CAPITAL REQUIREMENTS FOR TRANSFERS OF MORTGAGE LOANS.

(a) ACCOUNTING PRINCIPLES.—The accounting principles applicable to the transfer of a mortgage loan with recourse contained in reports or statements required to be filed with Federal banking agencies by a qualified insured depository institution shall be consistent with generally accepted accounting principles.

(b) CAPITAL AND RESERVE REQUIREMENTS.—With respect to the transfer of a mortgage loan with recourse that is a sale under generally accepted accounting principles, each qualified insured depository institution shall—

(1) establish and maintain a reserve equal to an amount sufficient to meet the reasonable estimated liability of the institution under the recourse arrangement; and

(2) treat as an asset (for purposes of applicable capital standards and other capital measures, including risk-based capital requirements) only the maximum amount at risk under the recourse arrangement.

(c) QUALIFIED INSTITUTIONS CRITERIA.—An insured depository institution is a qualified insured depository institution for purposes of this section if, without regard to the accounting principles or capital requirements referred to in subsections (a) and (b), the institution is—

(1) well capitalized; or

(2) with the approval, by regulation or order, of the appropriate Federal banking agency, adequately capitalized.

(d) AGGREGATE AMOUNT OF RECOURSE.—The total outstanding amount at risk with respect to transfers of mortgage loans under subsections (a) and (b) (together with the amount at risk under any provisions of law substantially similar to subsections (a) and (b)) shall not exceed—

(1) 15 percent of the risk-based capital of the institution; or

(2) such greater amount, as established by the appropriate Federal banking agency by regulation or order.

(e) INSTITUTIONS THAT CEASE TO BE QUALIFIED OR EXCEED AGGREGATE LIMITS.—If an insured depository institution ceases to be a qualified insured depository institution or exceeds the limits under subsection (d), this section shall remain applicable to any transfer of mortgage loans that occurred during the time that the institution was qualified and did not exceed such limit.

(f) PROMPT CORRECTIVE ACTION NOT AFFECTED.—The capital of an insured depository institution shall be computed without regard to this section in determining whether the institution is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized under section 38 of the Federal Deposit Insurance Act.

(g) REGULATIONS REQUIRED.—Not later than 180 days after the date of the enactment of this Act, each appropriate Federal banking agency shall promulgate final regulations implementing this section.

(h) ALTERNATIVE SYSTEM PERMITTED.—

(1) IN GENERAL.—This section shall not apply if, at the discretion of the appropriate Federal banking agency, the regulations of the agency provide that the aggregate amount of capital and reserves required with respect to the transfer of mortgage loans with recourse does not exceed the aggregate amount of capital and reserves that would be required under subsection (b).

(2) EXISTING TRANSACTIONS NOT AFFECTED.—Notwithstanding paragraph (1), this section shall remain in effect with respect to transfers of mortgage loans with recourse by qualified insured depository institutions occurring before the effective date of regulations referred to in paragraph (1).

(i) DEFINITIONS.—For purposes of this section—

(1) the term "adequately capitalized" has the same meaning as in section 28(b) of the Federal Deposit Insurance Act;

(2) the term "appropriate Federal banking agency" has the same meaning as in section 3 of the Federal Deposit Insurance Act;

(3) the term "capital standards" has the same meaning as in section 38(c) of the Federal Deposit Insurance Act;

(4) the term "Federal banking agencies" has the same meaning as in section 3 of the Federal Deposit Insurance Act;

(5) the term "insured depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act;

(6) the term "other capital measures" has the same meaning as in section 38(c) of the Federal Deposit Insurance Act;

(7) the term "recourse" has the meaning given to such term under generally accepted accounting principles;

(8) the term "mortgage loan" means—

(A) a note or certificate of interest or participation in a note (including any rights designed to assure servicing of, or the timeliness of receipt by the holders of such notes, certificates, or participation of amounts payable under such notes, certificates or participation) that is principally secured by an interest in real property; or

(B) a security (as such term is defined in section 8 of the Securities Exchange Act of 1934) that is secured by one or more notes described in subparagraph (A) or certificates of interest or participation in such notes (with or without recourse to issuers thereof) and that, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, on notes described in subparagraph (A) or certificates of interest or participation in such notes; and

(9) the term "well capitalized" has the same meaning as in section 38(b) of the Federal Deposit Insurance Act.

SEC. 3. AMENDMENT TO DEFINITION OF MORTGAGE RELATED SECURITY.

Section 3(a)(41)(A)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41)(A)(i)) is amended by inserting before the semicolon ", or on one or more parcels of real estate upon which is located one or more commercial structures".

SEC. 4. AUTHORITY TO EXEMPT COMMERCIAL MORTGAGE RELATED SECURITIES TRANSACTIONS FROM PROHIBITED TRANSACTION RULES.

The Secretary of Labor, in consultation with the Secretary of the Treasury, shall exempt, either unconditionally or on stated terms and conditions, transactions involving commercial mortgage related securities (as such term is defined in section 3(a)(41) of the Securities Exchange Act of 1934, as amended by section 3 of this Act) from—

(1) the restrictions of sections 406(a) and 407(a) of the Employee Retirement Income Security Act of 1974; and

(2) the taxes imposed under section 4975 of the Internal Revenue Code of 1986.

COMMERCIAL REAL ESTATE MORTGAGE SECURITIZATION: THE COMMERCIAL MORTGAGE CAPITAL AVAILABILITY ACT OF 1993

INTRODUCTION

As we enter the fourth quarter of 1993, there continues to be a lack of available commercial mortgage credit. Traditional commercial mortgage lenders have fled the commercial mortgage market, affecting both new construction and sales of existing properties. Mortgage loan renewals and refinancings, even by lenders with long-term credit relationships with borrowers, are increasingly difficult to secure.

When commercial mortgage credit is being advanced, it is under much more stringent terms than historical practice or current mortgage conditions should justify. Loan-to-value ratio limits are frequently below 60 percent, required debt coverage ratios are above 1.5, and spreads against 10-year Treasuries have increased to over 200 basis points, up from 60 basis points just 8 years ago. Furthermore, additional collateral or guarantees are frequently required, even on current, well-performing loans.

Additionally, federally-chartered commercial banks, burdened by poorly performing and illiquid commercial real estate portfolios, are constrained in their ability to modify or enhance their portfolio positions and, thus, are unable to originate new loans. Risk-based capital requirements, minimum equity standards, and the need to roll over maturing loans to avoid more REO has inhibited new lending activity over the last

several years. This constraint has resulted in a diminished ability by these institutions to meet small business and corporate client needs, and is further exacerbating the economic plight of local communities. Improving the balance sheets of financial institutions by enhancing the liquidity of commercial mortgage loans would free up credit for lending in small business and local communities. The gain here is enormous, since small businesses have such a large impact on jobs and job creation.

Enhancing securitization[1] procedures and the secondary market for commercial real estate loans would foster economic growth, create jobs and add to the financial stability of our lending institutions by increasing the flow of funds through capital markets and fostering liquidity. Securitization will not stimulate unnecessary new development activity. Indeed, it will contribute to the recovery of our commercial sector and help assure that the financial crisis experienced over the past several years, will not be repeated.

Although real estate markets in selected parts of the country have begun to exhibit signs of a possible recovery, instability and deeply depressed market values are the norm in most areas. The weakness in the commercial real estate sector has triggered devastating events that extend far beyond the development site. Thousands of businesses related to the real estate industry have failed, tens of thousands of workers have lost their jobs and numerous financial institutions have failed.

Many local economies have suffered considerably due to eroding tax bases caused by the fall of commercial real estate values. Communities have been forced to make up the difference in a variety of ways, including higher tax rates, layoffs and reduced services. Thus, the deterioration of commercial property values has cut deeply into revenues that could otherwise have been used to build new schools, repair bridges, hire police and firemen, or provide other important community services.

BACKGROUND

The commercial credit predicament can be best illustrated by the trend in commercial mortgage credit outstanding. Between 1990 and 1991, total commercial (excluding multifamily) mortgage debt outstanding dropped from $760.4 billion to $751.4 billion—the first drop since 1971. Over the decades since 1971, commercial credit outstanding had increased at an average annual rate of 11.7 percent. As of the third quarter of 1992, the total volume of outstanding commercial mortgage loans was $726.1 billion. As of the second quarter of 1993, total outstanding commercial mortgage debt—excluding multifamily—was just under $700 billion.

A direct parallel to the commercial mortgage market's credit dilemma can be found in the historical development of the residential secondary mortgage market. Comparable liquidity and funding problems plagued the residential mortgage markets in the 1970s and early 1980s. However, the timely development of an active secondary market for residential mortgages, including new forms of residential mortgage-backed securities, solved what otherwise could have been a serious capital shortage for housing as well as a liquidity crisis for the institutions holding residential loans.

Also, Freddie Mac and Fannie Mae provided a consistent flow of funds into residential mortgages, eliminating regional differences in the availability of mortgage capital. Since 1970, they have successfully created and maintained a secondary market for residential mortgage-backed securities. This market now represents 53 percent of the new origination market and 46 percent of residential mortgages outstanding.

It is noteworthy that despite the nation's persistent economic and financial problems over the past five years, one problem the country has not experienced is a lack of residential mortgage financing at market interest rates. This is largely attributable to the progress made in the trading and securitization of residential mortgage loans.

MULTIFAMILY SECURITIZATION

Financing for multifamily housing has also become competitive and more difficult to obtain. The convergence of several factors in the last few years, including changes in institutional lending due to FIRREA, repercussions from the Tax Reform Act of 1986, the constriction in Freddie Mac Multifamily programs, the repeated battle for congressional extension of the low-income housing tax credit, and reduced activity by FHA, have permanently altered the multifamily arena and has added to the frustrations of this nation's lower- and middle-income families in their efforts to obtain decent, affordable housing.

In the 1980s, thrifts and commercial banks were the primary source of financing to multifamily construction projects. In Fall, 1985, thrifts provided 53 percent of multifamily financing, dominating all other sources. By Fall, 1992, this market share fell to 36 percent and the traditional lending industry (thrifts and banks) continues to downsize its commercial real estate activity, primarily due to legislative and regulatory restraints. Stricter regulation after FIRREA has steered thrifts entirely away from commercial real estate (which includes multifamily) lending. Banks, the next logical source for financing, are constrained in their ability to make commercial loans also due to regulatory pressures. The struggle to meet risk-based capital requirements, contention with environmental liability, and the inability to connect existing loans to the capital marketplace has put acute pressure on banks' reserves and portfolio management.

Insurance companies are also being extremely cautious after some significant failures and with the impending threat of harsh treatment from the Investments of Insurers Model Act, proposed by the National Association of Insurance Commissioners, take-out commitments from insurance companies are likely to vanish altogether.

SECONDARY MARKET FOR LIQUIDITY AND TAKE-OUT SUPPORT

Worsening the liquidity in multifamily finance is the inability of traditional lenders to easily securitize and sell multifamily mortgages into an active secondary market. In the current market, the need to obtain financing for new originations and liquidate existing mortgage portfolios is a strong impetus for growth in multifamily mortgage-backed securities. However, the proportion of securitized multifamily loans is substantially smaller than securitized residential mortgages. Multifamily securitization, though increasing in market share, has not grown like the single-family product largely because multifamily mortgages have greater complexity and variation than residential mortgages.

However, the largest increase in market share of multifamily loans has been by mortgage securities. Their share grew from 3.3 percent in 1985 to 10.4 percent in 1992. Yet, the Resolution Trust Corporation (RTC) accounted for much of the increase and the RTC's securitization activity is supposed to be cut back tremendously in the coming year.

During the past two years, 12 multifamily issues totaling $4.5 billion have come to market. Although largely supported by RTC assets, this massive loan packaging has established the viability of securitization and has shown that this is an important technique for creating new loan funds for income-producing real estate.

THE COMMERCIAL MORTGAGE CAPITAL AVAILABILITY ACT OF 1993 IS THE SOLUTION

While many solutions to the commercial mortgage credit crunch have been proposed—turning to other forms of lending or the raising of equity capital—the best possible solution would be to enhance the liquidity of present mortgage products. Several conditions are necessary for liquidity of commercial mortgages to be enhanced. First, and foremost, there must be legislative and regulatory encouragement.

A viable secondary market for commercial mortgages is essential to provide liquidity and become the take-out vehicle that is currently missing from the market for construction lenders. The recent credit crunch for commercial real estate has pointed up the vulnerability of our financial institutions in dealing with the structural changes faced by the industry. Although there are a number of impediments to the development of a commercial secondary mortgage market, the benefits will be great to financial institutions who can more actively manage their portfolios and to borrowers who will not suffer periods of illiquidity in the market.

This reasoning is supported by almost everyone in the commercial real estate finance industry, and that is:

A broad-based secondary market for commercial mortgages would provide the appropriate forum in which commercial loans may be securitized and traded. The ability to securitize and trade loans in a secondary market, in turn, creates liquidity. Securities are, by design, a more liquid form of investment than direct investment in real estate. Moreover, the more liquid the assets held by a financial system, the more stable, secure and flexible that system will be.

The market for commercial mortgage securities is steadily growing, although the market is modest in comparison to the residential mortgage securities market. This

[1] What is Securitization: Securitization converts relatively illiquid real estate assets into marketable securities that can be purchased by a broad range of investors including pension funds, banks, insurance companies, mutual funds and investment funds. The securities are backed by pools of commercial mortgages, or sometimes by a single property, such as a large urban, mixed use complex.

The cash flows generated by the underlying properties are divided to create classes of securities in accordance to risk profiles, maturity schedules and various investor criteria. These securities are analyzed and assigned credit ratings by agencies such as Duff and Phelps, Moody's and Standard & Poor's, allowing investors to compare the risks of owning them with the risks of owning corporate bonds and other marketable investments.

Securitization techniques can enhance a loan origination program whereby an institution can originate, pool and securitize new mortgage loans without the capital restraints of becoming long-term holders of the loans. Thus, by packaging and selling off a significant proportion of loans to investors, lenders will be able to underwrite, process and service more mortgages without increasing their overall allocation to real estate. This directly enriches an institution's ability to manage asset-liability mix, interest rate sensitivity, and reduce capital required to meet regulatory reserve minimums.

market will evolve with or without federal intervention, however, now is the time to foster securitization methods and practices that bolster safety and soundness while providing fair and equitable market access to healthy financial institutions.

With approximately $700 billion in commercial real estate loans outstanding in the nation's financial system, it is critical that measures be taken to assure that the institutions holding these commitments have suitable methods and policies for managing and recirculating their capital in a liquid market.

• Mr. DOMENICI. Mr. President, the Senator from Nevada [Mr. BRYAN] and I are introducing a very important bill today—the Commercial Mortgage Capital Availability Act of 1993. This bill addresses the credit crunch by removing impediments to securitization. This is the process Wall Street uses to covert relatively illiquid real estate assets into marketable securities that can be purchased by a broad range of investors including pension funds, banks, insurance companies, mutual funds, and investment funds. The securities are backed by pools of commercial mortgages or sometimes by a single property, such as a large urban, mixed-use complex.

Securitization makes money for lending recyclable. A banker makes a loan, sells it, takes the proceeds and lends it out again. Wall Street buys the loans, pools them, securitizes them and enables banks to make more loans without waiting for repayment month after month.

In the last Congress, I chaired the Real Estate Task Force. We received recommendations from 40 or more real estate and lending institutions. The task force examined ways to increase commercial real estate liquidity by expanding the secondary market. An expanded secondary market would make more credit available for commercial real estate and small business lending purposes.

In April of this year, I held a Senate Banking Committee credit crunch hearing in New Mexico. Senator BRYAN held a hearing on the same topic in Nevada. We came to the same conclusion—we need to make it easier for the secondary market in commercial real estate to function and grow.

Testimony at the hearing in New Mexico included some very illuminating testimony from Lou Toulga who is an Albuquerque real estate broker and the chairman of the National Association of Realtors commercial investment committee.

"The commercial real estate market has been hurt because the traditional sources of funding for long-term loans have either disappeared, been traumatized, or experienced considerable price instability."

He and other witnesses knew of many banks that are not making any commercial real estate loans. Those that do make loans only offer terms with very short amortization periods. This makes it difficult to satisfy debt coverage ratios and make cash flow work. Loan to value ratio limits are often below 60 percent and required debt coverage ratios are often above 1.5. Interest rates are higher too—the spreads against 10-year Treasuries are now more than 200 basis points.

Loan terms tend to be too short—5 years with the accompanying uncertainty of rollovers and the uncertainty of reappraisals and the potential of revaluations through the appraising process. To get a 20-year loan on a building, a developer needs to have tenants with 20-year leases. This is usually impossible.

Facing these serious obstacles the National Association of Realtors, the National Realty Committee and the Mortgage Bankers Association started a consortium to do the necessary work to create a secondary market for commercial lending. They have asked for Congress' help to eliminate some of the regulatory restraints in current law. For example, modify the Secondary Mortgage Market Enhancement Act to allow the securities from commercial loan pools to be accepted across all 50 States.

We also need to deal with subordination. When a banker subordinates a particular obligation and sells it, he still needs to maintain the same capital requirements as if he had held on to the loan. This locks up capital that could be loaned for other productive purposes.

We also need to modify ERISA to allow comparable treatment of commercial real estate. Commercial real estate should be treated as favorably as residential by allowing secondary mortgage securitization. This would provide parity under ERISA for commercial real estate.

The bill Senator BRYAN and I are introducing today does three things: Broadens the Secondary Mortgage Market Enhancement Act [SMMEA] to apply to commercial securities; amends the Employment Retirement Income Security Act [ERISA] to include a class exemption for commercial mortgage securities. They would no longer be classified as prohibited transactions; and changes the regulatory treatment—risk-based capital requirements—of subordinated commercial loans to avoid forcing financial institutions to set aside more reserves than are really necessary for safety and soundness of the financial institutions.

As we enter the fourth quarter of 1993, there continues to be a shortage of commercial mortgage credit. Mortgage loan renewals continue to be difficult to secure even notwithstanding long-term credit relationships. This bill will help address that problem.

I urge my colleagues to join Senator BRYAN and I in cosponsoring this bill. It is the logical extension of a bill reported out of the Banking Committee by Senator D'AMATO. He should be commended for his hard work in making more capital available to small businesses.•

By Mr. DOMENICI:

S. 1729. A bill to amend the Internal Revenue Code of 1986 to repeal the 1993 Federal income tax rate increases on trusts established for the benefit of individuals with disabilities or for college education costs of a beneficiary; to the Committee on Finance.

PERSONS WITH DISABILITIES TRUSTS TAX RATE RESTORATION ACT

Mr. DOMENICI. Mr. President, things aren't always as they seem—especially in the world of tax legislation. Included in the same section that raised the tax rates for higher income individuals were provisions increasing the tax rate for trusts with meager incomes as low as $1,500.

President Clinton campaigned that he wouldn't raise taxes on anyone earning less than $200,000, yet in the bill the President signed this summer, tax bracket increases begin for trusts that have income of $1,500.

This isn't really a tax on trusts. It is a tax on people who are mentally ill and people with disabilities. It is also a tax on education.

The legislation I am introducing today would repeal that tax increase.

Trusts, at first blush, are faceless entities associated with the idle rich. But the vast majority of trusts are long term financial planning tools for people with simple goals and very special needs.

Trusts are set up to save for college or to provide a living allowance for people with disabilities or mental illness. It is a way that parents can plan for the time when they have passed on. These are worthy purpose trusts that are taking a heavy tax hit under the bill the President signed into law.

Increasing the tax rates on these faceless entities called trusts sounds appealing until we stop to realize that the money comes out of the living allowances of individuals with disabilities or mental illness.

I have experienced personally the agony a family faces as they try to adequately plan and provide for the future comfort and financial management of the affairs of a person with a disability or mental illness. Parents of children with special needs feel an indescribable vulnerability and responsibility as they contemplate, "How can we best provide for our child who has a disability or mental illness when we are gone?" "How can we insure that he/she will have an adequate living allowance?" It is an inescapable worry that shouldn't be compounded by misguided and ever-changing tax policy.

The problems are complex. It isn't just having enough money. Money isn't the issue. Taxes isn't the issue. It is a

management and caring dilemma. Some loved ones who are mentally ill are not suited to have immediate access to the financial resources that their parents saved for their economic security. A trust is a mechanism to provide the financial resources that parents would provide if they were still alive.

These trusts are not set up because wealthy people are trying to avoid taxes. Most of the tax avoidance schemes were written out of the Tax Code in 1986 anyway. The type of trust I am talking about is set up to provide for a loved one. Our tax policy should encourage family responsibility. Only the family can be counted on to provide financial support.

This is a terrible deed that we did in the tax bill to raise the rates on these trusts. Some of these trusts were set up decades ago to provide an adequate living allowance. They are irrevocable trusts. Once they are set up they cannot be changed.

These trusts are vulnerable to interest rate fluctuations and other economic variables. It is wrong to also subject them to an ever-increasing tax burden.

Parents and grandparents like to set up education trusts for their children and grandchildren. It teaches children to save. But under the new law trust income will be taxed much more steeply than in the past. In fact, these tax provisions really clobber these trusts too.

Under the old law, taxable trusts for college or for the care and maintenance of a person who is disabled or suffers from a mental illness paid a top rate of 31 percent on taxable income of more than $11,250. That was quite steep.

But under the administration bill that just passed it became much, much worse. They would pay 39.6 percent on income of more than $7,500.

This means that a very small trust under prior law with income of $3,750 would have paid $562 in Federal income taxes. Under the new law, the trust would pay $862—a 53-percent increase.

The bill I am introducing today would repeal that 53-percent rate increase.

Under the new tax law, trusts would pay 31 percent on income between $3,500 and $5,500; 36 percent on income over $5,500, and a surcharge on income over $7,500 leading to a marginal rate of 39.6 percent.

For a country with a miserable savings rate, this is the wrong tax policy and the wrong message to our children about responsibility, savings, and investment.

I would like to think the rate increase for these trusts was an unintended consequence of this new tax law. Regardless, it is one provision that should be repealed.

I hope my colleagues will join me in cosponsoring this bill. I ask unanimous consent that a copy of the legislation be reprinted in the RECORD.

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

S. 1729

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Persons With Disabilities Trusts Tax Rate Restoration Act".

SEC. 2. REPEAL OF 1993 RATE INCREASES ON TRUSTS FOR INDIVIDUALS WHO ARE DISABLED OR FOR COLLEGE EDUCATIONS.

(a) IN GENERAL.—Section 1(e) of the Internal Revenue Code of 1986 (relating to tax imposed on estates and trusts) is amended to read as follows:

"(e) ESTATES AND TRUSTS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), there is hereby imposed on the taxable income of—

"(A) every estate, and

"(B) every trust,

taxable under this subsection a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $1,500	15% of taxable income.
Over $1,500 but not over $3,500.	$225, plus 28% of the excess over $1,500.
Over $3,500 but not over $5,500.	$785, plus 31% of the excess over $3,500.
Over $5,500 but not over $7,500.	$1,405, plus 36% of the excess over $5,500.
Over $7,500	$2,125, plus 39.6% of the excess over $7,500.

"(2) SPECIAL RULE FOR CERTAIN TRUSTS.—

"(A) IN GENERAL.—There is hereby imposed on the taxable income of an eligible trust taxable under this subsection a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $3,300	15% of taxable income.
Over $3,300 but not over $9,900.	$495, plus 28% of the excess over $3,300.
Over $9,900	$2,343, plus 31% of the excess over $9,900.

"(B) ELIGIBLE TRUST.—For purposes of subparagraph (A), the term 'eligible trust' means a trust which is established exclusively for the purpose of providing reasonable amounts for—

(i) the support and maintenance of 1 or more beneficiaries each of whom is an individual who is mentally ill or has a disability (within the meaning of section 3(2) of the Americans With Disabilities Act of 1990 (42 U.S.C. 12102(2)) at the time the trust is established,

(ii) the support and maintenance of 1 or more beneficiaries each of whom is under 21 years of age and whose custodial parent or parents are deceased, or

(iii) the payment of qualified higher education expenses (as defined in section 135(c)(2)) of the grantor's children or grandchildren.

A trust shall not fail to meet the requirements of this subparagraph merely because the corpus of the trust may revert to the grantor or a member of the grantor's family upon the death of the beneficiary."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

By Mr. THURMOND:

S. 1730. A bill to suspend temporarily the duty on 3,4-Dimethylbenzaldehyde (3,4-DBAL); to the Committee on Finance.

DUTY SUSPENSION LEGISLATION

Mr. THURMOND. Mr. President, I rise today to introduce a bill which will suspend the duty on 3,4-Dimethylbenzaldehyde until December 31, 1993. Currently, this chemical is imported for use in the United States because there is no domestic supplier or readily available substitute. Therefore, suspending the duty on this chemical would not adversely affect domestic industries. This chemical is used to improve the clarity of polyolefin products. Major potential end uses include: Medical devices to improve safety, food storage containers, protective packaging, and improved pharmaceutical containers.

Mr. President, suspending the duty on this chemical will benefit the consumer by stabilizing the costs of manufacturing the end-use products. Further, this suspension will allow domestic producers to maintain or improve their ability to compete internationally. There are no known domestic producers of these materials. I hope the Senate will consider these measures expeditiously.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1730

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TEMPORARY DUTY SUSPENSION.

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:

"9902.31.12	3,4-Dimethylbenzaldehyde (3,4-DBAL) (CAS No. 5973-71-7) (provided for in subheading 2912.29.50)	Free	No change	No change	On or before 12/31/96".

SEC. 2. EFFECTIVE DATE.

The amendment made by section 1 applies with respect to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of enactment of this Act.

By Mr. BAUCUS (for himself, Mr. MCCAIN and Mr. RIEGLE):

S. 1733. A bill to amend the Internal Revenue Code of 1986 to provide tax treatment for foreign investment through a U.S. regulated investment company comparable to the tax treatment for direct foreign investment and investment through a foreign mutual fund; to the Committee on the Judiciary.

INVESTMENT COMPETITIVENESS ACT OF 1993

• Mr. BAUCUS. Mr. President, I send a bill to the desk and ask that its full text be printed in the RECORD immediately following these remarks.

Last December in conjunction with my cochairmanship of the Congressional Competitiveness Caucus, I issued a report called The New American Economy: Building for the Long Term. My objective in issuing the report was to outline specific steps necessary to begin a very broad and determined national effort to increase the income of Americans and to improve their quality of life, by meeting the highest standards of a competitive world economy.

Of particular importance is the need for an increase in capital investment in order to improve our international competitiveness. Increased investment leads to increased innovation, and this in turn stimulates productivity and overall economic growth.

The bill I introduce today, along with my colleagues Senator MCCAIN and Senator RIEGLE, represents a critical step in increasing America's ability to attract foreign capital. At the same time, this legislation will improve the international competitiveness of the U.S. mutual fund industry.

The United States is the world leader in mutual fund products, management, and marketing. However, foreign investment in U.S. mutual funds is restricted by barriers created by U.S. tax law. In fact, foreign shareholders own less than one-half of 1 percent of the shares of the $1.8 trillion U.S. mutual fund industry.

In an effort to remove these barriers, Senator MCCAIN, Senator RIEGLE, and I are today introducing the Investment Competitiveness Act of 1993. This legislation would remove the disincentive for foreign investors to purchase shares in U.S. mutual funds by providing them the same tax treatment as that received by a foreign investor who invests directly in a U.S. company or through a foreign mutual fund.

Under current law, most kinds of interest and short-term capital gains received directly by a foreign investor or received through a foreign mutual fund are not subject to the 30 percent withholding tax on investment income. However, interest and short-term capital gain income received through a U.S. mutual fund are subject to the withholding tax. This occurs because the statute characterizes interest income and short-term capital gain distributed by a U.S. mutual fund to a foreign investor as a dividend subject to withholding.

This legislation would correct this inequity and put U.S. funds on competitive footing with foreign funds by providing that interest income and short-term capital gain retain their character upon distribution to foreign investors.

The primary benefit of exporting U.S. mutual funds is the potential capital formation that results from the inflow of investment dollars into U.S. securities markets. Such capital formation would come about without the dilution of U.S. control of U.S. businesses that occurs from direct foreign investments in U.S. companies. Finally, increasing demand for U.S. mutual funds will have a ripple effect as it increases the need for ancillary fund service providers located in the United States.

Mr. President, I appreciate the efforts of Senators MCCAIN and RIEGLE in cosponsoring this legislation, and I urge my other colleagues to support this bill and help to move it forward.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1733

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the "Investment Competitiveness Act of 1993".

(b) AMENDMENT OF 1986 CODE.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 2. TREATMENT OF CERTAIN DIVIDENDS OF REGULATED INVESTMENT COMPANIES.

(a) GENERAL RULE.—

(1) NONRESIDENT ALIEN INDIVIDUALS.—Section 871 (relating to tax on nonresident alien individuals) is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

"(k) EXEMPTION FOR CERTAIN DIVIDENDS OF REGULATED INVESTMENT COMPANIES.—

"(1) INTEREST-RELATED DIVIDENDS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), no tax shall be imposed under paragraph (1)(A) of subsection (a) on any interest-related dividend received from a regulated investment company.

"(B) EXCEPTIONS.—Subparagraph (A) shall not apply—

"(i) to any interest-related dividend received from a regulated investment company by a person to the extent such dividend is attributable to interest (other than interest described in subparagraph (E) (i) or (iii)) received by such company on indebtedness issued by such person or by any corporation or partnership with respect to which such person is a 10-percent shareholder,

"(ii) to any interest-related dividend with respect to stock of a regulated investment company unless the person who would otherwise be required to deduct and withhold tax from such dividend under chapter 3 receives a statement (which meets requirements similar to the requirements of subsection (h)(4)) that the beneficial owner of such stock is not a United States person, and

"(iii) to any interest-related dividend paid to any person within a foreign country (or any interest-related dividend payment addressed to, or for the account of, persons within such foreign country) during any period described in subsection (h)(5) with respect to such country.

Clause (iii) shall not apply to any dividend with respect to any stock which was acquired on or before the date of the publication of the Secretary's determination under subsection (h)(5).

"(C) INTEREST-RELATED DIVIDEND.—For purposes of this paragraph, an interest-related dividend is any dividend (or part thereof) which is designated by the regulated investment company as an interest-related dividend in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company (including amounts so designated with respect to dividends paid after the close of the taxable year described in section 855) is greater than the qualified net interest income of the company for such taxable year, the portion of each distribution which shall be an interest-related dividend shall be only that portion of the amounts so designated which such qualified net interest income bears to the aggregate amount so designated.

"(D) QUALIFIED NET INTEREST INCOME.—For purposes of subparagraph (C), the term 'qualified net interest income' means the qualified interest income of the regulated investment company reduced by the deductions properly allocable to such income.

"(E) QUALIFIED INTEREST INCOME.—For purposes of subparagraph (D), the term 'qualified interest income' means the sum of the following amounts derived by the regulated investment company from sources within the United States:

"(i) Any amount includible in gross income as original issue discount (within the meaning of section 1273) on an obligation payable 183 days or less from the date of original issue (without regard to the period held by the company).

"(ii) Any interest includable in gross income (including amounts recognized as ordinary income in respect of original issue discount or market discount or acquisition discount under part V of subchapter P and such other amounts as regulations may provide) on an obligation which is in registered form; except that this clause shall not apply to any interest on an obligation issued by a corporation or partnership if the regulated investment company is a 10-percent shareholder in such corporation or partnership.

"(iii) Any interest referred to in subsection (i)(2)(A) (without regard to the trade or business of the regulated investment company).

"(F) 10-PERCENT SHAREHOLDER.—For purposes of this paragraph, the term '10-percent shareholder' has the meaning given to such term by subsection (h)(3).

"(2) SHORT-TERM CAPITAL GAIN DIVIDENDS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), no tax shall be imposed under paragraph (1)(A) of subsection (a) on any short-term capital gain dividend received from a regulated investment company.

"(B) EXCEPTION FOR ALIENS TAXABLE UNDER SUBSECTION (a)(2).—Subparagraph (A) shall not apply in the case of any nonresident alien individual subject to tax under subsection (a)(2).

"(C) SHORT-TERM CAPITAL GAIN DIVIDEND.—For purposes of this paragraph, a short-term capital gain dividend is any dividend (or part thereof) which is designated by the regulated investment company as a short-term capital gain dividend in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company (including amounts so designated with respect to dividends paid after the close of the taxable year described

in section 855) is greater than the qualified short-term gain of the company for such taxable year, the portion of each distribution which shall be a short-term capital gain dividend shall be only that portion of the amounts so designated which such qualified short-term gain bears to the aggregate amount so designated.

"(D) QUALIFIED SHORT-TERM GAIN.—For purposes of subparagraph (C), the term 'qualified short-term gain' means the excess of the net short-term capital gain of the regulated investment company for the taxable year over the net long-term capital loss (if any) of such company for such taxable year. For purposes of this paragraph, the excess of the net short-term capital gain for a taxable year over the net long-term capital loss for a taxable year (to which an election under section 4982(e)(4) does not apply) shall be determined without regard to any net capital loss or net short-term capital loss attributable to transactions after October 31 of such year, and any such net capital loss or net short-term capital loss shall be treated as arising on the 1st day of the next taxable year. To the extent provided in regulations, the preceding sentence shall apply also for purposes of computing the taxable income of the regulated investment company."

(2) FOREIGN CORPORATIONS.—Section 881 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) TAX NOT TO APPLY TO CERTAIN DIVIDENDS OF REGULATED INVESTMENT COMPANIES.—

"(1) INTEREST-RELATED DIVIDENDS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), no tax shall be imposed under paragraph (1) of subsection (a) on any interest-related dividend (as defined in section 871(k)(1)) received from a regulated investment company.

"(B) EXCEPTION.—Subparagraph (A) shall not apply—

"(i) to any dividend referred to in section 871(k)(1)(B), and

"(ii) to any interest-related dividend received by a controlled foreign corporation (within the meaning of section 957(a)) to the extent such dividend is attributable to interest received by the regulated investment company from a person who is a related person (within the meaning of section 864(d)(4)) with respect to such controlled foreign corporation.

"(C) TREATMENT OF DIVIDENDS RECEIVED BY CONTROLLED FOREIGN CORPORATIONS.—The rules of subsection (c)(4)(A) shall apply to any interest-related dividend received by a controlled foreign corporation (within the meaning of section 957(a)) to the extent such dividend is attributable to interest received by the regulated investment company which is described in clause (ii) of section 871(k)(1)(E) (and not described in clause (i) or (iii) of such section).

"(2) SHORT-TERM CAPITAL GAIN DIVIDENDS.—No tax shall be imposed under paragraph (1) of subsection (a) on any short-term capital gain dividend (as defined in section 871(k)(2)) received from a regulated investment company."

(3) WITHHOLDING TAXES.—

(A) Subsection (c) of section 1441 is amended by adding at the end thereof the following new paragraph:

"(12) CERTAIN DIVIDENDS RECEIVED FROM REGULATED INVESTMENT COMPANIES.—

"(A) IN GENERAL.—No tax shall be required to be deducted and withheld under subsection (a) from any amount exempt from the tax imposed by section 871(a)(1)(A) by reason of section 871(k).

"(B) SPECIAL RULE.—For purposes of subparagraph (A), clause (i) of section 871(k)(1)(B) shall not apply to any dividend unless the regulated investment company knows that such dividend is a dividend referred to in such clause. A similar rule shall apply with respect to the exception contained in section 871(k)(2)(B)."

(B) Subsection (a) of section 1442 is amended—

(i) by striking "and the references in section 1441(c)(10)" and inserting "the reference in section 1441(c)(10)", and

(ii) by inserting before the period at the end thereof the following: ", and the references in section 1441(c)(12) to sections 871(a) and 871(k) shall be treated as referring to sections 881(a) and 881(e) (except that for purposes of applying subparagraph (A) of section 1441(c)(12), as so modified, clause (ii) of section 881(e)(1)(B) shall not apply to any dividend unless the regulated investment company knows that such dividend is a dividend referred to in such clause)".

(b) ESTATE TAX TREATMENT OF INTEREST IN CERTAIN REGULATED INVESTMENT COMPANIES.—Section 2105 (relating to property without the United States for estate tax purposes) is amended by adding at the end thereof the following new subsection:

"(d) STOCK IN A RIC.—

"(1) IN GENERAL.—For purposes of this subchapter, stock in a regulated investment company (as defined in section 851) owned by a nonresident not a citizen of the United States shall not be deemed property within the United States in the proportion that, at the end of the quarter of such investment company's taxable year immediately preceding a decedent's date of death (or at such other time as the Secretary may designate in regulations), the assets of the investment company that were qualifying assets with respect to the decedent bore to the total assets of the investment company.

"(2) QUALIFYING ASSETS.—For purposes of this subsection, qualifying assets with respect to a decedent are assets that, if owned directly by the decedent, would have been—

"(A) amounts, deposits, or debt obligations described in subsection (b) of this section,

"(B) debt obligations described in the last sentence of section 2104(c), or

"(C) other property not within the United States."

(c) TREATMENT OF REGULATED INVESTMENT COMPANIES UNDER SECTION 897.—

(1) Paragraph (1) of section 897(h) is amended by striking "REIT" each place it appears and inserting "qualified investment entity".

(2) Paragraphs (2) and (3) of section 897(h) are amended to read as follows:

"(2) SALE OF STOCK IN DOMESTICALLY CONTROLLED ENTITY NOT TAXED.—The term 'United States real property interest' does not include any interest in a domestically controlled qualified investment entity.

"(3) DISTRIBUTIONS BY DOMESTICALLY CONTROLLED QUALIFIED INVESTMENT ENTITIES.—In the case of a domestically controlled qualified investment entity, rules similar to the rules of subsection (d) shall apply to the foreign ownership percentage of any gain."

(3) Subparagraphs (A) and (B) of section 897(h)(4) are amended to read as follows:

"(A) QUALIFIED INVESTMENT ENTITY.—The term 'qualified investment entity' means any real estate investment trust and any regulated investment company.

"(B) DOMESTICALLY CONTROLLED.—The term 'domestically controlled qualified investment entity' means any qualified investment entity in which at all times during the testing period less than 50 percent in value of the stock was held directly or indirectly by foreign persons."

(4) Subparagraphs (C) and (D) of section 897(h)(4) are each amended by striking "REIT" and inserting "qualified investment entity".

(5) The subsection heading for subsection (h) of section 897 is amended by striking "REITS" and inserting "CERTAIN INVESTMENT ENTITIES".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to dividends with respect to taxable years of regulated investment companies beginning after the date of the enactment of this Act.•

• Mr. MCCAIN. Mr. President, I am pleased to join with my good friend and colleague, Senator BAUCUS, in introducing the Investment Competitiveness Act of 1993. I have had a longstanding interest in enhancing the competitiveness of American businesses and industries, and eliminating artificial legal and regulatory barriers to the free flow of commerce and capital in the global marketplace. Encouraging capital investment to American firms is a vital component of any effort to improve our international competitiveness. This measure will help to ensure that U.S. mutual funds become one of the leading financial products exported by this country to the rest of the world, and consequently enhance the ability of U.S. firms to attract vital investment capital.

The U.S. mutual fund industry is clearly a tremendous growth industry, and a prime example of the preeminent role our country's financial services industry play in the global financial marketplace. Since 1980, industry assets have increased from about $135 billion to more than $1.8 trillion, with hundreds of millions more flowing into funds every day. Increasingly, foreign investors have participated in the U.S. securities markets, providing vital investment capital that fuels the growth of American enterprise.

Unfortunately, however, current tax law imposes unnecessary barriers in the way of foreign investors who may seek to invest in U.S. mutual funds. As noted by SEC Commissioner Carter Beese in a recent Wall Street Journal article, U.S. law imposes a prohibitive export tax on foreign investors simply for choosing U.S. mutual funds as their preferred investment vehicle, by subjecting them to withholding taxes that are not imposed if the investors purchases U.S. securities either directly or through a foreign fund.

The effect of this disparate treatment, not surprisingly, is that the mutual fund industry is incentivized to establish funds off-shore in order to satisfy the untapped demand on the part of foreign investors for U.S. securities. This is a less than satisfactory approach and unnecessarily and unduly limits the appeal and availability of U.S. funds to foreign investors, and consequently limits the growth of such funds.

This legislation would directly address this disparate treatment and put

U.S. funds on a level playing field and enable them to compete more effectively for vital investment capital. The result will be to benefit our capital markets; we will be exporting goods and services and creating jobs here, rather than exporting jobs abroad.

Mr. President. I want to commend Senator BAUCUS for his leadership on this important issue, and I look forward to working with him to obtain passage of this legislation. I would also request unanimous consent that a copy of the editorial by Commissioner Beese which appeared in the Wall Street Journal be inserted in the RECORD immediately following my remarks.•

[From the Wall Street Journal, Sept. 22, 1993]

MUTUAL FUNDS, THE NEXT GREAT U.S. EXPORT

(By J. Carter Brese Jr.)

The U.S. mutual fund industry has emerged as a dominant force in developing, managing and marketing investment products and services to American investors. Since 1980, industry assets have increased from about $135 billion to more than $1.8 trillion. With continued strong foreign demand for U.S. securities, and an ever-expanding pool of investors in industrialized and developing markets abroad, mutual funds appear poised to be the next great "Made in America" product successfully exported worldwide.

But this potential success for mutual funds will be nothing more than wishful thinking unless the U.S. modifies its tax laws, which now provide significant disincentives to any foreign investor seeking to purchase shares in a U.S. mutual fund.

For example, America's tax laws subject foreign investors in U.S. mutual funds to withholding taxes that are not imposed if the investor purchases U.S. securities either directly or through a foreign fund. In essence, America's laws impose a prohibitive export tax on foreign investors simply for choosing U.S. mutual funds as their preferred investment vehicle.

The current tax treatment of foreign investors in U.S. funds puts pressure on the mutual fund industry to establish funds offshore to attract these investors. Today, foreign demand for U.S. investment products is being satisfied by U.S. companies and their foreign competitors in such places as Bermuda, the Cayman Islands and Luxembourg.

Satisfying this demand indirectly appears to be limiting the market for U.S. securities unnecessarily. Although the growth of the mutual fund industry in these "tax havens" has been impressive, these offshore mutual funds will never successfully appeal to the average foreign investor because the offshore products lack the seal of approval provided by the U.S. regulatory system.

Because of the commitment to investor protection shared by the fund complexes and their regulators, the U.S. mutual fund industry has been free from major scandals and failures, and enjoys tremendous public confidence. If the tax laws were changed to allow U.S. mutual funds to capitalize on this advantage, America's ability to attract foreign capital, an important element of continued economic growth, would be enhanced.

In recent years, foreign investment in the U.S. in key sectors has declined or at best stagnated. Treasury Department figures indicate that the annualized rate of capital inflows into the U.S. during the first quarter of this year was only one-eighth the rate in the peak year of 1986.

Increased foreign investment in the U.S. through U.S. mutual funds could benefit our capital markets without increasing foreign control of American businesses. It would have a jobs effect by increasing the demand for the fund services provided by U.S. fund managers, custodians, accountants, transfer agents, and others based in the U.S.—jobs that are now located offshore.

Congress would be wise to enact legislation such as the Investment Competitiveness Act of 1993, recently introduced by Rep. Sam Gibbons (D., Fla.). Passage of this type of legislation would establish comparable tax treatment for U.S. and foreign funds, and thus free U.S. funds to compete on equal footing when courting foreign investors.

In today's competitive global economy, common sense says that the U.S. should be encouraging the export of every American good or service that foreign consumers want. It's one thing when U.S. businessmen complain that foreign laws or industry practices impede their ability to compete. It's quite another when U.S. tax law is one of the culprits.

By Mr. SIMON (for himself, Mr. HATCH and Ms. MOSELEY-BRAUN):

S. 1734. A bill to amend the Federal Food, Drug, and Cosmetic Act to expand the provisions relating to market exclusivity; to the Committee on the Judiciary.

MARKET EXCLUSIVITY FOR OXAPROZIN

• Mr. SIMON. Mr. President, today I introduce legislation to extend for 2 years the market exclusivity for oxaprozin, an important antiarthritic drug. Oxaprozin is a nonsteroidal, antiinflammatory drug [NSAID]. It is produced and marketed as DayPro by the G.D. Searle Pharmaceutical Co., headquartered in Skokie, IL. I am introducing this legislation as a matter of simple fairness and equity.

The Drug Price Competition and Patent Term Restoration Act of 1984, commonly referred to as the Waxman-Hatch Act, contains provisions granting 5 years of market exclusivity to brand name drug manufacturers following Food and Drug Administration [FDA] approval of a new drug application.

The legislation I am introducing today would provide DayPro a certain amount of market exclusivity beyond that provided in the Waxman-Hatch Act. Additional market exclusivity is being sought because the delay in obtaining FDA approval of DayPro was so excessive that the provisions of the Waxman-Hatch Act are inadequate to remedy the economic injury sustained by G.D. Searle. In the past, Congress has recognized that legislative action to grant additional market exclusivity protection in order to rectify inequities resulting from delays in FDA approval of new drug applications is justified in certain cases. I believe this is one of those cases.

I seek this remedy for a drug that was a victim of the same regulatory delays that were instrumental in causing Congress to recognize that Waxman-Hatch legislation was necessary in the first place. The Investigational New Drug Application [IND] for DayPro was filed in 1972 and then DayPro was caught up in an extremely long FDA drug lag. The New Drug Application [NDA] for DayPro was filed 10 years later in August 1982, and FDA approval of DayPro was granted on October 29, 1992. During the 20 years it took FDA to approve DayPro, its patent expired. Thus the practical patent life for DayPro was zero.

A number of studies have been conducted on the regulatory barriers that the NSAID faced in the 1980's. Studies make it clear that the problems encountered at FDA were generic—the unprecedented delay in NSAID approvals was due to FDA policy. The delay arose after serious problems were encountered with previously approved NSAID drugs. During this time, the FDA effectively imposed a moratorium on the approval of all NSAID's. It is important to note that the purpose of this moratorium was not to allow the FDA to collect further data on DayPro. The FDA never requested additional data on safety or efficacy beyond that which was presented in the original new drug application. When DayPro was approved in 1992, it was based on the data originally submitted to the FDA.

This legislation does not grant full recovery of the time that Searle lost while DayPro was under review; it does not grant even half of that time. The additional market exclusivity mentioned in this bill represents only some of the time lost after the drug applications had been under FDA review for more than 7 years. The legislation provides 2 years of added market exclusivity as partial compensation for the value lost when DayPro's patents expired while the drug application languished in the FDA files. I believe the figure of 2 years is a fair and equitable resolution of this matter.

G.D. Searle confronted an inordinate and inequitable delay in obtaining FDA approval to market DayPro. I urge that the relief embodied in this legislation be enacted.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1734

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Market Exclusivity Act of 1993".

SEC. 2. MARKET EXCLUSIVITY.

Section 505(j)(4)(D) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(4)(D)) is amended by adding at the end the following new clause:

"(vi) If—

"(I) an application (other than an abbreviated new drug application) was submitted under subsection (b) for a drug;

"(II) no active ingredient of the drug (including an ester or salt of the active ingredient) has been approved in any other application under subsection (b);

"(III) the application was filed before September 1, 1982;

"(IV) the application was under regulatory review for a regulatory review period (as defined in section 156(g) of title 35, United States Code) for at least 78 months; and

"(V) the application was approved October 29, 1992.

no application may be submitted under this subsection that refers to the drug for which the subsection (b) application was submitted before the expiration of 5 years from the date of the approval of the subsection (b) application, and no application submitted under this subsection that refers to such drug may be approved before the expiration of 5 years from the date of approval of the subsection (b) application plus the among by which the regulatory review period exceeds 84 months, except that the period for such amount of additional market exclusivity shall not exceed 24 months.".●

● Mr. HATCH. Mr. President, I rise to join my distinguished colleague from Illinois, Senator SIMON, in sponsoring legislation that would extend for 2 years the market exclusivity for the antiarthritic drug oxaprozin which is marketed as Daypro.

This extension is necessary because the delay in obtaining FDA approval the manufacturer, G.D. Searle Pharmaceutical Co., experience has been so excessive that the provisions of the Hatch-Waxman Act of 1984 are not sufficient to remedy the economic injury sustained.

Today, G.D. Searle simply seeks this remedy for a product that was a victim of the same regulatory delays that were instrumental in causing Congress to recognize that my 1984 legislation was necessary.

Mr. President, it seems to me that we need to encourage research and development in this country. This legislation serves to achieve that important objective by permitting a company that has invested heavily in research and development to receive the benefit of its patent.

Accordingly, I would urge my colleagues to support the bill's enactment.●

By Mr. SIMON:

S. 1735. A bill to establish a Privacy Protection Commission, and for other purposes; to the Committee on the Judiciary.

PRIVACY PROTECTION ACT OF 1993

● Mr. SIMON. Mr. President, I am introducing legislation today to create a Privacy Protection Commission. The fast-paced growth in technology coupled with American's increasing privacy concerns demand Congress take action.

A decade ago few could afford the millions of dollars necessary for a mainframe computer. Today, for a few thousand dollars, you can purchase a smaller, faster, and even more powerful personal computer. Ten years from now computers will likely be even less expensive, more accessible, and more powerful. Currently, there are "smart" buildings, electronic data "highways", mobile satellite communication systems, and interactive multimedia. Moreover, the future holds technologies that we can't even envision today. These changes hold the promise of advancement for our society, but they also pose serious questions about our right to privacy. We should not fear the future or its technology, but we must give significant consideration to the effect such technology will have on our rights.

Polls indicate that the American public is very concerned about this issue. For example, according to a Harris-Equifax poll completed this fall, 80 percent of those polled were concerned about threats to their personal privacy. In fact, an example of the high level of concern is reflected in the volume of calls received by California's Privacy Rights Clearing House. Within the first three months of operation. The California Clearinghouse received more than 5,400 calls. The Harris-Equifax poll also reported that only 9 percent of Americans felt that current law and organizational practices adequately protected their privacy. This perception is accurate. The Privacy Act of 1974 was created to afford citizens broad protection. Yet, studies and reviews of the Act clearly indicate that there is inadequate specific protection, too much ambiguity, and lack of strong enforcement.

Furthermore, half of those polled felt that technology has almost gotten out of control, and 80 percent felt that they had no control over how personal information about them is circulated and used by companies. A recent article written by Charles Piller for MAC World magazine outlined a number privacy concerns. I ask unanimous consent the article written by Charles Piller be included in the RECORD following my statement. These privacy concerns have caused the public to fear those with access to their personal information. Not surprisingly, distrust of business and government has significantly climbed upwards from just three years ago.

In 1990, the United States General Accounting Office reported that there were conservatively 910 major federal data banks with billions of individual records. Information that is often open to other governmental agencies and corporations, or sold to commercial data banks that trade information about you, your family, your home, your spending habits, and so on. What if the data is inaccurate or no longer relevant? Today's public debates on health care reform, immigration, and even gun control highlight the growing public concern regarding privacy.

The United States has long been the leader in the development of privacy policy. The framers of the Constitution and the Bill of Rights included an implied basic right to privacy. More than a hundred years later, Brandeis and Warren wrote their famous 1890 article, in which they wrote that privacy is the most cherished and comprehensive of all rights. International privacy scholar Professor David Flaherty has argued successfully that the United States invented the concept of a legal right to privacy. In 1967, Professor Alan Westin wrote Privacy and Freedom, which has been described as having been of primary influence on privacy debates world-wide. Another early and internationally influential report on privacy was completed in 1972 by the United States Department of Health, Education, and Welfare Advisory Committee. A few years later in 1974, Senator Sam Ervin introduced legislation to create a Federal Privacy Board. The result of debates on Senator Ervin's proposal was the enactment of the Privacy Act of 1974. The United States has not addressed privacy protection in any comprehensive way since.

International interest in privacy and in particular data protection dramatically moved forward in the late 1970's. In 1977 and 1978 six countries enacted privacy protection legislation. As of September 1993, 27 countries have enacted national privacy or data protection legislation, and 11 countries have legislation under consideration. I ask unanimous consent that a list of those countries be included in the RECORD following my statement. Among those considering legislation are former soviet block countries Croatia, Estonia, Slovakia, and Lithuania. Moreover, the European Community Commission will be adopting a Directive on the exchange of personal data between those countries with and those without data or privacy protection laws.

Mr. President, a Privacy Protection Commission is needed to restore the public's trust in business and government's commitment to protecting their privacy and willingness to thoughtfully and seriously address current and future privacy issues. It is also needed to fill in the gaps that remain in federal privacy law.

The Clinton Administration also recognizes the importance for restoring public trust. A statement the Office of Management and Budget sent to me included the following paragraph: "The need to protect individual privacy has become increasingly important as we move forward on two major initiatives, Health Care Reform and the National Information Infrastructure. The success of these initiatives will depend, in large part, on the extent to which Americans trust the underlying information systems. Recognizing this concern, the National Performance Review

has called for a Commission to perform a function similar to that envisioned by Senator SIMON. Senator SIMON's bill responds to an issue of critical importance."

In addition, the National Research Council recommends the creation of "an independent federal advisory body . . ." in their newly released study, Private Lives and Public Policies.

Is is very important that the Privacy Protection Commission be effective and above politics. Toward that end, the Privacy Protection Commission will be advisory and independent. It is to be composed of 5 members, who are appointed by the President, by and with the consent of the Senate, with no more than 3 from the same political party. The members are to serve for staggered seven year terms, and during their tenure on the Commission, may not engage in any other employment.

Mr. President, I am concerned about the creation of additional bureaucracy; therefore the legislation would limit the number of employees to a total of 50 officers and employees. The creation of an independent Privacy Protection Commission is imperative. I have received support for an independent Privacy Protection Commission from consumer, civil liberty, privacy, library, technology, and law organizations, groups, and individuals. I ask unanimous consent that a copy of a letter I have received be included in the RECORD following my statement.

What the Commission's functions, make-up, and responsibilities are will certainly be debated through the congressional process. I look forward to hearing from and working with a broad range of individuals, organizations, and businesses on this issue, as well as the Administration.

I urge my colleagues to review the legislation and the issue, and join me in support of a Privacy Protection Commission. I ask unanimous consent that the text of the bill be included in the RECORD.

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

S. 1735

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Privacy Protection Act of 1993".

SEC. 2. FINDINGS AND PURPOSE.

The Congress finds that—

(1) we live in an age of ever-increasing dependence on electronic data storage, communications, and usage;

(2) vast quantities of data are stored electronically and may be instantly transferred electronically from one party to another for business or for other purposes;

(3) the nature of such data allows for the increasing possibility that an individual's privacy rights may be violated;

(4) the technology is growing so rapidly that broader societal consequences may not have been reviewed or studied nor is it clear how the use of such technology will affect existing data systems and their use; and

(5) a United States Privacy Protection Commission should be established to—

(A) ensure that privacy rights of United States citizens in regard to electronic data and fair information practices and principles are not abused or violated;

(B) provide advisory guidance to the public and private sector on matters related to electronic data storage, communication, and usage;

(C) provide the public with a central agency for information and guidance on privacy protections and fair information practices and principles;

(D) oversee Federal agencies' implementation of section 552a of title 5, United States Code; and

(E) promote and encourage the adoption of fair information practices and principles in the public and private sector, which should include—

(i) the principle of openness, which provides that the existence of recordkeeping systems and databanks containing information about individuals be publicly known, along with a description of main purpose and uses of the data;

(ii) the principle of individual participation, which provides that each individual should have the right to see any data about him or herself and to correct any data that is not timely, accurate, or complete;

(iii) the principle of data quality, which provides that personal data should be relevant to the purposes for which they are to be used, and data should be timely, accurate, and complete;

(iv) the principle of collection limitation, which provides that there should be limits to the collection of personal data, that data should be collected by lawful and fair means, and that data should be collected, where appropriate, with the knowledge and consent of the subject;

(v) the principle of use limitation, which provides that there are limits to the use of personal data and that data should be used only for purposes specified at the time of collection;

(vi) the principle of disclosure limitation, which provides that personal data should not be communicated externally without the consent of the data subject or other legal authority;

(vii) the principle of security, which provides that personal data should be protected by reasonable security safeguards against such risks as loss, unauthorized access, destruction, use, modification or disclosure; and

(viii) the principle of accountability, which provides that recordkeepers should be accountable for complying with fair information practices and principles.

SEC. 3. ESTABLISHMENT OF A PRIVACY PROTECTION COMMISSION.

There is established the Privacy Protection Commission (hereinafter referred to as the "Commission").

SEC. 4. PRIVACY PROTECTION COMMISSION.

(a) MEMBERSHIP.—(1) The Commission shall be composed of 5 members who shall be appointed by the President, by and with the consent of the Senate, from among members of the public at large who are well qualified for service on the Commission by their knowledge and expertise in—

(A) civil rights and liberties;

(B) law;

(C) social sciences;

(D) computer technology;

(E) business; or

(F) State and local government.

(2) No more than 3 members of the Commission shall be members of the same political party.

(3) One of the members shall be designated Chairperson of the Commission by the President.

(b) MEETINGS.—The Chairperson shall preside at all meetings of the Commission, but the Chairperson may designate another member as an acting Chairperson who may preside in the absence of the Chairperson. A quorum for the transaction of business shall consist of at least 3 members present, except that 1 member may conduct hearings and take testimony if authorized by the Commission. Each member of the Commission, including the Chairperson, shall have equal responsibility and authority in all decisions and actions of the Commission, shall have full access to all information relating to performance of the duties or responsibilities of the Commission, and shall have 1 vote. Action of the Commission shall be determined by a majority vote of the members. The Chairperson or acting Chairperson shall see to the faithful execution of the policies and decisions of the Commission and shall report thereon to the Commission from time to time or as the Commission may direct.

(c) TERMS.—(1) A member of the Commission shall serve for a term of 7 years, except of members first appointed to the Commission—

(A) the member designated as Chairperson by the President shall be appointed for a term of 7 years;

(B) 2 members shall be appointed for a term of 5 years;

(C) 2 members shall be appointed for a term of 3 years; and

(D) all such terms shall begin on—

(i) January 1 next following the date of the enactment of this Act; or

(ii) such date as designated by the President.

(2) A member may continue to serve until a successor is confirmed.

(3) Members shall be eligible for reappointment for a single additional term.

(d) VACANCIES.—(1) Vacancies in the membership of the Commission shall be filled in the same manner in which the original appointment was made.

(2) If there are 2 or more Commission members in office, vacancies in the membership of the Commission shall not impair the power of the Commission to execute functions and powers of the Commission.

(e) COMPENSATION AND RESTRICTION ON OTHER EMPLOYMENT.—(1) The members of the Commission may not engage in any other employment during their tenure as members of the Commission.

(2) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new item:

"Members of Privacy Protection Commission (5).".

(f) REQUESTS AND RECOMMENDATIONS.—(1) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of that request to Congress.

(2) Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation to the President or Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments

69-059 O—97 Vol. 139 (Pt. 21) 40

on legislation, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

(g) SEAL.—The Commission shall have an official seal which shall be judicially noted.

SEC. 5. PERSONNEL OF THE COMMISSION.

(a) EXECUTIVE DIRECTOR AND GENERAL COUNSEL.—The Commission shall appoint an Executive Director and a General Counsel who shall perform such duties as the Commission may determine. Such appointment may be made without regard to the provisions of title 5, United States Code. The Executive Director and the General Counsel shall be compensated at a rate not in excess of the rate payable for a position under level V of the Executive Schedule under section 5316 of title 5, United States Code.

(b) LIMITATION ON EMPLOYEES.—The Commission is authorized to appoint and fix the compensation of not more than 50 officers and employees (or the full-time equivalent thereof), and to prescribe their functions and duties.

(c) CONSULTANTS.—The Commission may obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

SEC. 6. FUNCTIONS OF THE COMMISSION.

(a) IN GENERAL.—The Commission shall—

(1) provide leadership and coordination to the efforts of all Federal departments and agencies to enforce all Federal statutes, Executive orders, regulations and policies which involve privacy or data protection;

(2) maximize effort, promote efficiency, and eliminate conflict, competition, duplication, and inconsistency among the operations, functions, and jurisdictions of Federal departments and agencies responsible for privacy or data protection, data protection rights and standards, and fair information practices and principles;

(3) develop model standards, guidelines, regulations, policies, and routine uses for and by Federal, State, and local agencies in implementing the provisions of section 552a of title 5, United States Code;

(4) publish on a regular basis a guide to sections 552 and 552a of title 5, United States Code, and other laws relating to data protection, for use by record subjects;

(5) publish a compilation of agency system of records notices, including an index and other finding aids;

(6) no later than December 1, 1996, make recommendations to Congress to amend section 552a of title 5, United States Code, and for improving the coordination between such section and section 552 of such title;

(7) provide active leadership, guidance, education, and appropriate assistance to private sector businesses, and organizations, groups, institutions, and individuals regarding privacy, data protection rights and standards, and fair information practices and principles;

(8) develop model privacy, data protection, and fair information practices, principles, standards, guidelines, policies, and routine uses for use by the private sector; and

(9) upon written request, provide appropriate assistance to the private sector in implementing privacy, data protection, and fair information practices, principles, standards, guidelines, policies, or routine uses of privacy and data protection, and fair information.

(b) DISCRETIONARY FUNCTIONS.—The Commission may—

(1) issue advisory opinions relating to section 552a of title 5, United States Code, or privacy and data protection practices, principles, standards, guidelines, policies, or routine uses of data at the request of a Federal agency, a data integrity Commission of an agency or business, a court, the Congress, a business or any person;

(2) investigate compliance with section 552a of title 5, United States Code, and report on any violation of any provision thereof or any regulation promulgated under such section to an agency, the President, the Attorney General, and the Congress;

(3) file comments with the Office of Management and Budget and with any agency on any proposal to—

(A) amend section 552a of title 5, United States Code, or any regulation promulgated under such section;

(B) create or modify a system of records; or

(C) establish or alter routine uses of such a system;

(4) request an agency to stay—

(A) the establishment or revision of a system of records;

(B) a routine use;

(C) an exemption; or

(D) any other regulation promulgated under section 552a of title 5, United States Code;

(5) review Federal, State, and local laws, Executive orders, regulations, directives, and judicial decisions and report on the extent to which they are consistent with privacy and data protection rights, and fair information practices and principles;

(6) at the request of a Federal, State, or local government agency, a private business, or any person, provide assistance on matters relating to privacy or data protection;

(7) comment on the implications for privacy or data protection of proposed Federal, State, or local statutes, regulations, or procedures;

(8) propose legislation on privacy or data protection;

(9) accept and investigate complaints about violation of privacy or data protection rights, and fair information practices and principles;

(10) participate in any formal or informal Federal administrative proceeding or process where, in the judgment of the Commission, the action being considered would have a material effect on privacy or data protection, either as a result of direct Government action or as the result of direct Government regulation of others;

(11) petition a Federal agency to take action on a matter affecting privacy or data protection;

(12) conduct, assist, or support research, studies, and investigations on the collection, maintenance, use or dissemination of personal information; the implications for privacy or data protection of computer, communications, and other technologies, and any other matter relating to privacy or data protection;

(13) assist in the development or implementation of policies designed to provide for the protection of personal information maintained by private sector recordkeepers;

(14) assist United States companies doing business abroad to respond to foreign privacy or data protection laws and agencies;

(15) assist in the coordination of the United States privacy and data protection policies with the privacy and data protection policies of foreign countries; and

(16) cooperate and consult with privacy or data protection commissions, boards, or agencies of foreign governments.

SEC. 7. CONFIDENTIALITY OF INFORMATION.

(a) IN GENERAL.—Each department, agency, and instrumentality of the executive branch of the Government, including each independent agency, shall furnish to the Commission upon request made by the Chairperson, such data, reports, and other information as the Commission determines necessary to carry out its functions under this Act.

(b) CONFIDENTIALITY.—In carrying out its functions and exercising its powers under this Act, the Commission may accept from any Federal agency or other person, any identifiable personal data if such data is necessary to carry out such powers and functions. In any case in which the Commission accepts any such information, it shall provide all appropriate safeguards to ensure that the confidentiality of such information is maintained and that under completion of the specific purpose for which such information is required, the information is destroyed or returned to the agency or person from which it was obtained.

SEC. 8. POWERS OF THE COMMISSION.

(a) IN GENERAL.—The Commission may, in carrying out its functions under this Act—

(1) conduct inspections;

(2) sit and act at such times and places;

(3) hold hearings;

(4) take testimony;

(5) require by subpoena the attendance of such witnesses and the production of books, records, papers, correspondence, documents, film, and electronic information;

(6) administer such oaths; and

(7) make appropriate and necessary expenditures.

(b) SUBPOENAS.—(1) Subpoenas shall be issued only upon an affirmative vote of a majority of all members of the Commission. Subpoenas shall be issued under the signature of the Chairperson or any member of the Commission designated by the Chairperson. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(2) In the case of a disobedience to a subpoena issued under this Act, the Commission may invoke the aid of any district court of the United States in requiring compliance with such subpoena. Any district court of the United States within the jurisdiction where such person is found or transacts business may, in the case of contumacy or refusal to obey a subpoena issued by the Commission, issue an order requiring such person to appear and testify, to produce such books, records, papers, correspondence, documents, films, and electronic information any failure to obey the order of the court shall be punished by the court as a contempt thereof.

(c) APPEARANCES.—Appearances by the Commission in judicial and administrative proceedings shall be in its own name.

(d) DELEGATION.—The Commission may delegate any of its functions to such officers and employees of the Commission as the Commission may designate and may authorize such successive redelegations of such functions as it may determine desirable.

(e) ADMINISTRATIVE POWERS.—In order to carry out provisions of this Act, the Commission may—

(1) enter into contracts or other arrangements with any State or local government, any agency or department of the United States, or with any person, firm, association, or corporation; and

(2) establish advisory committees in accordance with the Federal Advisory Committee Act (5 U.S.C. App.).

SEC. 9. REPORTS AND INFORMATION.

In an annual report to the President and Congress, the Commission shall report on its activities in carrying out the provisions of this Act. The Commission shall undertake whatever efforts it may determine to be necessary or appropriate to inform and educate the public of data protection, privacy, and fair information rights and responsibilities.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act.●

PRIVACY IN PERIL

(By Charles Piller)

In recent years, gathering and sharing personal information has become a way of life for business and government. People have kept track of one another for millennia, of course. But the advent of telecommunications, the growth of centralized government, and the rise of massive credit and insurance industries that manage vast computerized databases have turned the modest records of an insular society into a bazaar of data available to nearly anyone for a price.

The U.S. Constitution carries no explicit guarantee of personal privacy. But most Americans consider the ability to conduct one's personal affairs relatively free from unwanted instructions to be an inherent human right. A year-long Macworld investigation shows that such a right stands little chance against new electronic technologies that make most people's lives as clear as glass.

From a personal computer anywhere in the world, data can be gathered from limitlessly broad and diverse sources. The ability to capture, sort, and analyze that data is often nearly instantaneous. The force of such tools has overwhelmed the capacity of laws and social mores to protect privacy.

Until the last few years, if you wanted to find out, say, if anyone had sued Roger Heinen, the former Apple vice president who defected to Microsoft in January, you had to laboriously check, in person, at various county courthouses. I spent about two minutes doing the same thing online.

"As technology becomes ever more penetrating and intrusive, it becomes possible to gather information with laserlike specificity and spongelike absorbency," says Gary T. Marx, a privacy expert who teaches at the University of Colorado. "Information leakage becomes rampant; indeed, it is hemorrhaging. Barriers and boundaries—be they distance, darkness, time, walls, windows, even skin—that have been fundamental to our conceptions of privacy, liberty, and individuality give way. Actions, feelings, thoughts, acts, even futures are increasingly visible." Easy access has blurred the borders of private life.

The public views these developments with growing alarm. In a 1992 poll conducted by Louis Harris and Associates, 78 percent of Americans expressed concern about their personal privacy, up from about a third of those polled in 1970, and up from 64 percent in 1978. Perceived threats to personal privacy from computers rose from 38 percent in 1974 to 68 percent last year.

In a 1991 *Time*/CNN poll, 93 percent of respondents asserted that companies that sell personal data should be required to ask permission from individuals in advance. The 1990 census showed the highest rates of noncooperation ever—the result of fears that participation could place personal information in jeopardy, contend some privacy advocates. And California's Privacy Rights Clearinghouse—the first privacy hotline in the nation—logged more than 5400 calls within three months of its inception last November.

WHAT THEY HAVE ON YOU

Public concerns have risen in tandem with the proliferation of personal records kept by government, corporations, and employers. New forms of data are coming online all the time. Nearly every quantifiable aspect of our lives—and many a judgment call—finds its way into data banks where it is exchanged, sold, and resold, again and again.

The sheer volume of available data is stunning. In 1990, the U.S. General Accounting Office, an arm of Congress, conducted a survey of federal data banks that contain health, financial, Social Security, and a wide range of other personal data. That incomplete tally included 910 major data banks with billions of individual records. Much of the information from these computerized systems is open to other government agencies and corporations, or sold to thousands of commercial data banks that trade on records about your home, possessions, stock transactions, family characteristics, and buying habits.

And once created, a record rarely disappears. "In our society, there is a tendency to collect data without a clear purpose. And it stays around for years," says Alan Brill, head of the information-security practice for Kroll Associates, the largest and most successful private-investigation firm in the country. "It's like vampire data. It rises up from the dead to bite you," he says.

Obsolete information can mislead. Out of context, a single incriminating element in someone's personal history can become a defining characteristic. Suppose you were guilty of possessing a small quantity of marijuana in 1985, but haven't taken a toke since 1986. Should that conviction affect your employment prospects in 1993?

The problems grow when the data is wrong. If data banks contain millions or billions of records, it's hardly surprising that they sometimes slip a digit or two.

Consider the Big Three credit bureaus—TRW, Equifax, and Trans Union—which are among the largest and most closely monitored purveyors of personal data. These agencies compile and sell the records of key economic transactions for a large majority of American consumers.

Early this year, TRW agreed to pay $1000 each to about 1200 residents of Norwich, Vermont, whom the company erroneously designated as deadbeats due to a coding error. A 1988 survey of 1500 credit reports found that 43 percent contained errors. And a 1991 survey by Consumers Union found errors in 48 percent of reports requested from the Big Three, including 19 percent with inaccuracies that could cause a denial of credit, such as a delinquent debt. The Federal Trade Commission receives more complaints about credit bureaus than about any older industry.

Errors are not always the fault of the credit bureau—it might be from one of its sources. "In many cases the [credit bureaus'] responsibility to their customers is to give an accurate reflection of what's in the public record, and that public record may itself be inaccurate," explains Steve Metalitz, general counsel of the Information Industries Association, which represents about 500 companies that gather and resell data.

Regardless of the origin of such errors, there are no clear lines of responsibility for correcting the record. Meanwhile, the victim's life may descend into a Kafka-esque nightmare.

VALUES IN CONFLICT

The new standards of electronic intrusion upset the balance between two distinctly American values; an open and accountable society, and the right to be left alone.

There are many reasons to keep public records open and easily accessible. Society has the responsibility, for example, to monitor illegal activities, to capture criminals and to preserve public safety. If electronic privacy rights were absolute, we would never have learned about Oliver North's E-mail messages, which helped unravel the Iran-Contra scandal. And organized-crime kingpin John Gotti might never have been convicted but for the tap on his phone.

Yet data collection has a dark side. In the 1960s and 1970s, J. Edgar Hoover's FBI gathered personal data by any means possible and often used it to blackmail innocent people, sometimes destroying their lives.

Employers have a right to guard against ineptitude, criminality, and corporate spies. But should employers be free to search at will any and all employee computer files, E-mail, voice-mail, and data transmissions over a company's local area network? (See "Bosses with X-Ray Eyes," in this issue.)

Government investigators, members of the press, and the public at large may have a legitimate interest, for example, in knowing whether U.S. Transportation Secretary Federico Pena has ever been tagged for drunk driving. (We have no reason to believe he has.) But when the driving records of millions of people are sold to mass marketers of automobile insurance or alcohol-treatment programs, has the public trust been violated?

BEYOND JUNK MAIL

The issue transcends electronic—list sales and the invasive micro-marketing tactics they stimulate. Personal data itself has become a commodity for sale on the open electronic market to anyone who owns a personal computer.

Take the case of Marketplace: Households, an ill-fated joint venture of Lotus Development Corporation, a software developer, and the Equifax credit bureau. Marketplace would have placed the names, estimated incomes, purchasing habits, marital status, and other data on 120 million consumers on a CD-ROM—the nation on a disc for only $700. Few consumers were persuaded by the project's privacy protections. And they let it be known: 30,000 angry letters killed Marketplace. Shortly thereafter, in the face of mounting consumer pressure, Equifax agreed to quit selling any consumer credit data to direct-marketing vendors.

In the space of a year Equifax went from promoting one of the most far-reaching incursions into privacy ever contemplated to opting out of the credit-data marketing business altogether. Early this year, TRW (but not Trans Union) followed suit.

But the personal-information market hardly depends on Equifax or TRW. Thousands of other data resellers—Macworld among them—offer lists of likely buyers. This wealth of sources has spawned a sprawling information-reselling industry. The Burwell Directory of Information Brokers describes 1253 commercial services with names like Disclosure, Access Information, and Answer Associates.

Many of those services provide only data on companies, economic trends, or sociopolitical issues. But personal information—address, marital, salary, driving, and employment history; corporate affiliations; who your neighbors are; vehicle and real estate holdings; civil and criminal court records—and much of the rest of the trail of bytes left by all of us is now available from scores of commercial sources. And to make their lives easier, the data-hungry turn to supermarkets of online information.

DOWN IN THE DATA MINES

So-called superbureaus buy access to the major credit bureaus, state and federal agencies, and just about any other private or public-record repository they can find. They provide one-stop shopping for online data. The data-reselling trade is the electronic equivalent of the gold rush—few legal restrictions apply, and there is lots of money to be made if you own the mine.

Standards vary widely, but some information brokers are less than scrupulous in screening their clients. Even legally shielded data such as credit and phone records, as well as arrests that do not result in convictions, frequently are revealed to a wide range of qualified or merely determined and savvy requesters. These include private investigators, direct marketers, the press, FBI agents, lawyers, insurance companies, corporate spies, and vindictive ex-spouses.

For data mining to be worthwhile, the information has to be difficult or impractical to obtain using conventional methods, but worth the cost of electronic extraction. It is.

Consider the results of an online experiment my colleague Galen Gruman and I conducted during research for this article. First we selected prominent individuals from the entertainment industry, business, politics, the Macintosh industry, and sports, including Hollywood producer (and friend of President Bill Clinton) Harry Thomason, former San Francisco 49ers quarterback Joe Montana, and Bank of America CEO Richard Rosenberg. Then we tried to find out everything we could on them, with the following restrictions: we did not seek legally protected data, and all the information had to be obtained online.

For this modest search we spent an average of only $112 and 75 minutes per subject. Even so, we unearthed the essential financial, legal, martial, and residential histories of nearly all of our subjects (see the chart "Shattering the Illusion of Privacy"). In short, we compiled electronic dossiers. and these were the efforts of data-mining neophytes.

As online services become increasingly interconnected, affordable, and fast, the ability to build electronic dossiers may quickly become the hottest privacy issue of the next century. Then again, there are so many pressing privacy issues and such widely divergent sensibilities about personal privacy, even professional privacy advocates have trouble deciding what's most important.

A QUESTION OF PRIORITIES

"To me, junk mail is not the most burning privacy issue," says Evan Hendricks, editor of the *Privacy Times* newsletter. "But I can see it annoys the hell out of a lot of people." To illustrate the point, he pulled out a box of 300 recent letters from consumers apoplectic over a deluge of unwanted letters flowing into their mailboxes. Financial interests and personal sensibilities about electronic privacy cover an enormously broad spectrum. This makes it hard to separate trivial problems from real invasions that damage people.

"You have to choose a certain bundle of records, prioritize those records, and create a trustee situation around them," argues Jerry Berman, Washington, D.C., director of the Electronic Frontier Foundation, an advocacy group for computer users. "You cannot protect all data, bit by bit, byte by byte."

What should be in the bundle? Medical records are a top priority "due to the sensitivity of the data and the lack of any existing legislation to protect it," says Ronald Plesser, a lawyer who represents the information industry and headed President Clinton's transition team for the Federal Communications Commission. Tighter privacy controls for banking, tax and credit records are also near the top of every privacy advocate's list.

"Around the world, the U.S. is a laughingstock among privacy experts because we have a law protecting video-tape-rental records, but not medical records," Hendricks adds. (The release of individual video-rental records was sharply restricted after a reporter finagled the details of Judge Robert Bork's viewing habits during his confirmation hearings for a seat on the U.S. Supreme Court two years ago.)

OUTCRY OVER CREDIT RECORDS

Public outcry and political pressure have already reformed the major credit bureaus: all three bureaus now permit consumers to view and correct credit reports, although the reports released to consumers may not be as detailed as those given to, say, prospective employers or landlords. What's missing is usually information like an assessment of the person's credit risk.

TRW makes reports available free to individual consumers. Equifax has opened a toll-free line (800/685-1111) to respond to consumer questions. Bad publicity has prompted credit agencies—particularly Equifax—to more strictly screen companies and information brokers who seek access to credit reports. And in February, federal legislation was introduced that would force credit bureaus to correct errors within 30 days, and would hold banks and retailers accountable for the quality of the information they turn over to credit bureaus.

But credit records represent only a small fraction of online personal data. The far broader category of public-records data—real estate ownership, court records, tax liens, bankruptcy filings, voter registration data, auto and driver records, marriage records, and the like—should be on the table, argues Jan-Lori Goldman of the American Civil Liberties Union's Privacy Project.

"We're now asking a question that hasn't been asked before: What is the public's interest in accessing this information?" she says. Should the price of a driver's license be that you give up your detailed personal description to anyone who wants to buy it? Privacy advocates call for a close look at online data mining and they recommend limits on the collection of unduly detailed electronic dossiers.

Plesser, the Clinton transition team adviser, suggests using this test: "Is the use of the information compatible with the purpose for which it was collected?" When the question is no, the prospect of misinterpretation or crass exploitation usually follows.

DO ACCESS AND PRIVACY CONFLICT?

Many lawyers. direct marketers, and reporters say that radical restrictions on public-records data would give them electronic migraines, and could even make their jobs impossible. But Marc Rotenberg, Washington, D.C., director of Computer Professionals for Social Responsibility, warns against believing arguments that access and privacy rights are inherently incompatible. Such conflicts are often promoted by those who stand to profit by expanding access to private data, he argues.

Take the case of caller ID. Such systems instantly reveal a caller's number on a display attached to the phone of the party receiving the call. Caller ID has often been portrayed in the media as a simple case of competing consumer interests—some people advocate the system as a way to apprehend heavy breathers; others fear caller ID as an open invitation for businesses to surreptitiously pad marketing lists and for bullies to find battered spouses hiding in shelters.

But there is a third factor. "With the advent of caller ID, the telephone companies stood at the fulcrum of this information transfer and stood to benefit from the proposed sale of personal telephone numbers," Rotenberg says. How? They can charge businesses for using the caller ID service and then charge consumers for being listed or not listed, depending on the local laws' requirements.

MANAGING ELECTRONIC PRIVACY

How should such conflicts be resolved? In the U.S., a wide range of federal and state agencies grapple with privacy issues. Sometimes they have exemplary tools to work with, such as the Electronic Communications Privacy Act, which bans most electronic eavesdropping over phone or data lines.

More often, there is little or no legal protection of personal data. Part of the reason may be that no government agency reviews privacy issues comprehensively or tries to map a coherent overall policy on the wide range of consumer, commercial, and workplace privacy issues.

Canada and many European nations use privacy commissions or data-protection agencies to advise their governments on privacy policy, protect consumer rights, or regulate corporations. Most privacy advocates in this country see some kind of privacy board—staffed with specialists equipped to evaluate emerging privacy issues—as a key to timely and effective regulation.

"The U.S. is an embarrassment to the privacy movement overseas," says Simon Davies, director of the Australian Privacy Foundation. "The U.S. stands alone as an example of what a superpower should not do in privacy."

A U.S. data-protection board with advisory powers was proposed in Congress in 1991. Proponents believe that such a board could sort out the privacy implications of new services or technologies before they saturate the marketplace or are unnecessary quashed by consumer outrage.

The developers of Lotus Marketplace might have averted years of fruitless development if a privacy board had offered freedback on the idea in advance. The National Research and Education Network (NREN), promoted by the Clinton administration, would be a prime candidate for a advance evaluation by a privacy board. This multibillion-dollar "data superhighway" would theoretically allow tens of millions of Americans to communicate data, voice, video, and other forms of media at many times the speed of current networks. Protecting personal information on NREN is "the privacy issue of the twenty-first century," says the Electronic Frontier Foundation's Berman, yet so far the government has ignored the privacy implications of the project.

With powerful industry interests arrayed against it, privacy-board legislation has gone nowhere. "American consumers have more choice than any other consumers in the world. Part of the reason is that we are an open information society," says Lorna Christi of the Direct Marketing Association, echoing the industry's general fear of government regulation. "Self-regulation is working."

John Baker, senior vice president of Equifax, supports the idea of a board that

conducts research and gives confidential advice to industry. But the objects to giving a privacy board the very investigative and complaint-resolution responsibilities that privacy advocates see as minimum requirements to safeguard consumer and worker rights.

For now at least, the privacy implication of new technologies are likely to be confronted by government on and ad hoc basis, and only after the pubic has cried out for relief.

THE ROLE OF TECHNOLOGY

Privacy advocates are fond of saying that the United States is "first in technology, last in privacy protection." And while technology has made our personal lives more transparent, privacy and technology are not inherently antagonistic. In the absence of a privacy board, new technologies may prove one of the most potent forces driving what Privacy Times's Hendricks calls "the right to informational self-determination."

Technology has already alleviated many everyday intrusions: Airport X-ray units have made hand searches of luggage rare. With magnetic markers in books and clothing, searches of purses or briefcases in libraries and stores are quickly becoming obsolete. And encryption software makes computer files infinitely more secure than paper documents in locked cabinets.

A California company has even developed a "video game" to replace drug testing for truck drivers and other workers. Before each shift, employees go through a short hand-eye coordination exercise at a computer terminal. If they fail this simple test, they skip the shift or are moved to less demanding work that day. The technique not only screens out drug or alcohol intoxication, but also seems to identify workers who are excessively fatigued or preoccupied. One trucking company reports a dramatic decrease in accidents and worker errors after a year using the system.

Such stories are encouraging, but so far they are rare. Industry and society face a daunting challenge to develop technologies that protect personal privacy faster than those that threaten privacy.

The stakes are high. "Privacy allows us to move freely between the public world and private world, to form smaller communities within the larger community, to share our concerns, dreams, and beliefs with our close friends. To have secrets," Rotenberg commented in an online forum sponsored last year by the Wall Street Journal. "There is a close tie between privacy and pluralism.* * * This is what I suspect is at risk in the current rush to record and exchange personal data. Global Village in theory. Surveillance State in practice."

NATIONAL DATA PROTECTION BILLS ENACTED

[As of September 13, 1993]

Country	Title of law	Date enacted	Date in force	Ratified CoE Conv. No. 108	Registration or notification	Includes manual files	Legal persons covered	License required for export
Australia	Privacy Act	1988	1990	N/A	Some	No	No	No.
Austria	Data Protection Act	Oct. 18, 78	Jan. 1, 80	Yes	All data	Yes	Yes	Some data.
Belgium	Protection of private life regarding the processing of Personal Data Act.	Dec. 8, 92	June 95	No	All data	Yes	Yes	
Canada	Privacy Act	1982	1982	N/A	No	Yes	No	No.
Czech Republic	Protection of personal data in information systems	Apr. 29, 92	Jun. 1, 92	No	Yes	Yes	No	Yes.
Denmark	Private Registers Act, Public Registers Act	Jun. 8, 78; amended 1987.	Jan. 1, 79	Yes	Some	Yes	Yes	Some.
Faeroe Islands	Private Registers Act, Public Registers Act	1984	Oct. 1, 84; April 1, 94.	No	Some	Yes	Yes	Some.
Findland	Data Protection Act	Feb. 4, 87	Jan. 1, 88	No	Some	Yes	No	Some.
France	Data Processing, Data Files and Individual Liberties Act.	Jan. 6, 78	Jan. 1, 80	Yes	All data	Yes	Yes	No.
Germany	Data Protection Act	Jan. 27, 77; amended 1990.	Jan. 1, 79; amended Jun. 1, 91.	Yes	Some	Yes	No	No.
Guernsey	Data Protection Act	Jul. 30, 86	Nov. 11, 87	Yes	Yes	All	No	No.
Hungary	Handling of personal data and access to public data bill.	Oct. 27, 92		No	Some	Yes	Yes	No.
Iceland	Systematic recording of Personal Data Act	Jun. 5, 81	Jan. 1, 82	Yes	All data	Yes	Yes	All data.
Ireland	Data Protection Act	Jul. 13, 88	Apr. 19, 89	Yes	Some	No	No	No.
Isle of Man	Data Protection Act	Jul. 16, 86	Oct. 17, 90	Yes	All data	No	No	No.
Israel	Privacy Act	1981	1981	N/A	Yes	Yes	No	No.
Japan	Act for protection of computer processed personal data.	Dec. 9, 88	Dec. 16, 88	N/A	Some	No	No	No.
Jersey	Data Protection Act	Apr. 30, 87	Nov. 11, 87	Yes	All data	No	No	No.
Luxembourg	The use of name linked data in computer processing	Mar. 31, 79	Oct. 1, 79	Yes	All data	No	Yes	No.
Netherlands	Data Protection Act	Dec. 28, 88	Jul. 1, 89	No	Some	Yes	No	No.
New Zealand	Privacy Commission Act	1992	1992	N/A	Some	Yes	No	No.
Norway	Personal Data Registers Act	Jan. 9, 78	Jan. 1, 80	Yes	Some	Yes	Yes	Some.
Portugal	Protection of Personal Data Act	Apr. 29, 91	May 4, 91	No	All data	No	No	All.
Spain	Regulation of automated processing of Personal Data Act.	Oct. 8, 92	Feb. 93	Yes	All Data	Yes	No	Some.
Sweden	Data Act	May 13, 73; amended 1982.	Jul 1, 74; amended 1983.	Yes	All data	No	No	Some data.
Switzerland	Data Protection Act	Jun. 19, 92	Jun. 16, 93	No	Some	Yes	Yes	Must be declared.
United Kingdom	Data Protection Act	Jul. 12, 84	Nov. 11, 87	Yes	All data	No	No	No.

NATIONAL DATA PROTECTION BILLS UNDER CONSIDERATION

[As of September 13, 1993]

Country	Title of law	Date introduced	Registration or notification	Includes manual files	Legal persons covered	License required for export.
Bulgaria	Information bill	1991				
Croatia	Bill on privacy protection	1993			No	Yes.
Estonia	Data protection bill	1992	Some	Yes	No	Some.
Greece	Data protection bill	1991	All data	Yes	No	Some.
Hong Kong	Information privacy bill	1993	Some	Yes	No	Some.
Italy	Administration of automated data banks	Sept. 1, 1992	Some	No	No	Some.
Liechtenstein	Data protection bill	1991	Some	Yes	Yes	Must be declared.
Lithuania	Data protection bill	1992	Some	Yes	No	
Poland	Protection of personal data bill	Oct. 1992	Automated files	Yes	No	
Slovakia	Data protection bill	1993	Yes	Yes	No	Yes.
Taiwan	Data protection bill	1993	Yes	No	No	Yes.

Source: Malcom Norris, Stuert Dresner, Dave Banisar, and Wayne Madsen. For English translations of most of the acts, see Madsen Handbook of Personal Data Protection (Stockton Press 1992).

COMPUTER PROFESSIONALS FOR SOCIAL RESPONSIBILITY,
Washington, DC, November 10, 1993.

Senator PAUL SIMON,
U.S. Senate, Washington, DC.

DEAR SENATOR SIMON: We the undersigned consumer, technology, library, privacy and civil liberties organizations support the establishment of a privacy protection agency. We believe that an independent entity is necessary to help ensure that privacy rights and Constitutional freedoms are protected. With other countries now undertaking similar efforts and with growing concern about privacy protection in the United States, we believe that this is a particularly good time to move forward.

We support your efforts to introduce legislation and we look forward to working with you on this important initiative.

Sincerely,

Marc Rotenberg, Computer Professionals for Social Responsibility.

John Barker, National Consumers League.

Simon Davies, Privacy International.

Janlori Goldman, American Civil Liberties Union.
Leslie Harris, People For the American Way.
Evan Hendricks, US Privacy Council.
Mary Gardiner Jones, Consumer Interest Research Institute.
Judith Krug, American Library Association.
James Love, Center for the Study of Responsive Law.
Robert Ellis Smith, Privacy Journal.
George Trubow, Center for Informatics Law, John Marshall Law School.
Paul Wolfson, Public Citizen.

By Mr. ROBB (for himself and Mr. WARNER):

S.J. Res. 154. A joint resolution designated January 16, 1994, as "Religious Freedom Day"; to the Committee on the Judiciary.

RELIGIOUS FREEDOM DAY

Mr. ROBB. Mr. President, I rise with my friend and colleague from Virginia, Senator WARNER, to introduce legislation to recognize and commemorate January 16, 1994, as "Religious Freedom Day." While many commemoratives pass through this body each year, none to my knowledge celebrates this first and most basic liberty secured by the first amendment. The passage of this resolution will mark an important step in the mission to educate the Nation's public in the significance of Thomas Jefferson's Statute of Religious Freedom, adopted by the Virginia General Assembly on January 16, 1786. It will also provide Americans with the opportunity to join together in observing the primary liberties secured for the people by the religious clauses of the first amendment.

Mr. Jefferson drafted a bill for religious freedom in 1777, soon after the signing of the Declaration of Independence. Drawing from the ideas of Montesquieu, this charter would be the first in the world to establish the separation of Church and State and the freedom of exercise as the complementary components of a secular state. It was defeated by the Virginia General Assembly in 1779, the reintroduced in 1785 by James Madison while Jefferson served as Ambassador to France. Aided by Madison's famous article entitled "Memorial and Remonstrance against Religious Assessments," the Statute for Religious Freedom was adopted on January 16, 1786. On that occasion, Jefferson wrote to Madison, "It is honorable for us to have produced the first legislature with the courage to declare that the reason of man may trusted with the formation of his own opinion."

The contest to secure these religious freedoms, first in the Virginia Statute, and later in the Bill of Rights, was remarkable for the ideals at stake and the triumph of the democratic process which transformed these ideals into law. However, the purpose of Religious Freedom Day is not limited to the celebration of historical events, for the principles behind religious freedom are not frozen in history; rather, they remain central to any debate on the relationship between government and individual conscience. The faithful protection of those rights guaranteed by the first amendment and the Bill of Rights as a whole requires an electorate which will defend the principles behind those rights.

Religious Freedom Day will be an occasion for all Americans to observe those principles of individual conscience and societal tolerance which form the foundation of the first amendment. This will be a day to reflect on these words of the Constitution and the effect they have on our lives: "Congress shall make no law respecting an establishment of any religions, or prohibiting the free exercise thereof."

Mr. WARNER. Mr. President, I rise today to introduce along with Senator ROBB a joint resolution which would designate January 16, 1994, as "Religious Freedom Day."

The birth of this joint resolution goes back to January 16, 1786—the day the Virginia General Assembly adopted "An Act Establishing Religious Freedom for Virginia." Written by Thomas Jefferson, this statute was the first to institute the separation of church and state and secure for all citizens the freedom of worship. The Virginia statute for religious freedom inspired the first amendment and is regarded by scholars, lawyers, and religious leaders as one of the most influential documents ever created.

On January 16, 1992, the Virginia General Assembly passed a resolution commemorating the Virginia Statute for religious freedom as the precursor for the Bill of Rights. A proclamation was then signed by Governor Wilder and Virginia became the first State to establish a day for the appreciation of religious freedom.

The purpose of this joint resolution is to extend to all the States this opportunity to commemorate our religious freedoms. Therefore, I invite my colleagues to join Senator ROBB and myself in designating January 16, 1993, as "Religious Freedom Day."

I will close my remarks by submitting a letter written by A.E. Dick Howard, a professor at the University of Virginia School of Law, who so eloquently addresses the significance of the Virginia statute for religious freedom. 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:

SCHOOL OF LAW,
UNIVERSITY OF VIRGINIA,
Charlottesville, VA, December 20, 1991.

MS. CAROL NEGUS,
President, Council for America's First Freedom, Richmond, VA.

DEAR MS. NEGUS: The Virginia Statute for Religious Freedom is a document whose historical significance transcends the place and time which gave it birth.

One who delves into the circumstances surrounding the Statute's drafting and enactment will better understand the origins and meaning of religious freedom in America. In 1776, the Virginia Statute was enacted, a more complete statement of religious liberty and thereby come into being.

The history of the Virginia Statute is intertwined with that of the First Amendment to the United States Constitution. The Supreme Court of the United States, in interpreting the First Amendment, has often made reference to the Virginia Statute. That enactment remains a seminal document for any enquiry into the application of the First Amendment's religion clauses even two centuries later.

The Statute's significance is not confined to concerns about church and state or religion in the conventional sense. I can think of no document which more eloquently states Thomas Jefferson's concern for liberating the human mind from any manner of bondage. A splendid emanation of enlightenment thinking at his best, the Statute proclaims that at the heart of our conception of freedom lies freedom to believe what one will.

In an age when many countries are putting a totalitarian past behind them and are laying the foundations for constitutional democracy, the Virginia Statute points the way to aspirations which, if acted upon, would help mute the passions of national and ethnic rivalry. In my own work in Central and Eastern Europe, I have used the Statute as an example of an approach to religious freedom that would be worthy of emulation by constitutional draftsmen in the fledgling democracies.

The Virginia Statute is a document for the ages. I applaud the plans to commemorate its meaning and to undertake public education in its teachings.

Sincerely.

A.E. DICK HOWARD.

By Mr. D'AMATO:

S.J. Res. 155. A joint resolution to designate the week beginning March 13, 1994 as "National Manufacturing Week"; to the Committee on the Judiciary.

NATIONAL MANUFACTURING WEEK

• Mr. D'AMATO. Mr. President, I introduce a joint resolution designating the week of March 13 to 19, 1994, as "National Manufacturing Week."

This resolution celebrates the important contributions of the manufacturing industry to our economy, national defense, and way of life in the United States. Too often, Mr. President, this body takes for granted the importance of manufacturing to the U.S. economy. This importance is often clouded by a number of myths which still surround the manufacturing industry. Consider:

Myth 1: We are in a post industrial society.

Reality: In the 1980's, and so far in the 1990's, U.S. manufacturing's direct share of the economy has remained stable at more than a fifth of the gross domestic product. In addition, nearly half of total economic activity depends at least indirectly on manufacturing.

Myth 2: U.S. manufacturing is not globally competitive.

Reality: U.S. exports doubled between 1986 and 1992 and continue to set

records. A large trade surplus with Europe and a rebounding surplus with other countries show United States products can penetrate the entire spectrum of world markets.

Myth 3: Manufacturing is plagued by low productivity.

Reality: Average productivity growth in manufacturing has been approximately 3 percent a year for 12 years, compared with the national average, which remained close to zero until last year.

Myth 4: Manufacturing is low-technology.

Reality: Nearly three-quarters of research and development spending in the United States is performed by manufacturers. Manufacturing is the main source of advances in technology and innovation.

Myth 5: High prices? Poor quality?

Reality: Recent surveys show American manufactured goods today offer greater value and higher quality than at any time in three decades.

Myth 6: Manufacturing jobs are not as good as other jobs.

Reality: Manufacturing workers receive 15 percent higher compensation; 98 percent receive company-paid health benefits; manufacturers spend more than $30 billion a year on education and training.

It is for these and other reasons, Mr. President, that I feel it is important that we recognize and salute the achievements of the manufacturers of America.

I ask unanimous consent that the text of this 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. 155

Whereas throughout the history of the United States, manufacturing has contributed substantially to the economic well-being of the Nation;

Whereas manufacturing is an essential yet often overlooked component of the economic foundation of the United States;

Whereas a strong manufacturing industry contributes to continued growth, prosperity, and high-paying jobs in every other sector of the national economy;

Whereas manufacturing directly employs more than 18 million workers, and at least 18 million workers in the service sector depend on a sound manufacturing sector for their jobs;

Whereas manufacturing accounts for many of the highest paying jobs in the economy, and manufacturing wages are 20 percent higher on the average than nonmanufacturing wages;

Whereas, in the 1980's, manufacturing increased from 20 to 23 percent of the gross national product and manufacturing productivity in the last decade has increased at an annual rate of 3.6 percent, 3 times faster than the rate at which nonmanufacturing activity has increased;

Whereas the quality revolution has been one of the most important factors contributing to the recent resurgence of manufacturing in the United States;

Whereas manufacturing is an important source of tax revenue for the Federal Government, and State and local governments;

Whereas the continued leadership of the United States in science and technology is inherently linked to the success of manufacturing;

Whereas manufactured goods account for more than 80 percent of the trade deficit of the United States, indicating that manufacturing is especially important to overall national competitiveness and international trade;

Whereas a sound manufacturing economy is an essential pre-condition for a strong national defense;

Whereas the Nation's school children should be educated about job opportunities in manufacturing; and

Whereas the people of the United States should be educated about the role manufacturing plays in the economy, international competitiveness, and the standard of living of the Nation, and about the challenges and changing nature of manufacturing: Now therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week beginning March 13, 1994, is designated as "National Manufacturing Week", and the President is authorized and requested to issue a proclamation calling on the people of the United States to observe the week with appropriate ceremonies and activities.●

By Mr. MITCHELL (for himself, Mr. LAUTENBERG, Mr. HOLLINGS, Mr. EXON, Mr. NUNN, Mr. MOYNIHAN, Mr. D'AMATO, Mr. WARNER, Mr. NICKLES, Mr. KENNEDY, Mr. PELL, Mr. COHEN, and Mr. BIDEN):

S.J. Res. 156. A joint resolution honoring W. Graham Claytor.

HONORING W. GRAHAM CLAYTOR

Mr. MITCHELL. Mr. President, it was with both pleasure and sadness that I rise to introduce this joint resolution recognizing the many years of dedicated public service of W. Graham Claytor, Jr. He has served his country with honor and distinction as Secretary of the Navy and Assistant Secretary of Defense, but it is in his current position as president and chairman of the board of Amtrak that I have come to know him best.

I am pleased to be able to stand on the floor of the Senate today and publicly express my gratitude to Mr. Claytor for all that he has done for the National Railroad Passenger Corp. Just as he once decided, hours before receiving orders, to change the course of the U.S.S. *Cecil J. Doyle* and thus rescue almost 100 survivors of a ship which had been torpedoed, he also made the difficult but necessary decisions to change the course of Amtrak during his 11-year tenure and that have enabled the railroad's survival. He leaves behind a railroad that is a higher quality, more economically viable one than he inherited.

I wish him well as he enters his well-deserved retirement, and I urge the Senate to approve the following joint resolution expressing the United States' Congress appreciation to W. Graham Claytor, Jr., for a lifetime of dedicated and inspired service to the Nation.

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. 156

Whereas W. Graham Claytor, Jr., has announced his retirement at age 81 from the National Railroad Passenger Corporation, better known as Amtrak, where he has served as President and Chairman of the Board since 1982;

Whereas W. Graham Claytor, Jr., has provided remarkable, energetic, inspired, and at times heroic service to the Nation during a career that has included service in the United States Navy, a brilliant legal career, leadership of one of the Nation's largest private railroads, service as Secretary of the Navy, Acting Secretary of Transportation, and Deputy Secretary of Defense, and stewardship of Amtrak during a period that witnessed the rebirth of the Nation's passenger rail system;

Whereas W. Graham Claytor, Jr., has brought to his work enormous intellectual and analytical skills developed at the University of Virginia, where he received his bachelor's degree in 1933, and Harvard Law School, where he graduated in 1936 summa cum laude and as President of the Harvard Law Review;

Whereas W. Graham Claytor, Jr., worked as a law clerk for two of the finest and most brilliant jurists in this Nation's history, Judge Learned Hand of the United States Court of Appeals for the Second District in 1936–1937, and Supreme Court Justice Louis D. Brandeis in 1937–38, and later as an associate and partner at the law firm of Covington & Burling;

Whereas W. Graham Claytor, Jr., served his Nation during World War II, advancing in the United States Navy from ensign to lieutenant commander, and held commands of the U.S.S. SC-516, the U.S.S. Lee Fox, and the U.S.S. Cecil J. Doyle;

Whereas W. Graham Claytor, Jr., is credited with having saved almost 100 survivors of the sinking heavy cruiser U.S.S. Indianapolis, which had been torpedoed in shark-infested waters in the Pacific, by decisively changing the course of his ship, the U.S.S. Cecil J. Doyle, to rescue the survivors hours before receiving orders to take part in the rescue;

Whereas W. Graham Claytor, Jr., retired in 1977 as Chairman and Chief Executive Officer of Southern Railways, where he also had served as Vice President of Law and President, and was responsible for revamping the corporation's management style, planning, and long-term focus, and for making the railroad one of the largest and most successful in the Nation;

Whereas W. Graham Claytor, Jr., brought his experience as a decisive Naval officer and premier corporate manager to bear on the challenge of shaping a strong, versatile, modern Navy through his appointment by President Jimmy Carter and confirmation by the Senate in 1977 as Secretary of the Navy, and on the challenge of providing for a strong defense within mounting budgetary constraints in 1979 as Deputy Secretary of Defense, as well as serving as Acting Secretary of Transportation;

Whereas W. Graham Claytor, Jr., was appointed President and Chairman of the Board

of Amtrak in 1982 at the age of 71, and is directly responsible for the dramatic improvement in the economics, quality, and marketability of rail passenger service that has occurred over the last decade, and in the resurgence of demand for Amtrak service as a means of addressing growing highway and airport congestion across the Nation;

Whereas the vision of leadership of W. Graham Claytor, Jr., is responsible for having enabled Amtrak and Congress to withstand zealous attempts to eliminate the Nation's rail passenger system by demanding of his corporation that Amtrak operate as a private business with strict attention to the bottom line and to improvements in efficiency and quality of service, and by engineering a substantial reduction in the corporation's revenue-to-cost ratio and in level of Federal support required to operate the system;

Whereas W. Graham Claytor, Jr., has positioned Amtrak to be the Nation's leader in the development of high-speed rail for the next century and has overseen development of the Northeast Corridor as the Nation's premier rail passenger line and a model for high-speed operations across the country; and

Whereas the retirement of W. Graham Claytor, Jr., will mean the loss of one of the Nation's most knowledgeable, inspiring, and persuasive voices in government service and of a close, personal friend to many in Congress, the Government, and business: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress recognizes the critical role of Amtrak in the Nation's transportation system, and that the Nation profoundly thanks W. Graham Claytor, Jr., for a lifetime of dedication and superb service to this Nation, for his willingness to assume major new public challenges at a time when his peers had long ago retired, for his ability to profoundly change the course of events, from the lives of the sailors of the U.S.S. Indianapolis to the preservation of national rail passenger service, and for his brilliant stewardship of Amtrak over the past decade.

By Mr. WOFFORD (for himself, Mr. PELL, Mr. ROBB, and Mr. GLENN):

S.J. Res. 158. A joint resolution to designate both the month of August 1994 and the month of August 1995 as "National Slovak American Heritage Month"; to the Committee on the Judiciary.

NATIONAL SLOVAK AMERICAN HERITAGE MONTH

• Mr. WOFFORD. Mr. President, I am proud to join my distinguished colleagues, Senator PELL, Senator ROBB, and Senator GLENN in introducing a joint resolution to recognize millions of Americans of Slovak descent by designating August 1994 and August 1995 as National Slovak American Heritage Month.

This year, as Slovakia sets forth on its new course as an independent nation, it is fitting that we remind ourselves of the contributions that our two nations have made, and continue to make, to each other. For decades, Americans of Slovak descent have made important contributions to this Nation. And in the years since Slovakia moved away from the former Soviet Union to the independence it enjoys today, may Slovak-Americans have worked selflessly to improve the home of their ancestors.

Immigrants from Slovakia began to arrive in the United States as early as the 18th century seeking religious, economic and political freedom. The number of Slovaks immigrating to America increased substantially during the late 1800's when many found work in the coal mines and with the railroads where they received as little as $1.50 to $2 a day for their labor. Later generations of Slovak-Americans moved into myriad professions where they have distinguished themselves in business, politics, science, athletics, and the arts.

Early Slovak immigrants identified themselves and their culture primarily in terms of their language and religion and in their distinct music, dances and cuisine. The first generation continued to speak Slovak at home, in the workplace, in schools and in places of worship. However, as Slovak-Americans have assimilated and become an essential part of the diverse American fabric, they have sacrificed some of their language and cultures. Since 1886, the number of publications produced in Slovak by Slovak-Americans has steadily declined to almost none. As generations pass, more and more of their proud heritage will be lost unless their children learn about Slovak culture from their elders.

By designating the month of August as National Slovak American History Month, we encourage education, celebration and understanding of the traditions and culture of people of Slovak decent.

I ask unanimous consent that the text of the 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. 158

Whereas Stefan Parmenius Stitnicky, a Slovak chronologist and author of the poem "De Navigatione", came to the New World as a member of Sir Humphrey Gilbert's expedition in 1583;

Whereas Jan Boda, Stefan Mada, and other Slovaks were among the first settlers of Jamestown, Virginia in 1609;

Whereas Slovak immigrants came to North America in great numbers seeking religious, economic, and political freedom and, since the birth of this Nation, have labored diligently for the betterment of America;

Whereas the history of the Slovak people in the United States reflects a hard-working and honorable presence for over 200 years and includes service in all of the Nation's wars, including the American Revolution;

Whereas Slovak-Americans, who comprise the second largest Slav ethnic group in America, have distinguished themselves by contributing to the development of the sciences, arts, literature, government, military service, athletics, and education in the United States; and

Whereas in 1993 and 1994, Slovak-Americans celebrate the independence of Slovakia and the centennials of Slovak churches, newspapers, and fraternal organizations in the United States and, in doing so, proudly proclaim their pride in being Americans: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the months of August 1993 and August 1994 are each designated as "National Slovak American Heritage Month". The President is authorized and requested to issue a proclamation calling on the people of the United States to observe these months with appropriate ceremonies and activities.•

ADDITIONAL COSPONSORS

S. 257

At the request of Mr. BUMPERS, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 257, a bill to modify the requirements applicable to locatable minerals on public domain lands, consistent with the principles of self-initiation of mining claims, and for other purposes.

S. 340

At the request of Mr. HEFLIN, the names of the Senator from Indiana [Mr. LUGAR] and the Senator from West Virginia [Mr. BYRD] were added as cosponsors of S. 340, a bill to amend the Federal Food, Drug, and Cosmetic Act to clarify the application of the Act with respect to alternate uses of new animal drugs and new drugs intended for human use, and for other purposes.

S. 401

At the request of Mr. COHEN, his name was added as a cosponsor of S. 401, a bill to amend title 23, United States Code, to delay the effective date for penalties for States that do not have in effect safety belt and motorcycle helmet safety programs, and for other purposes.

S. 411

At the request of Mr. D'AMATO, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 411, a bill to freeze domestic discretionary spending for fiscal years 1994 and 1995 at fiscal year 1993 levels.

S. 449

At the request of Mr. SMITH, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 449, a bill to amend the Internal Revenue Code of 1986 to allow individuals to designate that up to 10 percent of their income tax liability be used to reduce the national debt, and to require spending reductions equal to the amounts so designated.

S. 473

At the request of Mr. JOHNSTON, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S. 473, a bill to promote the industrial competitiveness and economic growth of the United States by strengthening the linkages between the laboratories of the Department of Energy and the private sector and by supporting the

development and application of technologies critical to the economic, scientific and technological competitiveness of the United States, and for other purposes.

S. 596

At the request of Mr. WOFFORD, his name was added as a cosponsor of S. 596, a bill to amend title IV of the Social Security Act to provide improved child welfare services, and for other purposes.

S. 618

At the request of Mr. RIEGLE, the name of the Senator from Wisconsin [Mr. FEINGOLD] was added as a cosponsor of S. 618, a bill to amend the Immigration and Nationality Act to permit the admission to the United States of nonimmigrant students and visitors who are the spouses and children of United States permanent resident aliens, and for other purposes.

At the request of Mr. LAUTENBERG, the name of the Senator from Michigan [Mr. RIEGLE] was added as a cosponsor of S. 773, a bill to require the Administrator of the Environmental Protection Agency to establish a program to encourage voluntary environmental cleanup of facilities to foster their economic redevelopment, and for other purposes.

S. 774

At the request of Mr. WOFFORD, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of S. 774, a bill to authorize appropriations for the Martin Luther King, Jr. Federal Holiday Commission, extend such Commission, establish a National Service Day to promote community service, and for other purposes.

S. 784

At the request of Mr. HATCH, the name of the Senator from Missouri [Mr. DANFORTH] was added as a cosponsor of S. 784, a bill to amend the Federal Food, Drug, and Cosmetic Act to establish standards with respect to dietary supplements, and for other purposes.

S. 916

At the request of Mr. CRAIG, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 916, a bill to amend the Davis-Bacon Act and the Copeland Act to provide new job opportunities, effect significant cost savings by increasing efficiency and economy in Federal procurement, promote small and minority business participation in Federal contracting, increase competition for Federal construction contracts, reduce unnecessary paperwork and reporting requirements, clarify the definition of prevailing wage, and for other purposes.

S. 921

At the request of Mr. BAUCUS, the name of the Senator from Pennsylvania [Mr. WOFFORD] was added as a cosponsor of S. 921, a bill to reauthorize and amend the Endangered Species Act for the conservation of threatened and endangered species, and for other purposes.

S. 985

At the request of Mr. WOFFORD, his name was added as a cosponsor of S. 985, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act with respect to minor uses of pesticides, and for other purposes.

S. 1027

At the request of Mr. BROWN, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 1027, a bill to amend certain cargo preference laws.

S. 1154

At the request of Mr. DECONCINI, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 1154, a bill to amend the Foreign Assistance Act of 1961 to provide for the establishment of a Microenterprise Development Fund, and for other purposes.

S. 1175

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 1175, a bill to amend the Internal Revenue Code of 1986 to allow corporations to issue performance stock options to employees, and for other purposes.

S. 1188

At the request of Mr. COVERDELL, the name of the Senator from Utah [Mr. BENNETT] was added as a cosponsor of S. 1188, a bill to provide that Federal regulatory mandates shall not be enforced unless the cost to the States of implementing them are funded by the Federal Government.

S. 1208

At the request of Mr. WOFFORD, the names of the Senator from Rhode Island [Mr. PELL], the Senator from Hawaii [Mr. AKAKA], the Senator from Arizona [Mr. DECONCINI], and the Senator from Ohio [Mr. METZENBAUM] were added as cosponsors of S. 1208, a bill to authorize the minting of coins to commemorate the historic buildings in which the Constitution of the United States was written.

S. 1288

At the request of Mr. AKAKA, the names of the Senator from Arkansas [Mr. PRYOR] and the Senator from Arkansas [Mr. BUMPERS] were added as cosponsors of S. 1288, a bill to provide for the coordination and implementation of a national aquaculture policy for the private sector by the Secretary of Agriculture, to establish an aquaculture commercialization research program, and for other purposes.

S. 1329

At the request of Mr. D'AMATO, the names of the Senator from California [Mrs. FEINSTEIN], the Senator from Ohio [Mr. METZENBAUM], the Senator from Alabama [Mr. HEFLIN], the Senator from Wisconsin [Mr. KOHL], the Senator from Louisiana [Mr. BREAUX], and the Senator from Missouri [Mr. DANFORTH] were added as cosponsors of S. 1329, a bill to provide for an investigation of the whereabouts of the United States citizens and others who have been missing from Cyprus since 1974.

S. 1361

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 1361, a bill to establish a national framework for the development of School-to-Work Opportunities systems in all States, and for other purposes.

S. 1383

At the request of Mr. HOLLINGS, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 1383, bill to amend the Communications Act of 1934 to prohibit the distribution to the public of violent video programming during hours when children are reasonably likely to comprise a substantial portion of the audience.

S. 1437

At the request of Mr. HOLLINGS, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 1437, a bill to amend section 1562 of title 38, United States Code, to increase the rate of pension for persons on the Medal of Honor roll.

S. 1447

At the request of Mr. SASSER, his name was added as a cosponsor of S. 1447, a bill to modify the disclosures required in radio advertisements for consumer leases, loans and savings accounts.

S. 1458

At the request of Mrs. KASSEBAUM, the names of the Senator from North Carolina [Mr. FAIRCLOTH], the Senator from New York [Mr. D'AMATO], and the Senator from Connecticut [Mr. LIEBERMAN] were added as cosponsors of S. 1458, a bill to amend the Federal Aviation Act of 1958 to establish time limitations on certain civil actions against aircraft manufacturers, and for other purposes.

S. 1464

At the request of Mr. SIMON, the name of the Senator from Colorado [Mr. CAMPBELL] was added as a cosponsor of S. 1464, a bill to amend the Elementary and Secondary Education Act of 1965 to ensure gender equity in education, and for other purposes.

S. 1465

At the request of Mr. HARKIN, the name of the Senator from Colorado [Mr. CAMPBELL] was added as a cosponsor of S. 1465, a bill to amend certain education laws regarding gender equity training, dropout prevention, and gender equity research and data.

S. 1510

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of

S. 1510, a bill to amend title 38, United States Code, to increase the amount of the loan guaranty for loans for the purchase or construction of homes.

S. 1521

At the request of Mr. SHELBY, the names of the Senator from Oklahoma [Mr. NICKLES], the Senator from Utah [Mr. HATCH], the Senator from Mississippi [Mr. LOTT], the Senator from Idaho [Mr. CRAIG], and the Senator from Idaho [Mr. KEMPTHORNE] were added as cosponsors of S. 1521, a bill to reauthorize and amend the Endangered Species Act of 1973 to improve and protect the integrity of the programs of such Act for the conservation of threatened and endangered species, to ensure balanced consideration of all impacts of decisions implementing such Act, to provide for equitable treatment of non-Federal persons and Federal agencies under such Act, to encourage non-Federal persons to contribute voluntarily to species conservation, and for other purposes.

S. 1533

At the request of Mr. LOTT, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 1533, a bill to improve access to health insurance and contain health care costs, and for other purposes.

S. 1560

At the request of Mr. MOYNIHAN, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 1560, a bill to establish the Social Security Administration as an independent agency, and for other purposes.

S. 1607

At the request of Mr. HATCH, his name was added as a cosponsor of S. 1607, a bill to control and prevent crime.

S. 1625

At the request of Mr. BROWN, the names of the Senator from Illinois [Mr. SIMON], the Senator from Iowa [Mr. GRASSLEY], the Senator from Florida [Mr. MACK], the Senator from California [Mrs. BOXER], the Senator from Tennessee [Mr. SASSER], and the Senator from Colorado [Mr. CAMPBELL] were added as cosponsors of S. 1625, a bill to prohibit the sale of defense articles and defense services to countries that participate in the secondary and tertiary boycott of Israel.

S. 1664

At the request of Mr. BRYAN, the name of the Senator from Minnesota [Mr. DURENBERGER] was added as a cosponsor of S. 1664, a bill to amend subchapter II of chapter 53 of title 31, United States Code, to improve enforcement of anti-money laundering laws, and for other purposes.

S. 1670

At the request of Mr. HARKIN, the name of the Senator from Missouri [Mr. BOND] was added as a cosponsor of S. 1670, a bill to improve hazard mitigation and relocation assistance in connection with flooding, and for other purposes.

SENATE JOINT RESOLUTION 41

At the request of Mr. SIMON, the name of the Senator from Texas [Mrs. HUTCHISON] was added as a cosponsor of Senate Joint Resolution 41, a joint resolution proposing an amendment to the Constitution of the United States to require a balanced budget.

SENATE JOINT RESOLUTION 52

At the request of Mr. PACKWOOD, the name of the Senator from Michigan [Mr. RIEGLE] was added as a cosponsor of Senate Joint Resolution 52, a joint resolution to designate the month of November 1993 and 1994 as "National Hospice Month".

SENATE CONCURRENT RESOLUTION 34

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of Senate Concurrent Resolution 34, a concurrent resolution expressing the sense of the Senate regarding the accounting standards proposed by the Financial Accounting Standards Board.

SENATE CONCURRENT RESOLUTION 35

At the request of Mr. WOFFORD, the names of the Senator from Louisiana [Mr. JOHNSTON], the Senator from Wisconsin [Mr. FEINGOLD], and the Senator from Florida [Mr. GRAHAM] were added as cosponsors of Senate Concurrent Resolution 35, a concurrent resolution to express the sense of the Congress with respect to certain regulations of the Occupational Safety and Health Administration.

SENATE CONCURRENT RESOLUTION 50

At the request of Mr. LAUTENBERG, the name of the Senator from Colorado [Mr. BROWN] was added as a cosponsor of Senate Concurrent Resolution 50, a concurrent resolution concerning the Arab boycott of Israel.

SENATE RESOLUTION 148

At the request of Mr. SIMON, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of Senate Resolution 148, a resolution expressing the sense of the Senate that the United Nations should be encouraged to permit representatives of Taiwan to participate fully in its activities, and for other purposes.

SENATE RESOLUTION 162

At the request of Mr. DOLE, his name was added as a cosponsor of Senate Resolution 162, a resolution relating to the treatment of Hugo Princz, a United States citizen by the Federal Republic of Germany.

SENATE RESOLUTION 164

At the request of Mr. MITCHELL, his name was added as a cosponsor of Senate Resolution 164, a resolution expressing the sense of the Senate commemorating the bombing of Pan Am Flight 103.

SENATE RESOLUTION 167

At the request of Mr. MOYNIHAN, the names of the Senator from Colorado [Mr. BROWN] and the Senator from Kansas [Mrs. KASSEBAUM] were added as cosponsors of Senate Resolution 167, a resolution expressing the sense of the Senate concerning the Iraqi Government's campaign against the Marsh Arabs of Southern Iraq.

SENATE CONCURRENT RESOLUTION 54—RELATIVE TO BOSNIA AND HERZEGOVINA

Mr. DECONCINI submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 54

Expressing the sense of the Congress regarding the impeded delivery of natural gas for heating to the civilian population of Bosnia-Herzegovina.

Whereas there is little likelihood that either international negotiations or the ongoing combat in the region will result in a conclusion of the conflict in Bosnia-Herzegovina in the near future;

Whereas the innocent civilian population of Bosnia-Herzegovina is heavily reliant on natural gas for heating, especially in Sarajevo and other cities;

Whereas the pipeline that delivers natural gas to Bosnia-Herzegovina runs through Serbia prior to reaching Bosnia-Herzegovina;

Whereas delivery of natural gas to Bosnia-Herzegovina from the pipeline entering Bosnia-Herzegovina from Serbia has been impeded by Serb militants in Bosnia-Herzegovina;

Whereas the denial of natural gas for heating, and of other utilities, is one of many aspects of the Serb siege of Sarajevo and other Bosnia civilian centers, and is part of the repugnant Serb policy known as ethnic cleansing;

Whereas international sanctions have been imposed on Serbia due to Serbian authorities' control of and influence over the Serb militants in Bosnia-Herzegovina, who are responsible for aggression and atrocities;

Whereas the sanctions against Serbia contain an exemption for humanitarian items, including natural gas as a heating fuel, which has resulted in the continuing flow of natural gas from Hungary into Serbia through the same pipeline that extends to Bosnia-Herzegovina;

Whereas there are no signs that Serbian officials have made any effort to compel or convince the Serb militants to restore the flow of natural gas to Sarajevo and other parts of Bosnia-Herzegovina;

Whereas the civilians of Bosnia-Herzegovina are dangerously vulnerable to the elements as the second winter of the war against them approaches, and many thousands may die from the cold temperatures and associated deprivations; and

Whereas the current situation in Bosnia-Herzegovina may become an even greater human tragedy if action is not taken soon to remedy this situation: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that—

(1) the President should actively seek a decision by the United Nations to immediately and completely cut off the delivery of natural gas to Serbia, including both delivery through the pipeline that enters Serbia from Hungary, and delivery through or by an alternative source; and

(2) such cutoff should continue until the regular and unimpeded flow of natural gas to

Sarajevo and other areas of Bosnia-Herzegovina is fully restored.

• Mr. DECONCINI. Mr. President, the strangulation of Sarajevo and other cities in Bosnia and Herzegovina continues as winter approaches. The first snowfall of the season fell earlier this week, a grim reminder of the humanitarian nightmare facing the beleaguered populace there following 19 months of aggression and genocide. The prospects for catastrophe are enormous absent a massive relief effort by the international community. And even then there is no guarantee that vital supplies will reach those in need before it is too late. The State Department recently estimated that 2.7 million civilians in Bosnia and Herzegovina are at risk.

The situation in Sarajevo and other cities is particularly acute given dangerously low food supplies, serious shortages of even the most basic medicines, and dwindling sources of fuel for heating. The slow but steady strangulation of these cities continues, taking its toll with each passing day. Earlier this week I met with Kemel Kurspahic, editor-in-chief of the Sarajevo newspaper, Oslobodjenje. Mr. Kurspahic painted a vivid picture of the severe daily hardship faced by the people of Sarajevo as they struggle to survive.

As part of their stranglehold on these cities the Serbs have cut off critical supplies of natural gas used for heating. This cynical practice was brought to my attention at a Helsinki Commission hearing I recently chaired. The flow of gas, which runs through a pipeline from Hungary which crosses Serbia, has been blocked by Serb militants. Supplies of natural gas to Belgrade, serviced by the same pipeline, have continued without interruption. The Serbs must be held accountable for such outrageous behavior.

The resolution which I submit today calls upon the President to actively seek a decision by the United Nations to immediately cut off all deliveries of natural gas to Serbia until the regular and unimpeded flow of gas to Sarajevo and other areas of Bosnia and Herzogovina is fully restored. Mr. President, I urge my colleagues to support this resolution which seeks to bring some measure of relief to the people of Sarajevo and other cities as they face the war for survival during yet another winter under siege.•

SENATE CONCURRENT RESOLUTION 55—RELATIVE TO TAIWAN

Mr. LIEBERMAN (for himself, Mr. WOFFORD, and Mr. GRAHAM) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 55

Expressing the sense of the Congress with respect to Taiwan's membership in the United Nations and other international organizations.

Whereas the Republic of China was one of the founding members of the United Nations in 1945;

Whereas as the end of the civil war in China in 1949 the Kuomindang nationalists were defeated and moved their Republic of China government to the island of Taiwan;

Whereas the governments in both Beijing and Taipei claim that they represent all of China, including Taiwan;

Whereas on December 15, 1978, the United States and the People's Republic of China released a joint communique that announced a switch in United States diplomatic recognition from Taipei to Beijing;

Whereas that joint communique also stated that "the United States will maintain cultural, commercial, and other unofficial relations with the people of Taiwan";

Whereas on December 15, 1978, in a unilateral statement released concurrently with that joint communique, the United States stated that it "continues to have an interest in the peaceful resolution of the Taiwan issue";

Whereas on April 10, 1979, President Carter signed into law the Taiwan Relations Act (Public Law 96-8), effective as of January 1, 1979, which created a domestic legal authority for the conduct of unofficial relations with Taiwan;

Whereas since January 1, 1979, the United States, in accordance with the Taiwan Relations Act, has continued the sale of selected defense articles and defense services to Taiwan;

Whereas in spite of its economic achievements and significant role in the world economy and in world affairs, Taiwan does not have representation in the United Nations or in other international organizations;

Whereas the people of Taiwan have, through their elected legislators, expressed a strong desire to join the United Nations and other international organizations; and

Whereas the participation of the people on Taiwan in the United Nations and in other international organizations would further enhance the peace, security, and stability in the Pacific and is in the best interests of the United States: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that the 21,000,000 people on Taiwan should be represented in the United Nations and in other international organizations.

• Mr. LIEBERMAN. Mr. President, I rise today, together with my distinguished colleagues, Senators WOFFORD and GRAHAM, to submit a concurrent resolution concerning Taiwan. This resolution, if adopted, would express the sense of Congress that the 21 million people on Taiwan should be represented in the United Nations and in other international organizations.

Such a move would recognize the exceptional progress of the people on Taiwan in ensuring political freedoms, developing democratic institutions, and building economic strength. Although Taiwan is a small nation in relative size and population, it ranks 13th in world trade, and 25th in per capita income, and is the 7th largest foreign investor. Furthermore, it is the United States' sixth largest trading partner and the largest holder of foreign reserves worldwide with over $88 billion total.

In addition to building a booming economy, the people of Taiwan have taken definitive steps toward democratic reform. Taiwan has worked hard to escape its tumultuous past; and, while it is far from a perfect democracy, substantial strides have been made in developing democratic institutions—including a free press.

By granting U.N. membership to Taiwan, the international community will be sending a clear message that Taiwan is an independent state with a role to play in the rapidly changing international environment.

A similar version of this bill which was introduced by Representatives TORRICELLI, DORNAN, GEJDENSON, and TAUZIN has been gaining support in the House of Representatives.

Mr. President, as a vibrant member of the international community, Taiwan deserves a seat in the United Nations—not only to benefit the people of Taiwan but to enhance the credibility of the United Nations. It is time to officially recognize the economic and political sovereignty of the people of Taiwan by supporting its full membership in the United Nations.•

SENATE RESOLUTION 170—DESIGNATING OBSTETRICIAN-GYNECOLOGISTS AS PRIMARY CARE PHYSICIANS

Mr. CHAFEE (for himself, Mr. INOUYE, Mr. HATFIELD, Ms. MIKULSKI, Mr. BOND, Mr. MCCAIN, Mr. STEVENS, Mr. MURKOWSKI, Mr. KEMPTHORNE, Mr. LOTT, Mr. COCHRAN, Mr. COHEN, Mrs. MURRAY, Ms. MOSELEY-BRAUN, Mr. SIMON, Mr. DURENBERGER, Mr. LUGAR, Mrs. HUTCHISON, Mr. LAUTENBERG, Mr. WARNER, Mr. AKAKA, Mr. SPECTER, Mr. BRYAN, Mr. HOLLINGS, Mr. THURMOND, Mr. GRASSLEY, Mr. JEFFORDS, Mrs. FEINSTEIN, Mr. BURNS, Mr. LEAHY, Mr. LIEBERMAN, Mr. REID, Mr. FORD, Mr. DECONCINI, Mr. WOFFORD, Mr. MCCONNELL, Mr. PELL, Mr. BINGAMAN, Mr. EXON, Mr. MACK, Mr. JOHNSTON, and Mr. DODD) submitted the following resolution; which was referred to the Committee on Labor and Human Resources:

S. RES. 170

Whereas women constitute more than 50 percent of the population of the United States;

Whereas, because women's health historically has received little attention in terms of Federal funding and in terms of research priorities, there should be an increased emphasis on the needs and preferences of women in such areas;

Whereas the Federal Government should increase its support for women's health and can make a significant difference in improving the status of women's health;

Whereas increased funding for research is insignificant if women's health care services are restricted;

Whereas obstetrician-gynecologists manage the health of women beyond the reproductive system, and are uniquely qualified

on the basis of education and experience to provide such health care services to women;

Whereas obstetrician-gynecologists provide health care to women with an awareness of the relationship of disease to family history;

Whereas over two-thirds of general family practice physicians do not deliver newborns and will not be able to address this need of women; and

Whereas 80 percent of maternity care services in the United States are provided by obstetrician-gynecologists: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) obstetrician-gynecologists should be included as primary care providers for women in Federal laws relating to the provision of health care; and

(2) legislative proposals that define primary care should include primary care services performed by obstetrician-gynecologists in such definition.

Mr. CHAFEE. Mr. President, the resolution we are submitting today is meant to draw attention to the differences in treatment and prevention that women experience in our health care system and to attempt to correct these deficiencies.

This resolution expresses the sense of several senators, including myself, that Obstetrician-Gynecologists [ob-gyns] should be included as primary care physicians in federal laws relating to health care, which will aid in providing women with greater access to complete health care.

In a survey from the HHS Office of Disease Prevention and Health Promotion, ob-gyns were found to provide primary care and a variety of preventive care services, such as screening for breast cancer, ovarian cancer, and others. When asked, ob-gyns provide counsel upon request from their patients about sexually transmitted diseases, HIV infection prevention, proper diet and exercise, work-related health risks, and aid in the identification of victims of domestic violence. In fact, a New England Journal of Medicine article, this August, found that ob-gyns, regardless of age and gender, consistently offer preventive screening measures at greater frequency than other medical professionals in closely related fields. Primary and preventive care are cornerstones of all health care reform plans being developed today.

Mr. President, it is my hope that health insurers include ob-gyns as primary care physicians in order to save money and lives, and to cut down on paper work and time-consuming referrals. In fact, ob-gyn patients are less often referred to other medical doctors than are the patients of other medical professionals. Furthermore, over two-thirds of all ob-gyns visits were established by returning patients. So, this shows that including ob-gyns as primary care physicians begins to close the gaps in women's health care.

Significant numbers of women currently view their ob-gyn as their primary care physician, and is the only physician they see regularly during their pre-menopausal years. In fact, last year 7,000,000 women visited their ob-gyn for a general medical exam, the second most frequently cited purpose of patient visits to ob-gyns. Furthermore, obtaining a general check up was a more frequently cited reason for visiting an ob-gyn than it was for seeing either family physicians for internists.

Prenatal care is the most frequently cited reason for visiting an ob-gyn. Proper prenatal care saves the health care system millions of dollars, but more importantly, Mr. President, it saves lives. Adequate prenatal care also reduces the incidence of low birthweight babies, which account for only 7 percent off all live births, which however, accounts for nearly 60 of all infant deaths. Low birthweight babies who do survive are twice as likely to suffer one or more handicaps, including mental retardation, deafness, blindness, autism, cerebral palsy, epilepsy, or chronic lung problems.

Mr. President, this is one step on the long march to improve the health of American women in this decade and beyond into the 21st century. The health care needs of half of our population must not be overlooked. I urge my colleagues to co-sponsor this Sense of the Senate resolution.

SENATE RESOLUTION 171—AUTHORIZE THE PRODUCTION OF RECORDS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. MITCHELL (for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 171

Whereas, the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs has been conducting an investigation of allegations of abuses in the Pell Grant financial assistance program;

Whereas, several law enforcement entities have requested access to records of the Subcommittee's investigation;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved, That the Chairman and Ranking Majority Member of the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, acting jointly, are authorized to provide, to law enforcement and regulatory entities requesting access, records of the Subcommittee's investigation of alleged abuses in the Pell Grant program.

AMENDMENTS SUBMITTED

BRADY HANDGUN VIOLENCE PREVENTION ACT

MITCHELL (AND DOLE) AMENDMENT NO. 1218

Mr. MITCHELL (for himself and Mr. DOLE) proposed an amendment to the bill (S. 414) to amend title 18, United States Code, to require a waiting period before the purchase of a handgun; as follows:

Strike all after the enacting clause and insert the following:

TITLE ___—BRADY HANDGUN CONTROL

SEC. ___01. SHORT TITLE.

This title may be cited as the "Brady Handgun Violence Prevention Act".

SEC. ___02. FEDERAL FIREARMS LICENSEE REQUIRED TO CONDUCT CRIMINAL BACKGROUND CHECK BEFORE TRANSFER OF FIREARM TO LICENSEE.

(a) INTERIM PROVISION.—

(1) IN GENERAL.—Section 922 of title 18, United States Code, is amended by adding at the end the following:

"(s)(1) Beginning on the date that is 90 days after the date of enactment of this subsection and ending either on the day before the date that is 60 months after such date of enactment or on the day that the Attorney General notifies the licensees in all of the States under section ___03(d) of the Brady Handgun Violence Prevention Act, whichever occurs earlier, it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun to an individual who is not licensed under section 923, unless—

"(A) after the most recent proposal of such transfer by the transferee—

"(i) the transferor has—

"(I) received from the transferee a statement of the transferee containing the information described in paragraph (3);

"(II) verified the identity of the transferee by examining the identification document presented;

"(III) within 1 day after the transferee furnishes the statement, provided notice of the contents of the statement to the chief law enforcement officer of the place of residence of the transferee; and

"(IV) within 1 day after the transferee furnishes the statement, transmitted a copy of the statement to the chief law enforcement officer of the place of residence of the transferee; and

"(ii)(I) 5 business days (meaning days on which State offices are open) have elapsed from the date the transferor furnished notice of the contents of the statement to the chief law enforcement officer, during which period the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

"(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

"(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10-day

period ending on the date of the most recent proposal of such transfer by the transferee, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

"(C)(i) the transferee has presented to the transferor a permit that—

"(I) allows the transferee to possess or acquire a handgun; and

"(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

"(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of the law;

"(D) the law of the State requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923, an authorized government official verify that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

"(E) the Secretary has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

"(F) on application of the transferor, the Secretary has certified that compliance with subparagraph (A)(i)(III) is impracticable because—

"(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

"(ii) the business premises of the transferor at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer; and

"(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

"(2) A chief law enforcement officer to whom a transferor has provided notice pursuant to paragraph (1)(A)(i)(III) shall make a reasonable effort to ascertain within 5 business days whether receipt or possession would be in violation of the law, including research in whatever State and local record-keeping systems are available and in a national system designated by the Attorney General.

"(3) The statement referred to in paragraph (1)(A)(i)(I) shall contain only—

"(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)) of the transferee containing a photograph of the transferee and a description of the identification used;

"(B) a statement that transferee—

"(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year;

"(ii) is not a fugitive from justice;

"(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

"(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

"(v) is not an alien who is illegally or unlawfully in the United States;

"(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

"(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

"(C) the date the statement is made; and

"(D) notice that the transferee intends to obtain a handgun from the transferor.

"(4) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall, within 1 business day after receipt of such request, communicate any information related to the transfer the transferor has about the transfer and the transferee to—

"(A) the chief law enforcement officer of the place of business of the transferor; and

"(B) the chief law enforcement officer of the place of residence of the transferee.

"(5) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

"(6)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with subclauses (III) and (IV) of paragraph (1)(A)(i) with respect to the statement.

"(B) Unless the chief law enforcement officer to whom a statement is transmitted under paragraph (1)(A)(i)(IV) determines that a transaction would violate Federal, State, or local law—

"(i) the officer shall, within 20 business days after the date the transferee made the statement on the basis of which the notice was provided, destroy the statement, any record containing information derived from the statement, and any record created as a result of the notice required by paragraph (1)(A)(i)(III);

"(ii) the information contained in the statement shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection; and

"(iii) the information contained in the statement shall not be used for any purpose other than to carry out this subsection.

"(C) If a chief law enforcement officer determines that an individual is ineligible to receive a handgun and the individual requests the officer to provide the reason for such determination, the officer shall provide such reasons to the individual in writing within 20 business days after receipt of the request.

"(7) A chief law enforcement officer or other person responsible for providing criminal history background information pursuant to this subsection shall not be liable in an action at law for damages—

"(A) for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section; or

"(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a handgun.

"(8) For purposes of this subsection, the term 'chief law enforcement officer' means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

"(9) The Secretary shall take necessary actions to ensure that the provisions of this subsection are published and disseminated to licensed dealers, law enforcement officials, and the public.".

(2) HANDGUN DEFINED.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

"(29) The term 'handgun' means—

"(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

"(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.".

(b) PERMANENT PROVISION.—Section 922 of title 18, United States Code, as amended by subsection (a)(1), is amended by adding at the end the following:

"(t)(1) Beginning on the date that is 30 days after the Attorney General notifies licensees under section ___03(d)(1) of the Brady Handgun Violence Prevention Act that the national instant criminal background check system is established, and upon notification by the Attorney General to licensees that the system is operational and capable of supplying information immediately, (during which 30-day period subsection (s) shall remain in effect), a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter, unless—

"(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section ___03 of that Act;

"(B)(i) the system provides the licensee with a unique identification number; or

"(ii) 3 business days (meaning a day on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that the receipt of a firearm by such other person would violate subsection (g) or (n) of this section; and

"(C) the transferor has verified the identity of the transferee by examining a valid identification document (as defined in section 1028(d)(1) of this title) of the transferee containing a photograph of the transferee.

"(2) If receipt of a firearm would not violate section 922 (g) or (n) or state law, the system shall—

"(A) assign a unique identification number to the transfer;

"(B) provide the licensee with the number; and

"(C) destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer.

"(3) Paragraph (1) shall not apply to a firearm transfer between a licensee and another person if—

"(A)(i) such other person has presented to the licensee a permit that—

"(I) allows such other person to possess or acquire a firearm; and

"(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

"(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law;

"(B) the Secretary has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

"(C) on application of the transferor, the Secretary has certified that compliance with paragraph (1)(A) is impracticable because—

"(i) the ratio of the number of law enforcement officers of the State in which the

transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

"(ii) the business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer (as defined in subsection (s)(8)); and

"(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

"(4) If the national instant criminal background check system notifies the licensee that the information available to the system does not demonstrate that the receipt of a firearm by such other person would violate subsection (g) or (n) or state law, and the licensee transfers a firearm to such other person, the licensee shall include in the record of the transfer the unique identification number provided by the system with respect to the transfer.

"(5) If the licensee knowingly transfers a firearm to such other person and knowingly fails to comply with paragraph (1) of this subsection with respect to the transfer and, at the time such other person most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that receipt of a firearm by such other person would violate subsection (g) or (n) of state law of this section, the Secretary may, after notice and opportunity for a hearing, suspend for not more than 6 months or revoke any license issued to the licensee under section 923, and may impose on the licensee a civil fine of not more than $5,000.

"(6) Neither a local government nor an employee of the Federal Government or of any State or local government, responsible for providing information to the national instant criminal background check system shall be liable in an action at law for damages—

"(A) for failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful under this section; or

"(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a firearm.

"(7)(A) Notwithstanding any provision of the law of any State or political subdivision thereof that prohibits the transfer or receipt of a firearm unless a specified period of time has elapsed prior to the transfer or receipt of a firearm, a licensee may transfer and a person may receive a firearm immediately after compliance with paragraph (1).

"(B) Section 927 shall not apply to subparagraph (A) of this paragraph.

"(C) Subparagraph (A) shall not apply to any State or political subdivision thereof that enacts, more than 1 year after the effective date of subparagraph (A), a law that prohibits the transfer or receipt of a firearm unless a specified period of time has elapsed prior to the transfer or receipt of a firearm.".

(c) PENALTY.—Section 924(a) of title 18, United States Code, is amended—

(1) in paragraph (1), by striking "paragraph (2) or (3) of"; and

(2) by adding at the end the following:

"(5) Whoever knowingly violates subsection (s) or (t) of section 922 shall be fined not more than $1,000, imprisoned for not more than 1 year, or both.".

SEC. ___03. NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

(a) DETERMINATION OF TIMETABLES.—Not later than 6 months after the date of enactment of this Act, the Attorney General shall—

(1) determine the type of computer hardware and software that will be used to operate the national instant criminal background check system and the means by which State criminal records systems and the telephone or electronic device of licensees will communicate with the national system;

(2) investigate the criminal records system of each State and determine for each State a timetable by which the State should be able to provide criminal records on an on-line capacity basis to the national system; and

(3) notify each State of the determinations made pursuant to paragraphs (1) and (2).

(b) ESTABLISHMENT OF SYSTEM.—

(1) DETERMINATIONS.—Not later than the date that is 24 months after the date of enactment of this Act, the Attorney General shall determine whether—

(A) the equipment used to link State criminal history records systems to the national criminal history records system and the equipment necessary to operate the national instant criminal background check system are operational; and

(B) any group of States that—

(i) have at least 80 percent of the population of the United States; and

(ii) have reported during a 12-month period at least 80 percent of the number of crimes of violence reported by all of the States during that period,

have achieved and maintained in each state at least 70 percent currency of case dispositions in computerized criminal history files for all cases in which there has been an event of activity within the last 5 years; and (c) if such determinations are made in the affirmative, the Attorney General shall certify that the national system is established.

(2) ESTABLISHMENT.—If the Attorney General makes an affirmative finding with respect to the matters described in paragraph (1) (A) and (B), the Attorney General shall establish a national instant criminal background check system that any licensee may contact, by telephone and by other electronic means in addition to the telephone, for information, to be supplied immediately, on whether receipt of a firearm by a prospective transferee would violate section 922 of title 18, United States Code or state law.

(c) EXPEDITED ACTION BY THE ATTORNEY GENERAL.—The Attorney General shall expedite—

(1) the upgrading and indexing of State criminal history records in the Federal criminal records system maintained by the Federal Bureau of Investigation;

(2) the development of hardware and software systems to link State criminal history check systems into the national instant criminal background check system established by the Attorney General pursuant to this section; and

(3) the current revitalization initiatives by the Federal Bureau of Investigation for technologically advanced fingerprint and criminal records identification.

(d) NOTIFICATION OF LICENSEES.—On establishment of the system under this section, the Attorney General shall notify each licensee and the chief law enforcement officer of each State of the existence and purpose of the system and the means to be used to contact the system.

(e) STATES IN COMPLIANCE WITH TIMETABLE.—At any time at which the Attorney General determines—

(1) that a State is in compliance with the timetable set for that State under section (a); and

(2) the State has achieved and maintains at least 70 percent currency of case dispositions in computerized criminal history files for all cases in which there has been an event of activity during the last 5 years,

the Attorney General shall notify each licensee in the State and the chief law enforcement officer of the State of the determination.

(f) ADMINISTRATIVE PROVISIONS.—

(1) AUTHORITY TO OBTAIN OFFICIAL INFORMATION.—Notwithstanding any other law, the Attorney General may secure directly from any department or agency of the United States such information on persons for whom receipt of a firearm would violate subsection (g) or (n) of section 922 of title 18, United States Code or state law, as is necessary to enable the system to operate in accordance with this section. On request of the Attorney General, the head of such department or agency shall furnish such information to the system.

(2) OTHER AUTHORITY.—The Attorney General shall develop such computer software, design and obtain such telecommunications and computer hardware, and employ such personnel, as are necessary to establish and operate the system in accordance with this section.

(f) WRITTEN REASONS PROVIDED ON REQUEST.—If the national instant criminal background check system determines that an individual is ineligible to receive a firearm and the individual requests the system to provide the reasons for the determination, the system shall provide such reasons to the individual, in writing, within 5 business days after the date of the request.

(g) CORRECTION OF ERRONEOUS SYSTEM INFORMATION.—If the system established under this section informs an individual contacting the system that receipt of a firearm by a prospective transferee would violate subsection (g) or (n) of section 922 of title 18, United States Code or state law, the prospective transferee may request the Attorney General to provide the prospective transferee with the reasons therefor. Upon receipt of such a request, the Attorney General shall immediately comply with the request. The prospective transferee may submit to the Attorney General information that to correct, clarify, or supplement records of the system with respect to the prospective transferee. After receipt of such information, the Attorney General shall immediately consider the information, investigate the matter further, and correct all erroneous Federal records relating to the prospective transferee and give notice of the error to any Federal department or agency or any State that was the source of such erroneous records.

(h) REGULATIONS.—After 90 days' notice to the public and an opportunity for hearing by interested parties, the Attorney General shall prescribe regulations to ensure the privacy and security of the information of the system established under this section.

(i) PROHIBITION RELATING TO ESTABLISHMENT OF REGISTRATION SYSTEMS WITH RESPECT TO FIREARMS.—No department, agency, officer, or employee of the United States may—

(1) require that any record or portion thereof generated by the system established under this section be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or political subdivision thereof; or

(2) use the system established under this section to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with

respect to persons, prohibited by section 922 (g) or (n) of title 18, United States Code or state law, from receiving a firearm.

(j) DEFINITIONS.—As used in this section:

(1) LICENSEE.—The term "licensee" means a licensed importer (as defined in section 921(a)(9) of title 18, United States Code), a licensed manufacturer (as defined in section 921(a)(10) of that title), or a licensed dealer (as defined in section 921(a)(11) of that title).

(2) OTHER TERMS.—The terms "firearm", "handgun", "licensed importer", "licensed manufacturer", and "licensed dealer" have the meanings stated in section 921(a) of title 18, United States Code, as amended by subsection (a)(2).

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, from the Violent Crime Reduction Trust Fund established by section 1115 of title 31, United States Code, such sums as are necessary to enable the Attorney General to carry out this section.

SEC. ___04. REMEDY FOR ERRONEOUS DENIAL OF FIREARM.

(a) IN GENERAL.—Chapter 44 of title 18, United States Code, is amended by inserting after section 925 the following new section:

"§ 925A. Remedy for erroneous denial of firearm

"Any person denied a firearm pursuant to subsection (s) or (t) of section 922—

"(1) due to the provision of erroneous information relating to the person by any State or political subdivision thereof, or by the national instant criminal background check system established under section ___03 of the Brady firearm Violation Prevention Act; or

"(2) who was not prohibited from receipt of a firearm pursuant to subsection (g) or (n) of section 922,

may bring an action against the State or political subdivision responsible for providing the erroneous information, or responsible for denying the transfer, or against the United States, as the case may be, for an order directing that the erroneous information be corrected or that the transfer be approved, as the case may be. In any action under this section, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 44 of title 18, United States Code, is amended by inserting after the item relating to section 925 the following new item:

"925A. Remedy for erroneous denial of firearm.".

SEC. ___05. RULE OF CONSTRUCTION.

This Act and the amendments made by this Act shall not be construed to alter or impair any right or remedy under section 552a of title 5, United States Code.

SEC. ___06. FUNDING FOR IMPROVEMENT OF CRIMINAL RECORDS.

(a) USE OF FORMULA GRANTS.—Section 509(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3759(b)) is amended—

(1) in paragraph (2) by striking "and" after the semicolon;

(2) in paragraph (3) by striking the period and inserting "; and"; and

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

"(4) the improvement of State record systems and the sharing with the Attorney General of all of the records described in paragraphs (1), (2), and (3) of this subsection and the records required by the Attorney General under section ___03 of the Brady Handgun Violence Prevention Act, for the purpose of implementing that Act.".

(b) ADDITIONAL FUNDING.—

(1) GRANTS FOR THE IMPROVEMENT OF CRIMINAL RECORDS.—The Attorney General, through the Bureau of Justice Statistics, shall, subject to appropriations and with preference to States that as of the date of enactment of this Act have the lowest percent currency of case dispositions in computerized criminal history files, make a grant to each State to be used—

(A) for the creation of a computerized criminal history record system or improvement of an existing system;

(B) to improve accessibility to the national instant criminal background system; and

(C) upon establishment of the national system, to assist the State in the transmittal of criminal records to the national system.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under paragraph (1), from the Violent Crime Reduction Trust Fund established by section 1115 of title 31, United States Code, a total of $200,000,000 for fiscal year 1994 and all fiscal years thereafter.

SEC. ___07. WITHHOLDING OF DEPARTMENT OF JUSTICE FUNDS.

If the Attorney General does not certify the national instant criminal background check system pursuant to section ___03(a) by—

(1) 24 months after the date of enactment of this Act the general administrative funds appropriated to the Department of Justice for the fiscal year beginning in the calendar year in which the date that is 24 months after the date of enactment of this Act falls shall be reduced by 5 percent on a monthly basis; and

(2) 36 months after the date of enactment of this Act the general administrative funds appropriated to the Department of Justice for the fiscal year beginning in the calendar year in which the date that is 36 months after the date of enactment of this Act falls shall be reduced by 10 percent on a monthly basis.

SEC. ___08. WITHHOLDING STATE FUNDS.

Effective on the date of enactment of this Act, the Attorney General may reduce by up to 50 percent the allocation to a State for a fiscal year under title I of the Omnibus Crime Control and Safe Streets Act of 1968 of a State that is not in compliance with the timetable established for such State under section ___03(a).

TITLE ___—MULTIPLE FIREARM PURCHASES TO STATE AND LOCAL POLICE

SEC. ___01. REPORTING REQUIREMENT.

Section 923(g)(3) of title 18, United States Code, is amended—

(1) in the second sentence by inserting after "thereon," the following: ", and to the department of State police or State law enforcement agency of the State or local law enforcement agency of the local jurisdiction in which the sale or other disposition took place,";

(2) by inserting "(A)" after "(3)"; and

(3) by adding at the end thereof the following:

"(B) Except in the case of forms and contents thereof regarding a purchaser who is prohibited by subsection (g) or (n) of section 922 of this title from receipt of a firearm, the department of State police or State law enforcement agency or local law enforcement agency of the local jurisdiction shall not disclose any such form or the contents thereof to any person or entity, and shall destroy each such form and any record of the contents thereof no more than 20 days from the date such form is received. No later than the date that is 6 months after the effective date of this subparagraph, and at the end of each 6-month period thereafter, the department of State police or State law enforcement agency or local law enforcement agency of the local jurisdiction shall certify to the Attorney General of the United States that no disclosure contrary to this subparagraph has been made and that all forms and any record of the contents thereof have been destroyed as provided in this subparagraph.".

TITLE ___—FEDERAL FIREARMS LICENSE REFORM

SEC. ___01. SHORT TITLE.

This title may be cited as the "Federal Firearms License Reform Act of 1993".

SEC. ___02. PREVENTION OF THEFT OF FIREARMS.

(a) COMMON CARRIERS.—Section 922(e) of title 18, United States Code, is amended by adding at the end the following: "No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.".

(b) RECEIPT REQUIREMENT.—Section 922(f) of title 18, United States Code, is amended—

(1) by inserting "(1)" after "(f)"; and

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

"(2) It shall be unlawful for any common or contract carrier to deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.".

(c) LICENSING.—Section 923(c) of title 18, United States Code, is amended by inserting after the first sentence the following: "A licensee may, in person, transfer or deliver firearms to, and receive firearms from, another licensee at any location without regard to the State which is specified on the license.".

(d) UNLAWFUL ACTS.—Section 922 of title 18, United States Code, as amended by section ___02(b), is amended by adding at the end the following new subsection:

"(u) It shall be unlawful for a person to steal or unlawfully take or carry away from the person or the premises of a person who is licensed to engage in the business of importing, manufacturing, or dealing in firearms, any firearm in the licensee's business inventory that has been shipped or transported in interstate or foreign commerce.".

(e) PENALTIES.—Section 924 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(i)(1)(A) A person who knowingly violates section 922(u) shall be fined not more than $10,000, imprisoned not more than 10 years, or both.

"(B) A person who, during any robbery (as defined in section 1951) or riot (as defined in section 2104), violates section 922(u), shall be sentenced to imprisonment for 30 years, no part of which may be suspended or, if a death results, to life imprisonment without release.

"(2) Nothing contained in this subsection shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this subsection operate to the exclusion of State laws on the same subject matter, nor shall any provision of this subsection be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this subsection.".

SEC. ___03. LICENSE APPLICATION FEES FOR DEALERS IN FIREARMS.

Section 923(a)(3) of title 18, United States Code, is amended—

(1) in subparagraph (B) by striking "a pawnbroker dealing in firearms other than" and inserting "not a dealer in";

(2) in subparagraph (B) by striking "$25 per year" and inserting "$200 for 3 years, except that the renewal of a valid license shall be $90 for 3 years."; and

(3) by striking subparagraph (C).

SEC. ___04. DEFINITION OF ANTIQUE FIREARMS.

Section 921(a)(16)(A) of title 18, United States Code, is amended by striking "1898" and inserting "1918".

SEC. ___05. COMMUNICATION WITH LICENSEES.

Section 926 of title 18, United States Code, is amended—

(1) by inserting at the end of subsection (b) the following: "In addition to such other requirements of law as may be applicable, no rule or regulation shall be effective until 30 days after a copy has been provided to all persons licensed under this chapter."; and

(2) by inserting at the end thereof the following new subsections:

"(d) The Secretary shall publish and provide to all licensees, not less than on a quarterly basis each year, all official rulings concerning this chapter and concerning chapter 53 of title 26, United States Code.

"(e) The Secretary shall publish and provide to all licensees, at such times as he shall deem necessary, the names and license numbers of all revoked firearms licensees.".

SEC. 6. NOTIFICATIONS OF ADJUDICATIONS OF PERSONS AS MENTAL DEFECTIVES AND COMMITMENTS TO MENTAL INSTITUTIONS.

Section 503(a) of title I of the Omnibus Safe Streets and Crime Control Act of 1968 (42 U.S.C. 3753(a)) is amended by adding at the end the following new paragraph:

"(12) A certification that the State has established a plan under which the State will provide to the Department of Justice, without fee—

"(A) within 30 days after the date on which any person in the State is adjudicated as a mental defective or committed to a mental institution, notice of the adjudication or commitment; and

"(B) within 30 days after the date on which the Department of Justice requests it, a copy of the certified record of the adjudication or commitment.".

MITCHELL AMENDMENT NO. 1219

Mr. MITCHELL proposed an amendment to amendment No. 1218 to the bill S. 414, supra; as follows:

On page 15, strike lines 4 through 18.

METZENBAUM (AND KOHL) AMENDMENT NO. 1220

Mr. METZENBAUM (for himself and Mr. KOHL) proposed an amendment to amendment No. 1218 proposed by Mr. Mitchell to the bill S. 414, supra; as follows:

On page 2, lines 10 through 12, strike "either on the day before the date that is 60 months after such date of enactment or".

On page 2, lines 14 and 15, strike "whichever occurs earlier,"

NORTH AMERICAN FREE-TRADE AGREEMENT

STEVENS AMENDMENT NO. 1221

Mr. STEVENS proposed an amendment to the bill (H.R. 3450) to implement the North American Free Trade Agreement; as follows:

Beginning on page 282, line 11, strike all through line 4 on page 300.

ADMINISTRATIVE LAW JUDGE CORPS ACT

HEFLIN AMENDMENT NO. 1222

Mr. HEFLIN proposed an amendment to the bill (S. 486) to establish a specialized corps of judges necessary for certain Federal proceedings required to be conducted, and for other purposes; as follows:

On page 23, line 22, strike out ", whichever is earlier".

On page 28, line 19, strike out "subject to the provisions of subsection (e),".

On page 32, line 3, insert "or staff member's" after "judge's".

On page 40, line 19, insert "permits, contracts, collective bargaining agreements, recognition of labor organizations," after "regulations,".

BROWN AMENDMENT NO. 1223

Mr. HEFLIN (for Mr. BROWN) proposed an amendment to the bill S. 486, supra; as follows:

On Page 41, strike out lines 18 through 22, and insert in lieu thereof the following:

(b) REPORTS BY OFFICE OF MANAGEMENT AND BUDGET.—The Director of the Office of Management and Budget shall monitor and report to the Congress—

(1) 60 days after the effective date of this Act, on the amount of all funds expended in fiscal year 1994 by each agency on the functions transferred under this Act and the amendments made by this Act;

(2) no later than October 1, 1994, on the amount of unexpended balances of appropriations, authorizations, allocations, and other funds transferred by all agencies to the Administrative Law Judge Corps under this Act and the amendments made by this Act; and

(3) 1 year after the effective date of this Act, and each of the next 2 years thereafter on—

(A) whether the expenditure of each agency that transfers functions and duties under this Act and the amendments made by this Act are reduced by the amount of savings resulting from the transfer of such functions and duties; and

(B) the Government savings resulting from transfer of such functions to the Administrative Law Judge Corps and recommendations to the Congress on how to achieve additional savings.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for each of fiscal years 1995, 1996, 1997, 1998, and 1999 to carry out the provisions of this Act and subchapter VI of title 5, United States Code (as added by section 3 of this Act) such amounts as may be necessary, not to exceed in any such fiscal year the total amount expended by all agencies in fiscal year 1994 in performing all functions transferred under this Act and the amendments made by this Act.

COHEN (AND HEFLIN) AMENDMENT NO. 1224

Mr. HEFLIN (for Mr. COHEN) (for himself and Mr. HEFLIN) proposed an amendment to the bill S. 486, supra; as follows:

On page 34, beginning with line 18, strike out all through line 2 on page 37 and insert in lieu thereof the following:

§ 599e. Removal and discipline

"(a) IN GENERAL.—(1) Except as provided under paragraph (2), an administrative law judge may not be removed, suspended, reprimanded, or disciplined except for misconduct or neglect of duty, but may be removed for physical or mental disability (consistent with prohibitions on discrimination otherwise imposed by law).

"(2) Paragraph (1) shall not apply to an action initiated under section 1215.

"(b) RULES OF JUDICIAL CONDUCT.—No later than 180 days after the appointment and confirmation of the Council, the Council shall adopt and issue rules of judicial conduct for administrative law judges. Such code shall be enforced by the Council and shall include standards governing—

"(1) judicial conduct and extra-judicial activities to avoid actual, or the appearance of, improprieties or conflicts of interest;

"(2) the performance of judicial duties impartially and diligently;

"(3) avoidance of bias or prejudice with respect to all parties; and

"(4) efficiency and management of cases so as to reduce dilatory practices and unnecessary costs.

"(c) DISCIPLINARY ACTION BY THE COUNCIL.—An administrative law judge may be subject to disciplinary action by the Council under subsection (j). An administrative law judge may be removed only after the Council has filed with the Merit Systems Protection Board a notice of removal and the Merit Systems Protection Board has determined on the record, after an opportunity for a hearing before the Merit Systems Protection Board, that there is good cause to take the action of removal.

"(d) COMPLAINTS RESOLUTION BOARD.—Under regulations issued by the Council, a Complaints Resolution Board shall be established within the Corps to consider and to recommend appropriate action to be taken when a complaint is made concerning conduct of a judge of the Corps. Such complaint may be made by any interested person, including parties, practitioners, the chief judge, administrative law judges, and agencies.

"(e) COMPOSITION OF THE BOARD.—(1) The Board shall consist of—

"(A) 2 judges from each division of the Corps, who shall be appointed by the Council; and

"(B) 16 attorneys who shall be appointed in accordance with the provisions of paragraph (2).

"(2) The Council shall request a list of candidates to be members of the Board from the American Bar Association. Such list may not include any individual who is an administrative law judge or former administrative law judge.

"(3) The chief judge and the division chief judges may not serve on the Board.

"(4) No individual may serve 2 successive terms on the Board.

"(5)(A) Except as provided under subparagraph (B), all terms on the Board shall be 2 years.

"(B) In making the original appointments to the Board, the Council shall designate one-half of the appointments made under paragraph (1)(A) and one-half of the appointments made under paragraph (1)(B), as a term of 1 year.

"(6)(A) Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for a position at the level of AL–3, rate C under section 5372 of this title for each day (including traveltime) during which such member is engaged in the performance of the duties of the Board. All members of the Board who are administrative law judges shall serve without compensation in addition to that received for their services as officers or employees of the United States.

"(B) The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

"(f) FILING AND REFERRAL OF COMPLAINT.—(1) A complaint concerning the official conduct of an administrative law judge shall be made in writing. The complaint shall be filed with the chief judge, or it may be originated by the chief judge on his own motion. The chief judge shall refer the complaint to a 5-member panel designated by the Council—

"(A) consisting of 3 administrative law judges appointed under subsection (e)(1)(A), none of whom may be serving in the same division as the administrative law judge who is the subject of the complaint; and

"(B) two members appointed under subsection (e)(1)(B), none of whom regularly practice before the division to which the administrative law judge, who is the subject of the complaint is assigned.

"(2) Any individual chosen to serve on the panel who has a personal or financial conflict of interest involving the administrative law judge who is the subject of the complaint shall be disqualified by the Council from serving on the panel. The Council shall replace any disqualified individual or vacancy with another member of the Board who is eligible to serve on the panel.

"(g) CHIEF JUDGE ACTION.—(1) After expeditiously reviewing a complaint, the chief judge, by written order stating his reason, may—

"(A) dismiss the complaint, if the chief judge finds the complaint to be—

"(i) directly related to the merits of a decision or procedural ruling; or

"(ii) frivolous;

"(B) conclude the proceeding if the chief judge finds that appropriate corrective action has been taken or that action on the complaint is no longer necessary because of intervening events; or

"(C) refer the complaint to the Complaint Resolution Board in accordance with subsection (f).

"(2) The chief judge shall transmit copies of the written order to the complainant and to the administrative law judge who is the subject of the complaint.

"(h) NOTICE OF THE COMPLAINT.—The administrative law judge and the complainant shall be given notice of receipt of the complaint and notice of referral of the complaint to the panel.

"(i) INQUIRY AND REPORT BY PANEL.—(1) The panel shall inquire into the complaint and have authority to conduct a full investigation of the complaint, including authority to hold hearings and issue subpoenas, examine witnesses, and receive evidence. All proceedings of the Complaint Resolution Board shall be confidential. The administrative law judge who is the subject of the complaint shall have the right to be represented by counsel and shall have an opportunity to appear before the panel. The complainant shall be afforded an opportunity to appear at the proceedings conducted by the investigating panel, if the panel concludes that the complainant could offer substantial information.

"(2) In determining whether misconduct has occurred, the panel shall apply a preponderance of evidence standard of proof to its proceedings.

"(3)(A) Within 90 days after the referral of the complaint, the panel shall report to the Council on its findings of fact and recommendations for appropriate disciplinary action, if any, that should be taken against the administrative law judge.

"(B) If the panel has not completed its inquiry within 90 days after receiving the complaint, the panel shall request an extension of time from the Council to complete its inquiry.

"(C) A copy of the report shall be provided concurrently to the Council, the administrative law judge who is the subject of the complaint, and the complainant. The Council shall retain all reports filed under this section and such reports shall be confidential, except that a recommendation for disciplinary action shall be made available to the public.

"(4) The recommendations of the panel shall include one of the following:

"(A) Dismissal of all or part of the complaint.

"(B) Direct informal reprimand.

"(C) Direct formal reprimand.

"(D) Suspension.

"(E) Automatic referral to the Merit Systems Protection Board on recommendations of removal.

"(5) The recommendations of the panel are binding on the Council, unless the administrative law judge appeals to the Merit Systems Protection Board.

"(j) DISCIPLINARY ACTION.—Except as provided in subsection (a)(2), the Council shall take appropriate disciplinary action against the administrative law judge based upon the report of the panel within 30 days after receiving the report of the panel. Such disciplinary action shall be enforced by the Council and shall be final unless the administrative law judge files an appeal with the Merit Systems Protection Board within 30 days after receiving notice of such disciplinary action.

"(k) RECOMMENDATION FOR RELIEF TO AGENCY, DEPARTMENT, OR COMMISSION.—Based upon a finding of judicial misconduct by an administrative law judge, the Council shall have authority to recommend to the head of an agency, department or commission that action may be taken to provide relief to aggrieved individuals due to the judicial misconduct by an administrative law judge.".

DEPARTMENT OF ENERGY NATIONAL COMPETITIVENESS TECHNOLOGY PARTNERSHIP ACT OF 1993

JOHNSTON AMENDMENT NO. 1225

Mr. FORD (for Mr. JOHNSTON) proposed an amendment to the bill (S. 473) to promote the industrial competitiveness and economic growth of the United States by strengthening the linkages between the laboratories of the Department of Energy and the private sector and by supporting the development and application of technologies critical to the economic, scientific and technological competitiveness of the United States, and for other purposes; as follows:

On page 46, strike lines 1–24, and on page 47, strike lines 1–8 and insert in lieu thereof the following:

"(C) Technology transfer.

"(3)(A) In addition to the missions identified in subsection (a)(2), the Departmental laboratories may pursue supporting missions to the extent that these supporting missions—

"(i) support the technology policies of the President:

"(ii) are developed in consultation with and coordinated with any other Federal agency or agencies that carry out such mission activities;

"(iii) are built upon the competencies developed in carrying out the primary missions identified in subsection (a)(2) and do not interfere with the pursuit of the missions identified in subsection (a)(2); and

"(iv) are carried out through a process that solicits the views of United States industry and other appropriate parties.

"(B) These supporting missions shall include activities in the following areas:

"(i) developing and operating high-performance computing and communications systems, with the goals of contributing to a national information infrastructure and addressing complex scientific and industrial challenges which require large-scale computational capabilities;

"(ii) conducting research on and development of advanced manufacturing systems and technologies, with the goal of assisting the private sector in improving the productivity, quality, energy efficiency, and control of manufacturing processes;

"(iii) conducting research on and development of advanced materials, with the goals of increasing energy efficiency, environmental protection, and improved industrial performance.

"(4) In carrying out the Department's missions, the Secretary, and the directors of the departmental laboratories, shall, to the maximum extent practicable, make use of partnerships. Such partnerships shall be for purposes of the following:

"(A) to lead to the development of technologies that the private sector can commercialize in areas of technology with broad application important to U.S. technological and economic competitiveness;

"(B) to provide Federal support in areas of technology where the cost or risk is too high for the private sector to support alone but that offer a potentially high payoff to the United States;

"(C) to contribute to the education and training of scientists and engineers;

"(D) to provide university and private researchers access to departmental laboratory facilities; or

"(E) to provide technical expertise to universities, industry or other Federal agencies.".

On page 66, strike section 7.

On page 70, by striking section 8.

On page 72, on line 10, by striking "9" and inserting "8".

On page 73, on line 3, by striking "10" and inserting "9".

On page 74, on line 22, by striking "11" and inserting "10".

On page 75, on line 3, by striking "12" and inserting "11".

On page 66, insert after line 8 the following:

"SEC. 7. STANDARDIZATION OF REQUIREMENTS AFFECTING DEPARTMENT OF ENERGY EMPLOYEES.

"(a) Part A of title VI of the Department of Energy Organization Act (42 U.S.C. 7211 through 7218) is repealed.

"(b) The table of contents for the Department of Energy Organization Act is amended by striking out the matter relating to part A of title VI.".

On page 73, after line 4 insert the following:

"(a) Section 12(a) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(a)) is amended by striking", to the extent provided in any agency-approved joint work statement,".

"(b) Section 12(b) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(b)) is amended by striking", to the extent provided in any agency-approved joint work statement,".

On page 73, line 5, strike "(a)" and insert "(c)".

On page 73, lines 8 and 9, strike "deleting" and all that follows through "thereof" and insert "amending subparagraph (C)(i) to read as follows:".

On page 73, line 13, strike "joint work statement and".

On page 73, lines 15 and 16, strike "In any case where" and insert "If".

On page 73, line 17, strike "joint work statements or".

On page 73, line 19, strike "joint work statement or".

On page 73, line 21, strike "No" and insert "Except as provided in subparagraph (D), no".

On page 73, line 23, strike "both".

On page 73, lines 24 and 25, strike "and a joint work statement".

On page 74, strike lines 1 through 3, and insert:

"(2) by amending subparagraph (C)(ii) to read as follows:

"(ii) If an agency that has contracted with a non-Federal entity to operate a laboratory disapproves or requests the modification of a cooperative research and development agreement submitted under clause (i), the agency shall promptly transmit a written explanation of such disapproval or modification to the director of the laboratory concerned.";".

On page 74, after line 3, insert the following:

"(3) by amending subparagraph (C)(iii) to read as follows:

"(iii) Any agency that has contracted with a non-Federal entity to operate a laboratory shall develop and provide to such laboratory a model cooperative research and development agreement, and guidelines for using such an agreement, for the purposes of standardizing practices and procedures, resolving common legal issues, and enabling negotiation and review of a cooperative research and development agreement to be carried out in a routine and prompt manner.";"

On page 74, line 4, strike "(3) by deleting" and insert "(4) by striking".

On page 74, strike lines 5 and 6, and insert "(5) by amending subparagraph (C)(v) to read as follows:".

On page 74, line 14, strike "and".

On page 74, strike lines 15 through 21 and insert the following:

"(6) by striking subparagraph (C)(vi); and

"(7) by amending subparagraph (D) to read as follows:

"(D)(i) Any agency that has contracted with a non-Federal entity to operate a laboratory may permit the director of a laboratory to enter into a cooperative research and development agreement without the submission, review, and approval of the agreement under subparagraph (C)(i) if: the Federal share under the agreement does not exceed $500,000 per year, or any amount the head of the agency may prescribe; the text of the cooperative research and development agreement is consistent with a model agreement under subparagraph (C)(iii); the agreement is entered into in accord with the agency's guidelines under subparagraph (C)(iii); and the agreement is consistent with and furthers an assigned laboratory mission.

"(ii) The director of a laboratory shall notify the head of the agency of the purpose and scope of an agreement entered into under this subparagraph. The agency shall include in its annual report required by section 11(f) of this Act (15 U.S.C. 3710(f)) and assessment of the implementation of this subparagraph including a summary of agreements entered into by laboratory directors under this subparagraph.

"(d) Section 12(d) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(d)) is amended—

"(1) in paragraph (1) by inserting "and" after the second semicolon;

"(2) in paragraph (2)—

"(A) by striking "substantial" before "purpose" in subparagraph (B);

"(B) by striking "the primary purpose" and inserting "one of the purposes" in subparagraph (C); and

"(C) by striking "; and " the second time it appears and inserting a period; and "(3) by striking paragraph (3).".".

PERSIAN GULF WAR VETERANS ACT OF 1993

ROCKEFELLER (AND OTHERS) AMENDMENT NO. 1226

Mr. FORD (for Mr. ROCKEFELLER for himself, Mr. MURKOWSKI, Mr. MITCHELL, Mr. AKAKA, Mr. DASCHLE, Mr. CAMPBELL, Mr. THURMOND, Mr. SPECTER, Mr. JEFFORDS, and Mr. RIEGLE) proposed an amendment to the bill (H.R. 2535) to amend title 38, United States Code, to provide additional authority for the Secretary of Veterans Affairs to provide health care for veterans of the Persian Gulf war; as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. AUTHORITY TO PROVIDE PRIORITY HEALTH CARE TO VETERANS OF THE PERSIAN GULF WAR.

(a) INPATIENT CARE.—(1) Section 1710(a)(1)(G) of title 38, United States Code, is amended by striking out "or radiation" and inserting in lieu thereof ", radiation, or environmental hazard".

(2) Section 1710(e) of such title is amended—

(A) by inserting at the end of paragraph (1) the following new subparagraph:

"(C) Subject to paragraphs (2) and (3) of this subsection, a veteran who the Secretary finds may have been exposed while serving on active duty in the Southwest Asia theater of operations during the Persian Gulf War to a toxic substance or environmental hazard is eligible for hospital care and nursing home care under subsection (a)(1)(G) of this section for any disability, notwithstanding that there is insufficient medical evidence to conclude that such disability may be associated with such exposure.";

(B) in paragraph (2), by striking out "subparagraph (A) or (B)" and inserting in lieu thereof "subparagraph (A), (B), or (C)"; and

(C) in paragraph (3), by striking out the period at the end and inserting in lieu thereof ", or, in the case of care for a veteran described in paragraph (1)(C), after December 31, 1994.".

(b) OUTPATIENT CARE.—Section 1712(a) of such title is amended—

(1) in paragraph (1)—

(A) by striking out "and" at the end of subparagraph (B);

(B) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof "; and"; and

(C) by adding at the end the following:

"(D) during the period before December 31, 1994, for any disability in the case of a veteran who served on active duty in the Southwest Asia theater of operations during the Persian Gulf War and who the Secretary finds may have been exposed to a toxic substance or environmental hazard during such service, notwithstanding that there is insufficient medical evidence to conclude that the disability may be associated with such exposure."; and

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

"(7) Medical services may not be furnished under paragraph (1)(D) with respect to a disability that is found, in accordance with guidelines issued by the Under Secretary for Health, to have resulted from a cause other than an exposure described in that paragraph.".

(c) EFFECTIVE DATE.—(1) The amendments made by subsections (a) and (b) shall take effect as of August 2, 1990.

(2) The Secretary of Veterans Affairs shall, upon request, reimburse any veteran who paid the United States an amount under section 1710(f) or 1712(f) of title 38, United States Code, as the case may be, for hospital care, nursing home care, or outpatient services furnished by the Secretary to the veteran before the date of the enactment of this Act on the basis of a finding that the veteran may have been exposed to a toxic substance or environmental hazard during the Persian Gulf War. The amount of the reimbursement shall be the amount that was paid by the veteran for such care or services under such section 1710(f) or 1712(f).

SEC. 2. EXTENSION OF CERTAIN HEALTH CARE AND OTHER AUTHORITIES.

(a) ELIGIBILITY FOR CARE FOR EXPOSURE TO DIOXIN OR IONIZING RADIATION.—Section 1710(e)(3) of title 38, United States Code, as amended by section 1(a)(2)(C), is further amended by striking out "December 31, 1993" and inserting in lieu thereof "June 30, 1994".

(b) ELIGIBILITY FOR SEXUAL TRAUMA COUNSELING.—Section 102(b) of the Women Veterans Health Programs Act of 1992 (Public Law 102-585; 38 U.S.C. 1720D note) is amended—

(1) by striking out "December 31, 1991," and inserting in lieu thereof "December 31, 1992,"; and

(2) by striking out "December 31, 1993" and inserting in lieu thereof "December 31, 1994".

(c) AUTHORITY TO MAINTAIN REGIONAL OFFICE IN THE PHILIPPINES.—Section 315(b) of title 38, United States Code, is amended by striking out "March 31, 1994" and inserting in lieu thereof "December 31, 1994".

(d) AUTHORITY FOR ADVISORY COMMITTEE ON EDUCATION.—Section 3692(c) of title 38, United States Code, is amended by striking out "December 31, 1993" and inserting in lieu thereof "December 31, 1994".

SEC. 3. SHARING OF RESOURCES WITH STATE HOMES.

(a) PURPOSE.—Section 8151 of title 38, United States Code, is amended by adding at the end the following: "It is further the purpose of this subchapter to improve the provision of care to veterans under this title by authorizing the Secretary to enter into agreements with State veterans facilities for the sharing of health-care resources.".

(b) DEFINITION.—Section 8152 of such title is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following new paragraph (3):

"(3) The term 'health-care resource' includes hospital care, medical services, and rehabilitative services, as those terms are defined in paragraphs (5), (6), and (8), respectively, of section 1701 of this title, any other health-care service, and any health-care support or administrative resource.".

(c) SHARING OF HEALTH-CARE RESOURCES.—Section 8153(a) of such title is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by striking out "other form of agreement," and all that follows and inserting in lieu thereof the following: "other form of agreement for the mutual use, or exchange of use, of—

"(A) specialized medical resources between Department health-care facilities and other health-care facilities (including organ banks, blood banks, or similar institutions), research centers, or medical schools; and

"(B) health-care resources between Department health-care facilities and State home facilities recognized under section 1742(a) of this title.

"(2) The Secretary may enter into a contract or other agreement under paragraph (1) only if (A) such an agreement will obviate the need for a similar resource to be provided in a Department health-care facility, or (B) the Department resources which are the subject of the agreement and which have been justified on the basis of veter * * *.

HIGHER EDUCATION TECHNICAL AMENDMENTS ACT OF 1993

KENNEDY AMENDMENT NO. 1227

Mr. FORD (for Mr. KENNEDY) submitted an amendment to the bill (S. 1507) to make technical amendments to the Higher Education Amendments of 1992 and the Higher Education Act of 1965, and for other purposes; as follows:

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "Higher Education Technical Amendments of 1993".

(b) REFERENCES.—References in this Act to "the Act" are references to the Higher Education Act of 1965.

SEC. 2. TECHNICAL AMENDMENTS.

(a) AMENDMENTS TO TITLES I, II, AND III OF THE ACT.—Titles I, II, and III of the Act (20 U.S.C. 1001 et seq., 1021 et seq., 1051 et seq.) are amended—

(1) in section 103(b)(2), by increasing the indentation of subparagraphs (A) through (E) by two em spaces;

(2) in section 104(b)(5)(C), by striking "subpart" and inserting "part";

(3) in section 241(a)(2)(B), by striking "information service" and inserting "information science";

(4) in section 301(a)(2), by striking the comma after "planning";

(5) in section 312(c)(2), by inserting "the" before "second fiscal year" the second place it appears;

(6) in section 313(b), by inserting ", except that for the purpose of this subsection a grant under section 354(a)(1) shall not be considered a grant under this part" before the period.

(7) in section 316(c), by striking "Such programs may include—" and inserting the following:

"(2) EXAMPLES OF AUTHORIZED ACTIVITIES.—Such programs may include—";

(8) by reducing by two em spaces the indentation of each of the following provisions: sections 323(b)(3), 331(a)(2)(D), and 331(b)(5);

(9) in section 326(e)(2)—

(A) by inserting "and" after the semicolon at the end of subparagraph (A);

(B) by striking subparagraph (B); and

(C) by redesignating subparagraph (C) as subparagraph (B);

(10) in section 331(b)(2), by reducing the indentation of subparagraphs (B) and (C) by four em spaces; and

(11) in section 331(b)(5), by striking "an endowment" and inserting "An endowment".

(b) AMENDMENTS TO PART A OF TITLE IV OF THE ACT.—Part A of title IV of the Act (20 U.S.C. 1070 et seq.) is amended—

(1) in section 401(a)(1), by inserting ", except that this sentence shall not be construed to limit the authority of the Secretary to place an institution on a reimbursement system of payment" before the period at the end of the second sentence;

(2) in section 401(b)(6), in the matter preceding subparagraph (A), by striking "single 12-month period" and inserting "single award year";

(3) in section 401(b)(6)(A), by striking "a baccalaureate" and inserting "an associate or baccalaureate";

(4) in section 401(b)(6)(B), by striking "a bachelor's" and inserting "an associate or baccalaureate";

(5) in section 401(i), by striking "part D of title V" and inserting "subtitle D of title V";

(6) in section 402A(b), by striking paragraph (2) and inserting the following:

"(2) DURATION.—Grants or contracts made under this chapter shall be awarded for a period of 4 years, except that—

"(A) the Secretary shall award such grants or contracts for 5 years to applicants whose peer review scores were in the highest 10 percent of scores of all applicants receiving grants or contracts in each program competition for the same award year; and

"(B) grants made under section 402G shall be awarded for a period of 2 years.";

(7) in the second sentence of section 402A(c)(1), by inserting before the period the following ", except that in the case of the programs authorized in sections 402E and 402G, the level of consideration given to prior experience shall be the same as the level of consideration given this factor in the other programs authorized in this chapter";

(8) in section 402A(c)(2)(A), by inserting "with respect to grants made under section 402G, and" after "Except";

(9) in section 402A, by amending subsection (e) to read as follows:

"(e) DOCUMENTATION OF STATUS AS A LOW-INCOME INDIVIDUAL.—(1) Except in the case of an independent student, as defined in section 480(d), documentation of an individual's status pursuant to subsection (g)(2) shall be made by providing the Secretary with—

"(A) a signed statement from the individual's parent or legal guardian;

"(B) verification from another governmental source;

"(C) a signed financial aid application; or

"(D) a signed United States or Puerto Rico income tax return.

"(2) In the case of an independent student, as defined in section 480(d), documentation of an individual's status pursuant to subsection (g)(2) shall be made by providing the Secretary with—

"(A) a signed statement from the individual;

"(B) verification from another governmental source;

"(C) a signed financial aid application; or

"(D) a signed United States or Puerto Rico income tax return.";

(10) in section 402C(c), by striking "and foreign" and inserting "foreign";

(11) in section 402D(c)(2), by striking "either";

(12) in section 404A(1), by striking "high-school" and inserting "high school";

(13) in section 404B(a)(1)—

(A) by striking "section 403C" and inserting "section 404D"; and

(B) by striking "section 403D" and inserting "section 404C";

(14) in section 404B(a)(2), by inserting "shall" after "paragraph (1)";

(15) in section 404C(b)(3)(A), by striking "grades 12" and inserting "grade 12";

(16) in section 404C(b)(3)(D)(i), by striking "section 401D of this subpart" and inserting "section 402D";

(17) in section 404C(b)(3)(D)(ii), by striking "section 401D of this part" and inserting "section 402D";

(18) in section 404D(d)(3), by striking "program of instruction" and inserting "program of undergraduate instruction";

(19) in section 404D(d)(4), by striking "the" the first place it appears;

(20) in section 404E(c), by striking "tuition" and inserting "financial";

(21) in section 404F(a), by striking "under this section shall biannually" and inserting "under this chapter shall biennially";

(22) in section 404F(c), by striking "biannually" and inserting "biennially";

(23) in section 404G—

(A) by striking "an appropriation" and inserting "to be appropriated"; and

(B) by striking the second sentence and inserting the following: "For any fiscal year for which funds are authorized to be appropriated to carry out subpart 4 of part A of this title, no amount may be expended to carry out the provisions of this chapter unless the amount appropriated for such fiscal year to carry out such subpart 4 exceed $60,000,000.";

(24) in section 409A(1), by striking "private financial" and inserting "private student financial";

(25) in section 413C(d)—

(A) by striking ", a reasonable proportion of the institution's allocation shall be made available to such students, except that" and inserting "and"; and

(B) by striking "5 percent of the need" and inserting "5 percent of the total financial need";

(26) in section 413D(d)(3)(C), by striking "three-fourths in the Pell Grant family size offset" and inserting "150 percent of the difference between the income protection allowance for a family of five with one in college and the income protection allowance for a family of six with one in college";

(27) in section 415C(b)(7), by striking the period at the end and inserting a semicolon;

(28) in section 419C(b)—

(A) by striking "for a period of not more than 4 years for the first 4 years of study" and inserting "for a period of not less than 1 or more than 4 years during the first 4 years of study"; and

(B) by adding at the end the following:

"The State educational agency administering the program in a State shall have discretion to determine the period of the award (within the limits specified in the preceding sentence), except that—

"(1) if the amount appropriated for this subpart for any fiscal year exceeds the amount appropriated for this subpart for fiscal year 1993, the Secretary shall identify to each State educational agency the number of scholarships available to that State under section 419D(b) that are attributable to such excess;

"(2) the State educational agency shall award not less than that number of scholarships for a period of 4 years."; and

(29) in section 419D, by adding at the end the following new subsection:

"(d) CONSOLIDATION BY INSULAR AREAS PROHIBITED.—Notwithstanding section 501 of Public Law 95-1134 (48 U.S.C. 1469a), funds allocated under this part to an Insular Area described in that section shall be deemed to be direct payments to classes of individuals, and the Insular Area may not consolidate such funds with other funds received by the Insular Area from any department or agency of the United States Government."; and

(30) in section 419G(b), by striking "the District of Columbia, the Commonwealth of Puerto Rico," and inserting "the Federated States of Micronesia, the Republic of the Marshall Islands,".

(c) AMENDMENTS TO PART B OF TITLE IV OF THE ACT.—Part B of title IV of the Act (20 U.S.C. 1071 et seq.) is amended—

(1) in section 422(c)(7), by striking the semicolon at the end of subparagraph (B) and inserting a period;

(2) in section 425(a)(1)(A)—

(A) by striking clauses (ii) and (iii) and inserting the following:

"(ii) in the case of a student at an eligible institution who has successfully completed such first year but has not successfully completed the remainder of a program of undergraduate education—

"(I) $3,500; or

"(II) if such student is enrolled in a program of undergraduate education, the remainder of which is less than one academic year, the maximum annual loan amount that such student may receive may not exceed the amount that bears the same ratio to the amount specified in subclause (I) as such remainder measured in semester, trimester, quarter, or clock hours bears to one academic year;

"(iii) in the case of a student at an eligible institution who has successfully completed the first and second years of a program of undergraduate education but has not successfully completed the remainder of such program—

"(I) $5,500; or

"(II) if such student is enrolled in a program of undergraduate education, the remainder of which is less than one academic year, the maximum annual loan amount that such student may receive may not exceed the amount that bears the same ratio to the amount specified in subclause (I) as such remainder measured in semester, trimester, quarter, or clock hours bears to one academic year;" and

(B) by striking the semicolon at the end of clause (iv) and inserting a period;

(3) in section 425(a)(1), by inserting at the end thereof the following:

"(C) For the purpose of subparagraph (A), the number of years that a student has completed in a program of undergraduate education shall include any prior enrollment in an eligible program of undergraduate education for which the student was awarded an associate or baccalaureate degree, if such degree is required by the institution for admission to the program in which the student is enrolled.";

(4) in the matter following subclause (II) of section 427(a)(2)(C)(i), by inserting "section" before "428B or 428C";

(5) in section 427A(e)(1), by striking "under this part," and inserting "under section 427, 428, or 428H of this part,";

(6) in section 427A(i)(1), by amending subparagraph (B) to read as follows:

"(B)(i) during any period in which a student is eligible to have interest payments paid on his or her behalf by the Government pursuant to section 428(a), by crediting the excess interest to the Government; or

"(ii) during any other period, by crediting such excess interest to the reduction of principal to the extent provided in paragraph (5) of this subsection.";

(7) in section 427A(i)(2)(B)—

(A) by striking "outstanding principal balance" and inserting "average daily principal balance"; and

(B) by striking "at the end of" and inserting "during";

(8) in section 427A(i)(4)(B)—

(A) by striking "outstanding principal balance" and inserting "average daily principal balance"; and

(B) by striking "at the end of" and inserting "during";

(9) in section 427A(i)(5)—

(A) in the first sentence—

(i) by striking "paragraph (2)" and inserting "paragraphs (2) and (4)"; and

(ii) by striking "principle" and inserting "principal"; and

(B) in the second sentence by inserting before the period at the end the following: ", but the excess interest shall be calculated and credited to the Secretary";

(10) in section 427A(i), by adding at the end the following new paragraph:

"(7) CONVERSION TO VARIABLE RATE.—(A) Subject to subparagraphs (C) and (D), a lender or holder shall convert the interest rate on a loan that is made pursuant to this part and is subject to the provisions of this subsection to a variable rate. Such conversion shall occur not later than January 1, 1995, and, commencing on the date of conversion, the applicable interest rate for each 12-month period beginning on July 1 and ending on June 30 shall be determined by the Secretary on the June 1 preceding each such 12-month period and be equal to the sum of (i) the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to such June 1; and (ii) 3.25 percent in the case of loans described in paragraph (1), or 3.10 percent in the case of loans described in paragraph (3).

"(B) In connection with the conversion specified in subparagraph (A) for any period prior to such conversion, and subject to paragraphs (C) and (D), a lender or holder shall convert the interest rate to a variable rate on a loan that is made pursuant to this part and is subject to the provisions of this subsection to a variable rate. The interest rates for such period shall be reset on a quarterly basis and the applicable interest rate for any quarter or portion thereof shall equal the sum of (i) the average of the bond equivalent rates of 91-Treasury bills auctioned for the preceding 3-month period, and (ii) 3.25 percent in the case of loans described in paragraph (1) or 3.10 percent in the case of loans described in paragraph (3). The rebate of excess interest derived through this conversion shall be provided to the borrower as specified in paragraph (5) for loans described in paragraph (1) or to the Government and borrower as specified in paragraph (3).

"(C) A lender or holder of a loan being converted pursuant to this paragraph shall complete such conversion on or before January 1, 1995. The lender or holder shall notify the borrower that the loan shall be converted to a variable interest rate and provide a description of the rate to the borrower not later than 30 days prior to the conversion. The notice shall advise the borrower that such rate shall be calculated in accordance with the procedures set forth in this paragraph and shall provide the borrower with a substantially equivalent benefit as the adjustment otherwise provided for under this subsection. Such notice may be incorporated into the disclosure required under section 433(b) if such disclosure has not been previously made.

"(D) The interest rate on a loan converted to a variable rate pursuant to this paragraph shall not exceed the maximum interest rate applicable to the loan prior to such conversion.

"(E) Loans on which the interest rate is converted in accordance with subparagraph (A) or (B) shall not be subject to any other provisions of this subsection.";

(11) in section 428(a)(2)(C)(i), by striking the period at the end and inserting "; and";

(12) in section 428(a)(2)(E), by inserting "or 428H" after "428A";

(13) in section 428(b)(1)(A)—

(A) by striking clauses (ii) and (iii) and inserting the following:

"(ii) in the case of a student at an eligible institution who has successfully completed such first year but has not successfully completed the remainder of a program of undergraduate education—

"(I) $3,500; or

"(II) if such student is enrolled in a program of undergraduate education, the remainder of which is less than one academic year, the maximum annual loan amount that such student may receive may not exceed the amount that bears the same ratio to the amount specified in subclause (I) as such remainder measured in semester, trimester, quarter, or clock hours bears to one academic year;

"(iii) in the case of a student at an eligible institution who has successfully completed the first and second years of a program of undergraduate education but has not successfully completed the remainder of such program—

"(I) $5,500; or

"(II) if such student is enrolled in a program of undergraduate education, the remainder of which is less than one academic year, the maximum annual loan amount that such student may receive may not exceed

the amount that bears the same ratio to the amount specified in subclause (I) as such remainder measured in semester, trimester, quarter, or clock hours bears to one academic year;";

(B) by redesignating clause (iv) as clause (v); and

(C) by inserting after clause (iii) the following:

"(iv) in the case of a student who has received an associate or baccalaureate degree and is enrolled in an eligible program for which the institution requires such degree for admission, the number of years that a student has completed in a program of undergraduate education shall, for the purposes of clauses (ii) and (iii), include any prior enrollment in the eligible program of undergraduate education for which the student was awarded such degree; and";

(14) in section 428(b)(1)(B), by striking the matter following clause (ii) and inserting the following:

"except that the Secretary may increase the limit applicable to students who are pursuing programs which the Secretary determines are exceptionally expensive;";

(15) in section 428(b)(1), by amending subparagraph (N) to read as follows:

"(N) provides that funds borrowed by a student—

"(i) are disbursed to the institution by check or other means that is payable to, and requires the endorsement or other certification by, such student; or

"(ii) in the case of a student who is studying outside the United States in a program of study abroad that is approved for credit by the home institution at which such student is enrolled or at an eligible foreign institution, are, at the request of the student, disbursed directly to the student by the means described in clause (i), unless such student requests that the check be endorsed, or the funds transfer authorized, pursuant to an authorized power-of-attorney;";

(16) in section 428(b)(1)(U)—

(A) by striking "this clause;" and inserting "this clause"; and

(B) by inserting a comma after "emergency action" each place it appears;

(17) in section 428(b)(1)—

(A) by striking subparagraphs (V) and (W); and

(B) by redesignating subparagraphs (X), (Y), and (Z) as subparagraphs (V), (W,) and (X), respectively;

(18) in section 428(b)(2)(F)(i), by striking "each to provide a separate notice" and inserting "either jointly or separately to provide a notice";

(19) in section 428(b)(2)(F)(ii), by striking "transferor" and inserting "transferee";

(20) in section 428(b)(2)(F)(ii)(I), by striking "to another holder";

(21) in section 428(b)(2)(F)(ii)(II), by striking "such other" and inserting "the new";

(22) in section 428(b), by amending paragraph (7) to read as follows:

"(7) REPAYMENT PERIOD.—(A) In the case of a loan made under section 427 or 428, the repayment period shall exclude any period of authorized deferment or forbearance and shall begin—

"(i) the day after 6 months after the date the student ceases to carry at least one-half the normal full-time academic workload (as determined by the institution); or

"(ii) on an earlier date if the borrower requests and is granted a repayment schedule that provides for repayment to commence at an earlier date.

"(B) In the case of a loan made under section 428H, the repayment period shall exclude any period of authorized deferment or forbearance, and shall begin as described in clause (i) or (ii) of subparagraph (A), but interest shall begin to accrue or be paid by the borrower on the day the loan is disbursed.

"(C) In the case of a loan made under section 428A, 428B, or 428C, the repayment period shall begin on the day the loan is disbursed, or, if the loan is disbursed in multiple installments, on the day of the last such disbursement, and shall exclude any period of authorized deferment or forbearance.";

(23) in section 428(b), by adding at the end thereof the following new paragraph:

"(8) MEANS OF DISBURSEMENT OF LOAN PROCEEDS.—Nothing in this title shall be interpreted to prohibit the disbursement of loan proceeds by means other than by check or to allow the Secretary to require checks to be made co-payable to the institution and the borrower.";

(24) in section 428(c)(1)(A), by striking the last sentence and inserting the following: "A guaranty agency shall file a claim for reimbursement with respect to losses under this subsection within 45 days after the guaranty agency discharges its insurance obligation on the loan.";

(25) in section 428(c)(2)(G), by striking "demonstrates" and inserting "certifies";

(26) in section 428(c)(3) by striking subparagraph (A) and inserting the following:

"(A) shall contain provisions providing that—

"(i) upon written request, a lender shall grant a borrower forbearance, renewable at 12-month intervals, on terms agreed to in writing by the parties to the loan with the approval of the insurer, and otherwise consistent with the regulations of the Secretary, if the borrower—

"(I) is serving in a medical or dental internship or residency program, the successful completion of which is required to begin professional practice or service, or is serving in a medical or dental internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training, provided that if the borrower qualifies for a deferment under section 427(a)(2)(C)(vii) or subsection (b)(1)(M)(vii) of this section as in effect prior to the enactment of the Higher Education Amendments of 1992, or section 427(a)(2)(C) or subsection (b)(1)(M) of this section as amended by such amendments, the borrower has exhausted his or her eligibility for such deferment;

"(II) has a debt burden under this title that equals or exceeds 20 percent of income; or

"(III) is serving in a national service position for which the borrower receives a national service educational award under the National and Community Service Trust Act of 1993;

"(ii) the length of the forbearance granted by the lender—

"(I) under clause (i)(I) shall equal the length of time remaining in the borrower's medical or dental internship or residency program, if the borrower is not eligible to receive a deferment described in such clause, or such length of time remaining in the program after the borrower has exhausted the borrower's eligibility for such deferment;

"(II) under clause (i)(II) shall not exceed 3 years; or

"(III) under clause (i)(III) shall not exceed the period for which the borrower is serving in a position described in such clause; and

"(iii) no administrative or other fee may be charged in connection with the granting of a forbearance under clause (i), and no adverse information regarding a borrower may be reported to a credit bureau organization solely because of the granting of such forbearance;";

(27) in section 428(e)(2)(A)—

(A) by striking "(i)";

(B) by striking "(I)" and inserting "(i)"; and

(C) by striking "(II)" and inserting "(ii)";

(28) in section 428(j)(2), in the matter preceding subparagraph (A), by striking "lender of last resort" and inserting "lender-of-last-resort";

(29) in section 428A(b)(1), by striking subparagraph (B) and inserting the following:

"(B) In the case of a student at an eligible institution who has successfully completed such first and second years but has not successfully completed the remainder of a program of undergraduate education—

"(i) $5,000; or

"(ii) if such student is enrolled in a program of undergraduate education, the remainder of which is less than one academic year, the maximum annual loan amount that such student may receive may not exceed the amount that bears the same ratio to the amount specified in subclause (I) as such remainder measured in semester, trimester, quarter, or clock hours bears to one academic year.";

(30) in section 428A(b)(1)—

(A) by redesignating subparagraph (C) as subparagraph (D); and

(B) by inserting after subparagraph (B) the following new subparagraph:

"(C) For the purposes of this paragraph, the number of years that a student has completed in a program of undergraduate education shall include any prior enrollment in an eligible program of undergraduate education for which the student was awarded an associate or baccalaureate degree, if such degree is required by the institution for admission to the program in which the student is enrolled.";

(31) in section 428A(b)(3)(B)(i), by striking "section 428" and inserting "sections 428 and 428H";

(32) in section 428A(c)(1), by striking "sections 427 or 428(b)" and inserting "section 427 or 428(b)";

(33) in section 428C(a)(3)(A), by striking "delinquent or defaulted borrower who will reenter repayment through loan consolidation" and inserting "defaulted borrower who has made arrangements to repay the obligation on the defaulted loans satisfactory to the holders of the defaulted loans";

(34) in section 428C(a)(4)(A), by striking ", except for loans made to parent borrowers under section 428B as in effect prior to the enactment of the Higher Education Amendments of 1986";

(35) in section 428C(a)(4)(C), by striking "part C" and inserting "part A";

(36) in section 428C(c)(2)(A)(vi), by inserting a period after "30 years";

(37) in section 428C(c)(3)(A), by inserting "be an amount" before "equal to";

(38) in section 428F(a)(2)—

(A) by striking "this paragraph" and inserting "paragraph (1) of this subsection"; and

(B) by striking "this section" and inserting "this subsection";

(39) in section 428F(a)(4), by striking "this paragraph" and inserting "paragraph (1) of this subsection";

(40) in section 428F(b), by adding at the end thereof the following new sentence: "A borrower may only obtain the benefit of this subsection with respect to renewed eligibility once.";

(41) in section 428G(c)(3), by striking "disbursed" and inserting "disbursed by the lender";

(42) in section 428H(d)(2), by amending subparagraph (B) to read as follows:

"(B) in the case of a student at an eligible institution who has successfully completed such first and second years but has not successfully completed the remainder of a program of undergraduate education—

"(i) $5,000; or

"(ii) if such student is enrolled in a program of undergraduate education, the remainder of which is less than one academic year, the maximum annual loan amount that such student may receive may not exceed the amount that bears the same ratio to the amount specified in subclause (I) as such remainder measured in semester, trimester, quarter, or clock hours bears to one academic year;";

(43) in section 428H(e)(1)—

(A) by striking "shall commence 6 months after the month in which the student ceases to carry at least one-half the normal full-time workload as determined by the institution." and inserting "shall begin at the beginning of the repayment period described in section 428(b)(7).";

(B) by adding at the end thereof the following new sentence: "Not less than 30 days prior to the anticipated commencement of such repayment period, the holder of such loan shall provide notice to the borrower that interest will accrue before repayment begins and of the borrower's option to begin loan repayment at an earlier date.";

(44) in section 428H(e)(4), by striking "427A(e)" and inserting "427A";

(45) in section 428H, by redesignating subsection (l) as subsection (h);

(46) in section 428I(g), by striking "the Federal False Claims Act" and inserting "section 3729 of title 31, United States Code,";

(47) in section 428J(b)(1), by striking "sections 428A, 428B, or 428C" and inserting "section 428A, 428B, or 428C";

(48) in section 428J(b)(1)(B), by striking "agrees in writing to volunteer for service" and inserting "serves as a full-time volunteer";

(49) in section 428J(c)(1), by striking "academic year" each place it appears and inserting "year of service";

(50) in the heading for section 428J(d), by striking "OF ELIGIBILITY" and inserting "TO ELIGIBLE";

(51) in section 428J, by amending subsection (e) to read as follows:

"(e) APPLICATION FOR REPAYMENT.—

"(1) IN GENERAL.—Each eligible individual desiring loan repayment under this section shall submit a complete and accurate application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require. Loan repayment under this section shall be on a first-come, first-served basis and subject to the availability of appropriations.

"(2) CONDITIONS.—An eligible individual may apply for repayment after completing each year of qualifying service. The borrower shall receive forbearance while engaged in qualifying service unless the borrower is in deferment while so engaged.";

(52) in section 430A(f)(1), by striking the comma at the end and inserting a semicolon;

(53) in the matter preceding paragraph (1) of section 433(b), by striking "60 days" and inserting "30 days";

(54) in section 433(e), by striking "section 428A, 428B," and inserting "sections 428A, 428B,";

(55) in section 435(a), by inserting after paragraph (2) the following new paragraph:

"(3) APPEALS BASED UPON ALLEGATIONS OF IMPROPER LOAN SERVICING.—An institution that—

"(A) is subject to loss of eligibility for the Federal Family Education Loan Program pursuant to paragraph (2)(A) of this subsection;

"(B) is subject to loss of eligibility for the Federal Supplemental Loans for Students pursuant to section 428A(a)(2); or

"(C) is an institution whose cohort default rate equals or exceeds 20 percent for the most recent year for which data are available;

may include in its appeal of such loss or rate a defense based on improper loan servicing (in addition to other defenses). In any such appeal, the Secretary shall take whatever steps are necessary to ensure that such institution has access to a representative sample (as determined by the Secretary) of the relevant loan servicing and collection records of the affected guaranty agencies and loan servicers for a reasonable period of time, not to exceed 30 days. The Secretary shall reduce the institution's cohort default rate to reflect the percentage of defaulted loans in the representative sample that are required to be excluded pursuant to subsection (m)(1)(B).";

(56) in section 435(d)(2)(D), by striking "lender; and" and inserting "lender;";

(57) in section 435(d)(2), by increasing the indentation of the matter following subparagraph (F) by two em spaces;

(58) in section 435(d)(3), by striking "435(o)" and inserting "435(m)";

(59) in section 435(m)(1)(A), by striking "428 or 428A" and inserting "428, 428A, or 428H,";

(60) in section 435(m)—

(A) by inserting at the end of paragraph (1)(A) the following new sentence: "The Secretary shall require that each guaranty agency that has insured loans for current or former students of the institution afford such institution a reasonable opportunity (as specified by the Secretary) to review and correct errors in the information required to be provided to the Secretary by the guaranty agency for the purposes of calculating a cohort default rate for such institution, prior to the calculation of such rate.";

(B) in paragraph (1)(B), by striking "and, in calculating" and all that follows through the period at the end thereof and inserting the following: "and, in considering appeals with respect to cohort default rates pursuant to subsection (a)(3), exclude any loans which, due to improper servicing or collection, would, as demonstrated by the evidence submitted in support of the institution's timely appeal to the Secretary, result in an inaccurate or incomplete calculation of such cohort default rate.";

(61) in section 435(m)(2)(D)—

(A) by inserting "(or the portion of a loan made under section 428C that is used to repay a loan made under section 428A)" after "section 428A" the first place it appears; and

(B) by inserting "(or a loan made under section 428C a portion of which is used to repay a loan made under section 428A)" after "section 428A" the second place it appears;

(62) in section 435(m), by adding at the end thereof the following new paragraph:

"(4) COLLECTION AND REPORTING OF COHORT DEFAULT RATES.—(A) The Secretary shall collect data from all insurers under this part and shall publish not less often than once every fiscal year a report showing default data for each category of institution, including (i) 4-year public institutions, (ii) 4-year private institutions, (iii) 2-year public institutions, (iv) 2-year private institutions, (v) 4-year proprietary institutions, (vi) 2-year proprietary institutions, and (vii) less than 2-year proprietary institutions.

"(B) The Secretary may designate such additional subcategories within the categories specified in subparagraph (A) as the Secretary deems appropriate.

"(C) The Secretary shall publish not less often than once every fiscal year a report showing default data for each institution for which a cohort default rate is calculated under this subsection.";

(63) in section 437, by amending subsection (b) to read as follows:

"(b) PAYMENT OF CLAIMS ON LOANS IN BANKRUPTCY.—The Secretary shall pay to the holder of a loan described in section 428(a)(1)(A) or (B), 428A, 428B, 428C, or 428H, the amount of the unpaid balance of principal and interest owed on such loan—

"(1) when the borrower files for relief under chapter 12 or 13 of title 11, United States Code;

"(2) when the borrower who has filed for relief under chapter 7 or 11 of such title commences an action for a determination of dischargeability under section 523(a)(8)(B) of such title; or

"(3) for loans described in section 523(a)(8)(A) of such title, when the borrower files for relief under chapter 7 or 11 of such title.";

(64) in section 437(c)(1)—

(A) by striking "If a student borrower" and inserting "If a borrower";

(B) by striking "under this part is unable" and inserting "under this part and the student borrower, or the student on whose behalf a parent borrowed, is unable"; and

(C) by striking "in which the borrower is enrolled" and inserting "in which such student is enrolled"; and

(65) in section 437(c)(4), by adding at the end the following new sentence: "The amount discharged under this subsection shall be treated the same as loans under section 465(a)(5) of this title.";

(66) in the matter preceding paragraph (1) of section 437A(a), by striking "under subsection (d)";

(67) in section 437A(c)(2), by inserting a period at the end;

(68) in section 437A, by striking subsection (e); and

(69) in section 439(r)(12), by striking "section 522" and inserting "section 552".

(d) AMENDMENT TO PART C OF TITLE IV OF THE ACT.—Part C of title IV of the Act (42 U.S.C. 2751 et seq.) is amended—

(1) in section 442(d)(4)(C), by striking "three-fourths in the Pell Grant family size offset" and inserting "150 percent of the difference between the income protection allowance for a family of five with one in college and the income protection allowance for a family of six with one in college";

(2) in section 442(e)—

(A) by inserting "(1)" before "If"; and

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

"(2) If, under paragraph (1) of this subsection, an institution returns more than 10 percent of its allocation, the institution's allocation for the next fiscal year shall be reduced by the amount returned. The Secretary may waive this paragraph for a specific institution if the Secretary finds that enforcing this paragraph would be contrary to the interest of the program.";

(3) in section 443(b)(2)(A), by striking "institution;" and inserting "institution; and";

(4) in section 443(b), by amending paragraph (5) to read as follows:

"(5) provide that the Federal share of the compensation of students employed in the

work-study program in accordance with the agreement shall not exceed 75 percent for academic year 1993–1994 and succeeding academic years, except that the Federal share may exceed such amounts of compensation if the Secretary determines, pursuant to regulations promulgated by the Secretary establishing objective criteria for such determinations, that a Federal share in excess of such amounts is required in furtherance of the purpose of this part;''; and

(5) in section 443(b)(8), by striking subparagraphs (A), (B), and (C) and inserting the following:

''(A) that are only on campus and that—

''(i) to the maximum extent practicable, complement and reinforce the education programs or vocational goals of such students; and

''(ii) furnish student services that are directly related to the student's education, as determined by the Secretary pursuant to regulations, except that no student shall be employed in any position that would involve the solicitation of other potential students to enroll in the school; or

''(B) in community service in accordance with paragraph (2)(A) of this subsection;''.

(e) AMENDMENT TO PART D OF TITLE IV OF THE ACT.—Section 453(b)(2)(B) of the Act (20 U.S.C. 1087c(b)(2)(B)) is amended to read as follows:

''(B) if the Secretary determines it necessary in order to carry out the purposes of subparagraph (A) and attain such reasonable representation (as required by subparagraph (A)), selecting additional institutions.''.

(f) AMENDMENTS TO PART E OF TITLE IV OF THE ACT.—Part E of title IV of the Act (20 U.S.C. 1087aa et seq.) is amended—

(1) in subsections (a)(1) and (a)(2)(D) of section 462, by striking ''if the institution which has'' each place it appears and inserting ''if the institution has'';

(2) in section 462(d)(4)(C), by striking ''three-fourths in the Pell Grant family size offset'' and inserting ''150 percent of the difference between the income protection allowance for a family of five with one in college and the income protection allowance for a family of six with one in college'';

(3) in section 462(e), by reducing the indentation of paragraph (2) by two em spaces;

(4) in section 462(h)(4), by reducing the indentation of subparagraph (B) by two em spaces;

(5) in section 463(a)(2)(B)(i)(II), by striking ''7.5 percent'' and inserting ''7.5 percent for award year 1993–1994 and has a cohort default rate which does not exceed 15 percent for award year 1994–1995 or for any succeeding award year'';

(6) in section 463(c)(4), by striking ''shall disclose'' and inserting ''shall disclose at least annually'';

(7) in section 463, by adding at the end the following new subsections:

''(d) LIMITATION ON USE OF INTEREST BEARING ACCOUNTS.—In carrying out the provisions of subsection (a)(10), the Secretary may not require that any collection agency, collection attorney, or loan servicer collecting loans made under this part deposit amounts collected on such loans in interest bearing accounts, unless such agency, attorney, or servicer holds such amounts for more than 45 days.

''(e) SPECIAL DUE DILIGENCE RULE.—In carrying out the provisions of subsection (a)(5) relating to due diligence, the Secretary shall make every effort to ensure that institutions of higher education may use Internal Revenue Service skip-tracing collection procedures on loans made under this part.'';

(8) in section 463A, by striking subsections (d) and (e);

(9) in section 464(c)(2)(B) by striking ''repayment or'' and inserting ''repayment of'';

(10) in section 464(c)(6), by striking ''Fullbright'' and inserting ''Fulbright'';

(11) in section 464(e), by striking ''principle'' and inserting ''principal'';

(12) in section 465(a)(2)(D), by striking ''services'' and inserting ''service'';

(13) in section 465(a)(2)(F), by striking ''or'' after the semicolon;

(14) in section 465(a), by reducing the indentation of paragraph (6) by 2 em spaces; and

(15) in section 466(c), by reducing the indentation of paragraph (2) by two em spaces.

(g) AMENDMENTS TO PART F OF TITLE IV OF THE ACT.—Part F of title IV of the Act (20 U.S.C. 1087kk et seq.) is amended—

(1) in section 472—

(A) in paragraph (10), by striking ''and'' after the semicolon;

(B) in paragraph (11), by striking the period and inserting ''; and''; and

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

''(12) for a student who receives a loan under this or any other Federal law, or, at the option of the institution, a conventional student loan incurred by the student to cover a student's cost of attendance at the institution, an allowance for the actual cost of any loan fee, origination fee, or insurance premium charged to such student or such parent on such loan, or the average cost of any such fee or premium charged by the Secretary, lender, or guaranty agency making or insuring such loan, as the case may be.'';

(2) in the table contained in sections 475(c)(4) and 477(b)(4), by inserting ''$'' before ''9,510'';

(3) in section 475(f)(3)—

(A) by striking ''Income in the case of a parent'' and inserting ''If a parent'';

(B) by striking ''(1) of this subsection, or a parent'' and inserting ''(1) of this subsection, or if a parent''; and

(C) by striking ''is determined as follows: The income'' and inserting ''the income'';

(4) in section 475(g)(1)(B), by inserting a close parentheses after ''paragraph (2)'';

(5) in the table contained in section 475(g)(3), by adding a last row that is identical to the last row of the table contained in section 476(b)(2);

(6) in section 476, by adding at the end thereof the following new subsection:

''(d) COMPUTATIONS IN CASE OF SEPARATION, DIVORCE, OR DEATH.—In the case of a student who is divorced or separated, or whose spouse has died, the spouse's income and assets shall not be considered in determining the family's contribution from income or assets.'';

(7) in section 477 by adding at the end thereof the following new subsection:

''(e) COMPUTATIONS IN CASE OF SEPARATION, DIVORCE, OR DEATH.—In the case of a student who is divorced or separated, or whose spouse has died, the spouse's income and assets shall not be considered in determining the family's available income or assets.'';

(8) in section 478—

(A) by striking ''1992–1993'' each place it appears and inserting ''1993–1994''; and

(B) in subsection (c)(1), by inserting ''December'' before ''1992'';

(9) in section 478(h), by striking ''Bureau of Labor Standards'' and inserting ''Bureau of Labor Statistics'';

(10) in section 479(a)(1), by inserting ''of'' after ''(c)'';

(11) in section 479(b)(1)(B)(i)—

(A) by inserting ''(and the student's spouse, if any)'' after ''student'' each time it appears; and

(B) by striking ''such'';

(12) in section 479(b)(2), by striking ''five elements'' and inserting ''six elements'';

(13) in section 479(b)(2)(E), by striking the semicolon and inserting a comma;

(14) in section 479(b)(3)—

(A) in subparagraph (A), by inserting ''(including any prepared or electronic version of such form)'' before ''required''; and

(B) in subparagraph (B), by inserting ''(including any prepared or electronic version of such return)'' before ''required'';

(15) in section 479(c)—

(A) by amending subparagraph (A) of paragraph (1) to read as follows:

''(A) the student's parents were not required to file an income tax return under section 6012(a)(1) of the Internal Revenue Code of 1986; and'';

(B) by amending subparagraph (A) of paragraph (2) to read as follows:

''(A) the student (and the student's spouse, if any) was not required to file an income tax return under section 6012(a)(1) of the Internal Revenue Code of 1986; and''; and

(C) in subparagraph (B) of paragraphs (1) and (2), by inserting ''in 1992 or the current year, whichever is higher,'' after ''that may be earned''; and

(16) in section 479A, by adding at the end the following new subsection:

''(c) ADJUSTMENTS FOR SPECIAL CIRCUMSTANCES.—

''(1) IN GENERAL.—A student financial aid administrator shall be considered to be making an adjustment for special circumstances in accordance with subsection (a) if—

''(A) in the case of a dependent student—

''(i) such student received a Federal Pell Grant as a dependent student in academic year 1992–1993 and the amount of such student's Federal Pell Grant for academic year 1993–1994 is at least $500 less than the amount of such student's Federal Pell Grant for academic year 1992–1993; and

''(ii) the decrease described in clause (i) is the direct result of a change in the determination of such student's need for assistance in accordance with this part that is attributable to the enactment of the Higher Education Amendments of 1992; and

''(B) in the case of a single independent student—

''(i) such student received a Federal Pell Grant as a single independent student in academic year 1992–1993 and qualified as an independent student in accordance with section 480(d) for academic year 1993–1994, and the amount of such student's Federal Pell Grant for academic year 1993–1994 is at least $500 less than the amount of such student's Federal Pell Grant for academic year 1992–1993; and

''(ii) the decrease described in clause (i) is the direct result of a change in the determination of such student's need for assistance in accordance with this part that is attributable to the enactment of the Higher Education Amendments of 1992.

''(2) AMOUNT.—A financial aid administrator shall not make an adjustment for special circumstances pursuant to this subsection in an amount that exceeds one-half of the difference between the amount of a student's Federal Pell Grant for academic year 1992–1993 and the amount of such student's Federal Pell Grant for academic year 1993–1994.

''(3) ACADEMIC YEAR LIMITATION.—A financial aid administrator shall make adjustments under this subsection only for Federal

Pell Grants awarded for academic years 1993–1994, 1994–1995, and 1995–1996.

"(4) SPECIAL RULE.—Adjustments under this subsection shall be made in any fiscal year only if an Act that contains an appropriation for such fiscal year to carry out this subsection is enacted on or after the date of enactment of the Higher Education Technical Amendments of 1993.

"(5) LIMITATION.—Adjustments under this subsection shall not be available for any academic year to any student who, on the basis of the financial circumstances of the student for the current academic year, would not have been eligible for a grant under this section in academic year 1992–1993.";

(17) in section 480(c)(2), by striking "Title" each place it appears and inserting "United States Code, title";

(18) in section 480(d)(2), by inserting "or was a ward of the court until the individual reached the age of 18" before the semicolon;

(19) in section 480(j), by reducing the indentation of paragraph (3) by 2 em spaces; and

(20) in section 480, by adding at the end the following new subsections:

"(k) DEPENDENTS.—(1) Except as otherwise provided, the term 'dependent of the parent' means the student, dependent children of the student's parents, including those children who are deemed to be dependent students when applying for aid under this title, and other persons who live with and receive more than one-half of their support from the parent and will continue to receive more than half of their support from the parent during the award year.

"(2) Except as otherwise provided, the term 'dependent of the student' means the student's dependent children and other persons (except the student's spouse) who live with and receive more than one-half of their support from the student and will continue to receive more than half of their support from the student during the award year.

"(l) FAMILY SIZE.—(1) In determining family size in the case of a dependent student—

"(A) if the parents are not divorced or separated, family members include the student's parents, and the dependents of the student's parents including the student;

"(B) if the parents are divorced or separated, family members include the parent whose income is included in computing available income and that parent's dependents, including the student; and

"(C) if the parents are divorced and the parent whose income is so included is remarried, or if the parent was a widow or widower who has remarried, family members also include, in addition to those individuals referred to in subparagraph (B), the new spouse and any dependents of the new spouse if that spouse's income is included in determining the parents' adjusted available income.

"(2) In determining family size in the case of an independent student—

"(A) family members include the student, the student's spouse, and the dependents of the student; and

"(B) if the student is divorced or separated, family members do not include the spouse (or ex-spouse), but do include the student and the student's dependents.

"(m) BUSINESS ASSETS.—The term 'business assets' means property that is used in the operation of a trade or business, including real estate, inventories, buildings, machinery, and other equipment, patents, franchise rights, and copyrights.".

(h) AMENDMENTS TO PART G OF TITLE IV OF THE ACT.—Part G of title IV of the Act (20 U.S.C. 1088 et seq.) is amended—

(1) in section 481(a)(3)(B), by inserting before the semicolon the following: ", except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary in the case of an institution of higher education that provides a 2-year or 4-year program of instruction for which the institution awards an associate or baccalaureate degree";

(2) in section 481(a)(3)(D)—

(A) by striking "are admitted pursuant to section 484(d)" and inserting "do not have a high school diploma or its recognized equivalent"; and

(B) by inserting before the period the following: ", except that the Secretary may waive the limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that it exceeds such limitation because it serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a high school diploma or its recognized equivalent";

(3) in section 481(a)(4), by amending subparagraph (A) to read as follows:

"(A) the institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy; or";

(4) in section 481(d), by amending paragraph (2) to read as follows:

"(2) For the purpose of any program under this title, the term 'academic year' shall require a minimum of 30 weeks of instructional time, and, with respect to an undergraduate course of study, shall require that during such minimum period of instructional time a full-time student is expected to complete at least 24 semester or trimester hours or 36 quarter hours at an institution that measures program length in credit hours, or at least 900 clock hours at an institution that measures program length in clock hours. The Secretary may reduce such minimum of 30 weeks to not less than 26 weeks for good cause, as determined by the Secretary on a case-by-case basis, in the case of an institution of higher education that provides a 2-year or 4-year program of instruction for which the institution awards an associate or baccalaureate degree.";

(5) in section 481(e) by striking paragraph (2) and inserting the following:

"(2)(A) A program is an eligible program for purposes of part B of this title if it is a program of at least 300 clock hours of instruction, but less than 600 clock hours of instruction, offered during a minimum of 10 weeks, that—

"(i) has a verified completion rate of at least 70 percent, as determined in accordance with the regulations of the Secretary;

"(ii) has a verified placement rate of at least 70 percent, as determined in accordance with the regulations of the Secretary; and

"(iii) satisfies such further criteria as the Secretary may prescribe by regulation.

"(B) In the case of a program being determined eligible for the first time under this paragraph, such determination shall be made by the Secretary before such program is considered to have satisfied the requirements of this paragraph.";

(6) in section 481(f), by striking "State" and inserting "individual, or any State,";

(7) in section 482(c), by adding at the end the following new sentence: "For award year 1994–95, this subsection shall not require a delay in the effectiveness of regulatory changes affecting parts B, G, and H of this title that are published in final form by May 1, 1994.";

(8) in section 483(a)(1), by striking "section 411(d)" and inserting "section 401(d)";

(9) in section 483(a)(2), by inserting at the end the following new sentence: "No data collected on a form for which a fee is charged shall be used to complete the form prescribed under paragraph (1).";

(10) in section 483(a)(3), by inserting at the end the following sentence: "Entities designated by institutions of higher education or States to receive such data shall be subject to all requirements of this section, unless such requirements are waived by the Secretary.";

(11) in section 483(f), by striking "address, social security number," and inserting "address or employer's address, social security number or employer identification number,";

(12) in section 483, by redesignating subsections (e), (f), and (g) as subsections (d), (e), and (f), respectively;

(13) in section 484(a)(4)(B), by inserting after "number" the following: ", except that the provisions of this subparagraph shall not apply to a student from the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau";

(14) in section 484(a)(5), by striking "in the United States for other than a temporary purpose and able to provide evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident" and inserting "able to provide evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident";

(15) in section 484(b)(2)—

(A) in subparagraph (A), by striking "and" after the semicolon;

(B) in subparagraph (B), by striking the period and inserting "; and"; and

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

"(C) has applied for a loan under section 428H, if such student is eligible to apply for such a loan.";

(16) in the matter following subparagraph (B) of section 484(b)(3), by striking "part B" and inserting "part B or D";

(17) in section 484, by striking subsection (f);

(18) in section 484(g), by inserting a comma after "Part D" each place it appears;

(19) in the matter preceding clause (i) of section 484(h)(4)(B), by striking "constitutes" and inserting "constitute";

(20) in section 484(i)(2)—

(A) by striking "(h)(4)(A)(ii)" and inserting "(h)(4)(A)(i)"; and

(B) by striking "documentation," and inserting "documentation, or";

(21) in section 484(i)(3)—

(A) by striking "(h)(4)(B)(ii)" and inserting "(h)(4)(B)(i)"; and

(B) by striking ", or" and inserting a period;

(22) in section 484(i), by striking paragraph (4);

(23) in section 484(n), by striking "part B, C," and inserting "parts B, C,";

(24) in section 484(q)(2), by striking "a correct social security number" and inserting "documented evidence of a social security number that is determined by the institution to be correct";

(25) in section 484, by redesignating subsections (g) through (q) as subsections (f) through (p), respectively;

(26) in section 484B(a), by striking "grant, loan, or work assistance" and inserting "grant or loan assistance";

(27) in section 484B(b)(3), by striking "subsection (d)" and inserting "subsection (c)";

(28) in clauses (i), (ii), and (iii) of section 485(a)(1)(F), by inserting before the comma at the end of each such clause the following: "for the period of enrollment for which a refund is required";

(29) in section 485(a)(1)(F)(iv), by inserting "under" after "awards";

(30) in section 485(a)(1)(F)(vii), by striking "provided under this title";

(31) in section 485(a)(1)(F)(viii), by striking the period;

(32) in section 485(a)(1)(F), by striking clause (vi) and redesignating clauses (vii) and (viii) as clauses (vi) and (vii), respectively;

(33) in section 485(a)(1)(L), by inserting a comma after "full-time";

(34) in section 485(a)(3), by amending subparagraph (A) to read as follows:

"(A) shall, for any academic year beginning more than 270 days after the Secretary first prescribes final regulations pursuant to such subparagraph (L), be made available to current and prospective students prior to enrolling or entering into any financial obligation; and";

(35) in paragraphs (1)(A) and (2)(A) of section 485(b), by striking "under parts" and inserting "under part";

(36) in section 485(d), by inserting a period at the end of the penultimate sentence;

(37) in section 485(e), by adding at the end the following new paragraph:

"(9) This subsection shall not be effective until the first July 1 that follows, by more than 270 days, the date on which the Secretary first prescribes final regulations pursuant to this subsection. The reports required by this subsection shall be due on that July 1 and each succeeding July 1 and shall cover the 1-year period ending June 30 of the preceding year.";

(38) in section 485B(a)—

(A) by striking "part E" and inserting "parts D and E"; and

(B) by striking the second period at the end of the third sentence;

(39) in section 485B(a)(4), by striking "part E" and inserting "parts D and E";

(40) in section 485B(c), by striking "part B or part E" and inserting "part B, D, or E";

(41) in section 485B(e), by striking "under this part" each place it appears and inserting "under this title";

(42) in section 487(a)(2), by striking ", or for completing or handling the Federal Student Assistance Report";

(43) in section 487(c)(1)(F), by striking "eligibility for any program under this title of any otherwise eligible institution," and inserting "participation in any program under this title of an eligible institution,";

(44) in section 489(a), by striking "484(c)" and inserting "484(h)";

(45) in section 491(d)(1), by striking "sections 411A through 411E and"; and

(46) in section 491(h)(1), by striking "subtitle III" and inserting "subchapter III".

(i) AMENDMENTS TO PART H OF TITLE IV OF THE ACT.—Part H of title IV of the Act (20 U.S.C. 1099a et seq.) is amended—

(1) in section 494C(a), by striking the first and second sentences and inserting the following: "The Secretary shall review all eligible institutions of higher education in a State to determine if any such institution meets any of the criteria in subsection (b). If any such institution meets one or more of such criteria, the Secretary shall inform the State in which such institution is located that the institution has met such criteria, and the State shall review the institution pursuant to the standards in subsection (d). The Secretary may determine that a State need not review an institution if such institution meets the criterion in subsection (b)(10) only, such institution was previously reviewed by the State under subsection (d), and the State determined in such previous review that the institution did not violate any of the standards in subsection (d).";

(2) in section 494C(i), by striking "sections 428 or 487" and inserting "section 428 or 487";

(3) in section 496(a)(2)(A)(i), by inserting "of institutions of higher education" after "membership";

(4) in section 496(a)(3)(A), by striking "subparagraph (A)" and inserting "subparagraph (A)(i)";

(5) in section 496(a)(5)—

(A) by striking the period at the end of subparagraph (L) and inserting a semicolon; and

(B) by inserting after subparagraph (L) the following:

"except that subparagraphs (G), (H), (I), (J), and (L) shall not apply to agencies or associations described in paragraph (2)(A)(ii) of this subsection;";

(6) in the matter preceding paragraph (1) of section 496(c), by striking "for the purpose of this title" and inserting "as a reliable authority as to the quality of education or training offered by an institution seeking to participate in the programs authorized under this title";

(7) in section 496(1)(2)—

(A) by striking "institututution" and inserting "institution"; and

(B) by striking "association leading to the suspension" and inserting "association, described in paragraph (2)(A)(i), (2)(B), or (2)(C) of subsection (a) of this section, leading to the suspension";

(8) in section 496(n)(1), by amending subparagraph (B) to read as follows:

"(B) site visits, including unannounced site visits as appropriate, at accrediting agencies and associations, and, at the Secretary's discretion, at representative member institutions.";

(9) in section 498(c)—

(A) in paragraph (2), by adding at the end the following new sentences: "Such criteria shall take into account any differences in generally accepted accounting principles, and the financial statements required thereunder, that are applicable to for profit and nonprofit institutions. The Secretary shall take into account an institution's total financial circumstances in making a determination of its ability to meet the standards herein required.";

(B) in the matter preceding subparagraph (A) of paragraph (3), by striking "may determine" and inserting "shall determine";

(C) by amending subparagraph (C) of paragraph (3) to read as follows:

"(C) such institution establishes to the satisfaction of the Secretary, with the support of a financial statement audited by an independent certified public accountant in accordance with generally accepted auditing standards, that the institution has sufficient resources to ensure against the precipitous closure of the institution, including the ability to meet all of its financial obligations (including refunds of institutional charges and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary); or";

(D) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively; and

(E) by inserting after paragraph (3) the following new paragraph:

"(4) If an institution of higher education that provides a 2-year or 4-year program of instruction for which the institution awards an associate or baccalaureate degree fails to meet the ratio of current assets to current liabilities imposed by the Secretary pursuant to paragraph (2), the Secretary shall waive that particular requirement for that institution if the institution demonstrates to the satisfaction of the Secretary that—

"(A) there is no reasonable doubt as to its continued solvency and ability to delivery quality educational services;

"(B) it is current in its payment of all current liabilities, including student refunds, repayments to the Secretary, payroll, and payment of trade creditors and withholding taxes; and

"(C) it has substantial equity in school-occupied facilities, the acquisition of which was the direct cause of its failure to meet the current operating ratio requirement.";

(10) in section 498(f), by inserting after the second sentence the following: "The Secretary may establish priorities by which institutions are to receive site visits, and may coordinate such visits with site visits by States, guaranty agencies, and accrediting bodies in order to eliminate duplication, and reduce administrative burden.";

(11) in section 498(h)(1)(B), by amending clause (iii) to read as follows:

"(iii) the Secretary determines that an institution that seeks to renew its certification is, in the judgment of the Secretary, in an administrative or financial condition that may jeopardize its ability to perform its financial responsibilities under a program participation agreement.";

(12) in section 498, by amending subsection (i)(1) to read as follows:

"(i) TREATMENT OF CHANGES OF OWNERSHIP.—(1) An eligible institution of higher education that has had a change in ownership resulting in a change of control shall not qualify to participate in programs under this title after the change in control (except as provided in paragraph (3)) unless it establishes that it meets the requirements of section 481 (other than the requirements in subsections (b)(5) and (c)(3)) and this section after such change in control.";

(13) in section 498(i)(3), by amending subparagraph (A) to read as follows:

"(A) the sale or transfer, upon the death of an owner of an institution, of the ownership interest of the deceased in that institution to a family member or to a person holding an ownership interest in that institution; or";

(14) in section 498, by amending subsection (j)(1) to read as follows:

"(j) TREATMENT OF BRANCHES.—(1) A branch of an eligible institution of higher education, as defined pursuant to regulations of the Secretary, shall be certified under this subpart before it may participate as part of such institution in a program under this title, except that such branch shall not be required to meet the requirements of sections 481(b)(5) and 481(c)(3) prior to seeking such certification. Such branch is required to be in existence at least 2 years prior to seeking certification as a main campus or free-standing institution."; and

(15) in section 498A(e), by striking "Act," and inserting "Act".

(j) AMENDMENTS TO TITLES V THROUGH XII OF THE ACT.—Titles V through XII of the Act (20 U.S.C. 1101 et seq.) are amended—

(1) in section 505(b)(2)(D)(iii), by striking the period and inserting a semicolon;

(2) in section 525, by amending subsection (c) to read as follows:

"(c) WAIVERS.—For purposes of giving special consideration under section 523(d), a

State may waive the criteria contained in the first sentence of subsection (b) for not more than 25 percent of individuals receiving Paul Douglas Teacher Scholarships on or after July 1, 1993.";

(3) in the first sentence of section 530A by striking "elementary and secondary school teachers" each place it appears and inserting "preschool, elementary, and secondary school teachers";

(4) in section 535(b)(1)(C), by striking the semicolon and inserting a period;

(5) in section 537(a), by inserting "IN" before "GENERAL";

(6) in section 545(d), by striking "parts B, D," and inserting "part B, D,";

(7) in section 580B, by striking "(a) AUTHORIZATION.—";

(8) in section 581(b)(2), by striking "402A(g)(2)" and inserting "402A(g)";

(9) in section 597(d)(1), by striking "Development and" and inserting "and Development";

(10) in section 602(a)(3), by striking "(1)(A)" and inserting "(1)";

(11) in section 602(a)(4), by striking "(1)(A)" and inserting "(1)";

(12) in the heading of subsection (a) of section 603, by striking "RESOURCES" and inserting "RESOURCE";

(13) in section 607(c), by redesignating the second paragraph (2) as paragraph (3);

(14) in section 714, by striking "(a) IN GENERAL.—";

(15) in section 715(b)—

(A) by striking "(1) STATE GRANTS.—";

(B) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2);

(C) in paragraph (2) (as so redesignated) by redesignating clauses (i), (ii), and (iii) as subparagraphs (A), (B), and (C), respectively; and

(D) by reducing the indentation of such paragraphs (1) and (2) (as so redesignated) by two em spaces;

(16) in section 725—

(A) by redesignating paragraphs (2) through (5) as paragraphs (3) through (6), respectively; and

(B) by inserting after paragraph (1) the following new paragraph:

"(2) shall require that the first loans for capital projects authorized under section 723 be made no later than March 31, 1994;";

(17) in section 726, by inserting a period after "title" the first time it appears and striking the remainder of the sentence;

(18) in section 731(a), by striking "faculties," and inserting "faculty,";

(19) in section 731(c), by striking "enactment of";

(20) in section 734(e)—

(A) by striking "FACULTIES" and inserting "FACULTY"; and

(B) by striking "faculties" and inserting "faculty";

(21) in section 781(b), by striking "Education Amendments of 1992," and inserting "Education Amendments of 1992";

(22) in section 782(1)(A), by striking "outpatient care of student" and inserting "outpatient care of students";

(23) in section 783—

(A) in subsection (a)(2), by inserting "on all such loans owed by such institution" after "outstanding indebtedness"; and

(B) by adding at the end thereof the following new subsection:

"(d) REDUCTION OF AMOUNTS OWED TO TREASURER.—If the Secretary forgives all or part of a loan described in subsection (a), the outstanding balance remaining on the notes of the Secretary that were issued to the Secretary of the Treasury under section 761(d) as in effect prior to the enactment of the Higher Education Amendments of 1992, or under any provision of this title as in effect at the time such note was issued, shall be reduced by such amount forgiven.";

(24) in the matter preceding paragraph (1) of section 802(b), by inserting after "fiscal year" the following: "the Secretary shall reserve such amount as is necessary to make continuing awards to institutions of higher education that were, on the date of enactment of the Higher Education Amendments of 1992, operating an existing cooperative education program under a multiyear project award and to continue to pay to such institutions the Federal share in effect on the day before such date of enactment. Of the remainder of the amount appropriated in such fiscal year";

(25) in section 803(b)(6)(A), by striking "data";

(26) in section 803(e)(2)—

(A) by striking "Mexican American" and inserting "Mexican-American"; and

(B) by striking "Mariana" and inserting "Marianian";

(27) in section 901(b)(2), by striking "such part" and inserting "such title";

(28) in section 922, by amending subsection (f) to read as follows:

"(f) INSTITUTIONAL PAYMENTS.—(1) The Secretary shall pay to the institution of higher education, for each individual awarded a fellowship under this part at such institution, an institutional allowance. Except as provided in paragraph (2), such allowance shall be—

"(A) $6,000 annually with respect to individuals who first received fellowships under this part prior to academic year 1993–1994; and

"(B) with respect to individuals who first received fellowships during or after academic year 1993–1994—

"(i) $9,000 for the academic year 1993–1994; and

"(ii) for succeeding academic years, $9,000 adjusted annually thereafter in accordance with inflation as determined by the Department of Labor's Consumer Price Index for the previous calendar year.

"(2) The institutional allowance paid under paragraph (1) shall be reduced by the amount the institution charges and collects from a fellowship recipient for tuition and other expenses as part of the recipient's instructional program.";

(29) in the second sentence of section 923(b)(1), by striking "granting of such fellowships" and all that follows through "set forth in this section," and inserting "granting of such fellowships for an additional period of study not to exceed one 12-month period,";

(30) in section 923(b)(2), by striking out the second and third sentences and inserting the following: "Such period shall not exceed a total of 3 years, consisting of not more than 2 years of support for study or research, and not more than 1 year of support for dissertation work, provided that the student has attained satisfactory progress prior to the dissertation stage, except that the Secretary may provide by regulation for the granting of such fellowships for an additional period of study not to exceed one 12-month period, under special circumstances which the Secretary determines would most effectively serve the purposes of this part. The Secretary shall make a determination to provide such 12-month extension of an award to an individual fellowship recipient for study or research upon review of an application for such extension by the recipient. The institution shall provide 2 years of support for each student following the years of Federal predissertation support under this part. Any student receiving an award for graduate study leading to a doctoral degree shall receive at least 1 year of supervised training in instruction during such student's doctoral program.";

(31) in section 923(b), by adding at the end the following new paragraph:

"(3) CONTINUATION OF AWARDS UNDER PRIOR LAW.—Notwithstanding any other provision of law, in the case of an individual who was awarded a multiyear fellowship under this part before the date of enactment of the Higher Education Amendments of 1992, awards to such individual for the remainder of such fellowship may, at the discretion of the institution of higher education attended by such individual, be subject to the requirements of this subsection as in effect prior to such date of enactment. The institution shall be required to exercise such discretion at the time that its application to the Secretary for a grant under this part, and the amount of any such grant, are being considered by the Secretary.";

(32) in section 924, by adding at the end thereof the following new sentence: "Notwithstanding any other provision of law, the Secretary may use funds appropriated pursuant to this section for fiscal year 1994 to make continuation awards under section 923(b)(3) to individuals who would have been eligible for such awards in fiscal year 1993 if such section had been in effect.";

(33) in section 931(a), by inserting after the first sentence the following new sentence: "These fellowships shall be awarded to students intending to pursue a doctoral degree, except that fellowships may be granted to students pursuing a master's degree in those fields in which the master's degree is commonly accepted as the appropriate degree for a tenured-track faculty position in a baccalaureate degree-granting institution.";

(34) in the third sentence of section 932(a)(1), by striking "doctoral" and inserting "graduate";

(35) in section 932(c), by striking "doctoral" and inserting "graduate";

(36) in section 933(b), by amending paragraph (1) to read as follows:

"(1) IN GENERAL.—(A) The Secretary shall (in addition to stipends paid to individuals under this part) pay to the institution of higher education, for each individual awarded a fellowship under this part at such institution, an institutional allowance. Except as provided in subparagraph (B), such allowance shall be—

"(i) $6,000 annually with respect to individuals who first received fellowships under this part prior to academic year 1993–1994; and

"(ii) with respect to individuals who first receive fellowships during or after academic year 1993–1994—

"(I) $9,000 for the academic year 1993–1994; and

"(II) for succeeding academic years, $9,000 adjusted annually thereafter in accordance with inflation as determined by the Department of Labor's Consumer Price Index for the previous calendar year.

"(B) The institutional allowance paid under subparagraph (A) shall be reduced by the amount the institution charges and collects from a fellowship recipient for tuition and other expenses as part of the recipient's instructional program.";

(37) in section 941, by striking "the part" and inserting "this part";

(38) in section 943(b), by striking "foreign languages or area studies" and inserting "foreign languages and area studies";

(39) in section 945, by amending subsection (c) to read as follows:

"(c) TREATMENT OF INSTITUTIONAL PAYMENTS.—An institution of higher education that makes institutional payments for tuition and fees on behalf of individuals supported by fellowships under this part in amounts that exceed the institutional payments made by the Secretary pursuant to section 946(a) may count such payments toward the amounts the institution is required to provide pursuant to section 944(b)(2).";

(40) in section 946, by amending subsection (a) to read as follows:

"(a) INSTITUTIONAL PAYMENTS.—(1) The Secretary shall (in addition to stipends paid to individuals under this part) pay to the institution of higher education, for each individual awarded a fellowship under this part at such institution, an institutional allowance. Except as provided in paragraph (2), such allowance shall be—

"(A) $6,000 annually with respect to individuals who first received fellowships under this part prior to academic year 1993–1994; and

"(B) with respect to individuals who first receive fellowships during or after academic year 1993–1994—

"(i) $9,000 for the academic year 1993–1994; and

"(ii) for succeeding academic years, $9,000 adjusted annually thereafter in accordance with inflation as determined by the Department of Labor's Consumer Price Index for the previous calendar year.

"(2) The institutional allowance paid under paragraph (1) shall be reduced by the amount the institution charges and collects from a fellowship recipient for tuition and other expenses as part of the recipient's instructional program.";

(41) in the matter preceding paragraph (1) of section 951(a), by inserting "Pacific Islanders," after "Native Americans,";

(42) in section 1004(a), by striking "part" and inserting "subpart";

(43) in section 1011(d), by striking "part" and inserting "subpart";

(44) in part D of title X, by redesignating section 1181 as section 1081;

(45) in section 1081(d) (as so redesignated) by inserting a comma after "this title)" and after "such institutions";

(46) in section 1106(a), by striking "may receive a grant" and inserting "may receive such a grant";

(47) in section 1142(d)(2), by inserting "program" after "literacy corps";

(48) in the last sentence of section 1201(a), by striking "subpart 3 of part H," and inserting "subpart 2 of part H of title IV of this Act,";

(49) by amending section 1204 to read as follows:

"TREATMENT OF TERRITORIES AND TERRITORIAL STUDENT ASSISTANCE

"SEC. 1204. (a) The Secretary is required to waive the eligibility criteria of any postsecondary education program administered by the Department where such criteria do not take into account the unique circumstances in Guam, the Virgin Islands, American Samoa, Palau, the Commonwealth of the Northern Mariana Islands, and the freely associated states.

"(b) Notwithstanding any other provision of law, an institution of higher education that is located in any of the freely associated states, rather than a State, shall be eligible, if otherwise qualified, for assistance under chapter 1 of subpart 2 of part A of title IV of this Act.";

(50) in section 1205, in the section heading, by inserting "national advisory" before "committee";

(51) in section 1205(a), by inserting "National Advisory" before "Committee" the first place it appears;

(52) in paragraphs (1) and (6) of section 1205(c), by inserting "of title IV of this Act" after "part H";

(53) in section 1205(f), by striking "Accreditation and Institutional Eligibility" and inserting "Institutional Quality and Integrity";

(54) in section 1209(f)(1), by striking "the Act" and inserting "this Act";

(55) in title XII, by redesignating section 1211 (as added by section 6231 of the Omnibus Trade and Competitiveness Act of 1988) as section 1212; and

(56) in section 1212(e)(2) (as so redesignated), by inserting close quotation marks after "facilities" the first place it appears.

(k) AMENDMENTS TO THE 1992 AMENDMENTS.—The Higher Education Amendments of 1992 (Public Law 102–325; 106 Stat. 459) is amended—

(1) in section 401(d)(2)(A), by inserting "the first place it appears" before "the following:";

(2) in section 425(d)(1)—

(A) by inserting "the second sentence of" after "(1) in"; and

(B) by striking "in the second sentence";

(3) in section 425(d)(4)—

(A) by inserting "the second sentence of" after "(4) in"; and

(B) by striking "in the second sentence";

(4) in section 426(c), by striking "new subsections" and inserting "new subsection";

(5) in section 432(a)(3), by striking "427(a)(2)(C) and 428(b)(1)(M)" and inserting "427(a)(2)(C), 428(b)(1)(M), and 428B(d)(1)";

(6) in section 446, by striking subsection (c);

(7) in section 465(a), by amending paragraph (1) to read as follows:

"(1) in subparagraph (A), by striking 'and such determination' and all that follows through 'such chapter 1';";

(8) in section 484, by inserting after subsection (h) the following new subsection:

"(i) EFFECTIVE DATE.—The amendments made by subsection (g) with respect to the addition of subsection (n) shall be effective on and after December 1, 1987.";

(9) in section 486(a)(3), by striking "section 1" and inserting "section 103";

(10) in section 1409(b)(1), by striking "the Asbestos Hazard Emergency Response Act" and inserting "section 202 of the Toxic Substances Control Act (15 U.S.C. 2642)";

(11) in section 1422(9), by striking "has placed" and inserting "have placed";

(12) in section 1442(c), by striking "Chairman" and inserting "Chairperson";

(13) in section 1541(g), by striking "educational" and inserting "education"; and

(14) in the subsection (a)(1) amended by section 1554(a), by striking "4" and inserting "6".

(l) AMENDMENT TO THE 1986 AMENDMENT.—Section 1507(a)(12) of the Higher Education Amendments of 1986 (20 U.S.C. 4414(a)(12)) is amended by striking the period and inserting a semicolon.

(m) STYLISTIC CONSISTENCY.—The Act is amended so that the section designation and section heading of each section of the Act shall be in the form and typeface of the section designation and heading of this section.

(n) ACCREDITATION THROUGH TRANSFER OF CREDIT.—(1) An institution of higher education which satisfied the requirements of section 1201(a)(5)(B) of the Act prior to the enactment of the Higher Education Amendments of 1992, shall be considered to meet the requirements of section 1201(a)(5) of the Act if—

(A) within 60 days after the date of enactment of the Higher Education Technical Amendments of 1993, such institution has applied for accreditation by a nationally recognized accrediting agency or association which the Secretary determines, pursuant to subpart 2 of part H of title IV of the Act, to be a reliable authority as to the quality of education or training offered;

(B) within 2 years of the date of enactment of the Higher Education Technical Amendments of 1993, such institution is accredited by such an accrediting agency or association or, if not so accredited, has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time; and

(C) such institution is legally authorized within a State to provide education beyond secondary education.

(2) The Secretary shall determine whether to recertify any institution that meets the requirements of paragraph (1) within 2 years after the date of enactment of this Act.

(3) Paragraph (1) of this subsection shall be effective on and after July 23, 1992.

SEC. 3. PACIFIC REGIONAL EDUCATIONAL LABORATORY.

Section 101A of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2311a) is amended—

(1) in the matter preceding paragraph (1) of subsection (b)—

(A) by striking "Center for the Advancement of Pacific Education, Honolulu, Hawaii, or its successor entity as the Pacific regional educational laboratory" and inserting "Pacific Regional Educational Laboratory, Honolulu, Hawaii"; and

(B) by inserting "or provide direct services regarding" after "grants for"; and

(2) in subsection (c), by striking "Center for the Advancement of Pacific Education" and inserting "Pacific Regional Educational Laboratory, Honolulu, Hawaii,".

SEC. 4. DISTRIBUTION OF FUNDS TO POSTSECONDARY AND ADULT PROGRAMS.

Section 232 of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2341a) is amended—

(1) in subsection (a)—

(A) in the first sentence—

(i) by inserting "(1)" before "Except"; and

(ii) by inserting "or consortia thereof" before "within"; and

(B) in the second sentence—

(i) by inserting "or consortium" before "shall"; and

(ii) by inserting "or consortium" before "in the preceding";

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

"(2) In order for a consortium of eligible institutions described in paragraph (1) to receive assistance pursuant to such paragraph such consortium shall operate joint projects that—

"(A) provide services to all postsecondary institutions participating in the consortium; and

"(B) are of sufficient size, scope and quality as to be effective.";

(2) in subsection (b)—

(A) in paragraph (1), by inserting "or consortia" after "institutions"; and

(B) in the matter preceding subparagraph (A) of paragraph (2), by inserting "or consortia" after "institutions"; and

(3) in subsection (c)—

(A) in paragraph (1), by inserting "or consortium" after "institution"; and

(B) in paragraph (2), by inserting "or consortia" after "institutions".

SEC. 5. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided therein or in subsection (b) of this section, the amendments made by section 2 of this Act shall be effective as if such amendments were included in the Higher Education Amendments of 1992 (Public Law 102–325), except that section 492 of the Act shall not apply to the amendments made by this Act.

(b) EXCEPTIONS.—

(1) EFFECTIVE ON OCTOBER 1, 1993.—The amendments made by the following subsections of section 2 of this Act shall be effective on and after October 1, 1993: (b)(29), (j)(28), (j)(36), and (j)(40).

(2) EFFECTIVE ON DATE OF ENACTMENT.—The amendments made by the following subsections of section 2 of this Act shall be effective on and after the date of enactment of this Act: (b)(2), (b)(7), (b)(28), (c)(3), (c)(5), (c)(13)(B), (c)(13)(C), (c)(18), (c)(30), (c)(62).

(3) EFFECTIVE 30 DAYS AFTER ENACTMENT.—The amendments made by the following subsections of section 2 of this Act shall be effective on and after 30 days after the date of enactment of this Act: (c)(19), (c)(20), (c)(21), (c)(59).

(4) EFFECTIVE 60 DAYS AFTER ENACTMENT.—The amendments made by the following subsections of section 2 of this Act shall be effective on and after 60 days after the date of enactment of this Act: (c)(31) and (c)(53).

(5) EFFECTIVE ON APRIL 1, 1994.—The amendments made by section 2(c)(43)(B) of this Act shall be effective on and after April 1, 1994.

(6) EFFECTIVE ON JULY 1, 1994.—The amendments made by the following subsection of section 2 of this Act shall be effective on and after July 1, 1994: (b)(25), (c)(2), (c)(13)(A), (c)(29).

(7) COHORT DEFAULT DATA EXAMINATIONS.—The amendment made by section 2(c)(60)(A) shall be effective on and after October 1, 1994.

(8) COHORT DEFAULT RATE DETERMINATIONS.—The amendments made to subsection (a)(3) and (m)(1)(B) of section 435 of this Act shall apply with respect to the determination (and appeals from determinations) of cohort default rates for fiscal year 1989 and any succeeding fiscal year.

NOTICES OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BUMPERS. Mr. President, I would like to announce for the public that a field hearing has been scheduled before the Subcommittee on Public Lands, National Parks and Forests.

The field hearing will take place on Friday, December 10, 1993, from 2 p.m. to 4 p.m. in the 3rd Floor Auditorium of the Louisiana State Museum which is located in the Old United States Mint Building, 400 Esplanade Avenue, New Orleans, LA.

The purpose of the hearing is to receive testimony on S. 1586, a bill to establish the New Orleans Jazz National Historical Park in the State of Louisiana, and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. It will be necessary to place witnesses in panels and limit the time for oral testimony. Witnesses testifying at the hearing are requested to bring 10 copies of their testimony with them on the day of the hearing. Please do not submit testimony in advance.

In addition, there will be a workshop preceding the hearing from 11:45 a.m. to 1:15 p.m. where staff will be available to receive any oral or written comments people may wish to submit or make regarding S. 1586. This material will also be included in the committee's official hearing record. The workshop, which is open to anyone interested in this legislation, will also be held in the third floor auditorium of the Louisiana State Museum.

Those who cannot attend either the hearing or the workshop but want to submit a statement for the record, may send it to the Subcommittee on Public Lands, National Parks and Forests, Room 364 of the Dirksen Senate Office Building, Washington, DC 20510–6150.

For further information regarding the hearing, please contact Charmaine Caccioppi in Senator Johnston's New Orleans office at (504) 589–2427, Laura Hudson in Senator Johnston's Washington, DC office at (202) 224–0090 or Tom Williams of the Committee staff at (202) 224–7145.

NOTICE OF RESCHEDULING OF FIELD HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

SUBCOMMITTEE ON WATER AND POWER

Mr. BRADLEY. Mr. President, I would like to announce for the public the rescheduling of a November 8, 1993, field hearing before the Subcommittee on Water and Power of the Senate Committee on Energy and Natural Resources to receive testimony on the contemporary needs and management of the Newlands Project in Nevada, a Bureau of Reclamation project.

The hearing will take place Saturday, December 11, 1993, beginning at 8 a.m., in Reno, NV. The exact location of the hearing has not been determined. Interested parties should contact the Subcommittee on Water and Power at (202) 224–6836 after Monday, November 29, 1993.

Due to the limited time available at the hearing, witnesses may testify by invitation only. However, anyone wishing to submit written testimony to be included in the printed hearing record is welcome to do so. Those persons wishing to submit written testimony should mail five copies of the statement to the Subcommittee on Water and Power, United States Senate, 304 Dirksen Senate Office Building, Washington, DC, 20510–s6150.

For more information, please contact Dana Sebren Cooper, Counsel for the Subcommittee at (202) 224–4531.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Friday, November 19, 1993 at 9:30 a.m., in open session to consider the nomination of Dr. Morton H. Halperin to be Assistant Secretary of Defense for Democracy and Peacekeeping.

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

COMMITTEE ON ARMED SERVICES

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Friday, November 19, 1993, at 5 p.m. in closed session, to receive a briefing by the Department of Defense and State Department on policy toward North Korea.

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

COMMITTEE ON FINANCE

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Finance be permitted to meet today at 10 a.m. to consider legislation to make the Social Security Administration an independent agency and to consider the nomination of Olivia Golden to be Commissioner, Administration on Children, Youth and Families.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. FORD. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee for authority to meet on Friday, November 19, at 11 a.m., for a hearing on the nomination of: Einar Dyhrkopp, to be Governor, U.S. Postal Service.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Friday, November 19, 1993, beginning at 9:30 a.m., in 485 Russell Senate Office Building on S. 1526, Indian Fish and Wildlife Resources Management Act of 1993.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. FORD. Mr. President, the Committee on Veterans' Affairs would like to request unanimous consent to hold a hearing and a markup on the nomination of Preston M. Taylor, Jr. to be Assistant Secretary of Labor for Veteran's Employment and Training. The hearing will be held in room 418 of the Russell Senate Office Building at 1:30 p.m. on Friday, November 19, 1993. The markup will be held in the Reception

Room after the first roll call vote after 2:30 p.m. on Friday, November 19, 1993.

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

SUBCOMMITTEE ON EAST ASIAN AND PACIFIC AFFAIRS

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on East Asian and Pacific Affairs of the Committee on Foreign Relations, be authorized to meet during the session of the Senate on Friday, November 19, 1993, at 10 a.m. to receive a closed briefing on North Korea's intransigence on the nuclear inspection issue.

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

ADDITIONAL STATEMENTS

THE ISSUE OF NORTHERN IRELAND

• Mr. DODD. Mr. President, earlier this year I appeared on the floor of this Chamber to inform my colleagues that the Committee on Foreign Relations planned to hold hearings on the issue of Northern Ireland.

These hearings would represent the first time since the troubles broke out in 1969—indeed, the first time in Ulster's history—that the issue of Northern Ireland would be examined by the committee. I am very grateful to the chairman of the committee, Senator PELL, and the chairman of the Subcommittee on European Affairs, Senator BIDEN, for their commitment to hold these timely and much-needed hearings.

For a variety of reasons, unfortunately, it proved impossible to schedule these hearings this year, as had been hoped. This was due in part to the challenge of finding time on the committee schedule and also to the recent emergence of a series of secret talks earlier this year. One set of talks was between Social Democratic and Labor Party leader John Hume and Sinn Fein leader Gerry Adams and another, if recent press reports are to be believed, was between Sinn Fein and the British Government. Obviously the existence of these negotiations and any secret agreements they may have produced would have made it difficult for the committee to engage in the kind of open and frank discussion needed when it comes to Northern Ireland.

Nonetheless, I want to make clear to my colleagues my very strong belief that the situation in Northern Ireland continues to deserve the attention of the Foreign Relations Committee. Since 1969, more than 3,000 people have been killed and over 30,000 wounded as a result of extended political violence in that troubled corner of the world. Surely amidst the troubles there are lessons we can learn about the nature of conflict and the many disparate forces that shape it; these lessons are all the more important as we go about laying the foundations for this new international order. Indeed I hope in some small way we can contribute to the body of knowledge on this conflict, and perhaps even hasten the day when it can be brought to an end.

Accordingly, I want to make clear that I fully expect that the Foreign Relations Committee will make every effort to pursue these hearings at some point in the next session of the current Congress. I look forward to working with my Senate colleagues on this very important issue in the future.•

TRIBUTE TO MALCOLM CHANCEY

• Mr. MCCONNELL. Mr. President, I rise today to recognize a Kentuckian who has taken the idea of civic duty to heart. Not only is he a successful businessman in Louisville, but for many years I have watched Mr. Malcolm Chancey dedicate time and service to furthering special causes, in particular, education.

Mr. President, this is a man who believes in planning for our future today by giving our children the training they need to succeed. Almost 20 years ago, Mr. Chancey decided to get involved in the community by becoming an education volunteer. Over the years he has raised money for several education projects, including the New Kid in School initiative, which provided $11 million to schools for computers and other technology. He also instituted a dropout prevention program to help about 4,000 disadvantaged students stay in school and find jobs.

But his investment of time and dedication to society doesn't stop with education. Above all else, Mr. Chancey wants to promote and develop his community, and this seems to have been his driving force throughout the years. Mr. Chancey has served on about 25 boards and committees, ranging from the Downtown Development Corp. to the Museum of History and Science. He has collected more than $15 million for a project to build a football stadium and over $4 million for the Greater Louisville Fund for the Arts.

His successes are equally strong in the business world. Mr. Chancey currently presides over Liberty, our State's largest independent bank. If Liberty and Banc One of Ohio merge as planned, Mr. Chancey will lead Kentucky's largest banking empire.

As Malcolm Chancey expands his business pursuits, I am confident he will also expand his civic interests. Mr. President, I am sure that with such strong convictions motivating him, Mr. Chancey will have no problem continuing his civic leadership, even with increased professional demands.

Mr. Malcolm Chancey has made a name for himself throughout the years by giving of himself to Louisville and to Kentucky. I congratulate him on his accomplishments and wish him continued success.

Mr. President, I ask that a recent article from Louisville's Courier-Journal be submitted in today's CONGRESSIONAL RECORD.

The article follows:

LIBERTY CHIEF BANKS ON LOUISVILLE

(By Andrew Wolfson)

Growing up in Fairdale, the oldest of nine children and the son of a Bacon's maintenance engineer, Malcolm B. Chancey, Jr., worked through high school as a cook and busboy at Blue Boar Cafeteria.

Now, more than 40 years later, he is running Kentucky's biggest independent bank—and helping run its biggest city.

If Liberty and Banc One of Ohio consummate the merger they announced last week, Chancey will soon preside over Kentucky's largest banking empire. But he has made a bigger name for himself outside of banking, as one of Louisville's most influential citizens.

Collecting more than $15 million in one of Louisville's most successful grass-roots fund-raising drives, he has laid the foundation for a football stadium that some said couldn't—or shouldn't—be built.

His fingerprints can be found on everything from downtown development to the selection of Jefferson County's new school superintendent, to fund raising for the arts and the Boy Scouts.

Serving on nearly two dozen boards and committees, Chancey has become ubiquitous in public life.

That is especially true in Jefferson County Public Schools, where he has helped select the district's last two superintendents and has championed the pragmatic idea that what is good for the business is good for the schools—and vice versa.

"He wants to be a player, and he is a player," said Leonard Hardin, National City Bank's chief executive. Former school board member Mike Wooden said, "On virtually every project, Malcolm was there."

To Chancey's public detractors—who are few, and who appear to be confined to QUEST, the citizen group that monitors racial integration in the schools—he is too involved and his Chamber-of-Commerce vision of the schools is too narrow.

"Malcolm sees students as worker bees and the schools as a place to produce employees for the work force," said QUEST member Jim Hill. "We see students as living, breathing human beings . . . who shouldn't be pigeonholed into some occupation."

Retired state Sen. Georgia Powers said Chancey "has more power than any one person should have. I think he really has too much influence."

Elevated last January to the top rung at Liberty, Chancey has stepped forward to fill a community leadership void left by the deaths of such corporate chieftains as Capital Holding Corp.'s Tom Simons and Humana Inc.'s Wendell Cherry, and the retirement of J. David Grissom from Citizens Fidelity Corp. and A. Stevens Miles of First Kentucky National Corp.

But students of Louisville leadership, including former Chamber president Charles Buddeke III and University of Louisville business school Dean Robert Taylor, describe Chancey as a consensus-builder rather than a power broker or a wheeler-dealer.

And, while Buddeke calls Chancey one of Louisville's "three or four most powerful people," other leaders, including Gordon Davidson of Wyatt Tarrant & Combs, note that

the banker has lost some public battles—most notably the 1991 library tax referendum. Chancey helped raise $750,000 for supporters of that cause, who out-spent opponents 130-to-1 only to lose by more than 6,000 votes.

Chancey prefers to call himself a "facilitator," and insists that people give him credit for more power and influence than he has. He said he may go months without seeing a school board member, for instance, and that he's talked only twice with new Superintendent Stephen Daeschner. (Chancey said his proudest accomplishment was a relatively small one—helping launch the student credit union at U of L.)

Chancey's clout begins with Liberty's $4.8 billion in assets. But friends and foes alike say his influence also derives from his energy and tenacity: He arrives at his office by 6:15 a.m. and usually doesn't head home until 12 hours later.

"A lot of people in this town go to cocktail parties and complain about what is wrong, but they don't want to do anything about it," said Republic Bank and Trust Co. chief executive Scott Trager. "Malcolm tries to do something."

Chancey acknowledges that his civic activities have been good for the bank. "If you are sowing the seeds to help the community, it comes back to you—and we've been getting our share," he said.

But he bridles at the notion, recently propounded by unsuccessful school board candidate Steve Porter, that his work in the schools is tied to preserving the district's no-bid bank account that Porter said has put $254 million into Liberty during the past three years.

"In all the years I've been dealing with public education," Chancey said, "I never once mentioned getting or keeping banking business in any way, shape or form."

Like many public figures, 61-year-old Malcolm Brant Chancey, Jr., is well-known, but not known well.

(None of two dozen business leaders interviewed for this story, for example, knew that he hails from Fairdale. If asked, Chancey says he's from "southern Jefferson County.")

Divided by a wide gulf in lifestyle and income, Chancey doesn't mix a great deal with his two sisters and six brothers, two of whom are elevator mechanics—"He's not like the rest of us," said Otis Chancey, a construction worker.

Chancey said he was "never real close" to his brothers and sisters in part because his parents looked to him to play surrogate father and disciplinarian. "I was never a child," he said. He said that it was as the oldest of nine children, however, that he got his first "management training."

Today Chancey drives a 3-year-old Oldsmobile and his wife, Gail, a 1987 Buick, but recently they bought a $450,000 beach-front condominium in Naples, Fla.

Chancey disclaims any great clout or influence, but he refers to the governor, mayor and county judge as "Brereton," "Jerry" and "Dave." He said he hates to see his name in the newspaper—but he used the media masterfully to collar donations for the stadium drive.

He's a registered Republican—and favors "conservative Republicans" in the White House—but he has lavished thousands of dollars in campaign contributions on Kentucky Democrats from Gov. Brereton Jones to Louisville Alderman-elect Scotty Greene. (Chancey never gave a cent to former Gov. Wallace Wilkinson, however, he wouldn't say why.)

He said he'd rather go to a football game than to the opera (he helped recruit coach Howard Schnellenberger), but he does attend the opera and the ballet. In 1991, in fact, he raised more than $4 million as chairman of the Greater Louisville Fund for the Arts.

Joining Liberty Bank in 1965 as a systems expert, the former computer salesman said he gave little thought to civic affairs until he suffered a "small coronary" in 1975 and decided "If I was going to do something good for the community, I better do it now."

The health scare coincided with a request from the Chamber for an education volunteer, and Liberty offered Chancey. He later helped recruit a new superintendent named Donald Ingwerson and managed an $11 million school-tax referendum that was trounced nearly 3-1 at the polls.

He led fund raising for the New Kid in School initiative, which injected $11 million in corporate money into the schools for computers and other technology. And he took a dropout prevention program that failed in Boston and made it work in Louisville—about 300 businesses and agencies have joined to help about 4,000 disadvantaged students stay in school and find full- and part-time jobs.

But it was running the stadium campaign that injected Chancey into the public spotlight. Even adversaries such as Sen. Tim Shaughnessy say Chancey wisely sought and raised money from fans first rather than from public coffers. Although the Louisville Cardinals' winning ways helped, Shaughnessy said the project would "never have been seriously considered without Malcolm Chancey."

What makes him run?

His biggest banking competitors say this interest in the schools and community is genuine and altruistic. Former Courier-Journal publisher George Gill, who serves on Liberty's board, notes that Louisville has been very good to Chancey, who collected more than $400,000 last year from Liberty in salary and bonuses, "He is just one of those guys who wants to put something back into the soil," Gill said.

Buddeke, the former Chamber president, said Chancey took his lead from his mentors at Liberty—Frank B. Hower Jr. and Joseph W. Phelps—"role models," Buddeke said, "from the old school of *noblesse oblige*."

That might seem to be an unusual role for a Fairdale native who was the first in his family to go to college.

"We don't have many lawyers or judges or bankers from Fairdale," said Martin Johnstone, a Fairdale native who is a judge on Kentucky's court of appeals. "That is not a direction that a lot of people from Fairdale take."

Chancey said his parents emphasized education, and he saw early on that schooling was the way to get ahead. Teachers at the old Fairdale High School told him he could be anything he wanted to be, Chancey said, and "I took them literally."

He is widely described as down-to-earth and accessible—"I don't think his ego is any bigger than it ought to be," Gill said.

Chancey golfs at the Louisville Country Club, Valhalla and Big Spring, but swims at a public pool, the Crescent Hill bubble. He and his wife live in a relatively unpretentious brick home in Cherokee Gardens valued at $276,000.

Retired Doe-Anderson chief Bob Allison said, "He has access to all the right people, but he's not a snob."

With Chancey at the helm last year, the Louisville Area Chamber of Commerce ducked the most controversial issue to face the city, taking no position on a proposed gay-rights ordinance that would have prohibited discrimination against gays in employment and housing.

But Chancey has never hidden his position as the Chamber's leading liaison to the Jefferson County schools: "The only agenda I have is to develop a better work force and to send a message to companies considering bringing plants here," he said.

He said he's a strong supporter of advanced classes, but he also says that the schools should train the next generation of plumbers, electricians and carpenters. "We too often want our kids to go to college and become Einsteins, when not all will become Einsteins," he said.

Although the Louisville Education Employment Partnership, which he chairs, has been criticized for creating a vast labor pool for fast-food restaurants, Chancey notes that many graduates have been placed in good jobs, including at his bank, and that others have gone to college. Data collected by the mentoring program show it has boosted academic performance and graduation rates.

QUEST members depict Chancey and former superintendent Ingwerson as Siamese twins connected at the head and say the relationship was so close it was troubling. "Ingwerson didn't make a move without checking with Malcolm first," Porter said.

Ingwerson remembers Chancey as a "great sounding board" with whom he never had any disagreements; Chancey says he and Ingwerson were "good civic associates" rather than friends, and that they usually consulted only once or twice a month.

Chancey insists he and Ingwerson did disagree once—on Ingwerson's plan in 1991 to drop busing in the primary grades, a move Ingwerson said was required by school reform.

"When he told me he thought it might produce all-black and all-white schools, I told him I didn't think that would fly," Chancey said.

But Ingwerson said he doesn't recall that conversation—or ever talking to Chancey about busing.

Porter, who served with Chancey on a panel that reviewed Ingwerson's plan to drop busing in the primary grades—said the banker "was against mandatory busing, period."

Chancey said he thought then—and still thinks—that busing for school desegregation has been a "strength" of the community, and notes that two of his four children were bused and are better off for it." But he also describes himself as a supporter of "school choice" and says he has long favored magnet schools and other carrots that encourage voluntary desegregation.

Expressing his views last year on race relations in Louisville, Chancey told The Courier-Journal: "I got where I am because I worked hard. Nobody gave me anything. Whatever I got, I worked for. To that extent, I can say nobody helped me because I'm white or helped me because I wasn't black."

Chancey said he regrets the perception that he endorsed Daeschner without researching Loretta Webb, a black candidate who vied for the superintendent's job; he said a bank board meeting kept him from visiting Webb's Virginia school district after making trips to see the other two candidates, including Daeschner in Cedar Rapids, Iowa.

But Chancey said he did call business leaders in Webb's district—"I couldn't find anyone who knew her."•

CELEBRATION OF DAVID McCORMICK'S 25TH ANNIVERSARY IN COUNTRY MUSIC

• Mr. BOREN. Mr. President, I rise today to congratulate David McCormick of Nashville, TN, on his 25 years of active participation in the explosion of the popularity of country music. Twenty-five years ago he started working for, and with, the late country music legend, Ernest Tubb—whose son Justin is following in his dad's footsteps. David began as a part-time clerk for Mr. Tubb, and after a 2-year tour in the Navy, returned to Nashville where Mr. Tubb offered him the job of manager of his record store at 417 Broadway, Nashville, TN, where the headquarters remain. David immediately took control of the store and recognized the opportunity to expand the organization. His expansion programs proved highly successful with the ultimate development of six stores; three in Nashville, one in Pigeon Forge, TN, one in Branson, MO, and a sixth and newest store in Ft. Worth, TX—in Ernest Tubb's home State. He believes in offering the music of artists from both the past and present to his customers. His company is known across the globe as the largest country and western record retail store in the world.

In addition to his success in business, David is known for his great humanitarianism, and his service to the community. He is on the board of directors of the Downtown Historical Commission of Nashville, a lifetime member of the Gospel Music Association, a member of the Nashville Chamber of Commerce, a founder of the Ernest Tubb Humanitarian Award and a very active member of Reunion of Professional Entertainers [ROPE]. Gov. Ned McWherter has also cited him for his outstanding achievement in these areas.

David is a great friend to many and is always willing to lend a helping hand. Young singers and songwriters often look to David for advice and support and he is always there. Mr. President, it is with great joy that I congratulate this distinguished American for 25 years of distinguished service to the country music industry.•

RECENT EVENTS IN KASHMIR

• Mr. COATS. Mr. President, for more than 1 month now, hundreds of innocent civilians have been trapped in the Hazratbal Mosque by government troops in Srinagar, a city in the Indian state of Kashmir. On October 16, 200–300 Kashmiris, who were returning from religious pilgrimages, sought shelter in the Hazratbal Mosque, the holiest site in Kashmir. The mosque was then surrounded by Indian troops, who claimed that the people inside were Kashmiri guerrillas, hiding a cache of weapons, a statement disputed by both Kashmiri officials and independent journalists. The Indian forces have since besieged the Hazratbal Mosque, and have rejected any attempts for a peaceful, negotiated settlement. The standoff continues today.

This is not the only case of gross human rights violations against the Kashmiri people. A peaceful demonstration by Kashmiri separatists at the mosque in Srinagar ended tragically when Indian troops opened fire, killing more than 40 people, and leaving more than 200 wounded. Reports of a program of systematic rape, intended to punish the Kashmiris, by the Indian Government have been filed by the human rights groups Asia Watch and Physicians for Human Rights, and Amnesty International has documented numerous other violations of Kashmiri rights. Sadly, the human rights abuses seem to be increasing.

Despite the presence of a sometimes violent campaign for independence by Kashmiri separatists, there can never be an excuse for the deliberate killing of innocent, unarmed civilians and widespread abuses of human rights. I call upon President Clinton, as well as my colleagues here, to urge the Indian Government to put an immediate end to human rights violations throughout its nation, and to attempt to deal with the situation in a manner befitting a country with a strong democratic tradition such as India, with due process and respect for the individual.•

WINTER IN BOSNIA

• Mr. LEAHY. Mr. President, as winter snows fall in the former Yugoslavia, I am deeply concerned about the large number of refugees and the problem of accessibility to them in Bosnia. There is a serious possibility of large numbers of deaths due to starvation and exposure to the winter elements if relief supplies do not reach these desperate people.

The recently passed foreign aid appropriations bill actually increased overall refugee funding, despite cuts in almost every other program. This increase was in part so that the United States could provide adequate assistance for Bosnia and refugees in that region. But in briefings on how that refuge aid is to be used I have become alarmed over the continued lack of access by U.N. relief convoys to many areas. The United States, together with our European allies, must not fail to ensure that the promises of relief are fulfilled. Extraordinary efforts may be necessary, such as large scale air drops. Whatever it takes, supplies and assistance must get through to these people. Any further delay could exact a terrible cost on the people of Bosnia.

As I understand the situation, there are currently enough relief supplies available, but significant difficulties in delivering the supplies to the interior of Bosnia where the need is greatest. The problem is not one of resources, though the scale of needs could eventually cause shortages, but at least as of now, the problem is access. Reports I am receiving indicate that both Serbian and Croatian regular and irregular forces are impeding or in some cases actually blockading relief supplies. There are signs that major fighting could once again break out between Croats and Serbs. Deliberate starvation could become a weapon of war.

An article in today's Washington Post, which I would ask to include at the end of my remarks, states that Mrs. Ogata, the U.N. High Commissioner for Refugees, has brokered an agreement between the Bosnian factions to allow free passage throughout the war-torn country. I congratulate Mrs. Ogata for this breakthrough. But the agreement lacks any enforcement and unfortunately will probably have as short a life as previous agreements.

United States and European leaders must not stand by and let a human catastrophe strike Bosnia this winter. I call on world leaders to bring massive pressure upon Presidents Tudjman and Milosevic to stand by their agreement to permit the flow of relief supplies into Bosnia. Also, Serb leader Radovan Karadzic must be convinced to allow the opening of the airport in Tuzla for aid flights. If necessary, I urge that we consider economic sanctions against Croatia if they continue to block relief. We cannot allow our allies and friends, including the Germans, who are afraid of a wave of refugees crossing their borders, to block us from taking strong action, including sanctions against, to open the roads to relief.

I am told that last year in the former Yugoslavia, thanks to one of the mildest winters in decades, only about 2,000 to 3,000 people perished for lack of shelter and supplies. However, relief officials tell me that this year's estimates of deaths from starvation and exposure could far exceed 100,000 if there is a normal winter. There are over 2 million refugees, displaced or at risk populations in Bosnia today. The number of refugees suffering in Bosnia is over two times as many as last year. Couple that with the likelihood of a bitterly cold winter, and the potential for the region to become a mass grave becomes more and more a possibility.

As I mentioned, the current problem is one of access, not resources. But this situation could change. If access is allowed, the danger of a resource shortage would occur. Mrs. Ogata has already called for an additional $700 million in supplemental aid to meet the needs of the Bosnian people through the winter months. Despite limited U.S. refugee resources, I strongly urge the administration to provide a fair U.S. share to meet the request of Mrs. Ogata, including drawing on the emergency migration and refugee assistance account, which we fully funded in the

foreign aid bill signed into law on September 30.

This problem needs immediate and full attention of the United Nations. The longer relief is delayed or obstructed, the worse the situation for the refugees becomes. The United States, together with our allies, has a humanitarian responsibility to not let a Somalia or Sudan happen in Bosnia. We must not hesitate, nor falter in our attempts to prevent mass deaths through starvation and exposure.

The article follows:

[From the Washington Post, November 19, 1993]

BOSNIAN FACTIONS AGREE TO LET U.N. CONVOYS PASS

(By Peter Maass)

GENEVA.—The leaders of Bosnia's three warring factions, meeting for the first time in two months, agreed today to stop shooting at U.N. aid convoys and allow them free passage throughout the war-torn country, steps that would help avert a humanitarian catastrophe this winter.

The agreement, brokered by the United Nations High Commissioner for Refugees, depends on the goodwill of all sides and lacks any enforcement provisions. As a result, the six-point "joint declaration" could have as short a life as the long list of previous accords on aid convoys and cease-fires.

Bosnia's Serb and Croat leaders, whose forces are blamed for stopping aid shipments in a bid to starve and freeze the Muslim-led government into submission, pledged to abide by the pact. But Prime Minister Haris Silajdzic said the only way to ensure that the promises are honored is for the United States and its NATO allies to use force if convoys are blocked.

"The land corridors must be protected by force," Silajdzic said after signing the agreement. But NATO has repeatedly refused to use military power unless U.N. troops deployed in Bosnia were in danger.

In a reflection of the gap between words spoken in Geneva and actions taken in Bosnia, Croat leader Mate Boban told reporters that his forces never had stood in the way of U.N. convoys seeking to enter the besieged Muslim sector of Mostar. He insisted that U.N. convoys had stopped on their own accord because of "security problems." Generally it has been the threat of attacks by his forces that caused these security problems.

The meeting, the first in which the three sides' leaders have participated since peace talks fell apart in late September, comes amid a blizzard of warnings that Bosnians face massive deaths from freezing and starvation this winter. Similar forecasts preceded last winter, but catastrophe was averted because the weather was exceptionally mild and fighting was relatively contained.

"This winter spells real disaster," said Sadako Ogata, the U.N. High Commissioner for Refugees, in a speech at the start of today's closed-door meeting. "The combination of war, of military blockades and of freezing temperatures provides for a terrible, deadly mix."

Ogata, noting that early snow already covers parts of Bosnia, said she would recommend the immediate resumption of U.N. convoys into central Bosnia after they were halted last month. The suspension followed a series of attacks on aid convoys that culminated in the killing of a Danish driver on Oct. 26. The suspension meant that no food was reaching a region in which 1.5 million civilians survive on U.N. handouts and where some of them have resorted to eating animal feed.

Ogata painted a grim picture. She warned that today's agreement, even if honored, will have a limited impact as long as the war continues. The problem, she said, is that the delivery of food and clothing is not an answer to the suffering of Bosnians. "Without peace, I don't know whether the humanitarian catastrophe can be avoided," she said.

News reports from Bosnia are not encouraging. A U.N. spokesman in Sarajevo said today that five inmates of an isolated and unheated mental hospital had died from the cold and others were wandering around naked for lack of clothes. The institution is located in Pazaric, in government-held territory near Sarajevo, but aid convoys must pass through Serb lines to reach it, and the Serbs have prevented this.

Also in Sarajevo, a British medical group said its doctors would no longer perform rehabilitative surgery because the patients were too weak and cold to survive such procedures, the Associated Press reported. The group's program gave Sarajevans virtually their only chance for elective and reconstructive surgery because local doctors have limited their services to saving lives.

The situation would be alleviated if today's agreement is honored. The joint declaration, signed by all sides, requires them to establish local cease-fires when U.N. convoys need to use a contested route. It also allows the United Nations to deliver special winter supplies, such as building materials and fuel, that in the past have been blocked because of their potential military use.

On another key humanitarian issue, U.N. officials said Serb leader Radovan Karadzic refused today to allow the opening of a government-held airport in Tuzla, in north central Bosnia, for aid flights.●

NEW ATTACK SUBMARINE

● Mr. D'AMATO. Mr. President, it is worth recalling that then-Under Secretary of Defense Yockey, in granting milestone 0 approval for the new attack submarine [NAS], specifically stated in his acquisition decision memorandum that "approval to initiate concept definition studies does not constitute approval for the start of a new attack submarine in the 1990's".

I cannot say what doubts prompted Mr. Yockey's guarded approach, but 18 months later, with a cost and operational effectiveness analysis [COEA] in hand, his unwillingness to launch a new acquisition program seems visionary. Congress is on the verge of making a major mistake by supporting the NAS, otherwise known as the *Centurion*.

Of the specifics of the COEA I can say little, but I urge every Member with an interest in submarines to review the startling conclusions of this document. The tragedy is that the COEA came too late to influence the fiscal year 1994 Defense appropriations process. Salted through the following R&D lines:

Advanced Submarine Combat Systems Development [RDT&E, Navy, R–1, Line 51, PE#0603504N].

New Design SSN HM&E [Project #F2177] embedded within Advanced Submarine System Development [RDT&E, Navy, R–1, Line 61, PE#0603561N].

Advanced Submarine Support Equipment Program [Project #F0770] embedded within Submarine Tactical Warfare Systems [RDT&E, Navy, R–1, Line 62, PE#0603562N].

New Design SSN [Project #F2200] embedded within Ship Preliminary Design & Feasibility Studies [RDT&E, Navy, R–1, Line 63, PE#0603564N].

S9G Nuclear Propulsion Plant [Project #S2158] embedded within Advanced Nuclear Power Systems [RDT&E, Navy, R–1, Line 64, PE#0603570N].

New Design SSN [RDT&E, Navy, R–1, Line 125, PE#0604558N].

There is roughly $500 million for the NAS that we appropriated on the assumption that milestone I, and the beginning of demonstration and validation (dem/val), should and would be approved by the Defense Acquisition Board [DAB]. It is clear that milestone I for the *Centurion* should not be approved. If the DAB ignores the facts and approves dem/val anyway, it is incumbent upon Congress to recapture the funds we provided.

There are more sensible approaches to solving our submarine dilemma than the NAS. If the DAB doesn't take one of them, we should. Come January, when faced with the rescission bill, I will seek to redirect those funds currently earmarked for *Centurion*. The alternatives available are known to all. I will leave it to my colleagues to choose the wisest path once the fiscal year 1994 NAS funds are once again under our control.●

JIM HAMILTON: SOUTH CAROLINA'S PREMIER AVIATOR

● Mr. HOLLINGS. Mr. President, I rise to salute Jim Hamilton, my long-time friend and sometime pilot, on his selection as Aviator of the Year by the South Carolina Aviation Association.

Mr. President, this richly earned honor is the culmination of a truly distinguished career in public service and private enterprise. Jim Hamilton served in the U.S. Army as an aviator and paratrooper. For the last three decades, he has been president of Midlands Aviation Corp., in Columbia, SC, in which capacity he is widely recognized as the most respected aviator/businessman in our State. Jim was appointed to three 4-year terms on the South Carolina Aeronautics Commission and elected chairman of the commission twice. He also served two terms as president of the South Carolina Aviation Trades Association.

Jim is perhaps best known, however, for his extraordinary dedication and leadership in voluntary civic activities in the Columbia area. His special commitment is to the cause of promoting opportunities for retarded citizens. He

has also done yeoman's work for other causes ranging from Habitat for Humanity to the American Cancer Society.

Mr. President, I deeply appreciate Jim Hamilton's many professional services and kindnesses to me down through the years. I congratulate him on being named South Carolina's Aviator of the Year for 1993.●

TRIBUTE TO DR. ARDIS D. HOVEN

● Mr. MCCONNELL. Mr. President, over the years, Kentuckians have let me know that health care reform is among their top priorities. Mr. President, health care reform is now at the top of our national agenda, and as the Senate gears up to consider various reform proposals, I want to take an opportunity to recognize a new leader in Kentucky's efforts to meet its health care needs: Dr. Ardis D. Hoven, the 1993–94 president of the Kentucky Medical Association [KMA].

Dr. Hoven's career is clear testimony to her determination as a pioneer in medical care delivery. Based on her desire to provide quality service to her community, Dr. Hoven pursued a specialty in infectious disease at the University of Kentucky and the University of North Carolina—Chapel Hill. Dr. Hoven's career has focused on excellence in care delivery as well as an aggressive pursuit of continuing education. Mr. President, her leadership in the development of KMA's HIV/AIDS education and prevention policy exemplifies her talents as a facilitator and public health advocate. In accepting the historic honor of serving as KMA's first female president in its 143-year history, Dr. Hoven brings to her post a broad-based knowledge in medical care delivery and disease prevention.

Dr. Hoven's leadership comes at a time in Kentucky—and our Nation—when the call for comprehensive health care reform is at its crescendo. Her goals for KMA's role in this effort are precise—physicians must gain a basic, sound working knowledge of the fundamental issues impacting quality care; and reform should be based on patient advocacy and restoring care to our health care system.

Based on her parents' example as dedicated ministers to the needs of their community, Dr. Hoven is applying her talents as a consensus builder and medical professional to ensure Kentuckians are provided with total quality care, not a medical system fragmented by shortfalls in communication and choice.

Mr. President, I commend Dr. Hoven on her earnest dedication to the well-being of Kentucky's citizens through improved medical care, and I encourage my colleagues to keep these fundamental goals in mind as we work toward an effective, long-term plan for meeting America's extensive health care needs. Mr. President, I ask that a copy of Dr. Hoven's KMA acceptance speech appear in the RECORD following my remarks.

The speech follows;

INAUGURAL ADDRESS—ARDIS D. HOVEN, MD

Thank you for the honor bestowed upon me as the 143rd President of the Kentucky Medical Association. The opportunity for service to the profession of medicine and to my peers is a very important part of my professional career. I am truly grateful for the challenges and the experiences which will come from this endeavor.

I am also indebted to those physicians who have preceded me in this office. Their leadership has provided a clear blueprint from which those of us who follow may continue in the spirit of the Kentucky Medical Association and achieve the objectives and goals we feel so important in the practice of medicine and in the lives of our patients.

Today I choose to speak of advocacy and unity. Two simple concepts, but truly imperatives for the KMA as it moves into another year of deliberations regarding health care reform in this state and other issues requiring the initiatives of physicians in the local community and at the state level. KMA and the physicians of the Commonwealth have clearly declared their position on a variety of issues encompassed by health care reform. Dr. William Monnig in his inaugural address last year stated, and I quote, "The KMA is committed to meaningful health care reform. We can be a strong partner for those who want to create a cooperative process for health care reform." That commitment continues, along with the dedication to uphold the principles and ethics of the profession of medicine, and to dedicate ourselves to the best possible methods of practice and delivery of medical care in our state.

As we continue into this next year's agenda, I would suggest to you two measuring sticks or instruments by which we should evaluate and judge the elements being considered in the reform process:

Advocacy for our patients and all the people of the Commonwealth; and advocacy for the profession of medicine.

If the policies and procedures being considered do not meet our high standards in these two areas, we must boldly and candidly, but in the spirit of cooperation, speak out. We will repeatedly ask: "Does it meet adequately the needs of our patients?" and "Does it allow physicians to practice high quality, innovative medicine and provide comprehensive care?" Inherent, however, in this attitude is the willingness to consider new methods and concepts enabling us to continue to render care and not being fearful of change, if it is in the best interest of our patients and the profession. We must avoid fossilization of our innovative and creative capabilities.

The KMA has a healthy tradition of patient advocacy. Many issues, in addition to a very strong voice for meaningful and financially responsible health care reform, have over the past several years been important to the citizens of the Commonwealth. KMA has taken the leadership position in promoting preventive care and other lifesaving initiatives, both in the community and in the legislature; we have spoken about and become involved in community awareness and education regarding domestic and interpersonal violence; we have debated, educated and legislated issues centered around HIV disease and directed our attention to the issues surrounding the infected health care worker.

The Kentucky Physicians Care Program remains an extremely important component of our indigent health care initiatives. We, the physicians, have spoken strongly in favor of a strong and independent Board of Medical Licensure, and we have supported actively the impaired physicians program—all ultimately benefiting our patients. These are just a few examples of our advocacy role.

Clearly, health care reform will continue for us to be a major agenda item, probably for several years to come. An incredible amount of energy and intellect has already been applied to this process, and we will continue to work on the behalf of our patients and our profession. Our ability to render excellent quality medical care in a fiscally responsible environment will be of foremost concern as we deliberate the issues.

The Task Force on Health Care Reform has completed its subcommittee work; the reports have been filed. With the provider tax in litigation, we must move on to the current proposals emanating from the subcommittees. We as physicians and the Kentucky Medical Association do understand the fiscal issues necessary for health care reform. We likewise understand where the excesses are and what can be done to relieve the problems if given the opportunity legally and politically. Price-fixing historically has not worked and will not work in the arena of health care. Discriminatory rates of reimbursement for providers of health care have for a long time been opposed by organized medicine for obvious reasons. "Packaged" health care for rural Kentucky cannot be the same as it is for the more urban areas. Solid tort and liability reform in this state must take place in order for meaningful health care reform to progress. This past year we have benefited from strong and effective leadership. Dr. William Monnig in his role as President strongly and precisely stated and debated our positions and concerns. Dr. Russell Travis, as Chairman of the Board of Trustees, with a great wealth of knowledge led us cautiously through the maze of information and political activity and provided powerful insight into the problems ahead.

In his inaugural address as the 148th President of the American Medical Association, Dr. Joseph Painter spoke of three constants in medicine: The first—scientific excellence resulting in high quality care; the second—the patient/physician relationship which is the ethical cornerstone of our profession; the third—use of our problem-solving skills.

Those problem-solving skills which we use routinely and daily must be applied to health care reform with physicians as partners in the process. It is vitally important that we protect these three constants.

In June, Dr. James Todd at the opening session of the AMA House of Delegates stated, "Unity within our professional family is a key to the destiny of the house of medicine." Never before has the issue of unity among physicians and organized medicine been so important as it is now. There is simply no room for polarization or fragmentation. The problem-solving skills we all possess, our abilities to communicate with one another and our dedication to a very high and special calling should enable us cohesively and confidently to move forward. Henry Ford once said, "Don't find the fault, find a remedy." General George Patton pronounced, "If everyone is thinking alike, then somebody isn't thinking."

There is plenty of room under the tent for divergent views—we learn from one another.

There is adequate time for all to be heard and the issues debated—we must respect and consider all views and democratically resolve the problems. The democratic process is truly alive and well on the floor of the House of Delegates and in the reference committees of this our Annual Meeting—so vital to the life of organized medicine. I challenge all physicians to be involved constructively and to contribute in a meaningful way to the many initiatives being undertaken at the local community level and at the state level. One of my responsibilities to you as President of KMA will be to keep us all on our feet!

Repeatedly we hear that the medical profession has somewhat faltered in its objectives and the public's perception of us is not precisely as we would like it to be. This is a painful and sensitive issue, but nonetheless one we must confront. Why has this occurred? What messages do we truly deliver about ourselves as physicians and the medical profession as a whole? Dr. John Ring, Past President of the American Medical Association, defined medicine's professionalism as that dedication to competence, compassion, and moral accountability. We as individuals and as the Kentucky Medical Association must continue to carry these attributes as a banner for all to see.

Thank you for giving me the opportunity of serving you as President of the Kentucky Medical Association. I would be remiss if I did not tell you that as the first woman to hold this position, I am greatly honored and challenged to work diligently and effectively on your behalf. It is so important that as physicians we serve as role models and leaders to those who will come behind us. It is equally important that we leave them a legacy of committed service and solid foundations upon which they will continue the practice of medicine.

As we move into another year of intensive activity and committed endeavors on behalf of our patients and our profession, I ask for your support, your energies, your opinions, and your thoughtful ideas. I then ask of you that you commit to a strengthened and more powerful Kentucky Medical Association.●

THE NICKEL SOLUTION

● Mr. WOFFORD. Mr. President, the harmony and prosperity created by labor and management dedicated to the same goals and motivated by mutual need, understanding, and trust are the hallmarks of our economic system. I believe it is important to this Nation's economic well-being that we acknowledge when labor and management can come together with new ideas that lead not just to their benefit, but to the common good.

I am proud and honored to come before the Senate today to announce the 10-year anniversary of a partnership between American glass container workers and American glass container manufacturers. The partnership has been based on the need to save American jobs by promoting glass packaging. The solution was simple, but as with many great ideas, insightful. It has been each worker donating a nickel for every hour worked and industry matching the contribution. Through plant town promotions, glass awareness committees and other worker-funded programs the glass container industry's Industry-Union Glass Container Promotion Program or Nickel Solution has accomplished a great deal, not least of which is the creation of glass recycling infrastructure for our Nation. The program has enabled both labor and management to realize their goals of a more stable industry and secure employment.

We can do no less as a people than to shed a spotlight on this success story. A story, that if repeated in every industry, would make America stronger, more competitive, and a better place to raise our children. I ask my colleagues whether there can be a better goal for industry and labor.

Please join me in congratulating the two leaders of Nickel Solution, Mr. James E. Hatfield, international president of the Glass, Molders, Pottery, Plastics and Allied Workers International Union who had the vision to found the Nickel Solution a decade ago, and Mr. Larry Bankowski, president of the American Flint Glass Workers Union. Mr. Hatfield is one of my constituents and his union is headquartered in Media, PA. Mr. Bankowski's union also has many members in Pennsylvania. These gentlemen have proven my belief that labor and management can work together, and when they do, it is always good for America.

Mr. President, our distinguished Secretary of Labor, Mr. Robert Reich, has recognized this anniversary and enthusiastically congratulates the founders of the Nickel Solution, I ask that the Secretary's letter be entered in the RECORD.

The letter follows:

Hon. JAMES E. HATFIELD,
International President, Glass, Molders, Pottery, Plastics and Allied Workers International Union, Media, PA.

DEAR MR. HATFIELD: A nickel from the workers and a nickel from employers does add up to make a dime—that is, 10 years of productive partnership.

I enthusiastically congratulate the forces of labor and management in the glass container industry for their progressive steps in continuing the American tradition of support for productivity and job creation while maintaining an environmental consciousness to preserve our natural resources. Your union and its predecessor organizations have always been prescient in industrial progress, dating to Molders' president William Sylvis and his dream of high-performance producer cooperatives in the 1870s. Such efforts past and present, definitely illuminate the paths of progress citizens like yourselves are taking in the journey to American workplaces of the 21st century.

Best good wishes,

ROBERT B. REICH.

EXTENSION OF AUTHORIZATION OF THE THOMAS JEFFERSON COMMEMORATION COMMISSION

● Mr. WARNER. Mr. President, today I join along with my Virginia colleague, Senator ROBB, in sponsoring legislation to extend for 1 year the authorization of the Thomas Jefferson Commemoration Commission. This Commission was established by Congress with the mission to provide a focus for civic education on Jefferson's life, thought, and legacy.

Although the original legislation authorizing the Commission was enacted on August 17, 1992, the Commission was not fully appointed, nor was a chairperson named, until June 1993. The delay was largely a result of the change of administrations. However, due to this delay, the Commission was not able to fulfill its duties in the few months remaining under their original authorization. It is my hope that this extension will enable the Commission to complete the many worthwhile projects they have undertaken to stimulate thought and discussion about Jefferson's meaning for today and for the 21st century.

Saturday, April 13, 1993, marked the anniversary of the birthday of Thomas Jefferson. It is fitting that we introduce legislation honoring his contributions to the State of Virginia and our Nation in shaping the current structure of Federal and State government.

On April 13, 1743, Thomas Jefferson was born at Shadwell in Goochland—now Albemarle County, VA, the son of Peter Jefferson, a surveyor, and the former Jane Randolph, the daughter of perhaps the most distinguished family in the province. His father drew the first accurate map of Virginia in 1751, and established his mark in government as the burgess and county lieutenant. Thomas Jefferson inherited his father's fondness for the State of Virginia. Of the 10 children of Peter Jefferson, he left Thomas, the elder of his two sons, 2,750 acres of land and an established position in the community.

Few Presidents in the history of our country possessed the range of interests and intellect as Jefferson. He is regarded as a Renaissance man—accomplished in art, literature, law, science, music, language, government, philosophy, agriculture, mathematics, architecture, ethnology, and inventions. Jefferson was a statesman, ambassador, educator, writer, philosopher, architect, inventor, scientist, and musician. President Kennedy's remark to a group of Nobel prize winners, that so many distinguished persons had not been gathered in the White House since Jefferson dined alone, characterized the brilliance of him as a man schooled in all subjects and interested in all things.

Nature destined him to the sciences, Jefferson often said, but no careers were open to him to Virginia, and he took the path of law, studying under George Wythe, the most prominent law teacher of his generation. In 1767, he was admitted to the bar, at the age of 24. He led a highly successful law practice until the Revolution closed the

courts. While he never practiced law again, his legal training and his attention to legal history, as well as of procedure, left a permanent impression on him and is reflected in his many writings—most notably as the author of the Declaration of Independence.

Jefferson's most important contribution to the Revolutionary debate was "A Summary View of the Rights of British America in 1774." He argued that Americans, as sons of expatriate Englishmen, possessed the same natural rights to govern themselves as their Saxon ancestors had exercised when they migrated to England from Germany. He was regarded as one of the Revolution's most articulate spokesmen, espousing the philosophies of the 18th century Enlightenment.

Following the Revolution, Jefferson returned to Virginia and to his seat in the reconstituted legislature and served until his election as Governor on June 1, 1779. He framed a bill for the purpose of moving the capital to Richmond, which included his preamble to the Virginia Constitution and provisions for public buildings. His plans for the State were never fully carried out, but he may properly be termed the "architect of Virginia government." He was responsible for the abolition of property laws that stemmed from feudalism and was a pioneer for establishing a complete system of public education, with elementary schools available to all.

From 1781 to 1783, Jefferson lived a private life and wrote his only book, "Notes on the State of Virginia," published in Paris, offering his opinions on a variety of subjects from slavery, geography, and science to the social and political life of 18th-century Virginia.

He returned to public service in June 1783 when he was elected as a delegate to Congress. He became a member of almost every important committee and drafted 31 State papers. Some of the most notable papers advocated establishing a decimal system of currency for the United States and a prohibition on slavery in all the western territory after 1800. He was also a major architect of American expansion and drafted papers to forbid the secession of any part of the western territory.

Jefferson resigned his position as President Washington's Secretary of State at the end of 1793, again determined to quit public life. But in 1796, the Republicans made him their Presidential candidate against John Adams. Losing by three electoral votes, Jefferson became Vice President. The chief significance of his service as Presiding Officer of the Senate lies in the fact that out of it emerged his "Manual of Parliamentary Procedure" in the U.S. Senate.

In 1798, Jefferson and James Madison prepared the Kentucky and Virginia resolutions in response to the Alien and Sedition Acts passed by the Federalist dominated Congress. These acts were used to stifle Democratic-Republican criticism of the Government. The resolutions advanced the theory of the Union as a compact among the several States, declared the Sedition Acts as unconstitutional and sought nullification. While the Sedition Acts were not repealed, the constitutional issue of State rights and Union expressed in the resolution of 1789 contributed to the resisting public clamor against the administration that led to its defeat at the polls in 1800.

On March 4, 1801, Jefferson became the third President of the United States. He defeated his opponent, Adams, in the electoral vote and his running mate, Aaron Burr, by 36 ballots in the House of Representatives after they received an equal number of votes. Jefferson's election marked the first means and powers of government, it sought to further peace, equality, and individual freedom. His greatest triumph came with his negotiating the Louisiana Purchase in 1803 for $11.25 million, thereby doubling the size of America with some 800,000 square miles.

Easily reelected in 1804, Jefferson encountered foreign and domestic troubles such as controlling an insurgency in the West and establishing an embargo on America's seagoing commerce. The embargo was ruinous to him and to many Virginia planters.

During his lifetime, Jefferson received American and international recognition as a man of learning. He was the president of the American Philosophical Society from 1797 to 1815. He received a gold medal from a French society for inventing the mouldboard plow which lifts, turns, and pulverizes soil with great efficiency—an invention to improve the resistance of a plow.

While Jefferson left no treatise on political philosophy, he was a passionate advocate of human liberty; he realized the value of the Union; he emphasized the importance of the States and of local agencies of government; and he anticipated the development of a dominant nation on the North American Continent. He is notable for being ahead of his time, a philosophical statesman rather than a political philosopher—"I am not an advocate for frequent changes in laws and constitutions. But laws and constitutions must go hand in hand with the progress of the human mind."

Jefferson died at Monticello on the 50th anniversary of the Declaration of Independence, July 4, 1826. He died believing that his debts would be paid, not realizing that Monticello would pass from the hands of his heirs forever. Jefferson believed in freedom of religion, government, thought, and speech. He said, "I have sworn upon the altar of God eternal hostility against every form of tyranny over the mind of man."

Jefferson's tombstone is inscribed with a simple epitaph he wrote for himself in remembrance of the things he left to the American people and not for his prestigious positions—"Here was buried Thomas Jefferson, author of the Declaration of American Independence, of the Statute of Virginia for religious freedom, and father of the University of Virginia."

Mr. President, Jefferson was truly one of the most remarkable and accomplished politicians of our Nation. The bill I am cosponsoring today with my Virginia colleague, Senator ROBB, would continue our tribute to our third President and honor his many contributions, both at home and abroad.•

SEATTLE ASIA PACIFIC ECONOMIC COOPERATION LEADERS MEETING

• Mr. JOHNSTON. This week has been an extraordinary week for trade, Mr. President. Much of our attention has focused on the North American Free-Trade Agreement [NAFTA], as is appropriate.

As important, however, are the discussions taking place right now in Seattle during the fifth annual ministerial meeting of the Asia Pacific Economic Cooperation, or APEC, forum. For the first time ever, this very important meeting will be followed by a meeting of the leaders of APEC participants, a thoughtful initiative announced by President Clinton last summer which I applaud.

Formed in 1989, on the initiative of Prime Minister Hawke of Australia, APEC is an important regional group which now includes 15 key Pacific rim actors: Australia, Brunei, Canada, the People's Republic of China, Hong Kong, Indonesia, Japan, Korea, Malaysia, New Zealand, the Philippines, Singapore, Chinese Taipei [Taiwan], Thailand, and the United States. Together these economies comprise almost half of the world's population, close to 60 percent of the world's gross domestic product and 40 percent of the world's trade.

The dynamic Pacific market has experienced remarkable growth over the last decade. Even with Japan's disappointing economic performance and the slower than hoped United States recovery in 1992, the weighted average growth rate for the region rose to 3.3 percent, from 2.6 percent in 1991. In large part, this is due to the growing economic diversity of the region, most notably, the emergence of multiple and diverse growth centers particularly in the ASEAN and China markets. This growth level is expected to increase to 4.2 percent in 1993, according to the Pacific Economic Cooperation Council, and to accelerate in 1994, in large part facilitated by growth in international trade.

The Asian/Pacific market is increasingly important to the United States.

United States total trade with Asian/Pacific rim nations increased 147.9 percent between 1981 and 1991. Trade with other major trading countries and blocs grew at a significantly lesser rate over this same period: With Canada, by 95 percent; with the European Community, by 91 percent, and with Latin America, by 56 percent. As a percentage of total United States trade with the world, United States total trade with the Asian/Pacific rim countries increased from 26 percent in 1981 to 36 percent in 1991.

Our exports to the Asian/Pacific rim countries rose 130.4 percent between 1981 and 1991 versus 92 percent for Canada, 84 percent for the European Community, and 51 percent for Latin America. U.S. manufactured exports tripled during this same period and accounted for over 75 percent of total U.S. exports to the region in 1991, compared by just under 62 percent in 1981.

At the same time, we continue to experience persistent trade imbalances with the Asian/Pacific rim area. From 1981 to 1991, the U.S. trade deficit with this region grew by over 230 percent, from $22.6 billion in 1981, to almost $75 billion in 1991. Fortunately, however, we have seen a decline in this deficit every year since 1987, when a record high $98.9 billion was recorded.

APEC offers the United States a forum for helping develop regional solutions to problems we have encountered, and in the long run for avoiding bilateral conflicts which too often in the past have led to tit-for-tat retaliation, in which all parties lose over the long run. It is my hope that the proposed Trade and Investment Framework will be adopted and create a regional forum and multilateral approach for increasing cooperation on key trade liberalization issues. Eventually, such a framework could result in concrete steps taken by all APEC parties in concert to reduce impediments and distortions affecting the flow of goods, services, capital, and technology, and reducing transaction costs affecting trade and investment flows.

With the end of the cold war, it is more important than ever that we explore every opportunity to develop institutionalized, multilateral forums for resolving potential trade disputes and regional economic issues. If our economy is to recover fully, and continue to grow in the next century, we must find ways to return to our roots as a nation of traders. More than half of the new jobs created in the United States in the late 1980's were the result of increased trade. Roughly 2.3 million good paying jobs in the United States depend on the $120 billion in annual merchandise exports to Asia, an area which grew as a percent of total United States exports to this area from almost 62 percent in 1983, to over 75 percent in 1991, and which by volume nearly tripled in that same period.

We can and must do more, however. Export job growth has improved, but our potential has not been fully met. If we remain outward looking in our approach to job creation, and take advantage of regional rather than strictly bilateral approaches, we can improve our performance record. The United States worker remains the most productive in the Asian/Pacific area and in key manufacturing sectors such as nonelectrical machinery, petroleum, stone, clay, and glass, United States productivity rates continued to grow more rapidly than elsewhere. Demand for many of these items is expected to continue throughout the Asian/Pacific rim area, particularly among the developing economies where infrastructure investment needs will continue to grow.

We can and must find regional institutionalized ways to coordinate policy positions and resolve differences so that we can benefit from these opportunities.

We cannot go it alone, in isolation from our other trading partners, unless we are willing to forsake these opportunities and the jobs they will create.

The President's initiative in calling for a leader's meeting this weekend will send an important political message that the United States is serious about staying fully engaged in the Asian/Pacific region, and doing so on the basis of mutual benefit and respect. I applaud the President for his efforts, and look forward to building on the foundation he has begun.

Several of my colleagues recently joined me in writing to the President to commend him on his emphasis on improving our economic and trade relations with Asia, and I ask unanimous consent that this letter be printed in full in the RECORD at the end of my remarks.

The letter follows:

U.S. SENATE,
Washington, DC, November 16, 1993.

Hon. BILL CLINTON,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: Our exports to the dynamic Asian market are vital to our continuing economic recovery. We are writing to commend your emphasis on our economic and trade relations with Asia, symbolized by your informal meeting with Asian leaders in Seattle on November 19 and 20.

This important informal discussion of future economic cooperation will do much to signal to our Asian friends that the United States is a reliable partner and will lay the foundation for the creation of thousands more high-paying export-related jobs in this country. Such a discussion in this forum will also reassure Asian leaders that we can avoid being mired down in contentious bilateral political issues and instead focus on how to encourage mutually beneficial trade and investment. As you predecessor, the late President John F. Kennedy, once said, "a rising tide lifts all boats." Robust economics in Asia and the United States helps everyone.

Your meeting will also send an important political message that the United States will remain fully engaged in the Asia-Pacific region but will do so based on the principles of mutual benefit and mutual respect. Your initiative to consult with Asian leaders on how to build a cooperative future is in the best tradition of American world leadership.

We wish you every success at the leader's meeting.

MITCH MCCONNELL.
DANIEL K. INOUYE.
J. BENNETT JOHNSTON.
KENT CONRAD.
JOHN B. BREAUX.
MAX BAUCUS.
SAM NUNN.
SLADE GORTON.●

NUCLEAR POWER, A NECESSARY OPTION FOR OUR ENERGY FUTURE

● Mr. WALLOP. Mr. President, my colleagues should know that America's nuclear energy industry is diligently working to ensure that the nuclear energy option remains a viable part of this country's energy mix.

At its November nuclear energy forum, the industry reported its progress in the strategic plan for building new nuclear power plants, which was initiated in 1990, and announced the implementation of its strategic plan for improved economic performance.

As the nuclear power industry continues to develop advanced, safe, and reliable reactors, the Federal Government has also recognized the nuclear power option through the passage of the National Energy Security Act of 1992. Though we have made progress in streamlining the Federal regulatory process, there is no guarantee that this administration is committed to developing nuclear power. The industry must, like a good sheep dog, keep pressing to ensure that the Government goes in the right direction.

The industry is to be commended for its plan for improved economics, realizing that the future of nuclear energy depends not only on new and improved reactor designs, but on continued safe and economic operations today.

Building on successes over the past several years—nuclear energy production costs have decreased on average by 4.4 percent from 1989 to 1991—the industry seeks to enhance safe and reliable operations through increased communications and shared operating experiences among utilities.

Mr. President, increasing numbers of U.S. nuclear energy facilities are joining the ranks of the world's top energy facilities. Through cooperation, operating experience at these world-class facilities can be shared and applied at all U.S. nuclear power plants. To be clear, the average cost per kilowatt-hour of electricity from nuclear energy is 2.16 cents. This compares competitively with coal-fired electricity at 1.98 cents per kilowatt-hour. However, considering that the 10 most economical nuclear energy plants generate electricity for less than 1.5 cents per kilowatt-hour, it is clear that a system to

pool the best operating knowledge could significantly lower the cost of electricity to millions of American ratepayers.

Besides providing economically priced electricity, nuclear energy produces no air polluting emissions. In fact, as the second largest source of electricity in the United States, nuclear energy reduces sulfur dioxide emissions by 3.6 million tons a year, carbon dioxide by 500 million tons, nitrogen oxides by 2 million tons a year, a since 1973 it has displaced the burning of more than 4.6 billion barrels of oil.

Again, I commend the industry for presenting a forward-thinking plan. It should help ensure that nuclear energy can continue to meet much of the Nation's energy needs in a safe, economic, and environmentally sound fashion.●

S. 1288 THE NATIONAL AQUACULTURE DEPARTMENT, RESEARCH, AND PROMOTION ACT OF 1993

● Mr. AKAKA. Mr. President, let me begin by thanking Chairman LEAHY and his colleagues on the Agriculture Committee for favorably reporting S. 1288.

I want to thank Doug O'Brien and Michael Knipe of the Senate Agriculture Committee, as well as Shane Merz and Patrick McGarey of my personal staff, for their efforts to make this bill a reality.

Reauthorization of the National Aquaculture Act is important to Hawaii and the 29 other States that produce two dozen species of fish, shellfish, and aquatic plants for commercial production.

S. 1288 is a bill for aquaculture. The legislation is designed to promote Federal policies that will allow the United States to become more competitive in the expanding world market for aquaculture products.

S. 1288 addresses some of the most pressing needs of aquaculture farmers—credit assistance, disaster assistance, international production data, and improved policy coordination among Federal agencies. but the bill can best be summarized in a simple, three word statement: Aquaculture is agriculture.

For too long, aquaculture farmers have suffered from the lack of a clear governmentwide policy to promote this important sector of agriculture. Aquaculture has also been limited by an inability to participate in many of the farm programs available to dry-land agriculture. The time has come for the Federal Government to recognize that just because the crop you harvest has fins and gills instead of hoofs and horns, it is still agriculture, and you deserve to be treated just like any other farmer who works hard for a living.

Efforts to expand the U.S. aquaculture industry will not go unrewarded. The current U.S. trade deficit for seafood stands at $3.3 billion. If we could reduce our seafood trade deficit by one-third through expanded aquaculture production, we would create 25,000 new jobs. That is what this aquaculture bill is about—creating jobs and putting Americans to work in new, promising industries.

Nearly one-quarter of global seafood consumption will come from fish farming by the year 2000. Based on population projections and assuming stable wild fishery harvests, world aquaculture production must double by the end of this decease and increase sevenfold in the next 35 years to keep pace with rising demand for seafood. The question we must ask is whether U.S. aquaculture will share in this explosive growth.

S. 1288 was drafted with one basic principle in mind, namely, the bill should assist all acquaculture farmers equally. It would be wrong to promote any segment of the industry—whether it is marine or fresh water aquaculture farming, or a particular species of fish or shellfish—more than another.

The objective of this legislation is to reduce our annual trade deficit in edible seafood products and ensure that U.S. aquaculture achieves its world market potential in the decades ahead.

S. 1288 reauthorizes the National Aquaculture Act through 1995. The bill designates USDA as the lead Federal agency for the development, implementation, and coordination of national policy and programs for private aquaculture.●

CONGRATULATIONS TO KENTUCKY'S 3346TH U.S. ARMY DENTAL DETACHMENT

● Mr. McCONNELL. Mr. President, I rise today to pay tribute to the men and women of Kentucky's 3346th U.S. Army Dental Service Detachment. Based at Fort Knox, this unit's service during Operation Desert Storm/Desert Shield has earned them the Army Superior Unit Award, one of the Army's most elite peacetime unit honors.

The 3346th was called to service stateside during the gulf war, and mobilized in an unusual and experimental manner—members of the unit were sent all over the country to provide dental services at 24 different Army posts. Many dentists suffered severe damage to their personal dental practices as a result of prolonged absence.

During their deployment, no punitive or disciplinary actions were taken against any member of the unit. As a matter of fact, every member received a commendation, and two received Meritorious Service Medals.

Those who served should be proud of their service in support of our military efforts during the Persian Gulf war. I am proud of their dedication and resolve during this difficult and challenging mission.

The following are copies of the 3346th Army Superior Unit Award Citation, the Army's description of the unit's service, and a list of those who served in the unit during the mobilization and are authorized to wear the award. I ask that each of these be printed in the RECORD.

The material follows:

DEPARTMENT OF THE ARMY

This is to certify that the Army Superior Unit Award has been awarded to the 3346th United States Army Dental Service Detachment for meritorious performance of a difficult and challenging mission from 28 August 1990 to 27 August 1991.

ARMY SUPERIOR UNIT AWARD

By direction of the Secretary of the Army, the Army Superior Unit Award is awarded to: 3346th United States Army Dental Service Detachment for outstanding meritorious performance during peacetime of a difficult and challenging mission:

During the period of 28 August 1990 to 27 August 1991, the 3346th United States Army Dental Service Detachment distinguished itself by superior service while activated during Operations Desert Shield Storm. Mobilized as a unit to provide augmentation to Fort Knox, Kentucky, the 3346th United States Army Dental Service Detachment was tasked to fragment and provide individual augmentation to twenty-four different Health Services Command Dental Activities. This unit's effort contributed significantly to the successful accomplishment of the Health Services Command mission to mobilize the United States Army Reserve and sustain services at all Health Services Command Activities. The professionalism and superior performance of the unit was evidenced by one hundred percent of the unit being cited for exemplary duty, and its excellent disciplinary record. The 3346th United States Dental Service Detachments' performance of duty reflects great credit on the unit, the United States Army Reserves, Health Services Command, and the United States Army.

THE 3346TH U.S. ARMY DENTAL SERVICE DETACHMENT

The following is a list of soldiers assigned to the 3346th USA Dental Service Detachment that were activated for Operation Desert Shield/Storm and are authorized to wear the Army Superior Unit Award:

Spc. Albright, Cheryl Lynn.
Spc. Armstead, Melanie Renee.
Sgt. Arnett, Perry Jonathan.
Spc. Baker, Latoya Eunice.
Ssg. Basham, Linda Katherine.
Spc. Benford, Claude Robert.
Spc. Benjamin, Tonia Lynn.
Spc. Bennett, Douglas Freeman.
Sgt. Blain, Denola Delores.
Spc. Braswell, Steven L.
Ssg. Breese, Laura Lee.
Maj. Brents, Charles Edward.
Spc. Brooks, Ondrae Lamont.
1Lt. Brooks, Paul Cephus III.
Pfc. Buckner, Donna Michelle.
Spc. Bunner, Louis E.
Spc. Byerly, Joseph Leo.
Cpt. Carter, Kevin Bruce.
Sgt. Chleobowski, Dense M.
1Sg. Claywell, Calvin Leo.
Ltc. Cruise, Sidney Elliot.
Ltc. Day, Ordie Lee II.

Cpt. Escobar, Victor Hugo.
Maj. Feeley, Susan Burton.
Ltc. Feldman, Stephen Michael.
Sgt. Ferguson, Scott T.
Cpt. Florence, Franklin R. Jr.
Sgt. Gatza, Michael David.
Maj. Gholston, Lamont Ray.
Spc. Graham, Donald Wayne.
Cpt. Graves, Joseph A. III.
Sgt. Guillory, Ruth Ann.
Sgt. Hart, Kenny Wayne.
Maj. Hill, Joseph Lee.
Sgt. Hovis, Elizabeth.
Spc. Jessie, Michael Henry.
Ltc. Kimble, Michael Keith.
Col. King, William Peyton.
Spc. Lyons, Jacqueline Sherman.
Cpt. Lyvers, Joseph Darrell.
Spc. McCullough, Phyllis Ann.
Ssg. Miller, Candice Annette.
Cpt. Mitchell, Curtis Lee.
Spc. Moore, David Wayne.
Cpt. Nichols, John Thomas.
Ssg. Nix, Soon Suck.
Ssg. Peckinpaugh, Kim Marie.
Sgt. Phipps, Robyne Kay.
Maj. Quiroz, Tito Arturo.
Spc. Ramos, Monique B.
Spc. Reed, Cheryl Anne.
Sfc. Richardson, James Michael.
Maj. Riley, Susie Jackson.
Ssg. Robertson, Sonja Grace.
Spc. Robinson, Deborah D.
Spc. Rose, Guillermo Emanuel.
Ssg. Rundell, Catherine Agnes.
Cpt. Sanders, William Louden.
Cpt. Scalf, Stanley Thomas.
Spc. Schablik, Timothy James.
Pfc. Semernezski, Lillian.
Ltc. Skeeters, Thomas Milton.
Col. Skidmore, Hugh Philip, Jr.
Col. Slone, Clinard Coleman.
Sgt. Slusher, Morra Dawn.
Spc. Strong, Shelley Renee.
Ltc. Thompson, Harry Patrick.
Spc. Turner, Philip Joe II.
Maj. Walker, Joseph Patrick.
Spc. Wallace, Eric L.
Cpt. Waton, Keith Brian.
Spc. Wesley, Alfred Leon.
Maj. Wettig, Philip Clark.
Spc. Williams, Linda C.
Sgt. Yancey, Lucille Lynn.●

CELEBRATION OF THE CENTENNIAL ANNIVERSARY OF SOUTHERN CONNECTICUT STATE UNIVERSITY

● Mr. LIEBERMAN. Mr. President, I rise today to commemorate the 100th anniversary of Southern Connecticut State University, one of the leading academic institutions in my State. Over the years, the university has provided quality, multifaceted, and affordable higher education to many students, both from Connecticut and out-of-State. Southern was established in 1893 as a normal school with 85 students and 3 teachers. Today the university is comprised of 6 academic schools serving approximately 13,000 students. Students are offered 150 different subject areas to study and explore, providing a diversified, well-rounded education. Southern provides an excellent, affordable education to so many students who may not otherwise have the chance to earn a college or graduate degree.

Throughout its history, Southern Connecticut has used the dynamic city of New Haven as a classroom. Field trips and volunteer internships with various city and State agencies are an integral part of the Southern education. These opportunities give students a chance to study the real world, while at the same time providing New Haven with an invaluable asset—the enthusiasm of student willing and eager to lend their energy and idealism.

Southern has produced some of the best and brightest minds serving New Haven and the State of Connecticut. I sincerely wish to thank and congratulate Southern Connecticut State for its 100 years of providing education and service to Connecticut. I know that the school will continue to thrive and flourish through the next 100 years.

At this time, I would also like to congratulate the New Haven Symphony Orchestra on its centennial anniversary. For 100 years the symphony has delighted and soothed the hearts and souls of New Haven. May the next 100 years be as musical as the first.●

FRANK SUMNER SMITH, JR.: PROFILE IN HUMANITARIAN SERVICE

● Mr. HOLLINGS. Mr. President, I rise to congratulate Frank Sumner Smith, Jr., on being named recipient last month of the 1993 Distinguished Humanitarian Award by the Richland Memorial Hospital Foundation.

Mr. President, this prestigious honor has been richly earned by Frank Smith. Across three decades of voluntary service, Frank has provided outstanding leadership to Richland Memorial Hospital in a variety of capacities. His vision, stewardship, and dedication have been invaluable in the emergence of Richland Memorial as a nationally recognized regional community and teaching hospital.

As a Richland County Council member in the 1960's, Frank took a special interest in Richland Memorial and was instrumental in moving it to its current site. In 1971, he was appointed to the hospital's board of trustees. He subsequently served as chairman of the board, as treasurer, and as a key fundraiser for the hospital's Center for Cancer Treatment and Research. He currently chairs the campaign to expand and renovate Richland Memorial's Children's Emergency/Trauma Center.

Mr. President, Frank Smith has been a tremendous friend and supporter for many years. I have the greatest respect for his leadership at Richland Memorial and in the larger Columbia community. I congratulate him for this latest honor.●

IN RECOGNITION OF BANDON HIGH SCHOOL

● Mr. HATFIELD. Mr. President, I would like to take a moment to recognize the accomplishments of a special group of Oregonians. The Bandon High School football team, though one of the smallest in the State, is one of the best. Last month, the team won their second league championship in 3 years. Several games, in fact, have had to be stopped, in accordance with league rules, when Bandon led their opponents by 45 points. This is truly an outstanding team.

But this is not just a story of skillful athletics. My State, as are many of my colleagues' home States, is grappling with a severely limited budget. Funding for athletic and other extracurricular activities is often the first to go as our school districts trim expenditures. Despite these limitations, however, Bandon High School's program remains a bright spot in our otherwise grim situation.

The Bandon High School team persists in spite of its loss of State funds. The school provides transportation to and from away games, but the rest is left to helpful and dedicated fans of the team who run concession stands and hold other events to raise money for the team. Other supporters pack sack lunches for the players for their away games. Special recognition should go to the teams's skillful coach, Don Markham, and his wife Linda, who both work tremendously hard to see the team succeed. The devoted efforts of the community to keep their football program alive, and to boost it to tremendous success, deserves our recognition and praise. Schools truly draw communities together. I know of few better examples that that of Bandon High School.

I offer my heartfelt congratulations to the team this season, and in the seasons to come. The team, the school, and the community are truly a class act.●

REMARKS OF REV. FRANCE A. DAVIS

● Mr. BENNETT. Mr. President, on November 5 of this year I attended a Humanities Award Council Awards ceremony in Salt Lake.

The principal speaker was the Rev. France Davis, pastor of Calvary Baptist Church, and I was impressed by the wisdom and timeliness of his words. If there is any doubt regarding the value of the family as the firm basis of our moral and spiritual foundation, Reverend Davis' examples should put it to rest. His comments give me great hope, and I commend his speech to all and ask that it be included at this point in the RECORD.

The comments follow:

HUMANITIES AWARD COUNCIL AWARDS CEREMONY SPEECH BY FRANCE A. DAVIS

To Governor Leavitt in his absence, the Utah Endowment for the Humanities Board, Mr. Oswald, ladies and gentleman. You both honor and humble me by this 1993 Governor's Award in the Humanities. Please accept my sincere thanks and appreciation for the tribute paid to me, but no doubt owed to my lovely wife, Willene, my family, and the Calvary Baptist Church congregation. Since coming to this community in 1972, I have learned to enjoy it, especially the unique opportunities to speak and share all across the state. The endowment has made so much possible. Thanks!

GEMS OF LIFE

Permit me to share just a few of the gems that have made so much difference in my life. For my life, my work, and my commitment have been shaped by the history, the religion and philosophy, the tools of communication, the teacher and preacher that are in me, and the special people with which I have interacted. These highlights of my experience, my training, my examples, and my choices represent the foundation upon which the journey of my life has progressed.

Home Training

I was born next to the last of nine children and reared on a Georgia farm during the days of so-called "separate-but-equal." Schooling through my first college experience at Tuskegee took place at all black organizations. Although many around us had more, we never wanted for any need. We lived with strong bonds to extended family and enjoyed being with each other. The neighbors, the church folks, the school teachers, and everybody else cared about our welfare as if we were their own flesh and blood.

My earliest memory goes back to my parents who combined reading with strong religious training. I shall never forget how unfair I thought it was that the community children played outside after Sunday Worship while we sat around to my father read biblical passages such as Psalm 23. He had no more than a third grade formal education, yet sparked my interest in what I now know as the humanities.

High Achievement Model

The first gem that I have held on to all these years is a model of high achievement. While my parents did alright with their limited learning and limited opportunity, the encouraged us to do and be better. There would be no excuse for us not learning more, reaching higher, or taking advantage of the opportunity that would knock at our door. Furthermore, we were never to think of ourselves as "less than" or adopt a "can't do" attitude.

They passed this on to us through poetry such as Langston Hughes' "Mother to Son":

Well, son, I'll tell you'
Life for me ain't been no crystal stair.
It's had tacks in it,
And splinters,
And boards torn up,
And places with no carpet on the floor—
Bare.
But all the time
I'se been a-climbin' on,
And reaching' landin's,
And turnin' corners,
And sometimes goin' in the dark
Where there ain't been no light.
So boy, don't you turn back
Don't you set down on the steps
'Cause you finds it's kinder hard.
Don't you fall now—
For I'se still goin', honey'
I'se still climbin',
And life for me ain't been no crystal stair.

When complaining about the back breaking farm labor, my parents responded with proverbial sayings: "Hard work never hurt or killed anybody," and "If at first a task's begun, never wait until it's done. Be the labor great or small, do it well or not at all."

The Best of Whatever You Are

A second gem passed on to us was to be the best of whatever we were. In short, excellence was to be the measure of success. We were reminded that the race was not given to the swift nor to the strong, but to those who held out and endured until the end (Ecclesiastes 9:11). The choice of career and/or work was left to each individual but doing a good job was a family standard. I can still hear my parents drilling into us: "Be what you is and not what you ain't, 'cause if you ain't what you is, then you is what you ain't."

In simple terms, the advice was to let your talk be matched by your walk.

Listen Before You Act

Thirdly, my parents taught us to never take the cat by the tail and run off half-cocked. In these 1990's, we live in an information driven society with collections and volumes of data exploding everywhere. Our task is to do as Bill Crosby instructed the ball player: "Throw the ball! Pick it up first!" Know what you are doing before you attempt to do it. Think twice before you speak or act. Consider the facts and the cost. Look at the issue from the other point of view. That's the best way to learn how to appreciate and celebrate diversity. For variety is indeed the spice of life.

Grasshoppers In Our Own Sight

With these gems, I have made every effort to draw on history and philosophy to inform life. I have sought to communicate and teach in organized classrooms as well as the larger community. You might say, the humanities with special people like Vincent Harding, Quency Troupe, Henry Mitchell, James Cone, and Howard Thurman have been the heart of my upbringing and experience.

Thus, to focus on the enemy is to be so distracted that you miss the mark. The bible tells of twelve spies who went to check out the Promised Land. Ten of them returned reporting giants too powerful to overcome and that they saw themselves as grasshoppers. The other two, with a minority report, acknowledged the giants but saw the clusters of grapes ripe with possibilities. They were convinced the giants provided no sufficient reason to cause them to give up.

Similarly, the apostle Peter went water walking and did not sink until he became distracted by the storm raging around him. In due time, he cried out for help and The Master came to his rescue. Nina Walter wrote "Shallow Pools" to remind us of the possibilities:

Our minds
Are little pools
Shallow rain pools;
And yet, sometimes they do reflect
The stars.

We must never settle for being grasshoppers in our own eyes or the eyes of others. For to focus on the obstacles sets us up for failure. It is only to the degree that we keep our eyes on the mark of the higher calling that we, as Mahalia Jackson sang, can "Move On Up A Little Higher."

Thus, my goal is to be the best of whatever I am, to fear the living God, to serve people, and to live an exemplary life. Let me encourage you to aim for the sky, and if you fall short you will still land among the stars.

Hold fast to dreams
For if dreams die
Life is a broken-winged bird
That cannot fly.

Hold fast to dreams
For when dreams go
Life is a barren field
Frozen with snow.

"Dreams" by Langston Hughes.●

WE NEED BOLD THINKING ON HEALTH CARE TAX POLICY

● Mr. DURENBERGER. Mr. President, the debate over health care reform has called forth a great deal of creative thinking about the very foundations of our national health care policy. And that is as it should be. We need to question the obvious, to reconsider conventional wisdom, as we plan to restructure one of the largest segments of our economy, and one that affects every American.

Professor Michael Graetz of Yale University is both an eminent tax law and tax policy academician and an individual with significant practical experience, who served as Deputy Assistant Secretary of the Treasury for Tax Policy in the Bush administration.

Professor Graetz recently published an article in Tax Notes suggesting—in the context of an attack on the employer mandate provisions of the Clinton health care plan—that we rethink the tax policies that underlie our health care policies.

Right now we allow expenditures on health insurance to be deducted—or excluded—from taxable income without limit. The Breaux/Durenberger managed Competition Act would limit that deduction to a reasonable sum, based on the costs of health care coverage in the community—as will the Senate Republican plan. We provide those tax caps as part of our effort to introduce economic incentive market forces into the individual's health care decisions. On the other hand, the Clinton plan does not limit the deduction for insurance; here, as elsewhere, it relies primarily on regulatory forces—global and alliance-specific budgets—to hold down expenditures.

Professor Graetz has provocatively suggested that an appropriate avenue for us to pursue is the provision of a tax credit, rather than a tax deduction, for insurance costs and other health expenditures. This is a useful contribution that forces us to focus on the fact that a deduction is worth more to a person in a high tax bracket than one in a low tax bracket, or who does not pay taxes at all.

In may view, in a world of guaranteed access to health care at reasonable prices—with benefits available that would eliminate both the fear and

the reality of catastrophic expenses—one may well ask whether health benefits need special treatment under the tax system, other than as an efficient way to deliver subsidies for those benefits to those who ought to receive them.

Our work on these questions is aided by Professor Graetz's comments, and I ask that they be printed at this point in the RECORD for the benefit of my colleagues.

The comments follow:

[From Tax Notes, Sept. 1993]

MANDATING EMPLOYER HEALTH COVERAGE: THE BIG MISTAKE

(By Michael J. Graetz)

My message here is simple. First, universal health insurance, like universal auto accident insurance, requires that coverage be mandated. Second, many current proposals either fail to face the mandate issue or, as in President Clinton's proposals, put the mandate in the wrong place: on employers. Both of these alternatives increase the danger of our stumbling into major health care reforms that in the long run will fail to provide the secure, portable, adequate, universal, and reasonably priced medical care that we all want.

In my view, the impetus for employer-mandated health coverage is not grounded in a vision of appropriate delivery of health insurance coverage, but rather in concerns for maintaining existing sources of health insurance financing and the attendant political need to minimize tax increases or new taxes to finance health reform. If ensuring that some specified level of health care insurance coverage is provided to everyone is the government's responsibility, like providing roads or sidewalks, parks and libraries, and elementary and secondary education, it is simply bizarre public policy to link the right to health care coverage to employment and then fill in gaps for those who work for small businesses or are unemployed or retired. The only reason for linking health coverage to employment is that employment now provides much such coverage, and no one is willing to challenge that status quo. In other words, employer mandates have far less to do with where we wish to take health reform than with where we are now and where we have been.

HOW DID WE GET HERE?

The current failing health care financing apparatus in the United States has resulted from a series of incremental policy decisions that have had little or nothing to do with the development of a coherent national health system. Employer-provided health coverage received an important stimulus from the exemption of such fringe benefits from the wage and price controls of the 1940s. This exemption allowed employers to pay their employees additional fringe benefits when they were barred from increasing cash wages.

The falling health care financing apparatus in the United States has resulted from a series of incremental policy decisions that have had little or nothing to do with the development of a coherent national health system.

An enduring further boost was provided by the income and Social Security and tax exemptions for recipients of employer-provided health insurance. These exemptions became more valuable due to the income tax bracket creep and Social Security tax rate increases of recent decades. Today, the combined federal tax rate (including the individual income tax and the employer and employee shares of Social Security and Medicare taxes) on the median worker is about 30 percent, down from a 1982 high of nearly 40 percent, but much higher than the 17-percent rate of 1965.[1] State income taxes, with top rates as high as 12 percent, also typically exempt employer-provided health insurance. Because of the tax advantages, employers find that about 65 cents of additional health coverage is worth as much as a dollar of cash wages for most of their employees, and, as a result, have preferred paying additional wages in the form of expanded health benefits. By the same token, union negotiators have found it easier to negotiate increases in health benefits than greater cash wages for their members.

The Employment Retirement Security Act of 1974 (ERISA), which was concerned principally with protecting employees' pension benefits, made employers' self-insurance of their employees' health benefits particularly desirable through a little noticed and un-debated provision that insulated employer self-insurance plans from state premium taxes and regulations. Recent court interpretations of this "preemption" provision have broadly extended self-insuring employers' protections to permit many self-insurers to avoid contributing to state health insurance reform programs. One additional unforeseen consequence of the ERISA incentives for employer self insurance is that employers and their employees—rather than insurance companies—have borne a greater share of the burden of escalating health care costs. More than one-half of the increase in average employees' real wages during the period 1974 to 1989 took the form of increases in the costs of health benefits.

More than one-half of the increase in average employees' real wages during the period 1974 to 1989 took the form of increases in the costs of health benefits.

While uneven and often unfair in their effects, these various tax and other incentives for employer health coverage have enjoyed a degree of success. Today, employers provide health insurance to about 60 percent of the U.S. population and contribute more than $200 billion toward health insurance coverage of their employees. The employees themselves pay directly more than an additional $50 billion for their coverage and that of their families. The income and Social Security tax revenue that the government loses due to compensation taking this form rather than cash wages has been estimated to amount to about $65 billion this year.

But the days when this nation could rely on voluntary employer provision of health insurance as the backbone of health care finance are now past. The escalation of health care costs—coupled with increasing job mobility and insecurity and efforts of insurers and employers alike to reduce costs by selecting people with low risks or eliminating coverage for people when they become unhealthy—has made health insurance coverage a major financial concern for virtually all Americans. Fears that employers will drop or reduce health insurance coverage are rampant, and having a good job no longer means having good, or even any, health insurance coverage, if it ever did.

WHY A MANDATE IS NECESSARY

I have argued elsewhere that reliance on a voluntary tax-incentive-based private pension system to ensure retirement security is problematic,[2] and even now two decades after ERISA increased employees' security through vesting, funding, and other requirements, many employees do not get the retirement benefits they had reasonably expected. But reliance on voluntary provision of health insurance is far more risky. The mandatory Social Security system guarantees a minimum level of retirement income security for both retirees and disabled employees, while, by comparison, only Medicaid and mandatory free hospital emergency room care cushion the lack of health insurance coverage.

In principle at least, virtually everyone prefers solutions to problems that emerge through voluntary, rather than government-coerced, behavior. But in this case, it would be ineffective and expensive to depend on voluntary behavior. In the current voluntary employer-based financing system, health insurance tax incentives must be large enough to encourage employers to provide health insurance they would not otherwise buy, or else they are simply a waste of government largess and totally without merit. But whenever they actually encourage such purchases at the margin, they also reward people for conduct they would have undertaken in any event. Tax policy wonks, to use the Clintonese appellation, call this "buying the base." Normal people call it throwing money away.

If we are really serious about universal health insurance as a fundamental goal of health care reform, if we really mean everyone when we say "universal," then a government requirement—a mandate—to purchase health insurance seems inevitable. Many young healthy people regard the purchase of health insurance as a bad deal now, and the forthcoming community rating of the health insurance market, which will bar insurers from taking the good health as well as the bad of their applicants into account in setting premiums, will mean that healthy people will have to pay more for health insurance than their own health risks would warrant in an unregulated market (although some of this additional cost may be offset by the purchasing power of the health alliance or other entity purchasing large quantities of insurance). If we are going to spread the financial risks of poor health across the whole populace, then coverage will have to be mandatory.

Moreover, the existence of the medical safety net—porous as it is—demands mandatory health insurance coverage. Otherwise, people who experience remote risks but expensive costs of bad health will be paid for not through their own insurance, but instead through shifting these costs onto the insurance of others.

Mandatory health insurance should be a part of any reform, whether it is so-called managed competition, which would rely on large purchasing cooperatives to bring health costs under control; or a Canadian-style single-payer system, or some hybrid. To be sure, a mandate would have to be accompanied by subsidies for the poor, many of the disabled and elderly, the unemployed, and at least a very large number of middle-income families. But this pattern of subvention would not be new in our financing of health care; federal, state, and local governments now pay large subsidies for each of these groups, albeit in a haphazard and often uncoordinated way.

However, neither the wisdom nor the inevitability of a mandate has been accepted by many of the key players in the health reform debate. The health care reform strategy preferred by members of the Conservative Democratic Forum, led by Rep. Jim Cooper,

D-Tenn., and the plan advanced by President Bush in 1992, which reflected a consensus among a significant number of House and Senate Republicans, would rely on community rating and the creation of large purchasing cooperatives required to take all comers to make health insurance sufficiently affordable; both reform packages would provide that coverage is voluntary, not mandatory. In contrast, the Senate Republican Health Care Task Force, chaired by Sen. John H. Chafee, R-R.I., has proposed phasing in a requirement that all individuals obtain health insurance, and President Clinton has called for mandating that employers provide coverage to their employees and that others obtain health insurance coverage.

WHY AN EMPLOYER MANDATE WOULD BE A BIG MISTAKE

Many key political actors seem to have accepted the view that a mandate is necessary to make health reform work, but have chosen to mandate employers to provide health insurance coverage for their employees. This group includes President Clinton, the Pepper Commission, the Chairman of the House Committee on Ways and Means, and many other House and Senate Democrats who have either explicitly endorsed an employer mandate or embraced its cousin, a play-or-pay system that mandates employer coverage either directly or through a payroll tax. Under play-or-pay, employers will choose to play—that is, to provide health coverage directly to their employees—if the level of the pay requirement is set high enough. On the other hand, if the pay requirement is set at a very low level, play-or-pay will induce many employers to abandon direct coverage in favor of government-provided health insurance.

For those mostly large employers who are already providing health coverage to their employees, there is, of course, little burden associated with a requirement to provide a standard package of health insurance benefits; all such a requirement would mean is that these firms would not be permitted to drop coverage below the level of the government's mandate. For most large employers, this restriction would be unlikely to chafe (unless their tax deductions for health coverage were limited) because the coverage they now provide is at least equal to, and often better than, the likely level of mandated coverage. On the other hand, for small businesses, who do not now provide their employees with health insurance, mandated coverage would substantially increase the costs both of keeping the employees they now have and of hiring new ones.

Again, there is more than one way to understand the thinking of those who support employer mandates. They may have concluded that health insurance coverage ought to be provided through employment and should be regarded as a fundamental obligation of employers to their employees—even when compared to a higher cash wage. (As I suggested earlier, one should wonder, of course, how this view distinguishes health care from, say housing, education, Social Security retirement benefits, or other "benefits" that could be employer-based.) Alternatively, they could have determined that current circumstances—in which employers provide and finance the bulk of adequate health insurance for the nonelderly population—demand that we preserve the health insurance base that we already have by prohibiting employers from abandoning existing employee coverage. Presumably, a notion of equity among employers—the idealized "level playing field," whatever that might mean here, given the inevitability in an employer-mandate system of providing some employers—principally small businesses—with government subsidies to enable them to fulfill their mandate—and the quest for universal coverage move them to require that other employers also provide equivalent health coverage for their employees.

The consequences of an employer mandate, however, would be quite difference from a requirement that all individuals or families obtain health insurance coverage. For those employers who wish to circumvent such a mandate, there could be incentives to use part-time workers (depending on how the mandate is structured)—and there certainly would be incentives to use temporary help, to substitute overtime for additional hiring, to engage in cash transactions off the books, and to classify workers as independent contractors rather than employees.

The adverse consequences of employer mandates would be harshest for marginal employees and marginal businesses. Often Congress attempts to avoid some of these adverse consequences of mandates by creating exemptions. For example, the Family Leave Act, enacted earlier this year, covers only employees who have been employed by the same employer for at least 12 months and have worked at least 1,250 hours in the 12-month period, and it completely exempts small businesses, defined as those that employ 50 or fewer people within a 75-mile radius. However, exceptions of this sort are simply not possible in the context of health care reform, if the goal of universal coverage is to be met. Indeed, the percentage of employees lacking health coverage is much higher in smaller firms than in larger ones—and there are roughly four million small businesses with 50 or fewer employees.

This means that an employer mandate will raise costs of hiring and retaining workers most for small businesses, which, of course, would attempt to lower cash wages or reduce the number of employees. Thus, an employer mandate would almost certainly be accompanied by some new subsidy for small or marginal businesses—additional charges on the Treasury that seem unlikely either to be well-targeted or equitable. For example, subsidies based solely on the size of the business—whether in terms of numbers of employees, assets, or receipts—would not distinguish those able to afford the additional costs of employer-mandated health coverage from those less able. Adding a requirement that a business demonstrate need would increase administrative costs and probably require a bureaucracy for adjudication. Subsidies based on the average wage levels of employees, which would be more generous for business with lower average wages, might be somewhat better targeted on the whole—inasmuch as a mandate by buy a standard health insurance package for each employee might be viewed as equivalent to an increase in the required minimum wage—but precisely because it would use averages, would still be inefficient and inequitable. Only adjusting the amount of the subsidy on the basis of each worker's income would address these problems, but individualizing the subsidy to each employee's need would convert the subsidies from employer-based payments to individual subsidies that seem incompatible and administratively difficult to coordinate with an employer mandate.

The fundamental problem is that we are not designing a health care delivery or financing system from scratch, but rather are trying to make substantial improvements in what we have now and to do so in a manner that does not either transfer unwarranted windfalls to people or firms or impose undue or inequitable burdens on them. The goal is to capture existing sources of finance of health insurance—and, as I indicated earlier, employment-based contributions for health care coverage constitute more than $250 billion of this total—and to minimize any new taxes needed to make health coverage universal. Put this way, what we are confronting is the familiar, but nevertheless difficult, issue of transition from one public policy—one set of institutional arrangements—to another. Recognizing this to be a transitional issue, however, demands that we address explicitly the questions of where we are heading and where we want to end up.

The enactment of employer mandates in this round of health reform would make it far more likely that we will forever have a health insurance delivery system tied to employment, rather than a system in which one's health insurance coverage is independent of where or for whom one works. If workers change jobs an average of eight times in their working lives, as has recently been suggested by the Secretary of Labor, and if we are serious about disengaging health coverage from job lock or job changes, moving in the direction of an employer mandate seems a very bad prescription, indeed.

As I indicated earlier, the provision of health insurance by employers largely resulted from wage and price control rules and tax incentives; today, only the latter remain important. The current tax system subsidizes employer-provided health insurance and greatly favors it over coverage that people purchase for themselves. If health insurance is provided by an employer, the costs—including those borne by the employee, if the employer has a so-called cafeteria plan—can be excluded from both income and Social Security taxes. By contrast, health insurance that individuals or families purchase for themselves almost always must be paid for with after-tax dollars—except for the self-employed, who have been allowed to deduct 25 percent of the costs of health insurance and, under the Clinton proposals, would be permitted to deduct 100 percent. The tax system serves, therefore, as a powerful inducement for employers to provide health insurance directly to their employees, rather than paying cash wages and letting the employee purchase his or her own health insurance. The current tax benefit is, of course, worth more to people in higher tax brackets and those who receive greater health benefits from their employers. Thus, the subsidy cannot be defended on grounds of equity.

A DIRECTION FOR CHANGE

The truth is that we will never wean ourselves from a system of employer-provided health insurance unless the tax incentives for health insurance are dramatically revised, and that will be no easy task. But if such change ever is to be accomplished, it should be done now, while the nation is setting a new course for the delivery and financing of health care. The failure to change direction in this round of reform will only lock us further into the existing system.

We will never wean ourselves from a system of employer-provided health insurance unless the tax incentives for health insurance are dramatically revised.

What we need to do is to redesign our system of public subsidies to create a fair and effective system that facilitates mandated purchases of health insurance for all American families. To the extent that employers want to purchase or finance health insurance for their employees, the system should be flexible enough to accommodate and even facilitate their taking on those roles. But individuals, not employers, should have the legal

responsibility for obtaining health insurance.

An essential step in moving to such a system is to phase out the current tax exclusions for employer-provided health insurance and to replace them with a taxable tax credit or voucher for the purchase of health insurance. Treating the revenues lost due to payroll and income tax exclusions for employer-provided health coverage as a government expenditure, C. Eugene Steuerle has estimated that is 1992, the federal, state, and local governments accounted for about one-half of total U.S. expenditures on health care—nearly $400 billion, an average of $4,000 for each of the 100 million U.S. households. An additional $150 billion was contributed by employers (or, more accurately, in real economic terms, by employees in the form of lower cash wages), and nearly $200 billion more was spent out-of-pocket by individuals for a total of about $750 billion.[1]

A standard health insurance package that covers all medically necessary or appropriate health care (but not long-term care, cosmetic surgery, or unlimited mental health benefits) is estimated to cost about $2,000 per capita or about $5,250 for an average family, a total of about $525 billion for the entire U.S. population. A more generous $3,000 per capita policy would total about $800 billion. Community rating requirements and reform of health insurance markets (in the Clinton plan, through the creation of HIPCS or health alliances) means that individuals with chronic illnesses or preexisting conditions would not have to pay more for their health insurance and that individuals would enjoy the same economies of aggregation into large purchasing units that are now generally only possible for very large employers.

Within the existing system there is enough money to fund a standard package of insurance coverage for all Americans, including an equitable and even generous system of tax credits.

These figures—approximate though they may be—suggest that within the existing system there is enough money to fund a standard package of insurance coverage for all Americans, including an equitable and even generous system of tax credits. This means that with enough reshuffling of existing expenditures, additional government financing may not be necessary. In any case, however, it is essential to make much more effective use of the revenues that current subsidies cost the government. The political trick—and no one should underestimate how great a trick it is—is to manage the transition from the system we now have to the system of individually based universal coverage I have proposed.

Tax credits or vouchers should serve as the mechanisms for facilitating the purchase of health insurance for those who are currently uninsured. Ideally, as we move toward a unified, individually based system of universal health insurance coverage, per-capita tax credits or vouchers would also replace the current Medicaid program for acute care of the poor. To maintain the existing financial division between the federal government and the states, state governments would have to help finance tax credits for those now receiving such coverage through Medicaid. Over time, such credits might also substitute for the subsidies now provided for the voluntary physician coverage (Part B) of Medicare.

These tax credits or vouchers should be transferable to employers, insurers, health insurance purchasing cooperatives (or "health alliances"), or health provider networks for the purchase of health coverage. To reduce windfalls to those employers who are now providing health coverage for their employees, for some period of transition, employees could be required to maintain their current efforts. Such a maintenance-of-effort requirement should be structured in a manner that allows, or even encourages, employers to substitute cash wages for health insurance coverage as individual tax credits are phased in. A maintenance-of-effort requirement of this sort could prove quite difficult to enforce, but the potential denial of otherwise available tax deductions could be used to help to induce compliance. Similarly, the potential denial of tax deductions or tax credits, or the imposition of a special excise tax, could be used as tools for enforcing the individual mandate to obtain health coverage.

To ensure universal health insurance coverage, the system of tax credits or vouchers should be designed to finance fully the purchase of a standard package of health insurance benefits for people at the poverty level and to decline gradually as the family's income rises. It is essential that this be a gradual reduction, both to ensure the financial capacities of families only slightly above the poverty level (those, for example, with incomes of up to 200 percent of the poverty line) and to minimize increases in marginal tax rates due to phasing-down of the credits as incomes rise. As recent analyses of the taxation of Social Security benefits or Part B Medicare (physicians's services) subsidies for high-income people have demonstrated, it is important in designing an equitable universally available government subsidy that the subsidy be includable in the taxable income of recipients to avoid giving greater net benefits to high-income people. To guarantee the universality of this financing program and avoid the political pitfalls of limiting the availability of its benefits to those who meet some means test while, at the same time unduly increasing the tax burdens of those who currently enjoy employer-provided health insurance, some minimum amount of credit should be made available to all individuals, (equal, say, to one-fifth or one-quarter of the cost of a standard health insurance package). Such a progressive distribution of benefits could resemble somewhat the Social Security schedule of wage replacement retirement benefits.

This kind of universal tax credit financing system for health insurance coverage would have employment effects directly opposite those of an employer mandate. Since low-income workers would come to the job with their health insurance largely financed, they would become less expensive to hire—not, as under an employer mandate, substantially more expensive. Because the size of the government's contribution to the cost of insurance would diminish with increases in individual or family incomes, the difficulty of trying to target a subsidy appropriately for small businesses would be avoided, as would be regressivity of the existing tax exclusions that, as I have noted, are more valuable to those with higher income.

A revision of the health coverage financing system along the lines suggested here would be compatible with virtually any approach to health care reform that is not employer-based.

A revision of the health coverage financing system along the lines suggested here would be compatible with virtually any approach to health care reform that is not employer-based. To be sure, the transition to a system of health coverage based on an individual mandate could create difficulties that in the short run might be avoided by trying to patch an employer mandate onto the current system. Moreover, a financing plan centered around tax credits or vouchers might engender opposition from people who are viscerally opposed to any change that seems to funnel money through the government. But if we are bold now, we can move to a rational and stable, yet flexible, system of health care finance well-suited to a modern mobile labor force—a system in which no one would lose, or even have to change, their health insurance because of job change or job loss.

If, instead, we opt for an employer mandate, we will have simply deferred the need to eventually rationalize the system—and, in the meantime, added to the costs of, and thereby jeopardized the rates of, employment. Moreover, we will have failed to address the underlying reasons for the concerns that working people now have about the affordability and fragility of health coverage. Moving in the direction of an employer mandate, instead of an individual mandate, would be a big mistake. It is a mistake that we can, and should, avoid.

FOOTNOTES

[1] Economic Report of the President, January 1993, at 125.

[2] Michael J. Graetz, "The Troubled Marriage of Retirement Security and Tax Policies," 135 University of Pennsylvania Law Review 851 (1987).

[3] See C. Eugene Steuerle, "The Search for Adaptable Health Policy Through Finance-Based Reform," in Robert B. Helms (ed.) American Health Policy: Critical Issues for Reform (AEI Press, 1993).●

GRANDPARENTS BACK IN THE PARENTING BUSINESS

● Mr. HATFIELD. Mr. President, I would like to take a moment today to pay tribute to a group of people whose contributions to our society are often overlooked; people who give completely of themselves to help others in need. I am speaking of grandparents who spend their days raising their grandchildren.

Recently, the American Association of Retired Persons brought to my attention several stories of grandparents who are playing an increasingly active role in the lives of their grandchildren. At 50 or 60, many grandparents are entering back into full time parenting. Examples range from grandparents spending weekends barbecuing for their grandchildren to adopting their grandchildren.

As grandparent caregivers, they have experienced the joys of parenting: the first day of school, the first lost teeth, the school plans, and the bicycle training. However, they have also experienced the legal hassles, financial burdens, and emotional turmoil that come from caring for grandchildren full time.

Grandfather Richard Hammond says he often wonders what he is doing. While he might prefer more relaxed years of retirement, he asks, "How can you let them go into foster care?" With the problems of AIDS, unwanted pregnancies, divorce, child neglect, and drug abuse adding to the numbers of children needing parental guidance,

grandparents have to come to the rescue. Their contributions are invaluable.

As a proud new grandparent myself, I understand that special attachment to a grandchild and I understand the desire to help my grandchildren live to their full potential. I also understand the strains of raising a child. The grandparents stepping in to help raise their grandchildren deserve recognition and tremendous thanks for the new role they are playing in their grandchildrens' lives.

During our debate of the crime bill over the last several weeks, it has become obvious to me that legislators in Washington can only do so much to curb the dramatic rise in crime we see across our country. Those who do the most to steer our children in the right direction are families, in these instances multigenerational families, who can teach young ones alternatives to lives of crime. I applaud the service of these grandparents to our communities and offer my thanks for their tireless work.

I ask that the article from the American Association of Retired Persons' newsletter be printed in the CONGRESSIONAL RECORD following my remarks.

The article follows:

HOW ARE THE KIDS DOING?—GRANDPARENTS TO THE RESCUE

(By Susan L. Crowley)

Jim Leonardo sizzles burgers on the grill while a couple of dozen kids gleefully jump into his backyard swimming pool. Twelve-year-old David cannonballs into the water, the spray arching into the air and raining down on the adults relaxing in lawn chairs.

"Take it easy, David, or you'll have to come out," yells Sally Walters, issuing a motherly ultimatum.

Except Walters is not David's mother—she is his grandmother. At age 50, she is back in the parenting business and is bringing up David herself.

In fact, all the adults at the barbecue at the Leonardo home in the Philadelphia suburbs have taken on the financial burdens, legal hassles, emotional upheavals and crushing fatigue of caring for grandchildren full time.

They are also members of Second Time Around Parents, one of hundreds of groups forming around the country for grandparent caregivers.

"Sometimes when I'm in the school-yard or driving the kids around, I think what the hell am I doing?" muses Richard Hammond, 68, who with his wife Agnes, 66, is bringing up three teenagers. "But how can you let them go into foster care?"

"I would much prefer to be just a grandmother," sighs 62-year-old Jane Roenberger as she towels off Michael, age 9. But she is determined to rear her grandson as long as his own mother can't do the job.

Commitment to the youngsters invariably wins out, but such mixed feelings are not unusual among the nation's growing number of grandparent caregivers.

What's fueling the trend? Teen pregnancies, divorce, AIDS, joblessness, incarceration and child neglect all contribute. But most experts say the burgeoning use of crack cocaine and other substances among birth parents—in all income groups—is the chief villain.

No one knows just how many grandparents are picking up the pieces, says Meridith Minkler, a professor of public health at the University of California at Berkeley. "But we believe about four million children are in their care," up 40 percent over the last 10 years.

These days grandparents are joining forces to get the help they need. "Nobody wants pity parties anymore," says Ethel Dunn, a Wisconsin grandmother and activist who cofounded the National Coalition of Grandparents in 1992. "What we need are laws to legitimize the multigenerational family."

Second Time Around Parents began as a support group in 1990. Members still "drop everything to help each other in a crisis," says Michele Daly, a social worker for family and community services in Pennsylvania's Delaware County who founded the group with Diane Werner, a single grandmother raising a grandson.

But the group has become savvier in negotiating the complex legal and social-services systems that regulate child care. Like other groups, they are lobbying Congress and state lawmakers to recognize the interests of children being raised by older relatives.

Cathy Leonardo, 57, is a vivacious women who with Jim, 58, has raised two grandchildren, now 8 and 10, since infancy. Part of that time they cared for two elderly parents as well.

Although financial woes are among the biggest headaches for most grandparents, Cathy points out, current laws offer little relief. "Foster parents get payments for child care. Grandparents get zero," she says, unless they become foster parents, too. But that means giving the state custody—and control—of the child.●

TRIBUTE TO JERGEN NASH

● Mr. DURENBERGER. Mr. President, as 1993 comes to an end, I would like to take a moment to remember one of Minnesota's great Scandinavians who dominated the airwaves for more than a quarter of a century. For many years, as sure as the day would begin, Jergen Nash would wake his listeners with the first daytime newscast for WCCO–AM Radio. And, just as night would fall, he would relax listeners at 9:30 with an array of light musical classics. Later, he became the primary newscaster from 8 to 5.

Jergen was one of the great radio announcers who helped to make WCCO–AM Radio the institution it is in the Upper Midwest. Radio audiences were drawn to this worldly Scandinavian who developed a reputation for acting like an Englishman. Jergen was known to be the most down-to-earth man broadcasting from Minneapolis and St. Paul into Minnesota, Wisconsin, Iowa, and the Dakotas. From the station's daily good morning song to his lively banter, Jergen rose to the top of the radio industry with his humor and creativity. Early in his career, Nash was named the winner of the American Federation of Television and Radio Artists award as the best radio announcer in the Twin Cities.

He explained the key to his own success when he described his outlook on providing daily news and entertainment for hundreds of thousands of listeners. He said that he just tries to "be a guest in someone's home every time I open the microphone * * * I guess that is why I enjoy radio so much. You can be an intimate guest * * * one radio man visiting one person at a time." Then he modestly adds, "At least that's what they write me and that's the easiest way for me to entertain and inform my friends."

The most endearing part of Jergen was how he shared anecdotes of his family life with the audience. During World War II while he was stationed in England, he met his wife Mary Kathleen McMahon of Shoneyburn, Scotland, which explains how this Minnesotan acquired his British tastes. Mary and Jergen were married in 1944, and soon after began to raise a family with children Michael, Susan, and Kathleen. Later, he became a grandparent.

Nash's Siamese cat, Tango, became a Northwest celebrity. That's because Jergen made a brief off-hand comment one noon about his sick cat. Good news for Tango and the Nash family came from all over the territory. WCCO listeners offered medical advice, sympathy, postcards, get-well cards, catnip, and even a get-well letter from a cat 200 miles away. Even the front yard elm tree became a matter of some concern across the five states. Jergen always reported its first buds, its first robin, its new shoots of summer and its first fall colors.

In 1980 after 27 years at WCCO Radio, Jergen retired. But he could not completely leave one of his many passions in life. Until just before his death this year, he continued to grace "'CCO-Land" every Sunday morning with a show called "Life's Passing Parade."

Throughout his life—and certainly over the airwaves—Jergen Nash was a good neighbor. His commentary will be missed, but he left a legacy that will be carried on over the airwaves of WCCO Radio.●

EXISTING APPLICANTS FOR LOTTERIES

● Mr. INOUYE. Mr. President, section 6002(e)(2) of title VI creates a special rule which provides that the Commission may not issue a license or permit by lottery after the date of enactment unless one or more applications for such license were accepted for filing by the Commission before July 26, 1993. I would like to clarify the use of the term "accepted for filing". For the purposes of this Act, accepted for filing is not meant in the usual technical sense, but means in this case that an application was actually timely filed before July 26, 1993, for a service that can be awarded by lottery under existing law. Thus, under the legislation, the FCC may use a lottery to award any license for which applications were filed prior to July 26.

This does not mean that every application that was filed before July 26, 1993, should be automatically considered eligible for the lottery. The Commission can and should review each application to determine whether the application complies with the rules of the Commission regarding the filing of such applications.

In permitting the Commission to use the lottery mechanism only to issue those licenses for which applications had been filed before July 26, 1993, the conferees were aware that the Commission would be required to suspend licensing activities for all other licenses while it alters its rules to conform to the new rules for auctions. The conferees concluded that the Commission would be able to make the needed rules changes promptly, and hence any disruption to services in the pipeline would be minor. The Commission should be mindful that delay in the resumption of licensing will harm these services, and hence it should move promptly to initiate—and consummate—the needed rulemaking proceedings.

I call the Commission's particular attention to the Interactive Video Data Service [IVDS] where delays in concluding the rulemaking and commencing the application and licensing process have already been lengthy. The public is not being well served by such delay, which is preventing the introduction of an important new service. The changes necessitated by this legislation should not be an invitation to reopen any questions resolved in the current rules. The Commission should merely modify the selection mechanism to substitute an auction mechanism for the lottery selection method. I expect the Commission to give particularly expeditious attention to concluding the needed rule modifications for IVDS, so the introduction of service will not be further delayed and the initial licensees and the providers of the technology and the service will not be disadvantaged.•

THE SOCIAL SECURITY ADMINISTRATION INDEPENDENCE ACT OF 1993

• Mr. MOYNIHAN. Mr. President, this morning the Committee on Finance voted to report S. 1560, a bill to remove the Social Security Administration from the Department of Health and Human Services and reestablish it as an independent agency in the executive branch of the Government. S. 1560 has as cosponsors my distinguished colleagues Senators PACKWOOD, MITCHELL, PRYOR, GRASSLEY, BRADLEY, RIEGLE, ROCKEFELLER, HATFIELD, JEFFORDS, MIKULSKI, and DECONCINI.

Making the Social Security Administration an independent agency is not a new notion. Social Security was originally independent, but lost that status when it was folded into the Federal Security Agency in 1939.

Beginning in the 1970's, there were proposals to return the agency to independent status. In 1980, the National Commission on Social Security recommended it. Wilbur Cohen, who was closely associated with social security for nearly three decades, and served as Secretary of Health, Education, and Welfare under President Johnson, was a member of this panel In 1983, the National Commission on Social Security Reform, the so-called Greenspan Commission, on which I served with the distinguished Republican leader, Senator DOLE, repeated the call to make SSA an independent agency.

In 1984 a study panel commissioned by the Congress and headed by the highly regarded former Comptroller General of the United States, Elmer Staats, issued its report on the best way to implement the proposal. The bill reported by the committee is based on those recommendations.

Under this legislation, the Social Security Administration will be led by a Commissioner, appointed by the President, with the advice and consent of the Senate. The Commissioner will serve a 4-year term that coincides with that of the President. In addition, the bill establishes a seven-member, bi-partisan, part-time advisory board, to make recommendations to the Commissioner on policy issues concerning Social Security.

Proposals to make SSA an independent agency have the support of nearly every organization with an interest in the administration of the Social Security program, including the American Association of Retired Persons, the National Council of Senior Citizens, and the AFL–CIO. At a September 14 hearing on this subject by the Committee on Finance, Arthur Flemming, Secretary of the Department of Health, Education, and Welfare under President Eisenhower, and now chairman of the Save Our Security Coalition [SOS], also testified in support of this measure.

The proposal enjoys broad-based support for a number of reasons. First, the sheer size of the agency argues for independence. SSA employs 64,000 workers in a national network of 1,300 offices. This is more than twice the number of employees at the State Department and three times the number of workers employed by the Department of Labor. And with a budget of more than $300 billion, SSA will spend more this year than the Department of Defense and nearly 10 times as much as the Department of Education. In fact, SSA's outlays this year will be larger than the combined outlays of 11 Federal departments. It simply defies common sense for an agency this large to be included under an umbrella bureaucracy.

Next is the matter of public confidence. While Social Security is our most successful domestic program, public opinion surveys consistently show that a majority of nonretired adults are not confident that the program will be there for them when they retire. I believe one reason for this is that you send in your FICA contributions every week, but you never hear back from SSA. A few years ago I got a provision enacted into law that will require SSA to start sending out annual statements to all workers by the end of the decade. This should help. But it cannot help for SSA to be buried in the Department of Health and Human Services. An agency that directly serves virtually every American, that administers a program as important as Social Security, that maintains earnings records for 132 million workers and sends benefits to 42 million recipients—that agency should be visible and accountable to inspire the public confidence that the program needs and deserves.

Compounding these problems is instability of leadership. In my 17 years on the Finance Committee, there have been 12 Commissioners, of whom five have been acting Commissioners. The position of Commissioner was vacant for a year before we received a nomination, whereupon the nominee was promptly confirmed on October 7. This turmoil at the top must end. This bill provides for a strong Commissioner, with a 4-year term of office, to provide the vigorous, stable leadership that Social Security must have.

Finally, I would make the point that this bill will enhance the capacity of the Department of Health and Human Services to deal with the enormous task before it. In recent years the principal focus of the Department has been on health, to the near exclusion of matters related to Social Security. And as we focus on how to restructure the health care system—which comprises some 14 percent of our domestic economy—it is essential that the leadership of the Department of HHS has the time and energy this undertaking requires. Removing SSA from the Department will facilitate the Secretary's participation in this important task.

This is an opportunity to make a significant improvement in government without raising the cost of government. The Congressional Budget Office has estimated the cost of the bill at $1 million a year. This increase is to cover the costs of the bipartisan advisory board, and the increased salary of the Commissioner and Deputy Commissioner, who under this bill will hold a position commensurate with their important responsibilities.

I ask unanimous consent that the text of the bill, along with a detailed description, be included in the RECORD at this point.

[The text of S. 1560 is printed in the RECORD of October 18, 1993 beginning on page 25186.]

The description follows:

THE SOCIAL SECURITY ADMINISTRATION INDEPENDENCE ACT OF 1993

DESCRIPTION OF PROVISIONS

Establishing the Social Security Administration [SSA] as an Independent Agency

Present Law.—SSA is a component of the Department of Health and Human Services (HHS). While the Secretary of HHS has overall responsibility for administration of the Old-Age, Survivors and Disability Insurance (OASDI) and Supplemental Security Income (SSI) programs, their administration has been delegated to the Commissioner of Social Security. The Commissioner reports only to the Secretary. The Commissioner is appointed by the President, by and with the advice and consent of the Senate, and is compensated at the rate for level IV of the Executive Schedule.

Under current SSA practice, there is one Principal Deputy Commissioner and six Deputy Commissioners (for management, operations, systems, policy and external affairs, human resources, and programs) who serve under the Commissioner. None of these are statutory positions. The Principal Deputy Commissioner is designated to serve as Acting Commissioner in the absence of the Commissioner.

By law, an advisory council is appointed by the Secretary of HHS every four years for the purpose of reviewing the status of the Social Security and Medicare programs, and a Board of Trustees is established to manage the OASDI Trust Funds.

Proposed Change.—The Social Security Administration will be established as an independent agency in the executive branch of the Government, responsible for the administration of the OASDI and SSI programs.

A. Commissioner and Deputy Commissioner of Social Security

The independent SSA will be directed by a Commission appointed by the President, by and with the advice and consent of the Senate, for a 4-year term coinciding with the term of the President (or until the appointment of a successor). The Commissioner will be compensated at the rate for level I of the Executive Schedule (equivalent to Cabinet officer pay). The Commissioner will be responsible for the exercise of all powers and the discharge of all duties of SSA, have authority and control over all personnel and activities of the agency, and serve as a member of the 5-member Board of Trustees of the OASDI Trust Funds.

The Commissioner will prescribe rules and regulations; establish, alter, consolidate, or discontinue organizational units and components of the agency (except for those prescribed by law); and assign duties, and delegate, or authorize successive redelegations of, authority to act and to render decisions, to such officers and employees as the Commissioner may find necessary.

The bill directs the Commissioner and the Secretary of HHS to consult with one another on an on-going basis to assure: (1) the coordination of the social security, SSI, and medicare and medicaid programs and (2) that adequate information concerning medicare and medicaid benefits will be available to the public.

The bill establishes a Deputy Commissioner in the independent SSA, who will be appointed by the President, with the advice and consent of the Senate, for a 4-year term coinciding with the term of the Commissioner or until appointment of a qualified successor.

The Deputy Commissioner will perform such duties and exercise such powers as are assigned by the Commissioner, and serve as acting Commissioner during the absence or disability of the Commissioner (or vacancy of office) unless the President designates someone else. The Deputy Commissioner will serve as the secretary of the OASDI Board of Trustees, and will be compensated at the rate provided for level II of the Executive Schedule.

B. Social Security Advisory Board

The bill provides for a 7-member part-time Advisory Board appointed for 6-year terms, made up as follows: 3 appointed by the President (no more than 2 from the same political party), and 2 each (no more than 1 from the same political party) by the Speaker of the House (with the advice of the Chairman and Ranking Minority Member of the Committee on Ways and Means) and the President pro tempore of the Senate (with the advice of the Chairman and Ranking Minority Member of the Committee on Finance).

Presidential appointees will be subject to Senate confirmation. Appointees will serve staggered terms. The chairman of the Board will be appointed by the President for a 4-year term, coinciding with the term of office for the President. The Board will be required to meet at least 6 times each year and generally will be responsible for giving advice to the Commissioner on policy issues.

Compensation of the members is set at a rate equal to 25 percent of level III of the Executive Schedule (except for meeting days when it would be equivalent to that of the daily rate of level III of the executive schedule). Other benefits (except for health insurance) will not accrue. The Board will have authority to appoint an SES staff director and hire its own staff.

The primary duty of the Board under this bill is to provide advice to the Commissioner of Social Security on policy matters relating to Social Security and SSI. Duties specified in the bill include analyzing the Nation's retirement and disability systems, making recommendations on policies to assure the solvency of the Social Security program, and engaging in activities that will increase public understanding of the Social Security system.

Because the Advisory Board essentially will take on the function of the quadrennial advisory council, this bill abolishes the advisory council for Social Security.

C. Personnel; Budgetary Matters

Under the bill, the Commissioner will appoint officers and employees to carry out the functions of SSA (with compensation fixed in accordance with title 5 of the U.S. Code, except as otherwise provided), and procure the services of experts and consultants.

The Director of the Office of Personnel Management (OPM) is directed to give SSA a larger allotment of SES positions to the extent a larger number is specified in a comprehensive work plan developed by the Commissioner, and the total number of such positions cannot be reduced at any time below the number SSA held immediately before enactment of this Act.

Appropriations requests for staffing and personnel of the Administration will be based upon a comprehensive work force plan, as determined by the Commissioner. Appropriations for administrative expenses are authorized to be provided on a biennial basis. Appropriate contingency funds will be apportioned upon the occurrence of the stipulated contingency, as determined by the Commissioner and reported to each House of Congress.

The number of positions in the independent SSA which may be excepted from the competitive service because of the confidential or policy-determining character of such positions cannot exceed the equivalent of ten full-time positions.

D. Transfers to the New Social Security Administration

The bill provides that assets and personnel related to the administration of Social Security programs will be transferred from HHS to the independent SSA.

HHS employees who are not employed on the date of the enactment of this bill in connection with functions transferred to SSA, but who are so employed on the day before SSA is established as an independent agency, may be transferred from HHS to SSA by the Commissioner, after consulting with the Secretary of HHS, if the Commissioner determine such transfers to be appropriate.

HHS employees who are employed on the date of enactment of this bill, solely in connection with functions transferred by this title to SSA, and who are so employed on the day before the date SSA is established as an independent agency, shall be transferred from HHS to SSA.

The office of Commissioner of Social Security in the Department of Health and Human Services is abolished effective upon the appointment of a Commissioner of Social Security pursuant to this Act.

E. Transitional Rules

The bill provides that the transition of SSA to its new status as an independent agency in the executive branch of the government will occur within 180 days after the enactment of this bill, unless the President establishes an earlier date. The transition will take place under the direction of a Transition Director, selected on the basis of experience and knowledge of the operation of the Federal government. Within 30 days after enactment, the President will appoint the Transition Director, who will be compensated at the rate provided for level IV of the executive schedule.

In conducting transition activities prior to the appointment of the Commissioner of Social Security, the Transition Director will consult regularly with the Director of the Office of Management and Budget. After such appointment, the Transition Director will conduct such activities at the direction of the Commissioner. Expenditures for necessary transition activities may be made out of the OASI and DI trust funds.

The President is required to appoint a Commissioner within 60 days after enactment of this bill. Upon such appointment and confirmation by the Senate, the Commissioner appointed under this title will assume the duties of the HHS Commissioner of Social Security until SSA is established as an independent agency. Nominations and appointments provided for under the provisions of the Act may be made at any time on or after enactment.

The bill requires that within 120 days of enactment, the Transition Director and the Commissioner of Social Security report to the Congress on the status of the transition, and on any significant internal restructuring or management improvements that are proposed to be undertaken.

All orders, determinations, rules, regulations, permits, contracts, collective bargaining agreements, recognitions of labor organizations, certificates, licenses, and privileges which have been issued or have been allowed to become effective that relate to the functions that are vested in the Commissioner of

Social Security shall continue in effect until modified, terminated or repealed by the Commissioner. Collective bargaining agreements shall remain in effect until the date of termination specified in such agreement.

The bill provides for the continuation of the existing advisory council for Medicare. The bill also repeals the requirement. That SSA submit an annual report to the Congress on the administration of the Social Security program.•

STATEMENT ON HEALTH CARE REFORM, QUALITY AND INNOVATION

• Mr. GREGG. Mr. President, I rise to make some comments on the President's health care reform plan. A few weeks ago, I talked about the effect that the President's plan would have on the delicate balance between State and Federal responsibilities for health care. Today, I would like to talk about an even more crucial topic—the effect that the President's plan would have on the high quality of medical care in this country.

Dr. C. Everett Koop, our distinguished former Surgeon General, recently said, "We Americans can have the best health care in the world, total access to care for everyone, or affordable care. But it is impossible to provide more than two of the three."

I think the First Lady and the President have decided to attempt all three in their plan. They do plan to provide total access to care for everyone, through their Health Security Card. They do plan to provide affordable care, by reducing medical price increases to the rate of general inflation by the year 1999. Mr. President, if you believe what Dr. Koop said, then we will no longer have the best health care in the world. This is one Senator who is not willing to give that up.

Nobody doubts that we Americans now have the finest medical care in history. If a citizen, rich or poor, were to collapse right now of a heart attack in downtown Washington, he would be taken to one of the world's greatest hospitals. He would be examined by doctors trained in the latest high-technology treatments for heart attacks. If it were indicated, he would receive a genetically-engineered enzyme to dissolve the clots in his coronary arteries. He would be admitted to a state-of-the-art coronary care unit. He would receive care that was better than virtually anywhere else in the world. Better than in Europe, better than in Japan.

Of the last 97 recipients of the Nobel Prize in Medicine and Physiology, 57 have been Americans. Of the 15 biotechnology-based drugs and vaccines approved by the FDA in 1991, every single one was developed by a U.S.-based firm. We are first in medical technology, first in pharmaceuticals, first in biologicals. We are also first in basic science—molecular biology, genetics, immunology. Without any doubt, the rest of the world depends on us in the United States for cutting-edge medical devices, for miracle drugs, and for new vaccines against killer diseases.

We have without question the world's best medical schools. Not just one or two of the world's best schools, but a score of the world's best schools. Doctors come from all over the world to train and practice here.

The President and Mrs. Clinton, and Ira Magaziner, believe they have a mandate from the American people to rewrite our health care economy from the ground up, sparing nothing. They don't want to just fix our system, they want to replace our system. If you have any doubt about that, Mr. President, you need only look at this 1,342 page plan.

The Clinton plan encompasses every square inch of the American health care system. For example, the plan dictates exactly what medical treatments will be covered and what will not. Blood lead tests for children, for instance, will be covered, but occult blood tests for colon cancer will not. The plan has controls, controls, controls on everything from breakthrough drugs prices, to the number of residency training positions in each medical specialty, to the prices doctors can charge for examinations and treatments.

What I am afraid the Clintons' plan would bring us, Mr. President, is a reduction in quality in medical care, a reduction to the level of mediocrity. If the Clinton plan were enacted, in 10 years we could easily find ourselves in the same situation as countries like Great Britain and Canada. Yes, access would be at least nominally improved for the 15 percent of our population who lack it now. But costs would be controlled through capped entitlements and global budgets, and quality would have slipped. Americans would wait in lines to see their doctors. People might wait in line for months for non-emergency care like total hip replacements and cataract operations, as they do in Canada and Great Britain. And when they did finally reach the head of that line, the care that they received would be of lower quality.

In Great Britain, doctors routinely decide not to provide kidney dialysis to patients who need it. As the President of the British Kidney Association once explained, "Decisions not to treat kidney patients are being taken by doctors all the time." But what is particularly tragic is that usually the patient does not understand that he could have been treated. In Great Britain, he just goes away to die quietly.

As one writer said, "The economics of the British National Health Service could not tolerate providing patients with real authority to choose health care." Mr. President, I believe the Clintons' health care plan could take the United States down the same road.

Now, I am sure that the proponents of the Clintons' plan will want to argue that the quality issue is explicitly addressed in the plan, in title V, subtitle A. They will point out that the Clinton plan includes a new National Quality Management Program, the NQMP. The NQMP would be run by the National Quality Management Council, the NQMC, made up of 15 members appointed by the President. The NQMC would set standards for the quality of care and send them out from Washington to the health alliances for implementation.

Mr. President, I don't want to put cold water on the NQMP, but I have significant doubt whether such a program would be successful. When the Federal Government tries to impose top-down regulations on the quality of anything, the result is often poor efficiency and higher costs.

Take Federal regulation of medical devices, for example. It takes literally years to get a new device approved by the FDA. The wait for approval is so long that many innovative companies simply give up. A report out this year said that the FDA was sitting on a backlog of more than 1,100 applications for new devices, not including a bunch of applications that were sitting in the mailroom, unopened. In the area of biotech drugs, there are now six times more drugs waiting for approval on desks at the FDA than there are on the market.

Lest we forget, the new NQMP would not be the Federal Government's first attempt to dictate quality from Washington. We have gone through a bevy of quality programs in Medicare. We had the UR program in the 1960's. Congress was not happy with it and enacted the PSRO program in 1972. The PSRO program was largely a failure, so Congress enacted the PRO program in 1982. The PRO looks to be working better than the earlier Medicare quality review programs, but there are still significant problems.

The Clintons' NQMC would also develop so-called practice guidelines for doctors. These would be used by doctors to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, disgnosed, treated, and managed clinically.

Mr. President, perhaps practice guidelines could act to enhance quality, or at least to level it. But I have concern that they will be too long in the writing, too long in the revising, and too long in the distribution to be very useful.

Remember, these guidelines will be written by committees. They can, and do, take years to produce, so that by the time they are published, they are almost obsolete. Furthermore, these committees may not be sufficiently cognizant of the remarkable differences between individual patients.

I am also concerned that somebody will want to give these Federal guidelines some kind of binding effect. That would be very tempting. But it could also be very disastrous. In my view, we never want to place doctors in a position where they fear violating a Federal guideline for ordering a reasonable treatment.

Mr. President, quality of care is very dependent on our ability, as a Nation, to innovate. We could have a wonderful NQMP in Washington, we could have top-flight practice guidelines, we could have excellent outcomes research, but we still won't have any assurance of quality if we stifle innovation in medical care.

Americans want innovation and access to high-technology treatments. In a recent poll, when Americans were asked whether they would be willing to give up certain expensive treatments like organ transplants, only 25 percent said "yes." In a 1992 Gallup poll, 52 percent of Americans said they would be willing to pay more to have the latest medical technology available in their own small communities, rather than in regional centers only.

I have had a chance to listen to people's concern on this issue, and I have learned one very important thing. The people who are the most concerned about American medical innovation are those who are sick. Ask a person who has lupus, or AIDS, or cancer whether he wants to put American medical innovation at risk. You will get a very clear answer.

Mr. President, how can we encourage health care innovation? Well, the answer is just one word: competition. Without competition, there is no innovation.

Despite all the economic problems in our current health care system, we have a tradition of innovation. Take magnetic resonance imaging, for example. Take a trip out to Chicago and look around the annual meeting of the Radiological Society of North America. You will barely believe your eyes. There, in front of you, will see several football field-sized rooms full of the latest in diagnostic equipment. Magnetic resonance imagers that can literally take pictures of internal organs, or even take pictures of blood as it moves through the arteries of the body. Every year, the machines are more sophisticated and more able to image diseases like cancer, heart disease, and many others.

Twenty years ago, if a patient had a brain tumor inside the inner chambers of the brain, he would have to undergo something called a pneumoencephalogram, where air was introduced into the brain cavity. It was painful, and sometimes dangerous. In 1993, no patient need have a pneumoencephalogram, because of huge strides in brain imaging.

Many new technologies lower costs, because they are cheaper than existing methods. For example, CAT scanning and MRI have lowered the cost of diagnosing pituitary adenoma, a kind of brain tumor, by 27 percent. Positron emission tomography—called PET scanning—has the potential to lower the cost of diagnosing dead or dying cardiac tissue. PET scanning is also 80 percent cheaper than the older methods of diagnosing the cause of certain kinds of epilepsy.

Other new medical technologies may not lower costs, but they may be very cost-effective. A good example is Betaseron, a product developed by Chiron to treat multiple sclerosis. Betaseron costs a lot of money, $10,000 a year, but it reduces the need for hospitalization by one-third, saving significantly more than $10,000 per year, perhaps as much as $40,000 per year. And while it is preventing hospitalization, it is also preventing human suffering.

Mr. President, with all the rhetoric directed against the American medical industry these days, it's easy to forget how important they are to our economy. Take pharmaceuticals for an example. In 1991, the United States had a positive trade balance in pharmaceuticals of about $1.3 billion. The pharmaceutical industry is one of the few remaining manufacturing sectors in which the United States still shines.

We've all heard about the goose that laid the golden eggs. Mr. President, our golden eggs are the medical innovations that will improve our lives, and the lives of our children and our grandchildren. Our golden eggs are cures for cancer and arthritis, and heart disease. The goose that is laying those eggs is American medical innovation, in universities and in private companies all over the land. In our hurry to obey some perceived political mandate to rewrite the health care economy, we cannot afford to hurt that goose.

I do not believe that the American people want us to upset our Nation's leadership in medical innovation. Nearly every voter out there has, at some time or other, benefitted from these great inventions, whether it be a new antibiotic, a new machine that can dissolve kidney stones without even entering the body, or a new method for cleaning out blocked coronary arteries.

But medical innovation is already at risk, right now, even before health care reform. Many people do not realize how risky the biotechnology business is. According to Ernst & Young, the biotechnology industry lost $3.6 billion last year. It is not unusual for a biotechnology company to spend $350 million—that's right, $350 million—and 8 to 12 years to get a new product to market. Most biotechnology companies are small—75 percent have fewer than 50 employees—and more than 50 percent of their costs are for research and development.

A recent article in the Boston Globe related how just the talk of price controls by the Clinton administration has "scared investors away from biotechnology—with the result that we are seeing companies postpone or cut back clinical trials, lay off scientists, freeze employment, and forgo the designing or building of new manufacturing facilities."

Initial public offerings for stock in biotechnology companies have fallen dramatically just this year. In 1991–92, IPO's for biotechnology stocks averaged about $100 to $150 million per month. In 1992–93, fear of Federal regulation of launch prices had dropped IPO's to $20 to $30 million per month. And where have these struggling companies gone to find capital, Mr. President? To Japan. According to David Hale of Gensia, hundreds of companies are going to Japan for capital, and giving away large shares of their companies in return. Mr. Hale says that if price controls are instituted in the United States, "Japan will be a world biotechnology power in 15 years."

Mr. President, to save innovation we must have vigorous competition. And, in order to have competition, we must have a real health care insurance market.

The current health care insurance market, to the extent that it exists at all, is so distorted that it does not perform the basic functions of a market. It does not set prices or temper demand. It does not provide information on quality. It has to be changed.

But if we change it the way the President and the First Lady have in mind, we will end up with less competition, not more. And we will end up with less innovation and lower quality.

President Clinton's plan is ostensibly based on the principles of managed competition. But if you read the plan, you see a lot of managed but not much competition.

Start with the most basic part of the plan—the financing. The President and First Lady had a great opportunity to use the financing mechanism in their plan to promote competition. Unfortunately, they decided not to do it. In the President's plan, employers would pay not the premiums generated by their own employees, but 80 percent of the average premium for the entire alliance. That is not a premium, it's a tax. And it immediately takes 80 percent of the competition out of the President's plan.

Additionally, the President's plan requires every employee to purchase care in quasi-governmental monopolies called health alliances. Where is the competition in that? Gone. Leaving only a bureaucracy behind.

And perhaps worst of all, the President's plan relies on some very heavy-handed price controls. First, the plan includes an enforceable global budget for each health alliance. Second, the plan allows alliances to set prices for fee-for-service plans, and to eliminate

from bidding those health plans that bid too high.

Price controls like these are directly antithetical to competition. More than anything else in the President's plan, they will harm innovation.

Mr. President, I want health care cost containment as much as anybody. But I am concerned that President and Mrs. Clinton, in attempting to expand access suddenly while also imposing cost controls, are writing a prescription for rationing and reductions in quality.

Health care reform based on true competition would not suffer from those same problems. By true competition, I mean a health care market that really operates like a market. Where the amount of information available on costs and quality is greatly increased, so that consumers have access to it when they purchase care. Where consumers can really know what they are getting for their hard-earned dollars.

A system based on grass-roots competition is a flexible system, able to adapt rapidly to changing demands in the marketplace. It is a system that can quickly redeploy resources into new uses. A system where the preferences of consumers drive the economy.

In such a system, innovation has its best chance to flourish. Good technologies, especially those that reduce costs and increase productivity, will rise to the surface. Bad technologies will sink. Promising research will be encouraged. Unpromising research will be discouraged. The natural battle between the need to control costs and the need to innovate will still be fought, but the winners and losers will be determined by the wants and needs of consumers, manifested by millions of individual decisions.

The alternative to competition is the Clinton plan, where the decisions, the selection of winners and losers, would be done in Washington by the National Quality Management Program and the National Health Board. Like other centralized government decisions, these would be made at a ponderously slow rate, with a heavy dose of political influence. If anyone doubts me on that, I offer one simple counterargument—Medicare.

Mr. President, we must have competition to have medical innovation. I suggest to my colleagues that they examine each of the reform plans that have been offered with that criterion in mind. Which ones provide for a true health care market? Which ones will maximize real economic competition? Which ones will keep decision-making in the hands of consumers, instead of in Washington?

The answers to those questions are crucial. If we in this body make the wrong decision, if we stifle American innovation in health care, we will have harmed the very thing that our American health care system has over all the other systems in the world, excellence.●

SENATE BIPARTISAN SPENDING CUTS PROPOSAL

● Mr. COHEN. President, when the Congress was considering the President's budget last August, there was great concern among both Democrats and Republicans that the plan relied too heavily on tax increases and not enough on spending cuts to reduce the deficit. I ultimately opposed the President's plan for this reason.

In exchange for their support for his package, the President promised a number of reluctant Democratic Members that he would offer additional spending cuts later this year.

Two weeks ago, the President fulfilled the letter of this agreement by offering a rescission bill. Unfortunately, the cuts in this bill total less than $12 billion. This is a barely significant in light of the nearly $1 trillion that will be added to the national debt over 5 years under the President's plan.

Anticipating the need for spending cuts beyond what the President would propose, a bipartisan groups of Members in each House have been working for the past month or so to develop a list of significant spending cuts that could be added to those proposed by the President.

On October 27, a bipartisan group in the House announced a plan to cut spending by $103 billion over 5 years. These Members deserve credit for their willingness to propose specific and detailed cuts. It is easy to call for deficit reduction in the abstract and to offer the usual platitudes about balancing the budget by cutting "waste, fraud and abuse." It is much harder to produce a detailed list of cuts, some of which are very unpopular.

While our House colleagues were working on their list of cuts, I and a group of like-minded Senators were developing our own list of spending reductions. On November 10, I joined Senator KERREY and others in offering a list of spending cuts totaling over $109 billion.

Tomorrow the House of Representatives is expected to consider the President's rescission bill and as well as an amendment offered by Congressman PENNY and Congressman KASICH incorporating the 103 billion in spending cuts developed by the bipartisan House group. I certainly hope that the House will pass this amendment and begin the process of serious deficit reduction.

When the Senate considers the rescission bill, the Senate bipartisan group intends to offer as an amendment our $109 billion list of spending cuts. While this may not occur until next year, we are intent on making serious spending cuts.

I firmly believe that lasting progress on the deficit can only be achieved through bipartisan efforts. For this reason, I joined Senators DANFORTH, BOREN and JOHNSTON last May in offering the only bipartisan alternative to the President's budget plan. Likewise, I have been pleased to work with a bipartisan group of Senators for the past month or so in developing a list of cuts that collectively we could support.

Not all of us support each and every item within the $109 billion in cuts, but each agrees that on balance the list is fair and deserves support.

The deficit continues to pose a serious threat to the standards of living of our children and their children. Higher deficits today mean higher taxes tomorrow. The only way to assure that deficits are reduced is by curtailing spending. Our proposal to cut $109 billion will not solve the deficit problem, but is a significant step in the right direction.●

HOUSING AND COMMUNITY DEVELOPMENT ACT

The text of the bill (S. 1299) to reform requirement for the disposition of multifamily property owned by the Secretary of Housing and Urban Development, enhance program flexibility, authorize a program to combat crime, and for other purposes, as passed by the Senate on November 18, 1993, is as follows:

S. 1299

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Housing and Community Development Act of 1993".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

SEC. 3. DEFINITIONS.

As used in this Act—

(1) the term "FHA" means the Federal Housing Administration;

(2) the term "Secretary" means the Secretary of Housing and Urban Development; and

(3) the term "RTC" means the Resolution Trust Corporation.

TITLE I—FHA MULTIFAMILY REFORMS

SEC. 101. MULTIFAMILY PROPERTY DISPOSITION.

(a) FINDINGS.—The Congress finds that—

(1) the portfolio of multifamily housing project mortgages insured by the FHA is severely troubled and at risk of default, requiring the Secretary to increase loss reserves from $5.5 billion in 1991 to $11.9 billion in 1992 to cover estimated future losses;

(2) the inventory of multifamily housing projects owned by the Secretary has more than tripled since 1989, and, by the end of 1993, may exceed 75,000 units;

(3) the cost to the Federal Government of owning and maintaining multifamily housing projects escalated to approximately $250 million in fiscal year 1992;

(4) the inventory of multifamily housing projects subject to mortgages held by the Secretary has increased dramatically, to more than 2,400 mortgages, and approximately half of these mortgages, secured by projects with over 230,000 units, are delinquent;

(5) the inventory of insured and formerly insured multifamily housing projects is rapidly deteriorating, endangering tenants and neighborhoods;

(6) over 5 million very low-income families today have a critical need for housing that is affordable and habitable; and

(7) the current statutory framework governing the disposition of multifamily housing projects effectively impedes the Government's ability to dispose of properties, protect tenants, and ensure that projects are maintained over time.

(b) MANAGEMENT AND DISPOSITION OF MULTIFAMILY HOUSING PROJECTS.—Section 203 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z–11) is amended to read as follows:

"SEC. 203. MANAGEMENT AND DISPOSITION OF MULTIFAMILY HOUSING PROJECTS.

"(a) GOALS.—The Secretary of Housing and Urban Development (hereafter in this section referred to as the 'Secretary') shall manage or dispose of multifamily housing projects that are owned by the Secretary or that are subject to a mortgage held by the Secretary in a manner that—

"(1) is consistent with the National Housing Act and this section;

"(2) will protect the financial interests of the Federal Government; and

"(3) will, in the least costly fashion among reasonable available alternatives, further the goals of—

"(A) preserving housing so that it can remain available to and affordable by low-income persons;

"(B) preserving and revitalizing residential neighborhoods;

"(C) maintaining existing housing stock in a decent, safe, and sanitary condition;

"(D) minimizing the involuntary displacement of tenants;

"(E) maintaining housing for the purpose of providing rental housing, cooperative housing, and homeownership opportunities for low-income persons; and

"(F) minimizing the need to demolish multifamily housing projects.

The Secretary, in determining the manner in which a project is to be managed or disposed of, shall balance competing goals relating to individual projects in a manner that will further the purposes of this section.

"(b) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) MULTIFAMILY HOUSING PROJECT.—The term 'multifamily housing project' means any multifamily rental housing project that is, or prior to acquisition by the Secretary was, assisted or insured under the National Housing Act, or was subject to a loan under section 202 of the Housing Act of 1959.

"(2) SUBSIDIZED PROJECT.—The term 'subsidized project' means a multifamily housing project receiving any of the following types of assistance immediately prior to the assignment of the mortgage on such project to, or the acquisition of such mortgage by, the Secretary:

"(A) Below market interest rate mortgage insurance under the proviso of section 221(d)(5) of the National Housing Act.

"(B) Interest reduction payments made in connection with mortgages insured under section 236 of the National Housing Act.

"(C) Direct loans made under section 202 of the Housing Act of 1959.

"(D) Assistance in the form of—

"(i) rent supplement payments under section 101 of the Housing and Urban Development Act of 1965;

"(ii) additional assistance payments under section 236(f)(2) of the National Housing Act;

"(iii) housing assistance payments made under section 23 of the United States Housing Act of 1937 (as in effect before January 1, 1975); or

"(iv) housing assistance payments made under section 8 of the United States Housing Act of 1937 (excluding payments made for tenant-based assistance under section 8);

if (except for purposes of section 183(c) of the Housing and Community Development Act of 1987) such assistance payments are made to more than 50 percent of the units in the project.

"(3) FORMERLY SUBSIDIZED PROJECT.—The term 'formerly subsidized project' means a multifamily housing project owned by the Secretary that was a subsidized project immediately prior to its acquisition by the Secretary.

"(4) UNSUBSIDIZED PROJECT.—The term 'unsubsidized project' means a multifamily housing project owned by the Secretary that is not a subsidized project or a formerly subsidized project.

"(c) MANAGEMENT OR DISPOSITION OF PROPERTY.—

"(1) DISPOSITION TO PURCHASERS.—The Secretary is authorized, in carrying out this section, to dispose of a multifamily housing project owned by the Secretary on a negotiated, competitive bid, or other basis, on such terms as the Secretary deems appropriate considering the low-income character of the project and the requirements of subsection (a), to a purchaser determined by the Secretary to be capable of—

"(A) satisfying the conditions of the disposition plan;

"(B) implementing a sound financial and physical management program that is designed to enable the project to meet anticipated operating and repair expenses to ensure that the project will remain in decent, safe, and sanitary condition;

"(C) responding to the needs of the tenants and working cooperatively with tenant organizations;

"(D) providing adequate organizational, staff, and financial resources to the project; and

"(E) meeting such other requirements as the Secretary may determine.

"(2) CONTRACTING FOR MANAGEMENT SERVICES.—The Secretary is authorized, in carrying out this section—

"(A) to contract for management services for a multifamily housing project that is owned by the Secretary (or for which the Secretary is mortgagee in possession), on a negotiated, competitive bid, or other basis at a price determined by the Secretary to be reasonable, with a manager the Secretary has determined is capable of—

"(i) implementing a sound financial and physical management program that is designed to enable the project to meet anticipated operating and maintenance expenses

to ensure that the project will remain in decent, safe, and sanitary condition;

"(ii) responding to the needs of the tenants and working cooperatively with tenant organizations;

"(iii) providing adequate organizational, staff, and other resources to implement a management program; and

"(iv) meeting such other requirements as the Secretary may determine; and

"(B) to require the owner of a multifamily housing project that is subject to a mortgage held by the Secretary to contract for management services for the project in the manner described in subparagraph (A).

"(3) FORECLOSURE SALE.—In carrying out this section, the Secretary shall—

"(A) prior to foreclosing on any multifamily housing project held by the Secretary, notify both the unit of general local government in which the property is located and the tenants of the property of the proposed foreclosure sale; and

"(B) upon disposition of a multifamily housing project through a foreclosure sale, determine that the purchaser is capable of implementing a sound financial and physical management program that is designed to enable the project to meet anticipated operating and repair expenses to ensure that the project will remain in decent, safe, and sanitary condition.

"(d) MAINTENANCE OF HOUSING PROJECTS.—

"(1) HOUSING PROJECTS OWNED BY THE SECRETARY.—In the case of multifamily housing projects that are owned by the Secretary (or for which the Secretary is mortgagee in possession), the Secretary shall—

"(A) to the greatest extent possible, maintain all such occupied projects in a decent, safe, and sanitary condition;

"(B) to the greatest extent possible, maintain full occupancy in all such projects; and

"(C) maintain all such projects for purposes of providing rental or cooperative housing.

"(2) HOUSING PROJECTS SUBJECT TO A MORTGAGE HELD BY THE SECRETARY.—In the case of any multifamily housing project that is subject to a mortgage held by the Secretary, the Secretary shall require the owner of the project to carry out the requirements of paragraph (1).

"(e) REQUIRED ASSISTANCE.—In carrying out the goals specified in subsection (a), the Secretary shall take not less than one of the following actions:

"(1) CONTRACT WITH OWNER.—Enter into contracts under section 8 of the United States Housing Act of 1937, to the extent budget authority is available, with owners of multifamily housing projects that are acquired by a purchaser other than the Secretary at foreclosure or after sale by the Secretary.

"(A) SUBSIDIZED OR FORMERLY SUBSIDIZED PROJECTS RECEIVING CERTAIN ASSISTANCE.—In the case of a subsidized project referred to in subparagraph (A), (B), or (C) of subsection (b)(2) or a formerly subsidized project that was subsidized as described in any such subparagraph—

"(i) the contract shall be sufficient to assist at least all units covered by an assistance contract under any of the authorities referred to in subsection (b)(2)(D) before acquisition, unless the Secretary acts pursuant to the provisions of subparagraph (C) of this paragraph;

"(ii) in the case of units requiring project-based rental assistance pursuant to clause (i) that are occupied by families who are not eligible for assistance under section 8, a contract under this subparagraph shall also provide that when a vacancy occurs, the owner shall lease the available unit to a family eligible for assistance under section 8; and

"(iii) the Secretary shall take actions to ensure the availability and affordability, as defined in paragraph (3)(B), for the remaining useful life of the project, as defined by the Secretary, of any unit located in any project referred to in subparagraph (A), (B), or (C) of subsection (b)(2) that does not otherwise receive project-based rental assistance under this subparagraph. To carry out this clause, the Secretary may require purchasers to establish use or rent restrictions on these units.

"(B) SUBSIDIZED OR FORMERLY SUBSIDIZED PROJECTS RECEIVING OTHER ASSISTANCE.—In the case of a subsidized project referred to in subsection (b)(2)(D) or a formerly subsidized project that was subsidized as described in subsection (b)(2)(D)—

"(i) the contract shall be sufficient to assist at least all units in the project that are covered, or that were covered immediately before foreclosure on or acquisition of the project by the Secretary, by an assistance contract under any of the authorities referred to in such subsection, unless the Secretary acts pursuant to provisions of subparagraph (C); and

"(ii) in the case of units requiring project-based rental assistance pursuant to clause (i) that are occupied by families who are not eligible for assistance under section 8, a contract under this paragraph shall also provide that when a vacancy occurs, the owner shall lease the available unit to a family eligible for assistance under section 8.

"(C) EXCEPTIONS TO SUBPARAGRAPHS (A) AND (B).—In lieu of providing project-based rental assistance under subparagraph (A) or (B), the Secretary may require certain units in unsubsidized projects to contain use restrictions providing that such units will be available to and affordable by very low-income families for the remaining useful life of the project, as defined by the Secretary, if—

"(i) the Secretary matches any reduction in the number of units otherwise required to be assisted with project-based rental assistance under subparagraph (A) or (B) with at least an equivalent increase in the number of units made affordable, as such term is defined in paragraph (3)(B), to very low-income persons within unsubsidized projects;

"(ii) the Secretary makes tenant-based assistance under section 8 available to low-income tenants residing in units otherwise requiring project-based rental assistance under subparagraph (A) or (B) upon disposition; and

"(iii) the units described in clause (i) are located within the same market area.

"(D) CONTRACT REQUIREMENTS FOR UNSUBSIDIZED PROJECTS.—Notwithstanding actions that are taken pursuant to subparagraph (C), in any unsubsidized project—

"(i) the contract shall be at least sufficient to provide project-based rental assistance for all units that are covered or were covered immediately before foreclosure or acquisition by an assistance contract under—

"(I) section 8(b)(2) of the United States Housing Act of 1937, as such section existed before October 1, 1983 (new construction and substantial rehabilitation); section 8(b) of such Act (property disposition); section 8(d)(2) of such Act (project-based certificates); section 8(e)(2) of such Act (moderate rehabilitation); section 23 of such Act (as in effect before January 1, 1975); or section 101 of the Housing and Urban Development Act of 1965 (rent supplements); or

"(II) section 8 of the United States Housing Act of 1937, following conversion from section 101 of the Housing and Urban Development Act of 1965; and

"(ii) the Secretary shall make available tenant-based assistance under section 8 of the United States Housing Act of 1937 to tenants currently residing in units that were covered by an assistance contract under the Loan Management Set-Aside program under section 8(b) of the United States Housing Act of 1937 immediately before foreclosure or acquisition of the project by the Secretary.

"(2) ANNUAL CONTRIBUTION CONTRACTS.—In the case of multifamily housing projects that are acquired by a purchaser other than the Secretary at foreclosure or after sale by the Secretary, enter into annual contribution contracts with public housing agencies to provide tenant-based assistance under section 8 of the United States Housing Act of 1937 to all low-income families who are otherwise eligible for assistance, in accordance with the requirements of subparagraph (A), (B), or (D) of paragraph (1), on the date that the project is acquired by the purchaser. The Secretary shall take action under this paragraph only after making a determination that there is an adequate supply of habitable housing in the area that is available to and affordable by low-income families using such assistance. With respect to subsidized or formerly subsidized projects, actions may be taken pursuant to this paragraph in connection with not more than 10 percent of the aggregate number of units in subsidized or formerly subsidized projects disposed of by the Secretary in each fiscal year.

"(3) OTHER ASSISTANCE.—

"(A) IN GENERAL.—In accordance with the authority provided under the National Housing Act, reduce the selling price, apply use or rent restrictions on certain units, or provide other financial assistance to the owners of multifamily housing projects that are acquired by a purchaser other than the Secretary at foreclosure, or after sale by the Secretary, on terms that will ensure that at least those units otherwise required to receive project-based section 8 assistance pursuant to subparagraph (A), (B), or (D) of paragraph (1) are available to and affordable by low-income persons for the remaining useful life of the project, as defined by the Secretary.

"(B) DEFINITION.—A unit shall be considered affordable under this paragraph if—

"(i) for very low-income tenants, the rent for such unit does not exceed 30 percent of 50 percent of the area median income, as determined by the Secretary, with adjustments for family size; and

"(ii) for low-income tenants other than very low-income tenants, the rent for such unit does not exceed 30 percent of 80 percent of the area median income, as determined by the Secretary, with adjustments for family size.

"(C) VERY LOW-INCOME TENANTS.—The Secretary shall provide assistance under section 8 of the United States Housing Act of 1937 to any very low-income tenant currently residing in a unit otherwise required to receive project-based rental assistance under section 8, pursuant to subparagraph (A), (B), or (D) of paragraph (1), if the rents charged such tenants as a result of actions taken pursuant to this paragraph exceed the amount payable as rent under section 3(a) of the United States Housing Act of 1937.

"(4) TRANSFER FOR USE UNDER OTHER PROGRAMS OF THE SECRETARY.—

"(A) IN GENERAL.—Enter into an agreement providing for the transfer of a multifamily housing project—

"(i) to a public housing agency for use of the project as public housing; or

"(ii) to an owner or another appropriate entity for use of the project under section 202 of the Housing Act of 1959 or under section 811 of the Cranston-Gonzalez National Affordable Housing Act.

"(B) REQUIREMENTS FOR AGREEMENT.—The agreement described in subparagraph (A) shall—

"(i) contain such terms, conditions, and limitations as the Secretary determines appropriate, including requirements to assure use of the project under the public housing, section 202, and section 811 programs; and

"(ii) ensure that no current tenant will be displaced as a result of actions taken under this paragraph.

"(f) OTHER ASSISTANCE.—In addition to the actions required by subsection (e), the Secretary may take any of the following actions:

"(1) SHORT-TERM LOANS.—Provide short-term loans to facilitate the sale of multifamily housing projects to nonprofit organizations or to public agencies if—

"(A) authority for such loans is provided in advance in an appropriations Act;

"(B) such loans are for a term of not more than 5 years;

"(C) the Secretary is presented with satisfactory documentation, evidencing a commitment of permanent financing to replace such short-term loan, from a lender who meets standards set forth by the Secretary; and

"(D) the terms of such loans are consistent with prevailing practices in the marketplace or the provision of such loans results in no cost to the Government, as defined in section 502 of the Congressional Budget Act.

"(2) TENANT-BASED ASSISTANCE.—Make available tenant-based assistance under section 8 of the United States Housing Act of 1937 to very low-income families that do not otherwise qualify for project-based rental assistance.

"(3) ALTERNATIVE USES.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, and subject to notice to and comment from existing tenants, allow not more than—

"(i) 5 percent of the total number of units in multifamily housing projects that are disposed of by the Secretary during each fiscal year to be made available for uses other than rental or cooperative housing, including low-income homeownership opportunities, community space, office space for tenant or housing-related service providers or security programs, or small business uses, if such uses benefit the tenants of the project; and

"(ii) 5 percent of the total number of units in multifamily housing projects that are disposed of by the Secretary during each fiscal year to be used in any manner, if the Secretary and the unit of general local government or area-wide governing body determine that such use will further fair housing, community development, or neighborhood revitalization goals.

"(B) DISPLACEMENT PROTECTION.—The Secretary shall—

"(i) make available tenant-based assistance under section 8 of the United States Housing Act of 1937 to any tenant displaced as a result of actions taken by the Secretary pursuant to subparagraph (A); and

"(ii) take such actions as the Secretary determines necessary to ensure the successful use of any tenant-based assistance provided under this subparagraph.

"(4) AUTHORIZATION OF USE OR RENT RESTRICTIONS IN UNSUBSIDIZED PROJECTS.—In carrying out the goals specified in subsection (a), the Secretary may require certain units in unsubsidized projects upon disposition to contain use or rent restrictions providing that such units will be available to and affordable by very low-income persons for the remaining useful life of the property, as defined by the Secretary.

"(g) CONTRACT REQUIREMENTS.—

"(1) CONTRACT TERM.—

"(A) IN GENERAL.—Contracts for project-based rental assistance under section 8 of the United States Housing Act of 1937 provided pursuant to this section shall be for a term of not more than 15 years; and

"(B) CONTRACT TERM OF LESS THAN 15 YEARS.—To the extent that units receive project-based rental assistance for a contract term of less than 15 years, the Secretary shall require that rents charged to tenants for such units shall not exceed the amount payable for rent under section 3(a) of the United States Housing Act of 1937 for a period of at least 15 years.

"(2) CONTRACT RENT.—

"(A) IN GENERAL.—The Secretary shall set contract rents for section 8 project-based rental contracts issued under this section at levels that, in conjunction with other resources available to the purchaser, provide for the necessary costs of rehabilitation of such project and do not exceed the percentage of the existing housing fair market rents for the area, as determined by the Secretary under section 8(c) of the United States Housing Act of 1937.

"(B) UP-FRONT GRANTS.—If such an approach is determined to be more cost-effective, the Secretary may utilize the budget authority provided for project-based section 8 contracts issued under this section to—

"(i) provide project-based section 8 rental assistance; and

"(ii) provide up-front grants for the necessary costs of rehabilitation.

"(h) DISPOSITION PLAN.—

"(1) IN GENERAL.—Prior to the sale of a multifamily housing project that is owned by the Secretary, the Secretary shall develop a disposition plan for the project that specifies the minimum terms and conditions of the Secretary for disposition of the project, the initial sales price that is acceptable to the Secretary, and the assistance that the Secretary plans to make available to a prospective purchaser in accordance with this section. The initial sales price shall reflect the intended use of the property after sale.

"(2) COMMUNITY AND TENANT INPUT INTO DISPOSITION PLANS AND SALES.—

"(A) IN GENERAL.—In carrying out this section, the Secretary shall develop procedures to obtain appropriate and timely input into disposition plans from officials of the unit of general local government affected, the community in which the project is situated, and the tenants of the project.

"(B) TENANT ORGANIZATIONS.—The Secretary shall develop procedures to facilitate, where feasible and appropriate, the sale of multifamily housing projects to existing tenant organizations with demonstrated capacity or to public or nonprofit entities that represent or are affiliated with existing tenant organizations.

"(C) TECHNICAL ASSISTANCE.—

"(i) IN GENERAL.—To carry out the procedures developed under subparagraphs (A) and (B), the Secretary is authorized to provide technical assistance, directly or indirectly.

"(ii) TECHNICAL ASSISTANCE PROVIDERS.—Recipients of technical assistance funding under the Emergency Low Income Housing Preservation Act of 1987, the Low-Income Housing Preservation and Resident Homeownership Act of 1990, subtitle B of title IV of the Cranston-Gonzalez National Affordable Housing Act, shall be permitted to provide technical assistance to the extent of such funding under any of such programs or under this section, notwithstanding the source of funding.

"(iii) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 to carry out this subparagraph. In addition, the Secretary is authorized to use amounts appropriated for technical assistance under the Emergency Low Income Housing Preservation Act of 1987, the Low-Income Housing Preservation and Resident Homeownership Act of 1990, subtitle B of title IV of the Cranston-Gonzalez National Affordable Housing Act, for the provision of technical assistance under this section.

"(i) RIGHT OF FIRST REFUSAL.—

"(1) PROCEDURE.—

"(A) NOTIFICATION BY SECRETARY OF THE ACQUISITION OF TITLE.—Not later than 30 days after the Secretary acquires title to a multifamily housing project, the Secretary shall notify the appropriate unit of general local government and State agency or agencies designated by the Governor of the acquisition of such title.

"(B) EXPRESSION OF INTEREST.—Not later than 45 days after receiving notification from the Secretary under subparagraph (A), the unit of general local government or designated State agency may submit to the Secretary a preliminary expression of interest in the project. The Secretary may take such actions as may be necessary to require the unit of general local government or designated State agency to substantiate such interest.

"(C) TIMELY EXPRESSION OF INTEREST.—If the unit of general local government or designated State agency has expressed interest in the project before the expiration of the 45-day period referred to in subparagraph (B) and has substantiated such interest if requested, the Secretary shall notify the unit of general local government or designated State agency, within a reasonable period of time, of the terms and conditions of the disposition plan, in accordance with subsection (h). The Secretary shall then give the unit of general local government or designated State agency not more than 90 days after the date of such notification to make an offer to purchase the project.

"(D) NO TIMELY EXPRESSION OF INTEREST.—If the unit of general local government or designated State agency does not express interest before the expiration of the 45-day period referred to in subparagraph (B), or does not substantiate an expressed interest if requested, the Secretary may offer the project for sale to any interested person or entity.

"(2) ACCEPTANCE OF OFFERS.—If the Secretary has given the unit of general local government or designated State agency 90 days to make an offer to purchase the project, the Secretary shall accept an offer that complies with the terms and conditions of the disposition plan. The Secretary may accept an offer that does not comply with the terms and conditions of the disposition plan if the Secretary determines that the offer will further the goals specified in subsection (a) by actions that include extension of the duration of low-income affordability restrictions or otherwise restructuring the transaction in a manner that enhances the long-term affordability for low-income persons. The Secretary shall, in particular, have discretion to reduce the initial sales price in exchange for the extension of low-income affordability restrictions beyond the period of assistance contemplated by the attachment

of assistance pursuant to subsection (e) or for an increase in the number of units that are available to and affordable by low-income families. If the Secretary and the unit of general local government or designated State agency cannot reach agreement within 90 days, the Secretary may offer the project for sale to the general public.

"(3) PURCHASE BY UNIT OF GENERAL LOCAL GOVERNMENT OR DESIGNATED STATE AGENCY.—Notwithstanding any other provision of law, a unit of general local government (including a public housing agency) or designated State agency may purchase multifamily housing projects in accordance with this subsection.

"(4) APPLICABILITY.—This subsection shall apply to projects that are acquired on or after the effective date of this subsection. With respect to projects acquired before such effective date, the Secretary may apply—

"(A) the requirements of paragraphs (2) and (3) of section 203(e) as such paragraphs existed immediately before the effective date of this subsection; or

"(B) the requirements of paragraphs (1) and (2) of this subsection, if the Secretary gives the unit of general local government or designated State agency—

"(i) 45 days to express interest in the project; and

"(ii) if the unit of general local government or designated State agency expresses interest in the project before the expiration of the 45-day period, and substantiates such interest if requested, 90 days from the date of notification of the terms and conditions of the disposition plan to make an offer to purchase the project.

"(j) DISPLACEMENT OF TENANTS AND RELOCATION ASSISTANCE.—

"(1) IN GENERAL.—Whenever tenants will be displaced as a result of the demolition of, repairs to, or conversion in the use of, a multifamily housing project that is owned by the Secretary (or for which the Secretary is mortgagee in possession), the Secretary shall identify tenants who will be displaced, and shall notify all such tenants of their pending displacement and of any relocation assistance that may be available. In the case of a multifamily housing project that is subject to a mortgage held by the Secretary, the Secretary shall require the owner of the project to carry out the requirements of this paragraph, if the Secretary has authorized the demolition of, repairs to, or conversion in the use of such multifamily housing project.

"(2) RIGHTS OF DISPLACED TENANTS.—The Secretary shall assure for any such tenant (who continues to meet applicable qualification standards) the right—

"(A) to return, whenever possible, to a repaired unit;

"(B) to occupy a unit in another multifamily housing project owned by the Secretary;

"(C) to obtain housing assistance under the United States Housing Act of 1937; or

"(D) to receive any other available relocation assistance as the Secretary determines to be appropriate.

"(k) MORTGAGE AND PROJECT SALES.—

"(1) IN GENERAL.—The Secretary may not approve the sale of any loan or mortgage held by the Secretary (including any loan or mortgage owned by the Government National Mortgage Association) on any subsidized project or formerly subsidized project, unless such sale is made as part of a transaction that will ensure that such project will continue to operate at least until the maturity date of such loan or mortgage, in a manner that will provide rental housing on terms at least as advantageous to existing and future tenants as the terms required by the program under which the loan or mortgage was made or insured prior to the assignment of the loan or mortgage on such project to the Secretary.

"(2) SALE OF CERTAIN PROJECTS.—The Secretary may not approve the sale of any subsidized project—

"(A) that is subject to a mortgage held by the Secretary; or

"(B) if the sale transaction involves the provision of any additional subsidy funds by the Secretary or a recasting of the mortgage; unless such sale is made as part of a transaction that will ensure that such project will continue to operate at least until the maturity date of the loan or mortgage, in a manner that will provide rental housing on terms at least as advantageous to existing and future tenants as the terms required by the program under which the loan or mortgage was made or insured prior to the proposed sale of the project.

"(3) MORTGAGE SALES TO STATE AND LOCAL GOVERNMENTS.—Notwithstanding any provision of law that may require competitive sales or bidding, the Secretary may carry out negotiated sales of mortgages held by the Secretary that are secured by subsidized, unsubsidized, or formerly subsidized multifamily housing projects, without the competitive selection of purchasers or intermediaries, to units of general local government or State agencies, or groups of investors that include at least 1 such unit of general local government or State agency, if the negotiations are conducted with such agencies, except that—

"(A) the terms of any such sale shall include the agreement of the purchasing agency or unit of local government or State agency to act as mortgagee or owner of a beneficial interest in such mortgages, in a manner consistent with maintaining the projects that are subject to such mortgages for occupancy by the general tenant group intended to be served by the applicable mortgage insurance program, including, to the extent the Secretary determines appropriate, authorizing such unit of local government or State agency to enforce the provisions of any regulatory agreement or other program requirements applicable to the related projects; and

"(B) the sales prices for such mortgages shall be, in the determination of the Secretary, the best prices that may be obtained for such mortgages from a unit of general local government or State agency, consistent with the expectation and intention that the projects financed will be retained for use under the applicable mortgage insurance program for the life of the initial mortgage insurance contract.

"(4) SALE OF MORTGAGES COVERING UNSUBSIDIZED PROJECTS.—Notwithstanding any other provision of law, the Secretary may sell mortgages held on unsubsidized projects on such terms and conditions as the Secretary may prescribe.

"(l) PROJECT-BASED RENTAL ASSISTANCE FOR TERM OF LESS THAN 15 YEARS.—Notwithstanding subsection (g), project-based rental assistance in connection with the disposition of a multifamily housing project may be provided for a contract term of less than 15 years if such assistance is provided—

"(1) under a contract authorized under section 6 of the HUD Demonstration Act of 1993; and

"(2) pursuant to a disposition plan under this section for a project that is determined by the Secretary to be otherwise in compliance with this section.

"(m) REPORT TO CONGRESS.—Not later than June 1 of each year, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, a report describing the status of multifamily housing projects owned by or subject to mortgages held by the Secretary, on an aggregate basis, which highlights the differences, if any, between the subsidized and the unsubsidized inventory. The report shall include—

"(1) the average and median size of the projects;

"(2) the geographic locations of the projects, by State and region;

"(3) the years during which projects were assigned to the Department, and the average and median length of time that projects remain in the HUD-held inventory;

"(4) the status of HUD-held mortgages;

"(5) the physical condition of the HUD-held and HUD-owned inventory;

"(6) the occupancy profile of the projects, including the income, family size, race, and ethnic origin of current tenants, and the rents paid by such tenants;

"(7) the proportion of units that are vacant;

"(8) the number of projects for which the Secretary is mortgagee in possession;

"(9) the number of projects sold in foreclosure sales;

"(10) the number of HUD-owned projects sold;

"(11) a description of actions undertaken pursuant to this section, including—

"(A) a comparison of results between actions taken after the date of enactment of the Housing and Community Development Act of 1993 and actions taken in the years preceding such date of enactment;

"(B) a description of any impediments to the disposition or management of multifamily housing projects, together with a recommendation of proposed legislative or regulatory changes designed to ameliorate such impediments;

"(C) a description of actions taken to restructure or commence foreclosure on delinquent multifamily mortgages held by the Department; and

"(D) a description of actions taken to monitor and prevent the default of multifamily housing mortgages held by the Federal Housing Administration;

"(12) a description of any of the functions performed in connection with this section that are contracted out to public or private entities or to States, including—

"(A) the costs associated with such delegation;

"(B) the implications of contracting out or delegating such functions for current Department field or regional personnel, including anticipated personnel or work load reductions;

"(C) necessary oversight required by Department personnel, including anticipated personnel hours devoted to such oversight;

"(D) a description of any authority granted to such public or private entities or States in conjunction with the functions that have been delegated or contracted out or that are not otherwise available for use by Department personnel; and

"(E) the extent to which such public or private entities or States include tenants of multifamily housing projects in the disposition planning for such projects; and

"(13) a description of the activities carried out under subsection (i) during the preceding year.".

(c) EFFECTIVE DATE.—The Secretary shall, by notice published in the Federal Register, which shall take effect upon publication, establish such requirements as may be necessary to implement the amendments made by this section. The notice shall invite public comments and, not later than 12 months after the date on which the notice is published, the Secretary shall issue final regulations based on the initial notice, taking into account any public comments received.

SEC. 102. REPEAL OF STATE AGENCY MULTIFAMILY PROPERTY DISPOSITION DEMONSTRATION.

Section 184 of the Housing and Community Development Act of 1987 (12 U.S.C. 1701z–11 note) is hereby repealed.

SEC. 103. RTC MARKETING AND DISPOSITION OF MULTIFAMILY PROJECTS OWNED BY HUD.

(a) AUTHORIZATION.—The Secretary may carry out a demonstration with not more than 50 unsubsidized multifamily housing projects owned by the Secretary, using the RTC for the marketing and disposition of the projects. Any such demonstration shall be carried out pursuant to an agreement between the RTC and the Secretary on such terms and conditions as are acceptable to the RTC and the Secretary. The RTC shall establish policies and procedures for marketing and disposition, subject to review and approval by the Secretary.

(b) RULES GOVERNING THE DEMONSTRATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), in carrying out the provisions of this section, the RTC shall dispose of unsubsidized multifamily housing projects pursuant to the provisions of section 21A(c) of the Federal Home Loan Bank Act.

(2) EXCEPTION.—Notwithstanding paragraph (1), a very low-income tenant currently residing in a unit otherwise required under subsection (e)(1)(D) of section 203 of the Housing and Community Development Amendments of 1978 to receive project-based rental assistance under section 8, shall upon disposition pay not more than the amount payable as rent under section 3(a) of the United States Housing Act of 1937.

(c) DETERMINATION OF PROJECTS INCLUDED.—In determining which projects to include in the demonstration, the Secretary and the RTC shall take into consideration—

(1) the prior experience of the RTC in disposing of other multifamily housing projects in the jurisdictions in which such projects are located; and

(2) such other factors as the Secretary and the RTC determine to be appropriate.

(d) REIMBURSEMENT.—The agreement entered into pursuant to subsection (a) shall provide that the Secretary shall reimburse the RTC for the direct costs associated with the demonstration, including the costs of administration and marketing, property management, and any repair and rehabilitation. The Secretary may use proceeds from the sale of the projects to reimburse the RTC for its costs.

(e) REPORTS.—

(1) ANNUAL REPORTS.—The Secretary and the RTC shall jointly submit an annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives detailing the progress of the demonstration.

(2) FINAL REPORT.—Not later than 3 months after the completion of the demonstration, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report describing the results of the demonstration and any recommendations for legislative action.

(f) TERMINATION.—The demonstration under this section shall not extend beyond the termination date of the RTC.

SEC. 104. CIVIL MONEY PENALTIES AGAINST GENERAL PARTNERS AND CERTAIN MANAGING AGENTS OF MULTIFAMILY HOUSING PROJECTS.

(a) CIVIL MONEY PENALTIES AGAINST MULTIFAMILY MORTGAGORS.—Section 537 of the National Housing Act (12 U.S.C. 1735f–15) is amended—

(1) in subsection (b)(1), by inserting after "mortgagor" the second place it appears the following: "or general partner of a partnership mortgagor";

(2) in subsection (c)—

(A) by striking the heading and inserting the following:

"(c) OTHER VIOLATIONS.—"; and

(B) in paragraph (1)—

(i) by striking "The Secretary may" and all that follows through the colon and inserting the following:

"(A) LIABLE PARTIES.—The Secretary may also impose a civil money penalty under this section on—

"(i) any mortgagor of a property that includes 5 or more living units and that has a mortgage insured, coinsured, or held pursuant to this Act;

"(ii) the general partner of a partnership mortgagor of such property; or

"(iii) any agent employed to manage the property that has an identity of interest with the mortgagor or the general partner of a partnership mortgagor of such property.

"(B) VIOLATIONS.—A penalty may be imposed under this paragraph for knowingly and materially taking any of the following actions:";

(ii) in subparagraph (B), as redesignated, by redesignating subparagraphs (A) through (L) as clauses (i) through (xii), respectively; and

(iii) by adding after clause (xii), as redesignated, the following new clauses:

"(xiii) Failure to maintain the premises, accommodations, and the grounds and equipment appurtenant thereto in good repair and condition in accordance with regulations and requirements of the Secretary, except that nothing in this clause shall have the effect of altering the provisions of an existing regulatory agreement or federally insured mortgage on the property.

"(xiv) Failure, by a mortgagor or general partner of a partnership mortgagor, to provide management for the project that is acceptable to the Secretary pursuant to regulations and requirements of the Secretary."; and

(iv) in the last sentence, by deleting "of such agreement" and inserting "of this subsection";

(3) in subsection (d)(1)(B), by inserting after "mortgagor" the following: ", general partner of a partnership mortgagor, or identity of interest agent employed to manage the property,";

(4) in subsection (d), by adding at the end the following new paragraph:

"(5) PAYMENT OF PENALTY.—No payment of a civil money penalty levied under this section shall be payable out of project income.";

(5) in subsection (e)(1), by deleting "a mortgagor" and inserting "an entity or person";

(6) in subsection (f), by inserting after "mortgagor" each place such term appears the following: ", general partner of a partnership mortgagor, or identity of interest agent employed to manage the property,";

(7) by striking the heading of subsection (f) and inserting the following: "CIVIL MONEY PENALTIES AGAINST MULTIFAMILY MORTGAGORS, GENERAL PARTNERS OF PARTNERSHIP MORTGAGORS, AND CERTAIN MANAGING AGENTS";

(8) in subsection (j), by striking "all civil money" and all that follows through the period at the end and inserting the following: "the Secretary shall apply all civil money penalties collected under this section, or any portion of such penalties, to the fund established under section 201(j) of the Housing and Community Development Amendments of 1978."; and

(9) by adding at the end the following new subsection:

"(k) IDENTITY OF INTEREST MANAGING AGENT.—For purposes of this section, the term 'identity of interest managing agent' means an ownership entity, or its general partner or partners, which has an ownership interest in and which exerts effective control over the property's ownership.".

(b) IMPLEMENTATION.—The Secretary shall implement the amendments made by this section by regulation issued after notice and opportunity for public comment. A proposed rule shall be published not later than March 1, 1994. The notice shall seek comments primarily as to the definition of the terms 'ownership interest in' and 'effective control', as such terms are used in the definition of identity of interest managing agent.

(c) APPLICABILITY OF AMENDMENTS.—The amendments made by subsection (a) shall apply only with respect to—

(1) violations that occur on or after the effective date of the final regulations implementing the amendments made by this section; and

(2) in the case of a continuing violation (as determined by the Secretary), any portion of a violation that occurs on or after such date.

SEC. 105. MODELS FOR PROPERTY DISPOSITION.

The Federal Housing Commissioner shall develop models which shall be designed to assist States and units of general local government in using other Federal programs for the purpose of acquiring, rehabilitating, or otherwise participating in—

(1) the disposition, pursuant to section 203 of the Housing and Community Development Amendments of 1978, of multifamily housing projects owned by the Secretary; or

(2) the sale, pursuant to section 203 of the Housing and Community Development Amendments of 1978, of multifamily housing projects subject to mortgages held by the Secretary.

SEC. 106. PREVENTING MORTGAGE DEFAULTS.

(a) MULTIFAMILY HOUSING PLANNING AND INVESTMENT STRATEGIES.—

(1) PREPARATION OF ASSESSMENTS FOR INDEPENDENT ENTITIES.—Section 402(a) of the Housing and Community Development Act of 1992 (12 U.S.C. 1715–1a note) is amended by adding at the end the following: "The assessment shall be prepared by an entity that does not have an identity of interest with the owner.".

(2) TIMING OF SUBMISSION OF NEEDS ASSESSMENTS.—Section 402(b) of the Housing and Community Development Act of 1992 (12 U.S.C. 17152–1a note) is amended to read as follows:

"(b) TIMING.—To ensure that assessments for all covered multifamily housing properties will be submitted on or before the conclusion of fiscal year 1997, the Secretary shall require the owners of such properties,

including covered multifamily housing properties for the elderly, to submit the assessments for the properties in accordance with the following schedule:

"(1) For fiscal year 1994, 10 percent of the aggregate number of such properties.

"(2) For each of fiscal years 1995, 1996, and 1997, an additional 30 percent of the aggregate number of such properties.".

(3) REVIEW OF COMPREHENSIVE NEEDS ASSESSMENTS.—Section 404(d) of the Housing and Community Development Act of 1992 (12 U.S.C. 1715–1a note) is amended to read as follows:

"(d) REVIEW.—

"(1) IN GENERAL.—The Secretary shall review each comprehensive needs assessment for completeness and adequacy before the expiration of the 90-day period beginning on the receipt of the assessment.

"(2) INCOMPLETE OR INADEQUATE ASSESSMENTS.—If the Secretary determines that the assessment is substantially incomplete or inadequate, the Secretary shall—

"(A) provide the owner with a reasonable amount of time to resubmit an amended assessment; and

"(B) indicate to the owner the portion of the original assessment requiring completion or other revision.".

(4) REPEAL OF NOTICE PROVISION.—Section 404(f) of the Housing and Community Development Act of 1992 (12 U.S.C. 1715–1a note) is hereby repealed.

(5) FUNDING.—Title IV of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–1a note) is amended by adding at the end the following new section:

"SEC. 409. FUNDING.

"(a) ALLOCATION OF ASSISTANCE.—Based upon needs identified in comprehensive needs assessments, and subject to otherwise applicable program requirements, including selection criteria, the Secretary may allocate the following assistance to owners of covered multifamily housing projects and may provide such assistance on a noncompetitive basis:

"(1) Operating assistance and capital improvement assistance for troubled multifamily housing projects pursuant to section 201 of the Housing and Community Development Amendments of 1978, except for assistance set aside under section 201(n)(1).

"(2) Loan management assistance available pursuant to section 8 of the United States Housing Act of 1937.

"(b) OPERATING ASSISTANCE AND CAPITAL IMPROVEMENT ASSISTANCE.—In providing assistance under subsection (a) the Secretary shall use the selection criteria set forth in section 201(n) of the Housing and Community Development Amendments.

"(c) AMOUNT OF ASSISTANCE.—The Secretary may fund all or only a portion of the needs identified in the capital needs assessment of an owner selected to receive assistance under this section.".

(b) FLEXIBLE SUBSIDY PROGRAM.—

(1) DELETION OF UTILITY COST REQUIREMENTS.—Section 201(i) of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z–1a(i)) is hereby repealed.

(2) REPEAL OF MANDATORY CONTRIBUTION FROM OWNER.—Section 201(k)(2) of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z–1a(k)(2)) is amended by striking ", except that" and all that follows through "such loan".

(3) FUNDING.—Section 201(n) of the Housing and Community Development Amendments of 1978 (42 U.S.C. 1715z–1a(n)) is amended to read as follows:

"(n)(1) For fiscal year 1994 only, in providing, and contracting to provide, assistance for capital improvements under this section, the Secretary shall set aside an amount, as determined by the Secretary, for projects that are eligible for incentives under section 224(b) of the Emergency Low Income Housing Preservation Act of 1987, as such section existed before the date of enactment of the Cranston-Gonzalez National Affordable Housing Act. The Secretary may make such assistance available on a noncompetitive basis.

"(2) Except as provided in paragraph (3), with respect to assistance under this section not set aside for projects under paragraph (1), the Secretary—

"(A) may award assistance on a noncompetitive basis; and

"(B) shall award assistance to eligible projects on the basis of—

"(i) the extent to which the project is physically or financially troubled, as evidenced by the comprehensive needs assessment submitted in accordance with title IV of the Housing and Community Development Act of 1992; and

"(ii) the extent to which such assistance is necessary and reasonable to prevent the default of federally insured mortgages.

"(3) The Secretary may make exceptions to selection criteria set forth in paragraph (2) to permit the provision of assistance to eligible projects based upon—

"(A) the extent to which such assistance is necessary to prevent the imminent foreclosure or default of a project whose owner has not submitted a comprehensive needs assessment pursuant to title IV of the Housing and Community Development Act of 1992;

"(B) the extent to which the project presents an imminent threat to the life, health, and safety of project residents; or

"(C) such other criteria as the Secretary may specify by regulation or by notice printed in the Federal Register.

"(4) In providing assistance under this section, the Secretary shall take into consideration—

"(A) the extent to which there is evidence that there will be significant opportunities for residents (including a resident council or resident management corporation, as appropriate) to be involved in the management of the project (except that this paragraph shall have no application to projects that are owned as cooperatives); and

"(B) the extent to which there is evidence that the project owner has provided competent management and complied with all regulatory and administrative instructions (including such instructions with respect to the comprehensive servicing of multifamily projects as the Secretary may issue).".

(c) IMPLEMENTATION AND EFFECTIVE DATE FOR SUBSECTIONS (a) AND (b).—

(1) IN GENERAL.—The Secretary shall, by notice published in the Federal Register, which shall take effect upon publication, establish such requirements as may be necessary to implement the amendments made by subsections (a) and (b). The notice shall invite public comments and, not later than 12 months after the date on which the notice is published, the Secretary shall issue final regulations based on the initial notice, taking into account any public comments received.

(2) CONTENTS.—The notice and the regulations shall describe the method by which the Secretary allocates assistance in accordance with section 409 of the Housing and Community Development Act of 1992 (as added by section 106(a) of this Act) and paragraphs (2) and (3) of section 201(n) of the Housing and Community Development Amendments of 1978.

(3) ANNUAL PUBLICATIONS.—The Secretary shall publish annually in the Federal Register—

(A) the method by which the Secretary determines which capital needs assessments will be received each year, in accordance with sections 402(b) and 404(d) of the Housing and Community Development Act of 1992; and

(B) a list of all owners of covered multifamily housing projects, by project, that have received funding under—

(i) section 409 of the Housing and Community Development Act of 1992 (as added by section 106(a) of this Act); or

(ii) paragraphs (2) and (3) of section 201(n) of the Housing and Community Development Amendments of 1978.

(4) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsections (a) and (b) shall take effect for amounts made available for fiscal year 1995.

(B) EXCEPTION.—Notwithstanding subparagraph (A), section 201(n)(1) of the Housing and Community Development Amendments of 1978 (as added by subsection (b)(3)) shall take effect on the date of enactment of this Act.

(d) STREAMLINED REFINANCING.—As soon as practicable, the Secretary shall implement a streamlined refinancing program under the authority provided in section 223 of the National Housing Act to prevent the default of mortgages insured by the FHA which cover multifamily housing projects, as defined in section 203(b) of the Housing and Community Development Amendments of 1978.

(e) PARTIAL PAYMENTS OF CLAIM.—

(1) IN GENERAL.—Notwithstanding any other provision of law, if the Secretary is requested to accept assignment of a mortgage insured by the Secretary that covers a multifamily housing project, as such term is defined in section 203(b) of the Housing and Community Development Amendments of 1978, and the Secretary determines that partial payment would be less costly to the Federal Government than other reasonable alternatives for maintaining the low-income character of the project, the Secretary may request the mortgagee, in lieu of assignment, to—

(A) accept partial payment of the claim under the mortgage insurance contract; and

(B) recast the mortgage, under such terms and conditions as the Secretary may determine.

(2) CONDITION.—As a condition to a partial claim payment under this section, the mortgagor shall agree to repay to the Secretary the amount of such payment and such obligation shall be secured by a second mortgage on the property on such terms and conditions as the Secretary may determine.

(f) GAO STUDY ON PREVENTION OF DEFAULT.—

(1) IN GENERAL.—Not later than June 1, 1994, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report that evaluates the adequacy of loan loss reserves in the General Insurance and Special Risk Insurance Funds and presents recommendations for the Secretary to prevent losses from occurring.

(2) CONTENTS.—The report submitted under paragraph (1) shall—

(A) evaluate the factors considered in arriving at loss estimates and determine whether other factors should be considered;

(B) determine the relative benefit of creating a new, actuarially sound insurance fund

for all new multifamily housing insurance commitments; and

(C) recommend alternatives to the Secretary's current procedures for preventing the future default of multifamily housing project mortgages insured under title II of the National Housing Act.

(g) GAO STUDY ON ACTUARIAL SOUNDNESS OF CERTAIN INSURANCE PROGRAMS.—

(1) IN GENERAL.—Not later than June 1, 1994, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report that evaluates, in connection with the General Insurance Fund, the role and performance of the nursing home, hospital, and retirement service center insurance programs.

(2) CONTENTS.—The reports submitted under paragraph (1) shall—

(A) evaluate the strategic importance of these insurance programs to the mission of the FHA;

(B) evaluate the impact of these insurance programs upon the financial performance of the General Insurance Fund;

(C) assess the potential losses expected under these programs through fiscal year 1999;

(D) evaluate the risk of these programs to the General Insurance Fund in connection with changes in national health care policy;

(E) assess the ability of the FHA to manage these programs; and

(F) make recommendations for any necessary changes.

(h) ANNUAL ACTUARIAL REVIEW.—

(1) SPECIAL RISK INSURANCE FUND.—Section 238(c) of the National Housing Act (12 U.S.C. 1715z–3(c)) is amended by adding at the end the following new paragraph:

"(3) The Secretary shall undertake an annual review of the actuarial soundness of each of the insurance programs comprising the Special Risk Insurance Fund, and shall present findings from such review to the Congress in the FHA Annual Management Report.".

(2) GENERAL INSURANCE FUND.—Section 519 of the National Housing Act (12 U.S.C. 1735c) is amended by adding at the end the following new subsection:

"(g) ANNUAL ACTUARIAL REVIEW.—The Secretary shall undertake an annual review of the actuarial soundness of each of the insurance programs comprising the General Insurance Fund, and shall present findings from such review to the Congress in the FHA Annual Management Report.".

(i) ALTERNATIVE USES FOR PREVENTION OF DEFAULT.—

(1) IN GENERAL.—Subject to notice and comment from existing tenants, to prevent the imminent default of a multifamily housing project subject to a mortgage insured under title II of the National Housing Act, the Secretary may authorize the mortgagor to use the project for purposes not contemplated by or permitted under the regulatory agreement, if—

(A) such other uses are acceptable to the Secretary;

(B) such other uses would be otherwise insurable under title II of the National Housing Act;

(C) the outstanding principal balance on the mortgage covering such project is not increased;

(D) any financial benefit accruing to the mortgagor shall, subject to the discretion of the Secretary, be applied to project reserves or project rehabilitation; and

(E) such other use serves a public purpose.

(2) DISPLACEMENT PROTECTION.—The Secretary shall—

(A) make available tenant-based assistance under section 8 of the United States Housing Act of 1937 to any tenant displaced as a result of actions taken by the Secretary pursuant to paragraph (1); and

(B) take such actions as the Secretary determines necessary to ensure the successful use of any tenant-based assistance provided under this paragraph.

(3) IMPLEMENTATION.—The Secretary shall, by notice published in the Federal Register, which shall take effect upon publication, establish such requirements as may be necessary to implement the amendments made by this subsection. The notice shall invite public comments and, not later than 12 months after the date on which the notice is published, the Secretary shall issue final regulations based on the initial notice, taking into account any public comments received.

(j) MORTGAGE SALE DEMONSTRATION.—The Secretary may carry out a demonstration to test the feasibility of restructuring and disposing of troubled multifamily mortgages held by the Secretary through the establishment of partnerships between public, private, and nonprofit entities.

(k) NATIONAL INTERAGENCY TASK FORCE ON MULTIFAMILY HOUSING.—

(1) FUNCTIONS.—Section 543(e)(1) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) is amended—

(A) in subparagraph (D), by striking "and" at the end;

(B) in subparagraph (E), by striking the period at the end and inserting "; and"; and

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

"(F) make available appropriate information to the Department of Housing and Urban Development that will assist in preventing the future default of multifamily housing project mortgages insured under title II of the National Housing Act.".

(2) USE OF APPROPRIATIONS AUTHORITY.—Section 543(h) of the Housing and Community Development Act of 1992 is amended by inserting after the first sentence the following: "The Secretary may use any non-Federal or private funding or may use the authority provided for salaries and expenses in appropriations Acts for activities carried out under this section.

SEC. 107. INTEREST RATES ON ASSIGNED MORTGAGES.

Section 7(i)(5) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(i)(5)) is amended by striking the first semicolon, and all that follows through "as determined by the Secretary".

SEC. 108. AUTHORIZATION OF APPROPRIATIONS.

(a) SPECIAL RISK INSURANCE FUND.—Section 238(b) of the National Housing Act (12 U.S.C. 1715z–3(b)) is amended by striking the fifth sentence.

(b) GENERAL INSURANCE FUND.—Section 519 of the National Housing Act (12 U.S.C. 1735c) is amended—

(1) by striking subsection (f); and

(2) by redesignating subsection (g) (as added by section 106(h)(2) of this Act) as subsection (f).

(c) MULTIFAMILY INSURANCE FUND APPROPRIATIONS.—Title V of the National Housing Act (12 U.S.C. 1731a et seq.) is amended by adding at the end the following new section:

"SEC. 541. AUTHORIZATION OF APPROPRIATIONS FOR GENERAL AND SPECIAL RISK INSURANCE FUNDS.

"There are authorized to be appropriated $350,000,000 for fiscal year 1994 and $360,500,000 for fiscal year 1995, to be allocated in any manner that the Secretary determines appropriate, for the following costs incurred in conjunction with programs authorized under the General Insurance Fund, as provided by section 519, and the Special Risk Insurance Fund, as provided by section 238:

"(1) The cost to the Government, as defined in section 502 of the Congressional Budget Act, of new insurance commitments.

"(2) The cost to the Government, as defined in section 502 of the Congressional Budget Act, of modifications to existing loans, loan guarantees, or insurance commitments.

"(3) The cost to the Government, as defined in section 502 of the Congressional Budget Act, of loans provided under section 203(f) of the Housing and Community Development Amendments of 1978.

"(4) The costs of the rehabilitation of multifamily housing projects (as defined in section 203(b) of the Housing and Community Development Amendments of 1978) upon disposition by the Secretary.".

TITLE II—ENHANCED PROGRAM FLEXIBILITY

Subtitle A—Office of Public and Indian Housing

SEC. 201. REVITALIZATION OF SEVERELY DISTRESSED PUBLIC HOUSING.

(a) IN GENERAL.—Section 24 of the United States Housing Act of 1937 (42 U.S.C. 1437v) is amended—

(1) by amending subsection (b) to read as follows:

"(b) [RESERVED].";

(2) in subsection (c)(2), by striking "$200,000" and inserting "$500,000";

(3) in subsection (c)(3)—

(A) by redesignating subparagraphs (E) through (I) as subparagraphs (F) through (J), respectively;

(B) by inserting after subparagraph (D) the following new subparagraph:

"(E) planning for community service and support service activities to be carried out by the public housing agency, residents, members of the community, and other persons and organizations willing to contribute to the social, economic, or physical improvement of the community (community service is a required element of the revitalization program);"; and

(C) in subparagraph (H), as redesignated, by striking "designing a suitable replacement housing plan," and inserting "designing suitable relocation and replacement housing plans,";

(4) in subsection (c)(4)—

(A) by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively; and

(B) by inserting after subparagraph (C) the following new subparagraph:

"(D) a description of the community service and support service planning activities to be carried out by the public housing agency, residents, members of the community, and other persons and organizations willing to contribute to the social, economic, or physical improvement of the community;";

(5) in subsection (c)(5)—

(A) by striking subparagraph (E) and redesignating subparagraphs (F) and (G) as subparagraphs (E) and (F), accordingly;

(B) in subparagraph (E), as redesignated, by inserting before the semicolon ", taking into account the condition of the stock of the public housing agency as a whole"; and

(C) by adding at the end the following:

"In making grants under this subsection, the Secretary may select a lower-rated, approvable application over a higher-rated application to increase the national geographic diversity among applications approved under this section.";

(6) in subsection (d)(2)—

(A) by redesignating subparagraphs (E) through (I) as subparagraphs (G) through (K), respectively;

(B) by inserting after subparagraph (D) the following new subparagraphs:

"(E) community service activities to be carried out by residents, members of the community, and other persons willing to contribute to the social, economic, or physical improvement of the community (community service is a required element of the revitalization program);

"(F) replacement of public housing units;"; and

(C) in subparagraph (K), as redesignated—

(i) by striking "15 percent" and inserting "20 percent"; and

(ii) by inserting before the period at the end the following: ", except that an amount equal to 15 percent of the amount of any grant under this subsection used for support services shall be contributed from non-Federal sources (which contribution shall be in the form of cash, administrative costs, and the reasonable value of in-kind contributions and may include funding under title I of the Housing and Community Development Act of 1974)";

(7) in subsection (d)(3)—

(A) by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively; and

(B) by inserting after subparagraph (C) the following new subparagraph:

"(D) a description of the community service and support service activities to be carried out by the public housing agency, residents, members of the community, and other persons and organizations willing to contribute to the social, economic, or physical improvement of the community;";

(8) in subsection (d)(4)—

(A) in subparagraph (D), by inserting "(with assistance from the Department of Housing and Urban Development if necessary)" after "applicant";

(B) by striking subparagraph (E) and redesignating subparagraphs (F) and (G) as subparagraphs (E) and (F), respectively;

(C) in subparagraph (E), as redesignated, by inserting before the semicolon ", taking into account the condition of the applicant's stock as a whole"; and

(D) by adding at the end the following:

"In making grants under this subsection, the Secretary may select a lower-rated, approvable application over a higher-rated application to increase the national geographic diversity among applications approved under this section.";

(9) in subsection (e), by adding at the end the following new paragraph:

"(3) DEMOLITION AND REPLACEMENT.—

"(A) IN GENERAL.—Notwithstanding any other applicable law or regulation, a revitalization plan under this section may include demolition and replacement on site or in the same neighborhood if the number of replacement units provided in the same neighborhood is fewer than the number of units demolished as a result of the revitalization effort.

"(B) TENANT-BASED ASSISTANCE.—Notwithstanding the limitations contained in subparagraph (A)(v) or (C) of section 18(b)(3), a public housing agency may replace not more than one-third of the units demolished or disposed of through a revitalization project under this section with tenant-based assistance under section 8.";

(10) in subsection (h)—

(A) by amending paragraph (5) to read as follows:

"(5) SEVERELY DISTRESSED PUBLIC HOUSING.—The term 'severely distressed public housing' means a public housing project or a building in a project—

"(A) that requires major redesign, reconstruction, redevelopment, or partial or total demolition to correct serious deficiencies in the original design (including inappropriately high population density), deferred maintenance, physical deterioration or obsolescence of major systems, and other deficiencies in the physical plant of the project; and

"(B) that either—

"(i)(I) is occupied predominantly by families with children that have extremely low incomes, high rates of unemployment, and extensive dependency on various forms of public assistance; and

"(II) has high rates of vandalism and criminal activity (including drug-related criminal activity); or

"(ii) that has a vacancy rate, as determined by the Secretary, of 50 percent or more;

"(C) that cannot be revitalized through assistance under other programs, such as the programs under sections 9 and 14, or through other administrative means because of the inadequacy of available funds; and

"(D) that, in the case of individual buildings, the building is, in the Secretary's determination, sufficiently separable from the remainder of the project to make use of the building feasible for purposes of this section."; and

(B) by adding at the end the following new paragraphs:

"(6) COMMUNITY SERVICE.—The term 'community service' means services provided on a volunteer or limited stipend basis for the social, economic, or physical improvement of the community to be served.

"(7) SUPPORT SERVICES.—The term 'support services' includes all activities designed to lead toward upward mobility, self-sufficiency, and improved quality of life for the residents of the project, such as literacy training, job training, day care, and economic development. Such activities may allow for the participation of residents of the neighborhood."; and

(11) in subsection (i)—

(A) by striking paragraph (2); and

(B) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(b) CONFORMING AMENDMENT.—The first sentence of section 25(m)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437w(m)(1)) is amended to read as follows:

"(1) The term 'eligible housing' means a public housing project, or one or more buildings within a project, that is owned or operated by a public housing agency that has been troubled for not less than 3 years and that, as determined by the Secretary, has failed to make substantial progress toward effective management.".

(c) USE OF TENANT-BASED ASSISTANCE FOR REPLACEMENT HOUSING.—Section 18(b)(3)(C)(i) of the United States Housing Act of 1937 (42 U.S.C. 1437p(b)(3)(C)(i)) is amended by striking "15-year".

(d) REPLACEMENT HOUSING OUTSIDE THE JURISDICTION OF THE PHA.—Section 18(b)(3) of the United States Housing Act of 1937 (42 U.S.C. 1437p(b)(3)), as amended by subsection (c), is amended—

(1) by redesignating subparagraphs (D) through (H) as subparagraphs (E) through (I), respectively; and

(2) by inserting after subparagraph (C) the following new subparagraph:

"(D) may provide that all or part of such additional dwelling units may be located outside of the jurisdiction of the public housing agency (the 'original agency') if—

"(i) the location is in the same housing market area as the original agency, as determined by the Secretary;

"(ii) the plan contains an agreement between the original agency and the public housing agency in the alternate location or other public or private entity that will be responsible for providing the additional units in the alternate location ('alternate agency or entity') that the alternate agency or entity will, with respect to the dwelling units involved—

"(I) provide the dwelling units in accordance with subparagraph (A);

"(II) complete the plan on schedule in accordance with subparagraph (F);

"(III) meet the requirements of subparagraph (G) and the maximum rent provisions of subparagraph (H); and

"(IV) not impose a local residency preference on any resident of the jurisdiction of the original agency for purposes of admission to any such units; and

"(iii) the arrangement is approved by the unit of general local government for the jurisdiction in which the additional units will be located;".

SEC. 202. DISALLOWANCE OF EARNED INCOME FOR RESIDENTS WHO OBTAIN EMPLOYMENT.

(a) IN GENERAL.—Section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437a) is amended—

(1) by striking the undesignated paragraph at the end of subsection (c)(3) (as added by section 515(b) of the Cranston-Gonzalez National Affordable Housing Act); and

(2) by adding at the end the following new subsection:

"(d) DISALLOWANCE OF EARNED INCOME FROM PUBLIC HOUSING RENT DETERMINATIONS.—Notwithstanding any other provision of law, the rent payable under subsection (a) for any public housing unit by a family whose income increases as a result of employment of a member of the family who was previously unemployed for one or more years (including a family whose income increases as a result of the participation of a family member in the Family Self-Sufficiency program or other job training program) shall not be increased for a period of 18 months, beginning with the commencement of employment as a result of the increased income due to such employment. After the expiration of the 18-month period, rent increases due to the continued employment of such family member shall be limited to 10 percent per year. In no case shall rent exceed the amount determined under subsection (a).".

(b) APPLICABILITY OF AMENDMENT.—Notwithstanding the amendment made by subsection (a), any resident of public housing participating in the program under the authority contained in the undesignated paragraph at the end of section 3(c)(3) of the United States Housing Act of 1937 as such paragraph existed before the date of enactment of this subsection shall continue to be governed by such authority.

SEC. 203. CEILING RENTS BASED ON REASONABLE RENTAL VALUE.

(a) AMENDMENT.—Section 3(a)(2)(A)(iii) of the United States Housing Act of 1937 (42 U.S.C. 1437a(a)(2)(A)(iii)) is amended to read as follows:

"(iii) is not less than the reasonable rental value of the unit, as determined by the Secretary.".

(b) REGULATIONS.—

(1) IN GENERAL.—The Secretary shall, by regulation, after notice and an opportunity for public comment, establish such requirements as may be necessary to carry out the provisions of section 3(a)(2)(A) of the United States Housing Act of 1937, as amended by subsection (a).

(2) APPLICABILITY.—Except in the case of an Indian housing authority, the regulations issued pursuant to paragraph (1) shall not apply to scattered site public housing units.

(3) TRANSITION RULE.—Prior to the issuance of final regulations under paragraph (1), a public housing agency may implement ceiling rents which shall be—

(A) determined in accordance with section 3(a)(2)(A) of the United States Housing Act of 1937, as such section existed before the date of enactment of this Act; or

(B) equal to the 95th percentile of the rent paid for a unit of comparable size by tenants in the same project or a group of comparable projects totaling 50 units or more.

SEC. 204. RESIDENT MANAGEMENT PROGRAM.

Section 20(f) of the United States Housing Act of 1937 (42 U.S.C. 1437r(f)) is amended—

(1) in paragraph (2), by striking "$100,000" and inserting "$250,000"; and

(2) in paragraph (3), by adding at the end the following: "The Secretary may use not more than 10 percent of the amounts made available under this subsection for program monitoring and evaluation, technical assistance, and information dissemination.".

Subtitle B—Office of Community Planning and Development

SEC. 211. ECONOMIC DEVELOPMENT INITIATIVE.

(a) SECTION 108 ELIGIBLE ACTIVITIES.—

(1) IN GENERAL.—Section 108(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5308(a)) is amended—

(A) in the first sentence—

(i) by striking "or" after "section 105(a);"; and

(ii) by inserting before the period the following: "; (5) the acquisition, construction, reconstruction, or installation of public facilities (except for buildings for the general conduct of government); or (6) in the case of colonias, public works and site or other improvements"; and

(B) by striking the second sentence and inserting the following: "A guarantee under this section (including a guarantee combined with a grant under subsection (q)) may be used to assist a grantee in obtaining financing only if the grantee has made efforts to obtain the financing without the use of the guarantee (and, if applicable, the grant) and cannot complete the financing consistent with the timely execution of the proposed activities and projects without the guarantee (or, if applicable, the grant).".

(2) DEFINITION.—Section 102(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)) is amended by adding at the end the following new paragraph:

"(24) The term 'colonia' means any identifiable community that—

"(A) is in the State of Arizona, California, New Mexico, or Texas;

"(B) is in the United States-Mexico border region;

"(C) is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing; and

"(D) was in existence as a colonia before the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act.".

(b) ECONOMIC DEVELOPMENT GRANTS.—

(1) IN GENERAL.—Section 108 of the Housing and Community Development Act of 1974 (42 U.S.C. 5308) is amended by adding at the end the following new subsection:

"(q) ECONOMIC DEVELOPMENT GRANTS.—

"(1) AUTHORIZATION.—The Secretary may make grants in connection with notes or other obligations guaranteed under this section to eligible public entities for the purpose of enhancing the security of loans guaranteed under this section or improving the viability of projects financed with loans guaranteed under this section.

"(2) ELIGIBLE ACTIVITIES.—Assistance under this subsection may be used for the purposes of and in conjunction with projects and activities assisted under subsection (a).

"(3) APPLICATIONS.—Applications for assistance under this subsection shall be submitted by eligible public entities in the form and in accordance with the procedures established by the Secretary. Eligible public entities may apply for grants only in conjunction with a request for guarantee under subsection (a).

"(4) SELECTION CRITERIA.—The Secretary shall establish criteria for awarding assistance under this subsection. Such criteria shall include—

"(A) the extent of need for such assistance;

"(B) the level of distress in the community to be served and in the jurisdiction applying for assistance;

"(C) the quality of the plan proposed and the capacity or potential capacity of the applicant to successfully carry out the plan; and

"(D) such other factors as the Secretary determines to be appropriate.".

(2) CONFORMING AMENDMENT.—Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) is amended—

(A) in section 101(c) in the second sentence, by inserting "or a grant" after "guarantee"; and

(B) in section 104(b)(3), by inserting "or a grant" after "guarantee".

(c) USE OF UDAG RECAPTURES.—Section 119(o) of the Housing and Community Development Act of 1974 (42 U.S.C. 5318(o)) is amended by inserting before the period the following: ", except that amounts available to the Secretary for use under this subsection as of October 1, 1993, and amounts released to the Secretary pursuant to subsection (t) may be used to provide grants under section 108(q).".

(d) UDAG AMNESTY PROGRAM.—

(1) AMENDMENT.—Section 119 of the Housing and Community Development Act of 1974 (42 U.S.C. 5318) is amended by adding at the end the following new subsection:

"(t) UDAG AMNESTY PROGRAM.—If a grant or a portion of a grant under this section remains unexpended as of the issuance of a notice implementing this subsection, the grantee may enter into an agreement, as provided under this subsection, with the Secretary to receive a percentage of the grant amount and relinquish all claims to the balance of the grant within 90 days of the issuance of notice implementing this subsection (or such later date as the Secretary may approve). The Secretary shall not recapture any funds obligated pursuant to this section during a period beginning on the date of enactment of the Housing and Community Development Act of 1993 until 90 days after the issuance of a notice implementing this subsection. A grantee may receive as a grant under this subsection—

"(1) 33 percent of such unexpended amounts if—

"(A) the grantee agrees to expend not less than one-half of the amount received for activities authorized pursuant to section 108(q) and to expend such funds in conjunction with a loan guarantee made under section 108 at least equal to twice the amount of the funds received; and

"(B)(i) the remainder of the amount received is used for economic development activities eligible under title I of this Act; and

"(ii) except when waived by the Secretary in the case of a severely distressed jurisdiction, not more than one-half of the costs of activities under subparagraph (B) are derived from such unexpended amounts; or

"(2) 25 percent of such unexpended amounts if—

"(A) the grantee agrees to expend such funds for economic development activities eligible under title I of this Act; and

"(B) except when waived by the Secretary in the case of a severely distressed jurisdiction, not more than one-half of the costs of such activities are derived from such unexpended amount.".

(2) IMPLEMENTATION.—Notwithstanding subsection (f), not later than 10 days after the date of enactment of this Act, the Secretary shall, by notice published in the Federal Register, which shall take effect upon publication, establish such requirements as may be necessary to implement the amendments made by this subsection.

(e) GUARANTEE OF OBLIGATIONS BACKED BY SECTION 108 LOANS.—Section 108 of the Housing and Community Development Act of 1974 (42 U.S.C. 5308), as amended by subsection (b), is amended by adding at the end the following new subsection:

"(r) GUARANTEE OF OBLIGATIONS BACKED BY SECTION 108 LOANS.—

"(1) AUTHORIZATION.—The Secretary may, upon such terms and conditions as the Secretary deems appropriate, guarantee the timely payment of the principal of and interest on trust certificates or other obligations that—

"(A) are offered by the Secretary, or by any other offeror approved for purposes of this subsection by the Secretary; and

"(B) are based on and backed by a trust or pool composed of notes or other obligations guaranteed by the Secretary under this section.

"(2) FULL FAITH AND CREDIT OF THE UNITED STATES.—Subsection (f) shall apply to any guarantee under this subsection.

"(3) SUBROGATION.—If the Secretary pays a claim under a guarantee issued under this section, the Secretary shall be subrogated fully to the rights satisfied by such payment.

"(4) POWERS OF THE SECRETARY.—No Federal, State, or local law shall preclude or limit the exercise by the Secretary of—

"(A) the power to contract with respect to public offerings and other sales of notes, trust certificates, and other obligations guaranteed under this section upon such terms and conditions as the Secretary deems appropriate;

"(B) the right to enforce by any means deemed appropriate by the Secretary any such contract; and

"(C) the Secretary's ownership rights, as applicable, in notes, certificates, or other obligations guaranteed under this section, or constituting the trust or pool against which trust certificates or other obligations guaranteed under this section are offered.".

(f) EFFECTIVE DATE.—The Secretary shall, by notice published in the Federal Register,

which shall take effect upon publication, establish such requirements as may be necessary to implement the amendments made by this section. The notice shall invite public comments and, not later than 12 months after the date on which the notice is published, the Secretary shall issue final regulations based on the initial notice, taking into account any public comments received.

SEC. 212. HOME INVESTMENT PARTNERSHIPS.

(a) PARTICIPATION BY STATE AGENCIES OR INSTRUMENTALITIES.—Section 104(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704(2)) is amended by inserting before the period at the end the following: ", or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the State with regard to the provisions of this Act".

(b) SIMPLIFY PROGRAM-WIDE INCOME TARGETING FOR HOME RENTAL HOUSING.—Section 214(1) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12744(1)) is amended by striking "such funds are invested with respect to dwelling units that are occupied by" each place such term appears and inserting "(i) the families receiving such rental assistance are, or (ii) the dwelling units assisted with such funds are occupied by" in each such place.

(c) REMOVE FIRST-TIME HOMEBUYER LIMITATION FOR HOME UNITS.—Section 215(b) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12745(b)) is amended by striking paragraph (3) and redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(d) SIMPLIFY RESALE PROVISIONS.—Section 215(b)(3)(B) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12745(b)(4)(B)), as redesignated by subsection (c), is amended by striking "subsection" and inserting "title".

(e) STABILIZATION OF HOME FUNDING THRESHOLDS.—The Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 et seq.) is amended—

(1) in section 216, by striking paragraph (10);

(2) in section 217(b), by striking paragraph (4);

(3) in section 217(b)(3)—

(A) in the first sentence, by striking "only those jurisdictions" and all that follows through "allocation" and inserting "jurisdictions that are not participating jurisdictions that are allocated an amount of $500,000 or more and jurisdictions that are participating jurisdictions shall receive an allocation"; and

(B) in the last sentence, by striking ", except as provided in paragraph (4)"; and

(4) in section 216—

(A) in paragraph (3)(A), by striking "Except as provided in paragraph (10), a jurisdiction" and inserting "A jurisdiction"; and

(B) in paragraph (9)(B), by striking ", except as provided in paragraph (10)".

(f) COMPREHENSIVE AFFORDABLE HOUSING STRATEGY.—

(1) HOME PROGRAM.—Section 218(d) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12748(d)) is amended in the first sentence, by inserting "that it is following a current housing affordability strategy that has been approved by the Secretary in accordance with section 105, and" after "certification".

(2) HOMELESS ASSISTANCE PROGRAMS.—Section 401 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11361) is amended to read as follows:

"SEC. 401. HOUSING AFFORDABILITY STRATEGY.

"(a) REQUIREMENT TO FOLLOW A CHAS.—Assistance may be made available under subtitle B to metropolitan cities, urban counties, and States receiving a formula amount under section 413, only if the jurisdiction certifies that it is following a current housing affordability strategy that has been approved by the Secretary in accordance with section 105 of the Cranston-Gonzalez National Affordable Housing Act.

"(b) REQUIREMENT FOR CONSISTENCY WITH CHAS.—Assistance may be made available under this title only if the application contains a certification that the proposed project or activities are consistent with the housing affordability strategy of the State or unit of general local government in which the project is located. The certification shall be from the public official responsible for submitting the strategy for the jurisdiction.".

(3) CONFORMING CHANGES.—Title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11361 et seq.) is amended by striking sections 426(a)(2)(F), 434(a)(10), and 454(b)(9).

(g) HOME MATCHING REQUIREMENTS.—Section 220(a) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12750(a)) is amended to read as follows:

"(a) CONTRIBUTION.—Each participating jurisdiction shall make contributions to housing that qualifies as affordable housing under this title that total, throughout a fiscal year, not less than 25 percent of the funds drawn from the jurisdiction's HOME Investment Trust Fund in that fiscal year. Such contribution shall be in addition to any amounts made available under section 216(3)(A)(ii).".

(h) SEPARATE AUDIT REQUIREMENT FOR THE HOME PROGRAM.—Section 283 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12833) is amended—

(1) by striking the section heading and inserting the following:

"SEC. 283. AUDITS BY THE COMPTROLLER GENERAL.";

(2) by striking subsection (a);

(3) in subsection (b)—

(A) by striking "(b) AUDITS BY THE COMPTROLLER GENERAL.—"; and

(B) by redesignating paragraphs (1) and (2) as subsections (a) and (b), respectively; and

(4) in subsection (a), as redesignated by paragraph (3), by striking the second sentence.

(i) HOME ENVIRONMENTAL REVIEW AMENDMENTS.—Section 288 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12838) is amended—

(1) in subsection (a)—

(A) in the first sentence, by striking "participating jurisdictions" and inserting "jurisdictions, Indian tribes, or insular areas"; and

(B) by adding at the end the following: "The regulations shall—

"(1) provide for the monitoring of environmental reviews performed under this section;

"(2) at the discretion of the Secretary, facilitate training for the performance of such reviews; and

"(3) establish criteria for the suspension or termination of the assumption under this section.

The Secretary's duty under this subsection shall not be construed to limit any responsibility assumed by a State or unit of general local government with respect to any particular release of funds.";

(2) in subsection (b) in the first sentence, by striking "participating jurisdiction" and inserting "jurisdiction, Indian tribe, or insular area";

(3) in subsection (c)(4), by striking "participating jurisdiction" and inserting "jurisdiction, Indian tribe, or insular area"; and

(4) in subsection (d), by striking "ASSISTANCE TO A STATE.—In the case of assistance to States" and inserting the following: "ASSISTANCE TO UNITS OF GENERAL LOCAL GOVERNMENT FROM A STATE.—In the case of assistance to units of general local government from a State".

(j) USE OF CDBG FUNDS FOR HOME ADMINISTRATIVE EXPENSES.—Section 105(a)(13) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(13)) is amended by inserting after "charges related to" the following: "(A) administering the HOME program under title II of the Cranston-Gonzalez National Affordable Housing Act; and (B)".

(k) PROJECT DELIVERY COSTS.—Section 105(a)(21) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(21)) is amended—

(1) by inserting "in connection with tenant-based assistance and affordable housing projects assisted under title II of the Cranston-Gonzalez National Affordable Housing Act" after "housing counseling"; and

(2) by striking "authorized" and all that follows through "any law" and inserting "assisted under title II of the Cranston-Gonzalez National Affordable Housing Act".

SEC. 213. HOPE MATCH REQUIREMENT.

Section 443(c)(1) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12893(c)(1)) is amended by striking "33" and inserting "25".

SEC. 214. FLEXIBILITY OF CDBG PROGRAM FOR DISASTER AREAS.

Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) is amended by adding at the end the following new section:

"SEC. 122. SUSPENSION OF REQUIREMENTS FOR DISASTER AREAS.

"For the duration of time during which an area has been declared a disaster area by the President under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, the Secretary may suspend all requirements for purposes of assistance under section 106 for that area, except for those related to public notice of funding availability, nondiscrimination, fair housing, labor standards, environmental standards, and requirements that activities benefit persons of low- and moderate-income.".

SEC. 215. FLEXIBILITY OF HOME PROGRAM FOR DISASTER AREAS.

Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12721 et seq.) is amended by adding at the end the following new section:

"SEC. 290. SUSPENSION OF REQUIREMENTS FOR DISASTER AREAS.

"For the duration of time during which an area has been declared a disaster area by the President under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, the Secretary may suspend all requirements for purposes of assistance under this title for that area, except for those related to public notice of funding availability, nondiscrimination, fair housing, labor standards, environmental standards, and low-income housing affordability.".

Subtitle C—Community Partnerships Against Crime

SEC. 221. COMPAC PROGRAM.

(a) CONFORMING PROVISIONS.—Section 5001 of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901) is amended in the table of contents—

(1) by striking the item relating to the heading for chapter 2 and inserting the following:

"CHAPTER 2—COMMUNITY PARTNERSHIPS AGAINST CRIME";

(2) by striking the item relating to section 5122 and inserting the following:

"Sec. 5122. Purposes.";

and

(3) by adding the following after the item relating to section 5130:

"Sec. 5131. Technical assistance.".

(b) SHORT TITLE, PURPOSES, AND AUTHORITY TO MAKE GRANTS.—The Public and Assisted Housing Drug Elimination Act of 1990 (42 U.S.C. 11901 et seq.) is amended by striking the chapter heading for chapter 2, and by striking sections 5121, 5122, and 5123 and inserting the following:

"CHAPTER 2—COMMUNITY PARTNERSHIPS AGAINST CRIME

"SEC. 5121. SHORT TITLE.

"This chapter may be cited as the 'Community Partnerships Against Crime Act of 1993'.

"SEC. 5122. PURPOSES.

"The purposes of this chapter are to—

"(1) improve the quality of life for law-abiding public housing residents by reducing the levels of fear, violence, and crime in their communities;

"(2) expand and enhance the Federal Government's commitment to eliminating crime in public housing;

"(3) broaden the scope of the Public and Assisted Housing Drug Elimination Act of 1990 to apply to all types of crime, and not simply crime that is drug-related;

"(4) target opportunities for long-term commitments of funding primarily to public housing agencies with serious crime problems;

"(5) encourage the involvement of a broad range of community-based groups, and residents of neighboring housing that is owned or assisted by the Secretary, in the development and implementation of anti-crime plans;

"(6) reduce crime and disorder in and around public housing through the expansion of community-oriented policing activities and problem solving;

"(7) provide training, information services, and other technical assistance to program participants; and

"(8) establish a standardized assessment system to evaluate need among public housing agencies, and to measure progress in reaching crime reduction goals.

"SEC. 5123. AUTHORITY TO MAKE GRANTS.

"The Secretary of Housing and Urban Development, in accordance with the provisions of this chapter, may make grants, for use in eliminating crime in and around public and other federally assisted low-income housing projects (1) to public housing agencies (including Indian housing authorities), and (2) to private, for profit, and nonprofit owners of federally assisted low-income housing. In designing the program, the Secretary shall consult with the Attorney General.".

(c) ELIGIBLE ACTIVITIES.—Section 5124(a) of the Public and Assisted Housing Drug Elimination Act of 1990 (42 U.S.C. 11903(a)) is amended—

(1) in the introductory material preceding paragraph (1), by inserting "and around" after "used in";

(2) in paragraph (3), by inserting ", such as fencing, lighting, locking, and surveillance systems" before the semicolon;

(3) in paragraph (4), by striking subparagraph (A) and inserting the following new subparagraph:

"(A) to investigate crime; and";

(4) in paragraph (6)—

(A) by striking "in and around public or other federally assisted low-income housing projects"; and

(B) by striking "and" after the semicolon;

(5) in paragraph (7)—

(A) by striking "where a public housing agency receives a grant,";

(B) by striking "drug abuse" and inserting "crime"; and

(C) by striking the period at the end and inserting a semicolon; and

(6) by adding at the end the following new paragraphs:

"(8) the employment or utilization of one or more individuals, including law enforcement officers, made available by contract or other cooperative arrangement with State or local law enforcement agencies, to engage in community policing involving interaction with members of the community on proactive crime control and prevention;

"(9) youth initiatives, such as activities involving training, education, after school programs, cultural programs, recreation and sports, career planning, and entrepreneurship and employment; and

"(10) resident service programs, such as job training, education programs, drug and alcohol treatment, and other appropriate social services that address the contributing factors of crime.".

(d) APPLICATIONS.—Section 5125 of the Public and Assisted Housing Drug Elimination Act of 1990 (42 U.S.C. 11904) is amended—

(1) in subsection (a)—

(A) by striking "To receive a grant" and inserting the following:

"(1) APPLICATIONS.—To receive a grant";

(B) in the second sentence, by striking "drug-related crime on the premises of" and inserting the following: "crime in and around"; and

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

"(2) ONE-YEAR RENEWABLE GRANTS.—

"(A) IN GENERAL.—Eligible applicants may submit an application for a 1-year grant under this chapter that, subject to the availability of appropriated amounts, shall be renewed annually for a period of not more than 4 years, if the Secretary finds, after an annual or more frequent performance review, that the public housing agency is performing under the terms of the grant and applicable laws in a satisfactory manner and meets such other requirements as the Secretary may prescribe.

"(B) PREFERENCE.—The Secretary shall accord a preference to applicants for grants under this paragraph if the grant is to be used to continue or expand activities eligible for assistance under this chapter that have received previous assistance either under this chapter, as it existed prior to the enactment of the Housing and Community Development Act of 1993, or under section 14 of the United States Housing Act of 1937. Such preference shall not preclude the selection by the Secretary of other meritorious applications, particularly applications which address urgent or severe crime problems or which demonstrate especially promising approaches to reducing crime. Such preference shall not be construed to require continuation of activities determined by the Secretary to be unworthy of continuation.

"(3) PUBLIC HOUSING AGENCIES THAT HAVE ESPECIALLY SEVERE CRIME PROBLEMS.—The Secretary shall, by regulation issued after notice and opportunity for public comment, set forth criteria for establishing a class of public housing agencies that have especially severe crime problems. The Secretary may allocate a portion of the annual appropriation for this program for public housing agencies in this class.".

(2) in subsection (b)—

(A) by striking the introductory material preceding paragraph (1) and inserting the following: "The Secretary shall approve applications under subsection (a)(2) that are not subject to a preference under subsection (a)(2)(B) on the basis of—";

(B) in paragraph (1), by striking "drug-related crime problem in" and inserting the following: "crime problem in and around";

(C) in paragraph (2), by inserting immediately after "crime problem in" the following: "and around"; and

(D) in paragraph (4), by inserting after "local government" the following: ", local community-based nonprofit organizations, local resident organizations that represent the residents of neighboring projects that are owned or assisted by the Secretary,";

(3) in subsection (c)(2), by striking "drug-related" each place it appears; and

(4) by striking subsection (d).

(e) DEFINITIONS.—Section 5126 of the Public and Assisted Housing Drug Elimination Act of 1990 (42 U.S.C. 11905) is amended by striking paragraphs (1) and (2), and redesignating paragraphs (3) and (4) as paragraphs (1) and (2), respectively.

(f) IMPLEMENTATION.—Section 5127 of the Public and Assisted Housing Drug Elimination Act of 1990 (42 U.S.C. 11906) is amended by striking "Cranston-Gonzalez National Affordable Housing Act" and inserting "Housing and Community Development Act of 1993".

(g) REPORTS.—Section 5128 of the Public and Assisted Housing Drug Elimination Act of 1990 (42 U.S.C. 11907) is amended—

(1) by striking "The Secretary" and inserting the following:

"(a) GRANTEE REPORTS.—The Secretary";

(2) by striking "drug-related crime in" and inserting "crime in and around"; and

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

"(b) HUD REPORTS.—The Secretary shall submit a report to the Congress describing the system used to distribute funds to grantees under this section. Such report shall include, at a minimum—

"(1) a description of the criteria used to establish the class of public housing agencies with especially severe crime problems and a list of such agencies;

"(2) the methodology used to distribute funds among the public housing agencies on the list created under paragraph (1); and

"(3) the Secretary's recommendations for any change to the method of distribution of funds.".

(h) AUTHORIZATION OF APPROPRIATIONS.—Section 5130 of the Public and Assisted Housing Drug Elimination Act of 1990 (42 U.S.C. 11909) is amended—

(1) in the first sentence of subsection (a), by striking "$175,000,000 for fiscal year 1993" and all that follows through the end of the sentence and inserting "$265,000,000 for fiscal year 1994 and $325,000,000 for fiscal year 1995."; and

(2) in subsection (b)—

(A) in the heading, by striking "SET-ASIDES" and inserting "SET-ASIDE"; and

(B) by striking the second sentence.

(i) REPEAL.—Section 520(k) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 11908) is hereby repealed.

(j) TECHNICAL ASSISTANCE.—The Public and Assisted Housing Drug Elimination Act of 1990 (42 U.S.C. 11901 et seq.) is further amended by adding at the end the following new section:

"SEC. 5131. TECHNICAL ASSISTANCE.

"Of the amounts appropriated annually for each of fiscal years 1994 and 1995 to carry out this chapter, the Secretary shall use not more than $10,000,000, directly or indirectly, under grants, contracts, or cooperative agreements, to provide training, information services, and other technical assistance to public housing agencies and other entities with respect to their participation in the program authorized by this chapter. Such technical assistance may include the establishment and operation of the clearinghouse on drug abuse in public housing and the regional training program on drug abuse in public housing under sections 5143 and 5144 of this Act. The Secretary is also authorized to use the foregoing amounts for obtaining assistance in establishing and managing assessment and evaluation criteria and specifications, and obtaining the opinions of experts in relevant fields.".

TITLE III—TECHNICAL AND OTHER AMENDMENTS

Subtitle A—Public and Assisted Housing

SEC. 301. CORRECTION TO DEFINITION OF FAMILY.

The first sentence of section 3(b)(3)(B) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(3)(B)) is amended—

(1) by striking "means" and inserting "includes"; and

(2) by inserting "and" immediately after "children,".

SEC. 302. IDENTIFICATION OF CIAP REPLACEMENT NEEDS.

Section 14 of the United States Housing Act of 1937 (42 U.S.C. 1437l) is amended—

(1) in subsection (d)—

(A) by striking paragraph (2); and

(B) in paragraph (4)—

(i) by striking "and replacements,"; and

(ii) by striking "(1), (2), and (3)" and inserting "(1) and (3)"; and

(2) in subsection (f)(1)—

(A) by striking subparagraph (B); and

(B) in subparagraph (D), by striking "(1), (2), and (3)" and inserting "(1) and (3)".

SEC. 303. APPLICABILITY OF PUBLIC HOUSING AMENDMENTS TO INDIAN HOUSING.

(a) AMENDMENT.—Section 201(b) of the United States Housing Act of 1937 (42 U.S.C. 1437aa(b)) is amended to read as follows:

"(b) APPLICABILITY OF TITLE I.—Except as otherwise provided by law, the provisions of title I shall apply to low-income housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority.".

(b) APPLICABILITY OF AMENDMENT.—The amendment made by subsection (a) shall not affect provisions of the United States Housing Act of 1937 that were made applicable to public housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority in accordance with section 201(b)(2) of such Act, as such section existed before the effective date of this section.

(c) APPLICABILITY OF HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1992.—Sections 103(a)(1), 112, 114, 116, 118, 903, and 927 of the Housing and Community Development Act of 1992 shall apply to public housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority.

SEC. 304. PROJECT-BASED ACCOUNTING.

Section 6(c)(4)(E) of the United States Housing Act of 1937 (42 U.S.C. 1437d(c)(4)(E)) is amended by striking "250" and inserting "500".

SEC. 305. OPERATING SUBSIDY ADJUSTMENTS FOR ANTICIPATED FRAUD RECOVERIES.

Section 9(a) of the United States Housing Act of 1937 (42 U.S.C. 1437g(a)) is amended by adding at the end the following new paragraph:

"(4) Adjustments to a public housing agency's operating subsidy made by the Secretary under this section shall reflect actual changes in rental income collections resulting from the application of section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988.".

SEC. 306. TECHNICAL ASSISTANCE FOR LEAD HAZARD REDUCTION GRANTEES.

Section 1011(g) of the Housing and Community Development Act of 1992 (42 U.S.C. 5318 note) is hereby repealed.

SEC. 307. ENVIRONMENTAL REVIEW IN CONNECTION WITH GRANTS FOR LEAD-BASED PAINT HAZARD REDUCTION.

Section 1011 of the Housing and Community Development Act of 1992 (42 U.S.C. 5318 note) is amended—

(1) by redesignating subsection (o) as subsection (p); and

(2) by adding after subsection (n) the following new subsection:

"(o) ENVIRONMENTAL REVIEW.—

"(1) IN GENERAL.—For purposes of environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1960 and other provisions of law that further the purposes of such Act, a grant under this section shall be treated as assistance under the HOME Investment Partnership Act, established under title II of the Cranston-Gonzalez National Affordable Housing Act, and shall be subject to the regulations promulgated by the Secretary to implement section 288 of such Act.

"(2) APPLICABILITY.—This subsection shall apply to—

"(A) grants awarded under this section; and

"(B) grants awarded 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 pursuant to title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Public Law 102-139, 105 Stat. 736).".

SEC. 308. FIRE SAFETY IN FEDERALLY ASSISTED HOUSING.

Section 31(c)(2)(A)(i) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2227(c)(2)(A)(i)) is amended by adding "(or equivalent level of safety)" after "system".

SEC. 309. SECTION 23 CONVERSION PROJECTS.

(a) SECTION 23 CONVERSION.—

(1) AUTHORIZATION.—Notwithstanding contracts entered into pursuant to section 14(b)(2) of the United States Housing Act of 1937, the Secretary is authorized to enter into obligations for conversion of Leonard Terrace Apartments in Grand Rapids, Michigan, from a leased housing contract under section 23 of such Act to a project-based rental assistance contract under section 8 of such Act.

(2) REPAYMENT REQUIRED.—The authorization made in paragraph (1) is conditioned on the repayment to the Secretary of all amounts received by the public housing agency under the comprehensive improvement assistance program under section 14 of the United States Housing Act of 1937 for the Leonard Terrace Apartment project and the amounts, as determined by the Secretary, received by the public housing agency under the formula in section 14(k) of such Act by reason of the project.

(b) CONTRACT RENEWAL.—

(1) IN GENERAL.—Leased housing contracts under section 23 of the United States Housing Act of 1937, as such section existed before the date of enactment of the Housing and Community Development Act of 1974, that—

(A) were converted to section 8 contracts on terms similar to or the same as the terms of the section 8 new construction program; and

(B) expire during fiscal year 1994 or 1995;

shall be extended for a period not to exceed 5 years as if the rents on such projects were established under the section 8 new construction program, except that section 8(c)(2)(C) of the United States Housing Act of 1937 shall not apply to such contracts.

(2) BUDGET COMPLIANCE.—To the extent that paragraph (1) results in additional costs under this section, such paragraph shall be effective only to the extent that amounts to cover such additional costs are provided in advance in appropriation Acts.

SEC. 310. INDEMNIFICATION OF CONTRACTORS FOR INTELLECTUAL PROPERTY RIGHTS DISPUTES.

A recipient of Federal housing assistance may not use such funds to indemnify contractors or subcontractors against costs associated with litigating or settling disputes concerning the infringement of intellectual property rights.

SEC. 311. ASSUMPTION OF ENVIRONMENTAL REVIEW RESPONSIBILITIES UNDER UNITED STATES HOUSING ACT OF 1937 PROGRAMS.

Title I of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) is amended by adding at the end the following new section:

"SEC. 26. ENVIRONMENTAL REVIEWS.

"(a) IN GENERAL.—

"(1) RELEASE OF FUNDS.—In order to assure that the policies of the National Environmental Policy Act of 1969 and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of funds under this title, and to assure to the public undiminished protection of the environment, the Secretary may, under such regulations, in lieu of the environmental protection procedures otherwise applicable, provide for the release of funds for projects or activities under this title, as specified by the Secretary upon the request of a public housing agency under this section, if the State or unit of general local government, as designated by the Secretary in accordance with regulations, assumes all of the responsibilities for environmental review, decisionmaking, and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary may specify, which would otherwise apply to the Secretary with respect to the release of funds.

"(2) IMPLEMENTATION.—The Secretary, after consultation with the Council on Environmental Quality, shall issue such regulations as may be necessary to carry out this section. Such regulations shall specify the programs to be covered.

"(b) PROCEDURE.—The Secretary shall approve the release of funds subject to the procedures authorized by this section only if, not less than 15 days prior to such approval and prior to any commitment of funds to such projects or activities, the public housing agency has submitted to the Secretary a request for such release accompanied by a certification of the State or unit of general

local government which meets the requirements of subsection (c). The Secretary's approval of any such certification shall be deemed to satisfy the Secretary's responsibilities under the National Environmental Policy Act of 1969 and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the release of funds which are covered by such certification.

"(c) CERTIFICATION.—A certification under the procedures authorized by this section shall—

"(1) be in a form acceptable to the Secretary;

"(2) be executed by the chief executive officer or other officer of the State or unit of general local government who qualifies under regulations of the Secretary;

"(3) specify that the State or unit of general local government under this section has fully carried out its responsibilities as described under subsection (a); and

"(4) specify that the certifying officer—

"(A) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 and agrees to comply with each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or other such provision of law apply pursuant to subsection (a); and

"(B) is authorized and consents on behalf of the State or unit of general local government and himself or herself to accept the jurisdiction of the Federal courts for the purpose of enforcement of his or her responsibilities as such an official.

"(d) APPROVAL BY STATES.—In cases in which a unit of general local government carries out the responsibilities described in subsection (c), the Secretary may permit the State to perform those actions of the Secretary described in subsection (b) and the performance of such actions by the State, where permitted by the Secretary, shall be deemed to satisfy the Secretary's responsibilities referred to in the second sentence of subsection (b).".

SEC. 312. INCREASED STATE FLEXIBILITY IN THE LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM.

Section 927 of the Housing and Community Development Act of 1992 (42 U.S.C. 8624) is amended—

(1) in subsection (a)—

(A) in the heading, by striking "(a) ELIGIBILITY.—" and inserting the following:

"(a) IN GENERAL.—";

(B) by striking "(including but not limited to the Low-Income Home Energy Assistance Program)"; and

(C) by inserting ", except as provided in subsection (d)" before the period at the end;

(2) in subsection (b)—

(A) by striking "such" and inserting "or receiving energy"; and

(B) by inserting before the period at the end "for any program in which eligibility or benefits are based on need, except as provided in subsection (d)"; and

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

"(d) SPECIAL RULE FOR LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM.—For purposes of the Low-Income Home Energy Assistance Program, tenants described in subsection (a)(2) shall not have their eligibility automatically denied. States may consider the amount of the heating or cooling component of utility allowances received by such tenants when setting benefit levels under the Low-Income Home Energy Assistance Program. Any reduction in fuel assistance benefits must be reasonably related to the amount of the heating or cooling component of the utility allowance received. States shall ensure that the highest level of assistance will be provided to those households with the highest energy burdens, in accordance with section 2605(b)(5) of the Low-Income Home Energy Assistance Act of 1981.".

Subtitle B—Multifamily Housing

SEC. 321. CORRECTION OF MULTIFAMILY MORTGAGE LIMITS.

The National Housing Act (12 U.S.C. 1701 et seq.) is amended in sections 207(c)(3), 213(b)(2), 220(d)(3)(B)(iii), and 234(e)(3) by striking "$59,160" each place it appears and inserting "$56,160".

SEC. 322. FHA MULTIFAMILY RISK-SHARING; HFA PILOT PROGRAM AMENDMENTS.

(a) IN GENERAL.—Section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) is amended—

(1) in paragraph (1), by inserting after "qualified housing finance agencies" the following: "(including entities established by States that provide mortgage insurance)";

(2) in paragraph (2)—

(A) in subparagraph (C), by striking the last sentence and inserting the following: "Such agreements shall specify that the qualified housing finance agency and the Secretary shall share any loss in accordance with the risk-sharing agreement."; and

(B) by adding at the end the following new subparagraph:

"(F) DISCLOSURE OF RECORDS.—Qualified housing finance agencies shall make available to the Secretary such financial and other records as the Secretary deems necessary for program review and monitoring purposes.";

(3) in paragraph (7)—

(A) by striking "very low-income"; and

(B) by striking "(2)"; and

(4) by adding at the end the following new paragraphs:

"(9) ENVIRONMENTAL AND OTHER REVIEWS.—

"(A) ENVIRONMENTAL REVIEWS.—

"(i) IN GENERAL.—(I) In order to assure that the policies of the National Environmental Policy Act of 1969 and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the insurance of mortgages under subsection (c)(2), and to assure to the public undiminished protection of the environment, the Secretary may, under such regulations, in lieu of the environmental protection procedures otherwise applicable, provide for agreements to endorse for insurance mortgages under subsection (c)(2) upon the request of qualified housing finance agencies under this subsection, if the State or unit of general local government, as designated by the Secretary in accordance with regulations, assumes all of the responsibilities for environmental review, decisionmaking, and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary may specify, that would otherwise apply to the Secretary with respect to the insurance of mortgages on particular properties.

"(II) The Secretary shall issue regulations to carry out this subparagraph only after consultation with the Council on Environmental Quality. Such regulations shall, among other matters, provide—

"(aa) for the monitoring of the performance of environmental reviews under this subparagraph;

"(bb) subject to the discretion of the Secretary, for the provision or facilitation of training for such performance; and

"(cc) subject to the discretion of the Secretary, for the suspension or termination by the Secretary of the qualified housing finance agency's responsibilities under subclause (I).

"(III) The Secretary's duty under subclause (II) shall not be construed to limit any responsibility assumed by a State or unit of general local government with respect to any particular property under subclause (I).

"(ii) PROCEDURE.—The Secretary shall approve a mortgage for the provision of mortgage insurance subject to the procedures authorized by this paragraph only if, not less than 15 days prior to such approval, prior to any approval, commitment, or endorsement of mortgage insurance on the property on behalf of the Secretary, and prior to any commitment by the qualified housing finance agency to provide financing under the risk-sharing agreement with respect to the property, the qualified housing finance agency submits to the Secretary a request for such approval, accompanied by a certification of the State or unit of general local government that meets the requirements of clause (iii). The Secretary's approval of any such certification shall be deemed to satisfy the Secretary's responsibilities under the National Environmental Policy Act of 1969 and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the provision of mortgage insurance on the property that is covered by such certification.

"(iii) CERTIFICATION.—A certification under the procedures authorized by this paragraph shall—

"(I) be in a form acceptable to the Secretary;

"(II) be executed by the chief executive officer or other officer of the State or unit of general local government who qualifies under regulations of the Secretary;

"(III) specify that the State or unit of general local government under this section has fully carried out its responsibilities as described under clause (i); and

"(IV) specify that the certifying officer consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 and under each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or such other provisions of law apply pursuant to clause (i), and is authorized and consents on behalf of the State or unit of general local government and himself or herself to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities as such an official.

"(iv) APPROVAL BY STATES.—In cases in which a unit of general local government carries out the responsibilities described in clause (i), the Secretary may permit the State to perform those actions of the Secretary described in clause (ii) and the performance of such actions by the State, where permitted by the Secretary, shall be deemed to satisfy the Secretary's responsibilities referred to in the second sentence of clause (ii).

"(B) LEAD-BASED PAINT POISONING PREVENTION.—In carrying out the requirements of section 302 of the Lead-Based Paint Poisoning Prevention Act, the Secretary may provide by regulation for the assumption of all or part of the Secretary's duties under such Act by qualified housing finance agencies, for purposes of this section.

"(C) CERTIFICATION OF SUBSIDY LAYERING COMPLIANCE.—The requirements of section

102(d) of the Department of Housing and Urban Development Reform Act of 1989 may be satisfied in connection with a commitment to insure a mortgage under this subsection by a certification by a housing credit agency (including an entity established by a State that provides mortgage insurance) to the Secretary that the combination of assistance within the jurisdiction of the Secretary and other government assistance provided in connection with a property for which a mortgage is to be insured shall not be any greater than is necessary to provide affordable housing.

"(10) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

"(A) MORTGAGE.—The term 'mortgage' means a first mortgage on real estate that is—

"(i) owned in fee simple; or

"(ii) subject to a leasehold interest that—

"(I) has a term of not less than 99 years and is renewable; or

"(II) has a remaining term that extends beyond the maturity of the mortgage for a period of not less than 10 years.

"(B) FIRST MORTGAGE.—The term 'first mortgage' means a single first lien given to secure advances on, or the unpaid purchase price of, real estate, under the laws of the State in which the real estate is located, together with the credit instrument, if any, secured thereby. Any other financing permitted on property insured under this section must be expressly subordinate to the insured mortgage.

"(C) UNIT OF GENERAL LOCAL GOVERNMENT; STATE.—The terms 'unit of general local government' and 'State' have the same meanings as in section 102(a) of the Housing and Community Development Act of 1974.".

(b) DEFINITION OF MULTIFAMILY HOUSING.—Section 544(1) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) is amended to read as follows:

"(1) The term 'multifamily housing' means housing accommodations on the mortgaged property that are designed principally for residential use, conform to standards satisfactory to the Secretary, and consist of not less than 5 rental units on 1 site. These units may be detached, semidetached, row house, or multifamily structures.".

SEC. 323. SUBSIDY LAYERING REVIEW.

Section 911 of the Housing and Community Development Act of 1992 (42 U.S.C. 3545 note) is amended—

(1) by striking subsection (a) and inserting the following:

"(a) CERTIFICATION OF SUBSIDY LAYERING COMPLIANCE.—The requirements of section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 may be satisfied in connection with a project receiving assistance under a program that is within the jurisdiction of the Department of Housing and Urban Development and under section 42 of the Internal Revenue Code of 1986 by a certification by a housing credit agency to the Secretary, submitted in accordance with guidelines established by the Secretary, that the combination of assistance within the jurisdiction of the Secretary and other government assistance provided in connection with a property for which assistance is to be provided within the jurisdiction of the Department of Housing and Urban Development and under section 42 of the Internal Revenue Code of 1986 shall not be any greater than is necessary to provide affordable housing."; and

(2) by striking subsection (c) and inserting the following:

"(c) REVOCATION BY SECRETARY.—If the Secretary determines that a housing credit agency has failed to comply with the guidelines established under subsection (a), the Secretary—

"(1) may inform the housing credit agency that the agency may no longer submit certification of subsidy layering compliance under this section; and

"(2) shall carry out section 102(d) of the Housing and Urban Development Reform Act relating to affected projects allocated a low-income housing tax credit pursuant to section 42 of the Internal Revenue Code of 1986.".

Subtitle C—Miscellaneous and Technical Amendments

SEC. 331. TECHNICAL CORRECTION TO RURAL HOUSING PRESERVATION PROGRAM.

Section 515(c)(1) of the Housing Act of 1949 (42 U.S.C. 1485(c)(1)) is amended by striking "December 21, 1979" and inserting "December 15, 1989".

SEC. 332. CDBG TECHNICAL AMENDMENT.

Notwithstanding any other provision of law, the city of Slidell, Louisiana may submit, not later than 10 days following the enactment of this Act, and the Secretary of Housing and Urban Development shall consider and accept, the final statement of community development objectives and projected use of funds required by section 104(a)(1) of the Housing and Community Development Act of 1974 in connection with a grant to the city of Slidell under title 1 of such Act for fiscal year 1994.

SEC. 333. ENVIRONMENTAL REVIEW IN CONNECTION WITH SPECIAL PROJECTS.

(a) IN GENERAL.—

(1) RELEASE OF FUNDS.—In order to assure that the policies of the National Environmental Policy Act of 1969 and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of funds for special projects appropriated under an appropriations Act for the Department of Housing and Urban Development, such as special projects under the head "Annual Contributions for Assisted Housing" in title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993, and to assure to the public undiminished protection of the environment, the Secretary of Housing and Urban Development may, under such regulations, in lieu of the environmental protection procedures otherwise applicable, provide for the release of funds for particular special projects upon the request of recipients of special projects assistance, if the State or unit of general local government, as designated by the Secretary in accordance with regulations, assumes all of the responsibilities for environmental review, decisionmaking, and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary specify, that would otherwise apply to the Secretary were the Secretary to undertake such special projects as Federal projects.

(2) IMPLEMENTATION.—The Secretary shall issue regulations to carry out this section only after consultation with the Council on Environmental Quality. Such regulations shall—

(A) provide for monitoring of the performance of environmental reviews under this section;

(B) in the discretion of the Secretary, provide for the provision or facilitation of training for such performance; and

(C) subject to the discretion of the Secretary, provide for suspension or termination by the Secretary of the assumption under paragraph (1).

(3) RESPONSIBILITIES OF STATE OR UNIT OF GENERAL LOCAL GOVERNMENT.—The Secretary's duty under paragraph (2) shall not be construed to limit any responsibility assumed by a State or unit of general local government with respect to any particular release of funds under paragraph (1).

(b) PROCEDURE.—The Secretary shall approve the release of funds for projects subject to the procedures authorized by this section only if, not less than 15 days prior to such approval and prior to any commitment of funds to such projects, the recipient submits to the Secretary a request for such release, accompanied by a certification of the State or unit of general local government which meets the requirements of subsection (c). The Secretary's approval of any such certification shall be deemed to satisfy the Secretary's responsibilities under the National Environmental Policy Act of 1969 and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the releases of funds for special projects to be carried out pursuant thereto which are covered by such certification.

(c) CERTIFICATION.—A certification under the procedures authorized by this section shall—

(1) be in a form acceptable to the Secretary;

(2) be executed by the chief executive officer or other officer of the State or unit of general local government who qualifies under regulations of the Secretary;

(3) specify that the State or unit of general local government under this section has fully carried out its responsibilities as described under subsection (a); and

(4) specify that the certifying officer—

(A) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 and agrees to comply with each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or other such provision of law apply pursuant to subsection (a); and

(B) is authorized and consents on behalf of the State or unit of general local government and himself or herself to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities as such an official.

(d) APPROVAL BY STATES.—In cases in which a unit of general local government carries out the responsibilities described in subsection (a), the Secretary may permit the State to perform those actions of the Secretary described in subsection (b) and the performance of such actions by the State, where permitted by the Secretary, shall be deemed to satisfy the Secretary's responsibilities referred to in the second sentence of subsection (b).

TITLE IV—GENERAL PROVISIONS

SEC. 401. MOUNT RUSHMORE COMMEMORATIVE COIN ACT.

(a) DISTRIBUTION OF SURCHARGES.—Section 8 of the Mount Rushmore Commemorative Coin Act (31 U.S.C. 5112 note) is amended by striking paragraphs (1) and (2) and inserting the following:

"(1) the first $18,750,000 shall be paid during fiscal year 1994 by the Secretary to the Society to assist the Society's efforts to improve, enlarge, and renovate the Mount Rushmore National Memorial; and

"(2) the remainder shall be returned to the United States Treasury for purposes of reducing the national debt.".

(b) RETROACTIVE EFFECT.—If, prior to the date of enactment of this Act, any amount of surcharges have been received by the Secretary of the Treasury and paid into the United States Treasury pursuant to section 8(1) of the Mount Rushmore Commemorative Coin Act, as in effect prior to the date of enactment of this Act, that amount shall be paid out of the Treasury to the extent necessary to comply with section 8(1) of the Mount Rushmore Commemorative Coin Act, as in effect after the date of enactment of this Act. Amounts paid pursuant to the preceding sentence shall be out of funds not otherwise appropriated.

SEC. 402. MINORITY COMMUNITY DEVELOPMENT GRANTS FOR COMMUNITIES WITH SPECIAL NEEDS.

(a) AUTHORIZATION.—There are hereby authorized to be expended from sums appropriated for water infrastructure financing and other wastewater activities for cities with special needs, not more than $25,000,000, for wastewater treatment projects, including the construction of facilities and related expenses in minority communities with special needs to—

(1) improve the housing stock infrastructure in the special needs communities; and

(2) abate health hazards caused by groundwater contamination from septage in arid areas with high groundwater levels.

(b) TREATMENT PROJECTS.—The wastewater treatment projects authorized under this section shall include innovative technologies such as vacuum systems and constructed wetlands.

(c) DEFINITIONS.—For purposes of this section—

(1) the term "cities with special needs" includes minority communities with special needs;

(2) the term "minority" means an African-American, a Hispanic-American, an Asian-American, or a Native American; and

(3) the term "minority community with special needs" means an unincorporated community—

(A) that, based on the latest census data, has a minority population in excess of 50 percent;

(B) that has been unable to issue bonds or otherwise finance a wastewater treatment system itself because its attempts to change its political subdivision have been rejected by the State legislature; and

(C) for which the State legislature has appropriated funds to help pay for a wastewater treatment project.

THE DOE MINORITY BANK PRESERVATION ACT OF 1993

The text of the bill (S. 1685) to amend the Federal Deposit Insurance Act to permit the continued insurance of deposits in minority- and women-owned banks by the Bank Deposit Financial Assistance Program, as passed by the Senate on November 18, 1993, is as follows:

S. 1685

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "The DOE Minority Bank Preservation Act of 1993".

SEC. 2. AMENDMENT RELATING TO THE INSURANCE OF DEPOSITS BY THE BANK FINANCIAL ASSISTANCE PROGRAM.

Section 7(i)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(i)(1)) is amended by striking "shall be insured" and all that follows through the period and inserting ", or funds deposited by an insured depository institution pursuant to the Bank Deposit Financial Assistance Program of the Department of Energy, shall be separately insured in an amount not to exceed $100,000 for each beneficiary of an irrevocable trust or insured depository institution depositing such program funds.".

SEC. 3. MINORITY COMMUNITY DEVELOPMENT GRANTS FOR COMMUNITIES WITH SPECIAL NEEDS.

(a) There are hereby authorized to be expended from sums appropriated for water infrastructure financing and other wastewater activities for cities with special needs, no more than $25,000,000 for wastewater treatment projects, including the construction of facilities and related expenses in minority communities with special needs to—

(1) improve the housing stock infrastructure in the special needs communities; and

(2) abate health hazards caused by groundwater contamination from septage in arid areas with high groundwater levels.

(b) Treatment projects must include innovative technologies such as vacuum systems and constructed wetlands.

(c) For purposes of this section "cities with special needs" includes minority communities with special needs.

(1) A "minority" means an African-American, a Hispanic-American, an Asian American or Native American.

(2) A "minority community with special needs" means—

(i) an unincorporated community that, based on the latest census data, has a minority population in excess of 50 percent;

(ii) has been unable to issue bonds or otherwise finance a wastewater treatment system itself because its attempt to change its political subdivision has been rejected by the State legislature; and

(iii) that the State legislature has appropriated funds to help pay for the project.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. I thank the Chair.

Madam President, I ask unanimous consent that I may proceed for up to 10 minutes as in morning business.

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

Mr. SPECTER. I thank the Chair.

VOTE FRAUD IN PHILADELPHIA

Mr. SPECTER. Madam President, I spoke very briefly yesterday in connection with the crime bill on a very serious matter of vote fraud in the city of Philadelphia on a special election held earlier this month for a seat in the Pennsylvania State Senate. It is a matter which requires the attention of the Senate, the Congress, and the Department of Justice because of the very serious issues involved.

This particular State Senate seat is crucial for the control of the Pennsylvania State Senate statewide, because, prior to that special election, there were 25 Republicans and 24 Democrats. If a Republican was elected, there would be Republican controlling of the State Senate. If a Democrat was elected, there would be Democrat control of the State Senate by virtue of the tie vote to be broken by the Lieutenant Governor, who is a Democrat.

When the election was held, out of approximately 40,000 votes cast, a Republican, an able young man named Bruce Marks, who was once an employee in the Senate, won by about 500 votes. When absentee ballots were counted, Bruce Marks lost by about 500 votes.

Evidence which has been disclosed in the Court of Common Pleas and also in an extensive series of articles in the Philadelphia Inquirer shows a systematic pattern of vote fraud, where workers of the Democratic Party went out and secured absentee ballots in violation of the State election code.

The State election code requires that people vote in person, unless they are to be out of the country or unless they are disabled so that they are physically incapacitated from coming to the voting booth. The application must be made in advance and the absentee ballots must be cast no later than Friday preceding the Tuesday of the election.

What happened, in fact, as disclosed by testimony in court under oath, and by affidavits which have been submitted, and by an extensive series of interviews in four major articles published in the Philadelphia Inquirer during the past week, shows a pattern that political workers from the Democratic party would go to Hispanics who had difficulty in understanding the form on the absentee ballot. They would represent to the prospective voters, almost all of whom were Hispanics, that they could conveniently vote at home by simply signing a paper. They showed people a paper which had the word "Democrat" on one column, where the prospective voters stated that they thought they were signifying their party registration, when, in fact, they wanted to vote for the Republican candidate Bruce Marks. This showing established a pattern of systematic fraud.

When the matter came before the county board of elections in a highly political context at 5:30 yesterday afternoon, the county commissioners certified the election in favor of the Democratic candidate. And then, by pure coincidence, he happened to be in Harrisburg, PA, to step into the State Senate chamber to be sworn in.

That kind of a raw political power play is regrettably common occurrence in the city of Philadelphia which has, for more than a century, been under one-party political rule. Since the election of 1951, 42 years ago, the Democrats have controlled the city of Philadelphia. For 67 years prior to 1951, the Republicans controlled the city of Philadelphia. In the face of one-party

control, there has been this unfortunate history of corruption of vote fraud.

I knew it well, Madam President, because in my tenure as district attorney for Philadelphia from 1966 to 1974, I had the responsibilities to prosecute many cases involving vote fraud and some very systematic vote fraud.

One case, back in 1972, involved a trade for the top of the Republican ticket in exchange for the balance of the Democratic ticket. All of the poll watchers for the Democratic Presidential nominee, George McGovern, were chased from the polls to perform their watcher function on a spurious and illegal order issued by the judge of the Common Pleas Court, who was later criminally prosecuted, along with many other people. One illustration of a systematic effort in vote fraud.

I and others have called upon the State attorney general to conduct an investigation. I am pleased to say that he has entered into the investigative fray.

I have also called upon the district attorney of Philadelphia to undertake an investigation. Regrettably, the district attorney has declined on the stated ground that the district attorney ran on the ticket with the Democratic candidate and was at campaign rallies with him, which, under my knowledge of the law, does not warrant recusal. And that office, the district attorney office, which is a powerful office—an office, as I say that I held for 8 years between 1966 and 1974—has the duty to conduct an investigation.

The State attorney general is going to undertake an investigation and that is a step in the right direction. I have made a request to the Attorney General of the United States to initiate a Federal investigation because there is jurisdiction under Federal law because there was a pattern of coercion and intimidation of Hispanics.

I might say, for a couple of decades in Philadelphia, we have had the balance of legal notices printed in both Spanish and English to try to give Hispanics an understanding of what they are voting about. Notwithstanding that, it is a difficult matter, if someone is going to be overreaching and overbearing, as it happened in this case.

I hope the Attorney General will initiate a Justice Department investigation. We talk about crime and talk about corruption; we talk about the underpinnings of the democratic government. There is nothing more important than the sanctity of the vote and the integrity of the balloting process in any election no matter what it is for—but especially when it is an election which controls the Pennsylvania State Senate, which has an enormous impact on legislation involving the economy, on workman's compensation, on health care, on taxation, matters of enormous and fundamental importance.

I speak on this subject with a little more length than I could talk yesterday because of the time constrictions, because I think the people and my colleagues ought to know about it. The Members of the House ought to know about it. People who are watching on C–SPAN ought to know about it.

I hope those who agree with the sanctity and importance of the integrity of the ballot will take the time to write a letter to the Attorney General of the United States, urging a prompt investigation into these very, very serious charges because it is an important Federal matter.

INDEPENDENT FEDERAL LAW JUDGES

Mr. SPECTER. Madam President, I would like to make a brief comment about very important legislation which the distinguished Senator form Alabama [Mr. HEFLIN] is the principal sponsor on. A more extensive statement will be included in the CONGRESSIONAL RECORD, but I think it worthy of just a moment or two.

I ask for an additional 5 minutes, if I may, to speak on this subject?

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

Mr. SPECTER. The legislation to which I refer is captioned Senate bill 486, which establishes an independent corps of Federal administrative law judges.

This is necessary because administrative law judges are technically in the executive branch. By way of very brief explanation, the article III judges are independent. Those are judges created under article III of the U.S. Constitution. When the Constitution was formed, article I was designated for Congress; article II for the executive branch, the President; and article III, for the Judiciary. I think the Founding Fathers thought the Congress was perhaps primary and the executive secondary and the judiciary system third.

As the constitutional law has worked out, the judiciary has evaluated itself to No. 1. When the issue of supremacy came before the courts, not surprisingly the courts decided that the courts were supreme, in Marbury versus Madison. They are still article III, and the article III judges are appointed for life and have independence.

But as we have seen the progress of the administrative agencies in carrying out the complex laws of the Federal bureaucracy, which is too massive, these administrative law judges have been created as part of the executive branch. Whereas they ought to be independent, and ought to function in the traditional role of judges, as impartial, they have, regrettably, been subjected to pressures from within their own agencies.

There is substantial evidence, illustratively, in the Social Security branch, where these judges have made decisions which are not impartial; where, in fact, they have yielded to pressures from the executive branch in which they serve.

The same thing has happened illustratively in the immigration laws, where we have found that the immigration administrative law judges have yielded to pressures within the administrative branch.

Senator HEFLIN, who heads the subcommittee of Judiciary, himself a former chief justice of Alabama, has been a leader on this critical issue of independence of the judiciary. It is a matter where I have long been concerned, because if you do not have impartial judges, the whole system of justice is for naught. And we have not had impartial judges on administrative branches. This is the fifth Congress where this issue has come before the Congress, where Senator HEFLIN and I have cosponsored this legislation. It is a very important bill.

Finally, tonight, in our so-called wrap-up, by unanimous consent we will have this legislation enacted. I hope the House will pass it and it will be signed into law because it is necessary for the protection of American citizens.

So I wanted to comment on that very briefly. At the appropriate time, I have signed a more extensive written statement which will be printed as part of the Record.

I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Pennsylvania.

EXTENDED UNEMPLOYMENT BENEFITS

Mr. WOFFORD. Madam President, the NAFTA debate, unfortunately, has turned around. It has turned into a debate over two symbols: America's willingness to embrace international trade against America's willingness to promote the interests of working people. From the beginning, I have been against NAFTA because I believe that agreement will cause job loss and the lowering of American wages. But we have to face facts tonight. NAFTA is going to pass before we adjourn. That is being hailed by some as a victory for international trade. That not my view. But now we can only hope it will turn out to be true.

But before we adjourn, it is important that we send a message to working people in America that we will protect their interests; that we do intend finally to put people first.

It has now been 7 weeks since extended unemployment benefits expired. That is a scandal. Every day, people from Pennsylvania call my office asking when Congress is going to act. Some are crying. All are confused and angry that their elected officials in Washington can so callously ignore their suffering.

Some may not see the connection between NAFTA and unemployment benefits, but it is critical. Whatever the overall effect of NAFTA, and I hope its proponents are right that it will create jobs and prosperity in the long run, we know this trade agreement will cause considerable worker dislocation and job loss in the short run. As the saying goes, in the long run, we will all be dead. But in the short run, right now, people who have already lost their jobs are suffering.

What do we think working families feel when they see Congress unwilling to extend unemployment compensation. Rushing ahead to approve an international trade agreement that will cause worker displacement.

Any definition of national security must include security in our homes, in our health, and in our jobs.

For almost 2 months now, Congress has been dithering and delaying on the passage of these extended benefits.

I know that we are rushing headlong toward adjournment, but I say to my colleagues that I think it would be an outrage, a true scandal, for us to adjourn without acting on these important benefits.

So, in closing Madam President, I only hope that those who have worked so hard to get NAFTA passed, will work just as hard to make certain that we keep the faith with the working people of America by extending unemployment benefits before we adjourn. You owe them that much. We owe them that.

REORGANIZATION OF THE FEDERAL ADMINISTRATIVE JUDICIARY ACT

Mr. HEFLIN. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 222, S. 486, the administrative law judge reorganization bill.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 486) to establish a specialized corps of judges necessary for certain Federal proceedings required to be conducted, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

[That this Act may be cited as the "Administrative Law Judge Corps Act".

[ESTABLISHMENT OF ADMINISTRATIVE LAW JUDGE CORPS

[SEC. 2. (a) Chapter 5 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

[''SUBCHAPTER VI—ADMINISTRATIVE LAW JUDGE CORPS

[''§ 595. Definitions

[''For the purposes of this subchapter—

[''(1) 'agency' means an authority referred to in section 551(1) of this title;

[''(2) 'Corps' means the Administrative Law Judge Corps of the United States established under section 596 of this title;

[''(3) 'administrative law judge' means an administrative law judge appointed under section 3105 of this title on or before the effective date of the Administrative Law Judge Corps Act or under section 599a of this title after such effective date;

[''(4) 'chief judge' means the chief administrative law judge appointed and serving under section 597 of this title;

[''(5) 'Council' means the Council of the Administrative Law Judge Corps established under section 599 of this title;

[''(6) 'Board', unless otherwise indicated, means the Complaints Resolution Board established under section 599c of this title; and

[''(7) 'division chief judge' means the chief administrative law judge of a division appointed and serving under section 598 of this title.

[''§ 596. Establishment; membership

[''(a) There is established an Administrative Law Judge Corps consisting of all administrative law judges, in accordance with the provisions of subsection (b). Such Corps shall be located in Washington, D.C.

[''(b) An administrative law judge serving as such on the date of the commencement of the operation of the Corps shall be transferred to the Corps as of that date. An administrative law judge who is appointed on or after the date of the commencement of the operation of the Corps shall be a member of the Corps as of the date of such appointment.

[''§ 597. Chief administrative law judge

[''(a) The chief administrative law judge shall be the chief administrative officer of the Corps and shall be the presiding judge of the Corps. The chief judge shall be appointed by the President, by and with the advice and consent of the Senate. The chief judge shall be an administrative law judge who has served as an administrative law judge for at least five years preceding the date of appointment as chief judge. The chief judge shall serve for a term of five years or until a successor is appointed and qualifies to serve, whichever is earlier. A chief judge may be reappointed upon the expiration of his term, by and with the advice and consent of the Senate.

[''(b)(1) If the office of chief judge is vacant, the division chief judge who is senior in length of service as a member of the Council shall serve as acting chief judge until such vacancy is filled.

[''(2) If two or more division chief judges have the same length of service as members of the Council, the division chief judge who is senior in length of service as an administrative law judge shall serve as such acting chief judge.

[''(c) The chief judge shall, within ninety days after the end of each fiscal year, submit a written report to the President and the Congress concerning the business of the Corps during the preceding fiscal year. The report shall include information and recommendations of the Council concerning the personnel requirements of the Corps.

[''(d) After serving as chief judge, such individual may continue to serve as an administrative law judge unless such individual has been removed from office in accordance with section 599c of this title.

[''§ 598. Divisions of the Corps; division chief judges

[''(a) Each judge of the Corps shall be assigned to a division by the Council, pursuant to section 599. The assignment of a judge who was an administrative law judge on the date of commencement of the operation of the Corps shall be made after consideration of the areas of specialization in which the judge has served. Each division shall be headed by a division chief judge who shall exercise administrative supervision over such division.

[''(b) The divisions of the Corps shall be as follows:

[''(1) Division of Communications, Public Utility, and Transportation Regulation.

[''(2) Division of Safety and Environmental Regulation.

[''(3) Division of Labor.

[''(4) Division of Labor Relations.

[''(5) Division of Health and Benefits Programs.

[''(6) Division of Securities, Commodities, and Trade Regulation.

[''(7) Division of General Programs.

[''(8) Division of Financial Services Institutions.

[''(c)(1) The division chief judge of each division set forth in subsection (b) shall be appointed by the President, by and with the advice and consent of the Senate.

[''(2) To be eligible for appointment as a division chief judge, an individual shall have served as an administrative law judge for at least five years and should possess experience and expertise in the specialty of the division to which such person is an appointee.

[''(3) Division chief judges shall be appointed for five-year terms except that of those division chief judges first appointed, the President shall designate two such individuals to be appointed for five-year terms, three for four-year terms, and two for three-year terms.

[''(4) Any division chief judge appointed to fill an unexpired term shall be appointed only for the remainder of such predecessor's term, but may be reappointed as provided in paragraph (5).

[''(5) Any division chief judge may be reappointed upon the expiration of his term if nominated for such appointment pursuant to the provisions of this title.

[''(6) Any judge, after serving as division chief judge may continue to serve as an administrative law judge unless such individual has been removed from office in accordance with section 599c of this title.

[''§ 599. Council of the Corps

[''(a) The policymaking body of the Corps shall be the Council of the Corps. The chief judge and the division chief judges shall constitute the Council. The chief judge shall preside over the Council. If the chief judge is unable to be present at a meeting of the Council, the division chief judge who is senior in length of service as a member of such Council shall preside.

[''(b) One half of all of the members of the Council shall constitute a quorum for the purpose of transacting business. The affirmative vote by a majority of all the members of the Council shall be required to approve a matter on behalf of the Council. Each member of the Council shall have one vote.

[''(c) Meetings of the Council shall be held at least once a month at the call of the chief judge or by the call of one-third or more of the members of the Council.

[''(d) The Council is authorized—

[''(1) to assign judges to divisions and transfer or reassign judges from one division to another, subject to the provisions of section 599a of this title;

["(2) to appoint persons as administrative law judges under section 599a of this title;

["(3) to file charges seeking adverse action against an administrative law judge under section 599c of this title;

["(4) subject to the provisions of subsection (e), to prescribe, after providing an opportunity for notice and comment, the rules of practice and procedure for the conduct of proceedings before the Corps, except that, with respect to a category of proceedings adjudicated by an agency before the effective date of the Administrative Law Judge Corps Act, the Council may not amend or revise the rules of practice and procedure prescribed by that agency during the two years following such effective date without the approval of that agency, and any amendments or revisions made to such rules shall not affect or be applied to any pending action;

["(5) to issue such rules and regulations as may be appropriate for the efficient conduct of the business of the Corps and the implementation of this subchapter, including the assignment of cases to administrative law judges;

["(6) subject to the civil service and classification laws and regulations, to select, appoint, employ, and fix the compensation of the employees (other than administrative law judges) that such Council determines necessary to carry out the functions, powers, and duties of the Corps and to prescribe the authority and duties of such employees;

["(7) to establish, abolish, alter, consolidate, and maintain such regional, district, and other field offices as are necessary to carry out the functions, powers, and duties of the Corps and to assign and reassign employees to such field offices;

["(8) to procure temporary and intermittent services under section 3109 of this title;

["(9) to enter into, to the extent or in such amounts as are authorized in appropriation Acts, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), contracts, leases, cooperative agreements, or other transactions that may be necessary to conduct the business of the Corps;

["(10) to delegate any of the chief judge's functions or powers with the consent of the chief judge, or whenever the office of such chief judge is vacant, to one or more division chief judges or other employees of the Corps, and to authorize the redelegation of any of those functions or powers;

["(11) to establish, after consulting with an agency, initial and continuing educational programs to ensure that each administrative law judge assigned to hear cases of an agency has the necessary training in the specialized field of law of that agency;

["(12) to make suitable arrangements for continuing education and training of other employees of the Corps, so that the level of expertise in the divisions of the Corps shall be maintained and enhanced; and

["(13) to determine all other matters of general policy of the Corps.

["(e) The Council shall select an official seal for the Corps which shall be officially noticed.

["§ 599a. Appointment and transfer of administrative law judges

["(a) After the initial establishment of the Corps, the Council shall appoint new or additional judges as may be necessary for the efficient and expeditious conduct of the business of the Corps. Appointments shall be made from a register maintained by the Office of Personnel Management under subchapter I of chapter 33 of this title. Upon request by the chief judge, the Office of Personnel Management shall certify enough names from the top of such register to enable the Council to consider five names for each vacancy. Notwithstanding section 3318 of this title, a vacancy in the Corps may be filled from the highest five eligible individuals available for appointment on the certificate furnished by the Office of Personnel Management.

["(b) A judge of the Corps may not perform or be assigned to perform duties inconsistent with the duties and responsibilities of an administrative law judge.

["(c) A judge of the Corps on the date of commencement of the operation of the Corps may not thereafter be involuntarily reassigned to a new permanent duty station if such station is beyond commuting distance of the duty station which is the judge's permanent duty station on that date, unless the Council determines and submits a written explanation to the judge stating that such reassignment is required to meet substantial changes in workloads. A judge may be temporarily detailed, once in a 24-month period, to a new duty station at any location, for a period of not more than 120 days.

["§ 599b. Jurisdiction

["(a) All types of cases, claims, actions and proceedings held before administrative law judges before the effective date of the Administrative Law Judge Corps Act shall be referred to the Corps for adjudication on the record after an opportunity for a hearing.

["(b) An administrative law judge who is a member of the Corps shall hear and render a decision upon—

["(1) every case of adjudication subject to the provisions of section 553, 554, or 556 of this title;

["(2) every case in which hearings are required by law to be held in accordance with sections 553, 554, or section 556 of this title; and

["(3) every other case referred to the Corps by an agency or court in which a determination is to be made on the record after an opportunity for a hearing.

["(c) When a case under subsection (b) arises, it shall be referred to the Corps. Under regulations issued by the Council the case shall be assigned to a division. The appropriate division chief judge shall assign cases to judges, taking into consideration specialization, training, workload and conflicts of interest.

["(d) Federal agencies and courts are authorized to refer any appropriate case either—

["(1) to the Corps; or

["(2) to a specific administrative law judge, with the approval of the majority of the Council, to serve as a special master pursuant to the provisions of Rule 53(a) of the Federal Rules of Civil Procedure.

["(e) Compliance with this subchapter shall satisfy any requirement under section 916 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.".

["§ 599c. Removal and discipline

["(a) Except as provided in subsection (b) of this section—

["(1) an administrative law judge may not be removed, suspended, reprimanded, or disciplined except for misconduct or neglect of duty, but may be removed for physical or mental disability; and

["(2) an action specified in paragraph (1) of this subsection may be taken against an administrative law judge only after the Council has filed a notice of adverse action against the administrative law judge with the Merit Systems Protection Board and the Board has determined, on the record after an opportunity for a hearing before the Board, that there is good cause to take such action.

["(b) Subsection (a) shall not apply to an action initiated under section 1206 of this title.

["(c) Under regulations issued by the Council, a Complaints Resolution Board shall be established within the Corps to consider and to recommend appropriate action to be taken when a complaint is made concerning the official conduct of a judge. Such complaint may be made by any interested person, including parties, practitioners, the chief judge, and agencies.

["(d) The Board shall consist of two judges from each division of the Corps who shall be appointed by the Council. The chief judge and the division chief judges may not serve on such Board.

["(e) A complaint of misconduct by an administrative law judge shall be made in writing. The complaint shall be filed with the chief judge, or it may be originated by the chief judge on his own motion. The chief judge shall refer the complaint to a panel consisting of three members of the Board selected by the Council, none of whom may be serving in the same division as the administrative law judge who is the subject of the complaint. The administrative law judge who is the subject of the complaint shall be given notice of the complaint and the composition of the panel. The administrative law judge may challenge peremptorily not more than two members of the panel. The Council shall replace a challenged member with another member of the Board who is eligible to serve on such panel.

["(f) The panel shall inquire into the complaint and shall render a report to the Council. A copy of the report shall be provided concurrently to the administrative law judge who is the subject of the complaint. The report shall be advisory only.

["(g) The proceedings, deliberations, and reports of the Board and the contents of complaints under this section shall be treated as privileged and confidential. Documents considered by the Board and reports of the Board are exempt from disclosure or publication under section 552 of this title. Section 552b of this title shall not apply to the Board.".

[(b) The table of sections for chapter 5 of title 5, United States Code, is amended by adding at the end thereof the following:

["SUBCHAPTER VI—ADMINISTRATIVE LAW JUDGE CORPS

"Sec.
["595. Definitions.
["596. Establishment; membership.
["597. Chief administrative law judge.
["598. Divisions of the Corps; division chief judges.
["599. Council of the Corps.
["599a. Appointment and transfer of administrative law judges.
["599b. Jurisdiction.
["599c. Removal and discipline.".

[AGENCY REVIEW STUDY AND REPORT

[SEC. 3. The chief administrative law judge of the Administrative Law Judge Corps of the United States shall make a study of the various types and levels of agency review to which decisions of administrative law judges are subject. A separate study shall be made for each division of the Corps. The studies shall include monitoring and evaluating data and shall be made in consultation with the division chief judges, the Chairman of the

Administrative Conference of the United States, and the agencies that review the decisions of administrative law judges. Not later than two years after the effective date of this Act, the Council shall report to the President and the Congress on the findings and recommendations resulting from the studies. The report shall include recommendations, including recommendations for new legislation, for any reforms that may be appropriate to make review of administrative law judges' decisions more efficient and meaningful and to accord greater finality to such decisions.

[TRANSITION AND SAVINGS PROVISIONS

[SEC. 4. (a) There are transferred to the administrative law judges of the Administrative Law Judge Corps established by section 596 of title 5, United States Code (as added by section 2 of this Act), all functions performed on the day before the effective date of this Act by the administrative law judges appointed under section 3105 of such title before the effective date of this Act.

[(b) With the consent of the agencies concerned, the Administrative Law Judge Corps of the United States may use the facilities and the services of officers, employees, and other personnel of agencies from which functions and duties are transferred to the Corps for so long as may be needed to facilitate the orderly transfer of those functions and duties under this Act.

[(c) The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, in connection with the functions, offices, and agencies transferred by this Act, are, subject to section 1531 of title 31, United States Code, correspondingly transferred to the Corps for appropriate allocation.

[(d) The transfer of personnel pursuant to subsection (b) of this section shall be without reduction in pay or classification for one year after such transfer.

[(e) The Director of the Office of Management and Budget, at such time or times as the Director shall provide, may make such determinations as may be necessary with regard to the functions, offices, agencies, or portions thereof, transferred by this Act, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, offices, agencies, or portions thereof, as may be necessary to carry out the provisions of this Act.

[(f) All orders, determinations, rules, regulations, certificates, licenses, and privileges which have been issued, made, granted, or allowed to become effective in the exercise of any duties, powers, or functions which are transferred under this Act and are in effect at the time this Act becomes effective shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Administrative Law Judge Corps of the United States or a judge thereof in the exercise of authority vested in the Corps or its members by this Act, by a court of competent jurisdiction, or by operation of law.

[(g) Except as provided in subsections (d)(5) and (e) of section 599 of title 5, United States Code, this Act shall not affect any proceeding before any department or agency or component thereof which is pending at the time this Act takes effect. Such a proceeding shall be continued before the Administrative Law Judge Corps of the United States or a judge thereof, or, to the extent the proceeding does not relate to functions so transferred, shall be continued before the agency in which it was pending on the effective date of this Act.

[(h) No suit, action, or other proceeding commenced before the effective date of this Act shall abate by reason of the enactment of this Act.

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 5. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act and subchapter VI of title 5, United States Code (as added by section 2 of this Act).

[TECHNICAL AND CONFORMING AMENDMENTS

[SEC. 6. Title 5, United States Code, is amended as follows:

[(1) Section 573(b) is amended by redesignating paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively, and inserting a new paragraph (4) to read as follows:

["(4) the chief administrative law judge of the Administrative Law Judge Corps of the United States;".

[(2) Section 3105 is amended to read as follows:

["§ 3105. Appointment of administrative law judges

["Administrative law judges shall be appointed by the Council of the Administrative Law Judge Corps pursuant to section 599a of this title.".

[(3) Section 3344 and any references to such section are repealed.

[(4) The table of sections for chapter 33 is amended by striking out the item relating to section 3344.

[(5)(A) Subchapter III of chapter 75 of title 5, United States Code, is repealed.

[(B) The table of sections at the beginning of chapter 75 of title 5, United States Code, is amended—

[(i) by striking out the items relating to subchapter III and section 7521;

[(ii) by redesignating "Subchapter IV" and all references to such subchapter as "Subchapter III"; and

[(iii) by redesignating "Subchapter V" and all references to such subchapter as "Subchapter IV".

[OPERATION OF THE CORPS

[SEC. 7. Operation of the Corps shall commence on the date the first chief administrative law judge of the Corps takes office.

[CONTRACT DISPUTES ACT

[SEC. 8. Nothing in this Act or the amendments made by this Act shall be deemed to affect any agency board established pursuant to the Contract Disputes Act (41 U.S.C. 601), or any other person designated to resolve claims or disputes pursuant to such Act.

[EFFECTIVE DATE

[SEC. 9. Except as otherwise provided, this Act and the amendments made by this Act shall take effect 120 days after the date of enactment.]

SECTION 1. SHORT TITLE.

This Act may be cited as the "Reorganization of the Federal Administrative Judiciary Act".

SEC. 2. FINDINGS.

The Congress finds that—

(1) in order to promote efficiency, productivity, the reduction of administrative functions, and to provide economies of scale and better public service and public trust in the administrative resolution of disputes, Federal administrative law judges should be organized in a unified corps;

(2) the dispersal of administrative law judges appointed under section 3105 of title 5, United States Code, in every Federal agency that requires hearings to be conducted by administrative law judges, underutilizes the potential of administrative law judges to serve the public and assist the Federal courts as special masters and finders of fact in specific instances to help reduce the backlog of cases in Federal courts;

(3) the organization of administrative law judges in a corps will best promote their assignment to Federal agency needs as demand requires;

(4) a unified administrative law judge corps will better promote the use of information technology in serving the public; and

(5) an administrative law judge corps will, through consolidation, eliminate unnecessary offices and reduce travel and other related costs.

SEC. 3. ESTABLISHMENT OF ADMINISTRATIVE LAW JUDGE CORPS.

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

"SUBCHAPTER VI—ADMINISTRATIVE LAW JUDGE CORPS

"§597. Definitions

"For the purposes of this subchapter—

"(1) 'agency' means an authority referred to in section 551(1);

"(2) 'Corps' means the Administrative Law Judge Corps of the United States established under section 598;

"(3) 'administrative law judge' means an administrative law judge appointed under section 3105 on or before the effective date of the Reorganization of the Federal Administrative Judiciary Act or under section 599c after such effective date;

"(4) 'chief judge' means the chief administrative law judge appointed and serving under section 599;

"(5) 'Council' means the Council of the Administrative Law Judge Corps established under section 599b;

"(6) 'Board', unless otherwise indicated, means the Complaints Resolution Board established under section 599e; and

"(7) 'division chief judge' means the chief administrative law judge of a division appointed and serving under section 599a.

"§598. Establishment; membership

"(a) ESTABLISHMENT.—There is established an Administrative Law Judge Corps consisting of all administrative law judges, in accordance with the provisions of subsection (b). Such Corps shall be administered in Washington, D.C.

"(b) MEMBERSHIP.—An administrative law judge serving as such on the date of the commencement of the operation of the Corps shall be transferred to the Corps as of that date. An administrative law judge who is appointed on or after the date of the commencement of the operation of the Corps shall be a member of the Corps as of the date of such appointment.

"§599. Chief administrative law judge

"(a) APPOINTMENT; TERM.—The chief administrative law judge shall be the chief administrative officer of the Corps and shall be the presiding judge of the Corps. The chief judge shall be appointed by the President, by and with the advice and consent of the Senate. The chief judge shall be learned in the law. The chief judge shall serve for a term of five years or until a successor is appointed and qualifies to serve, whichever is earlier. A chief judge may be reappointed upon the expiration of the term of such judge, by and with the advice and consent of the Senate.

"(b) VACANCIES.—(1) If the office of chief judge is vacant, the division chief judge who is senior in length of service as a member of the

Council shall serve as acting chief judge until such vacancy is filled.

"(2) If 2 or more division chief judges have the same length of service as members of the Council, the division chief judge who is senior in length of service as an administrative law judge shall serve as such acting chief judge.

"(c) SPECIAL FUNCTIONS OF CHIEF JUDGE.—(1) In addition to other duties conferred on the chief judge, the chief judge shall be responsible for developing programs and practices, in coordination with agencies using administrative law judges, which foster economy and efficiency in the processing of cases heard by administrative law judges. These programs and practices shall include—

"(A) training of judges in more than one subject area;

"(B) employment of computers and software and other information technology for automated decision preparation, case docketing, and research;

"(C) consolidating hearing facilities and law libraries; and

"(D) programs and practices to foster overall efficient use of staff, personnel, equipment, and facilities.

"(2) In order to minimize costs—

"(A) all administrative law judges and support personnel shall, for at least 1 year after the date of the commencement of the operation of the Corps, continue to use the office space and facilities, at the agencies using such judges and personnel, available before such date, and

"(B) the chief judge shall phase in transfers of administrative law judges and support personnel to other facilities so that the cost of providing facilities for the Corps shall not exceed the cost of maintaining such judges and personnel in equivalent space available at agencies using the Corps.

"(d) REPORTS.—The chief judge shall, within 90 days after the end of each fiscal year, make a written report to the President and the Congress concerning the business of the Corps during the preceding fiscal year. The report shall include information and recommendations of the Council concerning the future personnel requirements of the Corps.

"(e) SERVICE AFTER TERM EXPIRES.—After serving as chief judge, an individual may continue to serve as an administrative law judge unless such individual has been removed from office in accordance with section 599c.

"§599a. Divisions of the Corps; division chief judges

"(a) ASSIGNMENT TO DIVISIONS.—Each judge of the Corps shall be assigned to a division by the Council, pursuant to section 599b. The assignment of a judge who was an administrative law judge on the date of commencement of the operation of the Corps shall be made after consideration of the areas of specialization in which the judge has served. Each division shall be headed by a division chief judge who shall exercise administrative supervision over such division.

"(b) DIVISIONS.—The divisions of the Corps shall be as follows:

"(1) Division of Communications, Public Utility, and Transportation Regulation.

"(2) Division of Safety and Environmental Regulation.

"(3) Division of Labor.

"(4) Division of Labor Relations.

"(5) Division of Health and Human Services Programs.

"(6) Division of Securities, Commodities, and Trade Regulation.

"(7) Division of General Programs.

"(8) Division of Financial Services Institutions.

"(c) APPOINTMENT OF DIVISION CHIEF JUDGES.—(1) The division chief judge of each division set forth in subsection (b) shall be appointed by the President, by and with the advice and consent of the Senate, and shall be learned in the law.

"(2) Division chief judges shall be appointed for 5-year terms, except that of those division chief judges first appointed, the President shall designate 2 such individuals to be appointed for 5-year terms, 3 for 4-year terms, and 2 for 3-year terms.

"(3) Any division chief judge appointed to fill an unexpired term shall be appointed only for the remainder of such predecessor's term, but may be reappointed as provided in paragraph (4).

"(4) Any division chief judge may be reappointed upon the expiration of his or her term.

"(5) Any judge, after serving as division chief judge, may continue to serve as an administrative law judge unless such individual has been removed from office in accordance with section 599e.

"§599b. Council of the Corps

"(a) IN GENERAL.—The policymaking body of the Corps shall be the Council of the Corps. The chief judge and the division chief judges shall constitute the Council. The chief judge shall preside over the Council. If the chief judge is unable to be present at a meeting of the Council, the division chief judge who is senior in length of service as a member of such Council shall preside at the meeting.

"(b) QUORUM; VOTING.—One half of all of the members of the Council shall constitute a quorum for the purpose of transacting business. The affirmative vote by a majority of all the members of the Council shall be required to approve a matter on behalf of the Council. Each member of the Council shall have one vote.

"(c) MEETINGS.—Meetings of the Council shall be held at least once a month at the call of the chief judge or by the call of one-third or more of the members of the Council.

"(d) POWERS.—The Council is authorized—

"(1) to assign judges to divisions and transfer or reassign judges from one division to another, subject to the provisions of section 599c;

"(2) to appoint persons as administrative law judges under section 599c;

"(3) to file charges seeking adverse action against an administrative law judge under section 599e;

"(4) subject to the provisions of subsection (e), to prescribe, after providing an opportunity for notice and comment, the rules of practice and procedure for the conduct of proceedings before the Corps, except that, with respect to a category of proceedings adjudicated by an agency before the effective date of the Reorganization of the Federal Administrative Judiciary Act, the Council may not amend or revise the rules of practice and procedure prescribed by that agency during the 2 years following such effective date without the approval of that agency, and any amendments or revisions made to such rules shall not affect or be applied to any pending action;

"(5) to issue such rules and regulations as may be appropriate for the efficient conduct of the business of the Corps and the implementation of this subchapter, including the assignment of cases to administrative law judges;

"(6) subject to the civil service and classification laws and regulations—

"(A) to select, appoint, employ, and fix the compensation of the employees (other than administrative law judges) that the Council deems necessary to carry out the functions, powers, and duties of the Corps; and

"(B) to prescribe the authority and duties of such employees;

"(7) to establish, abolish, alter, consolidate, and maintain such regional, district, and other field offices as are necessary to carry out the functions, powers, and duties of the Corps and to assign and reassign employees to such field offices;

"(8) to procure temporary and intermittent services under section 3109;

"(9) to enter into, to the extent or in such amounts as are authorized in appropriation Acts, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), contracts, leases, cooperative agreements, or other transactions that may be necessary to conduct the business of the Corps;

"(10) to delegate any of the chief judge's functions or powers with the consent of the chief judge, or whenever the office of such chief judge is vacant, to one or more division chief judges or other employees of the Corps, and to authorize the redelegation of any of those functions or powers;

"(11) to establish, after consulting with an agency, initial and continuing educational programs to assure that each administrative law judge assigned to hear cases of that agency has the necessary training in the specialized field of law of that agency;

"(12) to make suitable arrangements for continuing education and training of other employees of the Corps, so that the level of expertise in the divisions of the Corps will be maintained and enhanced; and

"(13) to determine all other matters of general policy of the Corps.

"(e) OFFICIAL SEAL.—The Council shall select an official seal for the Corps which shall be judicially noticed.

"§599c. Appointment and transfer of administrative law judges

"(a) APPOINTMENT.—After the initial establishment of the Corps, the Council shall appoint new or additional judges as may be necessary for the efficient and expeditious conduct of the business of the Corps. Appointments shall be made from a register maintained by the Office of Personnel Management under subchapter I of chapter 33 of this title. Upon request by the chief judge, the Office of Personnel Management shall certify enough names from the top of such register to enable the Council to consider five names for each vacancy. Notwithstanding section 3318, a vacancy in the Corps may be filled from the highest five eligible individuals available for appointment on the certificate furnished by the Office of Personnel Management.

"(b) LIMITATION ON JUDGE'S DUTIES.—A judge of the Corps may not perform or be assigned to perform duties inconsistent with the duties and responsibilities of an administrative law judge.

"(c) REASSIGNMENTS; DETAILS.—A judge or staff member of the Corps on the date of commencement of the operation of the Corps, and all new judges and staff members appointed by the Council, may not thereafter be involuntarily reassigned to a new permanent duty station if such station is beyond the commuting area of the duty station which is the judge's permanent duty station on that date. A judge or staff member of the Corps may be temporarily detailed, once in a 24-month period, to a new duty station at any location, for a period of not more than 120 days.

"§599d. Jurisdiction

"(a) IN GENERAL.—Any case, claim, action, or proceeding authorized to be heard before an administrative law judge on the day before the effective date of the Reorganization of the Federal Administrative Judiciary Act shall, on or after such date, be referred to the Corps for adjudication on the record after an opportunity for a hearing.

"(b) TYPES OF CASES.—An administrative law judge who is a member of the Corps shall hear and render a decision upon—

"(1) every case of adjudication subject to the provisions of section 553, 554, or 556;

"(2) every case in which hearings are required by law to be held in accordance with sections 553, 554, or section 556;

"(3) every other case referred to the Corps by an agency in which a determination is to be made on the record after an opportunity for a hearing; and

"(4) every case referred to the Corps by a court for an administrative law judge to act as a special master or to otherwise making findings of fact on behalf of the referring court, which shall continue to have exclusive and undiminished jurisdiction over the case.

"(c) REFERRAL OF CASES.—When a case under subsection (b) arises, it shall be referred to the Corps. Under regulations issued by the Council, the case shall be assigned to a division. The appropriate division chief shall assign cases to judges, taking into consideration specialization, training, workload, and conflicts of interest.

"(d) REFERRALS BY AGENCIES AND COURTS.—Courts are authorized to refer, subject to the approval of the majority of the Council and the parties in the court proceeding, those cases, or portions thereof, in which they seek an administrative law judge either to act as a special master pursuant to the provisions of Rule 53(a) of the Federal Rules of Civil Procedure or otherwise seek an administrative law judge to make findings of fact in a case on behalf of the referring court, which shall continue to have exclusive and undiminished jurisdiction over the case. When a court has referred a case to an administrative law judge, the recommendations, rulings, and findings of fact of the administrative law judge are subject to de novo review by the referring court.

"(e) SATISFACTION OF OTHER PROCEDURAL REQUIREMENTS.—Compliance with this subchapter shall satisfy all requirements imposed under section 916 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

"(f) APPLICATION OF AGENCY POLICY.—The provisions of this subchapter shall effect no change in—

"(1) an agency's rulemaking, interpretative, or policymaking authority in carrying out the statutory responsibilities vested in the agency or agency head;

"(2) the adjudicatory authority of administrative law judges; or

"(3) the authority of an agency to review decisions of administrative law judges under any applicable provision of law.

"§ 599e. Removal and discipline

"(a) Except as provided in subsection (b)—

"(1) an administrative law judge may not be removed, suspended, reprimanded, or disciplined except for misconduct or neglect of duty, but may be removed for physical or mental disability (consistent with prohibitions on discrimination otherwise imposed by law); and

"(2) an action specified in paragraph (1) of this subsection may be taken against an administrative law judge only after the Council has filed with the Merit Systems Protection Board a notice of adverse action against the administrative law judge and the Merit Systems Protection Board has determined, on the record after an opportunity for a hearing before the Merit Systems Protection Board, that there is good cause to take such action.

"(b) Subsection (a) does not apply to an action initiated under section 1215.

"(c) COMPLAINTS RESOLUTION BOARD.—Under regulations issued by the Council, a Complaints Resolution Board shall be established within the Corps to consider and to recommend appropriate action to be taken when a complaint is made concerning the official conduct of a judge of the Corps. Such complaint may be made by any interested person, including parties, practitioners, the chief judge, and agencies.

"(d) COMPOSITION OF THE BOARD.—The Board shall consist of 2 judges from each division of the Corps, who shall be appointed by the Council. The chief judge and the division chief judges may not serve on the Board.

"(e) PROCEDURAL REQUIREMENTS.—A complaint of misconduct by an administrative law judge shall be made in writing. The complaint shall be filed with the chief judge, or it may be originated by the chief judge on his own motion. The chief judge shall refer the complaint to a panel consisting of 3 members of the Board selected by the Council, none of whom may be serving in the same division as the administrative law judge who is the subject of the complaint. The administrative law judge who is the subject of the complaint shall be given notice of the complaint and the composition of the panel. The administrative law judge may challenge peremptorily not more than 2 members of the panel. The Council shall replace a challenged member with another member of the Board who is eligible to serve on such panel.

"(f) INQUIRY AND REPORT BY PANEL.—The panel shall inquire into the complaint and shall render a report thereon to the Council. A copy of the report shall be provided concurrently to the administrative law judge who is the subject of the complaint. The report shall be advisory only.

"(g) CONFIDENTIALITY.—The proceedings, deliberations, and reports of the Board and the contents of complaints under this section shall be treated as privileged and confidential. Documents considered by the Board and reports of the Board under this section are exempt from disclosure or publication under section 552. Section 552b does not apply to the Board.".

(b) APPOINTMENTS OF DIVISION CHIEF JUDGES.—It is the sense of the Congress that the President should appoint as division chief judges under section 599a(c) of title 5, United States Code (as added by subsection (a) of this section), individuals who have served as an administrative law judge for at least 5 years.

(c) ADMINISTRATIVE PROVISION.—Except as provided under subchapter VI of chapter 5 of title 5, United States Code, the chief administrative law judge and the division chief judges appointed under such subchapter shall be deemed administrative law judges appointed under section 3105.

(d) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 5, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER VI—ADMINISTRATIVE LAW JUDGE CORPS

"Sec.
"597. Definitions.
"598. Establishment; membership.
"599. Chief administrative law judge.
"599a. Divisions of the Corps; division chief judges.
"599b. Council of the Corps.
"599c. Appointment and transfer of administrative law judges.
"599d. Jurisdiction.
"599e. Removal and discipline.".

SEC. 4. AGENCY REVIEW STUDY AND REPORT.

(a) STUDY.—The chief administrative law judge of the Administrative Law Judge Corps of the United States shall conduct a study of the various types and levels of agency review to which decisions of administrative law judges are subject. A separate study shall be conducted for each division of the Corps. The studies shall include monitoring and evaluating data and shall be conducted in consultation with the division chief judges, the Chairman of the Administrative Conference of the United States, and the agencies that review the decisions of administrative law judges.

(b) REPORT.—(1) Not later than 2 years after the effective date of this Act, the Council shall report to the President and the Congress on the findings and recommendations resulting from the studies conducted under subsection (a).

(2) The report under paragraph (1) shall include recommendations, including recommendations for new legislation, for any reforms that may be appropriate to make review of administrative law judges' decisions more efficient and meaningful and to accord greater finality to such decisions, except that all decisions subject, before the effective date of this Act, to review pursuant to section 205(g) of the Social Security Act (42 U.S.C. 405(g)) shall continue to be subject to such review pursuant to such section.

(3) The report under paragraph (1) shall also include recommendations for using staff more efficiently to decrease backlogs, especially in the area of social security disability cases.

SEC. 5. TRANSITION AND SAVINGS PROVISIONS.

(a) TRANSFER OF FUNCTIONS.—There are transferred to the administrative law judges of the Administrative Law Judge Corps established by section 598 of title 5, United States Code (as added by section 3 of this Act), all functions authorized to be performed on the day before the effective date of this Act by the administrative law judges appointed under section 3105 of such title before the effective date of this Act.

(b) USE OF AGENCY FACILITIES AND PERSONNEL.—With the consent of the agencies concerned, the Administrative Law Judge Corps of the United States may use the facilities and the services of officers, employees, and other personnel of agencies from which functions and duties are transferred to the Corps for so long as may be needed to facilitate the orderly transfer of those functions and duties under this Act.

(c) INCIDENTAL TRANSFERS.—The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, in connection with the functions transferred by this Act, are, subject to section 1531 of title 31, United States Code, transferred to the Corps for appropriate allocation.

(d) PAY OF TRANSFERRED PERSONNEL.—The transfer of personnel pursuant to subsection (b) or (c) shall be without reduction in pay or classification for 5 years after such transfer.

(e) AUTHORITIES OF DIRECTOR OF OMB.—The Director of the Office of Management and Budget, at such time or times as the Director shall provide, may make such determinations as may be necessary with regard to the functions transferred by this Act, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this Act.

(f) CONTINUED EFFECTIVENESS OF PRIOR ACTIONS.—All orders, determinations, rules, regulations, certificates, licenses, and privileges which have been issued, made, granted, or allowed to become effective in the exercise of any duties, powers, or functions which are transferred under this Act and are in effect at the time this Act becomes effective shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Administrative Law Judge Corps of the United States or a judge thereof in the exercise of authority vested in the Corps or its members by this Act, by a court of competent jurisdiction, or by operation of law.

(g) PENDING PROCEEDINGS.—(1) Except as provided in subsections (d)(5) and (e) of section 599b of title 5, United States Code, this Act shall not affect any proceeding before any department or agency or component thereof which is

pending at the time this Act takes effect. Such a proceeding shall be continued before the Administrative Law Judge Corps of the United States or a judge thereof, or, to the extent the proceeding does not relate to functions so transferred, shall be continued before the agency in which it was pending on the effective date of this Act.

(2) No suit, action, or other proceeding commenced before the effective date of this Act shall abate by reason of the enactment of this Act.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act and subchapter VI of title 5, United States Code (as added by section 3 of this Act).

SEC. 7. TECHNICAL AND CONFORMING AMENDMENTS.

(a) TITLE 5, UNITED STATES CODE.—Title 5, United States Code, is amended as follows:

(1) Section 593(b) is amended—

(A) by redesignating paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively, and

(B) by inserting the following after paragraph (3):

"(4) the chief administrative law judge of the Administrative Law Judge Corps of the United States;".

(2) Section 3105 is amended to read as follows:

"§ 3105. Appointment of administrative law judges

"Administrative law judges shall be appointed by the Council of the Administrative Law Judge Corps pursuant to sections 596 and 599c of this title.".

(3) Section 3344, and the item relating to section 3344 in the table of sections for chapter 33, are repealed.

(4) Subchapter III of chapter 75, and the items relating to subchapter III and section 7521 in the table of sections at the beginning of chapter 75, are repealed.

(5) Section 559 is amended—

(A) in the first sentence by striking "chapter 7" and all that follows through "7521" and inserting "subchapter VI of this chapter, chapter 7, and sections 1305, 3105, 4301(2)(E), and 5372"; and

(B) in the last sentence by striking "chapter 7" and all that follows through "7521" and inserting "subchapter VI of this chapter, chapter 7, section 1305, 3105, 4301(2)(E), or 5372".

(6) Section 1305 is amended—

(A) by striking "section 3105, 3344," and inserting "sections 3105,"; and

(B) by striking ", and for the purpose of section 7521 of this title, the Merit Systems Protection Board may".

(7) Section 5514(a)(2) is amended in the fourth sentence by striking ", except that" and all that follows through "administrative law judge".

(8) Section 7105 is amended—

(A) in subsection (d) by striking ", administrative law judges under section 3105 of this title,"; and

(B) in subsection (e)(2) by striking "under subsection (d) of this section" and inserting "under section 3105 of this title".

(9) Section 7132(a) is amended by striking "appointed by the Authority under section 3105 of this title" and inserting "appointed under section 3105 of this title who is conducting hearings under this chapter".

(10) Section 7502 is amended by striking "7521 or".

(11) Section 7512(E) is amended by striking "or 7521".

(b) OTHER PROVISIONS OF LAW.—

(1) Section 6(c) of the Commodity Exchange Act is amended—

(A) in the second sentence (7 U.S.C. 9)—

(i) by striking "Administrative Law Judge designated by the Commission" and inserting "administrative law judge of the Administrative Law Judge Corps"; and

(ii) by striking "Administrative Law Judge" and inserting "administrative law judge"; and

(B) by striking "Administrative Law Judge" each subsequent place it appears (7 U.S.C. 15) and inserting "administrative law judge of the Administrative Law Judge Corps".

(2) Section 12(b) of the Commodity Exchange Act (7 U.S.C. 16(b)) is amended by striking "Administrative Law Judges,".

(3) Section 274B(e)(2) of the Immigration and Nationality Act (8 U.S.C. 1324b(e)(2)) is amended by striking "are specially designated by the Attorney General as having" and inserting "have".

(4) Section 1416(a) of the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1715(a)) is amended—

(A) in the first sentence by inserting ", subject to section 599d of title 5, United States Code," after "who may";

(B) by striking the second sentence; and

(C) in the third sentence by striking "his administrative law judges to other administrative law judges or" and inserting "administrative law judges carrying out functions under this title".

(5) Section 488A(b) of the Higher Education Act of 1965 (20 U.S.C. 1095a(b)) is amended in the third sentence by striking ", except that" and all that follows through "administrative law judge".

(6) Section 509(1) of title 28, United States Code, is amended—

(A) by striking "subchapter II" and inserting "subchapters II and VI"; and

(B) by striking "employed by the Department of Justice".

(7) Section 12 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 661) is amended—

(A) in subsection (e)—

(i) by striking "administrative law judges and other"; and

(ii) by striking ": Provided" and all that follows through the end of the subsection and inserting a period;

(B) in subsection (j) in the first sentence by striking "A" and all that follows through "Commission," and inserting "An administrative law judge to whom is assigned any proceeding instituted before the Commission shall hear and make a determination upon the proceeding and any motion in connection with such proceeding,"; and

(C) by striking subsection (k).

(8) Section 502(e)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 792(e)(1)) is amended by striking the second and third sentences and inserting the following: "Proceedings required to be conducted under this section shall be presided over by administrative law judges appointed under subchapter VI of chapter 5 of title 5, United States Code.".

(9) Section 166 of the Job Training Partnership Act (29 U.S.C. 1576(a)) is amended in the first sentence by striking "of the Department of Labor".

(10) Section 5(e) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 804(e)) is amended to read as follows:

"(e) Proceedings required to be conducted in accordance with the provisions of this Act shall be presided over by administrative law judges appointed under subchapter VI of chapter 5 of title 5, United States Code.".

(11) Section 113 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 823) is amended—

(A) in subsection (b)(2) by striking all that follows the second sentence;

(B) in subsection (d)(1) in the first sentence by striking "appointed by the Commission" and all that follows through "by the Commission," and inserting "to whom is assigned any proceeding instituted before the Commission shall hear and make a determination upon the proceeding and any motion in connection with the proceeding,"; and

(C) in subsection (e) in the first sentence by striking "its" each place it appears.

(12) Section 428(b) of the Black Lung Benefits Act (30 U.S.C. 938(b)) is amended by striking the seventh sentence.

(13) Section 321(c)(1) of title 31, United States Code, is amended—

(A) by striking "subchapter II" and inserting "subchapters II and VI"; and

(B) by striking "employed by the Secretary".

(14) Section 3801(a)(7)(A) of title 31, United States Code, is amended by striking "appointed in the authority" and all that follows through "such title;" and inserting "of the Administrative Law Judge Corps;".

(15) Section 19(d) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 919(d)) is amended by amending the second sentence to read as follows: "Any such hearing shall be conducted by an administrative law judge qualified under subchapter VI of chapter 5 of that title.".

(16) Section 21(b)(5) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 921(b)(5)) is amended by striking the first sentence.

(17) Section 7101(b)(2)(B) of title 38, United States Code, is amended by striking "7521" and inserting "599e".

(18) Section 8(b)(1) of the Contract Disputes Act of 1978 (41 U.S.C. 607(b)(1)) is amended in the first sentence by striking "hearing examiners appointed pursuant to section 3105 of title 5, United States Code" and inserting "administrative law judges appointed under section 3105 of title 5, United States Code (as in effect on the day before the effective date of the Reorganization of the Federal Administrative Judiciary Act)".

(19) Section 705(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4(a)) is amended—

(A) by striking "administrative law judges,"; and

(B) by striking ": Provided" and all that follows through the end of the subsection and inserting a period.

(20) Section 808(c) of the Act of April 11, 1968 (42 U.S.C. 3608(c)), is amended—

(A) in the first sentence by inserting ", subject to section 599d of title 5, United States Code," after "The Secretary may";

(B) by striking the second sentence; and

(C) in the last sentence by striking "his hearing examiners to other hearing examiners or" and inserting "administrative law judges carrying out functions under this title".

(21) Section 806 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3787) is amended—

(A) in the first sentence by striking "appoint such hearing examiners" and all that follows through "United States Code," and inserting ", subject to section 599d of title 5, United States Code, request the use of such administrative law judges"; and

(B) in the second sentence by striking "hearing examiner or administrative law judge assigned to or employed thereby" and inserting "such administrative law judge".

(22) Section 401(c) of the Department of Energy Organization Act (42 U.S.C. 7171(c)) is amended by striking "appointment and employment of hearing examiners in accordance with the provisions of title 5," and inserting "referral of cases to the Administrative Law Judge Corps in accordance with subchapter VI of chapter 5 of title 5,".

(23) Section 303(c)(3) of the Independent Safety Board Act of 1974 (49 U.S.C. App. 1902(c)(3))

is amended by striking ", attorneys, and administrative law judges" and inserting "and attorneys".

(24) Section 304(b)(1) of the Independent Safety Board Act of 1974 (49 U.S.C. App. 1903(b)(1)) is amended in the first sentence by striking "employed by or".

(c) REFERENCES IN OTHER LAWS.—Reference in any other Federal law to an administrative law judge or hearing examiner or to an administrative law judge, hearing examiner, or employee appointed under section 3105 of title 5, United States Code, shall be deemed to refer to an administrative law judge of the Administrative Law Judge Corps established by section 598 of title 5, United States Code.

SEC. 8. OPERATION OF THE CORPS.

Operation of the Corps shall commence on the date the first chief administrative law judge of the Corps takes office.

SEC. 9. CONTRACT DISPUTES ACT.

Nothing in this Act or the amendments made by this Act shall be deemed to affect any agency board established pursuant to the Contract Disputes Act (41 U.S.C. 601 and following), or any other person designated to resolve claims or disputes pursuant to such Act.

SEC. 10. PAYMENT BY CERTAIN AGENCIES FOR ADMINISTRATIVE LAW JUDGE SALARIES AND EXPENSES.

Any agency which before the effective date of this Act paid the salaries and expenses of administrative law judges from fees charged by such agency shall on and after the effective date of this Act pay from such fees to the chief judge of the Administrative Law Judge Corps, or the designee of the chief judge, an amount necessary to reimburse the salaries and expenses of the Corps for services provided by the Corps to such agency.

SEC. 11. EFFECTIVE DATE.

Except as otherwise provided, this Act and the amendments made by this Act shall take effect 120 days after the date of the enactment of this Act.

Amend the title so as to read: "A bill to reorganize the Federal administrative law judiciary, and for other purposes.".

AMENDMENT NOS. 1222, 1223, AND 1224, EN BLOC

Mr. HEFLIN. Madam President, on behalf of myself, Senator BROWN and Senator COHEN, I send three amendments to the desk and I ask unanimous consent they be considered and agreed to en bloc and that the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the amendments.

The assistant legislative clerk read as follows:

The Senator from Alabama [Mr. HEFLIN] proposes amendments numbered 1222, 1223, and 1224, en bloc.

So the amendments (Nos. 1222, 1223 and 1224) were agreed to en bloc, as follows:

AMENDMENT NO. 1222

(Purpose: To make technical corrections)

On page 23, line 22, strike out ", whichever is earlier".

On page 28, line 19, strike out "subject to the provisions of subsection (e),".

On page 32, line 3, insert "or staff member's" after "judge's".

On page 40, line 19, insert "permits, contracts, collective bargaining agreements, recognition of labor organizations," after "regulations,".

AMENDMENT NO. 1223

(Purpose: To provide for certain reports by the Office of Management and Budget, to limit authorization of appropriations for functions performed by the Administrative Law Judge Corps to the amount of expenditures for such functions in fiscal year 1993, and for other purposes)

On page 41, strike out lines 18 through 22, and insert in lieu thereof the following:

(h) REPORTS BY OFFICE OF MANAGEMENT AND BUDGET.—The Director of the Office of Management and Budget shall monitor and report to the Congress—

(1) 60 days after the effective date of this Act, on the amount of all funds expended in fiscal year 1994 by each agency on the functions transferred under this Act and the amendments made by this Act;

(2) no later than October 1, 1994, on the amount of unexpended balances of appropriations, authorizations, allocations, and other funds transferred by all agencies to the Administrative Law Judge Corps under this Act and the amendments made by this Act; and

(3) 1 year after the effective date of this Act, and each of the next 2 years thereafter on—

(A) whether the expenditure of each agency that transfers functions and duties under this Act and the amendments made by this Act are reduced by the amount of savings resulting from the transfer of such functions and duties; and

(B) the Government savings resulting from transfer of such functions to the Administrative Law Judge Corps and recommendations to the Congress on how to achieve additional savings.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for each of fiscal years 1995, 1996, 1997, 1988, and 1999 to carry out the provisions of this Act and subchapter VI of title 5, United States Code (as added by section 3 of this Act) such amounts as may be necessary, not to exceed in any such fiscal year the total amount expended by all agencies in fiscal year 1994 in performing all functions transferred under this Act and the amendments made by this Act.

AMENDMENT NO. 1224

(Purpose: To provide for the removal and discipline of administrative law judges, and for other purposes)

On page 34, beginning with line 18, strike out all through line 2 on page 37 and insert in lieu thereof the following:

"§ 599e. Removal and discipline

"(a) IN GENERAL.—(1) Except as provided under paragraph (2), an administrative law judge may not be removed, suspended, reprimanded, or disciplined except for misconduct or neglect of duty, but may be removed for physical or mental disability (consistent with prohibitions on discrimination otherwise imposed by law).

"(2) Paragraph (1) shall not apply to an action initiated under section 1215.

"(b) RULES OF JUDICIAL CONDUCT.—No later than 180 days after the appointment and confirmation of the Council, the Council shall adopt and issue rules of judicial conduct for administrative law judges. Such code shall be enforced by the Council and shall include standards governing—

"(1) judicial conduct and extra-judicial activities to avoid actual, or the appearance of, improprieties or conflicts of interest;

"(2) the performance of judicial duties impartially and diligently;

"(3) avoidance of bias or prejudice with respect to all parties; and

"(4) efficiency and management of cases so as to reduce dilatory practices and unnecessary costs.

"(c) DISCIPLINARY ACTION BY THE COUNCIL.—An administrative law judge may be subject to disciplinary action by the Council under subsection (j). An administrative law judge may be removed only after the Council has filed with the Merit Systems Protection Board a notice of removal and the Merit Systems Protection Board has determined on the record, after an opportunity for a hearing before the Merit Systems Protection Board, that there is good cause to take the action of removal.

"(d) COMPLAINTS RESOLUTION BOARD.—Under regulations issued by the Council, a Complaints Resolution Board shall be established within the Corps to consider and to recommend appropriate action to be taken when a complaint is made concerning conduct of a judge of the Corps. Such complaint may be made by any interested person, including parties, practitioners, the chief judge, administrative law judges, and agencies.

"(e) COMPOSITION OF THE BOARD.—(1) The Board shall consist of—

"(A) 2 judges from each division of the Corps, who shall be appointed by the Council; and

"(B) 16 attorneys who shall be appointed in accordance with the provisions of paragraph (2).

"(2) The Council shall request a list of candidates to be members of the Board from the American Bar Association. Such list may not include any individual who is an administrative law judge or former administrative law judge.

"(3) The chief judge and the division chief judges may not serve on the Board.

"(4) No individual may serve 2 successive terms on the Board.

"(5)(A) Except as provided under subparagraph (B), all terms on the Board shall be 2 years.

"(B) In making the original appointments to the Board, the Council shall designate one-half of the appointments made under paragraph (1)(A) and one-half of the appointments made under paragraph (1)(B), as a term of 1 year.

"(6)(A) Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for a position at the level of AL–3, rate C under section 5372 of this title for each day (including travel time) during which such member is engaged in the performance of the duties of the Board. All members of the Board who are administrative law judges shall serve without compensation in addition to that received for their services as officers or employees of the United States.

"(B) The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

"(f) FILING AND REFERRAL OF COMPLAINT.—(1) A complaint concerning the official conduct of an administrative law judge shall be made in writing. The complaint shall be filed with the chief judge, or it may be originated by the chief judge on his own motion. The chief judge shall refer the complaint to a 5-member panel designated by the Council—

"(A) consisting of 3 administrative law judges appointed under subsection (e)(1)(A),

none of whom may be serving in the same division as the administrative law judge who is the subject of the complaint; and

"(B) two members appointed under subsection (e)(1)(B), none of whom regularly practice before the division to which the administrative law judge, who is the subject of the complaint is assigned.

"(2) Any individual chosen to serve on the panel who has a personal or financial conflict of interest involving the administrative law judge who is the subject of the complaint shall be disqualified by the Council from serving on the panel. The Council shall replace any disqualified individual or vacancy with another member of the Board who is eligible to serve on the panel.

"(g) CHIEF JUDGE ACTION.—(1) After expeditiously reviewing a complaint, the chief judge, by written order stating his reason, may—

"(A) dismiss the complaint, if the chief judge finds the complaint to be—

"(i) directly related to the merits of a decision or procedural ruling; or

"(ii) frivolous;

"(B) conclude the proceeding if the chief judge finds that appropriate corrective action has been taken or that action on the complaint is no longer necessary because of intervening events; or

"(C) refer the complaint to the Complaint Resolution Board in accordance with subsection (f).

"(2) The chief judge shall transmit copies of the written order to the complainant and to the administrative law judge who is the subject of the complaint.

"(h) NOTICE OF THE COMPLAINT.—The administrative law judge and the complainant shall be given notice of receipt of the complaint and notice of referral of the complaint to the panel.

"(i) INQUIRY AND REPORT BY PANEL.—(1) The panel shall inquire into the complaint and have authority to conduct a full investigation of the complaint, including authority to hold hearings and issue subpoenas, examine witnesses, and receive evidence. All proceedings of the Complaint Resolution Board shall be confidential. The administrative law judge who is the subject of the complaint shall have the right to be represented by counsel and shall have an opportunity to appear before the panel. The complainant shall be afforded an opportunity to appear at the proceedings conducted by the investigating panel, if the panel concludes that the complainant could offer substantial information.

"(2) In determining whether misconduct has occurred, the panel shall apply a preponderance of evidence standard of proof to its proceedings.

"(3)(A) Within 90 days after the referral of the complaint, the panel shall report to the Council on its findings of fact and recommendations for appropriate disciplinary action, if any, that should be taken against the administrative law judge.

"(B) If the panel has not completed its inquiry within 90 days after receiving the complaint, the panel shall request an extension of time from the Council to complete its inquiry.

"(C) A copy of the report shall be provided concurrently to the Council, the administrative law judge who is the subject of the complaint, and the complainant. The Council shall retain all reports filed under this section and such reports shall be confidential, except that a recommendation for disciplinary action shall be made available to the public.

"(4) The recommendations of the panel shall include one of the following:

"(A) Dismissal of all or part of the complaint.

"(B) Direct informal reprimand.

"(C) Direct formal reprimand.

"(D) Suspension.

"(E) Automatic referral to the Merit Systems Protection Board on recommendations of removal.

"(5) The recommendations of the panel are binding on the Council, unless the administrative law judge appeals to the Merit Systems Protection Board.

"(j) DISCIPLINARY ACTION.—Except as provided in subsection (a)(2), the Council shall take appropriate disciplinary action against the administrative law judge based upon the report of the panel within 30 days after receiving the report of the panel. Such disciplinary action shall be enforced by the Council and shall be final unless the administrative law judge files an appeal with the Merit Systems Protection Board within 30 days after receiving notice of such disciplinary action.

"(k) RECOMMENDATION FOR RELIEF TO AGENCY, DEPARTMENT, OR COMMISSION.—Based upon a finding of judicial misconduct by an administrative law judge, the Council shall have authority to recommend to the head of an agency, department or commission that action may be taken to provide relief to aggrieved individuals due to the judicial misconduct by an administrative law judge.".

Mr. HEFLIN. Madam President, I am pleased to rise in support of S. 486, the Reorganization of the Federal Administrative Judiciary Act. The purpose of this bill is to reorganize and establish an independent corps of administrative law judges within the executive branch of government. The bill is designed to address two critical issues which face our Nation. First, an independent corps is vital to the continued impartial resolution of issues and decision of cases arising under the Administrative Procedure Act. Second, this bill streamlines the Federal bureaucracy in order to better meet the needs of the people of the United States. For these reasons, legislation needs to be adopted to improve this Nation's administrative system of justice.

On March 3, 1993, I introduced S. 486, and on September 15, 1993, the Judiciary Committee considered this legislation, and ordered it favorably reported in the nature of a substitute to the Senate. This bill is cosponsored by Senators SPECTER, DECONCINI, METZENBAUM, MOSELEY-BRAUN, SHELBY, BUMPERS, and FORD. It now has the support of Senator THURMOND, and Senators COHEN and BROWN, both of whom have offered two valuable amendments which will be presented on the floor and which strengthen and improve this legislation.

The primary objective of this legislation is to reorganize the Federal administrative judiciary to promote efficiency, productivity, and the reduction of overhead functions. It will provide for economies of scale to better serve the public in the resolution of administrative disputes. This goal will be accomplished by placing all ALJ's in a unified corps with a chief judge as the primary administrative officer. The chief judge will be responsible for developing programs and practices, in coordination with the agencies using ALJ's, which attain this objective. Those programs and practices will include the training of judges in more than one subject area. This training will permit the utilization of the skills and expertise of each judge across agency lines to meet the demands of the existing workload.

This legislation will promote good government in an efficient and effective manner. The Congressional Budget Office [CBO] has prepared a report which estimates the legislation can save as much as $22 million a year in as few as 5 years.

Since the reorganization of the Federal administrative law judges into a unified corps is expected to save the U.S. taxpayer substantial dollars, and in consultation with Senator HANK BROWN of Colorado, an amendment offered by Senator BROWN will be accepted to add a provision ensuring that agencies reduce their budgets to reflect the projected savings from the removal of ALJ's from their agencies and report to Congress on their efforts, and a specific authorization amount of $7 million will be offered to Section 6 of the committee substitute.

The establishment of a unified corps of administrative law judges is not a unique concept. In fact, this type of legislation was first implemented in a number of States, and has been very successful. The individual States have been leaders in adapting and streamlining the administrative process to meet the changing needs of the American public. The adoption of similar Federal legislation merely builds upon the successful experiences of the States.

A final consideration which argues in favor of independence for ALJ's is the issue of public perception. For individuals who face the daunting prospect of being accused by a Federal agency of illegal activities, the fact that an administrative law judge who is an employee of that agency is hearing their case is hardly reassuring. The realities of the everyday world indicate that the key to public satisfaction and confidence in judicial decisionmaking is the issue of decisional independence. The creation of a unified corps of administrative law judges is likely to have the beneficial effect of greater public satisfaction with the administrative law system.

Working with my colleagues on the Judiciary Committee in a bipartisan manner, I have made important modifications to the text of S.486, contained in a committee substitute, to accommodate the concerns expressed by Members in reviewing similar bills in past Congresses and to respond to concerns expressed by executive branch agencies, particularly the Department

of Justice. The substitute is truly a reorganization of Federal administrative adjudication functions and not a radical departure from the principles of administrative law, which has concerned some Members in the past. To the contrary, the substitute insures that the rule of law will prevail in administrative adjudications without impermissible influence.

The substitute specifically states that an agency's policymaking authority will not be changed nor will the administrative law judge's adjudicatory authority. The reorganization preserves the existing powers of both agency managers and the administrative law judges, while removing the tension that naturally arises between those two functions. The substitute text provides that enactment of the bill will effect no change in an agency's rulemaking, interpretative or policymaking authority in carrying out statutory responsibilities vested in the agency or agency head. The substitute clarifies that the reorganization of administrative law judges in a corps will give that corps no policymaking authority for the agency, a past concern expressed by some Members. In preserving the status quo of the present administrative system, the agency and its head retain the authority to review decisions of administrative law judges under any applicable provision of law. The policymaking role of ALJ's is not enlarged by enactment of the bill nor is their adjudicatory authority changed from current status. An agency head or secretary retains final authority to reverse ALJ decisions as provided by statute and makes the final decisions for the agency. There is no change made in this statutory scheme by the passage of the bill.

In the committee report (103–154) to this legislation, my colleague, Senator COHEN, expressed support for the concept of establishing an independent Corps of administrative law judges within the executive branch of government and for the concept which would reform and streamline the Federal bureaucracy in order to serve the American public. Senator COHEN did have legitimate concerns and has offered excellent suggestions to improve and strengthen section 599(e) of the bill relating to removal and discipline of judges.

I have worked with Senator COHEN to strengthen and improve the removal and discipline provision of the bill, and I believe its provisions are a balanced effort to make the provisions fairer to all interest parties concerned by insuring public members serve on the Complaint Resolution Board (and its panels) to insure objectivity and impartiality. This legislation is better because of Senator COHEN'S participation and I greatly appreciate his cooperation.

For these reasons, I urge my colleagues to support final passage of this reform legislation.

Mr. BROWN addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. BROWN. Madam President, these amendments incorporate a number of changes. One of the attributes of this bill that many talked about was that there was a potential by making this change we could save money. As a matter of fact, the Congressional Budget Office reports that the transfer has the ability to save $20 million a year. Those of us who have watched Congress from year to year know that fond hopes of saving money are not enough; that what we need to do is nail those savings down if it is possible.

These amendments include an effort to nail them down as much as I know can be done. They include the following efforts: Because the contention is that simply shifting these personnel to a new agency will not only not cost us more money but will save us money, we have tried to guarantee it.

So the amendments, one, ask the Congressional Budget Office to do an analysis and report back to Congress on how much the agencies spend on the ALJ functions in this fiscal year; that is, to give us a complete breakout of the exact cost of the function as it is under the current framework.

The second thing the amendments do is require the Congressional Budget Office to give us an analysis of how much they spend next year. In other words, we are not going to simply assume that they save money or have done it without increased costs, but we are going to ask a specific followup audit or investigation by the Congressional Budget Office to pin down exactly what they did so.

Third, we limit in this the authorization for appropriations for this function to be the same as being spent in this current fiscal year. As far as I know, these protections are somewhat unique and have not always been done in the past. As a matter of fact, we could not find precedents for it. Literally, what we are doing is taking the sponsors of this bill at their word. They claim they are not going to increase costs by making this change: Auditing it with investigations by the CBO and then limiting the authorization for appropriations to precisely what they did in this year. In other words, they are not even going to have an increase in the following year for the function.

The amendment also, to be safe, sunsets this provision within 5 years. The purpose of it, frankly, is to force this issue to be revisited. We will have the advantage of the Congressional Budget Office investigation and analysis at that time, and we can keep a hammer over their heads to ensure that they do, indeed, achieve the cost savings that they talked about.

We expect the ALJ corps to tighten its belt. Among the things that I believe are possible and that they have committed to try and do is close regional data collection offices that are no longer needed, and there appears to be a potential of doing that, and also reduce the salary grade of office managers in order to save taxpayer dollars.

These are tough amendments. these are amendments that are meant to save the taxpayers money.

I want to express my admiration for the distinguished Senator from Alabama, Senator HEFLIN, who has worked very hard and long on this bill. He has acted in a very responsible manner. He has worked very closely with us in crafting these amendments. His advice has been invaluable in attempting to make it work.

This is the kind of responsible change that I think we ought to be doing in a number of areas: Looking for ways to save money and then assuring in any legislation that comes up that we do, indeed, save it.

Madam President, I want to take this moment to thank the distinguished Senator from Alabama for his very hard work in this area. I think his willingness to listen and willingness to work has made this a valuable piece of legislation.

Mr. HEFLIN. Madam President, I appreciate the kind words of the Senator from Colorado.

Mr. COHEN. Madam President, today I am offering an amendment to ensure the accountability of administrative law judges, ALJ's.

Under Senator HEFLIN'S proposal, administrative law judges will be removed from the agencies in which they serve and an independent Corps of ALJ's will be established. It is the intention of the bill's sponsors to create an environment in which administrative law judges are immune from any undue agency pressure or influence on their judicial decisionmaking. Mr. President, I agree that this is a critical objective, particularly in light of experiences in which agencies did indeed challenge that independence.

For example, in the early 1980's, Congress came to the defense of the Social Security Administration's [SSA] ALJ's when it was discovered that the agency was wrongly intruding upon the legitimate independence of the ALJ's decisionmaking. The harsh memories of those days, when the SSA unjustly removed thousands of disabled persons from the rolls and pressured the ALJ's to rule against claimants, have not faded from our minds, and provide a strong argument for insulating ALJ's from undue pressure to rule in favor of the Government on appeals.

However, while independence is critical to ensure impartiality by ALJ's, more recently, disturbing evidence has been offered by representatives of disability claimants that unfair bias may

have crept into the decisionmaking of some SSA ALJ's. While the allegations have been raised against only a small number of the over 800 SSA ALJ's, hearings that Senator LEVIN and I held on this issue in the Governmental Affairs Committee included strong testimony that some SSA ALJ's ignore medical evidence and expert testimony in order to deny disability claims.

Madam President, some of the alleged behavior was outrageous and must not be tolerated. For example we heard testimony that an ALJ declared that he would not give a hill of beans what the claimant testified about her pain; that an ALJ mischaracterized evidence stating that a claimant did not display outward signs of emotional distress, when the claimant spent much of the hearing with her knees drawn up to her chin; that an ALJ had berated claimants repeatedly at hearings during decisions, calling them manipulative or malingerers or that their conditions are easily faked, despite medical evidence to the contrary; that an ALJ stated that he would ignore medical evidence of obesity as a disability because he refuses to let someone eat their way onto benefits.

Despite repeated efforts of claimants' representatives to file complaints against such behavior, the Social Security Administration's response to these allegations of bias within the ALJ ranks has been slow, ad hoc, and unsatisfactory. While the agency recently has proposed changes in the procedure for handling complaints made against ALJ's, there are still basic flaws in how the agency handles these complaints that too easily allow an ALJ who is unfair or biased to go unsanctioned, and continue to hear disability cases.

While the provisions of S. 486 that separate ALJ's from their agencies will go far in insulating ALJs from undue influence in decisionmaking, I had concerns that the bill as reported from committee did not provide an adequate process to deal with complaints of bias or misconduct by ALJ's. If ALJ's are allowed by law to govern themselves, it is critical that a strong process be in place to ensure that ALJ's are bound by standards of conduct, and that allegations of misconduct are investigated fully and fairly.

My amendment would strengthen the provisions governing the removal and discipline of ALJ's and establish a fair and open process for taking disciplinary actions against ALJ's. My amendment requires that the Council of the ALJ Corps must adopt and issue rules of judicial conduct for administrative law judges. This code of conduct will include standards which govern the judicial conduct and extrajudicial activities of ALJs and should be designed to avoid actual, or the appearance of, improprieties or conflicts of interest, as well as bias or prejudice with respect to all parties, and to ensure the impartial and diligent performance of judicial duties and the efficient management of cases. The Council will be responsible in enforcing the code of conduct.

In addition, my amendment, while preserving the role of the Merit System Protection Board [MSPB] to take ultimate action of removal of an ALJ, will establish a complaint resolution panel, with outside membership to fairly and expeditiously dispose of complaints of misconduct against individual ALJs. By providing for an open, specific, and responsive procedure to handle allegations against ALJ's, the ALJ Corps will be able to retain public confidence and the integrity of the ALJ system. It will also eliminate the perception that the ALJ Corps will protect its own by ignoring allegations of bias or misconduct.

My amendment provides that a complaint can be made by any interested person, including parties, practitioners, the chief judge, other administrative law judges, and the Federal departments, agencies, or commissions.

With the complaint resolution panel comprised of outside members, similar to state judicial review commissions, this amendment ensures that there is some outside check on how an allegation is handled. Membership on the complaint resolution panel is balanced in order to ensure a fair hearing and resolution of the complaint.

My amendment gives the complaint resolution panel the authority to conduct full investigations, and requires the Panel to issue its findings of facts and any disciplinary recommendations to the Council, the complainant, and the ALJ who is the subject of the complainant. The recommendations of the complaint resolution panel are binding on the Council, unless the ALJ appeals to the MSPB, and the Council must take action within 30 days of the panel's recommendations.

Finally, my amendment gives the Council of the Corps the authority to make recommendations to the head of an agency, department or commission that action be taken to provide relief to aggrieved individuals due to the finding of judicial misconduct of an administrative law judge. This provision recognizes that with independence comes responsibility, and that the effects of an ALJ's misconduct could be far-reaching and warrant some action by the agency. Such a recommendation is advisory only, and does not require the agency to take any action.

While we must protect the legitimate independence of the ALJ, who is often the only person who stands between the claimant and the whim of agency bias and policy, it is crucial that we do not eliminate the accountability of ALJs who do engage in misconduct or unfair decisionmaking.

I believe that the inclusion of my amendment to S. 486 provides the necessary safeguards and mechanisms essential to any granting of additional independence to these federal employees.

I want to thank Senator HEFLIN and his staff for their willingness in working with me to address these concerns, as well as Judge Tennant and Judge Bernoski of the ALJ Association and the National Senior Citizens Law Center and several Social Security disability representatives for their assistance in developing this strengthened complaint procedure.

Mr. SHELBY. Madam President, I am pleased to join the senior Senator from Alabama as a cosponsor of S. 486, the Reorganization of the Federal Administrative Judiciary Act.

The principle of the bill, a uniform corps of ALJ's has already been enacted in a number of our States, and has been very successful. For many years, Senator HEFLIN has sought to bring similar success to the Federal administrative level by enacting this legislation. In fact, I first joined his longstanding effort while serving as a member of the House of Representatives. I believed in the necessity and importance of such a corps then, and I believe in it now. In fact, this bill represents a more improved and refined version of that original piece of legislation.

There are several important reasons why I believe this bill, if enacted into law, will greatly improve our administrative law system and benefit all of our citizens.

First, the bill will insure the independence, and the perception by the public, of the independence of our federal administrative law judges. ALJ's will continue to follow all applicable laws and agency regulations, just as they have in the past, but they will be free from what may be perceived as improper agency pressures. For example, the bill provides for the retention of all of the current authority of an agency and its head to review decisions of ALJ's under any applicable provision of law. However, the agency will no longer be able to reward or punish judges by measures such as promotions, staff support, and office space.

In short the bill insures that the rule of law will be followed without the threat of improper influence. This principle is basic and fundamental to any fair judicial system.

Second, the bill will save money, and will facilitate the more efficient operation of our administrative law system. It will do this in at least two ways: One, it will provide for the full utilization of ALJ's throughout the Federal Government. As it now stands, if an agency is underutilizing its ALJ's, there are considerable problems in getting work from other agencies for these judges.

Under the system envisioned by the bill, ALJ exchanges between agencies

will be greatly improved. Two, duplication of personnel offices, travel, and many other facilities and services in the various agencies that currently employ ALJ's will be eliminated. It stands to reason that the elimination of such duplication and some antiquated functions will result in considerable savings. These matters have been verified by the Congressional Budget Office. CBO has estimated that these and other economies provided by the bill will save as much as 22 million dollars a year in as few as 5 years. The start-up costs will be small, and one particular item of saving, the elimination of regional hearing offices in the Social Security Administration, will result in a saving of about 12 million dollars annually. Modern communications technology has made these regional hearing offices unnecessary and antiquated.

Third, and this is very important to those of us who represent some citizens in our more remote areas, the bill will provide for more grass roots justice for our people. By taking advantage of existing facilities, remote communities can have many of their cases heard and decided near their homes and businesses, instead of far away in some large city. Thus, administrative justice will be brought closer to home for many of our citizens.

Finally, the bill also provides for appropriate and fair discipline, and in some instances, removal of ALJ's; for enhanced training of ALJ's; and for greater accountability of ALJ's to their supervisors.

Madam President, this bill has broad bipartisan support by some of the most able and well-respected legal scholars in this Chamber. I urge all of my colleagues to support this necessary and important piece of legislation.

Mr. GRASSLEY. Madam President, although I strongly oppose this bill, I must give credit to the chairman of our Subcommittee on Courts and Administrative Practice, Senator HEFLIN, for his persistence. This bill has been around for almost as long as I can remember. He has offered this bill in every Congress since the 98th, a decade ago. We have had numerous hearings on it, and reported it out of committee several times.

In this 10-year process, Senator HEFLIN has made numerous significant improvements to his bill. He has altered the bill's appointment provisions to conform with the Constitution. He has clarified that agency heads retain the power to overrule the ALJ's interpretations of agency policy. The amendment by Senator COHEN lessens my concerns about removal and discipline of ALJ's. Senator BROWN's amendment helps guarantee that the bill's alleged cost savings are realized.

Unfortunately, these improvements do not change the basic premise of the bill—which is inherently flawed. By removing ALJ's from agencies and creating a centralized corps, the bill eliminates ALJ expertise. ALJ expertise is the foundation of ALJ legitimacy. Congress lets executive branch officials function as factfinders because we believe they have expertise. That expertise enables them to better adjudicate cases involving highly technical matters—whether applying complicated energy regulations or adjudicating Social Security disability disputes. ALJ's should have a special familiarity with the enabling statute and regulations of their agency, and with the business they are regulating. It is an error to try to turn them into generalists. As the administrative conference explained in its blueribbon report last year:

> Rejection of specialized expertise as a justification for administrative adjudication would have major implications * * * a typical regulatory or benefit system can be understood only by mastering hundreds of pages of statutes and regulations, thousands of pages of judicial opinions, and tens of thousands of pages of agency guidelines and decisions, and the principles of one or more disciplines other than law.
>
> To illustrate the point, consider just three agencies * * * the Nuclear Regulatory Commission, the Federal Energy Regulatory Commission, and the Social Security Administration.
>
> NRC's primary mission is to regulate civilian applications of nuclear power to protect public health and safety. [This] requires application of the principles of engineering, large scale construction, physics, and meteorology.
>
> FERC's mission is to regulate the natural gas and electricity industries in a way that ensures consumers' prices are just, reasonable, and not discriminatory. [This] requires application of the principles of microeconomics to two of the most structurally complicated industries in the nation.
>
> SSA's primary adjudicatory mission is to determine which of hundreds of thousands of applicants for disability benefits each year are eligible. The recurring issues require application of the principles of medicine to an infinitely variable set of physical and mental conditions, and then to compare the results of that process with the full range of vocations available in the U.S. economy.

In addition, each agency has radically different procedural issues. While SSA ALJ's deal with one claimant against a huge agency, FERC ALJ's preside over a free-for-all between literally hundreds of interested parties.

We simply should not defer important decisions about our Nation's nuclear power rules, the price and supply structure of electric and gas power, or the distribution of welfare benefits, to unaccountable hearing officers who don't even know anything about the subject matter before them.

The bill's proponents claim to retain expertise by assigning ALJ's to eight divisions. But a FERC ALJ assigned to the "Division of Communications, Public Utility, and Transportation Regulation" would hardly be qualified to handle an FCC licensing issue. Nor would an OSHA ALJ assigned to the "Division of Safety and Environmental Regulation" be qualified to hear a complex case applying arcane EPA groundwater regulations.

Even the Federal ALJ conference, a longtime advocate of the corps, has found many of its members raise concerns about the elimination of ALJ expertise. In fact, a drafting committee from the conference went so far as to propose an alternative corps which would have a division for each agency. That would be a big step in the right direction. But despite these serious concerns coming from the ALJ community, the sponsors persist in their effort to turn over our Nation's administrative adjudications to a group of unaccountable generalists.

I also remain very concerned about the bill's provisions for removal and discipline. The Cohen amendment improves the procedure. But the bill still makes it impossible to remove or Discipline an ALJ unless a party can convince a board of senior ALJ's or the M.S.P.B. that the ALJ has engaged in "misconduct or neglect of duty." That is a very tough standard.

I am very concerned that these changes will serve only to make agency adjudications operate less efficiently. This in turn will hinder the ability of citizens to get their grievances heard by an agency.

I also question whether these changes are necessary to protect ALJ independence. The proponents claim that ALJ's are currently biased in favor of their agencies, because they serve under the direction of the agency head. I, too needed am committed to guaranteeing that ALJ's are independent fact-finders. Indeed, the constitution requires ALJ's are "impartial decision makers."

Because the Constitution requires it, we already guarantee ALJ independence. ALJ's can only be removed for good cause established before the merit systems protection board—not the agency. OPM controls ALJ's pay—not the agency. Most importantly, the decision of an ALJ is subject to judicial review.

The Administrative Conference of the United States was right when it concluded in a blue-ribbon study last year that "the case for establishing an independent ALJ corps * * * has not been made."

The Conference was not alone in this conclusion. The Reagan administration opposed the proposal. The Bush administration opposed the proposal. And now many members of the Clinton administration oppose it. Seven agencies have written letters of opposition to S. 486. And every one of those agencies has written with the permission of OMB. We've heard from Donna Shalala, Robert Reich, and several other agency heads. The consensus is clear that S. 486 is a bad idea.

I ask unanimous consent that the letters of the administration in opposition to S. 486 be printed in the RECORD.

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

THE SECRETARY OF HEALTH
AND HUMAN SERVICES,
Washington, DC, August 30, 1993.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Committee on the Judiciary, Washington, DC.

DEAR MR. CHAIRMAN: This is to offer our views on S. 486, a bill "To establish a specialized corps of judges necessary for certain Federal proceedings required to be conducted, and for other purposes".

The bill would create a corps of administrative law judges (ALJs) consisting of all current ALJs to hold hearings and render decisions on all cases to which the Administrative Procedure Act applies, as well as any other case referred to the corps by an agency or court in which a determination is to be made on the record after an opportunity for a hearing. The bill also would require that all types of cases, claims, actions, and proceedings previously held before ALJs be referred to the corps. The intent of the legislation is that Social Security cases where a claimant has requested an ALJ hearing would be referred to the corps.

The bill's primary impact on this Department would be in connection with its administration of the Social Security Act. Under the Social Security and Medicare programs, in fiscal year (FY) 1992 the Social Security Administration (SSA) received about 391,000 requests for hearings. In FY 1993, we estimate that SSA will receive about 471,000 requests for hearings and about 490,000 in FY 1994.

We strongly oppose enactment of the bill because it would not achieve the sponsors' objectives of increasing ALJ decisional independence, increasing administrative efficiency, or reducing administrative costs. On the contrary, we think the bill would impede efficient administration, increase costs, and reduce the consistency and accuracy of ALJ decisions. (A detailed discussion of the reasons for our position is enclosed.)

The Office of Management and Budget has advised that there is no objection to submission of this report to the Congress from the standpoint of the Administration's program.

Sincerely,

DONNA E. SHALALA

Enclosure to Report on S. 486

DESCRIPTION OF BILL

The bill would create an Administrative Law Judge (ALJ) corps consisting of all current ALJs to hold hearings and render decisions on all cases to which the Administrative Procedure Act (APA) applies as well as any other case referred to the corps by an agency or court in which a determination is to be made on the record after an opportunity for a hearing. The bill also requires that all types of cases, claims, actions, and proceedings heretofore held before ALJs be referred to the corps. There would be eight divisions in the corps with each division dealing with a different area of specialization, such as "Health and Benefits Programs."

The policymaking body of the corps would be the council of the corps, consisting of the chief ALJ of the corps and the chief ALJ of each division. The council would have jurisdiction over general policy and rules of practice and procedure of the corps, and would appoint future ALJs from the Office of Personnel Management's (OPM's) register.

Under the bill, an ALJ could not be removed, suspended reprimanded or disciplined except for misconduct or neglect of duty, but could be removed for physical or mental disability. Any complaint of misconduct would have to be referred to a three-member panel selected by the council from a complaints resolution board, consisting of two judges from each division of the corps appointed by the council. The panel's report would be advisory only.

The bill would require that the chief ALJ of the corps submit a written report, within 90 days after the end of each fiscal year (FY), to the President and the Congress concerning the business of the corps during the preceding FY and including information and recommendations of the council concerning future corps personnel needs.

The bill would also require the chief ALJ of the corps to study the levels and types of agency review of ALJ decisions for each division. The studies would be made in consultation with the division chief ALJs, the Chairman of the Administrative Conference of the United States, and the agencies that review the ALJ decisions. Within 2 years after the provision's effective date (120 days after enactment), the council would report to the President and the Congress on the study results, including recommendations for legislation and for any reforms that might make review of ALJ decisions more efficient and meaningful and would accord greater finality to the decisions.

DISCUSSION

The primary impact of the bill would be on the Department of Health and Human Services. SSA had 123 ALJs on duty at the end of FY 1992—more than 70 percent of all the ALJs in the Federal Government—and received approximately 391,000 hearing requests (mostly involving the Social Security disability program) in FY 1992.

A separate ALJ corps is inconsistent with the concept of administrative decisionmaking. The authority for ALJs to make decisions in hearing cases is delegated to ALJs because the Secretary cannot personally hear and decide the cases. Under the delegation, the ALJ acts on behalf of the Secretary, applying the Secretary's policies (as established through rules and regulations) to the individual fact situation in a particular case. The ALJ does not, however, establish or create new policy. The SSA ALJ's decision generally represents the final decision of the Secretary in a case (unless action is taken by the Appeals Council). If the claimant disagrees with that final decision, he may file a civil action, and the Department of Justice defends the Secretary's final decision. Thus, it would be inappropriate for an ALJ corps totally outside this Department to have the final responsibility for making administrative decisions for the Secretary.

SSA always guarantees the decisional independence of ALJs in order to protect the rights of a claimant to a full, fair, and impartial hearing. No attempt is made to influence the outcome of a particular case, and *ex parte* communications from SSA are prohibited. ALJs are appointed pursuant to the APA and their independence is protected through specific safeguards: hiring and selecting criteria and compensation are established by OPM, not by SSA; and adverse personnel actions, such as removals or suspensions, may be taken only when good cause is established before the Merit Systems Protection Board after opportunity for a hearing.

The vast majority of SSA's ALJ hearings involve cases where persons have been denied disability benefits, or their benefits have been terminated, because they have been found not to be disabled under the definition of disability in the law. The Congress has been concerned about ALJ accuracy and consistency in disability cases, and in 1980 enacted legislation (the so-called Bellmon amendment) requiring SSA to institute an ongoing review of ALJ decisions in disability cases. The Congress, in 1984, took a further step to ensure consistency of decisions at all levels of adjudication by enacting section 10 of Public Law 98-460, which requires that uniform standards for disability decisionmaking be published in regulations.

Under the bill, ALJs would continue to be bound by the Social Security law and regulations and agency policy, and the Bellmon review would continue. However, because the ALJs would no longer be a part of SSA, they would have a more remote working relationship with SSA and there would be new bureaucratic barriers—the corps and the corps council—impeding the direct and immediate flow of policy information from SSA to the ALJs. This is of particular concern because the council would have authority under the bill to prescribe rules of practice and procedure and regulations for the conduct of proceedings before the corps (with the exception of a 2-year period beginning on the Act's effective date for proceedings adjudicated by an agency before that effective date unless the agency approves). As a result, SSA's continuing efforts to carry out the congressional mandate to improve the consistency and accuracy of ALJ decisions would be significantly hindered by the bill.

Currently, ALJs assigned to a particular administrative agency develop extensive expertise in the law and regulations governing the agency's programs. Although the bill would establish divisions with some degree of specialization, it is clear that the ALJs within these divisions would be responsible for hearing cases under a variety of Federal programs. The loss of program expertise that would inevitably occur under the bill is of particular concern to SSA. The disability program is complex, particular concern to SSA. The disability program is complex, requiring knowledge of both medical and legal concepts. Changes in both the law and the regulations are common, necessitating training efforts for all adjudicators. The bill would decrease ALJ expertise in the disaoility program and seriously impede SSA's efforts to ensure consistent and accurate decisionmaking at all levels of adjudication.

Finally, we believe the effect of the bill would be to increase costs and reduce administrative efficiency. Processing times would increase under the bill because of the cumbersome and time-consuming transfer of cases from SSA to the ALJ corps for decision and the transfer of cases back to SSA for review and revision or effectuation, as well as the additional transfer of cases remanded by the courts. Accountability to the Congress and the public for administrative decisionmaking would be diffused as case processing would be split between the corps and the agencies.

More importantly, SSA's extensive policy and administrative experience, which the corps would not have, enables it to estimate the size and character of workloads and to take steps to deal with them efficiently. Because SSA's ALJ workloads have been substantial and are expected to remain so, we have never encountered nor do we anticipate a situation where there is not a sufficient number of hearings for SSA's ALJ workforce. SSA's ALJ overall productivity

increased from an average of 30 cases a month per ALJ in FY 1980 to 37 cases a month per ALJ at the end of FY 1992. Improved productivity has been achieved by continuing administrative initiatives, including an increased ALJ staff support ratio (from 2.2 support staff to 1 ALJ in FY 1973 to 5 to 1 at the end of FY 1992), upgraded office equipment in SSA hearings offices, and improved organizational structures and methods of case processing. As a result, although SSA has far more ALJ hearings per year than any other agency, the productivity of SSA ALJs continues to be the highest. By merging SSA's workload with that of other Federal programs, it is very unlikely that the corps could tailor its processes to achieve this level of productivity and efficiency.

In view of SSA's considerable experience and achievements in dealing with a substantial hearings workload, we doubt whether a newly created ALJ corps could achieve the same level of success and therefore believe enactment of the bill would result in a reduction of the level and quality of service to the public.

U.S. DEPARTMENT OF LABOR,
SECRETARY OF LABOR,
Washington, DC, September 14, 1993.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is to submit the views of the Department of Labor on S. 486, the "Administrative Law Judge Corps Act." For the reasons expressed in this letter, the Department of Labor is opposed to this proposed legislation.

S. 486 would establish a new government-wide Corps to which all current and future administrative law judges would belong. The Corps would be divided into eight subject matter divisions. Each judge would be assigned to one of these divisions. The Corps would be governed by a policy-making Council composed of a chief administrative law judge and the chief judges of the various divisions. The Council would be authorized to assign judges to divisions and to transfer or reassign judges from one division to another in the adjudication of Federal agency cases. The President of the United States would appoint the chief administrative law judge and the division chief judges, with the advice and consent of the Senate.

Administrative law judges (ALJs) play a key adjudicative role in many important Department of Labor programs, presiding over many diverse types of actions. For example, ALJs are part of enforcement proceedings in which respondents are charged with violating: health and safety provisions under the *Federal Mine Safety and Health Act of 19787*, 30 U.S.C. 801, *et seq.*, and the *Occupational Safety and Health Act of 1970*, 29 U.S.C. 651, *et seq.*; minimum wage, overtime pay and child labor standards under the *Fair Labor Standards Act*, 29 U.S.C. 201, *et seq.*; prevailing wage requirements under the *Davis-Bacon Act*, 40 U.S.C. 276a, *et seq.*; and, worker protections for migrant and seasonal agricultural workers under the *Migrant and Seasonal Agricultural Worker Protection Act*, 29 U.S.C. 1801, *et seq.* ALJs also preside over hearings in which compensation is being sought by black lung claimants under the *Black Lung Benefits Act*, 30 U.S.C. 901, *et seq.*, or in which employment discrimination is being alleged against a Federal contractor under *Executive Order 11246*, or involving issues of Federal grants under the *Job Training Partnership Act*, 29 U.S.C. 1501, *et seq.*, or standards of conduct for Federal sector labor organizations under the *Civil Service Reform Act of 1978*, 5 U.S.C. 7120, or job service complaints under the *Wagner-Peyser Act of 1933*, as amended, 29 U.S.C. 49, *et seq.*, or labor certification issues under the Immigration and Nationality Act, as amended, 8 U.S.C. 1101, et seq.

The role of an administrative law judge is fundamentally different from that of an Article III judge. While the ALJ exists to ensure that due process and fairness are observed at agency adjudicative proceedings, in certain program areas, the ALJ also serves as a part of the decisionmaking process of the agency. For example, at the Department of Labor, in many cases, an ALJ decision often acts as the recommended decision of the Department, and, if that decision is not appealed, it may also become the final decision of the Department. Consequently, it is critically important to the Department that its ALJs have the requisite expertise and experience to decide cases for the Department in an informed, timely and efficient manner. In our view, the existing system furthers this end. Thus under the existing system, by their ongoing concentration on and study of, a particular program, ALJs are able to interpret and invoke complex statutory and regulatory provisions that have become well known to them. This expertise and experience translates into a reservoir of knowledge, skill and understanding that results in a timely, effective and efficient decisionmaking process for the Department.

The existence of administrative law judges with specialized expertise is also a logical outgrowth of modern-day principles and practices of delegation of powers by Congress to Federal agencies. Congress delegates to agency heads the authority and responsibility to administer increasingly complex programs. The agency head is held accountable to the Congress: (1) to make sure that the authority is exercised within the standards set forth by the Congress; and (2) to ensure that requisite procedural safeguards are followed in the administration of the program. Just as the Secretary must rely on Assistant Secretaries and administators with extensive program expertise to stay within the parameters of the delegation, he must similarly depend on ALJs with equal expertise to comply with the necessary procedural safeguards.

While the bill would establish a "Department of Labor Division," the fact remains that, with the rotation of judges in and out of that Division, ALJs with little or no experience with the Department would be hearing DOL cases, and former ALJs of the Department would be hearing cases of other Federal agencies for which they have no particular expertise. Also, the expertise of the ALJs in the Division will be further diluted because, in all likelihood, they will be spreading their attention more thinly among cases brought under a variety of statutes.

While it might be argued that the bill would allow the Department the benefit of obtaining currently underutilized judges from other agencies to help in the reduction of the Department's caseloads, this benefit would be more than offset by the critical loss of expertise in the decisionmaking process. In our view, it is imperative that administrative law judges continue to function effectively and efficiently in areas well known to them if the public interest is to be served.

We also note that under the bill, two years after a Corps is established, the Council, not the Department of Labor, whose cases the judges hear, could adopt rules of practice and procedure applicable to all hearings before judges. While it is possible that program-specific rules would remain, the bill broadly provides the Council with the authority to act to substitute an entirely new set of rules general enough to cover all administrative proceedings. The establishment of uniform rules could unsettle many years of program precedent and agency policy, and would require a substantial expenditure of government time and resources by the Council, by the program agencies, and by persons practicing before the agency.

We believe that any need for this suggested reform is far outweighed by the potential harm that such revision could bring to the agency adjudication processes.

Thank you for the opportunity to comment on this proposed legislation. The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the President's program.

Sincerely,

ROBERT B. REICH.

U.S. DEPARTMENT OF
TRANSPORTATION,
GENERAL COUNSEL,
Washington, DC, August 24, 1993.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Department of Transportation would like to take the opportunity to present its views on S. 486, a bill

To establish a specialized corps of judges necessary for certain Federal proceedings required to be conducted, and for other purposes.

S. 486 would amend the Administrative Procedure Act to establish an independent Administrative Law Judge Corps, to be made up of all existing administrative law judges (ALJ's) and all future appointees, and headed by a chief administrative law judge. The ALJ Corps would be divided according to subject areas into eight divisions, each headed by a chief judge. An administrative structure, known as the Council of the Corps, would be established to set policy and generally administer the affairs of the Corps. The Council would be composed of the Corps' chief judge and the eight division chief judges. The Council's responsibilities would include appointment of new judges, assignment or transfer of judges to divisions, oversight and disciplining of judges, establishment of rules of practice and procedure, and assignment of cases. The Corps' jurisdiction would extend to all types of cases, claims, actions and proceedings that are now held before ALJ's but would not affect disputes governed by the Contract Disputes Act (41 U.S.C. 601).

The Department of Transportation (DOT) opposes enactment of S. 486.

Although the reforms providing for the centralization of ALJ functions may provide for certain administrative efficiencies, we believe that these efficiencies are outweighed by the detrimental effects of the bill, namely: dilution of expertise available to the agency, disruption of agency practice, and loss of agency control over resources required for its functions.

We are concerned that ALJ's, organized in an independent agency, might be less sensitive to past agency precedent and the policy expressed by the agency decisionmakers. Moreover, to pool judges under general "Communications, Public Utility, and Transportation Regulation" or "Safety and Environmental" law divisions would deprive DOT of those persons who possess detailed knowledge of our programs and unique missions. For example, admiralty law cases

under the Coast Guard's jurisdiction are a unique area of maritime concern. Periodic assignment of judges from the Corps without admiralty exposure or maritime expertise, to sit on marine casualty cases, and/or proceedings involving offenses peculiar to shipboard disciplines, would tend to erode agency policy as it relates to safety of life and property at sea. We believe this could also adversely affect Class II Federal Water Pollution Control Act (FWPCA) civil penalty cases now assigned to Coast Guard ALJ's. Although judges now sitting on these suspension and revocation, as well as pollution, cases exercise independent decisional authority and discretion, they nevertheless are acutely aware of the Coast Guard's congressionally mandated duties and responsibilities. We do not believe that the training proposed by section 599(d)(11) will be an adequate substitute for needed expertise and experience.

The bill would authorize the Council of the new ALJ Corps to assign judges to divisions, to assign cases to particular judges, and to develop uniform procedural rules for hearings. Not all Administrative Procedure Act adjudications are the same and there is no provision in section 599(d)(4) for the affected agencies to be involved in the development of such rules in order to accommodate individual agency circumstances. We believe that it is necessary for the Department to retain control over its own resources and over how its cases are processed in order for us to be able to quickly implement new statutory directions and respond to changing functions. For example, in the aviation area, if DOT were given new authority under bilateral agreements to issue a significant number of new route awards, it must have the ability to rapidly increase its ALJ resources with the qualifications it determines are best to meet those needs. While a Corps could set general qualification standards and control a registry of available ALJ's, the Department must not be in the position of depending on another agency to provide the necessary resources to perform our critical functions. If, because of budgetary constraints, insufficient funding were available to the new corps, the results would likely be longer backlogs and delays for adjudications that DOT now completes on a timely basis.

We believe it would be a very difficult task for the new Corps to develop uniform procedural rules for hearings that would be appropriate for all agencies. We are concerned that such procedures would be developed for the benefit of the ALJ's and not for the agencies for whom present procedures have been tailored to meet individual agency needs. For example, the bill could be read to authorize the Corps to set standards for admission to practice before the judges. The Coast Guard has a 45-year tradition of prosecuting the bulk of suspension and revocation actions with non-legally trained commissioned officers. Respondents in such proceedings are also allowed to be represented by non-lawyer counsel. Alteration of the rules to require, for example, that persons be represented by attorneys, would be expensive, unnecessary and would interfere with the efficient administration of the Coast Guard's safety program.

Finally, the Department believes that the study required by section 3 of the bill is inappropriate. The Administrative Conference of the United States would be a more appropriate and impartial forum in which to conduct such a study of the various levels and types of agency review of ALJ decisions if such a study is deemed necessary.

The Department appreciates the opportunity to comment on this bill. The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission to Congress of the Department's views on this legislation.

Sincerely,

STEPHEN H. KAPLAN.

UNITED STATES GOVERNMENT,
NATIONAL LABOR RELATIONS BOARD,
Washington, DC, August 12, 1993.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC

Re S. 486, Administrative Law Judge Corps Act.

DEAR SENATOR BIDEN: The National Labor Relations Board wishes to express its opposition to S. 486, the Administrative Law Judge Corps Act. Like it predecessor bills, S. 486 would create a corps of administrative law judges, replacing the present system of such judges working for various boards and agencies. As the NLRB is one of the agencies that uses a large number of judges, it is particularly concerned about the changes proposed in the bill. For the reasons set forth below, it believes that such changes would not be in the best interests of either the Agency or the public that the Agency serves.

The NLRB has worked hard over the years in assisting the Office of Personnel Management to develop a group of qualified expert NLRB judges. The corps proposal, however, would likely have precisely the opposite effect, resulting in the appointment and assignment of judges who have little if any National Labor Relations Act (NLRA) background or experience. Such a result would seriously undermine the continued effectiveness and credibility of the NLRB as the expert quasi-judicial administrative agency responsible for enforcing the NLRA.

S. 486 establishes 8 divisions, including a Division of Labor Relations. The Division of Labor Relations would not appear to be limited to NLRB judges, however. Rather, it would likely also include judges of the Federal Labor Relations Authority and the Merit Systems Protection Board. Further it is clear from various other provisions in the bill that any beneficial experience-based distinctions which might initially exist between the 8 divisions could over time be substantially if not completely blurred or eliminated. Thus, for example, the bill provides the overall policy for the corps would be set by a "Council" consisting of a chief judge and the division chief judges. The bill would authorize the Council to assign judges to divisions and transfer or reassign judges from one division to another. In addition, the bill would grant the Council unrestricted authority in assigning cases to a particular division; the Council's authority in this regard apparently being subject only to regulations issued by the Council itself. Only after the case is assigned to a division would the division chief be required to take into consideration specialization in assigning the case to a particular judge.

Thus, as under the prior bills, judges with little or no experience with the NLRA could be hearing NLRB cases, and former NLRB judges could be hearing many cases for which they have no particular expertise. The non-expert judges would not even be able to achieve special qualifications by intensive on-the-job training, as can be done now with those relatively few judges who come to us without any prior labor law experience. They would undoubtedly take more time to write decisions, thus increasing delays, and because of their inexperience create additional difficulty for attorneys appearing before them and especially for the Board in its review of their decisions. The Board has always, in the majority of its cases, found itself able after thorough review to issue a short-form decision approving the judges decision. This would be less likely if the Board were to review decisions issued by judges in other divisions having no expertise. The Board's already difficult workload would be made even more difficult to process within reasonable time limits. In addition, the present Board judges would spend much of their time on non-Board work, using their time to learn new fields, and squandering the expertise they have developed.

Furthermore, the United States Courts of Appeals, which often give deference to Board "expertise," would be less likely to do so if the judges rendering the initial decisions were generalists.

Under S. 486, two years after a corps is established, the Council, and not the agencies whose cases the judges hear, could adopt rules and regulations applicable to all hearings before judges. It is true that the proposed bill does not mandate uniform rules of procedure. But the "corps concept" itself suggests that uniformity for the many agencies utilizing the corps would be most probable. Indeed, proponents of the corps visualize it as like the United States District Courts.

And they also want the corps to be totally "independent"of the agencies served by it, which militates against separate procedural rules for each agency. Accordingly, we assume that these rules and regulations would have to be sufficiently general to cover proceedings ranging from regulatory, such as licensing and rate making, to enforcement, such as unfair labor and trade practices, and to claims work, such as social security and black lung. However, elaborate pre-trial discovery and written testimony which may be appropriate for a rulemaking proceeding, may be inappropriate for and burdensome to unfair labor practice proceedings. We expect that in consequence these rules will differ substantially from those with which the labor bar is experienced and which have been time tested and refined. The substitution of an entirely new set of rules general enough to cover all administrative proceedings can only serve to create many issues regarding their implementation, interpretation, and application. The result, of course, will be to unsettle areas now well settled in practice before the Board.

The Board is also opposed to a loss of control over its own caseload. Under the bill, the NLRB could not be assured of having unfair labor practices heard in a timely manner; that lack of control can only exacerbate delay in the issuing of Board decisions.

One of the principal bases advanced by supporters of a corps is the notion that it would foster a more independent administrative judiciary. However, in the post-Administrative Procedure Act history of the Board, there have been no allegations of agency control over the decisional independence of NLRB judges. If what is meant is to remove the Board's role in the appointment process (which is already subject to OPM's procedures), that consequence operates as a strong argument against the corps concept.

The NLRB is an independent body consisting of five members appointed by the President with the advice and consent of the Senate. The Board sits very much as an appellate court with respect to unfair labor practice cases arising under the National Labor Relations Act. It decides all cases which

come before it, but has no role in deciding which cases to prosecute or bring before it. The authority to investigate charges that the Act has been violated and to issue complaints of such violations rests with the General Counsel, an independent officer also directly appointed by the President with the advice and consent of the Senate.

Unfair labor practice cases brought by the General Counsel are tried before Administrative Law Judges. The Administrative Law Judges are appointed by the Board, not the General Counsel, and within the narrow limits provided by the Administrative Procedure Act, are answerable to the Board, not the General Counsel. Thus, the Administrative Law Judges are by law and in fact totally independent of the officer who initiates cases and has taken a position as to how they should be resolved.

The relationship between the Board and the Administrative Law Judges is very much like that between an appellate court and trial courts in any uniform state court system. While the Board, of course, has an interest in seeing that its judges apply precedents and follow announced rules, it has no position with respect to any case when it is before an administrative law judge and no interest in how it is decided. It enters a case for the first time when a case is brought before it on appeal from an administrative law judge's decision. The proponents of the corps can cite no instances of interference with the independence on administrative law judges at the NLRB because the structure of the Board and the Administrative Procedure Act as it presently exists assure their decisional independence.

A second major argument made by proponents is that a corps of administrative law judges will be more efficient than the present system and save the government money because a corps could reallocate judges as fluctuating agency caseloads required and thus reduce the overall number of judges needed. In this regard, we have already noted above that efficiency will be impaired to the extent that judges are assigned to areas outside their expertise and require time to familiarize themselves with the substantial bodies of particularized agency case law.

Further, OPM has administered a loan program over the years which already assists agencies in temporarily reassigning judges as workloads fluctuate. It has been our experience over many years that the loan program does work well. OPM has streamlined procedures to make its use quick and easy, and its major drawback comes from the loss of efficiency when judges are assigned to areas outside their expertise, a drawback which would remain with a corps. We also note that the Board has recently been very active in the loan program and that the arrangements we have currently worked out with other agencies, including the Department of Labor, and the procedures now followed by OPM should serve as models for inter-agency loans in the future.

In sum, we believe that under the present system the decisional independence of administrative law judges is fully protected by the Administrative Procedure Act and provides for efficient and economical utilization of administrative law judges. We believe that there has been no showing of a need for change.

For all these reasons, the Board opposes S. 486.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

JAMES M. STEPHENS, *Chairman.*

FEDERAL LABOR RELATIONS AUTHORITY,
Washington, DC, September 2, 1993.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN. This is to offer the views of the Federal Labor Relations Authority (FLRA) on S. 486, the "Administrative Law Judges Corps Act."

The FLRA is an independent agency responsible for administering the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. §§7101–7135. The FLRA adjudicates labor disputes involving Federal agencies and unions representing Federal employees. The disputes resolved by the Authority include whether conduct alleged in a complaint constitutes an unfair labor practice (ULP).

As provided in the Statute, the Authority has appointed Administrative Law Judges (ALJ) to hear unfair labor practice cases. Decisions of the ALJs are transmitted to the Authority, and may be affirmed, modified or reversed in whole or in part. If no exceptions to an ALJ decision are filed with the Authority, the decision is adopted by the Authority.

S. 486 would establish an independent Corps of Administrative Law Judges within the Executive Branch. The Corps would be governed by a Chief ALJ and organized into eight divisions, each headed by a Division Chief. The Division of Labor would be responsible for all private and Federal sector labor law cases. The Chief ALJ and the Division Chiefs would form a Council, the policy-making body of the Corps. The Council would have the authority to appoint persons as ALJs, assign and transfer judges to divisions, prescribe rules and regulations for the conduct of the Corps, and generally manage the day-to-day operation of the Corps. The bill also provides that agencies shall refer all cases to the Corps, and the Council shall assign the cases to a particular division.

If enacted, S. 486 would have a negative impact on the FLRA. Although the Federal sector labor-management relations program was modeled after the National Labor Relations Act, there are significant differences between the two labor programs. At the FLRA, Judges are confronted with issues such as a union's right to be represented at "formal discussions" and, through the ULP process, the enforcement of arbitration awards and orders from the Federal Service Impasses Panel.

Creating a Division of Labor within the Corps, while appearing to create a specialty, will fail to adequately ensure that Federal employees' disputes are heard by ALJs competent in the field of Federal labor law. Over the years, the expertise acquired by ALJs at the FLRA has proven extremely beneficial for the efficient and timely resolution of unfair labor practice cases in the Federal sector. With the creation of the Corps, our cases could be referred to judges with little or no experience in the Federal labor laws, in turn delaying the issuance of decisions. The bill provides no assurance that our cases will be reviewed by those judges expert in Federal labor law.

The Authority is also concerned over the loss of control over its own caseload. If the bill were enacted, the Authority would be required to refer all ULP cases to the Corps for assignment by the Council. While this would provide flexibility to compensate for unexpected increases in caseload, the Authority would be dependent on the Corps for the issuance of a decision. With no power to expedite our cases over another agency's cases which the Council may wish to prioritize, out cases could be delayed unnecessarily.

While supporters argue that the present system pressures ALJs to confirm to agency will, at the FLRA, the ALJs enjoy total autonomy in their decisional responsibilities. The Authority does not exert pressure on the ALJs to decide cases one way or the other and, if exceptions are filed, the Authority has complete control over the outcome of the case. Furthermore, ALJs act independently from the General Counsel, who initially prosecutes ULP cases before them.

Although the Authority appoints ALJs, hiring, compensation and selection criteria are established by the Office of Personnel Management. In addition, as specified in 5 U.S.C. §7, adverse personnel actions involving ALJs, such as removals or suspensions, may be taken only for good cause determined by the Merit Systems Protection Board after opportunity for a hearing before the Board. Existing law, therefore, provides adequate mechanisms to protect and safeguard the rights of Administrative Law Judges.

For these reasons, the Federal Labor Relations Authority opposes the enactment of S. 486.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

JEAN MCKEE,
Chairman.

OCCUPATIONAL SAFETY AND
HEALTH REVIEW COMMISSION
Washington, DC August 11, 1993.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Judiciary Committee, U.S. Senate,
Washington, DC.

DEAR MR. CHAIRMAN: This letter expresses the views of the U.S. Occupational Safety & Health Review Commission (OSHRC) on S. 486, the "Administrative Law Judge Corps Act." OSHRC recommends against enactment of this legislation.

The bill would create a new Federal agency in the executive branch, the "Administration Law Judge Corps," into which all administrative law judges (ALJs) would be transferred from the administrative agencies where they now serve. This centralized corps of ALJs would conduct all the adjudicatory hearings required by statute. The Council of the Corps would have authority to assign ALJs to different divisions of the corps, to prescribe rules of practice and procedure for the conduct of proceedings before the corps, and generally to oversee the operation of the corps.

It is my understanding that proposals to establish a separate corps of ALJs have surfaced every year for the last fifteen years and the notion has been in discussion for over a quarter of a century. To date, a clear and certain case for creating such a corps has not been set forth. OSHRC's objections to the legislation are essentially three-fold:

(1) Our ALJs are already fully independent;

(2) Potential loss of substantive expertise;

(3) Potential procedural and logistical confusion.

We understand that one of the principal objectives of the legislation is to rid the ranks of the ALJs of possible bias and relieve them of actual or perceived partiality based on their relationship with the agencies

whose cases they hear. As between our ALJs and the Labor Department, whose cases they hear, there is no relationship. Thus, like all independent adjudicatory agencies, OSHRC should be exempt from the scope of this legislation.

OSHRC is not the adjudicatory "arm" of the Occupational Safety and Health Administration of the Department of Labor. On the contrary, OSHRC was established as an independent agency to carry out adjudicatory functions under the Occupational Safety and Health Act of 1970 ("Act"). The ALJs at this agency comprise fully a quarter of the personnel. OSHRC has no investigative, prosecutorial or policy-making functions whatsoever, and our ALJs have no institutional interest in the outcome of the cases they decide. They adjudicate employers' challenges to safety and health citations issued by OSHA: the Secretary of Labor "prosecutes" the case for OSHA and the employer "defends" itself. An initial decision rendered by an OSHRC ALJ becomes final unless it is selected for review by the three presidential-appointee commissioners. Final orders of the OSHRC may be appealed in the U.S. Courts of Appeals. Subjecting OSHRC ALJs to this legislation would not alleviate any undue pressure because none presently exists.

Not only would the legislation not do the good it seeks to do, but it would do substantial harm. Depending on how specialized the ALJs serving in the various "divisions" of the corps actually become, they may find themselves unable to give the employees and employers the kind of hearing they deserve. As many as 20 to 30 percent of the parties who appear before OSHRC are not represented by counsel, while many others are represented by attorneys unfamiliar with the Act. Certain areas of occupational safety and health law, particularly health regulations, present complex technical problems. Litigants who now come before OSHRC depend on ALJs who are highly knowledgeable in this field to ensure fair hearings. Similarly, the Commissioners themselves rely on seasoned ALJs to create adequate hearing records for cases that are appealed.

We see that S. 486 initially creates separate divisions, among them the "Division of Safety and Environmental Regulation" and the "Division of Health and Benefits Programs." Since our Act reaches both safety and health hazards on the job, it is uncertain how the corps would distribute OSH Act cases—many of which involve health aspects as well as safety. Even assuming that cases arising under the OSH Act would be allocated to a single division, the expertise of individuals in that division of the corps will be diluted from what it now is, simply by virtue of the fact that they will be required to spread their attention more thinly among cases brought under a variety of acts. Through no fault of their own, either the judges will generate decisions of lower quality or the decisional process will be slowed. Lower quality decisions result in more cases on appeal. Both consequences work to the detriment of the litigants (most often the employer and the government) and, ultimately, of the employees whom the Act seeks to protect. Violations under the OSH Act are not required to be corrected until the entry of a final order by OSHRC.

If the Council of the ALJ Corps were ultimately to attempt to develop a single, generic set of rules governing proceedings before it, such rules would undoubtedly fail to capture the peculiarities of occupational safety and health law practice under the Act. OSHRC's own rules of procedure concerning many matters—notices of contest, pleadings, amendments of citations, discovery, petitions for discretionary review, petitions for modification of abatement, and simplified proceedings—are specifically designed to address problems peculiar to occupational safety and health law and the Act. The Act provides that the Federal Rules and Civil Procedure apply to our proceedings unless we issue a rule of our own, so we have undertaken a creative approach, with excellent results. For instance, our rules defining the role of a settlement judge, along with the option for simplified proceedings, now serve as model rules for other agencies. These innovations, combined with the expertise of our ALJs, have fostered exceptionally high settlement rates. Regressing to a standard set of rules would only exacerbate litigation, increase the number of cases and the time required for disposition, and drive up the very costs we have sought to control.

Finally, we are concerned about the mechanics of emptying this agency of its ALJs. We envision the assignment of a case to an ALJ corps judge who is expected to divide his or her time amount occupational safety and health cases and cases that arise under other acts covering safety, environment, health or other benefits, appealable to other independent agencies or courts. Not only will monitoring agency-specific case flows become a challenge, but because the physical case file is opened here and, most typically, is closed here, we expect that tracking and managing our cases in the interim could become a formidable task, particularly with the increased risk of case files being misplaced among the various agencies. At a minimum, case disposition time will rise significantly because of increased handling and transfers of files. In this era of budgetary constraints, there has been no showing that a newly established corps would result in increased efficiency or in economies of scale. Moreover, streamlining case dispositions is particularly important under the Occupational Safety and Health Act because an employer who appeals an alleged safety or health citation is under no obligation to eliminate that hazardous condition until OSHRC has issued a final order, during which time employees may continue to be at risk of injury or illness.

In sum S. 486 would create major problems for this agency rather than solve them. We respectfully register our opposition to the bill.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the President's program.

Sincerely,

EDWIN G. FOULKE, Jr.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION,
Washington, DC, August 10, 1993.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Committee on the Judiciary, Washington, DC.

DEAR MR. CHAIRMAN: This letter is to offer the views of the Federal Mine Safety and Health Review Commission on S. 486, the Administrative Law Judge Corps Act. We strongly oppose this legislation. An administrative law judge (ALJ) corps would severely impair the expert and efficient disposition of mine safety and health cases by this Commission's ALJs. It would further run the risk of reducing operator compliance with federal mine safety requirements.

This Commission is an independent, adjudicative agency that provides administrative trial and appellate review of legal disputes arising under the Federal Mine Safety and Health Act of 1977 (Mine Act). Most cases deal with enforcement actions brought by the Department of Labor's Mine Safety and Health Administration against mine operators. In a typical proceeding, the Secretary of Labor prosecutes a case and a mine operator defends itself. Other cases address orders to close mines and miners' complaints of safety-related discrimination. This Commission is concerned solely with adjudication; it does not regulate nor enforce. Hence, its independence precludes potential bias or partiality on the part of its ALJs.

The cases brought before the Commission involve legal, procedural and technical issues that demand of our judges a secure grasp of the Mine Act, the implementing regulations promulgated by the Secretary of Labor, and the Commission's procedural rules and precedential case law, as well as a broad knowledge of modern mining technology. The legal issues in these cases arise under the Mine Act and its predecessor statute, the Federal Coal Mine Health and Safety Act of 1969. Congress recognized the special qualifications of our cadre of judges by transferring them en masse from the Department of the Interior to this Commission at the time it was created. The legislative history of the Mine Act evinces Congressional concern that, by permitting delays in adjudication and in civil penalty compliance, the prior law had failed to provide the means to react quickly to newly manifested hazards or to induce meaningful operator compliance. Congress expressed its intention that penalty litigation proceed with no undue delay.

The expertise of the Commission's judges in hearing and deciding cases has sustained high productivity and efficiency in case disposition. Case dispositions per ALJ have increased from 131 in fiscal year 1988 to an expected 232 this year. Mine safety cases are litigated by the Solicitor's Office in the Department of Labor and, to a large extent, by a specialized segment of the private bar. However, many mine operators and miners who appear before the Commission are not represented by counsel and others are represented by counsel who have little familiarity with the Mine Act. Experienced ALJs ensure fair hearings and save time and expense for both government and private litigants. Enactment of S. 486 would adversely affect the fairness and the efficiency with which cases are being heard and decided. The result would be delays in adjudication, which Congress sought to avoid in the Mine Act.

Commission administrative law judges were invested by Congress with a stature and authority that they have have used to great effect and stand to lose under a judge crops bill. A Commission judge's findings of fact are conclusive if supported by substantial evidence, the standard traditionally used by the federal courts in their review of final agency actions. Review of a judge's decision by the Commission is not a matter of right, but of discretion and the grounds for such review are circumscribed under the Mine Act. The statutory deference accorded to trial decisions in mine safety and health cases makes sense only in the context in which it was enacted, where the judges who hear and decide these cases in the first instance are experts. Of 5,469 ALJ case dispositions in fiscal year 1992, 82 were appealed for review by the Commission. Commission review and judicial review in the U.S. Courts of Appeals, as provided in the Mine Act, rely on expert ALJ development of the hearing record.

This Commission opposed earlier versions of this bill, introduced during the 98th, 99th,

100th, and 101st Congresses. It is the considered view of this Commission and its administrative law judges that S. 486 is counterproductive to its goals as expressed by Congress: the independent, fair and expeditious disposition of mine safety and health disputes.

We appreciate the opportunity to comment on this legislation and ask that this letter be included in the record. The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report.

Sincerely yours,

ARLENE HOLEN,
Chairman.

Mr. BUMPERS. Madam President, I rise today to suppoert S. 486, the Reorganization of the Federal Judiciary Act, introduced by Senator HEFLIN. This legislation is an opportunity to improve the efficiency of administrative adjudication in the U.S. Government and to help restore confidence in that process. It will also save the taxpayers at least $20 million the first year and even more in the future.

This bill will establish an independent corps of administrative law judges in the executive branch of government to adjudicate cases arising under the Administrative Procedure Act. Right now, Administrative Law Judges are assigned to particular agencies and deal with cases dealing with programs administered by those agencies. This bill would remove them from those agencies and make them part of a corps of administrative law judges, strengthening their independence and eliminating the appearance of undue influence by the agencies about which they render decisions.

This proposal can only improve the professional stature of the ALJ corps and add authority to their decision. S. 486 would place all ALJ's under the supervision of a Chief Administrative Law Judge to be appointed by the President and subject to Senate confirmation. There would be eight Division Chief Administrative Law Judges, responsible for immediate supervision of judges in eight areas of government administrative activity. Section 559 a(a) of this bill explicitly provides that "* * * the assignment of judge to a division shall be made after consideration of the areas of specialization in which the judge has served."

This bill would preserve and employ the expertise of the judges, allowing them to specialize in the same substantive areas while freeing them from the bureaucracy. Under this system we will have the benefit of judges' expertise in a specialty, but it allows for the resources of the ALJ Corps to be shifted to the areas where they are most needed. The U.S. Government and the people it serves need that sort of efficiency. And here is one of the most appealing features of this proposal: CBO estimates that this new approach would save $20 million in fiscal year 1995 and $29 million by fiscal year 1998 and so on into the future. This is a rare opportunity to cut spending while improving services.

Nothing in this bill would interfere with day-to-day management or the process of policy formulation in the agencies. Agency rule-making and interpretive authority of agencies would not be changed in any way.

This is not a new idea. Twelve States have similar laws in place. In fact, the legislative history shows that the drafters of the Administrative Procedure Act, which this bill would amend, considered establishing a separate ALJ Corps, but they decided to hold off and try the current arrangement. Experience has now shown us that an independent ALJ corps will better serve the people, with greater independence and greater efficiency. S. 486 is a substantively and fiscally responsible proposal. I hope all of my colleagues will support it.

Mr. SPECTER. Madam President, I am pleased once again, to cosponsor legislation to establish an independent corps of administrative law judges for Federal administrative agencies. I have been a cosponsor of similar legislation in each of the past five Congresses. Although several of these bills have been favorably reported to the Senate by the Judiciary Committee, this year marks the first year that the legislation is being considered by the full Senate.

When our National Government was established under the Constitution in 1789, no one conceived of the administrative state. The Government had three branches: legislative, executive, and judicial. Beginning in the late 19th century, however, the duties Congress delegated to the executive branch started to expand. Fearing improper political influence in certain areas, Congress even created "independent" agencies to regulate aspects of the economy.

The development of administrative agencies necessitated the establishment of adjudicators within the executive branch to handle fact-specific disputes in cases pending before an agency in order to gather evidence and make decisions based on that evidence.

The explosion of administrative agencies during the 1930's resulted in a significant increase in the number of hearing examiners employed by these administrative agencies. In 1946, to bring some order and regularity to Federal administrative procedures, Congress enacted the Administrative Procedure Act, or APA, which still governs the conduct of administrative proceedings today. The APA formalized the role of hearing examiners, who today are called administrative law judges.

Because the role of administrative law judges developed in response to specific agency needs, administrative law judges were always part of the agency they served. Because of the constitutional structure, as part of the executive branch, the decisions of administrative law judges were always, in some sense, advisory, as these officers stood in the place of the agency head, who could overturn the decision. Through the development of regulations and caselaw, however, administrative law judges gained additional protection from agency interference for their decisions.

Nonetheless, as employees of the agency whose cases they were adjudicating, there was always something unseemly about the role of administrative law judges. There would always be some question of their impartiality. The Supreme Court resolved the constitutional concerns over the status of administrative law judges and the ability of administrative agencies to decide issues pending before them by supporting the division of labor within the agency structure.

While there is no constitutional impediment to administrative law judges being part of the agency whose cases they are adjudicating, the possibility of improper influence was a necessary evil of the structure as it evolved and was finally codified in the APA. The issue of the potential conflict of interest continued to fester until it burst into the open and gained wide exposure during the 1980's, when there were many allegations of improper influence by political officials on Social Security Administration administrative law judges to curb the rates at which they were awarding disability benefits.

This legislation was an effort to respond to the concerns raised by these allegations of improper political influence in the administrative adjudicatory process. While the provisions of this bill have changed significantly since its initial introduction, the central premise of the legislation remains intact. Under the bill, administrative law judges from the various Federal administrative agencies will be removed from their agencies and placed in a new agency composed only of the judges. Thus, administrative law judges will be independent from the agencies whose cases they are adjudicating. The potential and real conflicts of interest will disappear. Administrative law judges will be free to find the facts and apply them to the issues before them in a fair and fully impartial manner.

Let me make clear, as this legislation does, that we are not establishing administrative law judges as a new, fourth branch of Government. These adjudicators will remain part of the executive branch. They are not policymaking officials, but will remain fully bound by the policies and legal interpretations of the agencies themselves, who exercise this authority as appointees of the President, the constitutional officer who executes the laws Congress enacts. Administrative law

69-059 O—97 Vol. 139 (Pt. 21) 43

judges in the new independent corps will not be free to substitute their view of the law; they are not judges in the constitutional sense. They remain aids to the administrative process. Nonetheless, their role as factfinders and appliers of agency regulations and policies is critical to the administrative process.

Many State administrative systems, responding to the real and perceived conflicts inherent in having administrative law judges remain part of the agency whose cases they adjudicate, have established independent corps of administrative law judges. By all accounts, these State systems function admirably.

I want to take a brief moment to express my appreciation to the lead sponsor of this legislation, the distinguished Senator from Alabama, who has been a stalwart in advocating the adoption of this measure for over 10 years.

This legislation represents a significant step forward for the machinery of our Federal Government, and I urge my colleagues to support this measure.

Mr. HEFLIN. Madam President, I urge that we go to third reading and pass the bill.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

(The text of the bill will be printed in a future edition of the RECORD.)

Mr. HEFLIN. Madam President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

Mr. HEFLIN. Madam President, I would like to thank members of the staff who have worked so hard on this and particularly here on the Senate floor in moving this at this late hour. I particularly want to thank my staff director and chief counsel Winston Lett.

The PRESIDING OFFICER. Without objection, the title amendment is agreed to.

The title was amended so as to read: "A bill to reorganize the Federal administrative law judiciary, and for other purposes.".

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

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

REMOVAL OF INJUNCTION OF SECRECY

Mr. FORD. Madam President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the Convention on Biological Diversity (Treaty Document No. 103-20), transmitted to the Senate by the President today and ask that the treaty be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the Record.

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

The message of the President is as follows:

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to ratification, the Convention on Biological Diversity, with Annexes, done at Rio de Janeiro, June 5, 1992, and signed by the United States in New York on June 4, 1993. The report of the Department of State is also enclosed for the information of the Senate.

The final text of the Convention was adopted in Nairobi by the Intergovernmental Negotiating Committee for a Convention on Biological Diversity (INC) on May 22, 1992. The INC was preceded by three technical meetings of an Ad Hoc Working Group of Experts on Biological Diversity and two meetings of an Ad Hoc Working Group of Legal and Technical Experts. Five sessions of the INC were held, from June 1991 to May 1992. The Convention was opened for signature at the United Nations Conference on Environment and Development in Rio de Janerio on June 5, 1992.

The Convention is a comprehensive agreement, addressing the many facets of biological diversity. It will play a major role in stemming the loss of the earth's species, their habitats, and ecosystems through the Convention's obligations to conserve biodiversity and sustainably use its components as well as its provisions that facilitate access to genetic resources and access to and transfer of technology so crucial to long-term sustainable development of the earth's biological resources. The Convention will also create a much needed forum for focusing international activities and setting global priorities on biological diversity.

The objectives of the Convention as set forth therein are the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising out of the utilization of genetic resources. These objectives are implemented through specific provisions that address, *inter alia*, identification and monitoring, *in situ* and *ex situ* conservation, sustainable use, research and training, public education and awareness, impact assessment, access to genetic resources, access to and transfer of technology, technical and scientific cooperation, handling of biotechnology and distribution of its benefits, and financing.

Economic incentives will help all Parties achieve the environmental benefits of conservation and sustainable use of biological diversity. The Administration thus supports the concept that benefits stemming from the use of genetic resources should flow back to those nations that act to conserve biological diversity and provide access to their genetic resources. We will strive to realize this objective of the Convention. As recognized in the Convention, the adequate and effective protection of intellectual property rights is another important economic incentive that encourages the development of innovative technologies, improving all Parties' ability to conserve and sustainably use biological resources. The Administration will therefore strongly resist any actions taken by Parties to the Convention that lead to inadequate levels of protection of intellectual property rights, and will continue to pursue a vigorous policy with respect to the adequate and effective protection of intellectual property rights in negotiations on bilateral and multilateral trade agreements. In this regard, the report of the Department of State provides a detailed statement of the Administration's position on those provisions of the Convention that relate to intellectual property rights.

Biological diversity conservation in the United States is addressed through a tightly woven partnership of Federal, State, and private sector programs in management of our lands and waters and their resident and migratory species. There are hundreds of State and Federal laws and programs and an extensive system of Federal and State wildlife refuges, marine sanctuaries, wildlife management areas, recreation areas, parks, and forests. These existing programs and authorities are considered sufficient to enable any activities necessary to effectively implement our responsibilities under the Convention. The Administration does not intend to disrupt the existing balance of Federal and State authorities through this Convention. Indeed, the Administration is committed to expanding and strengthening these relationships. We look forward to continued cooperation in conserving biological diversity and in promoting the sustainable use of its components.

The Convention will enter into force on December 29, 1993. Prompt ratification will demonstrate the United

States commitment to the conservation and sustainable use of biological diversity and will encourage other countries to do likewise. Furthermore, in light of the rapid entry into force of the Convention, early ratification will best allow the United States to fully represent its national interest at the first Conference of the Parties.

I recommend that the Senate give early and favorable consideration to this Convention and give its advice and consent to ratification, subject to the understandings described in the accompanying report of the Secretary of State.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *November 19, 1993.*

TRADING WITH INDIANS ACT OF 1993

Mr. FORD. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 311, S. 1501, a bill to repeal certain provisions of law relating to trading with Indians; that the bill be read for the third time, passed, the motion to reconsider laid upon the table; that any statements thereon appear in the RECORD at the appropriate place as if read.

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

So the bill (S. 1501) was passed, as follows:

(The text of the bill will be printed in a future edition of the RECORD.)

Mr. MCCAIN. Madam President, yesterday the Committee on Indian Affairs considered and unanimously voted to report S. 1501 to the Senate with the recommendation that the bill be passed. The committee report (S. Rept. 103–190) was filed last night. For the benefit of my colleagues, I would like to briefly highlight the purpose of this bill.

The purpose of S. 1501 is to repeal section 437 of title 18 U.S.C. This section prohibits officers, employees, or agents of the Bureau of Indian Affairs [BIA] or the Indian Health Service [IHS] from benefiting from contracts with any Indian, or from purchases and sales of property, goods, or services to or from any Indian unless specifically allowed by rules and regulations prescribed by the President or his designee.

The problem with the current law is that it is unduly restrictive because in addition to applying to IHS and BIA employees, the law also prohibits spouses from engaging in business activities with the local Indian residents. For example, a IHS employee at the Navajo Area Indian Health Service was informed this year that she was found to be in violation of the Trading with Indians Act solely because she has an interest in her husband's law practice on the Navajo Indian reservation. The IHS stated that she either had to divest herself of that interest or resign as a federal employee.

Madam President, no one questions the rationale behind the Trading with Indians Act. However, the effect of enforcing an 1834 statute, as amended, in 1993 has resulted in unforeseen and unintended consequences on IHS and BIA employees and their families. I believe there already exist adequate laws on the books which can address conflicts of interest involving Federal government employees. In order to double check this point, Senator Domenici and I wrote to Secretary Shalala and Secretary Babbitt on September 29, 1993 requesting the views of both departments on S. 1501. Both Departments provided a report in support of S. 1501, and have urged its passage. I would like to quote a pertinent paragraph from Secretary Shalala's letter.

We support S. 1501 and urge its expedited passage. We agree with the position that the Standards of Ethical Conduct, along with the criminal statutes at 18 U.S.C. 201–211, provide adequate safeguards against conflicts of interest involving Federal government employees, including employees of the IHS. In our view, these authorities can accomplish the purposes of the Act (Trading with Indians Act) without the overly broad restrictions contained in the Act.

Madam, President, I believe it is time to repeal this outdated statue. I urge my colleagues to support S. 1501.

COASTAL HERITAGE TRAIL ROUTE APPROPRIATIONS

Mr. FORD. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 290, S. 1574, to authorize appropriations for the Coastal Heritage Trail Route in New Jersey; that the bill be read three times, passed, the motion to reconsider laid upon the table, and that any statements on the measure appear in the RECORD at the appropriate place as if read.

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

So the bill (S. 1574) was passed, as follows:

(The text of the bill will be printed in a future edition of the RECORD.)

EXTENSION OF COURT-ANNEXED ARBITRATION

Mr. FORD. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 1732, a bill to extend court-annexed arbitration, introduced earlier today by Senator HEFLIN; that the bill be deemed read three times, passed, the motion to reconsider laid upon the table, and that any statements appear at the appropriate place in the RECORD as if read.

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

So the bill (S. 1732) was passed, as follows:

(The text of the bill will be printed in a future edition of the RECORD.)

Mr. HEFLIN. Madam President, Congress in 1988 passed legislation to authorize the continuation of 10 pilot programs of mandatory court-annexed arbitration which were operating in selected Federal district courts, and this legislation also authorized 10 additional pilot programs of voluntary court-annexed arbitration. This authority is scheduled to end on November 19th of this month, and I am introducing legislation today which would simply extend this authority with respect to these 20 pilot districts until 31 December 1994.

The House of Representatives in October of this year passed a bill, H.R. 1102, which would have required, not merely authorized, all 94 Federal districts courts to adopt either a mandatory or a voluntary court-annexed arbitration program which would operate under the existing authority of Chapter 44 [Sections 651–658] of Title 28 of the United States Code. H.R. 1102 also increased the maximum amount in controversy for cases referred under the mandatory programs from $100,000 to $150,000.

On October 29 of this year, the Judiciary Subcommittee on Courts and Administrative Practice held a hearing on the provisions of H.R. 1102 and heard a number of excellent witnesses who testified both in favor of and against the bill. Among those who testified were Judge Ann Claire Williams of the U.S. District Court for the Northern District of Illinois, who appeared as a representative of the Judiciary Conference which is the policy making body of the Federal judiciary. The Judicial Conference has recommended that Congress adopt legislation to continue authorization for court-annexed arbitration in the 20 district courts which are operating such programs, and the Conference recommended that Congress authorize all Federal district courts to have the discretion to utilize voluntary non-binding court-annexed arbitration. Thus the Judicial Conference did not recommend the expansion of mandatory court-annexed arbitration for the remainder of the Federal district courts.

Judge William W. Schwarzer, Director of the Federal Judicial Center, Judge Raymond Broderick, U.S. District Court for the Eastern District of Pennsylvania, Magistrate-Judge Wayne D. Brazil, U.S. District Court for the Northern District of California, and Dianne Nast, a practicing attorney in the Eastern District of Pennsylvania, testified in favor of H.R. 1102, citing the beneficial aspect of mandatory court-annexed arbitration. Jack Watson, a Washington attorney, on behalf of the American Bar Association, testified to the ABA's support for the policy

goals of H.R. 1102, but he advised the subcommittee that the ABA "has not adopted a policy regarding the mandatory use of ADR procedures but strongly encourages, where appropriate, its voluntary use, as well as the availability of mandatory nonbinding arbitration in Federal district courts." Mr. Stuart Grossman, on behalf of the American Board of Trial Advocates, an organization consisting of approximately 4,000 plaintiff and defense counsel evenly divided, and Judge Bill Wilson, U.S. District Court for the Eastern District of Arkansas, testified in opposition to H.R. 1102 and the mandatory aspect of court-annexed arbitration as being unwise policy and violative of the right to a civil jury trial as guaranteed by the 7th amendment to the U.S. Constitution.

In light of the lack of clear consensus on such a sweeping proposal as that embodied by the provisions of H.R. 1102 and in light of the fact that the subcommittee has just begun to explore this proposed legislation and all of its far-ranging implications and what improvements, if any, could be made to the bill, I think it would be imprudent for the subcommittee to recommend to the full Judiciary Committee and the Senate the favorable passage of H.R. 1102 in its current form. I am, therefore, introducing today a bill to extend until 31 December 1994 the court-annexed arbitration programs which are currently operating in 20 pilot districts across the country. I urge my colleagues to favorably support this needed extension so that the Senate can send this legislation quickly to the House of Representatives to act upon, hopefully, before the expiration of the 19 November deadline.

Mr. GRASSLEY. Madam President, I offer my support to this bill to extend the authorization of court annexed arbitration in 20 U.S. district courts. I do so while at the same time expressing my disappointment that we are not able, at this time, to extend authority for court annexed arbitration in the remaining 74 U.S. district courts. But, I defer to the to the chairman of our Courts Subcommittee, Senator HEFLIN, who wants to study this issue in greater detail next year. In the meantime, we will extend the authority for arbitration in those jurisdictions in which it has proved to be a success. And I look forward to working with him to find a way to expand the use of arbitration in our Federal courts.

I would like to spend a few moments explaining why arbitration works and why it should be extended. In 1988, Congress passed legislation to extend the mandatory nonbinding court annexed arbitration programs then in existence in 10 districts and to grant authority for 10 additional district courts to adopt voluntary nonbinding court annexed arbitration. Arbitration would be utilized, under the terms of the 1988 Judicial Improvements and Access to Justice Act, in noncomplex cases where the amount sought in damages did not exceed $100,000. In the 10 mandatory districts, all small routine contract and tort cases would go through the arbitration process before a jury trial could be had. In the 10 voluntary districts, arbitration would be utilized only where the parties agreed to go to arbitration before seeking a trial.

All arbitration, whether in the mandatory or voluntary districts, is nonbinding. That is, if one or both parties are not satisfied with the arbitration result, they may proceed in court without prejudice. Current law contains some incentives to accept the arbitrator's decision. First, the party seeking the trial de novo may be responsible for the arbitrator's fee if that party does not improve his or her position at trial. And, in the voluntary arbitration districts, costs and attorneys' fees may be assessed against the party seeking the trial if that party fails to obtain a judgment at trial that is substantially more favorable than the arbitrator's award and the court finds the party acted in bad faith in seeking a trial.

Under the terms of the 1988 act, the Federal Judicial Center studied the 10 mandatory arbitration programs and found them to be an overwhelming success. First, arbitration provides parties with increased options to resolve the case—adjudication by a neutral third party, in addition to the possibility of settling the case. Second, arbitration provides the litigants with a fair procedure. Third, arbitration reduces costs and the time it takes to resolve cases. And, finally, arbitration reduces court burdens.

Lawyers and litigants are satisfied with arbitration, and they do not view arbitration as second-class justice. In fact, the opposite is actually true, as witnesses who appeared before our courts subcommittee hearing on October 29, 1993, stated. Magistrate Judge Wayne Brazil of California and attorney Dianne Nast of Pennsylvania spoke eloquently about justice denied to those parties who have to wait 2 to 4 years for a resolution of a $100,000 dispute. That waiting period—when neither the lawyer nor the judge is focussed on the case—represents second class justice. Without arbitration, the parties to such a case may feel that the only alternative to the long delay is a hasty settlement. That may be no justice at all.

The House of Representatives passed a more comprehensive bill earlier this year. H.R. 1102 reauthorizes the 20 programs in existence and requires the remaining 74 districts to adopt either mandatory or voluntary arbitration programs in cases where the amount of damages sought does not exceed $150,000. The House has a very good idea. But the House bill went further than the Federal judges wanted to go. On a very closely split vote, the judicial conference voted to endorse only additional voluntary arbitration. So, Senator HEFLIN is not yet ready to approve the House bill, since it would potentially create more mandatory arbitration.

In an effort to compromise the issue, I drafted a proposal that I hope will be the subject of discussion and consideration next year. My proposal, which I will ask to be printed in the RECORD following this statement, would simply authorize the 74 districts to adopt arbitration, either voluntary, mandatory or no arbitration, in the courts' discretion. In addition, my proposal would repeal the small disincentives for seeking a trial, now contained in current law. The district judges in each jurisdiction are best equipped to decide what type of arbitration works. I know that in Arkansas, as Judge Bill Wilson testified at our October 29 hearing, arbitration may not be necessary. In Iowa, U.S. District Court Judge Charles Wolle feels the same way. These judges are more able to control their dockets and move cases along effectively. But, I do not believe their view that arbitration is unnecessary in their jurisdictions should preclude other jurisdictions from adopting arbitration—which has been shown to be fair, effective and satisfactory to litigants and lawyers alike.

So, I look forward to working with my colleague from Alabama on this issue. I am hopeful that he will see the utility in expanding the availability of arbitration, and empowering the Federal judges, in each district, to determine what kind, if any, of arbitration best fits their caseload.

DEPARTMENT OF ENERGY NATIONAL COMPETITIVENESS TECHNOLOGY PARTNERSHIP ACT OF 1993

Mr. FORD. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 109, S. 473, a bill relating to the Department of Energy, National Competitiveness Act of 1993.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows.

A bill (S. 473) to promote the industrial competitiveness and economic growth of the United States, and so forth.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources with an amendment to strike out all after the enacting clause and inserting in lieu thereof the following:

S. 473

SECTION 1. SHORT TITLE.

This Act may be cited as the "Department of Energy National Competitiveness Technology Partnership Act of 1993".

SEC. 2. DEFINITIONS.

For purposes of this Act, the term—

(1) "Department" means the United States Department of Energy; and

(2) "Secretary" means the Secretary of the United States Department of Energy.

SEC. 3. COMPETITIVENESS AMENDMENT TO THE DEPARTMENT OF ENERGY ORGANIZATION ACT.

(a) The Department of Energy Organization Act is amended by adding the following new title (42 U.S.C. 7101 et seq.):

"TITLE XI—TECHNOLOGY PARTNERSHIPS

"SEC. 1101. FINDINGS, PURPOSES AND DEFINITIONS.

"(a) FINDINGS.—For purposes of this title, Congress finds that—

"(1) the Department has scientific and technical resources within the departmental laboratories in many areas of importance to the economic, scientific and technological competitiveness of United States industry;

"(2) the extensive scientific and technical investment in people, facilities and equipment in the departmental laboratories can contribute to the achievement of national technology goals in areas such as the environment, health, space, and transportation;

"(3) the Department has pursued aggressively the transfer of technology from departmental laboratories to the private sector; however, the capabilities of the laboratories could be made more fully accessible to United States industry and to other Federal agencies;

"(4) technology development has been increasingly driven by the commercial marketplace, and the private sector has research and development capabilities in a broad range of generic technologies;

"(5) the Department and the departmental laboratories would benefit, in carrying out their missions, from collaboration and partnership with United States industry and other Federal agencies; and

"(6) partnerships between the departmental laboratories and United States industry can provide significant benefits to the Nation as a whole, including creation of jobs for United States workers and improvement of the competitive position of the United States in key sectors of the economy such as aerospace, automotive, chemical and electronics.

"(b) PURPOSES.—The purposes of this title are—

"(1) to promote partnerships among the Department, the departmental laboratories and the private sector;

"(2) to establish a goal for the amount of departmental laboratory resources to be committed to partnerships;

"(3) to ensure that the Department and the departmental laboratories play an appropriate role, consistent with the core competencies of the laboratories, in implementing the President's critical technology strategies;

"(4) to provide additional authority to the Secretary to enter into partnerships with the private sector to carry out research, development, demonstration and commercial application activities;

"(5) to streamline the approval process for cooperative research and development agreements proposed by the departmental laboratories; and

"(6) to facilitate greater cooperation between the Department and other Federal agencies as part of an integrated national effort to improve United States competitiveness.

"(c) DEFINITIONS.—For purposes of this title, the term—

"(1) 'cooperative research and development agreement' has the meaning given that term in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(d)(1));

"(2) 'core competency' means an area in which the Secretary determines a departmental laboratory has developed expertise and demonstrated capabilities;

"(3) 'critical technology' means a technology identified in the Report of the National Critical Technologies Panel;

"(4) 'departmental laboratory' means a facility operated by or on behalf of the Department that would be considered a laboratory as that term is defined in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(d)(2)) or any other laboratory or facility designated by the Secretary;

"(5) 'disadvantaged' has the same meaning as that term has in section 8(a) (5) and (6) of the Small Business Act (15 U.S.C. 637(a) (5) and (6));

"(6) 'dual-use technology' means a technology that has military and commercial applications;

"(7) 'educational institution' means a college, university, or elementary or secondary school, including any not-for-profit organization dedicated to education that would be exempt under section 501(a) of the Internal Revenue Code of 1986;

"(8) 'minority college or university' means a historically Black college or university that would be considered a 'part B institution' by section 322(2) of the Higher Education Act of 1965 (20 U.S.C. 1061(2)) or a 'minority institution' as that term is defined in section 1046 of the Higher Education Act of 1965 (20 U.S.C. 1135d–5(3)).

"(9) 'multi-program departmental laboratory' means any of the following: Argonne National Laboratory, Brookhaven National Laboratory, Idaho Nation Engineering Laboratory, Lawrence Berkeley Laboratory, Lawrence Livermore National Laboratory, Los Alamos National Laboratory, National Renewable Energy Laboratory, Oak Ridge National Laboratory, Pacific Northwest Laboratory, and Sandia National Laboratories;

"(10) 'partnership' means any arrangement under which the Secretary or one or more departmental laboratories undertakes research, development, demonstration, commercial application or technical assistance activities in cooperation with one or more non-Federal partners and which may include partners from other Federal agencies;

"(11) 'Report of the National Critical Technologies Panel' means the biennial report on national critical technologies submitted to Congress by the President pursuant to section 603(d) of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683(d)); and

"(12) 'small business' means a business concern that meets the applicable standards prescribed pursuant to section 3(a) of the Small Business Act (15 U.S.C. 632(a)).

"SEC. 1102. GENERAL AUTHORITY.

"(a)(1) In carrying out the missions of the Department, the Secretary and the departmental laboratories may conduct research, development, demonstration or commercial application activities that build on the core competencies of the departmental laboratories.

"(2) In addition to missions established pursuant to other laws, the Secretary may assign to departmental laboratories any of the following missions:

"(A) National security, including the—

"(i) advancement of the military application of atomic energy;

"(ii) support of the production of atomic weapons, or atomic weapons parts, including special nuclear materials;

"(iii) support of naval nuclear propulsion programs;

"(iv) support for the dismantlement of atomic weapons and the safe storage, transportation and disposal of special nuclear materials;

"(v) development of technologies and techniques for the safe storage, processing, treatment, transportation, and disposal of hazardous waste (including radioactive waste) resulting from nuclear materials production, weapons production and surveillance programs, and naval nuclear propulsion programs and of technologies and techniques for the reduction of environmental hazards and contamination due to such waste and the environmental restoration of sites affected by such waste;

"(vi) development of technologies and techniques needed for the effective negotiation and verification of international arms control agreements and for the containment of the proliferation of nuclear, chemical, and biological weapons and delivery vehicles of such weapons; and

"(vii) protection of health and promotion of safety in carrying out other national security missions.

"(B) Energy-related science and technology, including the—

"(i) enhancement of the nation's understanding of all forms of energy production and use;

"(ii) support of basic and applied research on the fundamental nature of matter and energy, including construction and operation of unique scientific instruments;

"(iii) development of energy resources, including solar, geothermal, fossil, and nuclear energy resources, and related fuel cycles;

"(iv) pursuit of a comprehensive program of research and development on the environmental effects of energy technologies and programs;

"(v) development of technologies and processes to reduce the generation of waste or pollution or the consumption of energy or materials;

"(vi) development of technologies and techniques for the safe storage, processing, treatment, management, transportation and disposal of nuclear waste resulting from commercial nuclear activities; and

"(vii) improvement of the quality of education in science, mathematics, and engineering.

"(C) Industrial infrastructure, in technology areas such as—

"(i) microelectronics;

"(ii) high-performance computing and communications;

"(iii) transportation;

"(iv) advanced manufacturing;

"(v) advanced materials;

"(vi) space;

"(vii) human health sciences; and

"(viii) environmental science.

"(D) Technology transfer.

"(3) In carrying out the Department's missions, the Secretary, and the directors of the departmental laboratories, shall, to the maximum extent practicable, make use of partnerships. Such partnerships shall be for purposes of the following:

"(A) to lead to the development of technologies that the private sector can commercialize in areas of technology with broad application important to United States technological and economic competitiveness;

"(B) to provide Federal support in areas of technology where the cost or risk is too high for the private sector to support alone but that offer a potentially high payoff to the United States;

"(C) to contribute to the education and training of scientists and engineers;

"(D) to provide university and private researchers access to departmental laboratory facilities; or

"(E) to provide technical expertise to universities, industry or other Federal agencies.

"(b) The Secretary, in carrying out partnerships, may enter into agreements using instruments authorized under applicable laws, including but not limited to contracts, cooperative research and development agreements, work for other agreements, user-facility agreements, cooperative agreements, grants, personnel exchange agreements and patent and software licenses with any person, any agency or instrumentality of the United States, any State or local governmental entity, any educational institution, and any other entity, private sector or otherwise.

"(c) The Secretary, and the directors of the departmental laboratories, shall utilize partnerships with United States industry, to the maximum extent practicable, to ensure that technologies developed in pursuit of the Department's missions are applied and commercialized in a timely manner.

"(d) The Secretary shall work with other Federal agencies to carry out research, development, demonstration or commercial application activities where the core competencies of the departmental laboratories could contribute to the missions of such other agencies.

"SEC. 1103. ESTABLISHMENT OF GOAL FOR PARTNERSHIPS BETWEEN DEPARTMENTAL LABORATORIES AND UNITED STATES INDUSTRY.

"(a) Beginning in fiscal year 1994, the Secretary shall establish a goal to allocate to cost-shared partnerships with United States industry not less than 20 percent of the annual funds provided by the Secretary to each multi-program departmental laboratory for research, development, demonstration and commercial application activities.

"(b) Beginning in fiscal year 1994, the Secretary shall establish an appropriate goal for the amount of resources to be committed to cost-shared partnerships with United States industry at other departmental laboratories.

"SEC. 1104. ROLE OF THE DEPARTMENT IN THE DEVELOPMENT OF CRITICAL TECHNOLOGY STRATEGIES.

"(a) The Secretary shall develop a multyear critical technology strategy for research, development, demonstration and commercial application activities supported by the Department for the critical technologies listed in the Report of the National Critical Technologies Panel.

"(b) In developing such strategy, the Secretary shall—

"(1) identify the core competencies of each departmental laboratory;

"(2) develop goals and objectives for the appropriate role of the Department in each of the critical technologies listed in the report, taking into consideration the core competencies of the departmental laboratories;

"(3) consult with appropriate representatives of United States industry, including members of industry associations and representatives of labor organizations; and

"(4) participate in the executive branch process to develop critical technology strategies.

"SEC. 1105. PARTNERSHIP PREFERENCES.

"(a) The Secretary shall ensure that the principal economic benefits of any partnership accrue to the United States economy.

"(b) Any partnership that would be given preference under section 12(c)(4) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(c)(4) if it were a cooperative research and development agreement shall be given preference under this title.

"(c) The Secretary shall issue guidelines, after consultation with the Laboratory Partnership Advisory Board established in section 1109, for application of section 12(c)(4) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(c)(4)) and application of subsection (a) of this section to partnerships.

"(d) The Secretary shall encourage partnerships that involve minority colleges or universities or private sector entities owned or controlled by disadvantaged individuals.

"SEC. 1106. EVALUATION OF PARTNERSHIP PROGRAMS.

"(a) The Secretary, in consultation with the Laboratory Partnership Advisory Board established in section 1109, shall develop mechanisms for independent evaluation of the ongoing partnership activities of the Department and the departmental laboratories.

"(b)(1) The Secretary and the director of each departmental laboratory shall develop mechanisms for assessing the progress of each partnership.

"(2) The Secretary and the director of each departmental laboratory shall utilize the mechanisms developed under paragraph (1) to evaluate the accomplishments of each ongoing multiyear partnership and shall condition continued Federal participation in each partnership on demonstrated progress.

"SEC. 1107. ANNUAL REPORT.

"(a) The Secretary shall submit an annual report to Congress describing the ongoing partnership activities of the Secretary and each departmental laboratory and, to the extent practicable, the activities planned by the Secretary and by each departmental laboratory for the coming fiscal year. In developing the report, the Secretary shall seek the advice of the Laboratory Partnership Advisory Board established in section 1109.

"(b) The Secretary shall submit the report under subsection (a) to the Committees on Appropriations and Energy and Natural Resources of the Senate and to the appropriate Committees of the House of Representatives. No later than March 1, 1994, and no later than the first of March of each subsequent year, the Secretary shall submit the report under subsection (a) that covers the fiscal year beginning on the first of October of such year.

"(c) Each director of a departmental laboratory shall provide annually to the Secretary a report on ongoing partnership activities and a plan and such other information as the Secretary may reasonably require describing the partnership activities the director plans to carry out in the coming fiscal year. The director shall provide such report and plan in a timely manner as prescribed by the Secretary to permit preparation of the report under subsection (a).

"(d) The Secretary's description of planned activities under subsection (a) shall include, to the extent such information is available, appropriate information on—

"(1) the total funds to be allocated to partnership activities by the Secretary and by the director of each departmental laboratory;

"(2) a breakdown of funds to be allocated by the Secretary and by the director of each departmental laboratory for partnership activities by areas of technology;

"(3) any plans for additional funds not described in paragraph (2) to be set aside for partnerships during the coming fiscal year;

"(4) any partnership that involves a federal contribution in excess of $500,000 the Secretary or the director of each departmental laboratory expects to enter into in the coming fiscal year;

"(5) the technologies that will be advanced by each partnership that involves a Federal contribution in excess of $500,000;

"(6) the types of entities that will be eligible for participation in partnerships;

"(7) the nature of the partnership arrangements, including the anticipated level of financial and in-kind contribution from participants and any repayment terms;

"(8) the extent of use of competitive procedures in selecting partnerships; and

"(9) such other information that the Secretary finds relevant to the determination of the appropriate level of Federal support for such partnerships.

"(e) The Secretary shall provide appropriate notice in advance to Congress of any partnership, which has not been described previously in the report required by subsection (a), that involves a Federal contribution in excess of $500,000.

"SEC. 1108. PARTNERSHIP PAYMENTS.

"(a)(1) Partnership agreements entered into by the Secretary may require a person or other entity to make payments to the Department, or any other Federal agency, as a condition for receiving support under the agreement.

"(2) The amount of any payment received by the Federal Government pursuant to a requirement imposed under paragraph (1) may be credited, to the extent authorized by the Secretary, to the account established under paragraph (3). Amounts so credited shall be available, subject to appropriations, for partnerships.

"(3) There is hereby established in the United States Treasury an account to be known as the 'Department of Energy Partnership Fund'. Funds in such account shall be available to the Secretary for the support of partnerships.

"(b) The Secretary may advance funds under any partnership without regard to section 3324 of title 31 of the United States Code to—

"(1) small businesses;

"(2) not-for-profit organizations that would be exempt under section 501(a) of the Internal Revenue Code of 1986; or

"(3) State or local governmental entities.

"SEC. 1109. LABORATORY PARTNERSHIP ADVISORY BOARD AND INDUSTRIAL ADVISORY GROUPS AT MULTI-PROGRAM DEPARTMENTAL LABORATORIES.

"(a)(1) The Secretary shall establish within the Department an advisory board to be known as the "Laboratory Partnership Advisory Board", to provide the Secretary with advice on the implementation of this title.

"(2) The membership of the Laboratory Partnership Advisory Board shall consist of persons who are qualified to provide the Secretary with advice on the implementation of this title. Members of the Board shall include representatives primarily from United States industry but shall also include representatives from—

"(A) small businesses;

"(B) private sector entities owned or controlled by disadvantaged persons;

"(C) educational institutions, including representatives from minority colleges or universities;

"(D) laboratories of other Federal agencies; and

"(E) professional and technical societies in the United States.

"(3) The Laboratory Partnership Advisory Board shall request comment and suggestions from departmental laboratories to assist the Board in providing advice to the Secretary on the implementation of this title.

"(b) The director of each multiprogram departmental laboratory shall establish an advisory group consisting of persons from United States industry to—

"(1) evaluate new initiatives proposed by the departmental laboratory;

"(2) identify opportunities for partnerships with United States industry; and

"(3) evaluate ongoing programs at the departmental laboratory from the perspective of United States industry.

"(c) Nothing in this section is intended to preclude the Secretary or the director of a departmental laboratory from utilizing existing advisory boards to achieve the purposes of this section.

"SEC. 1110. FELLOWSHIP PROGRAM.

"The Secretary shall encourage scientists, engineers and technical staff from departmental laboratories to serve as visiting fellows in research and manufacturing facilities of industrial organizations, State and local governments, and educational institutions in the United States and foreign countries. The Secretary may establish a formal fellowship program for this purpose or may authorize such activities on a case-by-case basis. The Secretary shall also encourage scientists and engineers from United States industry to serve as visiting scientists and engineers in the departmental laboratories.

"SEC. 1111. COOPERATION WITH STATE AND LOCAL PROGRAMS FOR TECHNOLOGY DEVELOPMENT AND DISSEMINATION.

"The Secretary and the director of each departmental laboratory shall seek opportunities to coordinate their activities with programs of State and local governments for technology development and dissemination, including programs funded in part by the Secretary of Defense pursuant to section 2523 of title 10, of the United States Code, and section 2513 of title 10, of the United States Code, and programs funded in part by the Secretary of Commerce pursuant to sections 25 and 26 of the Act of March 3, 1901 (15 U.S.C. 278k and 2781), and section 5121(b) of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 2781 note).

"SEC. 1112. AVAILABILITY OF FUNDS FOR PARTNERSHIPS.

"(a) All of the funds authorized to be appropriated to the Secretary for research, development, demonstration or commercial application activities, other than atomic energy defense programs, shall be available for partnerships to the extent such partnerships are consistent with the goals and objectives of such activities.

"(b) All of the funds authorized to be appropriated to the Secretary for research, development, demonstration or commercial application of dual-use technologies within the Department's atomic energy defense activities shall be available for partnerships to the extent such partnerships are consistent with the goals and objectives of such activities.

"(c) Funds authorized to be appropriated to the Secretary and made available for departmental laboratory-directed research and development shall be available for any partnership.

"SEC. 1113. PROTECTION OF INFORMATION.

"Section 12(c)(7) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(c)(7)), relating to the protection of information, shall apply to the partnership activities undertaken by the Secretary and by the directors of the departmental laboratories.

"SEC. 1114. FAIRNESS OF OPPORTUNITY.

"(a) The Secretary and the director of each departmental laboratory shall institute procedures to ensure that information on laboratory capabilities and arrangements for participating in partnerships with the Secretary or the departmental laboratories is publicly disseminated.

"(b) Prior to entering into any partnership having a Federal contribution in excess of $5,000,000, the Secretary or director of a departmental laboratory shall ensure that the opportunity to participate in such partnership has been publicly announced to potential participants.

"(c) In cases where the Secretary or the director of a departmental laboratory believes a potential partnership activity would benefit from broad participation from the private sector, the Secretary or the director of such departmental laboratory may take such steps as may be necessary to facilitate formation of a United States industry consortium to pursue the partnership activity.

"SEC. 1115. PRODUCT LIABILITY.

"The Secretary, after consultation with the Laboratory Partnership Advisory Board established in section 1109, and the Attorney General shall enter into a memorandum of understanding establishing a consistent policy and standards regarding the liability of the United States, of the non-Federal entity operating a departmental laboratory and of any other party to a partnership for product liability claims arising from partnership activities. The Secretary and the director of each departmental laboratory shall, to the maximum extent practicable, incorporate into any partnership the policy and standards established in the memorandum of understanding.

"SEC. 1116. INTELLECTUAL PROPERTY.

"The Secretary shall, after consultation with the Laboratory Partnership Advisory Board established in section 1109, develop guidelines governing the application of intellectual property laws by the Secretary and by the director of each departmental laboratory in partnership arrangements.

"SEC. 1117. SMALL BUSINESS.

"(a) The Secretary shall develop simplified procedures and guidelines for partnerships involving small businesses to facilitate access to the resources and capabilities of the departmental laboratories.

"(b) Notwithstanding any other law, the Secretary may waive, in whole or in part, any cost-sharing requirement for a small business involved in a partnership if the Secretary determines that the cost-sharing requirement would impose an undue hardship on the small business and would prevent the formation of the partnership.

"(c) Notwithstanding section 12(d) of the Stevenson-Wydler Innovation Act of 1980 (15 U.S.C. 3710a(d)(1)), the Secretary may provide funds as part of a cooperative research and development agreement to a small business if the Secretary determines that the funds are necessary to prevent imposing an undue hardship on the small business and necessary for the formation of the cooperative research and development agreement.

"SEC. 1118. MINORITY COLLEGE AND UNIVERSITY REPORT.

"Within one year after the date of enactment of this title, and annually thereafter, the Secretary shall submit to the Committee on Energy and Natural Resources of the United States Senate and to the United States House of Representatives a report identifying opportunities for minority colleges and universities to participate in programs and activities being carried out by the Department or the departmental laboratories. The Secretary shall consult with representatives of minority colleges and universities in preparing the report. Such report shall—

"(a) describe ongoing education and training programs being carried out by the Department or the departmental laboratories with respect to or in conjunction with minority colleges and universities in the areas of mathematics, science, and engineering;

"(b) describe ongoing research, development demonstration or commercial application activities involving the Department or the departmental laboratories and minority colleges and universities;

"(c) describe funding levels for the programs and activities described in subsections (a) and (b);

"(d) identify ways for the Department or the departmental laboratories to assist minority colleges and universities in providing education and training in the fields of mathematics, science, and engineering;

"(e) identify ways for the Department or the departmental laboratories to assist minority colleges and universities in entering into partnerships;

"(f) address the need for and potential role of the Department or the departmental laboratories in providing to minority colleges and universities the following:

"(1) increased research opportunities for faculty and students;

"(2) assistance in faculty development and recruitment and curriculum enhancement and development; and

"(3) laboratory instrumentation and equipment, including computer equipment, through purchase, loan, or other transfer;

"(g) address the need for and potential role of the Department or departmental laboratories in providing funding and technical assistance for the development of infrastructure facilities, including buildings and laboratory facilities at minority colleges and universities; and

"(h) make specific proposals and recommendations, together with estimates of necessary funding levels, for initiatives to be carried out by the Department or the departmental laboratories to assist minority colleges and universities in providing education and training in the areas of mathematics, science, and engineering, and in entering into partnerships with the Department or departmental laboratories.

"SEC. 1119. MINORITY COLLEGE AND UNIVERSITY SCHOLARSHIP PROGRAM.

"The Secretary shall establish a scholarship program for students attending minority colleges or universities and pursuing a degree in energy-related scientific, mathematical, engineering, and technical disciplines. The program shall include tuition assistance. The program shall provide an opportunity for the scholarship recipient to participate in an applied work experience in a departmental laboratory. Recipients of such scholarships shall be students deemed by the Secretary to have demonstrated (1) a need for such assistance and (2) academic potential in the particular area of study. Scholarships awarded under this program shall be known as Secretary of Energy Scholarships.".

(b) CONFORMING AMENDMENT—The table of contents of the Department of Energy Organization Act (42 U.S.C. 7101 et. seq.) is

amended by adding at the end thereof the following items:

"TITLE XI—TECHNOLOGY PARTNERSHIPS

SEC. 4. NATIONAL ADVANCED MANUFACTURING TECHNOLOGIES PROGRAM.

The Secretary is encouraged to use partnerships to expedite the private sector deployment of advanced manufacturing technologies as required by section 2202(a) of the Energy Policy Act of 1992 (42 U.S.C. 13502).

SEC. 5. NOT-FOR-PROFIT ORGANIZATIONS.

The Secretary shall encourage the establishment of not-for-profit organizations, such as the Center for Applied Development of Environmental Technology (CADET), that will facilitate the transfer of technologies from the departmental laboratories to the private sector.

SEC. 6. CAREER PATH PROGRAM.

(a) The Secretary, utilizing authority under other applicable law and the authority of this section, shall establish a career path program to recruit employees of the national laboratories to serve in positions in the Department.

(b) Section 207 of title 18, United States Code, is amended by inserting after subsection (j)(6) the following:

"(7) NATIONAL LABORATORIES.—(A) The restrictions contained in subsections (a), (b), (c), and (d) shall not apply to an appearance or communication made, or advice or aid rendered by a person employed at a facility described in subparagraph (B), if the appearance or communication is made on behalf of the facility or the advice or aid is provided to the contractor of the facility.

"(B) This paragraph applies to the following: Argonne National Laboratory, Brookhaven National Laboratory, Idaho National Engineering Laboratory, Lawrence Berkeley Laboratory, Lawrence Livermore National Laboratory, Los Alamos National Laboratory, National Renewable Energy Laboratory, Oak Ridge National Laboratory, Pacific Northwest Laboratory, and Sandia National Laboratories.".

(c) Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) is amended by inserting the following new subsection:

"(q) NATIONAL LABORATORIES.—(1) The restrictions on obtaining a recusal contained in paragraphs (c)(2) and (c)(3) shall not apply to discussions of future employment or business opportunity between a procurement official and a competing contractor managing and operating a facility described in paragraph (3): *Provided*, That such discussions concern the employment of the procurement official at such facility.

"(2) The restrictions contained in paragraph (f)(1) shall not apply to activities performed on behalf of a facility described in paragraph (3).

"(3) This subsection applies to the following: Argonne National Laboratory, Brookhaven National Laboratory, Idaho National Engineering Laboratory, Lawrence Berkeley Laboratory, Lawrence Livermore National Laboratory, Los Alamos National Laboratory, National Renewable Energy Laboratory, Oak Ridge National Laboratory, Pacific Northwest Laboratory, and Sandia National Laboratories.".

SEC. 7. INFORMATION INFRASTRUCTURE AND TECHNOLOGY.

(a) FINDINGS.—For purposes of this title, Congress finds that—

(1) high-performance computing has the potential to enhance the economic, scientific and technological competitiveness of United States industry; and

(2) the Federal Government should ensure that there is a coordinated interagency program in partnership with the private sector to identify and promote applications of high-performance computing that will significantly improve the use of information, foster and strengthen research and development capabilities, and enhance the competitiveness of United States industry.

(b) PURPOSES.—The purposes of this section are to—

(1) ensure the widest possible application of high-performance computing in the United States; and

(2) provide for partnerships that will enhance Federal and private efforts to deploy and commercialize these technologies as part of a national information infrastructure.

(c) NATIONAL INFORMATION INFRASTRUCTURE DEVELOPMENT PROGRAM.—The High-Performance Computing Act of 1991 (15 U.S.C. 5501 et seq.) is amended—

(1) in section 101(a), by adding after paragraph (2) a new paragraph (3) as follows and renumbering subsequent paragraphs accordingly:

"(3) The Program shall also—

"(A) provide for a coordinated interagency effort in partnership with the private sector to develop, deploy and commercialize high-performance computing technologies through a national information infrastructure for applications in—

"(i) education,

"(ii) health care,

"(iii) manufacturing,

"(iv) digital information,

"(v) energy demand management,

"(vi) environmental monitoring and remediation,

"(vii) financial services,

"(viii) law enforcement; and

"(ix) such other fields as the President deems appropriate;

"(B) set forth the role of the network in making the benefits of applications of high-performance computing available to United States industry, government and academia through a national information infrastructure; and

"(C) otherwise ensure that services and applications of high-performance computing technologies are available as needed to United States industry, government and academia.";

(2) in section 101, by changing the reference to section 101(a)(3)(A) each time it appears to section 101(a)(4)(A); and

(3) in section 203, by adding at the end thereof a new subsection (f) as follows:

"(f) APPLICATIONS.—(1) The Secretary of Energy shall, consistent with the Program, provide for cooperative projects involving the Department of Energy or one or more Department of Energy laboratories and appropriate non-Federal entities to develop, test and apply high-performance computing technologies for—

"(A) education and training, including science, mathematics and engineering education and practical post-secondary training in skills needed by United States industry;

"(B) health care, including remote diagnosis and monitoring;

"(C) manufacturing;

"(D) energy demand management and control, including vehicle efficiency and utilization, energy efficiency in commercial and residential buildings, and industrial energy use and practices;

"(E) scientific, technical and energy information dissemination and analysis, including exhibits and model experiments;

"(F) technology transfer among the Department of Energy laboratories, United States industry and educational institutions;

"(G) environmental monitoring, modeling and remediation;

"(H) financial services, including security and data base management of financial data;

"(I) law enforcement; and

"(J) such other areas as the Secretary of Energy deems appropriate.

"(2) In carrying out projects under paragraph (1), the Secretary of Energy shall, where appropriate, seek to address the technical, architectural, economic, regulatory and market considerations critical to further development of a national information infrastructure.

"(3) There is authorized to be appropriated to the Secretary of Energy for purposes of this subsection $50,000,000 for fiscal year 1994, $100,000,000 for fiscal year 1995 and $150,000,000 for fiscal year 1996.".

SEC. 8. AVLIS COMMERCIALIZATION.

(a) PREDEPLOYMENT CONTRACTOR.—Not later than ninety days after the date of enactment of this Act, the Secretary shall solicit proposals for a commercial predeployment contractor to conduct such activities as may be necessary to enable the Secretary or any successor to the Secretary's uranium enrichment enterprise to deploy a commercial uranium enrichment plant using the Atomic Vapor Laser Isotope Separation (AVLIS) technology. Such activities shall include—

(1) developing a transition plan for transferring the AVLIS program from research, development, and demonstration activities at the Lawrence Livermore National Laboratory to deployment of a commercial AVLIS production plant;

(2) confirming the technical performance of AVLIS technology;

(3) developing the economic and industrial assessments necessary for the Secretary or his successor to make a commercial decision whether to deploy AVLIS;

(4) providing an industrial perspective for the planning and execution of remaining demonstration program activities; and

(5) completing feasibility and risk studies necessary for a commercial decision whether to deploy AVLIS, including financing options.

(b) ADDITIONAL ACTIVITIES.—Based upon the results of subsection (a), the Secretary may solicit additional proposals to complete the following activities:

(1) site selection, site characterization, and environmental documentation activities for a commercial AVLIS plant;

(2) engineering design of a production plant, developing a project schedule, and initiating operations planning;

(3) activities leading to obtaining necessary licenses from the Nuclear Regulatory Commission; and

(4) ensuring the successful integration of AVLIS technology into the commercial nuclear fuel cycle.

(c) REPORTS.—The Secretary shall submit to the Committee on Energy and Natural Resources of the United States Senate and to the Speaker of the House of Representatives a written report on the progress made toward the deployment of a commercial AVLIS production plant ninety days after the date of enactment of this Act and each ninety days thereafter.

SEC. 9. DOE MANAGEMENT.

(a) Section 202(a) of the Department of Energy Organization Act (42 U.S.C. 7132(a)) is amended by striking "Under Secretary" and inserting in its place "Under Secretaries".

(b) Section 202(b) of the Department of Energy Organization Act (42 U.S.C. 7132(b)) is amended to read as follows:

"(b) There shall be in the Department three Under Secretaries and a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform functions and duties the Secretary prescribes. The Under Secretaries shall be compensated at the rate for level III of the Executive Schedule under section 5314 of title 5, United States Code, and the General Counsel shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.".

SEC. 10. AMENDMENTS TO STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT.

(a) Section 12(c)(5) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(c)(5)) is amended—

(1) by deleting subparagraph (C)(i) and inserting in lieu thereof:

"(C)(i) Any agency that has contracted with a non-Federal entity to operate a laboratory shall review and approve, request specific modifications to, or disapprove a joint work statement and cooperative research and development agreement that is submitted by the director of such laboratory within thirty days after such submission. In any case where an agency has requested specific modifications to a joint work statement or cooperative research and development agreement, the agency shall approve or disapprove any resubmission of such joint work statement or cooperative research and development agreement within fifteen days after such resubmission. No agreement may be entered into by a Government-owned, contractor-operated laboratory under this section before both approval of the cooperative research and development agreement and a joint work statement.";

(2) by adding in subparagraph (C)(ii) the words, "or cooperative research and development agreement" after "joint work statement";

(3) by deleting subparagraph (C)(iv);

(4) by deleting subparagraph (C)(v) and inserting in lieu thereof:

"(C)(iv) If an agency fails to complete a review under clause (i) within any of the specified time-periods, the agency shall submit to the Congress, within 10 days after the failure to complete the review, a report on the reasons for such failure. The agency shall, at the end of each successive 15-day period thereafter during which such failure continues, submit to Congress another report on the reasons for the continued failure."; and

(5) by deleting subparagraph (C)(vi).

(b) Section 12(d)(2) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(d)(2)) is amended—

(1) in subparagraph (B) by striking "substantial" before "purpose"; and

(2) in subparagraph (C) by striking "primary".

SEC. 11. GUIDELINES.

The implementation of the provisions of this Act shall not be delayed pending the issuance of guidelines, policies or standards required by sections 1105, 1115 and 1116 of the Department of Energy Organization Act (42 U.S.C. 7101 et. seq.) as added by section 3 of this Act.

SEC. 12. AUTHORIZATION.

(a) In addition to funds made available for partnerships under section 1112 of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.) as added by section 3 of this Act, there is authorized to be appropriated from funds otherwise available to the Secretary—

(1) for partnership activities with industry in areas other than atomic energy defense activities $100,000,000 for fiscal year 1994, $140,000,000 for fiscal year 1995, $180,000,000 for fiscal year 1996 and $220,000,000 for fiscal year 1997; and

(2) for partnership activities with industry involving dual-use technologies within the Department's atomic energy defense activities $240,000,000 for fiscal year 1994, $290,000,000 for fiscal year 1995, $350,000,000 for fiscal year 1996 and $400,000,000 for fiscal year 1997.

(b) There is authorized to be appropriated to the Secretary for the Minority College and University Scholarship Program established in section 1119 of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.) as added by section 3 of this Act $1,000,000 for fiscal year 1994, $2,000,000 for fiscal year 1995 and $3,000,000 for fiscal year 1996.

(c) There is authorized to be appropriated to the Secretary for research or educational programs, carried out through partnerships or otherwise, and for related facilities and equipment that involve minority colleges or universities such sums as may be necessary.

AMENDMENT NO. 1225

Mr. FORD. Madam President, on behalf of Senator JOHNSTON, I ask that it be in order to send to the desk 5 amendments, and I ask unanimous consent the Senate proceed to their immediate consideration en bloc, that the amendments be agreed to en bloc, that the motions to reconsider en bloc be laid upon the table.

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

So the amendments (No. 1225) were agreed to, as follows:

On page 46, strike lines 1–24, and on page 47, strike lines 1–8 and insert in lieu thereof the following:

"(C) Technology transfer.

"(3)(A) In addition to the missions identified in subsection (a)(2), the Departmental laboratories may pursue supporting missions to the extent that these supporting missions—

"(i) support the technology policies of the President;

"(ii) are developed in consultation with and coordinated with any other Federal agency or agencies that carry out such mission activities;

"(iii) are built upon the competencies developed in carrying out the primary missions identified in subsection (a)(2) and do not interfere with the pursuit of the missions identified in subsection (a)(2); and

"(iv) are carried out through a process that solicits the view of United States industry and other appropriate parties.

"(B) These supporting missions shall include activities in the following areas:

"(i) developing and operating high-performance computing and communications systems, with the goals of contributing to a national information infrastructure and addressing complex scientific and industrial challenges which require large-scale computational capabilities;

"(ii) conducting research on and development of advanced manufacturing systems and technologies, with the goal of assisting the private sector in improving the productivity, quality, energy efficiency, and control of manufacturing processes;

"(iii) conducting research on and development of advanced materials, with the goals of increasing energy efficiency, environmental protection, and improved industrial performance.

"(4) In carrying out the Department's missions, the Secretary, and the directors of the departmental laboratories, shall, to the maximum extent practicable, make use of partnerships. Such partnerships shall be for purposes of the following:

"(A) to lead to the development of technologies that the private sector can commercialize in areas of technology with broad application important to U.S. technological and economic competitiveness;

"(B) to provide Federal support in areas of technology where the cost or risk is too high for the private sector to support alone but that offer a potentially high payoff to the United States;

"(C) to contribute to the education and training of scientists and engineers;

"(D) to provide university and private researchers access to departmental laboratory facilities; or

"(E) to provide technical expertise to universities, industry or other Federal agencies.".

On page 66, strike section 7.

On page 70, by striking section 8.

On page 72, on line 10, by striking "9" and inserting "8".

On page 73, on line 3, by striking "10" and inserting "9".

On page 74, on line 22, by striking "11" and inserting "10".

On page 75, on line 3, by striking "12" and inserting "11".

On page 66, insert after line 8 the following:

"SEC. 7. STANDARDIZATION OF REQUIREMENTS AFFECTING DEPARTMENT OF ENERGY EMPLOYEES.

"(a) Part A of title VI of the Department of Energy Organization Act (42 U.S.C. 7211 through 7218) is repealed.

"(b) The table of contents for the Department of Energy Organization Act is amended by striking out the matter relating to part A of title VI.".

On page 73, after line 4 insert the following:

"(a) Section 12(a) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C.

3710a(a)) is amended by striking ", to the extent provided in any agency-approved joint work statement,".

"(b) Section 12(b) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(b)) is amended by striking ", to the extent provided in any agency-approved joint work statement,".".

On page 73, line 5, strike "(a)" and insert "(c)".

On page 73, lines 8 and 9, strike "deleting" and all that follows through "thereof" and insert "amending subparagraph (C)(i) to read as follows:".

On page 73, line 13, strike "joint work statement and".

On page 73, lines 15 and 16, strike "In any case where" and insert "If".

On page 73, line 17, strike "joint work statement or".

On page 73, line 19, strike "joint work statement or".

On page 73, line 21, strike "No" and insert "Except as provided in subparagraph (D), no".

On page 73, line 23, strike "both".

On page 73, lines 24 and 25, strike "and a joint work statement".

On page 74, lines 1 through 3, and insert:

"(2) by amending subparagraph (C)(ii) to read as follows:

"(ii) If an agency that has contracted with a non-Federal entity to operate a laboratory disapproves or requests the modification of a cooperative research and development agreement submitted under clause (i), the agency shall promptly transmit a written explanation of such disapproval or modification to the director of the laboratory concerned.";".

On page 74, after line 3, insert the following

"(3) by amending subparagraph (C)(iii) to read as follows:

"(iii) Any agency that has contracted with a non-Federal entity to operate a laboratory shall develop and provide to such laboratory a model cooperative research and development agreement, and guidelines for using such an agreement, for the purposes of standardizing practices and procedures, resolving common legal issues, and enabling negotiation and review of a cooperative research and development agreement to be carried out in a routine and prompt manner.";"

On page 74, line 4, strike "(3) by deleting" and insert "(4) by striking".

On page 74, strike lines 5 and 6, and insert "(5) by amending subparagraph (C)(v) to read as follows:".

On page 74, line 14, strike "and".

On page 74, strike lines 15 through 21 and insert the following:

"(6) by striking subparagraph (C)(vi); and

"(7) by amending subparagraph (D) to read as follows:

"(D)(i) Any agency that has contracted with a non-Federal entity to operate a laboratory may permit the director of a laboratory to enter into a cooperative research and development agreement without the submission, review, and approval of the agreement under subparagraph (C)(i) if: the Federal share under the agreement does not exceed $500,000 per year, or any amount the head of the agency may prescribe; the text of the cooperative research and development agreement is consistent with a model agreement under subparagraph (C)(iii); the agreement is entered into in accord with the agency's guidelines under subparagraph (C)(iii); and the agreement is consistent with and furthers an assigned laboratory mission.

"(ii) The director of a laboratory shall notify the head of the agency of the purpose and scope of an agreement entered into under this subparagraph. The agency shall include in its annual report required by section 11(f) of this Act (15 U.S.C. 3710(f)) an assessment of the implementation of this subparagraph including a summary of agreements entered into by laboratory directors under this subparagraph.

"(d) Section 12(d) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(d)) is amended—

"(1) in paragraph (1) by inserting "and" after the second semicolon;

"(2) in paragraph (2)—

"(A) by striking "substan .ial" before "purpose" in subparagraph (B);

"(B) by striking "the primary purpose" and inserting "one of the purposes" in subparagraph (C); and

"(C) by striking "; and" the second time it appears and inserting a period; and

"(3) by striking paragraph (3).".".

Mr. JOHNSTON. Madam President, today the Senate is considering S. 473, the Department of Energy National Competitiveness Technology Partnership Act of 1993. The Committee on Energy and Natural Resources reported S. 473 on June 24, 1993. On September 9, 1993, the Senate passed legislation virtually identical to S. 473 as an amendment to the National Defense Authorization Act for fiscal year 1994. Unfortunately, the House is not willing to act on this legislation as part of the Defense Authorization bill. Thus, it is necessary to move S. 473 through the Senate in order for the House to consider this important legislation.

We have a great opportunity to forge a governmentwide policy for advanced technology development in the 103d Congress. Earlier this year, President Clinton forwarded to Congress the administration's technology initiative, which includes proposals to increase and expand the partnerships between our national laboratories and industry. Similarly, a number of our colleagues have introduced legislative proposals to improve the competitiveness of U.S. industry. We need to work together—among committees in Congress and with the administration—to develop a coordinated effort. S. 473 will build on DOE's existing program in response to the new emphasis the Clinton administration is placing on U.S. competitiveness.

S. 473 will provide more flexible authority to the Department of Energy to work with domestic industry to strengthen the economic and technological competitiveness of the United States. The Department now has a significant program of cooperation with industry to develop new technologies.

To date, the Department has joined with industry in over 500 cooperative research and development agreements with a total value over $700 million. Industry pays nearly 60 percent of the costs under these agreements. There is a tremendous opportunity for cooperative work with the Department's laboratories to develop new technologies. The Department of Energy is the Federal Government's largest employer of scientists and engineers and owns the nation's premier laboratories and facilities for basic science. No national technology policy can afford to ignore these assets.

The Department's laboratory system consists of ten multi-program national laboratories and approximately 20 other specialized program facilities around the country. Development of the laboratory complex stems from the Manhattan Project, and the primary focus of the laboratories' work was initially in the area of weapons production. Over the years, the scope of research and development within the laboratory system has been broadened to include the full spectrum of fundamental sciences. Almost every area of basic scientific knowledge is represented in the research activities of the laboratories.

The laboratories currently employ over 60,000 scientists, engineers and technicians, more than 8,500 of whom have doctorate degrees. In fiscal year 1993, the laboratories will carry out $6.6 billion worth of research and development. More than 50 Nobel prizes have been awarded for work related to that performed at the national laboratories. No single laboratory or group of laboratories anywhere in the country can compare with this resource or match its record of accomplishment. The laboratory system has evolved into an interdisciplinary environment with the capability to undertake very complex research and development projects. Altogether, the laboratories represent one of the largest complexes engaged in fundamental research anywhere in the world.

Entire industries, as well as new companies and products, have evolved from technology initially developed within the Department's laboratories. Legislation over the last 10 years has promoted and simplified the transfer of technologies from the laboratories to the private sector. Yet, the laboratories' potential still remains largely untapped.

Several years ago, the Committee on Energy and Natural Resources began to reassess the missions and roles of the Department of Energy laboratories and to take a hard look at the adequacy of the mechanisms for technology transfer. In the 102d Congress, the committee reported S. 2566, which was passed by the Senate in July 1992. As there was no companion measure in the House, there was insufficient time for the House to act on the measure.

On March 2, 1993, along with a number of my colleagues from the Committee on Energy and Natural Resources, I introduced S. 473, which builds on the committee's work over the past several years. S. 473 reflects the input the committee received during hearings held on the bill as well as input from industry, the educational community and the laboratories.

Today I will offer five amendments to S. 473 that reflect events that have occurred since the bill was reported by the Energy and Natural Resources Committee. First, the administration has developed a statement for the Department of Energy's laboratories that delineates the missions and responsibilities of the laboratories. Therefore, I will offer an amendment to amend section 1102(a)(2)(C) of S. 473 to be consistent with the administration's position.

The administration's statement clarifies the role of the departmental laboratories in developing technologies important to the Nation. S. 473 as reported recognized the department's traditional missions in national security, energy, and technology transfer. S. 473 would have established industrial infrastructure as an appropriate mission of the departmental laboratories. Microelectronics, high-performance computing, transportation, advanced manufacturing, advanced materials, space, human health and environmental science were listed as examples of industrial infrastructure technologies. The departmental laboratories posses expertise in all of these areas of technologies. S. 473 authorized the departmental laboratories to pursue technology development in any of these areas, or any other area, as long as the activity built on the core competencies of the departmental laboratories.

The administration's statement recognizes the departmental laboratories traditional missions, referring to them as primary missions, and authorizes the laboratories to pursue missions that support the primary missions. The statement sets forth an illustrative listing of supporting missions—high-performance computing, advanced materials and advanced manufacturing. Many other areas of technology would also be appropriate areas to pursue as supporting missions. Some examples of these technologies are microelectronics, transportation, space, human health, and environmental science. To decide if an area of technology would be appropriate as a supporting mission, the administration's statement provides a list of criteria. One of the key criteria is that the activity build upon the competencies developed at the laboratories in carrying out their primary missions and does not interfere with a primary mission. S. 473 similarly required the departmental laboratories to build upon the core competencies of the laboratories when developing technologies beyond the energy or defense missions.

The administration's statement also requires that in carrying out a supporting mission the Department consult and coordinate with other agencies. The purpose of this change is to ensure the maximum efficient use of the Federal Government's resources. The Department of Energy already consults and coordinates with other agencies in carrying out many of its technology activities. For example, the Department of Energy has worked within the Federal Coordinating Council for Science, Engineering and Technology to establish the Department's role in the interagency high-performance computing and communications initiative. The amendment requires that industry views on supporting missions be solicited. Finally, the supporting mission should support the technology policies of the President.

The Department of Energy has also proposed a number of changes to S. 473 since the bill was reported.

The Department believes the time required for industry and laboratories to execute Cooperative Research and Development Agreements [CRADA's] needs to be reduced in order to attract the highest quality of industry interest. The Department has identified two ways to reduce that time. The first is to eliminate the statutory requirement for a laboratory to submit a joint work statement, a description of the work to be carried out, in addition to the actual CRADA to the Department. There is no reason the information contained in the joint work statement cannot be included in the CRADA. Requiring both the joint work statement and the CRADA is duplicative and slows down the approval process.

The second way the Department believes CRADA approval time can be reduced is if laboratory directors are given authority to enter into small CRADAs without having to gain approval from the Department. Requiring the Department's approval for every CRADA is burdensome on the laboratories, the Department and the private sector participants. Furthermore, small CRADA's typically involve small businesses who often lack the resources to deal with the requirements imposed by both laboratory and the Department. Giving laboratory directors the authority to execute small CRADA's will greatly streamline the process.

I believe both of these suggestions from the Department of Energy are good ones and intend to offer an amendment to address this.

The Department also believes that the purpose behind section six of S. 473—to enhance the Department's ability to attract qualified personnel—could be strengthened by repealing eight sections of the Department of Energy Organization Act (Public Law 95–91) that were enacted in 1977. These sections deal with conflict-of-interest requirements, financial reporting requirements, and post-employment restrictions for Departmental employees.

These sections were enacted by the Congress prior to passage of Government-wide ethics requirements in the Ethics in Government Act of 1978, and in some sense served as a prototype for these requirements. Since the passage of the Ethics in Government Act and the Ethics Reform Act of 1989, though, the need for specific statutory ethics requirements that are different from Government-wide requirements and unique to the Department of Energy [DOE] has disappeared.

The Senate has twice approved language to repeal these sections of the DOE Act in the fiscal year 1994 Department of Defense authorization bill and the fiscal year 1992–93 Department of Defense authorization bill. In addition, Congress has twice enacted into law temporary suspensions affecting these sections of the Department of Energy Organization Act. The Department of Energy and the administration strongly support this amendment, as does the exclusive bargaining representative for DOE headquarters employees, the National Treasury Employees Union.

Therefore, I will offer an amendment to strike these unnecessary provisions of law.

Two other amendments I will offer would delete sections 7 and 8 of S. 473. Section 7 deals with important issues in the area of information infrastructure and technology. For example, S. 473 would establish a program at the Department of Energy that would lead to new applications for use on high-speed computer networks. Provisions in other legislation before the Senate, however, deal with similar issues. The provisions of S. 473 must be reconciled with these other provisions before this piece of S. 473 can move forward. I expect that we will work out these issues soon, and they will be considered by the Senate in a separate vehicle.

Section 8 would require the Secretary of Energy to take certain actions leading up to the construction of a uranium enrichment plant using atomic vapor laser isotope separation [AVLIS] technology. Section 8 was a holdover from a previous version of the bill introduced in the 102d Congress.

Section 8 has been overtaken by events. Last year, Congress transferred responsibility for taking the requisite actions from the Department of Energy to the new United States Enrichment Corp. More recently, the Senate Appropriations Committee's report on the Energy and Water Development Appropriations Act for fiscal year 1994 enacted last month reaffirmed the U.S. Enrichment Corporation's responsibility for conducting these activities and for making a decision by April 30, 1994, on whether to build a commercial AVLIS plant. In light of these measures, section 8 is no longer needed.

The Senate has long supported the development of AVLIS as a more efficient and commercially competitive method of enriching uranium than current technology. Striking section 8 in no way diminishes the Senate's commitment to AVLIS. Striking the section merely reflects the arrangements

that are now in place for determining the future of AVLIS.

S. 473, as amended, will leverage the capabilities and resources of the Department of Energy laboratories through partnerships with U.S. industry and universities in key areas of technology such as in energy, high-performance computing, the environment, human health, advanced manufacturing, advanced materials and transportation. S. 473 will establish a minimum goal for the percentage of each laboratory budget to be devoted to partnerships with industry, and it will provide more flexible authority to the Secretary of Energy to enter into partnerships with the private sector. Through these partnerships, a closer and more effective working relationship can be developed among the laboratories, U.S. industry, the educational community and other Federal agencies. These relationships will improve the coordination between the laboratories and the private sector and ensure that technologies important to this country's long-term survival will be developed. The amendment ensures that benefits from these partnerships will accrue to the United States.

Madam President, if this laboratory complex did not exist, we could not afford to create it in today's budget climate. We have these laboratories as a legacy from the time when the Nation invested heavily in the infrastructure of science for defense. These laboratories are on the brink of change in how they operate. With the end of the cold war, we are at a crossroads. As funding for nuclear weapons declines, it is prudent to redirect the activities of the national laboratories to help American industry and universities.

Some may think that we should simply let these laboratories fade away as they are no longer needed. The fact is, however, that the Department's laboratories already do more civilian research than weapons research. But they can still do more. We now have the opportunity to use these laboratories to solve the problems of today. We must define a new mission for DOE's laboratories—that of contributing strongly to the nation's technological and economic competitiveness. This bill will redirect the resources of the laboratories—and streamline the process for doing business—to do just that.

Madam President, I urge my colleagues to support passage of this important legislation.

Mr. DOMENICI. Madam President. I am proud to be a coauthor of S. 473, the Department of Energy National Competitiveness Technology Partnership Act of 1993. This legislation will dramatically streamline and expand partnerships between Department of Energy national laboratories, industry, and universities, improve the Department's ability to administer its technology transfer activities, and make the funding sources for partnerships more reliable.

As amended, S. 473 permits the Secretary of Energy to assign departmental laboratories missions in national security, energy-related science and technology, and technology transfer. In addition, the departmental laboratories may pursue supporting missions to the extent they meet certain requirements. This provision is included out of recognition that the departmental laboratories possess capabilities, developed in support of their traditional missions with applications in areas outside those traditional missions. Numerous entities, ranging from other Federal agencies to small businesses, have expressed an interest in pursuing the further development of those capabilities in order to utilize the laboratories' existing expertise.

Three areas in which the laboratories will have a supporting mission are explicitly stated in the legislation to serve as examples; high performance computing and communications, advanced manufacturing systems and technologies, and advanced materials. The departmental laboratories possess capabilities in a number of other areas such as microelectronics, transportation, space, human health sciences, and environmental science which could also serve as examples of areas in which it is appropriate for the departmental laboratories to pursue supporting missions.

The legislation requires the Secretary of Energy to establish guidelines regarding a number of difficult issues that have slowed CRADA negotiations. These include: The meaning of substantial manufacture and principal economic benefit, and the liability resulting from partnership activities. By requiring the establishment of guidelines, the legislation seeks to avoid the difficulties associated with the Department negotiating these issues on a case-by-case basis. While unusual circumstances may continue to require special consideration, in general, the Department should be able to provide potential non-federal partners with defined guidelines for participation in partnerships in advance of negotiations.

The Secretary of Energy is also directed to develop simplified guidelines for partnerships involving small business. Frequently, those businesses best positioned to take advantage of cutting edge technologies are small and lack the resources of established, larger entities. The guidelines will provide for special allowances regarding cost sharing and other requirements that can be difficult for small businesses to meet.

In order to best address issues such as the need to ensure fairness of opportunity, this legislation also places emphasis on larger partnerships based on industry developed technology agendas which involve large numbers of entities in certain industry sectors. As an example, I point to relationships with the Advanced Battery Consortium, AMTEX, and SEMATECH. These promise to have the most significant impact on U.S. competitiveness while providing market advantages to all participants.

We have also included an amendment to the committee reported version of S. 473 regarding joint work statements and laboratory director approved CRADA's. Last year, hundreds of companies dedicated significant resources to preparing joint work statements only to find, a number of months later, that no funding would be available for the labs to participate in CRADA's. This amendment will eliminate the upfront delay attributed to negotiating joint work statements by making them unnecessary in those cases in which a model CRADA can be used. In addition, laboratory directors would be provided the authority to sign CRADA's in cases in which the Federal share is no more than $500,000 and the CRADA is consistent with DOE's model CRADA's. Combined with those provisions of this legislation that clarify that program dollars are now available for technology transfer funding, these provisions should significantly reduce the time from which a promising technology or opportunity is identified to the time when collaborative work is initiated.

There is a recognition that private sector interests have differing requirements which are best met through a variety of mechanisms. For that reason, this legislation clarifies that partnerships consist not only of CRADA's but also of any arrangement under which the Department of Energy or one or more departmental laboratories undertakes research, development, demonstration, commercial application, or technical assistance in cooperation with one or more non-federal partners.

Standards will be developed for evaluating performance. Technology transfer now represents a significant portion of many labs' budgets. It is essential that these expenditures be held accountable to performance standards to ensure oversight and to demonstrate the value of the programs.

The protection of information provisions of Stevenson-Wydler are extended to all partnerships not just CRADA's. This provides the same enforceable provisions for the protection of intellectual property rights that have proven desirable and effective in CRADA's.

Since the passage of the National Technology Transfer Act of 1989, the Department of Energy's labs have signed over 500 CRADA's with a total value of over $680 million, $400 million of which represents the industry's contribution.

However, numerous industrial entities that could benefit greatly from partnering with the labs have been

hesitant to initiate the long and tedious process involved in negotiating a CRADA. The process can take months or even years, in cases, longer than the life cycle of the technology the parties seek to develop, and frequently the Federal Government has been unable to provide funding for projects, even after the long negotiations process has been completed. In addition, the laboratories have been restricted in the areas in which they can apply their existing expertise to meet the needs of industry.

This legislation will greatly improve the ability of the national laboratories to make their expertise and resources available to non-federal partners. I would like to thank my colleagues with whom I have worked closely on this legislation, and I look forward to its enactment.

Mr. BAUCUS. Madam President, would the Senator from Louisiana yield for a question to clarify my understanding of the intent of the amended language in section 1102(a)(3)(A)(ii) related to the coordination of the missions of the Department of Energy laboratories with the missions of other Federal agencies. I am particularly interested in how the Department of Energy laboratories will coordinate their activities in environmental technologies with the Environmental Protection Agency. Could the distinguished chairman clarify for me how this section of S. 473 would be implemented?

Mr. JOHNSTON. Certainly. I would be happy to clarify the committee's intent. Section 1102(a)(3)(A)(ii) specifies that the Department of Energy laboratories should consult and coordinate with other Federal agencies when it carries out activities in areas that would be considered supporting missions of the Department. By supporting missions, what we mean is those areas where the laboratories have developed expertise in areas of technology that are outside of the primary missions of the Department of Energy. Some examples of such areas where it is appropriate for the laboratories to have a supporting mission are in high-performance computing, advanced manufacturing, and advanced materials.

The intent of this language is to ensure that there is coordination among Federal agencies and to avoid unnecessary duplication of activities. Essentially, this is a codification of the current practice within the administration to coordinate agency activities through such mechanisms as the Federal Coordinating Council for Science, Engineering, and Technology or memorandum of understanding between Federal agencies. This consultation and coordination will ensure that, in the development of advanced technologies, the resources of the Federal Government are brought together and used efficiently and without unnecessary duplication.

As my distinguished colleague from Montana probably knows, the Department of Energy laboratories already have a significant mission in the environmental area that was established in 1977 by the Department of Energy Organization Act. As my colleague knows, this mission includes both the development of technology for environmental cleanup and nuclear waste management and in research and development on the environmental effects of energy technologies and programs.

To the extent that there are additional activities pursued by the laboratories in the environmental area, the language included in this section would ensure that those activities are developed in consultation with and coordinated with the activities of the Environmental Protection Agency.

Mr. BAUCUS. I want to thank the distinguished chairman for clarifying the intent of this language. I would also urge the distinguished chairman as he advances this legislation to consider extending this kind of coordination to other aspects of the mission of the DOE national labs.

I strongly believe that environmental technologies are critical to our nation's future. They are the clearest linkage between the twin goals of a healthy environment and a strong economy. As DOE, EPA and other government agencies begin to turn their attention to this important new priority, it is critical that all of these efforts are well coordinated. I have sponsored legislation that would achieve this coordination.

The administration shares this goal of coordinating technology efforts among agencies. Indeed, the Director of the Office of Science and Technology Policy, Dr. Jack Gibbons, recently reiterated his support for broad coordination on environmental technologies. As the chairman advances this bill, I hope he could also work to broaden the necessary coordination, not just for the supporting missions of the DOE labs, but for some of their more basic missions as well.

Mr. REID. I have read section 1112(b) of S. 473, which regards the availability of funds for partnerships. Is it the intent of the chairman that the Nevada Test Site be eligible for these partnership funds?

Mr. JOHNSTON. The section says that all of the funds authorized to be appropriated to the Secretary for research, development, demonstration or commercial application of dual-use technologies within the Department of Energy's atomic energy defense activities shall be available for partnerships. Therefore, the Nevada Test Site would be eligible for such funds.

Mr. REID. I thank the chairman for that clarification. As the chairman knows, the Nevada Test Site is uniquely suited for technology transfer partnerships. For four decades, the facility has tested both nuclear devices and the effects of those devices. The technology developed to perform this important work, I believe, will have important private sector applications.

Mr. JOHNSTON. I agree that opportunities exist at the Nevada Test Site for partnerships with the private sector, and would support the Secretary of Energy in pursuing those opportunities.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

(The text of the bill will be printed in a future edition of the RECORD.)

Mr. FORD. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

FEDERAL EMPLOYEES CLEAN AIR INCENTIVES ACT

Mr. FORD. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3318, Federal Employees Clean Air Incentives Act just received form the House; that the bill be deemed read three times, passed, the motion to reconsider laid upon the table, and that any statements relating thereto be placed in the RECORD at an appropriate place.

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

So the bill (H.R. 3318) was passed.

PEARL HARBOR REMEMBRANCE DAY; COMMEMORATION OF THE BOMBING OF PAN AM FLIGHT 103; GOOD TEEN DAY

Mr. FORD. Madam President, I ask unanimous consent that the Judiciary Committee be discharged en bloc from further consideration of the following:

S.J. Res. 140;

S. Res. 164;

H.J. Res. 75;

That the Senate proceed en bloc to their immediate consideration; that the joint resolutions each be read three times and passed; that the resolution be agreed to; that the preambles be agreed to en bloc; that the motions to reconsider be laid upon the table en bloc; that any statements relating to these measures appear in the RECORD at the appropriate place as if given,

and the consideration of these items appear individually in the RECORD.

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

The joint resolution (H.J. Res. 75) was passed.

The joint resolution (S.J. Res. 140) was passed.

The resolution (S. Res. 164) was agreed to.

The resolutions, with their preambles, are as follows:

(The text of the resolutions will be printed in a future edition of the RECORD.)

Mr. MOYNIHAN. Madam President, I ask unanimous consent that the following list of Senators be added as cosponsors to S. Res. 164, designating December 21, 1993, as "Fifth Anniversary Day of Remembrance for the Victims of the Bombing on Pan Am Flight 103." Senators BUMPERS, ROCKEFELLER, BIDEN, HELMS, KERRY, BROWN, ROBB, JEFFORDS, FEINGOLD, MATHEWS, LIEBERMAN, PELL, SHELBY, KASSEBAUM, REID, PRYOR, BRYAN, SASSER, SPECTER, MURRAY, GLENN, WARNER, FEINSTEIN, COVERDELL, MITCHELL, INOUYE, and DANFORTH.

Madam President, 5 years ago, on December 21, 1988, a terrorist bomb destroyed Pan Am Flight 103, killing all 259 passengers aboard and 11 people on the ground. Of those killed, 189 were Americans. They had committed no offense other than being American. In effect, this was an attack on us all.

S. Res. 164, designates December 21, 1993, a day of remembrance for the victims of this crime. The resolution also honors the efforts of their loved ones and pledges the Senate's resolve never to forget the victims of the bombing and to punish their murderers.

I wish to thank my colleagues, the many who have cosponsored and supported this resolution. And, in particular, I wish to thank the families and loved ones of the victims of this horrible act for their support this endeavor.

During the approaching holiday season, the family members and friends of the passengers of Pan Am Flight 103 will be remembering their loved ones. It is important for the Senate to say that it, too, remembers them, and will neither forget them nor relent in its commitment to achieve justice in this matter.

AMERICAN INDIAN AGRICULTURAL RESOURCE MANAGEMENT ACT

Mr. FORD. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 298, H.R. 1425, an act to improve the management, productivity, and use of Indian agricultural lands; that the bill be read three times, passed, the motion to reconsider be laid upon the table, and that any statements thereon appear at the appropriate place in the RECORD as if read.

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

So the bill (H.R. 1425) was passed.

Mr. MCCAIN. Madam President, I am very pleased that we are acting on H.R. 1425, the American Indian Agricultural Resources Management Act. This legislation culminates 8 years of work by the Committee on Indian Affairs.

Approximately 54 million acres of land are held in trust by the United States for the benefit of Indian tribes and individuals. Seventy-five percent of these acres are used for agricultural pursuits. Over 33,000 Indian families derive their livelihood from agricultural pursuits. It is estimated that the Indian agriculture economy generates about $540 million in income each year and lease revenues to tribes and individuals account for another $50 million. This compares to total revenues from Indian forest resources of about $61 million per year and revenues from oil and gas resources of about $260 million per year. Clearly, Indian agricultural resources are a vital component of the economy on Indian lands.

H.R. 1425 reflects four years of work by the House and Senate to fashion legislation aimed at protecting and improving Indian agricultural lands and resources. The bill provides for the development of management plans by Indian tribal governments and the Secretary of the Interior. It contains authority for the Secretary and Indian tribes to develop effective laws to deal with the theft, waste and loss caused by trespass on Indian agricultural lands. A long overdue needs assessment is also authorized so that the Secretary, Indian tribal governments and the Congress will have the information which is necessary to make sound management and planning decisions. The laws relating to leasing of Indian agricultural lands are revised to promote the highest possible economic returns from Indian agricultural lands. The bill also provides new education and employment opportunities for Indian students interested in a career in natural resources management.

Madam President, H.R. 1425 will implement recommendations which were first made to the Congress in 1986 by Indian tribes and the Bureau of Indian Affairs. In the 1990 farm bill we were able to implement those recommendations which pertained to the Department of Agriculture. H.R. 1425 applies to the Department of the Interior and will bring greater certainty to the programs which already exist there.

I want to thank the tribal leaders and the members and staff of the Intertribal Agriculture Council for their assistance in developing this legislation. I also want to thank Representative Richardson, the Chairman of the Subcommittee on Native American Affairs of the House Committee on Natural Resources. We have been able to work together during this session of Congress to bridge substantial differences in the House and Senate approaches to this legislation during the 102d Congress and I appreciate his leadership.

Mr. CHAFEE. May I address a question to the distinguished vice chairman of the Committee on Indian Affairs, Senator MCCAIN?

Mr. MCCAIN. Yes.

Mr. CHAFEE. Does section 102(b) of H.R. 1425 prohibit, impede, or alter in any way the Secretary's responsibilities, and his ability to carry out his responsibilities, under the Endangered Species Act or any other Federal law relating to fish or wildlife?

Mr. MCCAIN. No; it does not.

Mr. CHAFEE. Does it in any way alter or affect the Secretary's ability to carry out his responsibilities as a Federal trustee for natural resources?

Mr. MCCAIN. Again, the answer is no. Nothing in this act alters or affects the authorities and responsibilities of the Secretary to implement Federal environmental laws or to carry out his responsibilities as a natural resource trustee.

Mr. CHAFEE. I thank the Senator for his response.

PERSIAN GULF WAR VETERANS ACT OF 1993

Mr. FORD. Madam President, I ask unanimous consent that the Veterans' Affairs Committee be discharged from further consideration of H.R. 2535 relating to Persian Gulf war veterans, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2535) to amend title 35 United States Code to provide additional authority for the Secretary of Veterans Affairs to provide health care for veterans of the Persian Gulf war.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 1226

Mr. FORD. I ask unanimous consent that it be in order for me on behalf of Senator ROCKEFELLER to send a substitute amendment to the desk, that it be agreed to, and that the motion to reconsider be laid upon the table.

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

So the amendment (No. 1226) was agreed to, as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. AUTHORITY TO PROVIDE PRIORITY HEALTH CARE TO VETERANS OF THE PERSIAN GULF WAR.

(a) INPATIENT CARE.—(1) Section 1710(a)(1)(G) of title 38, United States Code, is amended by striking out "or radiation"

and inserting in lieu thereof ", radiation, or environmental hazard".

(2) Section 1710(e) of such title is amended—

(A) by inserting at the end of paragraph (1) the following new subparagraph:

"(C) Subject to paragraphs (2) and (3) of this subsection, a veteran who the Secretary finds may have been exposed while serving on active duty in the Southwest Asia theater of operations during the Persian Gulf War to a toxic substance or environmental hazard is eligible for hospital care and nursing home care under subsection (a)(1)(G) of this section for any disability, notwithstanding that there is insufficient medical evidence to conclude that such disability may be associated with such exposure.";

(B) in paragraph (2), by striking out "subparagraph (A) or (B)" and inserting in lieu thereof "subparagraph (A), (B), or (C)"; and

(C) in paragraph (3), by striking out the period at the end and inserting in lieu thereof ", or, in the case of care for a veteran described in paragraph (1)(C), after December 31, 1994.".

(b) OUTPATIENT CARE.—Section 1712(a) of such title is amended—

(1) in paragraph (1)—

(A) by striking out "and" at the end of subparagraph (B);

(B) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof "; and"; and

(C) by adding at the end the following:

"(D) during the period before December 31, 1994, for any disability in the case of a veteran who served on active duty in the Southwest Asia theater of operations during the Persian Gulf War and who the Secretary finds may have been exposed to a toxic substance or environmental hazard during such service, notwithstanding that there is insufficient medical evidence to conclude that the disability may be associated with such exposure."; and

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

"(7) Medical services may not be furnished under paragraph (1)(D) with respect to a disability that is found, in accordance with guidelines issued by the Under Secretary for Health, to have resulted from a cause other than an exposure described in that paragraph.".

(c) EFFECTIVE DATE.—(1) The amendments made by subsections (a) and (b) shall take effect as of August 2, 1990.

(2) The Secretary of Veterans Affairs shall, upon request, reimburse any veteran who paid the United States an amount under section 1710(f) or 1712(f) of title 38, United States Code, as the case may be, for hospital care, nursing home care, or outpatient services furnished by the Secretary to the veteran before the date of the enactment of this Act on the basis of a finding that the veteran may have been exposed to a toxic substance or environmental hazard during the Persian Gulf War. The amount of the reimbursement shall be the amount that was paid by the veteran for such care or services under such section 1710(f) or 1712(f).

SEC. 2. EXTENSION OF CERTAIN HEALTH CARE AND OTHER AUTHORITIES.

(a) ELIGIBILITY FOR CARE FOR EXPOSURE TO DIOXIN OR IONIZING RADIATION.—Section 1710(e)(3) of title 38, United States Code, as amended by section 1(a)(2)(C), is further amended by striking out "December 31, 1993" and inserting in lieu thereof "June 30, 1994".

(b) ELIGIBILITY FOR SEXUAL TRAUMA COUNSELING.—Section 102(b) of the Women Veterans Health Programs Act of 1992 (Public Law 102–585; 38 U.S.C. 1720D note) is amended—

(1) by striking out "December 31, 1991," and inserting in lieu thereof "December 31, 1992,"; and

(2) by striking out "December 31, 1993" and inserting in lieu thereof "December 31, 1994".

(c) AUTHORITY TO MAINTAIN REGIONAL OFFICE IN THE PHILIPPINES.—Section 315(b) of title 38, United States Code, is amended by striking out "March 31, 1994" and inserting in lieu thereof "December 31, 1994".

(d) AUTHORITY FOR ADVISORY COMMITTEE ON EDUCATION.—Section 3692(c) of title 38, United States Code, is amended by striking out "December 31, 1993" and inserting in lieu thereof "December 31, 1994".

SEC. 3. SHARING OF RESOURCES WITH STATE HOMES.

(a) PURPOSE.—Section 8151 of title 38, United States Code, is amended by adding at the end the following: "It is further the purpose of this subchapter to improve the provision of care to veterans under this title by authorizing the Secretary to enter into agreements with State veterans facilities for the sharing of health-care resources.".

(b) DEFINITION.—Section 8152 of such title is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following new paragraph (3):

"(3) The term 'health-care resource' includes hospital care, medical services, and rehabilitative services, as those terms are defined in paragraphs (5), (6), and (8), respectively, of section 1701 of this title, any other health-care service, and any health-care support or administrative resource.".

(c) SHARING OF HEALTH-CARE RESOURCES.—Section 8153(a) of such title is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by striking out "other form of agreement," and all that follows and inserting in lieu thereof the following: "other form of agreement for the mutual use, or exchange of use, of—

"(A) specialized medical resources between Department health-care facilities and other health-care facilities (including organ banks, blood banks, or similar institutions), research centers, or medical schools; and

"(B) health-care resources between Department health-care facilities and State home facilities recognized under section 1742(a) of this title.

"(2) The Secretary may enter into a contract or other agreement under paragraph (1) only if (A) such an agreement will obviate the need for a similar resource to be provided in a Department health care facility, or (B) the Department resources which are the subject of the agreement and which have been justified on the basis of veterans' care are not used to their maximum effective capacity.".

Mr. ROCKEFELLER. Madam President, I urge the Senate to support the pending measure which would give VA clear authority to furnish health care to Persian Gulf War veterans, extend several important veterans' benefits that will expire at the end of this calendar year or shortly thereafter, and provide authority to VA to share resources with State veterans' homes.

The provisions of this bill are derived mainly from S. 1030, the proposed "Veterans' Health Programs Improvement Act of 1993", which was reported favorably by the Committee on July 15, 1993, and from certain companion House measures. Due to the imminent end of the first session, there is insufficient time to conclude Senate action on S. 1030. I am, therefore, proposing the pending measure, as a substitute amendment to H.R. 2535, to ensure that VA can meet the health care needs of Persian Gulf War veterans and that certain benefits are not terminated before Congress takes final action on all of these issues early next year.

Specifically, this measure contains provisions that would:

First, authorize VA to furnish inpatient and ambulatory care to Persian Gulf War veterans, without regard for other eligibility criteria, until December 31, 1994. Although VA indicated at our Committee's hearing earlier this week that Persian Gulf War veterans already are receiving treatment for conditions that may be related to their service in the Gulf, this provision gives VA clear authority to furnish such care and to do so on a priority basis.

Second, extend the period of entitlement to VA care for veterans exposed to Agent Orange or radiation from December 31, 1993, to June 30, 1994.

Third, extend an existing limit on the period that certain veterans can seek sexual trauma care from VA by providing that veterans discharged before December 31, 1992, can seek such care until December 31, 1994.

Fourth, extend VA's authority to maintain a regional office in the Republic of the Philippines from March 31, 1994, until December 31, 1994.

Fifth, extend VA's Advisory Committee on Education from December 31, 1993, until December 31, 1994.

In addition, the measure includes a provision, originally included in H.R. 2034 as passed by the House on August 6, 1993, which would authorize VA to share with State veterans' homes any health care resources which are not used to maximum effective capacity.

Madam President, I urge my colleagues to support this measure to authorize VA to meet the health care needs of Persian Gulf War veterans and to provide short extensions of several important veterans' benefits, until the Congress has time next year to resolve fully these and other issues concerning veterans' health care.

Mr. MURKOWSKI. Madam President, I am pleased to join with the distinguished chairman of the Committee on Veterans' Affairs in support of legislation which will not allow the first session of the 103d Congress to come to a close with critical issues relating to America's veterans unaddressed.

The year gone by has brought many issues critical to our country's veterans before the Committee and, under the leadership of my friend from West Virginia, the Committee has considered and reported an impressive body of legislation.

In some cases however, the Committee has reported bills for which circumstances, or the need for further debate, have prevented consideration by

the Senate. In some cases, those bills include time-crucial provisions or provisions relating to authority for VA action which will expire unless the Congress acts.

This bill addresses those needs by providing short term extensions so that the Senate may consider the underlying policy when we return for the second session of the 103d Congress.

For example, the Congress continues to evaluate the best long term options for meeting the health care needs of Persian Gulf veterans, including those who have difficult to diagnose illnesses. This bill would allow VA to provide those veterans with a complete continuum of care until a permanent policy is established.

The special health care priority for veterans exposed to herbicides or radiation will expire at the end of this year. This bill provides a temporary extension to ensure these veterans receive treatment while the Congress decides a long term policy.

The same principle applies to provisions relating to counseling for veterans who are the victims of sexual trauma, VA's authority to operate a benefits office in Manila, and VA's advisory committee on veterans' education.

The bill also includes a provision to allow VA to share health care resources with state veterans' homes.

I commend Chairman ROCKEFELLER for his initiative in ensuring that VA programs continue to serve veterans while the Congress deliberates long term policy, and I urge my colleagues to join me in support of the bill.

The PRESIDING OFFICER (Mr. WOFFORD). The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

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

So the bill (H.R. 2535), as amended, was passed.

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

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

The PRESIDING OFFICER.

W. GRAHAM CLAYTOR, JR.

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.J. Res. 294, a joint resolution expressing appreciation to W. Graham Claytor, Jr., for a lifetime of dedicated inspired service to the Nation just received from the House; that the joint resolution be read three times; passed; and the motion to reconsider be laid upon the table; that the preamble be agreed to; and that any statement in relation thereto be placed in the RECORD at an appropriate place.

The PRESIDING OFFICER. The clerk will report: A joint resolution (H.J. Res. 294) expressing appreciation to W. Graham Claytor, Jr., for a lifetime of dedicated inspired service to the Nation.

There being no objection, the Senate proceeded to consider the joint resolution.

The PRESIDING OFFICER. If there is no objection, the resolution is deemed read the third time and passed, and the preamble is agreed to.

The joint resolution (H.J. Res. 294) was deemed read the third time and passed.

The preamble was agreed to.

The joint resolution with its preamble is as follows:

(The text of the joint resolution will be printed in a future edition of the RECORD.)

Mr. FORD. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

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

The motion to lay on the table was agreed to.

THE HAZARD MITIGATION AND RELOCATION ASSISTANCE ACT OF 1993

Mr. FORD. Mr. President, I ask unanimous consent that the Environment and Public Works Committee be discharged from further consideration of S. 1670, the Hazard Mitigation and Relocation Assistance Act of 1993; that the Senate then proceed to its immediate consideration; that the bill be deemed read three times, and passed; that the motion to reconsider be laid upon the table; and that any statements related to this measure appear in the RECORD at the appropriate place, as if given.

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

There being no objection, the Senate proceeded to considered the bill.

THE HAZARD MITIGATION AND FLOOD DAMAGE REDUCTION ACT OF 1993

Mr. CHAFEE. Mr. President, I would like to ask the sponsor of the bill we are about to approve, S. 1670, a question about the provision entitled "Statutory Construction." This bill amends section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act by, among other things, adding a new subsection (b). New paragraph (3) of subsection (b), entitled "Statutory Construction", says that new subsection (b) is not intended to alter or affect agreements entered into before enactment of this bill.

Under ordinary rules of statutory construction, the provisions of this bill would, with or without new paragraph (3), only apply to agreements entered into after enactment of this bill. Paragraph (3) appears to be superfluous and, for that reason, I am concerned that including it may have some unforeseen consequences. Could the sponsor of this bill, the Senator from Iowa, explain the need for this provision?

Mr. HARKIN. The language cited by the Senator from Rhode Island is included to make it clear that, with respect to agreements entered into prior to enactment of this bill, FEMA retains the flexibility that they now have to approve or to disapprove such agreements. Local and State entities maintain whatever rights they now have as well with respect to agreements entered into prior to enactment of this bill. With respect to agreements entered into after enactment, FEMA's discretion is limited. There are new conditions which must be applied to acquisition or relocation agreements that are entered into after enactment of this bill.

Mr. CHAFEE. So FEMA's authority under current law to reject, or to add conditions to, agreements that may have been entered into between States and local governments prior to enactment of this bill to ensure they are consistent with current Federal laws, regulations, and policy is not affected by this language?

Mr. HARKIN. That is correct. This language is designed to preserve FEMA's authority to approve such agreements, with or without conditions as allowed under current FEMA policies. For agreements entered into after enactment, FEMA will be required to impose certain conditions. The parties to the agreements maintain whatever rights they have. They gain no additional rights because of this subsection. And, FEMA loses none of its rights that it has under present law.

Mr. CHAFEE. I thank the Senator for his explanation.

THE HAZARD MITIGATION AND RELOCATION ASSISTANCE ACT

Mr. HARKIN. Madam President. I rise to thank my colleagues in the Senate for enabling the prompt passage of The Hazard Mitigation and Relocation Assistance Act, S. 1670 which I introduced along with Senators DANFORTH, MOSELEY-BRAUN, GRASSLEY, SIMON, and BOND. Similar legislation was proposed in the House under Congressman VOLKMER'S able leadership.

This legislation will provide additional resources to allow State and local governments with Federal support to help families whose homes are damaged in natural disasters acquire new homes that are not in flood prone areas. It will allow homeowners to receive preflood market value for their property thus allowing them to relocate.

This assistance would come through an increase in the amount of FEMA hazard mitigation funds provided to States after natural disasters like the devastating Midwest that hit last summer. The amount would be increased from 10 percent of the grants made for

repair and replacement of publicly owned facilities by FEMA to 15 percent of the amount of FEMA provided grants for public and individual assistance in a State.

In addition, Mr. President, our legislation would reduce the burden to local communities by cutting the amount of the local match for the hazard mitigation funds from 50 to 25 percent. This has been included to address in the inability of hard hit States and local governments to make use of these funds.

Relocation projects approved under the legislation would only be acceptable if the local governments involved agreed that the land acquired under the program be used in perpetuity for uses appropriate for a flood plain such as a public park or a wetland. The only structures that could be built on the land acquired through the program created would be bathroom facilities, other buildings which are open on all sides or structures specifically approved by the Director of FEMA.

The legislation is not designed to impact projects which were under contract prior to this legislation.

Madam President, I am afraid without this legislation far too many families will rebuild, be flooded and then rebuild again. And, each time Federal funds will pay for some of those costs. It is far better in many circumstances to buy the housing and permanently use the land for parks or other useful public purposes.

This situation has been brought to my attention by many city officials and individual flood victims in Iowa. The need for these funds is very real. I believe that this measure will allow for a logical broadening of Federal disaster assistance. I thank my colleagues for supporting this important measure.

The bill (S. 1670) was deemed read the third time and passed as follows:

(The text of the bill will be printed in a future edition of the RECORD.)

HIGHER EDUCATION TECHNICAL AMENDMENTS ACT OF 1993

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on (S. 1507), a bill to make technical amendments to the Higher Education Amendments of 1992 and the Higher Education Act of 1965, and for other purposes.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Amendments: Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; REFERENCES EFFECTIVE DATES.

(a) SHORT TITLE.—This Act may be cited as the "Higher Education Technical Amendments of 1993".

(b) REFERENCES.—References in this Act to "the Act" are references to the Higher Education Act of 1965.

(c) EFFECTIVE DATES.—Except as otherwise provided therein, the amendments made by this Act shall be effective as if such amendments were included in The Higher Education Amendments of 1992 (Public Law 102-325).

SEC. 2. TECHNICAL AMENDMENTS.

(a) AMENDMENTS TO TITLES I, II, AND III OF THE ACT.—The Act is amended—

(1) in section 103(b)(2), by increasing the indentation of subparagraphs (A) through (E) by two em spaces;

(2) in section 104(b)(5)(C), by striking "subpart" and inserting "part";

(3) in section 241(a)(2)(B), by striking "information service" and inserting "information science";

(4) in section 301(a)(2), by striking the comma after "planning";

(5) in section 312(c)(2), by inserting "the" before "second fiscal year" the second place it appears;

(6) in section 316(c), by striking "Such programs may include—" and inserting the following:

"(2) EXAMPLES OF AUTHORIZED ACTIVITIES.—Such program may include—";

(7) by reducing by two em spaces the indentation of each of the following provisions: sections 323(b)(3), 331(a)(2)(D), and 331(b)(5);

(8) in section 326(e)(2)—

(A) by inserting "and" after the semicolon at the end of subparagraph (A);

(B) by striking subparagraph (B); and

(C) by redesignating subparagraph (C) as subparagraph (B);

(9) in section 331(b)(2), by reducing the indentation of subparagraphs (B) and (C) by four em spaces; and

(10) in section 331(b)(5), by striking "an endowment" and inserting "An endowment".

(b) AMENDMENTS TO PART A OF TITLE IV OF THE ACT.—Part A of title IV of the Act is amended—

(1) in section 401(a)(1), by striking the last sentence;

(2) in section 401(b)(6), in the matter preceding subparagraph (A), by striking "single 12-month period" and inserting "single award year";

(3) in section 401(b)(6)(A), by striking "a baccalaureate" and inserting "an associate or baccalaureate";

(4) in section 401(b)(6)(B), by striking "a bachelor's" and inserting "an associate or baccalaureate";

(5) in section 401(b)(8)(A), by striking "(determined in accordance with regulations issued by the Secretary)";

(6) in section 401(i), by striking "part D of title V" and inserting "subtitle D of title V";

(7) in section 402A(b), by striking paragraph (2) and inserting the following:

"(2) DURATION.—Grants or contracts made under this chapter shall be awarded for a period of 4 years, except that—

"(A) the Secretary shall award such grants or contracts for 5 years to applicants whose peer review scores were in the highest 10 percent of scores of all applicants receiving grants or contracts in each program competition for the same award year; and

"(B) grants made under section 402G shall be awarded for a period of 2 years.";

(8) in section 402A(c)(1), by inserting before the period the following ", except that in the case of the programs authorized in sections 402E and 402G, the level of consideration given to prior experience shall be the same as the level of consideration given this factor in the other programs authorized in this chapter";

(9) in section 402A(c)(2)(A), by inserting "with respect to grants made under section 402G, and" after "Except";

(10) in section 402A, by amending subsection (e) to read as follows:

"(e) DOCUMENTATION OF STATUS AS A LOW-INCOME INDIVIDUAL.—(1) Except in the case of an independent student, as defined in section 480(d), documentation of an individual's status pursuant to subsection (g)(2) shall be made by providing the Secretary with—

"(A) a signed statement from the individual's parent or legal guardian;

"(B) verification from another governmental source;

"(C) a signed financial aid application; or

"(D) a signed United States or Puerto Rico income tax return.

"(2) In the case of an independent student, as defined in section 480(d), documentation of an individual's status pursuant to subsection (g)(2) shall be made by providing the Secretary with—

"(A) a signed statement from the individual;

"(B) verification from another governmental source;

"(C) a signed financial aid application; or

"(D) a signed United States or Puerto Rico income tax return.";

(11) in section 402C(c), by striking "and foreign" and inserting "foreign";

(12) in section 402D(c)(2), by striking "either";

(13) in section 404A(1), by striking "high-school" and inserting "high school";

(14) in section 404B(a)(1)—

(A) by striking "section 403C" and inserting "section 404D"; and

(B) by striking "section 403D" and inserting "section 404C";

(15) in section 404B(a)(2), by inserting "shall" after "paragraph (1)";

(16) in section 404C(b)(3)(A), by striking "grades 12" and inserting "grade 12";

(17) in section 404C(b)(3)(D)(i), by striking "section 401D of this subpart" and inserting "section 402D";

(18) in section 404C(b)(3)(D)(ii), by striking "section 401D of this part" and inserting "section 402D";

(19) in section 404D(d)(3), by striking "program of instruction" and inserting "program of undergraduate instruction";

(20) in section 404D(d)(4), by striking "the" the first place it appears;

(21) in section 404E(c), by striking "tuition" and inserting "financial";

(22) in section 404F(a), by striking "under this section shall biannually" and inserting "under this chapter shall biennially";

(23) in section 404F(c), by striking "biannually" and inserting "biennially";

(24) in section 404G, by striking "an appropriation" and inserting "to be appropriated";

(25) in section 409A(1), by striking "private financial" and inserting "private student financial";

(26) in section 413C(d)—

(A) by striking ", a reasonable proportion of the institution's allocation shall be made available to such students, except that" and inserting "and"; and

(B) by striking "5 percent of the need" and inserting "5 percent of the total financial need";

(27) in section 413D(d)(3)(C), by striking "three-fourths in the Pell Grant family size offset" and inserting "150 percent of the difference between the income protection allowance for a family of five with one in college and the income protection allowance for a family of six with one in college";

(28) in section 415C(b)(7), by striking the period at the end and inserting a semicolon;

(29) in section 419C(b)—

(A) by striking "for a period of not more than 4 years for the first 4 years of study" and inserting "for a period of not less than 1 or more than 4 years during the first 4 years of study"; and

(B) by adding at the end the following:

"The State educational agency administering the program in a State shall have discretion to determine the period of the award (within the

limits specified in the preceding sentence), except that—

"(1) if the amount appropriated for this subpart for any fiscal year exceeds the amount appropriated for fiscal year 1993, the Secretary shall identify to each State educational agency the number of scholarships available to that State under section 419D(b) that are attributable to such excess; and

"(2) the State educational agency shall award not less than that number of scholarships for a period of 4 years.";

(30) in section 419D, by adding at the end the following new subsection:

"(d) CONSOLIDATION BY INSULAR AREAS PROHIBITED.—Notwithstanding section 501 of Public Law 95–1134 (48 U.S.C. 1469a), funds allocated under this part to an Insular Area described in that section shall be deemed to be direct payments to classes of individuals, and the Insular Area may not consolidate such funds with other funds received by the Insular Area from any department or agency of the United States Government."; and

(31) in section 419G(b), by striking "the District of Columbia, the Commonwealth of Puerto Rico,".

(c) AMENDMENTS TO PART B OF TITLE IV OF THE ACT.—Part B of title IV of the Act is amended—

(1) in section 422(c)(7), by striking the semicolon at the end of subparagraph (B) and inserting a period;

(2) in section 425(a)(1)(A)—

(A) by striking clauses (ii) and (iii) and inserting the following:

"(ii) in the case of a student at an eligible institution who has successfully completed such first year but has not successfully completed the remainder of a program of undergraduate education—

"(I) $3,500; or

"(II) if such student is enrolled in a program of undergraduate education, the remainder of which is less than one academic year, the maximum annual loan amount that such student may receive may not exceed the amount that bears the same ratio to the amount specified in subclause (I) as such remainder measured in semester, trimester, quarter, or clock hours bears to one academic year;

"(iii) in the case of a student at an eligible institution who has successfully completed the first and second years of a program of undergraduate education but has not successfully completed the remainder of such program—

"(I) $5,500; or

"(II) if such student is enrolled in a program of undergraduate education, the remainder of which is less than one academic year, the maximum annual loan amount that such student may receive may not exceed the amount that bears the same ratio to the amount specified in subclause (I) as such remainder measured in semester, trimester, quarter, or clock hours bears to one academic year;" and

(B) by striking the semicolon at the end of clause (iv) and inserting a period;

(3) in section 425(a)(1), by inserting at the end thereof the following:

"(C) For the purpose of subparagraph (A), the number of years that a student has completed in a program of undergraduate education shall include any prior enrollment in an eligible program of undergraduate education for which the student was awarded an associate or baccalaureate degree, if such degree is required by the institution for admission to the program in which the student is enrolled.";

(4) in section 427(a)(2)(C)(i), by inserting "section" before "428B or 428C";

(5) in section 427A(e)(1), by striking "under this part," and inserting "under section 427, 428, or 428H of this part,";

(6) in section 427A(i)(1), by amending subparagraph (B) to read as follows:

"(B)(i) during any period in which a student is eligible to have interest payments paid on his or her behalf by the Government pursuant to section 428(a), by crediting the excess interest to the Government; or

"(ii) during any other period, by crediting such excess interest to the reduction of principal to the extent provided in paragraph (5) of this subsection.";

(7) in section 427A(i)(2)(B), by striking out "outstanding principal balance" and inserting in lieu thereof "average daily principal balance";

(8) in section 427A(i)(4)(B), by striking out "outstanding principal balance" and inserting in lieu thereof "average daily principal balance";

(9) in section 427A(i)(5)—

(A) by striking "paragraph (2)" and inserting "paragraphs (2) and (4)";

(B) by striking "principle" and inserting "principal"; and

(C) by inserting before the period at the end of the second sentence the following: ", but the excess interest shall be calculated and credited to the Secretary";

(10) in section 427A(i), by adding at the end the following new paragraph:

"(7) CONVERSION TO VARIABLE RATE.—(A) Subject to subparagraphs (B) and (C), a lender or holder may convert the interest rate on a loan made pursuant to section 428 or 428H that is subject to the provisions of this subsection to a variable rate which is adjusted quarterly. The applicable rate of interest for such loans for each 3-month period beginning on January 1, April 1, July 1, or October 1, shall be determined on the first day of the month preceding such 3-month period, and shall be equal to (i) the bond equivalent rate of the 91-day Treasury bill auctioned at the final auction held prior to the first day of the month preceding such 3-month period; plus (ii) 3.25 percent if the first disbursement of the loan occurred prior to July 23, 1992, or 3.10 percent if the first disbursement of the loan occurred on or after July 23, 1992.

"(B) A lender or holder shall notify the borrower within 30 days of the conversion of the loan to a variable interest rate.

"(C) The interest rate on a loan converted to a variable rate pursuant to this paragraph shall not exceed the maximum interest rate applicable to the loan prior to such conversion.

"(D) Loans on which the interest rate is converted in accordance with subparagraph (A) shall not be subject to any other provisions of this subsection.";

(11) in section 428(a)(2)(C)(i), by striking the period at the end and inserting "; and";

(12) in section 428(a)(2)(E), by inserting "or 428H" after "428A";

(13) in section 428(a)(3)(A)(v)—

(A) in subclause (I), by striking out "before the first disbursement of the loan; or" and inserting "before the loan is first delivered to the borrower; or"; and

(B) in subclause (II), by striking out "before the first disbursement of the loan" and inserting "before the loan is first delivered to the borrower";

(14) in section 428(b)(1)(A)—

(A) by striking clauses (ii) and (iii) and inserting the following:

"(ii) in the case of a student at an eligible institution who has successfully completed such first year but has not successfully completed the remainder of a program of undergraduate education—

"(I) $3,500; or

"(II) if such student is enrolled in a program of undergraduate education, the remainder of which is less than one academic year, the maximum annual loan amount that such student may receive may not exceed the amount that bears the same ratio to the amount specified in subclause (I) as such remainder measured in semester, trimester, quarter, or clock hours bears to one academic year;

"(iii) in the case of a student at an eligible institution who has successfully completed the first and second years of a program of undergraduate education but has not successfully completed the remainder of such program—

"(I) $5,500; or

"(II) if such student is enrolled in a program of undergraduate education, the remainder of which is less than one academic year, the maximum annual loan amount that such student may receive may not exceed the amount that bears the same ratio to the amount specified in subclause (I) as such remainder measured in semester, trimester, quarter, or clock hours bears to one academic year;";

(B) by redesignating clause (iv) as clause (v); and

(C) by inserting after clause (iii) the following:

"(iv) in the case of a student who has received an associate or baccalaureate degree and is enrolled in an eligible program for which the institution requires such degree for admission, the number of years that a student has completed in a program of undergraduate education shall, for the purposes of clauses (ii) and (iii), include any prior enrollment in the eligible program of undergraduate education for which the student was awarded such degree; and";

(15) in section 428(b)(1)(B), by striking the matter following clause (ii) and inserting the following:

"except that the Secretary may increase the limit applicable to students who are pursuing programs which the Secretary determines are exceptionally expensive;";

(16) in section 428(b)(1), by amending subparagraph (N) to read as follows:

"(N) provides that funds borrowed by a student—

"(i) are disbursed to the institution by check or other means that is payable to, and requires the endorsement or other certification by, such student, unless such student requests that the check be endorsed, or the funds transfer authorized, pursuant to an authorized power-of-attorney; and

"(ii) are, at the request of the student, disbursed directly to the student by the means described in clause (i), in the case of a student who is studying outside the United States in a program of study abroad that is approved for credit by the home institution at which such student is enrolled or at an eligible foreign institution;";

(17) in section 428(b)(1)(U)—

(A) by striking "this clause;" and inserting "this clause"; and

(B) by inserting a comma after "emergency action" each place it appears;

(18) in section 428(b)(1), by striking subparagraph (V);

(19) in section 428(b)(2)(F)(i), by striking "each to provide a separate notice" and inserting "either jointly or separately to provide a notice";

(20) in section 428(b)(2)(F)(ii), by striking "transferor" and inserting "transferee";

(21) in section 428(b)(2)(F)(ii)(I), by striking "to another holder";

(22) in section 428(b)(2)(F)(ii)(II), by striking "such other" and inserting "the new";

(23) in section 428(b), by striking paragraph (7) and inserting the following:

"(7) REPAYMENT PERIOD.—(A) In the case of a loan made under section 427 or 428, the repayment period shall exclude any period of authorized deferment or forbearance and shall begin—

"(i) the day after 6 months after the date the student ceases to carry at least one-half the normal full-time academic workload (as determined by the institution); or

"(ii) on an earlier date if the borrower requests and is granted a repayment schedule that provides for repayment to commence at an earlier date.

"(B) In the case of a loan made under section 428H, the repayment period shall exclude any period of authorized deferment or forbearance, and—

"(i) if such loan is made to a borrower that has borrowed a loan made under section 427 or 428 for the same period of instruction—

"(I) interest shall begin to accrue or be paid by the borrower on the day the loan is disbursed, or, if the loan is disbursed in multiple installments, on the day of the last such disbursement; and

"(II) the repayment period with respect to principal begins in accordance with subparagraph (A); and

"(ii) if such loan is made to any other borrower, the repayment or accrual of interest shall begin as described in clause (i)(I), but the borrower shall be required to elect whether the repayment of principal shall begin as described in clause (i)(II), or on the day immediately after the student ceases to carry at least one-half the normal full-time academic workload (as determined by the institution).

"(C) In the case of a loan made under section 428A, 428B, or 428C, the repayment period shall begin on the day the loan is disbursed, or, if the loan is disbursed in multiple installments, on the day of the last such disbursement, and shall exclude any period of authorized deferment or forbearance.";

(24) in section 428(b), by adding at the end thereof the following new paragraph:

"(8) MEANS OF DISBURSEMENT OF LOAN PROCEEDS.—Nothing in this title shall be interpreted to prohibit the disbursement of loan proceeds by means other than by check or to allow the Secretary to require checks to be made co-payable to the institution and the borrower.";

(25) in section 428(c)(1)(A), by striking the last sentence and inserting the following: "A guaranty agency shall file a claim for reimbursement with respect to losses under this subsection within 45 days after the guaranty agency discharges its insurance obligation on the loan.";

(26) in section 428(c)(2)(G), by striking "demonstrates" and inserting "certifies";

(27) in section 428(c)(3), by striking subparagraph (A) and inserting the following:

"(A) shall contain provisions providing that—

"(i) upon written request, a lender shall grant a borrower forbearance, renewable at 12-month intervals, on terms agreed to in writing by the parties to the loan with the approval of the insurer, and otherwise consistent with the regulations of the Secretary, if the borrower—

"(I) is serving in a medical or dental internship or residency program, the successful completion of which is required to begin professional practice or service, or is serving in a medical or dental internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training, provided that if the borrower qualifies for a deferment under section 427(a)(2)(C)(vii) or subparagraph (M)(vii) of this paragraph as in effect prior to the enactment of the Higher Education Amendments of 1992, or section 427(a)(2)(C) or subparagraph (M) of this paragraph as amended by such amendments, the borrower has exhausted his or her eligibility for such deferment; or

"(II) has a debt burden under this title that equals or exceeds 20 percent of income;

"(ii) the length of the forbearance granted by the lender—

"(I) under clause (i)(I) shall equal the length of time remaining in the borrower's medical or dental internship or residency program, if the borrower is not eligible to receive a deferment described in such clause, or such length of time remaining in the program after the borrower has exhausted his or her eligibility for such deferment; or

"(II) under clause (i)(II) shall not exceed 3 years; and

"(iii) no administrative or other fee may be charged in connection with the granting of a forbearance under clause (i), and no adverse information regarding a borrower may be reported to a credit bureau organization solely because of the granting of such forbearance;";

(28) in section 428(e)(2)(A)—

(A) by striking "(i)";

(B) by striking "(I)" and inserting "(i)"; and

(C) by striking "(II)" and inserting "(ii)";

(29) in section 428(j)(2), in the matter preceding subparagraph (A), by striking "lender of last resort" and inserting "lender-of-last-resort";

(30) in section 428A(b)(1), by striking subparagraph (B) and inserting the following:

"(B) In the case of a student at an eligible institution who has successfully completed such first and second years but has not successfully completed the remainder of a program of undergraduate education—

"(i) $5,500; or

"(ii) if such student is enrolled in a program of undergraduate education, the remainder of which is less than one academic year, the maximum annual loan amount that such student may receive may not exceed the amount that bears the same ratio to the amount specified in subclause (I) as such remainder measured in semester, trimester, quarter, or clock hours bears to one academic year.";

(31) in section 428A(b)(1)—

(A) by redesignating subparagraph (C) as subparagraph (D); and

(B) by inserting after subparagraph (B) the following:

"(C) For the purposes of this paragraph, the number of years that a student has completed in a program of undergraduate education shall include any prior enrollment in an eligible program of undergraduate education for which the student was awarded an associate or baccalaureate degree, if such degree is required by the institution for admission to the program in which the student is enrolled.";

(32) in section 428A(b)(3)(B)(i), by striking "section 428" and inserting "sections 428 and 428H";

(33) in section 428A(c)(1), by striking "sections 427 or 428(b)" and inserting "section 427 or 428(b)";

(34) in section 428B(c)(2), by striking "borrower." and inserting "borrower, and sent to such institution.";

(35) in section 428C(a)(3)(A), by striking "delinquent or defaulted borrower who will reenter repayment through loan consolidation" and inserting "defaulted borrower who has made arrangements to repay the obligation on the defaulted loans satisfactory to the holders of the defaulted loan";

(36) in section 428C(a)(4)(A), by striking ", except for loans made to parent borrowers under section 428B as in effect prior to the enactment of the Higher Education Amendments of 1986";

(37) in section 428C(a)(4)(C), by striking "part C" and inserting "part A";

(38) in section 428C(c)(2)(A)(vi), by inserting a period after "30 years";

(39) in section 428C(c)(3)(A), by inserting "be an amount" before "equal to";

(40) in section 428F(a)(2)—

(A) by striking "this paragraph" and inserting "paragraph (1) of this subsection"; and

(B) by striking "this section" and inserting "this subsection";

(41) in section 428F(a)(4), by striking "this paragraph" and inserting "paragraph (1) of this subsection";

(42) in section 428F(b), by adding at the end thereof the following new sentence: "A borrower may only obtain the benefit of this subsection with respect to renewed eligibility once.";

(43) in section 428G(c)(3), by striking "disbursed" and inserting "disbursed by the lender";

(44) in section 428H(d)(2), by striking subparagraph (B) and inserting the following:

"(B) in the case of a student at an eligible institution who has successfully completed such first and second years but has not successfully completed the remainder of a program of undergraduate education, $5,000.";

(45) in section 428H(e)(1), by striking "shall commence 6 months after the month in which the student ceases to carry at least one-half the normal full-time workload as determined by the institution." and inserting "shall begin as described in section 428(b)(7)(B).";

(46) in section 428H(e)(4), by striking "427A(e)" and inserting "427A";

(47) in section 428H, by redesignating subsection (l) as subsection (h);

(48) in section 428I(g), by striking "the Federal False Claims Act" and inserting "section 3729 of title 31, United States Code,";

(49) in section 428J(b)(1), by striking "sections 428A, 428B, or 428C" and inserting "section 428A, 428B, or 428C";

(50) in section 428J(b)(1)(B), by striking "agrees in writing to volunteer for service" and inserting "serves as a full-time volunteer";

(51) in section 428J(c)(1), by striking "academic year" each place it appears and inserting "year of service";

(52) in the heading for section 428J(d), by striking "OF ELIGIBILITY" and inserting "TO ELIGIBLE";

(53) in section 428J, by amending subsection (e) to read as follows:

"(e) APPLICATION FOR REPAYMENT.—

"(1) IN GENERAL.—Each eligible individual desiring loan repayment under this section shall submit a complete and accurate application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require. Loan repayment under this section shall be on a first-come, first-served basis and subject to the availability of appropriations.

"(2) CONDITIONS.—An eligible individual may apply for repayment after completing each year of qualifying service. The borrower shall receive forbearance while engaged in qualifying service.";

(54) in section 430A(f)(1), by striking the comma at the end and inserting a semicolon;

(55) in section 432(m)(2)—

(A) by striking "DEFERMENT FORM" and inserting "DEFERMENT FORMS"; and

(B) by striking "a common deferment reporting form" and inserting "common deferment reporting forms";

(56) in section 433(b), in the matter preceding paragraph (1), by striking "60 days" and inserting "30 days";

(57) in section 433(e), by striking "section 428A, 428B," and inserting "sections 428A, 428B,";

(58) in section 435(d)(2)(D), by striking "lender; and" and inserting "lender;";

(59) in section 435(d)(2), by increasing the indentation of the matter following subparagraph (F) by two em spaces;

(60) in section 435(d)(3), by striking "435(o)" and inserting "435(m)";

(61) in section 435(m)(1)(A), by striking "428 or 428A" and inserting "428, 428A, or 428H,";

(62) in section 435(m)(2)(D)—

(A) by inserting "(or the portion of a loan made under section 428C that is used to repay a loan made under section 428A)" after "section 428A" the first place it appears; and

(B) by inserting "(or a loan made under section 428C a portion of which is used to repay a loan made under section 428A)" after "section 428A" the second place it appears;

(63) in section 437, by amending subsection (b) to read as follows:

"(b) PAYMENT OF CLAIMS ON LOANS IN BANKRUPTCY.—The Secretary shall pay to the holder of a loan described in section 428(a)(1)(A) or (B) or section 428A, 428B, 428C, or 428H, the amount of the unpaid balance of principal and interest owed on such loan—

"(1) when the borrower files for relief under chapter 12 or 13 of title 11, United States Code;

"(2) when the borrower who has filed for relief under chapter 7 or 11 of such title commences an action for a determination of dischargeability under section 523(a)(8)(B) of such title; or

"(3) for loans described in section 523(a)(8)(A) of such title, when the borrower files for relief under chapter 7 or 11 of such title.";

(64) in section 437(c)(1)—

(A) by striking "If a student borrower" and inserting "If a borrower";

(B) by striking "under this part is unable" and inserting "under this part and the student borrower, or the student on whose behalf a parent borrowed, is unable"; and

(C) by striking "in which the borrower is enrolled" and inserting "in which such student is enrolled"; and

(65) in section 437(c)(4), by adding at the end thereof the following sentence: "The amount of a loan, and interest on a loan, which is canceled under this subsection shall be treated the same as loans under section 465(a)(5) of this title.";

(66) in section 437A(a), in the matter preceding paragraph (1), by striking ", to the extent of funds appropriated under subsection (d)";

(67) in section 437A(c)(2), by inserting a period at the end;

(68) in section 437A, by striking subsection (e); and

(69) in section 439(r)(12), by striking "section 522" and inserting "section 552".

(d) AMENDMENT TO PART C OF TITLE IV OF THE ACT.—Part C of title IV of the Act is amended—

(1) in section 442(d)(4)(C), by striking "three-fourths in the Pell Grant family size offset" and inserting "150 percent of the difference between the income protection allowance for a family of five with one in college and the income protection allowance for a family of six with one in college";

(2) in section 442(e)—

(A) by inserting "(1)" after the subsection heading; and

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

"(2) If, under paragraph (1) of this subsection, an institution returns more than 10 percent of its allocation, the institution's allocation for the next fiscal year shall be reduced by the amount returned. The Secretary may waive this paragraph for a specific institution if the Secretary finds that enforcing this paragraph would be contrary to the interest of the program.";

(3) in section 443(b)(2)(A), by striking "institution;" and inserting "institution; and";

(4) in section 443(b), by amending paragraph (5) to read as follows:

"(5) provide that the Federal share of the compensation of students employed in the work-study program in accordance with the agreement shall not exceed 75 percent for academic year 1993–1994 and succeeding academic years, except that the Federal share may exceed such amounts of compensation if the Secretary determines, pursuant to regulations promulgated by the Secretary establishing objective criteria for such determinations, that a Federal share in excess of such amounts is required in furtherance of the purpose of this part;"; and

(5) in section 443(b)(8), by striking subparagraphs (A), (B), and (C) and inserting the following:

"(A) that are only on campus and that—

"(i) to the maximum extent practicable, complement and reinforce the education programs or vocational goals of such students; and

"(ii) furnish student services that are directly related to the student's education, as determined by the Secretary pursuant to regulations, except that no student shall be employed in any position that would involve the solicitation of other potential students to enroll in the school; or

"(B) in community service in accordance with paragraph (2)(A) of this subsection;".

(e) AMENDMENTS TO PART E OF TITLE IV OF THE ACT.—Part E of title IV of the Act is amended—

(1) in section 462(a)(2)(D), by striking "if the institution which has" and inserting "if the institution has";

(2) in section 462(d)(4)(C), by striking "three-fourths in the Pell Grant family size offset" and inserting "150 percent of the difference between the income protection allowance for a family of five with one in college and the income protection allowance for a family of six with one in college";

(3) in section 462(e), by reducing the indentation of paragraph (2) by two em spaces;

(4) in section 462(h)(4), by reducing the indentation of subparagraph (B) by two em spaces;

(5) in section 463(a)(2)(B)(i)(II), by striking "7.5 percent" and inserting "7.5 percent for award year 1993–1994 and has a cohort default rate which does not exceed 15 percent for award year 1994–1995 or for any succeeding award year";

(6) in section 463(c)(4), by striking "shall disclose" and inserting "shall at least annually disclose";

(7) in section 463, by adding at the end the following new subsections:

"(d) LIMITATION ON USE OF INTEREST BEARING ACCOUNTS.—In carrying out the provisions of subsection (a)(10), the Secretary may not require that any collection agency, collection attorney, or loan servicer collecting loans made under this part deposit amounts collected on such loans in interest bearing accounts, unless such agency, attorney, or servicer holds such amounts for more than 45 days.

"(e) SPECIAL DUE DILIGENCE RULE.—In carrying out the provisions of subsection (a)(5) relating to due diligence, the Secretary shall make every effort to ensure that institutions of higher education may use Internal Revenue Service skip-tracing collection procedures on loans made under this part.";

(8) in section 463A, by striking subsections (d) and (e);

(9) in section 464(c)(2)(B) by striking "repayment or" and inserting "repayment of";

(10) in section 464(c)(6), by striking "Fullbright" and inserting "Fulbright";

(11) in section 464(e), by striking "principle" and inserting "principal";

(12) in section 465(a)(2)(D), by striking "services" and inserting "service";

(13) in section 465(a)(2)(F), by striking "or" at the end;

(14) in section 465(a), by reducing the indentation of paragraph (6) by 2 em spaces; and

(15) in section 466(c), by reducing the indentation of paragraph (2) by two em spaces.

(f) AMENDMENTS TO PART F OF TITLE IV OF THE ACT.—Part F of title IV of the Act is amended—

(1) in the table contained in sections 475(c)(4) and 477(b)(4), by inserting "$" before "9,510";

(2) in section 475(f)(3)—

(A) by striking "Income in the case of a parent" and inserting "If a parent";

(B) by striking "(1) of this subsection, or a parent" and inserting "(1) of this subsection, or if a parent"; and

(C) by striking "is determined as follows: The income" and inserting "the income";

(3) in section 475(g)(1)(B), by inserting a close parentheses after "paragraph (2)";

(4) in the table contained in section 475(g)(3), by adding a last row that is identical to the last row of the table contained in section 476(b)(2);

(5) in section 476, by adding at the end thereof the following new subsection:

"(d) COMPUTATIONS IN CASE OF SEPARATION, DIVORCE, OR DEATH.—In the case of a student who is divorced or separated, or whose spouse has died, the spouse's income and assets shall not be considered in determining the family's contribution from income or assets.";

(6) in section 477 by adding at the end thereof the following new subsection:

"(e) COMPUTATIONS IN CASE OF SEPARATION, DIVORCE, OR DEATH.—In the case of a student who is divorced or separated, or whose spouse has died, the spouse's income and assets shall not be considered in determining the family's available income or assets.";

(7) in section 478—

(A) by striking "1992–1993" each place it appears and inserting "1993–1994"; and

(B) in subsection (c)(1), by striking "1992" and inserting "1993";

(8) in section 478(h), by striking "Bureau of Labor Standards" and inserting "Bureau of Labor Statistics";

(9) in section 479(a)(1), by inserting "of" after "(c)";

(10) in section 479(b)(1)(B)(i)—

(A) by inserting "(and the student's spouse, if any)" after "student" each time it appears; and

(B) by striking "such";

(11) in section 479(b)(2), by striking "five elements" and inserting "six elements";

(12) in section 479(b)(2)(E), by striking the semicolon and inserting a comma;

(13) in section 480(c)(2), by striking "Title" each place it appears and inserting "United States Code, title";

(14) in section 480(d)(2), by inserting "or was a ward of the court until the individual reached the age of 18" prior to the semicolon; and

(15) in section 480, by adding at the end the following new subsections:

"(k) DEPENDENTS.—(1) Except as otherwise provided, the term 'dependent of the parent' means the student, dependent children of the student's parents, including those children who are deemed to be dependent students when applying for aid under this title, and other persons who live with and receive more than one-half of their support from the parent and will continue to receive more than half of their support from the parent during the award year.

"(2) Except as otherwise provided, the term 'dependent of the student' means the student's dependent children and other persons (except the student's spouse) who live with and receive more than one-half of their support from the student and will continue to receive more than half of their support from the student during the award year.

"(l) FAMILY SIZE.—(1) In determining family size in the case of a dependent student—

"(A) if the parents are not divorced or separated, family members include the student's parents, and the dependents of the student's parents including the student;

"(B) if the parents are divorced or separated, family members include the parent whose income is included in computing available income and that parent's dependents, including the student; and

"(C) if the parents are divorced and the parent whose income is so included is remarried, or if the parent was a widow or widower who has remarried, family members also include, in addition to those individuals referred to in subparagraph (B), the new spouse and any dependents of the new spouse if that spouse's income is included in determining the parents' adjusted available income.

"(2) In determining family size in the case of an independent student—

"(A) family members include the student, the student's spouse, and the dependents of the student; and

"(B) if the student is divorced or separated, family members do not include the spouse (or ex-spouse), but do include the student and the student's dependents.

"(m) BUSINESS ASSETS.—The term 'business assets' means property that is used in the operation of a trade or business, including real estate, inventories, buildings, machinery, and other equipment, patents, franchise rights, and copyrights.".

(g) AMENDMENTS TO PART G OF TITLE IV OF THE ACT.—Part G of title IV of the Act is amended—

(1) in section 481(a)(3)(B), by inserting before the semicolon the following: ", except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary";

(2) in section 481(a)(3)(D)—

(A) by striking "are admitted pursuant to section 484(d)" and inserting "do not have a high school diploma or its recognized equivalent"; and

(B) by inserting before the period the following: ", except that the Secretary may waive the limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that it exceeds such limitation because it serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a high school diploma or its recognized equivalent";

(3) in section 481(a)(4), by amending subparagraph (A) to read as follows:

"(A) the institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy;";

(4) in section 481(d), by amending paragraph (2) to read as follows:

"(2) For the purpose of any program under this title, the term 'academic year' shall require a minimum of 30 weeks of instructional time, and, with respect to an undergraduate course of study, shall require that during such minimum period of instructional time a full-time student is expected to complete at least 24 semester or trimester hours or 36 quarter hours at an institution that measures program length in credit hours, or at least 900 clock hours at an institution that measures program length in clock hours.";

(5) in section 481(e) by striking paragraph (2) and inserting the following:

"(2)(A) A program is an eligible program for purposes of part B of this title if it is a program of at least 300 clock hours of instruction, but less than 600 clock hours of instruction, offered during a minimum of 10 weeks, that—

"(i) has a completion rate of at least 70 percent, as determined in accordance with the regulations of the Secretary;

"(ii) has a placement rate of at least 70 percent, as determined in accordance with the regulations of the Secretary; and

"(iii) satisfies such further criteria as the Secretary may prescribe by regulation.

"(B) In the case of a program being determined eligible for the first time under this paragraph, such determination shall be made by the Secretary before such program is considered to have satisfied the requirements of this paragraph.";

(6) in section 481(f), by striking "State" and inserting "individual, or any State,";

(7) in section 482(c), by adding at the end the following new sentence: "For award year 1994–95, this subsection will not apply to regulatory changes affecting parts B, G, and H of this title.";

(8) in section 483(a)(1), by striking "section 411(d)" and inserting "section 401(d)";

(9) in section 483(a)(2), by inserting at the end the following new sentence: "No data collected on a form for which a fee is charged shall be used to complete the form prescribed under paragraph (1).";

(10) in section 483(a)(3), by inserting at the end the following sentence: "Entities designated by institutions of higher education or States to receive such data shall be subject to all requirements of this section, unless such requirements are waived by the Secretary.";

(11) in section 483(f), by striking "address, social security number," and inserting "address or employer's address, social security number or employer identification number,";

(12) in section 484(a)(4)(B), by striking the semicolon and inserting the following: "(or if the student is ineligible for or unable to obtain a social security number, such student's identification number); and ";

(13) in section 484(a)(5), by striking "in the United States for other than a temporary purpose and able to provide evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident" and inserting "able to provide evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident";

(14) in section 484(b)(2)—

(A) in subparagraph (A), by striking "and";

(B) in subparagraph (B), by striking the period and inserting "; and"; and

(C) after subparagraph (B), by inserting:

"(C) has applied for a loan under section 428H, if eligible.";

(15) in section 484(b)(3), by striking "part B" and inserting "part B or D";

(16) in section 484, by striking subsection (f);

(17) in section 484(g), by inserting a comma after "Part D" each place it appears;

(18) in section 484(h)(4)(B), by striking "constitutes" and inserting "constitute";

(19) in section 484(i)(2)—

(A) by striking "(h)(4)(A)(ii)" and inserting "(h)(4)(A)(i)"; and

(B) by striking "documentation," and inserting "documentation, or";

(20) in section 484(i)(3)—

(A) by striking "(h)(4)(B)(ii)" and inserting "(h)(4)(B)(i)"; and

(B) by striking ", or" and inserting a period;

(21) in section 484(i), by striking paragraph (4);

(22) in section 484(n), by striking "part B, C," and inserting "parts B, C,";

(23) in section 484(q)(2), by striking "a correct social security number" and inserting "documented evidence of a social security number that is determined by the institution to be correct";

(24) in section 484B(a), by striking "grant, loan, or work assistance" and inserting "grant or loan assistance";

(25) in section 484B(b)(3), by striking "subsection (d)" and inserting "subsection (c)";

(26) in section 485(a)(1)(F)(iv), by inserting "under" after "awards";

(27) in section 485(a)(1)(F)(viii), by striking the period;

(28) in section 485(a)(1)(F), by striking clause (vi) and redesignating clauses (vii) and (viii) as clauses (vi) and (vii), respectively;

(29) in section 485(a)(1)(L), by inserting a comma after "full-time";

(30) in section 485(a)(3), by striking subparagraph (A) and inserting the following:

"(A) shall, for any academic year beginning more than 270 days after the Secretary first prescribes final regulations pursuant to such subparagraph (L), be made available to current and prospective students prior to enrolling or entering into any financial obligation;";

(31) in paragraphs (1)(A) and (2)(A) of section 485(b), by striking "under parts" and inserting "under part";

(32) in section 485(e), by adding at the end the following new paragraph:

"(9) This subsection shall not be effective until the first July 1 that follows, by more than 270 days, the date on which the Secretary first prescribes final regulations pursuant to this subsection. The reports required by this subsection shall be due on that July 1 and each succeeding July 1 and shall cover the 1-year period ending June 30 of the preceding year.";

(33) in section 485B(a)—

(A) by striking "part E" and inserting "parts D and E"; and

(B) by striking the second period at the end of the third sentence;

(34) in section 485B(a)(4), by striking "part E" and inserting "parts D and E";

(35) in section 485B(c), by striking "part B or part E" and inserting "part B, D, or E";

(36) in section 485B(e), by striking "under this part" each place it appears and inserting "under this title";

(37) in section 487(a)(2), by striking ", or for completing or handling the Federal Student Assistance Report";

(38) in section 487(c)(1)(F), by striking "eligibility for any program under this title of any otherwise eligible institution," and inserting "participation in any program under this title of an eligible institution,";

(39) in section 489(a), by striking "484(c)" and inserting "484(h)"; and

(40) in section 491(h)(1), by striking "subtitle III" and inserting "subchapter III".

(h) AMENDMENTS TO PART H OF TITLE IV OF THE ACT.—Part H of title IV of the Act is amended—

(1) in section 494C(a), by striking the first and second sentences and inserting the following: "The Secretary shall review all eligible institutions of higher education in a State to determine if any such institution meets any of the criteria in subsection (b). If any such institution meets one or more of such criteria, the Secretary shall inform the State in which such institution is located that the institution has met such criteria, and the State shall review the institution pursuant to the standards in subsection (d). The Secretary may determine that a State need not review an institution if such institution only meets the criterion in subsection (b)(10), such institution was previously reviewed by the State under subsection (d), and the State determined in such previous review that the institution did not violate any of the standards in subsection (d).";

(2) in section 494C(i), by striking "sections 428 or 487" and inserting "section 428 or 487";

(3) in section 496(a)(2)(A)(i), by inserting "of institutions" after "membership";

(4) in section 496(a)(3)(A), by striking "subparagraph (A)" and inserting "subparagraph (A)(i)";

(5) in section 496(a)(5)—

(A) by striking the period at the end of subparagraph (L) and inserting a semicolon; and

(B) by inserting after subparagraph (L) the following:

"except that subparagraphs (G), (H), (I), (J), and (L) shall not apply to agencies or associations described in paragraph (2)(A)(ii) of this subsection;";

(6) in section 496(c), by striking "for the purpose of this title" and inserting "as a reliable authority as to the quality of education or training offered by an institution seeking to participate in the programs authorized under this title";

(7) in section 496(l)(2)—

(A) by striking "institututions" and inserting "institution"; and

(B) by striking "association leading to the suspension" and inserting "association, described in paragraph (2)(A)(i), (2)(B), or (2)(C) of subsection (a) of this section, leading to the suspension";

(8) in section 496(n)(1), by amending subparagraph (B) to read as follows:

"(B) site visits, including unannounced site visits as appropriate, at accrediting agencies and associations, and, at the Secretary's discretion, at representative member institutions.";

(9) in section 498(c)(3), by amending subparagraph (C) to read as follows:

"(C) such institution establishes to the satisfaction of the Secretary, with the support of a report of an independent certified public accountant prepared under generally accepted accounting principles (except as provided herein), that the institution has sufficient resources (which shall include, as a current asset, the equity in land, buildings, and other facilities owned and occupied by such institution and used to provide the education and training services described in such institution's official publications and statements) to ensure against precipitous closure, including the ability to meet all of its financial obligations, including refunds of institutional charges and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary; or";

(10) in section 498(f), by inserting after the second sentence the following: "The Secretary may establish priorities by which institutions are to receive site visits, and may coordinate such visits with site visits by States, guaranty agencies, and accrediting bodies in order to eliminate duplication, and reduce administrative burden.";

(11) in section 498(h)(1)(B), by amending clause (iii) to read as follows:

"(iii) the Secretary determines that an institution that seeks to renew its certification is, in the judgment of the Secretary, in an administrative or financial condition that may jeopardize its ability to perform its financial responsibilities under a program participation agreement.";

(12) in section 498(h)(3), by striking "the Secretary may terminate"; and inserting "the Secretary may, after providing the institution an opportunity to show that the institution meets those responsibilities, terminate";

(13) in section 498, by amending subsection (i)(1) to read as follows:

"(i) TREATMENT OF CHANGES OF OWNERSHIP.—(1) An eligible institution of higher education that has had a change in ownership resulting in a change of control shall not qualify to participate in programs under this title after the change in control (except as provided in paragraph (3)) unless it establishes that it meets the requirements of section 481 (other than the requirements in subsections (b)(5) and (c)(3)) and this section after such change in control.";

(14) in section 498(i)(3), by amending subparagraph (A) to read as follows:

"(A) the sale or transfer, upon the death of an owner of an institution, of the ownership interest of the deceased in that institution to a family member or to a person holding an ownership interest in that institution; or";

(15) in section 498(j), by amending subsection (j)(1) to read as follows:

"(j) TREATMENT OF BRANCHES.—(1) A branch of an eligible institution of higher education, as defined pursuant to regulations of the Secretary, must be certified under this subpart before it may participate as part of such institution in a program under this title, except that such branch shall not be required to meet the requirements of sections 481(b)(5) and 481(c)(3) prior to seeking such certification. Such branch is required to be in existence at least 2 years prior to seeking certification as a main campus or free-standing institution."; and

(16) in section 498A(e), by striking "Act," and inserting "Act".

(i) AMENDMENTS TO TITLES V THROUGH XII OF THE ACT.—The Act is amended—

(1) in section 505(b)(2)(D)(iii), by striking the period and inserting a semicolon;

(2) in section 525, by striking subsection (c) and inserting the following:

"(c) WAIVERS.—For purposes of giving special consideration under section 523(d), a State may waive the criteria contained in the first sentence of subsection (b) for up to 25 percent of individuals receiving Paul Douglas Teacher Scholarships on or after July 1, 1993.";

(3) in the first sentence of section 530A—

(A) by striking "means" and inserting "is determined both during a scholar's education and when the scholar begins teaching and means"; and

(B) by striking "elementary and secondary school teachers" each place it appears and inserting "preschool, elementary, and secondary school teachers";

(4) in section 535(b)(1)(C), by striking the semicolon and inserting a period;

(5) in section 537(a), by inserting "IN" before "GENERAL";

(6) in section 545(d), by striking "parts B, D," and inserting "part B, D,";

(7) in section 580B, by striking "(a) Authorization.—";

(8) in section 581(b)(2), by striking "402A(g)(2)" and inserting "402A(g)";

(9) in section 597(d)(1), by striking "Development and" and inserting "and Development";

(10) in section 602(a)(3), by striking "(1)(A)" and inserting "(1)";

(11) in section 602(a)(4), by striking "(1)(A)" and inserting "(1)";

(12) in section 603(a), by striking "RESOURCES" and inserting "Resource";

(13) in section 607(c), by redesignating the last paragraph as paragraph (3);

(14) in section 714, by striking "(a) IN GENERAL.—";

(15) in section 715(b)—

(A) by striking "(1) STATE GRANTS.—";

(B) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2);

(C) in paragraph (2) (as so redesignated) by redesignating clauses (i), (ii), and (iii) as subparagraphs (A), (B), and (C), respectively; and

(D) by reducing the indentation of such paragraphs (1) and (2) (as so redesignated) by two em spaces;

(16) in section 725—

(A) by redesignating paragraphs (2) through (5) as subparagraphs (3) through (6), respectively; and

(B) by inserting after paragraph (1) the following:

"(2) shall require that the first loans for capital projects authorized under section 723 be made no later than March 31, 1994, and that the provisions of part B be administered under the Education Department General Administrative Regulations (EDGAR), if final regulations have not been completed by that date to implement the provisions of part B;"

(17) in section 726, by inserting a period after "title" the first time it appears and striking the remainder of the sentence;

(18) in section 731(a), by striking "faculties," and inserting "faculty,";

(19) in section 731(c), by striking "enactment of";

(20) in section 734(e)—

(A) by striking "FACULTIES" and inserting "FACULTY"; and

(B) by striking "faculties" and inserting "faculty";

(21) in section 781(b), by striking "Education Amendments of 1992," and inserting "Education Amendments of 1992";

(22) in section 782(1)(A), by striking "outpatient care of student" and inserting "outpatient care of students";

(23) in the matter preceding paragraph (1) of section 802(b), by inserting after "fiscal year" the following: "the Secretary shall reserve such amount as is necessary to make continuing awards to institutions of higher education that were, on the date of enactment of the Higher Education Amendments of 1992, operating an existing cooperative education program under a multiyear project award and to continue to pay to such institutions the Federal share in effect on the day before such date of enactment. Of the remainder of the amount appropriated in such fiscal year";

(24) in section 803(b)(6)(A), by striking out "data";

(25) in section 803(e)(2)—

(A) by striking "Mexican American" and inserting "Mexican-American"; and

(B) by striking "Mariana" and inserting "Marianian";

(26) in section 901(b)(2), by striking "such part" and inserting "such title";

(27) in section 922, by striking subsection (f) and inserting the following:

"(f) INSTITUTIONAL PAYMENTS.—(1) The Secretary shall pay to the institution of higher education, for each individual awarded a fellowship under this part at such institution, an institutional allowance. Except as provided in paragraph (2), such allowance shall be—

"(A) $6,000 annually with respect to individuals who first received fellowships under this part prior to academic year 1993–1994;

"(B) with respect to individuals who first receive fellowships during or after academic year 1993–1994—

"(i) $9,000 for the academic year 1993–1994;

"(ii) for succeeding academic years, $9,000 adjusted annually thereafter in accordance with inflation as determined by the Department of Labor's Consumer Price Index for the previous calendar year.

"(2) The institutional allowance paid under paragraph (1) shall be reduced by the amount the institution charges and collects from a fellowship recipient for tuition and other expenses as part of the recipient's instructional program.";

(28) in the second sentence of section 923(b)(1), by striking "granting of such fellowships" and all that follows through "set forth in this section," and inserting "granting of such fellowships for an additional period of study not to exceed one 12-month period,";

(29) in section 923(b)(2), by striking out the second and third sentences and inserting the following: "Such period shall not exceed a total of 3 years, consisting of not more than 2 years of support for study or research, and not more than 1 year of support for dissertation work provided that the student has attained satisfactory progress prior to the dissertation stage, except that the Secretary may provide by regulation for the granting of such fellowships for an additional period of study not to exceed one 12-

month period, under special circumstances which the Secretary determines would most effectively serve the purposes of this part. The Secretary shall make a determination to provide such 12-month extension of an award to an individual fellowship recipient for study or research upon review of an application for such extension by the recipient. The institution shall provide 2 years of support for each student following the years of Federal predissertation support under this part. Any student receiving an award for graduate study leading to a doctoral degree shall receive at least 1 year of supervised training in instruction during his or her doctoral program.'';

(30) in section 923(b), by adding at the end the following new paragraph:

''(3) CONTINUATION OF AWARDS UNDER PRIOR LAW.—Notwithstanding any other provision of law, in the case of an individual who was awarded a multiyear fellowship under this part before the date of enactment of the Higher Education Amendments of 1992, awards to such individual for the remainder of such fellowship may, at the discretion of the institution of higher education attended by such individual, be subject to the requirements of this subsection as in effect prior to such date of enactment. The institution shall be required to exercise such discretion at the time that its application to the Secretary for a grant under this part, and the amount of any such grant, are being considered by the Secretary.'';

(31) in section 924, by adding at the end thereof the following new sentence: ''Notwithstanding any other provision of law, the Secretary may use funds appropriated pursuant to this section for fiscal year 1994 to make continuation awards under section 923(b)(3) to individuals who would have been eligible for such awards in fiscal year 1993 if such section had been in effect.'';

(32) in section 931(a), by inserting after the first sentence the following new sentence: ''These fellowships shall be awarded to students intending to pursue a doctoral degree, except that fellowships may be granted to students pursuing a master's degree in those fields in which the master's degree is commonly accepted as the appropriate degree for a tenured-track faculty position in a baccalaureate degree-granting institution.'';

(33) in the third sentence of section 932(a)(1), by striking ''doctoral'' and inserting ''graduate'';

(34) in section 932(c), by striking ''doctoral'' and inserting ''graduate'';

(35) in section 933(b), by striking paragraph (1) and inserting the following:

''(1) IN GENERAL.—(A) The Secretary shall (in addition to stipends paid to individuals under this part) pay to the institution of higher education, for each individual awarded a fellowship under this part at such institution, an institutional allowance. Except as provided in subparagraph (B), such allowance shall be—

''(i) $6,000 annually with respect to individuals who first received fellowships under this part prior to academic year 1993–1994;

''(ii) with respect to individuals who first receive fellowships during or after academic year 1993–1994—

''(I) $9,000 for the academic year 1993–1994;

''(II) for succeeding academic years, $9,000 adjusted annually thereafter in accordance with inflation as determined by the Department of Labor's Consumer Price Index for the previous calendar year.

''(B) The institutional allowance paid under subparagraph (A) shall be reduced by the amount the institution charges and collects from a fellowship recipient for tuition and other expenses as part of the recipient's instructional program.'';

(36) in section 941, by striking ''the part'' and inserting ''this part'';

(37) in section 943(b), by striking ''foreign languages or area studies'' and inserting ''foreign languages and area studies'';

(38) in section 945, by striking subsection (c) and inserting the following:

''(c) TREATMENT OF INSTITUTIONAL PAYMENTS.—An institution of higher education that makes institutional payments for tuition and fees on behalf of individuals supported by fellowships under this part in amounts that exceed the institutional payments made by the Secretary pursuant to section 946(a) may count such payments toward the amounts the institution is required to provide pursuant to section 944(b)(2).'';

(39) in section 946, by striking subsection (a) and inserting the following:

''(f) INSTITUTIONAL PAYMENTS.—(1) The Secretary shall (in addition to stipends paid to individuals under this part) pay to the institution of higher education, for each individual awarded a fellowship under this part at such institution, an institutional allowance. Except as provided in paragraph (2), such allowance shall be—

''(A) $6,000 annually with respect to individuals who first received fellowships under this part prior to academic year 1993–1994;

''(B) with respect to individuals who first receive fellowships during or after academic year 1993–1994—

''(i) $9,000 for the academic year 1993–1994;

''(ii) for succeeding academic years, $9,000 adjusted annually thereafter in accordance with inflation as determined by the Department of Labor's Consumer Price Index for the previous calendar year.

''(2) The institutional allowance paid under paragraph (1) shall be reduced by the amount the institution charges and collects from a fellowship recipient for tuition and other expenses as part of the recipient's instructional program.'';

(40) in section 951(a), in the matter preceding paragraph (1), by inserting ''Pacific Islanders,'' after ''Native Americans,'';

(41) in section 1004(a), by striking ''part'' and inserting ''subpart'';

(42) in section 1011(d), by striking ''part'' and inserting ''subpart'';

(43) in part D of title X, by redesignating section 1181 as section 1081;

(44) in section 1081(d) (as so redesignated) by inserting a comma after ''this title)'' and after ''such institutions'';

(45) in section 1142(d)(2), by inserting ''program'' after ''literacy corps'';

(46) in section 1201(a), by striking ''subpart 3 of part H,'' and inserting ''subpart 2 of part H of title IV of this Act,'';

(47) by amending section 1204 to read as follows:

''TREATMENT OF TERRITORIES AND TERRITORIAL STUDENT ASSISTANCE

''SEC. 1204. (a) The Secretary is required to waive the eligibility criteria of any postsecondary education program administered by the Department where such criteria do not take into account the unique circumstances in Guam, the Virgin Islands, American Samoa, the Republic of Palau, the Commonwealth of the Northern Mariana Islands, and the freely associated states.

''(b) Notwithstanding any other provision of law, an institution of higher education that is located in any of the freely associated states, rather than a State, shall be eligible, if otherwise qualified, for assistance under chapter 1 of subpart 2 of part A of title IV of this Act.'';

(48) in section 1205, in the section heading, by inserting ''**National Advisory**'' before ''**Committee**'';

(49) in section 1205(a), by inserting ''National Advisory'' before ''Committee'' the first place it appears;

(50) in paragraphs (1) and (6) of section 1205(c), by inserting ''of title IV of this Act'' after ''part H'';

(51) in section 1205(f), by striking ''Accreditation and Institutional Eligibility'' and inserting ''Institutional Quality and Integrity'';

(52) in section 1209(f)(1), by striking ''the Act'' and inserting ''this Act'';

(53) in title XII, by redesignating section 1211 (as added by section 6231 of the Omnibus Trade and Competitiveness Act of 1988) as section 1212; and

(54) in section 1212(e)(2) (as so redesignated), by inserting close quotation marks after ''facilities'' the first place it appears.

(j) AMENDMENTS TO THE 1992 AMENDMENTS.—The Higher Education Amendments of 1992 is amended—

(1) in section 401(d)(2)(A), by inserting ''the first place it appears'' before ''the following:'';

(2) in section 425(d)(1)—

(A) by inserting ''the second sentence of'' after ''(1) in''; and

(B) by striking ''in the second sentence'';

(3) in section 425(d)(4)—

(A) by inserting ''the second sentence of'' after ''(4) in''; and

(B) by striking ''in the second sentence'';

(4) in section 426(c), by striking ''new subsections'' and inserting ''new subsection'';

(5) in section 432(a)(3), by striking ''427(a)(2)(C) and 428(b)(1)(M)'' and inserting ''427(a)(2)(C), 428(b)(1)(M), and 428B(d)(1)'';

(6) in section 432(a)—

(A) by redesignating paragraphs (13), (14), and (15), as paragraphs (14), (15), and (16), respectively; and

(B) by inserting immediately after paragraph (12) the following new paragraph:

''(13) that the changes made to subsections (a) and (c) of section 435, as they relate to the elimination of vocational schools from the definition of an eligible institution and to the repeal of the definition of a vocational school, shall be effective as of the effective date of final regulations implementing section 481(e)(2)(A) of the Act;'';

(7) in section 446, by striking subsection (c);

(8) in section 465(a), by amending paragraph (1) to read as follows:

''(1) in subparagraph (A), by striking 'and such determination' and all that follows through 'such chapter 1';'';

(9) in section 484, by inserting after subsection (h) the following new subsection:

''(i) EFFECTIVE DATE.—The amendments made by subsection (g) with respect to the addition of subsection (n) shall be effective on and after December 1, 1987.'';

(10) in section 486(a)(3), by striking ''section 1'' and inserting ''section 103'';

(11) in section 498—

(A) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively;

(B) by inserting immediately after paragraph (2) the following new paragraph:

''(3) the changes made to section 481(b) and (c), relating to the references to an eligible program, shall be effective as of the effective date of final regulations implementing section 481(e)(2)(A) of the Act;''; and

(C) by amending paragraph (4) (as redesignated by subparagraph (A)) to read as follows:

''(4) section 481(e), as added by such amendments, relating to the definition of an eligible program, shall be effective as of the effective date of final regulations implementing paragraph (2)(A) of such section;'';

(12) in section 1409(b)(1), by striking ''the Asbestos Hazard Emergency Response Act'' and inserting ''section 202 of the Toxic Substances Control Act (15 U.S.C. 2642)'';

(13) in section 1422(9), by striking "has placed" and inserting "have placed";

(14) in section 1442(c), by striking "Chairman" and inserting "Chairperson";

(15) in section 1541(g), by striking "educational" and inserting "education"; and

(16) in section 1554(a)(1), by striking "4" and inserting "6".

(k) AMENDMENT TO THE 1986 AMENDMENT.—Section 1507(a)(12) of the Higher Education Amendments of 1986 is amended by striking the period and inserting a semicolon.

(l) ACCREDITATION THROUGH TRANSFER OF CREDIT.—(1) An institution of higher education which satisfied the requirements of section 1201(a)(5)(B) of the Act prior to the enactment of the Higher Education Amendments of 1992, shall be considered to meet the requirements of section 1201(a)(5) of the Act if—

(A) within 60 days after the date of enactment of the Higher Education Technical Amendments of 1993, such institution has applied for accreditation by a nationally recognized accrediting agency or association which the Secretary determines, pursuant to subpart 2 of part H of title IV of the Act, to be a reliable authority as to the quality of education or training offered; and

(B) within 2 years of the date of enactment of the Higher Education Technical Amendments of 1993, such institution is accredited by such an accrediting agency or association or, if not so accredited, has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

(2) Paragraph (1) of this subsection shall be effective July 23, 1992.

(m) AMENDMENT TO PART D OF TITLE IV OF THE ACT.—Section 453(b)(2)(B) of the Act is amended to read as follows:

"(B) if the Secretary determines it necessary in order to carry out the purposes of subparagraph (A) and attain such reasonable representation (as required by subparagraph (A)), selecting additional institutions.".

HIGHER EDUCATION TECHNICAL AMENDMENTS

Mr. PELL. Mr. President, House and Senate staff have been working for the past 2 weeks to work out differences between the higher education technicals legislation approved by both Houses. The legislation before us is the result of their long hard work. It is needed legislation, and I would hope that we might be able to pass it before we adjourn this session.

There were over 280 items of difference between the two bills. Of these, more than 130 were corrections of grammar, punctuation, and spelling in the Higher Education Amendments of 1992. The remainder were clarifications of congressional intent with respect to provisions of those same amendments. A very few of these changes, however, are of considerable significance, and merit specific mention.

The legislation alters current law for our graduate education and cooperative education programs. These are crucial to the effective operation of those important programs, and to make sure that participants in these programs, especially those in the Patricia Roberts Harris Fellowship Program, can receive the assistance they need to pursue their postsecondary education.

The agreement reached at the staff level would also alleviate concerns regarding displacement of Pell grant recipients due to the needs analysis simplification accomplished last year. By giving financial aid officers the discretion to adjust the award of any student who lost a significant portion of their grant over the past year, this provision insures that all students will be treated fairly under the new law. I would point out, however, that a supplemental appropriation will be necessary in order for this provision to take effect.

The bill would also change provisions regarding the cohort default rate. This is necessary to insure that the Department can more effectively administer this program and crack down on institutions that may be able to unjustifiably use current law to avoid being kicked out of Federal student aid programs. At the same time, it provides protection for sound, legitimate institutions so that erroneous data will not be used in calculating their actual default rate.

We also clarify the financial responsibility provisions enacted as part of the 1992 Higher Education Amendments. This will protect institutions that are not financially at risk, but it does so without weakening the current law. It has been difficult to strike the necessary balance in this area, but the provisions in the amendment will, we believe, make sure that financially at-risk institutions will be subject to careful scrutiny and even exclusion from participation in Federal student aid programs. Our goal in this regard has been a constant one: to insure that students have access to a quality education at schools that are strong and viable institutions of postsecondary education.

This agreement would also safeguard Pell grant funds by clarifying that institutions may not use a provision in current law to keep the Secretary of Education from putting them on a reimbursement system. This same language was included in the original Senate-passed bill in response to concerns raised by the Department of Education.

To further safeguard all Federal student aid funds, the agreement would require institutions to verify the accuracy of the data used to determine program eligibility for all student aid applicants. Current law requires institutions to verify such data for only 30 percent of their applicants.

Mr. President, this agreement contains a number of critical and timesensitive technical corrections to the Higher Education Act. The Senate has already approved a number of the provisions included in this agreement. In some cases, the Senate has acted favorably on these provisions twice before. It is important that we approve this important legislation before we adjourn, and I urge my colleagues to support this very necessary measure.

AMENDMENT NO. 1227

Mr. FORD. Mr. President, I move that the Senate concur in the House amendment with the following amendment.

The PRESIDING OFFICER. The clerk will report:

The legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD] for Mr. Kennedy, proposes an amendment numbered 1227.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

The PRESIDING OFFICER. The motion is agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

S. RES. 160

S. RES 162

S. RES. 167

S. CON. RES. 44

S. CON. RES. 50

Mr. FORD. Mr. President, I ask unanimous consent that the Senate turn to consideration of the following calendar numbers: 301, S. Res. 160, the Burundi Resolution; 302, S. Res. 162, the Hugo Prinez Resolution; 304, S. Res. 167, the Marsh Arabs of Southern Iraq Resolution; 305, S. Con. Res. 44, the International Year of the World's Indigenous Peoples Concurrent Resolution; and 306, S. Con. Res. 50, the Boycott of Israel Concurrent Resolution; that they be considered, en bloc; that any committee reported amendments deemed be agreed to; that the resolutions be agreed to, and any preambles agreed to; that the motions to reconsider be tabled, en bloc, and that any statements thereon appear in the RECORD at the appropriate place.

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

So the resolution and concurrent resolutions were considered and deemed agreed to, as follows:

BURUNDI RESOLUTION

The resolution (S. Res. 160) expressing the sense of the Senate regarding

the October 21, 1993, attempted coup d'etat in Burundi, and for other purposes, was considered and agreed to. The preamble was agreed to. The resolution and the preamble are as follows:

S. RES. 160

Whereas Burundi has a long history of military rule and ethnic conflict between the majority Hutu and the minority Tutsi;

Whereas on March 9, 1992, the people of Burundi adopted a democratic constitution, leading to Burundi's first multiparty election on June 1, 1993, through which Melchoir Ndadaye was overwhelmingly elected president in a free and fair election;

Whereas President Ndadaye had shown his commitment to ethnic reconciliation and democracy by appointing members of the opposition to key government posts;

Whereas recent years have also witnessed a period of ethnic reconciliation in Burundi, in large part because of policies implemented by former President Buyoya;

Whereas on October 21, 1993, President Ndadaye and other senior government officials were murdered by coup plotters; and

Whereas the attempted coup and murder of President Ndadaye sparked ethnically motivated attacks throughout the country, resulting in widespread deaths and approximately 500,000 refugees fleeing to neighboring Rwanda, Tanzania, and Zaire: Now, therefore, be it

Resolved, That the Senate—

(1) strongly condemns the attempted coup d'etat in Burundi and the murder of President Ndadaye;

(2) commends the people of Burundi for their commitment to democracy by adopting a constitution and holding free and fair elections, and for their respect for the democratic process;

(3) urges the people of Burundi to help end ethnic strife that has caused untold suffering;

(4) encourages the people of Burundi to continue their commitment to ethnic reconciliation and democracy;

(5) commends the Clinton administration for its prompt condemnation of the October 21, 1993, coup in Burundi; and for the immediate suspension of foreign assistance to Burundi;

(6) calls upon the Organization of African Unity (OAU) to bolster and support the continuation of democracy and the end of ethnic strife in Burundi; and

(7) calls upon the international community to assist the OAU in its efforts to strengthen democracy in Burundi and to address the humanitarian needs of Burundian refugees in Rwanda, Tanzania, and Zaire.

HUGO PRINCZ RESOLUTION

The resolution (S. Res. 162) relating to the treatment of Hugo Princz, a United States citizen, by the Federal Republic of Germany, was considered and agreed to. The preamble was agreed to. The resolution and the preamble are as follows:

S. RES. 162

Whereas Hugo Princz and his family were United States citizens residing in Europe at the outbreak of World War II;

Whereas as civilians, Mr. Princz and his family were arrested as enemy aliens of the German Government (not prisoners of war) in early 1942;

Whereas the Government of Germany, over the protests of Mr. Princz's father, refused to honor the validity of the Princz family's United States passports on the grounds that the Princz family were Jewish Americans and failed to return the Princz family to the United States as part of an International Red Cross civilian prisoner exchange;

Whereas the Princz family was instead sent to Maidanek concentration camp in Poland, after which Mr. Princz's father, mother and sister were shipped to Treblinka death camp and exterminated;

Whereas Mr. Princz and his two younger brothers were transported by cattle car to Auschwitz to serve as slave laborers, where Mr. Princz was forced to watch as his two siblings were intentionally starved to death while they lay injured in a camp hospital;

Whereas Mr. Princz was subsequently transferred to a camp in Warsaw and, then, by death march, to the Dachau slave labor facility;

Whereas in the closing days of the war, Mr. Princz and other slave laborers were selected for extermination by German authorities in an effort to destroy incriminating evidence of war crimes;

Whereas hours before his scheduled execution, Mr. Princz's death train was intercepted and liberated by United States Armed Forces, and Mr. Princz was sent to an American military hospital for treatment;

Whereas although the actions of the United States Army saved Mr. Princz's life, he was sent to an American facility and was never processed through a "Center for Displaced Persons", a development which would later affect his eligibility to receive reparations for his suffering;

Whereas following his hospitalization, Mr. Princz was permitted to enter then-Communist-occupied Czechoslovakia to search for family members, and, after determining that he was the sole survivor, Mr. Princz traveled to America where he was taken in by relatives;

Whereas in the early 1950s, the Federal Republic of Germany (FRG) established a reparations program for "survivors", to which Mr. Princz made timely application in 1955;

Whereas Mr. Princz's application was rejected, and Mr. Princz has argued that his rejection was based on the grounds that he was a United States national at the time of his capture and later rescued and not a "stateless" person or "refugee";

Whereas Mr. Princz has not received relief from the Federal Republic of Germany in the intervening 40 years;

Whereas Mr. Princz's diplomatic remedies were exhausted by late 1990, forcing him to sue the Federal Republic of Germany in the Federal District Court for the District of Columbia in 1992;

Whereas the Court denied Germany's dismissal motion and determined Mr. Princz's situation to be sui generis, given Germany's concurrence with the material facts in the case and its simultaneous failure to accept financial responsibility with respect to Mr. Princz, when it has distributed billions of dollars in compensation to other Nazi death camp survivors, simply because of his American citizenship at the time of Mr. Princz's capture and later rescue;

Whereas the trail is now stayed pending Germany's appeal to the District of Columbia Circuit to require the case to be dismissed on grounds of sovereign immunity; and

Whereas Germany's refusal to redress Mr. Princz's unique and tragic grievances and to provide him a survivor's pension undercuts its oft-voiced claims to have put its terrible past behind it: Now, therefore, be it

Resolved, That it is the sense of the Senate that the President and Secretary of State should—

(1) raise the matter of Hugo Princz with the Federal Republic of Germany, including the Chancellor and Foreign Minister, and take all appropriate steps necessary to ensure that this matter will be expeditiously resolved and that fair reparations will be provided Mr. Princz; and

(2) state publicly and unequivocally that the United States will not countenance the continued discriminatory treatment of Hugo Princz in light of the terrible torment he suffered at the hands of the Nazis.

MARSH ARABS OF SOUTHERN IRAQ RESOLUTION

The Senate proceeded to consider the resolution (S. Res. 167) expressing the sense of the Senate concerning the Iraqi Government's campaign against the Marsh Arabs of southern Iraq, which had been reported from the Committee on Foreign Relations with amendments.

The amendments were agreed to.

The resolution, as amended, was agreed to.

The preamble as amended was agreed to.

The resolution, as amended, and the preamble, as amended, are as follows:

S. RES. 167

Whereas, the government of Saddam Hussein has a long and well documented history of brutal repression of the population of Iraq;

Whereas, Saddam Hussein carried out a methodical campaign of genocide against Iraqi Kurds, including extensive efforts to render large areas of Iraqi Kurdistan uninhabitable and the use of poison gas in violation of international law;

Whereas, Saddam Hussein is now conducting a massive campaign of repression against the population of Shiite Arabs in southern Iraq known as the marsh Arabs or the *Maadan*;

Whereas, this campaign includes an enormous effort to drain the wetlands at the confluence of the Tigris and the Euphrates which have sustained the distinct marsh Arab civilization for thousands of years;

Whereas, in addition to draining the wetlands Iraqi troops have extensively shelled villages in the marshes;

Whereas, the campaign against the marsh Arabs appears to constitute an effort to drive the entire civilian population out of the marshes and to destroy the way of life of a distinct community within Iraq;

Whereas, there are recent reports that Iraqi troops have employed chemical weapons against the marsh Arabs in violation of international law and United Nations Security Council resolutions concerning Iraq;

Whereas, prior to the Gulf War the world community did not stop Saddam Hussein from employing similar tactics against the Kurds: Now, therefore, be it hereby

Resolved by the Senate, That the United States Government should immediately—

(a) raise the issue of Saddam Hussein's campaign of repression against the marsh Arabs in the Security Council;

(b) insist that United Nations weapons inspectors be permitted to conduct on site inspections concerning the possible use by Iraqi troops of chemical weapons;

(c) seek to provide humanitarian assistance to persons fleeing from the marshes; and,

(d) study and report to the Congress concerning the environmental consequences of the destruction of this vast wetlands area.

INTERNATIONAL YEAR OF THE WORLD'S INDIGENOUS PEOPLES CONCURRENT RESOLUTION

The Senate proceeded to consider the concurrent resolution (S. Con. Res. 44) to express the sense of the Congress concerning the International Year of the World's Indigenous Peoples, which had been reported from the Committee on Foreign Relations with amendments,

The amendments were agreed to.

The resolution, as amended, was agreed to.

The preamble was agreed to.

The resolution, as amended, and the preamble, are as follows:

S. CON. RES. 44

Whereas, United Nations Resolution 45/164 of December 18, 1990, proclaimed the year 1993 as the International Year of the World's Indigenous Peoples, in order to strengthen international cooperation for a solution to the problems faced by indigenous communities in areas such as human rights, the environment, development, education, and health;

Whereas indigenous peoples are descendants of the original inhabitants of many countries with diverse cultures, religions, languages, and social and economic customs;

Whereas an estimated 300 million indigenous peoples live in more than 70 countries, including the United States;

Whereas indigenous peoples are often disadvantaged and face common difficulties in their homelands, including issues such as self-determination, the preservation of land and natural resources, the preservation of culture, arts, and language, and dismal social and economic conditions;

Whereas many indigenous peoples continue to face discrimination and exploitation in their homelands;

Whereas the rights and social and economic conditions of indigenous peoples have often been overlooked by individual nations and the international community; and

Whereas the United Nations Working Group on Indigenous Populations has drafted a Declaration on the Rights of Indigenous Peoples: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that—

(1) the United States should cooperate with the United Nations in its efforts to raise the level of public interest in and consciousness of the problems of indigenous peoples;

(2) the United States should address the rights and improve the social and economic conditions of its own indigenous peoples, including Native American Indians, Alaska Natives, Native Hawaiians, Chamorros, American Samoans, and Palauans;

(3) the United States should support the United Nations in its efforts to establish international standards on the rights of indigenous peoples; and

(4) the United States recognizes that the year 1993 is an insufficient time period for promoting public awareness of the plight of indigenous peoples and urges the United Nations to proclaim an International Decade of the World's Indigenous Peoples.

BOYCOTT OF ISRAEL CONCURRENT RESOLUTION

The concurrent resolution (S. Con. Res. 50) concerning the Arab League boycott of Israel, was considered and agreed to. The preamble was agreed to. The resolution and the preamble are as follows:

S. CON. RES. 50

Whereas the signing on September 13, 1993, of the Declaration of Principles between the Palestine Liberation Organization and the Government of Israel signals a new era of cooperation in the Middle East;

Whereas a true peace in the Middle East can only be established and remain in effect if there is economic stability and cooperation in the region;

Whereas adherence to the Arab League boycott of Israel is a source of economic instability in the Middle East;

Whereas the members of the Arab League instituted a primary boycott against Israel in 1948;

Whereas in the early 1950's the Arab states instituted a secondary and tertiary boycott against United States and other firms because of their commercial ties to Israel;

Whereas the boycott attempts to use economic blackmail to force United States firms to comply with boycott regulation;

Whereas the boycott was cited by the United States Trade Representative in the 1992 National Trade Estimate Report on Foreign Trade Barriers as an "additional legal restraint to United States trade in the region";

Whereas hundreds of United States firms have been blacklisted and barred from doing business with members of the Arab League under the secondary and tertiary boycott;

Whereas the total damage caused by the boycott is unknown because the number of United States firms that conduct business with Israel have not attempted commercial transactions with members of the Arab League due to the boycott is uncertain; and

Whereas the United States has a policy of prohibiting United States firms from providing Arab states with the requested information about compliance to boycott regulation; Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring),

SECTION 1. SHORT TITLE.

This resolution may be cited as the "Anti-Boycott Resolution of 1993".

SEC. 2. EXPRESSION OF CONGRESSIONAL VIEWS.

The Congress—

(1) believes the continuation of the Arab League boycott of Israel will be a severe impediment to the economic prosperity of all participating nations and to the establishment of a lasting peace and prosperity in the Middle East;

(2) believes the secondary and tertiary boycott cause substantial economic losses to United States firms;

(3) welcomes the actions by those members of the Arab League that have begun dismantling the secondary and tertiary boycott, and urges them to continue their efforts until a complete dissolution of the primary, secondary, and tertiary boycott is achieved;

(4) hopes that the indefinite postponement of the October 24, 1993, meeting of the Central Boycott Committee signals an end to the placement of more United States firms on the boycott list and a willingness to dismantle the boycott in its entirety;

(5) urges those states that have begun to or are considering dismantling all forms of the boycott to proceed promptly with such dismantlement;

(6) urges those states that are still enforcing the boycott to dismantle the boycott in all its forms and to issue the necessary laws, rules, and regulations to ensure that United States firms have free and open access to Arab markets regardless of their business relationships with Israel;

(7) urges those states, in addition, to cease enforcing and requiring participation in the boycott in its primary, secondary, and tertiary forms;

(8) urges the United States Government to continue to raise the boycott as an unfair trade practice in every appropriate international trade forum; and

(9) expresses the sense of the Congress that the end of the Arab League boycott of Israel is of great urgency to the United States Government and will continue to be a priority issue in all bilateral relations with participating states until its complete dissolution.

Mr. LIEBERMAN. Mr. President, it gives me great pleasure to be an original cosponsor of this resolution and to urge my colleagues to vote for its adoption. The story of Hugo Princz and his family is one of great tragedy and legalistic folly. I will not recount the details of this story since they appear in the text of the resolution itself, but I urge my colleagues to read this amazing story of a family which was denied the protections they were entitled as American citizens in Germany at the outbreak of World War II. This family suffered great losses at the hands of Nazi tyranny and only Hugo Princz survived the death camps to which his family was sent even though they were Americans. Mr. Princz is alive today because he was rescued by American soldiers who liberated the death train which was carrying him to his execution. yet it was this very rescue which led to the circumstances which have been cited as the cause for his ineligibility for reparations from the German Government. He has been denied the reparations which Germany has paid other death camp survivors because of the mere fact that his rescue by Americans meant that he did not process through a center for displaced persons. This is a legalistic folly which the Government of Germany should be embarrassed to advance. There is no doubt that a great wrong was done to Hugo Princz as it was to too many other Jews by the Nazis. The Government of Germany has worked hard to right the wrongs of the past, yet it is unwilling to take the final step necessary and to acknowledge its debt to Hugo Princz.

This resolution should not be necessary. The Government of Germany should have resolved this matter long ago, but it has not. I hope that the Government of Germany will see the support that this resolution has in the United States Senate and will do whatever it can to end this folly. No one can give Hugo Princz back the loved ones

he watched die, but the Federal Republic of Germany can and should acknowledge this tragedy and provide the fair reparations which are Hugo Princz's due.

Mr. LAUTENBERG. Mr. President, today the Senate will consider a resolution calling on the German Government to provide fair reparations to Mr. Hugo Princz, Senate Resolution 162. I urge my colleagues to approve this resolution without delay.

Hugo Princz is a constituent from Highland Park. His story is tragic. Sadly, because he is an American citizen he has been unable to collect fair reparations for his suffering during the Second World War.

Mr. Princz and his family lived in Europe at the outbreak of World War II. Although United States citizens and civilians at the time, Mr. Princz and his family were arrested as enemy aliens of the German Government in early 1942.

Despite the protests of Mr. Princz's father, the Government of Germany refused to honor the validity of the Princz family's United States passports.

Mr. President, the Princz family were Jewish Americans. Consequently, the Government of Germany refused to return them to the United States although a civilian prisoner exchange program was available through the International Red Cross.

Instead, the Princz family was sent to the Maidanek concentration camp in Poland. Mr. Princz's father, mother, and sister were shipped to Treblinka death camp and exterminated.

Mr. Princz and his two younger brothers were transported by cattle car to Auschwitz to serve as slave laborers. At Auschwitz, Mr. Princz was forced to watch as his two brothers were starved to death while they lay injured in a camp hospital. Mr. Princz was subsequently transferred to a camp in Warsaw and then, by death march, to the Dachau slave labor facility.

In the closing days of the war, Mr. Princz and other slave laborers were selected for extermination by Germany in an effort to destroy incriminating evidence of war crimes. Fortunately, hours before Mr. Princz's scheduled execution, his death train was intercepted and liberated by U.S. Armed Forces personnel.

United States personnel recognized Mr. Princz as an American by the designation "USA" stenciled by the Germans on his concentration camp garb, and he was sent to an American military hospital for immediate treatment.

The actions of the U.S. Army were commendable. They saved Mr. Princz' life. However, because Mr. Princz was given immediate medical treatment, he was never processed through a center for displaced persons. This process would later affect his eligibility to receive reparations for his suffering.

Following his hospitalization, Mr. Princz was permitted to enter then-Communist-occupied Czechoslovakia to search for family members. After determining that he was the sole survivor, Mr. Princz traveled to America.

In the early 1950's, the Federal Republic of Germany established a reparations program for survivors. Mr. Princz' application was rejected because he had not been classified as a "stateless" person or "refugee."

Had he been processed through the center for displaced persons" instead of receiving immediate medical care in a U.S. facility, Mr. Princz would have received this designation. Instead, he has been considered a U.S. national and, therefore, ineligible for fair reparations.

Although the Federal Republic of Germany has provided reparations to thousands of Holocaust survivors, Mr. Princz hasn't received a dime.

Mr. President, it's time for the Federal Republic of Germany to recognize its injustice against Mr. Princz. Mr. Princz has suffered enough. He should receive fair reparations.

This resolution urges the President and the Secretary of State to raise this case with the Federal Republic of Germany. It also urges them to take all appropriate steps necessary to ensure that this matter will be expeditiously resolved and that fair reparations will be provided Mr. Princz.

Mr. President, the Federal Republic of Germany cannot bring back Hugo Princz' family or erase the painful memories of the tragic years he spent in slave labor camps. But, the Federal Republic of Germany can and should acknowledge Mr. Princz's tragic story and provide him with fair reparations which are long overdue.

I urge my colleagues to approve this resolution without delay.

Mr. DURENBERGER. Mr. President, I am pleased that the Foreign Relations Committee has favorably reported Senate Resolution 160, a resolution I introduced which strongly condemns the recent attempted coup d'etat in Burundi and the assassination of its democratically elected president, Melchoir Ndadadye. I would like to thank my colleagues on the committee for taking swift action on this measure, and I urge all of my colleagues to support its passage.

Mr. President, I am no expert on Africa. But throughout my years in the Senate, I have been fortunate enough to form personal relationships with several African leaders. For this reason, I have a special interest in events on this continent.

About a month ago, in the midst of our debate over the United States presence in Somalia, several of us sat down to breakfast with a fairly young man who not long before had been elected President of Burundi in that country's first ever multiparty election. We found him to be committed to national unity, democracy, and economic progress.

At the time, I did not know much about Burundi, and I would guess that some of my colleagues have never even heard of this country. It is a small country, with a history of military rule and ethnic violence. Earlier this year, the people of Burundi made giant strides toward democracy, holding the country's first ever multiparty elections.

Just 2 weeks later, I learned that a military coup was taking place in Burundi, and the President had been killed. Luckily, the coup failed. But as a result of these events, ethnically motivated attacks have ravaged Burundi's countryside and more than one-tenth of the population had fled the country to neighboring Rwanda, Tanzania, and Zaire.

A few days ago, I spoke with University of Minnesota basketball's star center, Ernest Nzigamasabo, who happens to be from Burundi. A member of the minority Tutsi ethnic group in Burundi, Ernest has been in Minnesota for the past 6 years on a student visa—the last 4 years at the university.

Although approximately 700,000 Burundis have fled the country and many members of Ernest's family have been killed, his father refuses to leave. During our conversation, Ernest explained to me the depth of the ethnic conflict in Burundi and his hope that his generation can stop the cycle of conflict.

Mr. President, since the attempted coup, significant positive events have taken place, and I am hopeful that Burundi's problems will be resolved in the near future. The surviving members of the Government have recently come out of hiding and are attempting to follow the provisions of their constitution. And just today, it was reported that the United Nations Security Council has approved sending a fact finding delegation to Burundi.

This is a bipartisan resolution. It does not call for deploying U.S. troops. What it does in a broad sense is let the people of Burundi know that the United States is supportive of their efforts to bring democracy and ethnic reconciliation to their country. It is meant to bolster the hope of people like Ernest and his family.

Mr. President, I would like to thank all of my colleagues who cosponsored this resolution, and I urge its unanimous passage.

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

INDIAN TRIBAL JUSTICE ACT

Mr. FORD. Mr. President, I submit a report of the committee of conference on H.R. 1268 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 1268), a bill to assist the development of tribal judicial systems, and for other purposes. Having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

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

(The conference report is printed in the House proceedings of RECORD.)

Mr. FORD. Mr. President, I ask unanimous consent that the conference report be agreed to, the motion to reconsider laid upon the table, and any statements thereon appear in the RECORD at the appropriate place as if read.

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

So the conference report on H.R. 1268 was agreed to.

THE CONFERENCE REPORT FOR H.R. 1268, THE INDIAN TRIBAL JUSTICE ACT

Mr. MCCAIN. Mr. President, I am pleased that we have finally been able to reach agreement on this legislation. It has been nearly 6 years since the Committee on Indian Affairs began the process of developing and considering legislation to assist Indian tribal governments in the development and operation of justice systems. On the face of it, this effort would seem to be very straight forward. However, it has been fraught with profound disagreements among all interested parties. In the early stages of developing this legislation, we encountered great difficulty in reaching consensus among the tribal governments. At every stage in the process we have had to deal with objections from the Bureau of Indian Affairs. And, as many of my colleagues know, we encountered extreme difficulty in resolving our differences with the House during the last Congress.

I am happy to say today that we have finally resolved all differences and have produced a bill which moves the Federal Government and the Indian tribal governments in the right direction. As is the case in all compromises, this bill does not provide everything which everyone felt was necessary to redress the unmet needs of tribal justice systems. It will provide a basis from which most of the known problems can be resolved.

The conference substitute authorizes $50 million per year for the next 6 years to provide base support funding to tribal justice systems. In addition, $7 million per year is authorized to provide education, training and technical assistance for tribal judicial personnel. The present Branch of Judicial Services in the Bureau of Indian Affairs will be elevated to the Office of Tribal Justice Support, $500,000 per year is authorized for the administrative expenses of the office. This legislation also provides for an annual survey of the needs of tribal justice systems. Tribal judicial conferences are authorized to receive up to $500,000 per year for administrative costs and to enter into contracts under the Indian Self-Determination and Education Assistance Act to provide training, education and technical assistance to the tribal governments which are members of a conference.

We still have before us the task of ensuring that adequate appropriations are made available to carry out this legislation. I was pleased to hear the Bureau of Indian Affairs state in testimony to the Committee on Indian Affairs earlier this year that they intend to request $30 million for Indian justice systems in fiscal year 1995 and to seek funding for a long overdue needs assessment. I call upon President Clinton to include this request in his budget for 1995. I hope that the Appropriations Committee will work closely with us to ensure that these funds are provided.

Mr. President, I want to thank everyone who worked so long and hard to bring this legislation to final passage. As always, we owe a debt of gratitude to the distinguished chairman of the Indian Affairs Committee, Senator INOUYE. Our colleagues in the House, the chairman of the Committee on Natural Resources, Mr. MILLER and the chairman of the Subcommittee on Native Americans, Mr. RICHARDSON have worked very closely with us to resolve the problems which prevented us from reaching agreement in the last Congress. I thank them for their effort and their constructive approach to this legislation. Last, and certainly not least, I want to thank the hundreds of tribal leaders and judges who have worked with us on this legislation. I know that for many of them this legislation falls short of their expectations. I hope that they will continue to work with us over the next several years so that we can have a basis for further progress when we reauthorize this legislation in 1998.

AUTHORIZING PRODUCTION OF SENATE RECORDS

Mr. FORD. Mr. President, on behalf of the majority leader and the Republican leader, I send S. Res. 171 to the desk relating the authorization of production of Senate records and ask unanimous consent that the Senate proceed to its immediate consideration; that the resolution be agreed to, the preamble be agreed to; that the motion to reconsider be laid upon the payable table, and that a statement by the majority leader appear in the appropriate place in the RECORD as if given.

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

So the resolution (S. Res. 171) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 0171

Whereas, the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs has been conducting an investigation of allegations of abuses in the Pell Grant financial assistance program;

Whereas, several law enforcement entities have requested access to records of the Subcommittee's investigation;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolve, That the Chairman and Ranking Minority Member of the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, acting jointly, are authorized to provide, to law enforcement and regulatory entities requesting access, records of the Subcommittee's investigation of alleged abuses in the Pell Grant program.

Mr. MITCHELL. Mr. President, several law enforcement entities have requested access to documents from the files of Permanent Subcommittee on Investigations relating to its investigation into allegations of fraud, waste, abuse, and mismanagement in the Pell Grant Program, which is a Federal student financial assistance program.

In keeping with the Senate's customary practice with regard to similar requests, this resolution would authorize the chairman and ranking minority member of the Subcommittee to provide to these agencies, and other law enforcement and regulatory entities that may make similar requests, Subcommittee records of its investigation into allegations of abuses in the Pell Grant Program.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FORD. Mr. President, if you will bear with me a little bit, I have several executive calendar unanimous consent agreements.

I ask unanimous consent that the Senate proceed to executive session to consider the following nominations:

Calendar Nos. 428, 486, 513, 521, 529, 538, 539, 540, 541, 542, 544, 545, 546, 547, 548, 549, 550, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604 605 606, 607, 608. And all nominations placed on the secretary's desk in the Air Force, Marine Corps and Navy.

I further ask unanimous consent that the nominees be confirmed, en bloc, that any statement appear in the RECORD as if read; that upon confirmation, the motions to reconsider be laid upon the table, en bloc, and that the President be immediately notified of the Senate's actions.

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

The nominations, considered and confirmed, en bloc, are as follows:

FEDERAL COMMUNICATIONS COMMISSION

Reed E. Hundt, of Maryland, to be a Member of the Federal Communications Commission for a term of five years from July 1, 1993.

DEPARTMENT OF JUSTICE

Jo Ann Harris, of New York, to be an Assistant Attorney General.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Harold Varmus, of California, to be Director of the National Institutes of Health.

NATIONAL MEDIATION BOARD

Magdalena G. Jacobsen, of Oregon, to be a Member of the National Mediation Board for the term expiring July 1, 1996.

Robert S. Gelbard, of Washington, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Assistant Secretary of State for International Narcotics Matters, vice Melvyn Levitsky, resigned.

Brian J. Donnelly, of Massachusetts, to be an Alternate Representative of the United States of America to the Forty-eighth Session of the General Assembly of the United Nations.

Stuart George Moldaw, of California, to be an Alternate Representative of the United States of America to the Forty-eighth Session of the General Assembly of the United Nations.

EXECUTIVE OFFICE OF THE PRESIDENT

Jennifer Anne Hillman, of the District of Columbia, for the rank of Ambassador during her tenure of service as Chief Textile Negotiator.

UNITED STATES INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

John Chrystal, of Iowa, to be a Member of the Board of Directors of the Overseas Private Investment Corporation for a term expiring December 17, 1994.

Mark L. Schneider, of California, to be an Assistant Administrator of the Agency for International Development.

George J. Kourpias, of Maryland, to be a Member of the Board of Directors of the Overseas Private Investment Corporation for a term expiring December 17, 1994.

Lottie Lee Shackelford, of Arkansas, to be a Member of the Board of Directors of the Overseas Private Investment Corporation for a term expiring December 17, 1995.

M. Douglas Stafford, of New York, to be an Assistant Administrator of the Agency for International Development. Natsios, resigned.

Larry E. Byrne, of Virginia, to be an Assistant Administrator of the Agency for International Development.

UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY

John David Holum, of South Dakota, to be Director of the United States Arms Control and Disarmament Agency.

INTER-AMERICAN DEVELOPMENT BANK

L. Ronald Scheman, of the District of Columbia, to be United States Executive Director of the Inter-American Development Bank for a term of three years.

INTERNATIONAL MONETARY FUND

Karin Lissakers, of New York, to be United States Executive Director of the International Monetary Fund for a term of two years.

DEPARTMENT OF JUSTICE

John Joseph Kelly, of New Mexico, to be United States Attorney for the District of New Mexico for the term of four years.

Gerald Mann Stern, of California, to be Special Counsel, Financial Institutions Fraud Unit, Department of Justice.

Kendall Brindley Coffey, of Florida, to be United States Attorney for the Southern District of Florida for the term of four years.

Sherry Scheel Matteucci, of Montana, to be United States Attorney for the District of Montana for the term of four years.

Alan D. Bersin, of California, to be United States Attorney for the Southern District of California for the term of four years.

James Burton Burns, of Illinois, to be United States Attorney for the Northern District of Illinois for the term of four years.

Joseph Leslie Famularo, of Kentucky, to be United States Attorney for the Eastern District of Kentucky for the term of four years.

Walter Charles Grace, of Illinois, to be United States Attorney for the Southern District of Illinois for the term of four years.

Loretta Collins Argrett, of Maryland, to be an Assistant Attorney General.

Patrick Michael Patterson, of Florida, to be United States Attorney for the Northern District of Florida for the term of four years.

Katrina Campbell Pflaumer, of Washington, to be United States Attorney for the Western District of Washington for the term of four years.

Charles Joseph Stevens, of California, to be United States Attorney for the Eastern District of California for the term of four years.

Donald Kenneth Stern, of Massachusetts, to be United States Attorney for the District of Massachusetts for the term of four years.

EXECUTIVE OFFICE OF THE PRESIDENT

Steven Kelman, of Massachusetts, to be Administrator for Federal Procurement Policy.

DEPARTMENT OF AGRICULTURE

Anthony A. Williams, of Connecticut, to be Chief Financial Officer, Department of Agriculture.

Grant B. Buntrock, of South Dakota, to be a Member of the Board of Directors of the Commodity Credit Corporation.

Michael V. Dunn, of Iowa, to be Administrator of the Farmers Home Administration, vice La Verne G. Ausman, resigned.

Wally B. Beyer, of North Dakota, to be Administrator of the Rural Electrification Administration for a term of ten years.

COMMODITY FUTURES TRADING COMMISSION

John E. Tull, Jr., of Arkansas, to be a Commissioner of the Commodity Futures Trading Commission for the term expiring April 13, 1998.

Barbara Pedersen Holum, of Maryland, to be a Commissioner of the Commodity Futures Trading Commission for the term expiring April 13, 1997, vice Fowler C. West, resigned.

DEPARTMENT OF DEFENSE

Joe Robert Reeder, of Texas, to be Under Secretary of the Army.

Togo Dennis West, Jr., of the District of Columbia, to be Secretary of the Army.

Richard Danzig, of the District of Columbia, to be Under Secretary of the Navy.

AIR FORCE

The following named officer for appointment in the United States Air Force to the grade of brigadier general under the provisions of title 10, United States Code, section 624:

The following named officer for appointment in the Reserve of the Air Force, to the grade indicated, under the provisions of Sections 593, 8218, 8351, and 8374, Title 10, United States Code:

To be major general

Brig. Gen. John R. Haack, xxx-xx-xxxx Air National Guard of the United States

The following named officer for appointment to the grade of lieutenant general on the retired list pursuant to the provisions to Title 10, United States Code, section 1370:

To be lieutenant general

Lt. Gen. Eugene H. Fischer, xxx-xx-xxxx, United States Air Force

The following named officer for appointment to the grade of lieutenant general while assigned to a position of importance and responsibility under Title 10, United States Code, section 601:

To be lieutenant general

Majo. Gen. Marcus A. Anderson, 533–36–8770, United States Air Force

ARMY

The following named officer for appointment to the grade of lieutenant general while assigned to a position of importance and responsibility under Title 10, United States Code, Section 601(a):

To be lieutenant general

Maj. Gen. Robert L. Ord, III, xxx-xx-xxxx, United States Army

The following-named Medical Corps officer for appointment in the Regular Army of the United States to the grade indicated under the provisions of Title 10, United States Code, Section 611(a) and 624(c):

To be permanent brigadier general

Col. Vernon C. Spaulding, xxx-xx-xxxx, United States Army

The following named officer for appointment to the grade of lieutenant general while assigned to a position of importance and responsibility under title 10, United States Code, Section 601(a):

To be lieutenant general

Maj. Gen. Malcolm R. O'Neill, xxx-xx-xxxx, United States Army

The following named officer for appointment to the grade of general while assigned to a position of importance and responsibility under title 10, United States Code, Section 601(a):

To be general

Lt. Gen. Leon E. Salomon, xxx-xx-xxxx, United States Army

The following named officer to be placed on the retired list in the grade indicated under the provisions of Title 10, United States Code, Section 1370:

To be lieutenant general

Lt. Gen. Wilson A. Shoffner, xxx-xx-xxxx, United States Army

The following named officer to be place on the retired list in the grade indicated under the provisions of Title 10, United States Code, Section 1370:

To be lieutenant general

Lt. Gen. Teddy G. Allen, xxx-xx-xxxx United States Army

The following United States Army National Guard officers for promotion to the grades indicated in the Reserve of the Army

of the United States, under the provisions of Title 10, United States Code, sections 593(a), 3385 and 3392:

To be major general

Brig. Gen. Robert J. Byrne, xxx-xx-xxxx
Brig. Gen. Michael W. Ryan, xxx-xx-xxxx
Brig. Gen. William F. Stewart, xxx-xx-xxxx
Brig. Gen. George K. Hastings, xxx-xx-xxxx

To be brigadier general

Col. Frank A. Catalano, Jr., xxx-xx-xxxx
Col. Lawrence E. Gillespie, Sr., xxx-xx-xxxx
Col. Joel W. Norman, xxx-xx-xxxx
Col. Salvador R. Recio-Sanchez, xxx-xx-xxxx
Col. Eugene W. Schmidt, xxx-xx-xxxx
Col. John E. Stevens, xxx-xx-xxxx
Col. Francis L. Briganti, xxx-xx-xxxx
Col. Emilio Diaz-Colon, xxx-xx-xxxx
Col. John E. Prendegrast, xxx-xx-xxxx
Col. Juan F. Rosado-Ortiz, xxx-xx-xxxx
Col. Murrel J. Bowen, Jr., xxx-xx-xxxx
Col. Fletcher C. Coker, Jr., xxx-xx-xxxx
Col. Rodney C. Johnson, xxx-xx-xxxx
Col. Thomas C. Johnson, xxx-xx-xxxx
Col. Guido J. Portante, Jr., xxx-xx-xxxx
Col. John C. Rowland, xxx-xx-xxxx
Col. Thomas E. Whitecotton, III, xxx-xx-xxxx...
Col. Edmund C. Zysk, xxx-xx-xxxx
Col. Francis A. Laden, xxx-xx-xxxx
Col. Sigurd E. Murphy, Jr., xxx-xx-xxxx
Col. Murray G. Sagsveen, xxx-xx-xxxx

NAVY

The following-named captain in the staff corps of the United States Navy for promotion to the permanent grade of rear admiral (lower half), pursuant to Title 10, United States Code, section 624, subject to qualifications therefore as provided by law:

MEDICAL CORPS

To be rear admiral (lower half)

Capt. Dennis Irwin Wright, xxx-xx-xxxx, U.S. Navy

The following-named rear admiral (lower half) in the competitive category of special duty officer (intelligence) of the Navy for promotion to the permanent grade of rear admiral, pursuant to Title 10, United States Code, section 624, subject to qualifications therefor as provided by Law:

SPECIAL DUTY OFFICER (INTELLIGENCE)

To be rear admiral

Rear Adm. (lh) Michael William Cramer, U.S. Navy, xxx-xx-xxxx

The following named officer for appointment to the grade of vice admiral while assigned to a position of importance and responsibility under Title 10, United States Code, Section 601:

To be vice admiral

Rear Adm. Joseph W. Prueher, U.S. Navy, xxx-xx-xxxx

NOMINATIONS PLACED ON THE SECRETARY'S DESK

IN THE AIR FORCE, FOREIGN SERVICE, MARINE CORPS, NAVY

Air Force nominations beginning Robert D. Blevins, and ending Michael J. Yaguchi, which nominations were received by the Senate and appeared in the Congressional Record of November 4, 1993

Foreign Service nominations beginning Frank Almaguer, and ending James R. Dempsey, which nominations were received by the Senate and appeared in the Congressional Record of October 5, 1993

Foreign Service nominations beginning Curtis Warren Kamman, and ending Thomas W. Yun, M.d., which nominations were received by the Senate and appeared in the Congressional Record of October 5, 1993

Foreign Service nominations beginning Bruno J. Cornelio, and ending Richard R. Ries, which nominations were received by the Senate and appeared in the Congressional Record of October 21, 1993

Marine Corps nominations beginning Harald Aagaard, and ending Jeffery J. Tlapa, which nominations were received by the Senate and appeared in the Congressional Record of November 4, 1993

Navy nominations beginning Robert K. Takesuye, and ending Jason Scarlett, which nominations were received by the Senate and appeared in the Congressional Record of November 4, 1993

Navy nominations beginning John D. Sowers, and ending Gary W. Caille, which nominations were received by the Senate and appeared in the Congressional Record of November 4, 1993

Navy nominations beginning Ricky D. Allen, and ending Peter G. Wish, which nominations were received by the Senate and appeared in the Congressional Record of November 4, 1993

Navy nominations beginning Timothy F. Dolan, and ending Christopher A. Ursino, which nominations were received by the Senate and appeared in the Congressional Record of November 4, 1993

Navy nominations beginning Christopher J. Adams, and ending Edmund L. Zukowski, which nominations were received by the Senate and appeared in the Congressional Record of November 4, 1993

Navy nominations beginning James L. Basford, and ending Donald E. Wyatt, which nominations were received by the Senate and appeared in the Congressional Record of November 4, 1993

Navy nominations beginning Scott M. Allen, and ending Uriah E. Zachary, which nominations were received by the Senate and appeared in the Congressional Record of November 4, 1993

Navy nominations beginning Aaron M. Abarbanell, and ending Daryk E. Zirkle, which nominations were received by the Senate and appeared in the Congressional Record of November 4, 1993

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to consider the following nomination reported today by the Committee on Energy and Natural Resources. Christine Ervin, to be an Assistant Secretary of Energy.

I further ask unanimous consent that the nominee be confirmed, that any statements appear in the Record as if read, that the motion to reconsider be laid upon the table and that the President be immediately notified of the Senate's action.

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

The nomination was considered and confirmed, as follows:

DEPARTMENT OF ENERGY

Christine Ervin, to be an Assistant Secretary of Energy.

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to consider the following nomination reported by the Committee on Labor and Human Resources on November 17, and reported today by the Committee on Veterans Affairs: Preston M. Taylor, Jr., to be Assistant Secretary of Labor for Veterans' Employment and Training.

I further ask unanimous consent that the nominee be confirmed, that any statements appear in the Record as if read, that upon confirmation, the motion to reconsider be laid upon the table, that the President be immediately notified of the Senate's action.

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

The nomination was considered and confirmed, as follows:

DEPARTMENT OF LABOR

Preston M. Taylor, Jr., to be an Assistant Secretary of Labor for Veterans' Employment and Training.

STATEMENT ON THE NOMINATION OF PRESTON M. TAYLOR

Mr. ROCKEFELLER. Mr. President, as chairman of the Committee on Veterans' Affairs, I am pleased to recommend to the Senate the confirmation of Preston M. Taylor to be the Assistant Secretary of Labor for Veterans' Employment and Training.

Preston Taylor is an outspoken, dedicated individual, and I am confident that he will use his skills and talents to play a key role alongside the Secretary of Labor, Bob Reich, in bolstering the leadership and motivation of that Department's effort to provide America's veterans with quality employment and training opportunities.

The committee held a hearing on November 19, 1993, at which Mr. Taylor presented candid testimony to Committee members. He also responded to prehearing questions and completed the Committee's Questionnaire for Presidential Nominees. After reviewing all these materials as well as the FBI report, I am satisfied that Mr. Taylor is well-suited to serve in the position for which he has been nominated. On November 19, 1993, our committee met to consider Mr. Taylor's nomination and voted unanimously to recommend his confirmation to the full Senate.

Mr. President, I would like to speak briefly about this nominee.

Born in Mobile, AL, Preston Taylor received his undergraduate degree from Pepperdine University in 1978, and his master's degree in human resource management from Central Michigan University in 1987.

He has a distinguished military career, including 6 years of active duty with the Air Force and 33 years with the Air National Guard, where he rose to the rank of Brigadier General. He has extensive experience with human resource management and administrative matters, and presently serves as the Deputy Adjutant General for the State of New Jersey's Department of Military and Veterans' Affairs.

President Clinton has shown great confidence in Preston Taylor's work and an appreciation for his clear commitment to veterans. I share in this confidence, and I am pleased that the Veterans' Employment and Training

Service will benefit from the expertise he clearly brings with him.

I have no doubt that Mr. Taylor's unique and valuable perspectives regarding the relationship between State and Federal offices will be an asset to the position of Assistant Secretary of Labor for Veterans' Employment and Training. Such perspectives should assist him in building a closer partnership focused on sharing Federal and State-level responsibilities and providing services more effectively to veterans.

Mr. President, in conclusion, I reiterate my sense of satisfaction that Preston Taylor is well-suited to take on the challenges of the position for which he has been nominated, and I urge my colleagues to give him their unanimous support.

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to consider the following nomination reported by the Committee on Labor and Human Resources on November 17, and reported today by the Committee on Finance: Olivia A. Golden, to be Commissioner on Children, Youth, and Families, Department of Health and Human Services.

I further ask unanimous consent that the nominee be confirmed, that any statements appear in the Record as if read, that upon confirmation, the motion to reconsider be laid upon the table, that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

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

The nomination was considered and confirmed, as follows:

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Olivia A. Golden, to be Commissioner on Children, Youth, and Families, Department of Health and Human Services.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to the consideration of legislative business.

BRADY HANDGUN VIOLENCE PREVENTION ACT—H.R. 1025

Mr. FORD. Mr. President, under rule XIV, I understand the Senate has received from the House H.R. 1025, the Brady Handgun Violence Prevention Act.

On behalf of Senator BIDEN, I ask that the bill be read for the first time.

The PRESIDING OFFICER. The clerk will read the bill.

The legislative clerk read as follows:

A bill (H.R. 1025) to provide for a waiting period before the purchase of a handgun, and for the establishment of a national instant criminal background check system to be contacted by firearms dealers before the transfer of any firearm.

Mr. FORD. Mr. President, I now ask for its second reading.

Mr. BROWN. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The bill will be read for the second time on the next legislative day.

ORDERS FOR SATURDAY, NOVEMBER 20, 1993

Mr. FORD. Mr. President, on behalf of the majority leader, I ask unanimous consent that when the Senate completes its business, it stand in recess until 10:15 a.m., Saturday, November 20, that following the prayer, the Journal of proceedings be deemed approved to date, and the time for the 2 leaders reserved for their use later in the day; and that the Senate then resume consideration of Calendar No. 310, the North American Free Trade Agreement.

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

RECESS UNTIL SATURDAY, NOVEMBER 20, 1993, AT 10:15 A.M.

Mr. FORD. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in recess as previously ordered.

There being no objection, the Senate, at 12:17 a.m., recessed until Saturday, November 20, 1993, at 10:15 a.m.

NOMINATIONS

Executive nominations received by the Senate November 19, 1993:

FEDERAL AVIATION ADMINISTRATION

LINDA HALL DASCHLE, OF SOUTH DAKOTA, TO BE DEPUTY ADMINISTRATOR OF THE FEDERAL AVIATION ADMINISTRATION, VICE BARRY LAMBERT HARRIS, RESIGNED.

THE JUDICIARY

MICHAEL A. PONSOR, OF MASSACHUSETTS, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MASSACHUSETTS VICE FRANK H. FREEDMAN, RETIRED.

MICHAEL J. DAVIS, OF MINNESOTA, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MINNESOTA VICE HARRY H. MACLAUGHLIN, RETIRED.

LESLEY BROOKS WELLS, OF OHIO, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO VICE JOHN M. MANOS, RETIRED.

ANCER L. HAGGERTY, OF OREGON, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF OREGON VICE OWEN M. PANNER, RETIRED.

MARJORIE O. RENDELL, OF PENNSYLVANIA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA, VICE LOUIS C. BECHTLE, RETIRED.

SAMUEL FREDERICK BIERY, JR., OF TEXAS, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS VICE A NEW POSITION CREATED BY PUBLIC LAW 101–650, APPROVED DECEMBER 1, 1990.

W. ROYAL FURGESON, JR., OF TEXAS, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS VICE A NEW POSITION CREATED BY PUBLIC LAW 101–650, APPROVED DECEMBER 1, 1990.

ORLANDO L. GARCIA, OF TEXAS, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS VICE EMILIO M. GARZA, ELEVATED.

JOHN H. HANNAH, JR., OF TEXAS, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF TEXAS VICE A NEW POSITION CREATED BY PUBLIC LAW 101–650, APPROVED DECEMBER 1, 1990.

JANIS GRAHAM JACK, OF TEXAS, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS VICE A NEW POSITION CREATED BY PUBLIC LAW 101–650, APPROVED DECEMBER 1, 1990.

FRANKLIN D. BURGESS, OF WASHINGTON, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WASHINGTON VICE JACK E. TANNER, RETIRED.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

SHIRLEY SACHI SAGAWA, OF VIRGINIA, TO BE A MANAGING DIRECTOR OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE. (NEW POSITION.)

POSTAL RATE COMMISSION

GEORGE W. HALEY, OF MARYLAND, TO BE A COMMISSIONER OF THE POSTAL RATE COMMISSION FOR THE TERM EXPIRING OCTOBER 14, 1998. (REAPPOINTMENT)

DEPARTMENT OF JUSTICE

REBECCA ALINE BETTS, OF WEST VIRGINIA, TO BE U.S. ATTORNEY FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA FOR THE TERM OF 4 YEARS VICE MICHAEL W. CAREY, RESIGNED.

ROBERT CHARLES BUNDY, OF ALASKA, TO BE U.S. ATTORNEY FOR THE DISTRICT OF ALASKA FOR THE TERM OF 4 YEARS VICE MICHAEL R. SPAAN, RESIGNED.

LARRY HERBERT COLLETON, OF FLORIDA, TO BE U.S. ATTORNEY FOR THE MIDDLE DISTRICT OF FLORIDA FOR THE TERM OF 4 YEARS VICE ROBERT W. GENZMAN, RESIGNED.

HARRY DONIVAL DIXON, JR., OF GEORGIA, TO BE U.S. ATTORNEY FOR THE SOUTHERN DISTRICT OF GEORGIA FOR THE TERM OF 4 YEARS VICE HINTON R. PIERCE, RESIGNED.

LEZIN JOSEPH HYMEL, JR., OF LOUISIANA, TO BE U.S. ATTORNEY FOR THE MIDDLE DISTRICT OF LOUISIANA FOR THE TERM OF 4 YEARS VICE PAUL RAYMOND LAMONICA.

DAVID LEE LILLEHAUG, OF MINNESOTA, TO BE U.S. ATTORNEY FOR THE DISTRICT OF MINNESOTA FOR THE TERM OF 4 YEARS VICE THOMAS B. HEFFELFINGER, RESIGNED.

KENNETH RAY ODEN, OF TEXAS, TO BE U.S. ATTORNEY FOR THE WESTERN DISTRICT OF TEXAS FOR THE TERM OF 4 YEARS VICE RONALD F. EDERER, RESIGNED.

DANIEL J. HORGAN, OF FLORIDA, TO BE U.S. MARSHAL FOR THE SOUTHERN DISTRICT OF FLORIDA FOR THE TERM OF 4 YEARS. (REAPPOINTMENT)

PATRICK J. WILKERSON, OF OKLAHOMA, TO BE U.S. MARSHAL FOR THE WESTERN DISTRICT OF OKLAHOMA FOR THE TERM OF 4 YEARS VICE STUART E. EARNEST.

JAMES LAMAR WIGGINS, OF GEORGIA, TO BE U.S. ATTORNEY FOR THE MIDDLE DISTRICT OF GEORGIA FOR THE TERM OF 4 YEARS VICE EDGAR W. ENNIS, JR., RESIGNED.

PAUL MICHAEL GAGNON, OF NEW HAMPSHIRE, TO BE U.S. ATTORNEY FOR THE DISTRICT OF NEW HAMPSHIRE FOR THE TERM OF 4 YEARS VICE JEFFREY R. HOWARD, RESIGNED.

MARK TIMOTHY CALLOWAY, OF NORTH CAROLINA, TO BE U.S. ATTORNEY FOR THE WESTERN DISTRICT OF NORTH CAROLINA FOR THE TERM OF 4 YEARS VICE THOMAS J. ASHCRAFT, RESIGNED.

WALTER CLINTON HOLTON, JR., OF NORTH CAROLINA, TO BE U.S. ATTORNEY FOR THE MIDDLE DISTRICT OF NORTH CAROLINA FOR THE TERM OF 4 YEARS VICE ROBERT H. EDMUNDS, RESIGNED.

KRISTINE OLSON ROGERS, OF OREGON, TO BE U.S. ATTORNEY FOR THE DISTRICT OF OREGON FOR THE TERM OF 4 YEARS VICE CHARLES H. TURNER, RESIGNED.

JAMES DOUGLAS, JR., OF MICHIGAN, TO BE U.S. MARSHAL FOR THE EASTERN DISTRICT OF MICHIGAN FOR THE TERM OF 4 YEARS VICE JAMES Y. STEWART.

WILLIAM STEPHEN STRIZICH, OF MONTANA, TO BE U.S. MARSHAL FOR THE DISTRICT OF MONTANA FOR THE TERM OF 4 YEARS VICE LEO A. GIACOMETTO.

TERRENCE EDWARD DELANEY, OF ILLINOIS, TO BE U.S. MARSHAL FOR THE SOUTHERN DISTRICT OF ILLINOIS FOR THE TERM OF 4 YEARS VICE DONALD R. BROOKSHIER.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

MARY LUCILLE JORDAN, OF MARYLAND, TO BE A MEMBER OF THE FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING AUGUST 30, 1996, VICE FORD BARNEY FORD.

DEPARTMENT OF STATE

ROBERT H. PELLETREAU, JR., OF CONNECTICUT, TO BE AN ASSISTANT SECRETARY OF STATE, VICE EDWARD P. DJEREJIAN.

IN THE ARMY

THE FOLLOWING NAMED OFFICERS, ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADE INDICATED IN THE UNITED STATES ARMY IN ACCORDANCE WITH SECTIONS 624 AND 626, TITLE 10 UNITED STATES CODE. THE OFFICER IDENTIFIED WITH AN ASTERISK IS ALSO BEING NOMINATED FOR APPOINTMENT IN THE REGULAR ARMY IN ACCORDANCE WITH SECTION 531, TITLE 10, UNITED STATES CODE.

ARMY

To be lieutenant colonel

NOEL B. BERGERON, XX...

JUDGE ADVOCATE GENERAL

To be lieutenant colonel

RICHARD P. LAVERDURE, XX...

ARMY

To be major

*SHEILA J. THURBER, XX...

THE FOLLOWING NAMED OFFICES FOR PROMOTION IN THE RESERVE OF THE ARMY, UNDER THE PROVISIONS OF TITLE 190, U.S.C., SECITONS 593(A) AND 3383:

ARMY PROMOTION LIST

To be colonel

ROGER H. BLYTHE, xxx-xx-x...
JAMES L. CLEMENT, xxx-xx-x...
GARY W. DAVIS, xxx-xx-x...
BRANDT C. DOWNEY, xxx-xx-x...
MICHAEL HENRYSON, xxx-xx-x...
RANDALL KOPITZKE, xxx-xx-x...
RONALD J. NEWMAN, xxx-xx-x...
RICHARD T. REHN, xxx-xx-x...
W.C. WEATHERHEAD, xxx-xx-x...

CHAPLAIN CORPS

To be colonel

TIMOTHY J. O'BRIEN, xxx-xx-x...
RAYMOND J. OGE, xxx-xx-x...
SHERMAN R. REED, xxx-xx-x...

MEDICAL SERVICE CORPS

To be colonel

GARY J. MCCRIGHT, xxx-xx-x...

ARMY PROMOTION LIST

To be lieutenant colonel

WARREN. BEYER, xxx-xx-x...
GERALD ELLIS, xxx-xx-x...
HAROLD GLANVILLE, xxx-xx-x...
DANIEL F. HENNESSY, xxx-xx-x...
RICHARD INDRIERI, xxx-xx-x...
JOSEPH MAEZ, xxx-xx-x...
KENNETH B. ROSS, xxx-xx-x...
STEPHEN J. STOMBER, xxx-xx-x...
RUSSELL O. TATE, xxx-xx-x...
DAVID R. TUTHILL, xxx-xx-x...
KEITH R. WINGATE, xxx-xx-x...

CHAPLAIN CORPS

To be lieutenant colonel

JAMES L. HOKE, xxx-xx-x...

ARMY NURSE CORPS

To be lieutenant colonel

LEILA E. CREEL, xxx-xx-x...

MEDICAL CORPS

To be lieutenant colonel

JOHN L. BLACK, xxx-xx-x...

MEDICAL SERVICE CORPS

To be lieutenant colonel

MANUEL DOMINGUEZ, xxx-xx-x...
PAMELA D. PARKER, xxx-xx-x...

THE FOLLOWING NAMED OFFICERS FOR PROMOTION IN THE RESERVE OF THE ARMY, UNDER THE PROVISIONS OF TITLE 10, U.S.C., SECTIONS 593(A), 3370 AND 1552:

ARMY NURSE CORPS

To be colonel

RODNEY C. LESTER, xxx-xx-x...

THE FOLLOWING NAMED OFFICERS FOR PROMOTION IN THE RESERVE OF THE ARMY, UNDER THE PROVISIONS OF TITLE 10, U.S.C., SECTIONS 593(A), 3366 AND 1552:

ARMY PROMOTION LIST

To be lieutenant colonel

DAVID M. KLING, xxx-xx-x...
JOHN R. PHILLIPS, xxx-xx-x...
ALAN L. VANLOENEN, xxx-xx-x...

ARMY NURSE CORPS

To be lieutenant colonel

MAR CABRERA-MUNOZ, xxx-xx-x...
KAREN A. SMELTZER, xxx-xx-x...

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE REGULAR ARMY OF THE UNITED STATES, IN THEIR ACTIVE DUTY BRANCH AND GRADE, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 531, 532, AND 533:

ARMY NURSE CORPS

To be major

MARILYN H. BROOKS, xxx-xx-x...

MEDICAL SERVICE CORPS

To be majors

ROBERT S. BOROWSKI, xxx-xx-x...
LISANNE G. GROSS, xxx-xx-x...
THOMAS M. LOGAN, xxx-xx-x...
DENNIS R. PAYNE, xxx-xx-x...

To be captains

MUSTAPHA DEBBOUN, xxx-xx-x...
IRNE L. RICHARDSON, xxx-xx-x...
TODD W. WALKER, xxx-xx-x...
ROBERT E. WOOLDRIDGE, xxx-xx-x...
ALAN M. YAMAMOTO, xxx-xx-x...

To be first lieutenants

REX A. BERGGREN, xxx-xx-x...
S. LANCASTER-HALL, xxx-xx-x...
BRIAN M. SOLES, xxx-xx-x...

To be second lieutenant

STEPEHEN A. BARNES, xxx-xx-x...

VETERINARY CORPS

To be captains

HOWARD N. LOCKWOOD, xxx-xx-x...
ROBERT R. THOMPSON, xxx-xx-x...
N. VINCENT-JOHNSON, xxx-xx-x...
ANDREW C. WILKINSON, xxx-xx-x...

MEDICAL SPECIALIST CORPS

To be captain

ROBIN C. RICHARDSON, xxx-xx-x...

MEDICAL CORPS

To be colonels

RICHARD K. BACHMAN, xxx-xx-x...
DAVID B. CRANDALL, xxx-xx-x...
GERALD D. EVANS, xxx-xx-x...
DONALD R. MOFFITT, xxx-xx-x...
CHARLES T. THORNSVARD, xxx-xx-x...
CLYDE M. WEAVER, xxx-xx-x...

To be lieutenant colonels

WILLIAM R. BYRNE, xxx-xx-x...
HERACLIO F. CASTRO, xxx-xx-x...
VIRGIL T. DEAL, JR., xxx-xx-x...
STEVEN A. GREENWELL, xxx-xx-x...
MARY A. MCAFEE, xxx-xx-x...
MICHAEL A. NOCE, xxx-xx-x...
WILLIAM R. WILSON, xxx-xx-x...

To be majors

DAVID M. CHENEY, xxx-xx-x...
JOHN S. CROWLEY, xxx-xx-x...

To be captains

JOHN CAMPBELL, xxx-xx-x...
JANIS K. CHANG, xxx-xx-x...

DENTAL CORPS

To be lieutenant colonels

MICHAEL H. CHEMA, xxx-xx-x...
LINDA L. SMITH, xxx-xx-x...

To be major

ETHEL M. LARUE, xxx-xx-x...

To be captains

PAUL L. COREN, xxx-xx-x...
CORNELIUS C. LEHAN, xxx-xx-x...

THE FOLLOWING NAMED RESERVE OFFICERS' TRAINING CORPS CADETS FOR APPOINTMENT IN THE REGULAR ARMY OF THE UNITED STATES, IN THE GRADE OF SECOND LIEUTENANT, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 531, 532, AND 533:

CARL A. BROSKY, xxx-xx-x...
CASSANDRA A. BURNS, xxx-xx-x...
TRENT C. JEFFERIES, xxx-xx-xx...
LESLIE L. LEWIS, xxx-xx-x...
STEPHEN C. LINTHWAITE, xxx-xx-x...
JEFFREY J. SHAFER, xxx-xx-xx...

THE FOLLOWING NAMED DISTINGUISHED HONOR GRADUATES FROM THE OFFICER CANDIDATE SCHOOL FOR APPOINTMENT IN THE REGULAR ARMY OF THE UNITED STATES, IN THE GRADE OF SECOND LIEUTENANT, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 531, 532, AND 533:

THOMAS E. HANSON, xxx-xx-x...
DENNIS S. HEANEY, xxx-xx-x...
SUZANNE K. HECKENBACH, xxx-xx-x...
FRANK J. STANCO, JR., xxx-xx-x...
DAVID W. WHITMIRE, xxx-xx-x...

IN THE NAVY

THE FOLLOWING NAMED NAVAL ACADEMY MIDSHIPMEN TO BE APPOINTED PERMANENT ENSIGN IN THE LINE OR STAFF CORPS OF THE U.S. NAVY, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 531:

ANTHONY M. ELLIS
MICHAEL D. HASS
STEVE L. PALMER
EDRICKE L. PEYTON

THE FOLLOWING NAMED U.S. NAVAL RESERVE OFFICERS TO BE APPOINTED PERMANENT ENSIGN IN THE LINE OF THE U.S. NAVY, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 531:

DAVID R. APPEL
GEOFFREY L. GERBER
JONATHAN N. HENRY
CHRISTOPHER L. LEGRAND
CHRISTOPHER S. MILES

THE FOLLOWING NAMED DISTINGUISHED NAVAL GRADUATES TO BE APPOINTED PERMANENT ENSIGN IN THE LINE OR STAFF CORPS OF THE U.S. NAVY, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 531:

ERIC R. FEDELE
JEFFREY A. GUTHRIE
PERRY L. HERRICK
BRANDON A. LARSON
HARRIS S. ROSE
CHARLES L. SHEPARD
TROY P. SPILLMAN
JOSEPH H. WILKINSON

THE FOLLOWING NAMED MEDICAL COLLEGE GRADUATES TO BE APPOINTED PERMANENT COMMANDER IN THE MEDICAL CORPS OF THE U.S. NAVAL RESERVE, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 593:

FRANK A. CHAPMAN
JOHN M. STONE

THE FOLLOWING U.S. NAVY OFFICER TO BE APPOINTED PERMANENT COMMANDER IN THE MEDICAL CORPS OF THE U.S. NAVAL RESERVE, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 593:

RICK S. WEISSER

THE FOLLOWING U.S. NAVY OFFICER TO BE APPOINTED PERMANENT COMMANDER IN THE DENTAL CORPS OF THE U.S. NAVAL RESERVE, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 593:

LELAND S. BLOUGH

THE FOLLOWING U.S. NAVY OFFICER TO BE APPOINTED PERMANENT COMMANDER IN THE MEDICAL SERVICE CORPS OF THE U.S. NAVAL RESERVE, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 593:

JAMES A. UNSEN

THE FOLLOWING NAMED U.S. NAVY OFFICERS TO BE APPOINTED PERMANENT COMMANDER IN THE CIVIL ENGINEER CORPS OF THE U.S. NAVAL RESERVE, PURSUANT TO TITLE 10. UNITED STATES CODE, SECTION 593:

WALTER D. DEKIN
TIMOTHY K. EQUELS

THE FOLLOWING NAMED U.S. NAVY OFFICERS TO BE APPOINTED PERMANENT COMMANDER IN THE LINE OF THE U.S. NAVAL RESERVE, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 593:

JILL A. LEARN
STEPHEN R. LUOMA
PAULETTE R. NESHIEM

THE FOLLOWING NAMED DISTINGUISHED NAVAL GRADUATES TO BE APPOINTED PERMANENT ENSIGN IN THE LINE OR STAFF CORPS OF THE U.S. NAVY, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 531:

THOMAS D. BARBER
JEFFREY D. BROOKS
PHILLIP Z. CLAY
GALEN R. HARTMAN
ERIK W. JOHNSON
PATRICIA A. HOSKINSON
BRETT S. MARTIN
SCOTT E. MEDLIN
TABB B. STRINGER
BRIAN W. SULLIVAN
CHARLES C. WILLIAMS

THE FOLLOWING U.S. NAVY OFFICER TO BE APPOINTED PERMANENT LIEUTENANT IN THE JUDGE ADVOCATE GENERAL CORPS OF THE U.S. NAVY, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 531.

MATTHEW C. DOLAN

THE FOLLOWING LIEUTENANT COLONEL, USAFR, TO BE APPOINTED PERMANENT COMMANDER IN THE MEDICAL CORPS OF THE U.S. NAVAL RESERVE, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTIONS 593 AND 716.

ALAN R. ROWLEY

THE FOLLOWING FORMER U.S. NAVAL RESERVE OFFICER TO BE APPOINTED PERMANENT COMMANDER IN THE MEDICAL CORPS OF THE U.S. NAVAL RESERVE, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 593.

MARSHALL I. ABEL

THE FOLLOWING NAMED U.S. NAVY OFFICERS TO BE APPOINTED PERMANENT COMMANDER IN THE MEDICAL CORPS OF THE U.S. NAVAL RESERVE, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 593.

GLENN M. AMUNDSON
CYNTHIA G. DAVIS
RICARDO B. EUSEBIO
DENNIS A. WILSON

THE FOLLOWING NAMED U.S. NAVAL RESERVE OFFICERS TO BE APPOINTED PERMANENT ENSIGN IN THE LINE OR STAFF CORPS OF THE U.S. NAVY, PURSUANT TO TITLE 10, UNTIED STATES CODE, SECTION 531:

MARK R. ASUNCION
THOMAS P. BASTOW
JOHN J. BOVATSEK
BARNABY D. BULLARD
FRANK E. DESIMONE
ROBERT A. EIKHOFF
ROBERT C. FRENZEL
DAVID C. GEORGE
ALEXANDER GILSON
TIMMY A. GOTTFRIED
THOMAS D. HACKER
MICHAEL D. HAGGERTY
MARK E. JOHNSON
PHILLIP A. KAHRL
ROBERT R. KENYON
JEFFERY G. LINVILLE
MICHAEL C. LORUSSO
SALVATORE M. MAIDA, JR.
LETITIA B. ROBINSON
DOUGLAS R. SCHELB
RICHARD A. SIENICKI
BRIAN D. VANOSS
KY N. VU
WILLIE V. WRIGHT

THE FOLLOWING NAMED U.S. NAVAL RESERVE OFFICERS, WHO ARE IN THE NAVY COMMISSIONING PROGRAM TO BE APPOINTED PERMANENT ENSIGN IN THE LINE OR STAFF CORPS OF THE U.S. NAVY, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 531.

JAMES F. BLAKELY
JAMES M. COLLINS
DINO S. DELEO
JOHN W. FOY
GENE M. GUTTROMSON
STEVEN R. HOEM
RICHARD W. KOENING
WILBERT A. PEDRAZA
PAUL J. STEINBRENNER
RICHARD F. WEBB
JAMES H. ZIEGLER

THE FOLLOWING DISTINGUISHED NAVAL GRAUDATE TO BE APPOINTED PERMANENT ENSIGN IN THE LINE OF

THE U.S. NAVY, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 531.

PATRICK L. PERRY

THE FOLLOWING MEDICAL COLLEGE GRADUATE TO BE APPOINTED PERMANENT COMMANDER IN THE MEDICAL CORPS OF THE U.S. NAVAL RESERVE, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 593.

DAVID R. DAHLENBURG

THE FOLLOWING U.S. NAVY OFFICER TO BE APPOINTED PERMANENT COMMANDER IN THE DENTAL CORPS OF THE U.S. NAVAL RESERVE, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 593.

TERRENCE L. ALLEMANG

THE FOLLOWING U.S. NAVY OFFICER TO BE APPOINTED PERMANENT COMMANDER IN THE MEDICAL CORPS OF THE U.S. NAVAL RESERVE, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 593.

THOMAS G. ANDERSON, JR.

THE FOLLOWING U.S. NAVY OFFICER TO BE APPOINTED PERMANENT COMMANDER IN THE SUPPLY CORPS OF THE U.S. NAVAL RESERVE, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 593.

GARY W. CORDERMAN

THE FOLLOWING NAMED U.S. NAVY OFFICERS TO BE APPOINTED PERMANENT COMMANDER IN THE LINE OF THE U.S. NAVAL RESERVE, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 593:

CONINGSBY E. BURDON, JR.	F. SEAN GORMAN
KATHERIN S. DERIE	DAVID V. HUTSON
MARGARET R. EARLE	JOHN H. LANE, III
DON A. FRASIER, JR.	JANE D. WALSH

Communications Satellite Corporation

PETER S. KNIGHT, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE COMMUNICATIONS SATELLITE CORPORATION UNTIL THE DATE OF THE ANNUAL MEETING OF THE CORPORATION IN 1996, VICE JAMES B. EDWARDS.

CONFIRMATION

Executive nomination confirmed by the Senate November 19, 1993:

DEPARTMENT OF JUSTICE

JANET ANN NAPOLITANO, OF ARIZONA, TO BE U.S. ATTORNEY FOR THE DISTRICT OF ARIZONA FOR THE TERM OF 4 YEARS.

Executive nominations confirmed by the Senate November 20, 1993:

FEDERAL COMMUNICATIONS COMMISSION

REED E. HUNDT, OF MARYLAND, TO BE A MEMBER OF THE FEDERAL COMMUNICATIONS COMMISSION FOR A TERM OF 5 YEARS FROM JULY 1, 1993.

EXECUTIVE OFFICE OF THE PRESIDENT

STEVEN KELMAN, OF MASSACHUSETTS, TO BE ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY.

JENNIFER ANNE HILLMAN, OF THE DISTRICT OF COLUMBIA, FOR THE RANK OF AMBASSADOR DURING HER TENURE OF SERVICE AS CHIEF TEXTILE NEGOTIATOR.

U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

JOHN CHRYSTAL, OF IOWA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION FOR A TERM EXPIRING DECEMBER 17, 1994.

MARK L. SCHNEIDER, OF CALIFORNIA, TO BE AN ASSISTANT ADMINISTRATOR OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT.

GEORGE J. KOURPIAS, OF MARYLAND, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION FOR A TERM EXPIRING DECEMBER 17, 1994.

LOTTIE LEE SHACKELFORD, OF ARKANSAS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION FOR A TERM EXPIRING DECEMBER 17, 1995.

M DOUGLAS STAFFORD, OF NEW YORK, TO BE AN ASSISTANT ADMINISTRATOR OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT.

LARRY E. BYRNE, OF VIRGINIA, TO BE AN ASSISTANT ADMINISTRATOR OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HAROLD VARMUS, OF CALIFORNIA, TO BE DIRECTOR OF THE NATIONAL INSTITUTES OF HEALTH.

DEPARTMENT OF STATE

BRIAN J. DONNELLY, OF MASSACHUSETTS, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE 48TH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

STUART GEORGE MOLDAW, OF CALIFORNIA, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE 48TH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

ROBERT S. GELBARD, OF WASHINGTON, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE ASSISTANT SECRETARY OF STATE FOR INTERNATIONAL NARCOTICS MATTERS.

U.S. ARMS CONTROL AND DISARMAMENT AGENCY

JOHN DAVID HOLUM, OF SOUTH DAKOTA, TO BE DIRECTOR OF THE UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

OLIVIA A. GOLDEN, OF THE DISTRICT OF COLUMBIA, TO BE COMMISSIONER ON CHILDREN, YOUTH, AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES.

DEPARTMENT OF AGRICULTURE

ANTHONY A. WILLIAMS, OF CONNECTICUT, TO BE CHIEF FINANCIAL OFFICER, DEPARTMENT OF AGRICULTURE.

GRANT B. BUNTROCK, OF SOUTH DAKOTA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE COMMODITY CREDIT CORPORATION.

WALLY B. BEYER, OF NORTH DAKOTA, TO BE ADMINISTRATOR OF THE RURAL ELECTRIFICATION ADMINISTRATION FOR A TERM OF 10 YEARS.

MICHAEL V. DUNN, OF IOWA, TO BE ADMINISTRATOR OF THE FARMERS HOME ADMINISTRATION.

NATIONAL MEDIATION BOARD

MAGDALENA G. JACOBSEN, OF OREGON, TO BE A MEMBER OF THE NATIONAL MEDIATION BOARD FOR THE TERM EXPIRING JULY 1, 1996.

DEPARTMENT OF LABOR

PRESTON M. TAYLOR, JR., OF NEW JERSEY, TO BE ASSISTANT SECRETARY OF LABOR FOR VETERANS' EMPLOYMENT AND TRAINING.

INTER-AMERICAN DEVELOPMENT BANK

L. RONALD SCHEMAN, OF THE DISTRICT OF COLUMBIA, TO BE UNITED STATES EXECUTIVE DIRECTOR OF THE INTER-AMERICAN DEVELOPMENT BANK FOR A TERM OF 3 YEARS.

DEPARTMENT OF DEFENSE

JOE ROBERT REEDER, OF TEXAS, TO BE UNDER SECRETARY OF THE ARMY.

TOGO DENNIS WEST, JR., OF THE DISTRICT OF COLUMBIA, TO BE SECRETARY OF THE ARMY.

RICHARD DANZIG, OF THE DISTRICT OF COLUMBIA, TO BE UNDER SECRETARY OF THE NAVY.

COMMODITY FUTURES TRADING COMMISSION

JOHN E. TULL, JR., OF ARKANSAS, TO BE A COMMISSIONER OF THE COMMODITY FUTURES TRADING COMMISSION FOR THE TERM EXPIRING APRIL 13, 1998.

BARBARA PEDERSEN HOLUM, OF MARYLAND, TO BE A COMMISSIONER OF THE COMMODITY FUTURES TRADING COMMISSION FOR THE TERM EXPIRING APRIL 13, 1997.

INTERNATIONAL MONETARY FUND

KARIN LISSAKERS, OF NEW YORK, TO BE U.S. EXECUTIVE DIRECTOR OF THE INTERNATIONAL MONETARY FUND FOR A TERM OF 2 YEARS.

DEPARTMENT OF ENERGY

CHRISTINE ERVIN, OF OREGON, TO BE AN ASSISTANT SECRETARY OF ENERGY (ENERGY EFFICIENCY AND RENEWABLE ENERGY).

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

DEPARTMENT OF JUSTICE

JO ANN HARRIS, OF NEW YORK, TO BE AN ASSISTANT ATTORNEY GENERAL.

JOHN JOSEPH KELLY, OF NEW MEXICO, TO BE U.S. ATTORNEY FOR THE DISTRICT OF NEW MEXICO FOR THE TERM OF 4 YEARS.

GERALD MANN STERN, OF CALIFORNIA, TO BE SPECIAL COUNSEL, FINANCIAL INSTITUTIONS FRAUD UNIT, DEPARTMENT OF JUSTICE.

KENDALL BRINDLEY COFFEY, OF FLORIDA, TO BE U.S. ATTORNEY FOR THE SOUTHERN DISTRICT OF FLORIDA FOR THE TERM OF 4 YEARS.

SHERRY SCHEEL MATTEUCCI, OF MONTANA, TO BE U.S. ATTORNEY FOR THE DISTRICT OF MONTANA FOR THE TERM OF 4 YEARS.

ALAN D. BERSIN, OF CALIFORNIA, TO BE U.S. ATTORNEY FOR THE SOUTHERN DISTRICT OF CALIFORNIA FOR THE TERM OF 4 YEARS.

JAMES BURTON BURNS, OF ILLINOIS, TO BE U.S. ATTORNEY FOR THE NORTHERN DISTRICT OF ILLINOIS FOR THE TERM OF 4 YEARS.

JOSEPH LESLIE FAMULARO, OF KENTUCKY, TO BE U.S. ATTORNEY FOR THE EASTERN DISTRICT OF KENTUCKY FOR THE TERM OF 4 YEARS.

WALTER CHARLES GRACE, OF ILLINOIS, TO BE U.S. ATTORNEY FOR THE SOUTHERN DISTRICT OF ILLINOIS FOR THE TERM OF 4 YEARS.

LORETTA COLLINS ARGRETT, OF MARYLAND, TO BE AN ASSISTANT ATTORNEY GENERAL.

PATRICK MICHAEL PATTERSON, OF FLORIDA, TO BE U.S. ATTORNEY FOR THE NORTHERN DISTRICT OF FLORIDA FOR THE TERM OF 4 YEARS.

KATRINA CAMPBELL PFLAUMER, OF WASHINGTON, TO BE U.S. ATTORNEY FOR THE WESTERN DISTRICT OF WASHINGTON FOR THE TERM OF 4 YEARS.

CHARLES JOSEPH STEVENS, OF CALIFORNIA, TO BE U.S. ATTORNEY FOR THE EASTERN DISTRICT OF CALIFORNIA FOR THE TERM OF 4 YEARS.

DONALD KENNETH STERN, OF MASSACHUSETTS, TO BE U.S. ATTORNEY FOR THE DISTRICT OF MASSACHUSETTS FOR THE TERM OF 4 YEARS.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE OF BRIGADIER GENERAL UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 624:

To be brigadier general

COL. PETER F. HOFFMAN, [redacted] REGULAR AIR FORCE.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

MAJ. GEN. JAMES E. CHAMBERS, [redacted] U.S. AIR FORCE.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE, TO THE GRADE INDICATED, UNDER THE PROVISIONS OF SECTIONS 593, 8218, 8351, AND 9374, TITLE 10, UNITED STATES CODE:

To be major general

BRIG. GEN. JOHN R. HAACK [redacted] AIR NATIONAL GUARD OF THE UNITED STATES.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL ON THE RETIRED LIST PURSUANT TO THE PROVISIONS TO TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. EUGENE H. FISCHER, [redacted] U.S. AIR FORCE.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

MAJ. GEN. MARCUS A. ANDERSON, [redacted] U.S. AIR FORCE.

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

MAJ. GEN. ROBERT L. ORD, III [redacted] U.S. ARMY.

THE FOLLOWING-NAMED MEDICAL CORPS OFFICER FOR APPOINTMENT IN THE REGULAR ARMY OF THE UNITED STATES TO THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 611(A) AND 624(C):

To be permanent brigadier general

COL. VERNON C. SPAULDING, [redacted] U.S. ARMY.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

MAJ. GEN. MALCOLM R. O'NEILL, [redacted] U.S. ARMY.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be general

LT. GEN. LEON E. SALOMON, [redacted] U.S. ARMY.

THE FOLLOWING NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. WILSON A. SHOFFNER, [redacted] U.S. ARMY.

THE FOLLOWING NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. TEDDY G. ALLEN, [redacted] U.S. ARMY.

THE FOLLOWING UNITED STATES ARMY NATIONAL GUARD OFFICERS FOR PROMOTION TO THE GRADES INDICATED IN THE RESERVE OF THE ARMY OF THE UNITED STATES, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 593(A), 3385 AND 3392:

To be major general

BRIG. GEN. ROBERT J. BYRNE, xxx-xx-x...
BRIG. GEN. MICHAEL W. RYAN, xxx-xx-x...
BRIG. GEN. WILLIAM F. STEWART, xxx-xx-x...
BRIG. GEN. GEORGE K. HASTINGS, xxx-xx-x...

To be brigadier general

COL. FRANK A. CATALANO, JR., xxx-xx-x...
COL. LAWRENCE E. GILLESPIE, SR., xxx-xx-x...
COL. JOEL W. NORMAN, xxx-xx-x...
COL. SALVADOR R. RECIO-SANCHEZ, xxx-xx-x...
COL. EUGENE W. SCHMIDT, xxx-xx-x...
COL. JOHN E. STEVENS, xxx-xx-x...
COL. FRANCIS L. BRIGANTI, xxx-xx-x...
COL. EMILIO DIAZ-COLON, xxx-xx-x...
COL. JOHN E. PRENDERGAST, xxx-xx-x...
COL. JUAN F. ROSADO-ORTIZ, xxx-xx-x...
COL. MURREL J. BOWEN, JR., xxx-xx-x...
COL. FLETCHER C. COKER, JR., xxx-xx-x...
COL. RODNEY C. JOHNSON, xxx-xx-x...
COL. THOMAS C. JOHNSON, xxx-xx-x...
COL. GUIDO J. PORTANTE, JR., xxx-xx-x...
COL. JOHN C. ROWLAND, xxx-xx-x...
COL. THOMAS E. WHITECOTTON, III, xxx-xx-x...
COL. EDMUND C. ZYSK, xxx-xx-x...
COL. FRANCIS A. LADEN, xxx-xx-x...
COL. SIGURD E. MURPHY, JR., xxx-xx-x...
COL. MURRAY G. SAGSVEEN, xxx-xx-x...

IN THE NAVY

THE FOLLOWING-NAMED CAPTAIN IN THE STAFF CORPS OF THE UNITED STATES NAVY FOR PROMOTION TO THE PERMANENT GRADE OF REAR ADMIRAL (LOWER HALF), PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 624, SUBJECT TO QUALIFICATIONS THEREFORE AS PROVIDED BY LAW:

MEDICAL CORPS

To be rear admiral (lower half)

CAPT. DENNIS IRWIN WRIGHT, xxx-xx-... U.S. NAVY.

THE FOLLOWING-NAMED REAR ADMIRAL (LOWER HALF) IN THE COMPETITIVE CATEGORY OF SPECIAL DUTY OFFICER (INTELLIGENCE) OF THE NAVY FOR PROMOTION TO THE PERMANENT GRADE OF REAR ADMIRAL, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 624, SUBJECT TO QUALIFICATIONS THEREFORE AS PROVIDED BY LAW:

SPECIAL DUTY OFFICER (INTELLIGENCE)

To be rear admiral

REAR ADM. (IH) MICHAEL WILLIAM CRAMER, U.S. NAVY, xxx-xx-...

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF VICE ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be vice admiral

REAR ADM. JOSEPH W. PRUEHER, U.S. NAVY, xxx-xx-...

IN THE AIR FORCE

AIR FORCE NOMINATIONS BEGINNING ROBERT D. BLEVINS, AND ENDING MICHAEL J YAGUCHI, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF NOVEMBER 4, 1993.

IN THE MARINE CORPS

MARINE CORPS NOMINATIONS BEGINNING HARALD AAGAARD, AND ENDING JEFFERY J. TLAPA, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF NOVEMBER 4, 1993.

IN THE NAVY

NAVY NOMINATIONS BEGINNING ROBERT K. TAKESUYE, AND ENDING JASON SCARLETT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF NOVEMBER 4, 1993.

NAVY NOMINATIONS BEGINNING JOHN D. SOWERS, AND ENDING GARY W. CAILLE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF NOVEMBER 4, 1993.

NAVY NOMINATIONS BEGINNING RICKY D. ALLEN, AND ENDING PETER G. WISH, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF NOVEMBER 4, 1993.

NAVY NOMINATIONS BEGINNING TIMOTHY F. DOLAN, AND ENDING CHRISTOPHER A. URSINO, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF NOVEMBER 4, 1993.

NAVY NOMINATIONS BEGINNING CHRISTOPHER J. ADAMS, AND ENDING EDMUND L. ZUKOWSKI, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF NOVEMBER 4, 1993.

NAVY NOMINATIONS BEGINNING JAMES L. BASFORD, AND ENDING DONALD E. WYATT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF NOVEMBER 4, 1993.

NAVY NOMINATIONS BEGINNING SCOTT M. ALLEN, AND ENDING URIAH E. ZACHARY, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF NOVEMBER 4, 1993.

NAVY NOMINATIONS BEGINNING AARON M. ABARBANELL, AND ENDING DARYK E. ZIRKLE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF NOVEMBER 4, 1993.