ANNUAL REPORT OF THE DEPARTMENT OF TRANSPORTATION—MESSAGE FROM THE PRESIDENT RECEIVED DURING THE RECESS—PM 25

Under the authority of the order of January 4, 1995, the Secretary of the Senate, on Wednesday, March 1, 1995, during the recess of the Senate, received the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Commerce, Science, and Transportation:

To the Congress of the United States:

In accordance with section 308 of Public Law 97–449 (49 U.S.C. 308(a)), I transmit herewith the Twenty-seventh Annual Report of the Department of Transportation, which covers fiscal year 1993.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 1, 1995.*

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Zaroff, 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 was referred to the Committee on Energy and Natural Resources.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 12:25 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 926. An act to promote regulatory flexibility and enhance public participation in Federal agency rulemaking and for other purposes.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent and referred as indicated:

H.R. 926. An act to promote regulatory flexibility and enhance public participation in Federal agency rulemaking and for other purposes; to the Committee on Governmental Affairs.

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. KYL (for himself, Mr. GRAMS, Mr. ABRAHAM, and Mr. CRAIG):

S. 494. A bill to balance the Federal budget by fiscal year 2002 through the establishment of Federal spending limits; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged.

By Mrs. KASSEBAUM:

S. 495. A bill to amend the Higher Education Act of 1965 to stabilize the student loan programs, improve congressional oversight, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. WARNER (for himself and Mr. ROBB):

S. 496. A bill to abolish the Board of Review of the Metropolitan Washington Airports Authority, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. HELMS (for himself and Mr. FAIRCLOTH):

S. 497. A bill to amend title 28, United States Code, to provide for the protection of civil liberties, and for other purposes; to the Committee on Governmental Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KYL (for himself, Mr. GRAMS, Mr. ABRAHAM, and Mr. CRAIG):

S. 494. A bill to balance the Federal budget by fiscal year 2002 through the establishment of Federal spending limits; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged.

THE BALANCED BUDGET/SPENDING LIMITATION ACT OF 1995

Mr. KYL. Mr. President, I rise today with my colleagues, ROD GRAMS, SPENCER ABRAHAM, and LARRY CRAIG to introduce the Balanced Budget/Spending Limitation Act of 1995, a bill designed to balance the budget by fiscal year 2002, through the establishment of Federal spending limits and sequestration. An identical bill is being introduced in the House of Representatives by Representatives JIM MCCRERY and MEL HANCOCK.

The Balanced Budget/Spending Limitation Act establishes a mechanism to limit spending and enforce limits. It establishes a Federal spending limit as 21.5 percent of the gross domestic product in fiscal year 1996, declining one-half percent of GDP per year to 19 percent in fiscal year 2001.

In subsequent years, Federal spending would have to balance with revenue but could not exceed 19 percent of the gross domestic product. Any excess of spending over receipts or the Federal spending limits would be eliminated by sequesters, including a new fiscal year start sequester designed to hold a fiscal year's spending accountable for any actual deficit in the prior year.

The Federal spending limits in the Balanced Budget/Spending Limit Act are established in recognition of the fact, as the Senator from Idaho said a moment ago, that revenues have fluctuated only within the narrow bands of 18 to 20 percent of the gross domestic product for the last 40 years, despite tax increases, tax cuts, economic contractions, and expansions and fiscal policies pursued by Presidents of both parties.

In effect, the economy has already imposed an effective limit on how much revenue the Federal Government can raise—19 percent of the gross domestic product, exactly the level of today. While tax rate increases and tax cuts may produce temporary surges and declines in revenue, revenues always adjust at about 19 percent of GDP, and that is because changes in the Tax Code affect people's behavior. Higher taxes discourage work, production, savings, and investment, slowing economic growth. And with less economic activity to tax, of course, revenues to the Treasury are never as great as the tax writers expect.

On the other hand, lower tax rates stimulate work, production, savings, and investment so revenues to the Treasury increase even at lower tax rates.

With that in mind, the only way that Congress really can ever balance the budget is to ratchet spending as a share of GDP down to the level of revenues the economy has historically been willing to bear—19 percent of GDP.

Limit spending, and there is no need for Congress to consider tax rate increases. It would not be allowed to spend any additional revenue that it raised. Besides, as reflected in historical trends, tax rate increases are more likely to slow economic growth than produce additional revenue relative to the gross domestic product.

Link spending to economic growth, as measured in terms of GDP, and a positive incentive is created for Congress to support pro-growth economic policies. The more the economy grows, the more Congress is allowed to spend, although always proportionate to the size of the Nation's economy. In other words, 19 percent of a larger GDP represents more revenue to the Treasury and, thus, more than Congress is allowed to spend, than 19 percent of a smaller GDP.

The advantages of the Federal spending limits are thus threefold.

First, it will get us to a balanced budget by limiting spending, not increasing tax rates; second, it will shrink Government relative to the size of the economy; and third, it gives Congress a strong incentive to support policies that will keep the economy healthy and strong, policies of less taxation, less regulation and less spending that the American people are demanding anyway.

For those Members of the Senate who voted against the balanced budget amendment saying Congress could do the job if it only had the courage and the will, well, here is your chance. For those who express concern about Social

Security, this bill provides for protection of the trust funds that we promised during the debate on the balanced budget amendment. The balanced budget amendment will never be a threat to Social Security.

Mr. President, with or without a balanced budget amendment, deficit spending must stop. We know that. The economic security of the Nation is at stake. The future of our children and our grandchildren is at stake as a result of the mountain of debt Congress is leaving behind.

This bill we are introducing today defines the glidepath and includes the enforcement mechanism to get the budget to balance, and I am going to urge its prompt consideration by this body so that we can immediately demonstrate to the State legislatures, to the people of this country and, frankly, to many of our colleagues who did not support the balanced budget amendment yesterday that we mean business, that we mean to balance this budget by the year 2002 and that we are prepared to begin the steps to achieve that goal. One of the first steps should be the adoption of legislation such as this to establish the framework for achieving our goal.

By Mrs. KASSEBAUM:

S. 495. A bill to amend the Higher Education Act of 1965 to stabilize the student loan programs, improve congressional oversight, and for other purposes; to the Committee on Labor and Human Resources.

THE STUDENT LOAN EVALUATION AND STABILIZATION ACT

• Mrs. KASSEBAUM. Mr. President, I introduce the Student Loan Evaluation and Stabilization Act. Similar legislation has been introduced in the House by Congressman GOODLING and others.

The provisions of this bill are designed to accomplish four main goals:

First, to cap the direct loan program at 40 percent of student loan volume;

Second, to correct problems in the budget scoring process which result in an inaccurate accounting of the full costs of the direct loan program;

Third, to clarify congressional intent on a number of provisions of the legislation which established the direct loan program; and

Fourth, to level the playing field with respect to direct loans and guaranteed loans so that they can be evaluated based on real differences in the administration, efficiency, and effectiveness between the two programs.

It is no secret that I have serious reservations and concerns about the direct loan program enacted into law last Congress in the Omnibus Budget Reconciliation Act, otherwise known as OBRA 1993.

I am troubled that the President is proposing a further expansion of this program in his fiscal year 1996 budget request. This proposal, which would institute 100 percent direct lending by academic year 1997–98, amounts to a total Federal takeover of a successful public/private sector partnership—the Student Loan Program. This approach stands in stark contrast to the ''reinventing'' Government message promoted by Vice President GORE, where the focus is on privatizing more Federal functions and reducing the size of the Federal Government.

I can support a demonstration of a direct loan program, but I believe that the small 5-percent demonstration included in the Higher Education Act Amendments of 1992 was adequate. I believe that OBRA 1993 went far beyond a demonstration in allowing for the eventual replacement of 60 percent of the Federal guaranteed student loan program with a direct loan program.

Thus, my legislation would cap the direct lending program at the level specified in current law for the second year of the program—permitting up to 40 percent of the total student loan volume to be made through direct Government loans. All schools which signed participation agreements with the Department of Education in 1994 to enter the program in July of this year will be able to enter the program, but the program will not expand beyond this level until Congress authorizes such an expansion.

Restoring the direct loan program to a more appropriate demonstration level will allow for a more thoughtful evaluation and comparison of the guaranteed Federal Family Education Loan [FFEL] Program and the Federal Direct Student Loan [FDSL] Programs. It will allow both programs to operate with continued stability until Congress has enough information to determine which program is more effective and cost-efficient for students, institutions of higher education, and taxpayers.

Through the reconciliation process, the 103d Congress made a substantial change in the student loan program without the benefit of comprehensive hearings or debate or of any evaluation results of the direct loan demonstration included in the 1992 higher education amendments.

This change was made in order to take advantage of the current budget treatment of direct loans—which produces an inaccurate picture of its true budgetary consequences because certain direct loan costs are excluded in the scoring. These distortions have been well-documented by the Congressional Budget Office. It is unfortunate that serious policy decisions were driven by a budget process which hid the true costs of this program.

As evidence of this shell game, the Department of Education has criticized the companion bill introduced by Representative GOODLING stating that it would increase costs or budget outlays by $4.9 billion because the bill would change the budget scoring process. The Department's analysis notes that this change in the scoring process ''does not change the long-term cost of the Direct Loan program, it only changes when those costs are scored for budgetary purposes.''

This analysis illustrates the frustrating situation we face in getting a handle on the real costs of direct lending. What the materials developed by the Department say, in effect, is that current scoring practices undercount $4.9 billion in costs for the current direct loan program! Moving to 100 percent direct lending to claim more savings, as proposed by the President, will only compound the problem. We cannot and should not continue to operate in this type of budgetary Fantasyland.

The Department's criticism is also disingenuous because a change in scoring would not increase costs or force the Congress to pay for the scoring change. It would simply allow the direct and guaranteed student loan programs to be scored in the same manner so we can truly compare the costs of the two programs.

Therefore, I have included in this legislation an amendment to the Congressional Budget Act that would provide a more accurate comparison of direct and guaranteed student loans.

The bill also clarifies congressional intent with respect to several provisions of the direct loan authorization legislation. Specifically:

First, my legislation specifies that direct consolidation loans are intended to be offered only to students with guaranteed loans who cannot obtain consolidation loans or income-contingent repayment from participating guaranteed loan lenders. This clarification is important, as the administration is in the process of developing a plan that could result in transferring millions of dollars worth of guaranteed loans into the direct loan program through the direct consolidation loan program. The magnitude of this program, as well as the circumstances under which the administration envisions it would apply, goes far beyond congressional intent in providing authority for consolidation loans.

Second, the bill makes clear that Department officials must calculate default rates for direct lending schools just as they do for guaranteed loan schools. To date, Department officials have not indicated how they will calculate default rates for direct loan schools or for students that select income-contingent loan repayment. Many schools with high or rising default rates entered the direct loan program because they saw this as a way to escape penalties for high default rates or to reduce their default rates.

Third, in order to determine the effect of income-contingent repayment on institutional cohort default rates, the bill also requires the Department to report various data on loans being repaid through such repayment.

Finally, the bill clarifies certain provisions of the law which the Department has interpreted and implemented in a way that gives direct lending an edge over the guaranteed loan program. True comparisons between the two programs are not possible with such differences. Thus, my bill levels

the playing field between the two programs.

Having described what my bill does, I would also like to clarify what the bill does not do.

First, the changes that I am proposing will have no effect on student access to Federal loans, on the costs of those loans to students, or on the amount that students may borrow. There is a widespread misconception that the direct loan program offers lower fees and interest rates than those available to guaranteed loan borrowers. This is simply not the case.

The issue in this debate is who should be making the loans and providing the capital—the Federal Government or the private sector. The issue is not the availability or cost of loans to students.

Second, my legislation will not reduce the number of repayment options available to students. The repayment options available to students in the guaranteed loan program are virtually identical to those in the direct loan program. Students have multiple repayment options available to them in both programs—including options to repay over longer periods of time or to make smaller initial payments which gradually increase over time as earnings increase.

In fact, my bill will increase the number of repayment options available by permitting students in the guaranteed loan program to repay their loans based on their incomes—an option now available only to students participating in the direct loan program. I would hope that students would exercise caution in selecting this option, given that it could greatly increase the amount they end up repaying. However, I feel the option should be made available to both guaranteed and direct loan student borrowers—many of whom may otherwise default on their loans.

As the legislative process continues, I will be keeping an open mind to other program changes designed to maximize the benefits of private sector participation in the Federal student lending program while holding down the costs to taxpayers. These changes could include steps such as increased risk-sharing by lenders and guaranty agencies—coupled with relief from burdensome and unnecessary regulations.

It is my hope that Congress can act promptly to correct the problems I have identified, so that decisions regarding Federal student loans can be made on the basis of sound policy rather than on flawed budget scoring procedures.

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. 495

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the ''Student Loan Evaluation and Stabilization Act of 1995''.

(b) REFERENCES.—References in this Act to ''the Act'' are references to the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).

SEC. 2. FINDINGS.

The Congress finds that:

(1) The current public/private student loan partnership is fulfilling the mission set for it by Congress, delivering loans to students reliably and in a timely fashion, and should be preserved.

(2) The Administration's dismantling of the Federal Family Education Loan (FFEL) Program which has begun in order to replace it with an unproven direct Government lending program, which increases the Federal debt, further enlarges the Federal bureaucracy, adds major new financial oversight activities to the already overburdened Department of Education, and forces Congress to depend on estimated budget savings which may prove illusory, needs to be stopped so that a true and valid comparison of the student loan programs can occur.

(3) The Federal Direct Student Loan (FDSL) Program pilot is only now getting started and has proceeded fairly smoothly when dealing with 5 percent of new loan volume. This slow and cautious approach should be continued as the volume increases to 40 percent. This pilot program should continue to proceed slowly and cautiously and demonstrate successful results before expanding it to additional loan volume.

(4) While the FDSL Program pilot continues its test phase, reform of the FFEL Program which will benefit students and institutions of higher education, should be a continuing priority for the Department of Education.

SEC. 3. PARTICIPATION OF INSTITUTIONS AND ADMINISTRATION OF DIRECT LOAN PROGRAMS.

(a) LIMITATION ON PROPORTION OF LOANS MADE UNDER THE DIRECT LOAN PROGRAM.—Section 453(a) of the Act (20 U.S.C. 1087c(a)) is amended—

(1) by amending paragraph (2) to read as follows:

''(2) DETERMINATION OF NUMBER OF AGREEMENTS.—In the exercise of the Secretary's discretion, the Secretary shall enter into agreements under subsections (a) and (b) of section 454 with institutions for participation in the programs under this part, subject to the following:

''(A) for academic year 1994–1995, loans made under this part shall represent 5 percent of new student loan volume for such year; and

''(B) for academic year 1995–1996 and for any succeeding fiscal year, loans made under this part shall represent 40 percent of new student loan volume for such year, except that the Secretary may not enter into agreements under subsections (a) and (b) of section 454 with any additional eligible institutions that have not applied and been accepted for participation in the program under this part on or before December 31, 1994.''.

(2) by striking paragraph (3); and

(3) by redesignating paragraph (4) as paragraph (3).

(b) ELIMINATION OF CONSCRIPTION.—Section 453(b)(2) of the Act is amended—

(1) by striking subparagraph (B);

(2) by redesignating subparagraphs (A)(i) and (A)(ii) as subparagraphs (A) and (B) respectively; and

(3) in such subparagraph (B) (as so redesignated) by striking ''clause (i); and'' and inserting ''subparagraph (A).''.

(c) CONTROL OF ADMINISTRATIVE EXPENSES.—

(1) ADMINISTRATIVE EXPENSES.—Section 458(a) of the Act is amended to read as follows:

''(a) IN GENERAL.—For each fiscal year, there shall be available to the Secretary from funds not otherwise appropriated, funds for all direct and indirect expenses associated with the Direct Student Loan program under this part.''

(2) IMPROVED CONGRESSIONAL OVERSIGHT OF ADMINISTRATION.—(A) Section 458(b) of the Act is amended to read as follows:

''(b) FUNDING TRIGGERS.—For each fiscal year, funds available under this section may be obligated only in such amounts and according to such schedule as specified in the appropriations Act for the Department of Education of a detailed proposal of expenditures under this section.''.

(B) Section 458(d) of the Act is amended to read as follows:

''(d) QUARTERLY REPORT.—The Secretary shall provide a detailed quarterly report of all monies expended under this section to the Chairman of the Committee on Labor and Human Resources of the Senate and the Chairman of the Committee on Economic and Educational Opportunities of the House of Representatives. Such report shall specifically identify all contracts entered into by the Department for services supporting the loan programs under parts B and D of this title and the current and projected costs of such contracts.''

(3) ADMINISTRATIVE COST ALLOWANCE.—Section 428(f) of the Act is amended—

(A) in subsection (A) by striking out ''For a fiscal year prior to fiscal year 1994, the'' and inserting in lieu thereof ''The''; and

(B) by inserting after the first sentence of subsection (B) the following new sentence:

''For fiscal year 1996 and each succeeding fiscal year, each guaranty agency shall elect to receive an administrative cost allowance, payable quarterly, for such fiscal year calculated on the basis of either of the following:

''(i) 0.85 percent of the total principal amount of the loans upon which insurance was issued under part B during such fiscal year by such guaranty agency; or

''(ii) 0.08 percent of the original principal amount of loans guaranteed by the guaranty agency that was outstanding at the end of the previous fiscal year.''

(d) ELIMINATION OF TRANSITION TO DIRECT LOANS.—The Act is further amended—

(1) in section 422(c)(7)—

(A) by striking ''during the transition'' and all that follows through ''part D of this title'' in subparagraph (A); and

(B) by striking ''section 428(c)(10)(F)(v)'' in subparagraph (B) and inserting ''section 428(c)(9)(F)(v)'';

(2) in section 428(c)(8)—

(A) by striking ''(A)'' after the paragraph designation; and

(B) by striking subparagraph (B);

(3) in section 428(c)(9)(E)—

(A) by inserting ''or'' after the semicolon at the end of clause (iv);

(B) by striking''; or'' at the end of clause (v) and inserting a period; and

(C) by striking clause (vi);

(4) in clause (vii) of section 428(c)(9)(F)—

(A) by inserting ''and'' before ''to avoid disruption''; and

(B) by striking '', and to ensure an orderly transition'' and all that follows through the end of such clause and inserting a period;

(5) in section 428(c)(9)(K), by striking ''the progress of the transition from the loan programs under this part to'' and inserting ''the integrity and administration of'';

(6) in section 428(e)(1)(B)(ii), by inserting ''during the transition'' and all that follows through ''part D of this title'';

(7) in section 428(e)(3), by striking ''of transition'';

(8) in section 428(j)(3)—

(A) by striking ''DURING TRANSITION TO DIRECT LENDING'' in the heading of paragraph (3); and

(B) by striking ''during the transition'' and all that follows through ''part D of this title,'' and inserting a comma;

(9) in section 453(c)(2), by striking ''TRANSITION'' and inserting ''INSTITUTIONAL'' in the heading of paragraph (2);

(10) in section 453(c)(3), by striking ''AFTER TRANSITION'' in the heading of paragraph (3); and

(11) in section 456(b)—

(A) by inserting ''and'' after the semicolon at the end of paragraph (3);

(B) by striking paragraph (4);

(C) by redesignating paragraph (5) as paragraph (4); and

(D) in such paragraph (4) (as redesignated), by striking ''successful operation'' and inserting ''integrity and efficiency.''

SEC. 4 DIRECT LOANS HAVE THE SAME TERMS AND CONDITIONS AS FEDERAL FAMILY EDUCATION LOANS.

(a) IN GENERAL.—Section 455(a)(1) of the Act (20 U.S.C. 1087e(a)(1)) is amended to read as follows:

''(1) PARALLEL TERMS, CONDITIONS, BENEFITS AND AMOUNTS.—Unless otherwise specified in this part, loans made to borrowers under this part shall have the same terms, conditions, eligibility requirements and benefits, and be available in the same amounts, as the corresponding types of loans made to borrowers under section 428, 428B, 428C and 428H of this title.''.

(b) DIRECT CONSOLIDATION LOANS.—Section 455(a)(2) of the Act is amended—

(1) by striking ''and'' at the end of subparagraph (B);

(2) by redesignating subparagraph (C) as subparagraph (D); and

(3) by inserting after subparagraph (B) the following new subparagraph:

''(C) section 428C shall be known as 'Federal Direct Consolidation Loans'; and''.

SEC. 5. ABILITY OF BORROWERS TO CONSOLIDATE UNDER DIRECT AND GUARANTEED LOANS PROGRAMS.

(a) ABILITY OF PART D BORROWERS TO OBTAIN FEDERAL STAFFORD CONSOLIDATION LOANS.—Section 428C(a)(4) of the Act (20 U.S.C. 1078–3(a)(4)) is amended—

(1) by striking ''or'' at the end of subparagraph (B);

(2) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E); and

(3) by inserting after subparagraph (B) the following new subparagraph:

''(C) made under part D of this title;''.

(b) ABILITY OF PART B BORROWERS TO OBTAIN FEDERAL DIRECT CONSOLIDATION LOANS.—Section 428C(b)(5) of the Act is amended to read as follows:

''(5) DIRECT CONSOLIDATION LOANS FOR BORROWERS IN SPECIFIED CIRCUMSTANCES.—(A) The Secretary may offer a borrower a direct consolidation loan if a borrower otherwise eligible for a consolidation loan pursuant to this section is—

''(i) unable to obtain a consolidation loan from a lender with an agreement under subsection (a)(1); or

''(ii) unable to obtain a consolidation loan with an income contingent repayment schedule from a lender with an agreement under subsection (a)(1).

''(B) The Secretary shall establish appropriate certification procedures to verify the eligibility of borrowers for loans pursuant to this paragraph.

''(C) The Secretary shall not offer such consolidation loans if, in the Secretary's judgment, the Department of Education does not have the necessary origination and servicing arrangement in place for such loans, or the projected volume in the program would be destabilizing to the availability of loans otherwise available under this part.''.

SEC. 6. INCOME CONTINGENT REPAYMENT IN THE FEDERAL FAMILY EDUCATION LOAN PROGRAM.

(a) INSURANCE PROGRAM AGREEMENT.—Section 428(B)(1)(E)(i) of the Act (20 U.S.C. 1078(b)(1)(E)(i)) is amended by striking ''or income-sensitive repayment schedule'' and inserting in lieu thereof ''repayment schedule or either an income-sensitive or income contingent repayment schedule''.

(b) REPAYMENT SCHEDULES.—Section 428(c)(A) of the Act is amended by striking ''or income-sensitive repayment schedules'' and inserting in lieu thereof ''repayment schedules or either income sensitive or income contingent repayment schedules''.

(c) DEFINITIONS.—Section 435 of the Act is amended by adding a new subsection (n):

''(n) INCOME CONTINGENT REPAYMENT SCHEDULES.—For the purpose of this part, income contingent repayment schedules established pursuant to section 428(b)(1)(E)(i) and 428(c)(2)(A) may have terms and conditions comparable to terms and conditions established by the Secretary pursuant to section 45(e)(4).''.

SEC. 7. RESERVE FUND REFORMS.

(a) GUARANTY AGENCY RESERVE LEVELS.—Section 428(c)(9) of such Act (20 U.S.C. 1078(c)(9)) is amended—

(1) in subparagraph (E)—

(A) by striking ''The Secretary'' and inserting ''After notice and opportunity for hearing on the record, the Secretary''; and (2) in subparagraph (F)—

(A) by inserting ''dedicated to the functions of the agency under the loan insurance program under this part'' after ''assets of the guaranty agency'' in clause (vi); and

(B) in clause (vi), by inserting before ''; or'' the phrase '', except that the Secretary may not take any action to require the guaranty agency to provide to the Secretary the unencumbered non-Federal portion of a reserve fund (as defined in section 422(a)(2))''.

(b) ADDITIONAL AMENDMENTS.—Section 422 of the Act is further amended—

(1) in the last sentence of subsection (a)(2), by striking ''Except as provided in section 428(c)(10) (E) or (F), such'' and inserting ''Such'';

(2) in subsection (g), by striking paragraph (4) and inserting the following:

''(4) DISPOSITION OF FUNDS RETURNED TO OR RECOVERED BY THE SECRETARY.—Any funds that are returned to or otherwise recovered by the Secretary pursuant to this subsection shall be retuned to the Treasury of the United States for purposes of reducing the Federal debt and shall be deposited into the special account under section 3113(d) of title 31, United States Code.''.

SEC. 8. DEFAULT RATE LIMITATIONS ON DIRECT LENDING.

(a) INELIGIBILITY BASED ON DEFAULT RATES.—Section 435(a)(2) of the Act (20 U.S.C. 1085(a)(2)) is amended by inserting ''or part D'' after ''under this part''.

(b) COHORT DEFAULT RATE.—Section 435(m)(1) of the Act is amended by:

(1) striking ''428, 428A, or 428H'' in paragraph (A) and inserting ''428, 428A, 428H, or part D of the Act (except for Federal Direct PLUS Loans)'';

(2) striking ''428C'' in paragraph (A) and inserting ''428C or 455(g)'';

(3) striking ''428C'' in paragraph (C) and inserting ''428C or 455(g)''; and

(4)(A) in paragraph (B), by striking ''only''; and

(B) in paragraph (B) by inserting ''and loans made under part D determined to be in default,'' after ''for instance.''.

(c) INCOME CONTINGENT REPAYMENT.—Section 435(m) of the Act is amended by adding at the end thereof the following new paragraph:

''(5)(A) The Secretary shall produce an annual report on loans subject to repayment schedules under sections 428(b)(1)(E)(i), 428C(c)(2)(A), and 455(e)(4) at the end of each fiscal year detailing, by institution and for the title IV, part B and D programs separately and together—

''(i) the number and amount of loans scheduled for payments that did not equal the interest accruing on the loan,

''(ii) the number and amount of loans where no payment was scheduled to be received from the borrower due to their low-income status,

''(iii) the number and amount of loans where a scheduled payment was more than 90 days delinquent, and

''(iv) the projected amount of interest and principal to be forgiven at the end of the 25 year repayment period, based on the projected payment schedule for the borrower over that period.

''(B) Such report shall be made available at the same time as the reports required under section 435(m)(4) of this Act.''.

(d) TERMINATION OF INSTITUTIONAL PARTICIPATION.—Section 455 of the Act is amended by adding at the end the following new subsection:

''(k) TERMINATION OF INSTITUTIONS FOR HIGH DEFAULT RATES.—

''(l) METHODOLOGY AND CRITERIA.—After consultation with institutions of higher education and other members of the higher education community, the Secretary shall develop—

''(A) a methodology for the calculation of institutional default rates under the loan programs operated pursuant to this part;

''(B) criteria for the initiation of termination proceedings on the basis of such default rates; and

''(C) procedures for the conduct of such termination proceedings.

''(2) COMPARABILITY TO PART B.—In developing the methodology, criteria, and procedures required by paragraph (1), the Secretary shall, to the maximum extent possible, establish standards for the termination of institutions from participation in loan programs under this part that are comparable to the standards established for the termination of institutions from participation in the loan programs under part B. Such procedures shall also include provisions for the appeal of default rate calculations based on deficiencies in the servicing of loans under this part that are comparable to the provisions for such appeals based on deficiencies in the servicing of loans under part B.''.

''(3) LIMITATION ON AUTHORIZATION TO ISSUE NEW LOANS UNDER THIS PART.—Such standards and procedures required by paragraphs (1) and (2) shall be promulgated in final form no later than 120 days after date of enactment of this paragraph. Notwithstanding any other provision of this part, no new loan under this part shall be issued after 120 days after the date of enactment of this paragraph if the standards and procedures required under this section have not been promulgated prior to that date. The authority to issue new loans under this part shall resume upon the Secretary's issuance of such standards and procedures.''

SEC. 9. USE OF ELECTRONIC FORMS.

Section 484(a) of the Act (20 U.S.C. 1091b(a)) is amended by adding the following new paragraph after paragraph (a)(4):

''(5) ELECTRONIC FORMS.—(A) Nothing in this Act shall preclude the development, production, distribution or use of the form described in subsection (a)(1) in an electronic

format through software produced or distributed by guaranty agencies or eligible lenders, or consortia thereof. Such electronic form need not require the signature of the applicant to be collected at the time the form is submitted, if the applicant certifies the output of the application in a subsequent document. No fee may be charged in connection with use of the electronic form described in subsection (a)(1).

''(B) The Secretary shall approve the use of an electronic form submitted for approval that is not inconsistent with the provisions of this part or part B within 30 days of such submission. In the case of any electronic form not approved, the Secretary shall specifically identify the changes to the form necessary to secure approval.''.

SEC. 10. APPLICATION FOR PART B LOANS USING FREE FEDERAL APPLICATION.

Secton 483(a) of the Act (20 U.S.C. 1090(a)) is amended—

(1) in paragraph (1)—

(A) by inserting ''B,'' after ''assistance under parts A,'';

(B) by striking ''part A) and to determine the need of a student for the purpose of part B of this title'' and inserting ''part A).''; and

(C) by striking the last sentence and inserting the following: ''Such form may be in an electronic or any other format (subject to section 485B) in order to facilitate use by borrowers and institutions.''; and

(2) in paragraph (3), by striking ''and States shall receive,'' and inserting'', any guaranty agency authorized by any such institution, and States shall receive, at their request and''.

SEC. 11. CREDIT REFORM.

(a) AMENDMENT.—Section 502(5)(B) of the Congressional Budget Act (31 U.S.C. 661a(5)(B)) is amended to read as follows:

''(B) The cost of a direct loan shall be the net present value, at the time when the direct loan is disbursed, of the following cash flows for the estimated life of the loan:

''(i) Loan disbursements.

''(ii) Repayments of principal.

''(iii) Payments of interest and other payments by or to the Government over the life of the loan after adjusting for estimated defaults, prepayments, fees, penalties, and other recoveries.

''(iv) In the case of a direct student loan made pursuant to the program authorized under part D of title IV of the Higher Education Act of 1965, direct and indirect expenses, including but not limited to the following: expenses arising from credit policy and oversight, activities related to credit extension, loan origination, loan servicing, training, program promotion and payments to contractors, other Government entities, and program participants, collection of delinquent loans, and write-off and close-out of loans.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) of this section shall apply to all fiscal years beginning on or after October 1, 1995, and to statutory changes made on or after the date of enactment of this Act.

SUMMARY OF S. 495

The bill will do four basic things:

(1) Cap the direct loan program at 40 percent of student loan volume.

(a) This allow for the continued implementation of the Federal Direct Student Loan Program (FDSL) at the loan volume currently authorized for the second year of the program (beginning July 1995).

(b) It provides for the continued stability of the Federal Family Education Loan Program (FFELP—previously known as the Guaranteed Student Loan or the Stafford and PLUS loan programs).

(c) It improves congressional oversight of administrative expenditures.

(2) Improve the accuracy of the budget scoring process.

The bill revises the Congressional Budget Act so that budget scoring will be fair and accurate when determining and comparing costs associated with the FFELP loan program and the direct lending program.

(3) Clarify congressional intent with respect to provisions of the law establishing the direct loan program.

(a) Clarifies that direct consolidation loans are intended to be offered only to those students who cannot obtain consolidation loans or income-contingent repayment from participating lenders.

(b) Clarifies that default rates should be calculated for direct lending schools as they are for FFELP loan schools.

(c) Also requires the reporting of data on direct loans being repaid through income-contingent repayment in order to determine the effect of such repayment on cohort default rates.

(4) Make the FDSL and FFELP programs more comparable so that they can be evaluated based on ''real'' differences between the administration, efficiency, and effectiveness of the two programs.

(a) Clarify that the guaranteed loan program and the direct loan program have essentially the same terms and conditions for loans and their repayment.

(b) Allow income-contingent repayment for FFELP borrowers.

(c) Make the application processes similar for FFELP and direct loan students.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title. The bill is to be cited as the ''Student Loan Evaluation and Stabilization Act of 1995.''

Section 2. Findings. The bill makes four findings upon which the legislation is based. The findings highlight the fact that the Federal Direct Student Loan Program (direct loan program) is in its pilot phase and that a slow and cautious approach toward implementing the program should be continued. The findings further emphasize that the federal debt, further enlarges the federal bureaucracy, adds major new financial oversight activities to the Department of Education, and forces Congress to depend on an estimated budget savings that may prove illusory. In addition, the findings note that reform of the Federal Family Education Loan Program (guaranteed loan program) should be a continuing priority of the Department of Education.

Section 3. Participation of Institutions and Administration of Direct Loan Programs.

Subsection (a). Participation in direct loans is limited as follows:

(1) five percent of new student loan volume for academic year 1994–1995;

(2) for academic year 1995–1996 loans to those students and parents of students attending institutions who have applied and been accepted for participation in the direct loan program on or before December 31, 1994.

Subsection (b). The authority of the Secretary to force schools into the direct loan program is eliminated.

Subsection (c). Section 458 of the HEA is amended so that administrative expenses for the direct loan program under are made available on an entitlement basis to cover the full administrative costs of direct loans made under Part D. These costs are recognized on a net present value basis under the Credit Reform Act amendment in section 11 of this legislation.

This section also establishes ''funding triggers'' for the release of funds under section 458. Funds may be obligated only in such amounts and according to the schedules specified under the Appropriations Act for the Department of Education after submission of a detailed proposal for expenditures under this section.

In addition, this section also directs the Secretary to produce a detailed quarterly report of the expenditures of monies under section 458.

Finally, this section mandates payment of an administrative cost allowance to guaranty agencies based on the following formula: .85 percent of the total principal amount of the loans for which insurance was issued during the fiscal year, or .08 percent of the original principal amount of the loans guaranteed by the program that are outstanding at the end of the previous fiscal year. Agencies elect which formula under which to receive payment.

Subsection (d). References to the transition to the direct loan program are eliminated from the HEA.

Section 4. Direct Loans Have the Same Terms and Conditions as Federal Family Education Loans. The legislation clarifies and strengthens Congressional intent that direct and guaranteed loans have essentially the same terms, conditions, eligibility requirements, and loan limits.

Section 5. Ability of Borrowers to Consolidate Under Direct and Guaranteed Loan Programs.

Subsection (a). Borrowers of direct loans under Part D are made eligible to consolidate such loans into a Federal Stafford Consolidation Loan.

Subsection (b). The HEA is clarified to reflect Congressional intent that a guaranteed loan borrower is only eligible to obtain a direct consolidation loan when they are unable to obtain a consolidation loan from a lender. The law is also modified to limit eligibility of a guaranteed loan borrower to those students who are unable to obtain a consolidation loan with an income-contingent loan repayment schedule from a lender.

This section also requires the Secretary to establish appropriate certification procedures to verify eligibility of borrowers and it prohibits the Secretary from offering consolidation loans if the Department lacks the capacity or if the projected loan volume would destabilize the availability of guaranteed loans.

Section 6. Income Contingent Repayment in the Federal Family Education Loan Program. The legislation authorizes guaranteed student loan borrowers to repay their loans through income-contingent repayment to lenders like in the direct loan program.

Section 7. Reserve Fund Reforms. The legislation requires due process procedures, including a hearing on the record, for the return of guaranty agencies reserve funds. The legislation further restricts the expenditure of such funds, and those funds otherwise recovered by the Secretary, by requiring the funds to be returned to the U.S. Treasury.

Section 8. Default Rate Limitations on Direct Lending. This section clarifies the HEA to reflect Congressional intent that the Secretary is required to calculate default rates for direct lending schools and to terminate such schools if they exceed the default rates established in the law as is done currently for the guaranteed loan schools.

This section also requires the reporting of data on direct loans being repaid through income-contingent repayment in order to determine the effect of such repayment on cohort default rates.

In addition, section 455 of the HEA is modified by directing the Secretary to develop criteria for the calculation of default rates for institutions participating in the direct loan program. The methodology, criteria, and procedures to be used in determining

such default rates must be comparable to those applied to schools participating in the guaranteed loan program under Part B of the HEA. Such standards must be promulgated no later than 120 days after the date of enactment of this legislation or the Secretary may no longer make any new direct loans.

Section 9. Use of Electronic Forms. This section permits the development, production, distribution and use of an electronic version of the common application form by guaranty agencies, lenders, and consortium thereof to expedite the processing of student loans. Requires that the Secretary approve the form to ensure it is consistent with the requirements of the HEA. Allows the applicant to certify that the output of the application is accurate in a subsequent document. The legislation prohibits a fee from being charged to students in connection with the use of this form.

Section 10. Application for Part B Loans Using the Free Federal Application. Section 483(A) of the HEA is amended to clarify that the application may be the Free Application for Federal Student Assistance (FAFSA). The legislation also clarifies that the application may be in an electronic or other format in order to facilitate use by borrowers and institutions. Finally, this section clarifies that data shall be available to any guaranty agency authorized by an institution.

Section 11. Credit Reform. The bill modifies section 502(5)(B) of the Congressional Budget Act to require consideration of direct and indirect expenses associated with Federal Direct Student Loans, including, but not limited to, expenses arising from credit policy and oversight, credit extension, loan origination, loan servicing, training, program promotion, and payments to contractors. The amendment would apply to all fiscal years beginning on or after October 1, 1995, and to statutory changes made on or after the date of enactment of this bill.●

By Mr. WARNER (for himself and Mr. ROBB):

S. 496. A bill to abolish the Board of Review of the Metropolitan Washington Airports Authority, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE BOARD OF REVIEW OF THE METROPOLITAN WASHINGTON AIRPORTS AUTHORITY ABOLITION ACT OF 1995

Mr. WARNER. Mr. President, on January 26, 1995, I joined with my colleagues Senators MCCAIN and ROBB in introducing legislation in the Senate to abolish the Board of Review of the Metropolitan Washington Airports Authority.

Mr. President, I have been involved for many years in seeking to devise a legislative solution to the constitutional issues that exist due to the decisions of the Congressional Board of Review.

Unfortunately, Mr. President, I have learned that the legislation which my colleagues and I introduced does include a provision which I do not support. The provision is contained in section 3 of the legislation which is the elimination of the perimeter rule with respect to certain nonstop flights.

After further review and analysis of this provision, and after consultation with the Governor of Virginia and the Metropolitan Washington Airports Authority, I have learned that adoption of such a provision would be detrimental to the current and projected operations of Washington National Airport and Washington Dulles International Airport. Eliminating the perimeter rule could in the short term disrupt existing air service patterns, with nonstop flights to cities within the perimeter being canceled as flights are added to more distant and economically beneficial destinations. In the longer term, both the airlines and the cities that could suffer a loss in nonstop service to National could call for increases in the number of flights allowed at National.

Mr. President, today I am introducing legislation along with my colleague Senator ROBB, which will seek to abolish the Board of Review of the Metropolitan Washington Airports Authority.

Mr. President, our legislation would: First, remove the unconstitutional sections of the Metropolitan Washington Airports Act; second, provide a savings clause to protect all actions of the Authority taken under the old legislation; and third direct the Secretary of Transportation to amend the Authority's 50-year lease.

This legislation provides a necessary cure to a constitutional deficiency as defined by the Federal courts, in the structure of the Airports Authority, which is operating and improving the two airports that serve the Nation's Capital and the Washington region, Washington National and Washington Dulles International.

In April 1994, the Court of Appeals for the District of Columbia Circuit found that the Board of Review, made up of current and former Senators and Members of Congress, violated constitutional separation of powers principles. This was the second time the courts have struck down the Board of Review, which was designed to represent users of the airports and to preserve some Federal control over them.

The court of appeals stayed its decision until the Supreme Court had time to consider the issue. The Supreme Court decided not to hear the case in January, and the stay expires March 31, 1995.

Therefore, I repeat, all Congress is required to do to keep the airports in operation is to pass this legislation. Such continued uninterrupted operations are essential to the travel requirements of Members of Congress and their staffs.

If the Congress does not amend the Metropolitan Washington Airports Act by that date, the Airports Authority Board of Directors will lose all its power to take basic, critical actions, including the ability to award contracts, issue more bonds, amend its regulations, change its master plans, or adopt an annual budget.

This shutdown could not come at a worse time. The Airports Authority is in the middle of a $2 billion construction program between two airports.

In 1986, the Congress transferred the airports to an interstate agency created by the District of Columbia and the Commonwealth of Virginia. We did this because we recognized that an independent state-level authority could do what the Federal Government apparently could not—issue revenue bonds and undertake the major construction that was so long overdue at both airports.

The Airports Authority has done a credible job carrying out congressional intent. It has sold over $1.3 billion in tax-exempt bonds, and has multimillion dollar projects underway to double the size of the Dulles terminal and replace many of the National Airport facilities with a modern new terminal building.

As of today, the Authority has already completed $331 million in construction projects, and has an additional $416 million under construction. The steel superstructure at National is visible to all; just this week, construction crews topped off the new 220-foot high air traffic control tower there.

Thus, we cannot afford to interrupt this construction progress by Congress not acting by March 31, 1995. The Congress must pass this legislation now.

Mr. President, recently the House Transportation subcommittee on Aviation adopted H.R. 1036, the Metropolitan Washington Airports Amendments Act of 1995. This legislation contains provisions which we cannot support at this time.

Specifically, the legislation imposes a reauthorization provision in which the Congress would reauthorize the Airports Authority every 2 years. Also, the statutory freeze on the 37 slots under the high density rule would be repealed. This would mean that the Federal Aviation Administration would be able to increase slots through a rulemaking process.

Mr. President, all the Congress must consider now—before March 31—legislation to abolish the Congressional Board of Review. Any further delays will result in slowing the schedule and increasing the costs of the major construction projects at both airports.

By Mr. HELMS (for himself and Mr. FAIRCLOTH):

S. 497. A bill to amend title 28, United States Code, to provide for the protection of civil liberties, and for other purposes; to the Committee on Governmental Affairs.

ACT TO END UNFAIR PREFERENTIAL TREATMENT

Mr. HELMS. Mr. President, momentarily I am going to send a bill to the desk for introduction but I want to make a few remarks before I do that.

First of all, this bill will simply get us started along a road that the Senate ought to have taken a long time ago. Senator DOLE may have a similar bill, in which case I will gladly serve as a cosponsor of his bill, and I feel sure that he will want to be a cosponsor of mine. There may be others. But somebody has to start the ball rolling and that is what I am doing here at about 18 minutes until 3 p.m. on Friday.

Mr. President, unless I am badly mistaken, when the bill I shall offer today hits the hopper there is likely to be the usual outburst of usual phony demagoguery among our liberal brethren in the political arena and in the news media. It always happens when a proposal is made to do away with any Federal program that was established in the first place to attract votes for liberal candidates and liberal issues.

The liberal brethren can begin their holier than thou lamentations, because here comes the bill that proposes to eliminate so-called affirmative action programs that have done more harm than good in terms of race relations, which have been exceedingly costly to the American taxpayers, and worst of all, have been so burdensome for people trying to operate small businesses or, in fact, businesses of any size.

This legislation, which I shall send to the desk presently, is almost identical to the California Civil Rights Initiative which proposes to erase several decades of State-sponsored preferential programs in California based on race, color, gender, or ethnic background. If you want to call it the Helms bill that is fine, but I want to call it, ''An Act to End Unfair Federal Preferential Treatment.'' And I hope that hereinafter it will be known as that.

This bill's principal difference with the California legislation is that I am proposing to eliminate the same kinds of discriminatory, expensive, and counterproductive programs on the Federal level as California is attempting on the State level.

As I said at the outset, Mr. President, we are likely to hear and see the customary antics by the liberal news media who always start tossing epithets around any time efforts are proposed to put an end to Federal programs that do not work and that have done more harm than good—in this case, the heavy-handed effort of Government to force so-called affirmative action down the throats of the American people of all races.

But I say, here and now, that this legislation—indeed this issue—is not about race—although an intellectually dishonest liberal media may try to portray it as such. It is about fairness. It is about putting an end to reverse discrimination at the hands of ruthless bureaucrats.

Reasonable men and women may disagree about the wisdom of the Government's having gotten into the business of racial and other quotas, and affirmative action in the first place. But, now is not the time to revisit that argument, or to attempt to unscramble that egg. And that is not what this legislation is all about.

Rather, Mr. President, this legislation is based on questions being raised by a vast percentage of the American people. For example:

First, with a Federal debt of $4.8 trillion, can Congress justify forcing the American taxpayers to continue paying for programs that are today no longer needed?

Second, should Congress—which so recklessly ran up this $4.8 trillion debt—now act to do away with the social engineering foolishness that is so harming the country?

Third, after 30 years of federally funded affirmative action programs, it is now time to say enough is enough.

Fourth, should America return to the fundamental principles laid out prayerfully, and with specificity, by our Founding Fathers?

Is not the answer ''yes'' to each of these questions?

Of course it is.

You see, Mr. President, the American dream has been within the reach of citizens of all races, religions, and ethnic backgrounds because our Nation has adhered for so many years to the principles of free enterprise, self reliance, personal responsibility, and, of course, the concept that every citizen should be free to pursue his or her personal dream—based not on birthright, but rather on hard work, initiative, talent, and character.

The now-entrenched, but nonetheless discriminatory system of affirmative action preferences established by Congress, the courts, and virtually every Federal agency flies in the face of the merit-based society that the Founding Fathers envision, which is why my legislation, aimed at removing these preferences, is called the ''Act to End Unfair Federal Preferential Treatment.''

Mr. President, I am convinced this legislation reflects the thoughts of countless citizens across America of every color and creed who struggle each day to make the American dream become a reality—to own their own homes, raise their families, and provide educations for their children. But the all-powerful Federal Government somehow manages to get in the way at nearly every turn. This is the thing that we must put an end to.

Those familiar with the debate surrounding affirmative action and quota programs likely have heard of the California Civil Rights Initiative, which residents of that State will vote upon as early as next March. For those unfamiliar with this initiative, it reads:

> Neither the State of California nor any of its political subdivisions or agents shall use race, sex, color, ethnicity or national origin as a criterion for either discriminating against, or granting preferential treatment to, any individual or group in the operation of the State's system of public employment, public education or public contracting.

As I stated previously, the Act To End Unfair Federal Preferential Treatment—which I will shortly send to the desk—differs in that it puts an end to taxpayer funding of such programs on the Federal level.

Mr. President, polls show that 73 percent of Californians support this initiative to roll back racial and other quotas and preferences. But California is not alone in this sentiment. According to a recent Wall Street Journal/NBC News survey, 2 out of every 3 Americans—including half of those who voted for President Clinton—oppose so-called affirmative action.

This demonstrates, I believe, that the American people are once again far ahead of their leaders in Washington. Americans recognize that such programs are divisive, discriminatory, and in fact, harm the very citizens they claim they want to help. In short, these programs pervert the concept of equality. As Senator Malcolm Wallop, the great statesman from Wyoming, put it, ''Any government that is not strictly blind in matters of race is quite simply un-American.''

Mr. President, we simply cannot afford to continue to pour money into ineffective and ultimately destructive affirmative action programs when the total Federal debt, as of March 1, stood at exactly $4,848,389,403,816.26. That is $18,404.57 for every man, woman, and child in America.

Of course, those who pay taxes—because so many do not—will pay even far more than that in the theoretical sense of how much it will cost to pay off the debt. We must stop wasting the taxpayers' money on programs that demonstrably cannot and will not work.

If the California initiative passes, one legislative analysis predicts that high schools and community colleges would save $120 million a year in administrative costs. Universities would save another $50 million a year. Think of the savings we could realize if Federal programs are terminated nationwide. It boggles the mind.

Let me offer a few examples of Government-sponsored affirmative action programs that are so counterproductive and divisive they make me wonder how much more of this we can swallow. These few programs are only the tip of the iceberg.

First, the State Department has been instructed that certain new positions must be filled with women and minorities rather than white workers. The administration complained when a State Department list of candidates for ambassadorial posts did not contain enough minorities and women. The White House returned the list to Secretary Christopher.

Second, the Federal Communications Commission has for years implemented a program where women and minorities are given special tax breaks and special incentives to enable them to acquire mass media facilities, such as radio and television stations.

The most well-known example is the special tax break that Viacom, the world's second largest entertainment conglomerate, is trying to use. Under current FCC law, Viacom can defer $1.1 to $1.6 billion in taxes on the sale of its cable operations simply by selling them to an African-American buyer. And this buyer just happens to be the same man who conceived the minority tax-break program while working on FCC issues in the Carter White House.

This minority buyer now plans to invest $1 million of his own money in the acquisition. I ask you, Mr. President, is this someone in need of a Federal preference? I say no way, José.

Third, the Forest Service has a firefighter program where certain positions can be filled only with women or minorities. And a North Carolina constituent and Forest Service employee recently sent me articles regarding an internal Forest Service document that actually states, ''Only unqualified applicants will be considered.'' This policy was supposed to be a set-aside for women. So much for qualifications being important.

Fourth, and what about the Defense Department's special hiring directive that said, ''special permission will be required for promotion of all white men without disabilities.''

Mr. President, I have it on good authority that there are more than 160 such preference programs in place today in the Federal bureaucracy. That is what this bill is aimed at. And who pays for them? That is right. The American taxpayers pay for them.

Citizens visiting my office frequently note on my office wall a picture of a man who was a friend of all of us who served with him, Hubert Humphrey of Minnesota. Hubert was the author of the original Civil Rights Act of 1964. True enough, Senator Humphrey and I disagreed on just about every policy issue but we disagreed agreeably. We were friends, nevertheless. And I respected him for having the courage of his convictions, wrong as I thought those convictions were sometimes. He stated many times to me that my feeling about him was mutual, and I appreciated that.

In any event, Hubert Humphrey was exactly right when he stated during a debate in this room over the Civil Rights Act of 1964:

> * * * if there is any language [in the Civil Rights Act of 1964] which provides that any employer will have to hire on the basis of percentages or quotas related to color, race, religion or national origin, I will start eating the pages one after another because it is not there.

Well, the distinguished majority leader, Mr. DOLE, recently remarked,

> Now we all have indigestion from living in an America where the government too often says that the most important thing about you is the color of your skin or the country of your forefathers * * * that's wrong, and we should fix it.

I agree with Senator DOLE. BOB DOLE was on target, and hopefully the legislation that I am introducing today will serve as a first step toward fixing this problem.

As I said at the outset, I anticipate that Senator DOLE may offer legislation on this subject. I hope others will too so that we can all think together and act together on a problem that should not be allowed further to beset the greatest country on Earth.

But, Mr. President, back to Hubert Humphrey. Hubert Humphrey hated the idea of quotas and preferential treatment based on race. He knew instinctively that such programs, if instituted, would turn America inside out—which is exactly what has occurred: there is much evidence that so-called affirmative action programs have exacerbated racial problems—not healed them. Former Secretary of Education William Bennett put it this way.

> Affirmative Action has not brought us what we want—a colorblind society. It has brought us an extremely color-conscious society. In our universities we have separate dorms, separate social centers. What's next—water fountains? That's not good, and everybody knows it.

George Weigel of the Ethics and Public Policy Center had this observation regarding how divided a country America has become:

> People have not grasped the extent to which the notion of governmentally appointed preference groups is pernicious to American democracy * * * They have not grasped what it means to balkanize the United States. My guess is that there will be a tremendous revolt against this.

Paul Sniderman of Stanford University and Thomas Piazza of the University of California recently completed a book, ''The Scar of Race.'' These authors demonstrate that whites are more likely to view African-Americans in a negative light if they are first asked questions about affirmative action. Here's what Sniderman and Piazza found:

> A number of whites dislike the idea of affirmative action so much and perceive it to be so unfair that they have come to dislike blacks as a consequence.

Parenthetically, Mr. President, that is an awful state of affairs, but I believe it to be true. It should not be true, but it is. The authors continued:

> Hence the special irony of the contemporary politics of race. In the very effort to make things better, we have made some things worse.

Sharon Brooks Hodge, an African-American writer and broadcaster, perhaps summed it up best when she observed:

> * * * white skepticism leads to African-American defensiveness * * * Combined, they make toxic race relations in the workplace.

And, as is the case with so many forays into social engineering by the Federal Government, affirmative action and quota programs, have, at the end of the day, harmed the very people their proponents designed them to assist. Peter Schrag of the San Diego Union-Tribune hit the nail on the head when he asked:

> To what extent will the real achievements of minorities be diminished by the suspicion that they got some sort of break?

Although Federal agencies designed affirmative action programs to benefit victims of discrimination at the lowest rungs of the economic ladder, today they benefit chiefly educated, middle-class minorities. As Linda Chavez, the Hispanic leader and President of the Center for Equal Opportunity and former staff director of the U.S. Commission on Civil Rights under President Reagan, observed today's government affirmative action programs benefit those who can make it on their own.

Mr. President, after 30 years of affirmative action, America now finds itself a more racially ethnically divided society than ever before. The cohesiveness which once brought all of us together as Americans first is slipping away.

After 30 years, it is obvious that this social experiment called affirmative action has outlived its usefulness. It is time for the Federal Government to scrap these programs, and restore the principles upon which our country was built—personal responsibility, self-reliance, and hard work.

Mr. President, that formula for achievement was the answer 200 years ago and it is still the same today. And I might add, it is the only road to reaching the American dream for all our citizens, whether they be black, white, Hispanic or Asian, men or women. The Act To End Unfair Federal Preferential Treatment is the first step toward this dream.

Mr. President, I ask unanimous consent that the following items be printed in the RECORD at the conclusion of my remarks following the text of the bill, an August 21, 1994, article by Peter Schrag of the San Diego Union Tribune; a February 15, 1995, article by Linda Chavez in USA Today; and a February 13, 1995, article by Steven Roberts in U.S. News & World Report.

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

S. 497

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 ''Act to End Unfair Preferential Treatment''.

SEC. 2. PUBLIC EMPLOYMENT, PUBLIC CONTRACTING, AND FEDERAL BENEFITS.

Part VI of title 28, United States Code, is amended by inserting after chapter 176 the following new chapter:

''CHAPTER 177—CIVIL LIBERTIES

''§ 3601. Public employment, public contracting, and Federal benefits

''Notwithstanding title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), section 15 of the Small Business Act (15 U.S.C. 644), or any other provision of law, no agent or agency of the Federal Government may use race, color, gender, ethnicity, or national origin—

''(1) as a criterion for either discriminating against, or granting preferential treatment to, any individual or group; or

''(2) in a manner that has the effect of requiring that employment positions be allocated among individuals or groups;

with respect to providing public employment, conducting public contracting, or providing a Federal benefit for education or other activities.

"§ 3602. Necessary classifications based on gender

"Nothing in this chapter shall be interpreted as prohibiting classifications based on gender that are reasonably necessary to the normal provision of public employment, conduct of public contracting, or provision of a Federal benefit.

"§ 3603. Court order or consent decree

"Nothing in this chapter shall be interpreted as—

"(1) affecting any court order or consent decree that is in effect as of the date of enactment of this chapter; or

"(2) forbidding a court to order appropriate relief to redress past discrimination.

"§ 3604. Definitions.

"As used in this chapter:

"(1) The term 'agent' means an officer or employee of the Federal Government.

"(2) The term 'Federal benefit' means—

"(A) funds made available through a Federal contract; or

"(B) cash or in-kind assistance in the form of a payment, grant, loan, or loan guarantee, provided through any program administered or funded by the Federal Government.".

MINORITIES CAN'T MEASURE UP? THAT'S WHAT AFFIRMATIVE ACTION POLICIES IMPLY, THOUGH YOU WON'T HEAR ITS LIBERAL BACKERS SAY SO

(By Linda Chavez)

BETHESDA, MD.—For years I've suspected that many liberals favor affirmative action because they believe blacks and Hispanics can't measure up to the same standards as whites, but it's been difficult to get any of them to say so publicly.

Now Rutgers University President Francis L. Lawrence, a staunch proponent of affirmative action throughout his career, has let the cat out of the bag.

In comments to a faculty group discussing the school's admission criteria, Lawrence referred to blacks as a "disadvantaged population that doesn't have the genetic, hereditary background" to score equally with whites on the Scholastic Aptitude Test.

Lawrence has since apologized for his comments—which he now says he doesn't actually believe—and students have led angry protests demanding his resignation.

But the fact is that affirmative-action programs at universities around the country operate as if Lawrence were right.

They routinely apply lower admission standards to black and Hispanic applicants, all the while pretending that such double standards won't reinforce negative stereotypes and stigmatize students admitted under them.

The University of California at Berkeley, for example, admits black and Hispanic students with test scores and grade-point averages significantly below those it requires of both white and Asian students.

Berkeley is one of the few universities that has made available such information, even on a limited basis.

In 1989, Berkeley turned away approximately 2,800 white students with perfect 4.0 GPAs—straight As. But half of the minority students it admitted that year had below a 3.53 GPA.

And contrary to the assumptions of many affirmative-action supporters, students admitted on the basis of lower test scores and grades aren't necessarily economically disadvantaged graduates of poor inner-city schools.

At Berkeley, for example, the Hispanic student admitted through the affirmative action program comes from a middle-class family, and many if not most attended integrated schools, often in the suburbs.

In fact, 17% of Hispanic entering freshmen admitted to Berkeley in 1989 came from families that earned more than $75,000 a year, as did 14% of black students.

Statistics like these make it increasingly difficult for advocates to argue that affirmative action is intended to benefit disadvantage minorities.

One Mexican-American student told researchers studying the Berkeley program she was "unaware of the things that have been going on with our people, all the injustice we've suffered, how the world really is. I thought racism didn't exist, and here, you know, it just comes to light."

No doubt she was referring to the political indoctrination many minority students receive in such programs so they'll know how "oppressed" they really are, despite attending one of the world's elite institutions of higher learning.

But the comments that racism at Berkeley "just comes to light" might just as well apply to the university's own admission standards, which clearly do treat applicants differently according to their race.

Affirmative action advocates can't have it both ways. A system that depends on holding minorities to different—and lower—standards than whites invites prejudice and bolsters bigotry.

But it also sends a clear message to the intended beneficiaries that those who claim to want to help minorities don't really believe blacks and Hispanics can ever measure up to whites.

Most supporters of affirmative action no doubt would be horrified that anyone might interpret their intentions so malignly. But their actions speak as loudly as words.

WHAT OTHERS ARE SAYING

"We are happily at a time when a number of the compensations that were earlier advanced to make up for earlier discrimination are no longer needed."—Calif. Gov. Pete Wilson.

"If the president respects the goal of affirmative action as fully as he should, he might gain political support from voters who believe in pursuing an integrated society. * * * But if he ignores the subject and lets critics set the terms of the debate * * * he's likely to be stuck with affirmative action as a thin cover for nasty, race-minded politics—the Willie Horton issue of 1996. And it's likely to contribute to his loss."—Lincoln Caplan, Newsweek magazine contributing editor.

"The people in America now are paying a price for things that were done before they were born. We did discriminate. * * * But should future generations have to pay for that?"—Senate Majority Leader Bob Dole.

"We know that affirmative action has created problems, abuses we didn't contemplate. But if you eliminate or severely curb * * * then what?"—Calif. Lt. Gov. Gray Davis.

"(It's) going to be hell. * * * You better make sure you prepare for it."—Franklyn Jenifer, president of the University of Texas at Dallas, warning college administrators of a backlash from minority students if affirmative action policies are removed.

[From the U.S. News & World Report, Feb. 13, 1995]

AFFIRMATIVE ACTION ON THE EDGE—A DIVISIVE DEBATE BEGINS OVER WHETHER WOMEN AND MINORITIES STILL DESERVE FAVORED TREATMENT

Affirmative action is a time bomb primed to detonate in the middle of the American political marketplace. Federal courts are pondering cases that challenge racial preferences in laying off teachers, awarding contracts and admitting students. On Capitol Hill, the new Republican majority is taking aim at the Clinton administration's civil rights record. On the campaign trail, several Republican presidential hopefuls are already running against affirmative action. And in California, organizers are trying to put an initiative on next year's ballot banning state-sanctioned "preferential treatment" based on race or gender.

This increasingly angry and divisive debate about the role of race and gender in modern America could help the Republicans unseat Bill Clinton in 1996 and change the way many institutions allot jobs, business and benefits. A recent Wall Street Journal NBC News survey found that 2 out of 3 Americans, including half of those who voted for President Clinton in 1992, oppose affirmative action. The Los Angeles Times found 73 percent of Californians back the ballot initiative. "The political implications are enormous," says Will Marshall of the Democratic leadership Council, a moderate group. "Obviously, a lot of Republicans look at affirmative action as the ultimate wedge issue."

The assault on affirmative action is gathering strength from a slow-growth economy, stagnant middle-class incomes and corporate downsizing, all of which make the question of who gets hired—or fired—more volatile. Facing attacks on such a broad front, women's groups, civil rights organizations and other defenders of affirmative action are circling their wagons. Women and minorities still need preferential treatment, they argue, because discrimination still exists, causing blacks and other minorities to lag far behind whites in terms of economic status. "If African-Americans are taking all these jobs," asks Barbara Arnwine of the Lawyers Committee for Civil Rights Under Law, "why is there double-digit unemployment in the African-American community?" Adds Patricia Williams, a professor at Columbia Law School: "There is this misplaced sound and fury about nothing. Access is still very limited, and the numbers are still very low."

But the sound and fury are real. Affirmative action poses a conflict between two cherished American principles: the belief that all Americans deserve equal opportunities and the idea that hard work and merit, not race or religion or gender or birthright, should determine who prospers and who does not. In 1965, Lyndon Johnson defended affirmative action by arguing that people hobbled by generations of bias could not be expected to compete equally. That made sense to most Americans 30 years ago, but today many argue that the government is not simply ensuring that the race starts fairly but trying to decide who wins it.

Moreover, many women and racial minorities are no longer disadvantaged simply because of their race or gender. Indeed, most of the young people applying for jobs and to colleges today were not even born when legal segregation ended. "I'll be goddamned why the son of a wealthy black businessman should have a slot reserved for that race when the son of a white auto-assembly worker is excluded," says a liberal Democratic lawmaker. "That's just not right."

DISHEARTENING

The critics of affirmative action include some conservative minority and women's leaders who believe it has a destructive effect on their own communities. Thomas Sowell, the black economist, argues that affirmative action has created a process of "mismatching," in which competition for talented minorities is so fierce that many are pushed into colleges for which they are not ready. "You can't fool kids," says Linda Chavez, a Hispanic activist. "They come into a university, they haven't had the preparation and it's a very disheartening experience for some of them.

Others say affirmative action causes coworkers to view them with suspicion. ''White skepticism leads to African-American defensiveness,'' says Sharon Brooks Hodge, a black writer and broadcaster. ''Combined, they make toxic race relations in the workplace.'' Glenn Loury, an economics profession at Boston University, says proponents of affirmative action have an inferiority complex: ''When blacks say we have to have affirmative action, please don't take it away from us, it's almost like saying, 'You're right, we can't compete on merit.' But I know that we can compete.''

William Bennett, former education secretary and a leading GOP strategist, says that ''toxic'' race relations, aggravated by affirmative action, have led to a damaging form of re-segregation: ''Affirmative action has not brought us what we want—a colorblind society. It has brought us an extremely color-conscious society. In our universities we have separate dorms, separate social centers. What's next—water fountains? That's not good, and everybody knows it.''

But supporters of affirmative action maintain that arguments like Bennett's are unrealistic—even naive. ''We tried colorblind 30 years ago, and that system is naturally and artificially rigged for white males,'' says Connie Rice of the NAACP Legal Defense and Education Fund. ''If we abandon affirmative action, we return to the old-boy network.''

Voices on both sides of the debate are starting to discuss a possible compromise that would focus eligibility on class, instead of on race or gender. For example, the son of a poor white coal miner from West Virginia would be eligible for special help, but the daughter of a black doctor from Beverly Hills would not. ''Some of the conventional remedies don't work as one might have hoped,'' says University of Pennsylvania law professor Lani Guinier, whose ill-fated nomination as Clinton's chief civil rights enforcer sparked a storm of protest from conservatives. ''Perhaps there is an approach that does not suggest that only people who have been treated unfairly because of race or gender or ethnicity have a legitimate case.''

No one questions the sensitivity of the subject. For years, the civil rights lobby, backed by Democrats in Congress, was so strong that critics often felt intimidated. Even today, Democrats who disagree with affirmative action are reluctant to voice their doubts. ''The problem is political correctness—you can't talk openly,'' says a member of Congress.

Democrats are talking privately, however, urging the White House to formulate a response to the antiaffirmative-action wave before it swamps the president and the party. At the Justice Department, chief civil rights enforcer Duval Patrick is ready: ''We have to engage; we can't sit to one side.''

But despite the fact that the California initiative could cost Clinton a must-win state in 1996, the administration seems sluggish, even paralyzed. Laments a senior adviser, ''We're going to wait until it's a crisis before reacting.'' White House political strategists admit one reason for the inaction: The issue is a sure loser.

REFEREE?

Caught between angry white males and the party's traditional liberal base, White House advisers think the best they can do is position the president as an arbiter between two extremes. In a recent interview with U.S. News, the president voiced his aim this way: ''What I hope we don't have here, and what I hope they don't have in California, is a vote that's structured in such a way as to be highly divisive, where there have to be winners and losers and no alternatives can be easily considered.'' Asked his views on affirmative action, the president tried—as he often does—to please both sides: ''There's no question that a lot of people have been helped by it. Have others been hurt by it? What is the degree of that harm? What are the alternatives? That's a discussion we ought to have.''

But a senior administration official admits that the middle ground will be an uncomfortable place: ''The civil rights groups are going to say we're caving in if we make any compromises. And the Republicans are going to shout, 'Quotas.''' That same tension is already developing within the White House. U.S. News has learned that Chief of Staff Leon Panetta is quietly asking friends on Capitol Hill whether the president should simply endorse the California initiative—a position sure to trigger outrage among the president's more-liberal advisers.

Unsure how resolute the White House will be, civil rights groups are looking for their own strategy to defend affirmative action. One of their main jobs, they say, is to debunk the ''myth'' that unqualified women and minorities are being hired in large numbers. And some of the best salesmen for affirmative action are big corporations that adjusted long ago to the demands for a more-diverse work force, dread bad publicity and fear the uncertainty change would produce. James Wall, national director of human resources for Deloitte & Touche LLP, a management consulting firm, says diversity is good business: ''If you don't use the best of all talent, you don't make money.''

Even so, the combination of old resentments, new economic hardships and shifting political winds threatens to explode. ''There's a great deal of pent-up anger beneath the surface of American politics that's looking for an outlet,'' says conservative strategist Clint Bolick of the Institute for Justice. It's the same anxiety that helped pass Proposition 187 in California, which sharply restricts public assistance to the children of illegal immigrants, and thwarted Clinton's plan to push a Mexican aid plan through Congress. ''If there is a squeeze on the middle class,'' says GOP pollster Linda Divall, ''people get very vociferous if they think their ability to advance is being limited.''

Some African-American leaders insist that this white-male anger is being stirred up by demogogues who make blacks and women into scapegoats. Says Derrick Bell, professor of law at New York University: ''There is a fixation among so many in this country that their anxieties will go away if we can just get these black folks in their place.''

But the anxieties are strong and are coupled with a growing belief that affirmative action is another aspect of intrusive and inefficient big government. ''The real back-to-basics movement is not in education but in politics,'' says William Bennett. ''We're rethinking basic assumptions about government.''

Accordingly, the fight over affirmative action is playing out in four arenas:

CALIFORNIA

The real question is whether the civil rights initiative will appear on the primary ballot in March of 1996 or on the general-election ballot. If it appears in November, the measure could seriously damage President Clinton's chances to carry the nation's most populous state. That is precisely why national Republicans are promising to raise money for the effort—as long as organizers aim for November.

The initiative is the brainchild of two academics, Tom Wood and Glynn Custred, who say they were alarmed by the prevalence of ''widespread reverse discrimination'' in the state's college system. The initiative has already attracted some unlikely support: Ward Connerly, a black member of the University of California Board of Regents, said last month that he favors an end to racial and gender preferences. ''What we're doing is inequitable to certain people. I want something in its place that is fair.'' and Hispanic columnist Roger Hernandez wrote: ''I've never understood why Hispanic liberals, so sensitive to slights from the racist right, don't also take offense at the patronizing racists of the left who say that being Hispanic makes you an idiot.''

California Assembly Speaker Willie Brown, who is black, opposes the initiatives as an attempt ''to maintain white America in total control.'' But other Democrats are scurrying for cover. ''The wedge potential is absolutely scary,'' says Ron Wakabayashi, director of the Los Angeles County Human Rights Commission. ''The confrontation of interests looks like blacks and Latinos on one side and Asians and Jews on the other.''

THE COURTS

The Supreme Court has generally supported race and gender preferences to remedy past discrimination, but an increasingly conservative bench has moved to limit the doctrine. In 1989, the court struck down a program in Richmond, Va., that set aside 30 percent of municipal contracts for racial minorities, and that decision set off a flurry of litigation. In the current term, the court already has heard arguments in a key case: A white-owned construction company is claiming that it failed to get a federal contract in Colorado because of bonuses given to contractors that hire minority firms.

In another case making its way toward the high court, a black teacher in Piscataway, N.J., was retained while an equally qualified white teacher was fired, in the name of diversity. The Bush administration sided with the white teacher after she sued the school board. The Clinton administration backs the board. Two other cases relating to education are also moving forward. In one, white students at the University of Maryland are challenging a scholarship program reserved for minorities. In the other, the University of Texas law school is being sued for an admissions policy that lowers standards for blacks and Hispanics.

While most court watchers do not expect sweeping changes in current doctrine, the high court is closely divided on racial-preference questions, and the deciding votes could be cast by Justice Sandra Day O'Connor. Legal analysts cite her opinion in a 1993 case challenging voting districts that were drawn to guarantee a black winner: ''racial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions.'' The court's most likely move: require programs to be more narrowly tailored to remedy past discrimination.

CONGRESS

Republican victories last year mean that critics of affirmative action now control the key committees and the congressional calendar. A strategy session was held last Friday at the Heritage Foundation, a conservative think tank, bringing together about two dozen Hill staffers, lawyers and conservative activists. Already, Rep. Charles Canady, the Florida Republican who heads the key House subcommittee, has written to the Justice Department requesting every document relating to affirmative action cases. His goal oversight hearings that try to demonstrate that the administration's civil rights policies far exceed the original intent of Congress.

Conservatives are considering amendments to appropriations bills that would restrict the administration's flexibility. There also is talk of a measure banning racial and gender

preferences altogether. Civil rights proponents remain confident that Clinton would veto any measure that eviscerates affirmative action and that his veto would survive.

CAMPAIGN '96

The affirmative action issue will be test-marketed this year by Buddy Roemer, a Republican candidate for governor of Louisiana. But it is already intruding into the politics of 1996: California Gov. Pete Wilson has all but endorsed the initiative and Sen. Phil Gramm of Texas, who will soon announce his presidential candidacy, has taken over the appropriations subcommittee that handles the Justice Department. He will use it, predicts an administration official, ''as a platform to rail against quotas.''

The danger for Republicans lies in going too far in attacking affirmative action and courting resentful white males. If the antiaffirmative-action campaign ''turns into mean-spirited racial crap, to hell with it,'' William Bennett warned fellow Republicans.

But the questions at the core of the affirmative action debate remain unanswered. How much discrimination still exists in America? And what remedies are still necessary to aid its victims?

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[From the San Diego Union-Tribune, Aug. 21, 1994]

THE PREFERENTIAL TREATMENT BACKLASH

(By Peter Schrag)

A Republican attempt to prohibit California government agencies from discriminating for or against individuals on the basis of race, ethnicity or gender got a three-hour hearing in the Assembly Judiciary Committee this month, followed by the predictable brushoff from the committee's majority Democrats. ''It is one of the most dangerous pieces of legislation I have witnessed in my four years here,'' said Assemblywoman Barbara Lee, D-Oakland.

We should only be so lucky.

The California Civil Rights Initiative (CCRI), a constitutional amendment that would have required a two-thirds vote in each house of the Legislature in order to go on the ballot, had as much chance as a snowball in a furnace. It was sponsored by Assemblyman Bernie Richter of Chico and had some 42 legislative co-sponsors, one of whom was a Democrat and one an Independent.

It's a simply worded proposition. Its key passage says, ''Neither the state * * * nor any of its political subdivisions or agents shall use race, sex, color, ethnicity or national origin as a criterion for either discriminating against, or granting preferential treatment to, any individual or group in the operation of the state's system of public employment, public education or public contracting.''

Put that proposition to the voters unadorned and you're likely to get a sweep. It's as American as Abraham Lincoln and Martin Luther King Jr.: Judge people as individuals on what they can do, on the content of their character, not on what group they belong to or the color of their skin.

It's not the way things work, either in the universities, where much of the push and inspiration for CCRI comes from, or many other places in the public arena. Everywhere there are preferences based at least partly on something else—in hiring, in college admissions and in a thousand subtle other ways.

The reasons for some official preferences are obvious enough: 1) to make up for the lingering effects of past discrimination and 2) to try to get in the professions, in the civil service and on the campuses people who, at the very least, are not strikingly different in pigmentation from the rest of the populace.

But as the backers of the CCRI point out, the thing has gone to the point where new offenses are committed in the effort to remedy the old: Should there be scholarships reserved for blacks or Hispanics? Should college departments be offered bounties for bagging minorities in their faculty recruiting? Should there be legislative requirements of racial proportionality, not only in university admissions, but in graduation rates?

Should people of the right color or sex be given preference in contracting with public agencies, even if it costs the public more? And to what extent should success of a particular ethnic group—Asians in academic achievement for example—itself become a reason for race-based restrictions against them?

In some instances, these things have reached such totemic proportions that just questioning them is regarded as evidence of racism.

But it's not the whole story. Even CCRI's sponsors, who now hope to get the measure on the ballot by the initiative route, acknowledge that there are colleges that give preference in admission to children of alumni or, as at the University of California, to the offspring of legislators. And there are almost without doubt fire and police departments, and probably other public agencies as well, where it still doesn't hurt to be related to somebody, or at least to know them, whatever the civil service regulations say.

More important, there are legitimate sensibilities and experiences that come with certain backgrounds that may well be important in the selection of police officers or in enriching the composition of a campus. Where two candidates are otherwise similarly qualified, what's wrong with giving preference to the one whose parents are immigrants and grew up in the barrio?

CCRI's backers point out, correctly, that economic disadvantage could be used more legitimately to accomplish almost the same thing. But the very precision in CCRI's language is likely to run colleges and other state agencies afoul, on the one hand, of federal laws that encourage affirmative action and, on the other, to invite still more suits from disappointed applicants every time there's a suggestion that race or gender might have been used, however marginally, as a criterion.

All that being said, however, CCRI nonetheless reflects a set of increasingly serious problems and grievances that, as the state becomes ever more diverse, will become all the more vexing.

At what point do objective criteria and real performance become secondary to the politically correct imperatives of diversity, as in some cases they already are, thereby making it harder and harder to maintain standards of quality? To what extent do preferences for marginal candidates lead to frustration when its beneficiaries are overwhelmed?

The questions run on: To what extent will the real achievements of minorities be diminished by the suspicion that they, too, got some kind of break? To what extent does the whole process generate mutually self-validating backlash that further institutionalizes race in our society? And at what point, given our growing diversity, do the definitional problems about who is what—definitions, ironically, that squint right back to the slaveholders' racial distinctions—become both absurd and totally unmanageable?

The problem may lie as much in the idea of subjecting these processes to a rigid legal formula as in the formula chosen. And it lies in the unchecked spread of the idea that everything—college admissions, college graduation, a job—is an entitlement not to be abridged without due process.

But the complaint of the CCRI people is real enough, and it has legs.

ADDITIONAL COSPONSORS

S. 17

At the request of Mr. SPECTER, the name of the Senator from Pennsylvania [Mr. SANTORUM] was added as a cosponsor of S. 17, a bill to promote a new urban agenda, and for other purposes.

S. 47

At the request of Mr. SARBANES, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 47, a bill to amend certain provisions of title 5, United States Code, in order to ensure equality between Federal firefighters and other employees in the civil service and other public sector firefighters, and for other purposes.

S. 111

At the request of Mr. DASCHLE, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of S. 111, a bill to amend the Internal Revenue Code of 1986 to make permanent, and to increase to 100 percent, the deduction of self-employed individuals for health insurance costs.

S. 242

At the request of Mr. DASCHLE, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of S. 242, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for the payment of tuition for higher education and interest on student loans.

S. 252

At the request of Mr. LOTT, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S. 252, a bill to amend title II of the Social Security Act to eliminate the earnings test for individuals who have attained retirement age.

S. 254

At the request of Mr. LOTT, the name of the Senator from New Jersey [Mr. LAUTENBERG] was added as a cosponsor of S. 254, a bill to extend eligibility for veterans' burial benefits, funeral benefits, and related benefits for veterans of certain service in the U.S. merchant marine during World War II.

S. 262

At the request of Mr. GRASSLEY, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of S. 262, a bill to amend the Internal Revenue Code of 1986 to increase and make permanent the deduction for health insurance costs of self-employed individuals.

S. 303

At the request of Mr. LIEBERMAN, the name of the Senator from Oklahoma [Mr. INHOFE] was added as a cosponsor of S. 303, a bill to establish rules governing product liability actions against raw materials and bulk component suppliers to medical device manufacturers, and for other purposes.

S. 304

At the request of Mr. SANTORUM, the name of the Senator from Oklahoma [Mr. INHOFE] was added as a cosponsor